

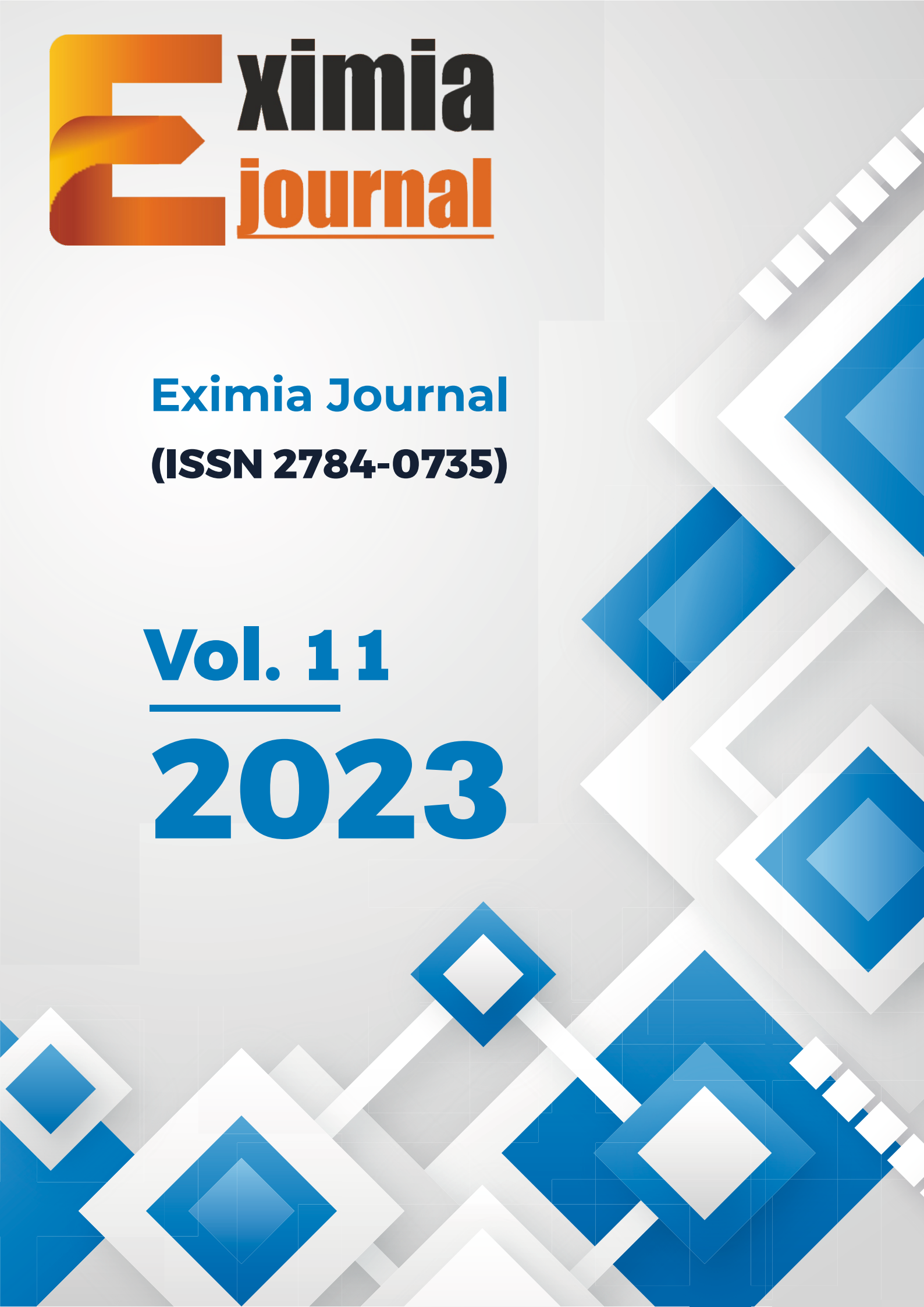


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## Establishing the identity of persons

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**Abstract.** Establishing the identity of persons is a predominant police method with a preventive character, intended to combat both possible crimes, but also to discover delinquents. Establishing the identity involves checking the documents provided with a photo of both Romanian citizens and foreigners who enter our country or are in transit. More and more often, the identity of people is established when crossing state borders, thus the state of danger can be removed. We can say that the procedure of establishing the identity is a measure that the judicial bodies resort to, and with the help of witnesses or victims, they establish the identity of people with the help of technical methods. Throughout life, both the Romanian Constitution and the Criminal Code have tried to diversify and improve identification methods, to be as simple as possible and to reach the best possible result in the shortest possible time with the aim of reducing the criminal phenomenon. In the theme we chose to write the establishment of the identity of the persons, the stages of this process, the persons subject to identification, but also the circumstances in which this process is carried out. We will detail the cases in which establishing identification is possible and under what conditions, but especially the presentation of the 3 cases through which establishing identity is possible, establishing identity through portrait photography, through voice signals, but not least through external signals.

**Keywords.** Police rules, material endowment, compliance with the law, preventive activities, notices

### **I. General considerations**

Establishing the identity of persons represents preventive police measures, which consist in requesting and verifying the identity card or other documents provided with a photograph or the statements of the intercepted person, as well as through the checks carried out by the police officer in the exercise of his duties carried out by electronic means owned by him.

Preventive measures are used in order to prevent or combat a dangerous situation, maintain order and public peace, the intervention of law enforcement only taking place according to the necessity of the situation or to combat a danger.

The need for identity has been felt since ancient times, although in those days there were no documents to certify the identity of people, people were recognized by all kinds of more or less common signs, such as clothing, facial features, color of the skin, or according to different particular traits intended to differentiate the individual in society, nevertheless society felt the need for administrative records of the population and for the attestation of identity, with the result that administrative registers, land registers, episcopal tables and passports became means through which the authorities established the identity of the persons.

Starting from these sources of information, administrative registers, episcopal tables, passports, each containing data concerning the identity of the human being, to arrive in contemporary society at a true modernization of the system of records of persons, establishing identity by fingerprint, portrait photograph, voice cues, external cues are just some of the modern methods of establishing identity that today's society has come up with.

We can say that a person's identity is a multifaceted concept that consists in clarifying the individual, both as a social person and as an individual. Identity cannot be limited to a set of characteristics that can define an individual forever because he is subject to a long process of personal transformation.

This side of people, "identity" corresponds to the systems of ideas, habits, our personality that individualize us in the groups we belong to.

Identity is part of an evolutionary process, it is progressively shaped, reorganized and modified throughout life, its evolution starts from childhood and changes throughout life.

In each period of individuals' development, elements of the social context, living environment, standard of living influence this identity. Identity evolves, therefore, along the socio-cultural transformations produced in a society.

This perspective must be discussed taking into account the stages that each individual goes through starting from the identity characteristics discovered in adolescence and reaching old age.

Any human being who belongs to a group needs an identity to distinguish himself from other members.

Socialization is the main feature of identity, it is what shapes the individual throughout existence, allows the individual to learn cultural and social rules, ways to react to different situations, all of which shape his identity throughout his life.

Personal identity is not necessarily related to similarities in material acquisition. Some resort to the soul: it has an untouched continuity throughout all the physical changes of the body, and can even survive the total destruction of the body. However, there is not enough evidence to prove the existence of the soul, and modern neurology has proven that the vast majority of the functions supposed to be of the soul are, in fact, performed by the brain. Although the soul would offer a solution to the problem of personal identity, its existence cannot be practically proven. Thus, the answer to the question "what is the identity of a person?" it can only be found through scientific theories that base personal identity on natural phenomena.

Establishing a person's identity is, therefore, a way to establish not only the person's affiliation, race, religion, physical features, but also the moral features of the individual, the genetic heritage.

We can affirm the fact that, in the exercise of the duties of the service, the policeman does not only establish the identity of the person, but discovers the traits of the intellect or the character of the individual which is most often acquired from the social, family environment or from the needs that have arisen during his evolution. Thus, an individual can resort to various crimes some minor others with a greater impact on society due to these identity traits, a child in full social development who will see his parents living in a hostile environment, who resort to various crimes for to survive, such as robbery, rape, blackmail, and so on, will develop having already implemented these characteristics at the subconscious level and which in turn, involuntarily or not, will resort to the same methods to survive.

As far as the criminal phenomenon is concerned, establishing the identity of people is not limited to an individual, most of the time the police discover true criminal groups. Groups of delinquents obey a command structure and a canon of specific rules, different from the

general rules imposed by society. Individuals are prepared for life in a similar way, therefore any offense is sanctioned almost identically whenever it is identified. Criminal activity, having a participatory character, requires that the understanding of individuals be total, in the sense that each criminal aims to be a criminal alongside other criminals. Participation is a complex process, because homogeneity must be reached between the perception of the meaning of the crime, by each participant, and the uniformity of the acts that ensure the accomplishment of the act. The approach to the collective criminal phenomenon requires the actional identity of the participants, in order to ensure the unitary structure of the criminal act.

The crime rate index depends on the way social groups are organized, in the sense that some are organized to commit crimes, and some are organized to prevent crimes from occurring. The absence of the anti-criminal model causes the crime rate to increase, the need for differentiated organization of groups being obvious.

The fact that man can only exist in society is attested not only by psychology and sociology, but also by history, anthropology, the entire culture of humanity and especially the psychic evolution of man based on the deepening and internalization of the social which has become the starting point of human consciousness.

Identity has been, directly or indirectly, the research object of several psychologists, concerned with the evolution of human personality, with the causal understanding of its manifestations, with the improvement of its behavior aimed at placing man on a new stage of evolution.

We are not, but we become. Everything is to surprise ourselves, to find ourselves in what is essential in our being, in what constitutes the dominant trajectory in the transformation of our personality.

## **II. Establishing the identity of persons on the territory of Romania**

Establishing the identity of persons represents police measures of a predominantly preventive nature, with the aim of reducing the criminal phenomenon and maintaining public order and tranquility. The identity of the persons, whether Romanian or foreign, is carried out by checking the documents valid at the time of the request, or by any other document issued by the competent authorities.

On the territory of Romania, the establishment of the identity of persons is carried out only for the purpose of fulfilling the duties of the service, the information obtained in this way will only be used in compliance with the legal provisions on the protection of personal data, at the end of the working hours the policeman must be able to record in a report the identity data of the intercepted persons and the measures applied to them.

The practice of police work shows the need to comply with some rules regarding the establishment of the identity of persons:

- the policeman has the obligation to salute and decline his rank, and when in civilian clothes to present his badge and service ID;

- it is carried out with caution, in order to prevent an attack on the part of the legitimized person or his escape. At the moment of identification, the policeman will hold the identity document at an appropriate height, standing in front of the person being identified at approximately 1-2 meters, attentive to any movement, in such a way that he can intervene effectively, if the situation requires it;

- the identity card or other document presented is checked very carefully, to see if it belongs to the person in question, has changes, deletions, falsifications and if the photo corresponds to the person's physiognomy. Questions are also asked regarding the justification of the presence in that place and the data entered on the identity document;

- avoid, as much as possible, identification in crowded, dark places or where this measure could not be carried out in good conditions, either due to the curiosity of the people assisting, or the unwanted intervention of some of them."<sup>1</sup>

A person's identity bears mainly philosophical discussion, its definition being the cause of many books specific to the field. However, from a philosophical point of view there is no unanimity regarding the concept of identity, the established interpretations accumulating a series of common points, but subject to the imprint of the personality. In this context, the regulation from a legal point of view of a text of law regarding the right to identity of individuals, appears as at least cumbersome, as long as there is no agreement on the concept of identity, able to stop giving rise to discussions in contradictory.

The identity of a person is given by certain elements that manage to distinguish him from others, such as name, domicile, marital status. However, the acquisition of these attributes (also called personality rights) is carried out strictly, by complying with the provisions applicable in the field. For example, the acquisition of the first name takes place on the date of birth registration, based on the birth declaration.

#### I I.1. Establishing the identity of Romanian citizens

Establishing the identity of persons can be carried out by the policeman on duty or by any competent authority, the verification of documents is carried out according to a well-established procedure, the identity document is kept at a height that allows the policeman to check the identity document if it shows deletions, additions or changes, and last but not least if the intercepted person corresponds to the ID photo.

"The police officer checks whether the identity document presented:

- a) is issued by the competent authority.
- b) corresponds in form and content.
- c) does it belong to the person or not, in the sense that the photo in the document corresponds to the physiognomy of the possessor and if the civil status data correspond to those declared by the person in question.
- d) the validity period for which it was issued has expired.
- e) shows signs of forgery, has erasures, changes, corrections, additions, or contains impermissible, written or stamped mentions, or is damaged."<sup>2</sup>

The term "identity" is translated as a set of personal data intended to describe the individual, a set of data and values intended to identify the individual through a series of attributes specific to each individual.

Establishing the identity of persons is carried out with the help of the identity document in the most common cases, when this is not possible, establishing the identity is carried out with the help of other documents issued by the public authorities provided with a recent photo.

Establishing the identity of persons is a preventive police measure, a measure that helps to combat illegal actions, establish order and public peace.

"In order to legitimize and establish the identity of a person, the policeman carries out the following activities:

- a) intercept the person;

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<sup>1</sup> Buzescu Gheorghe , *Rules of police theory and practice* , Pro Universitaria Publishing House, Bucharest 2016

<sup>2</sup> Anane Ivan , *Elements of theory and tactics of criminal investigation bodies* , Pro Universitaria Publishing House, Bucharest 2014

b) request the identity document, using the formula: GOOD MORNING (EVENING)! I AM (surname, surname and professional rank of the police officer) FROM (police unit), PLEASE PRESENT MY IDENTITY DOCUMENT;

c) when identification is carried out by two policemen, one of them checks the identity document, and the other supervises the behavior of the person with identification, positioning himself 2-3 steps from him towards the back and to the side. As the case may be, the policeman supervising the authorized person will have the means of intervention prepared.

d) the identity document is kept at an appropriate height, which allows both the permanent and careful supervision of the person's behavior, as well as the reading of its content.

e) questions regarding the identity data of the person are addressed in a different order than those that are entered in the act." <sup>3</sup>

The identity of the persons can be established both for a single person and for a group of persons, to establish the identity of a group of persons the policeman will place the persons in line requesting the identity document for each one separately, in the situation where the verified document is in accordance, and no legal action is required against the authorized persons, the policeman returns the document and continues his duties.

In the situation where the intercepted person does not have identity documents, but provides personal data, the policeman checks the information in the database, and if the situation requires it, he takes legal measures.

Establishing the identity of persons is a police measure that must be carried out under good conditions, avoiding as much as possible very crowded areas, away from the interest of those around them, their unwanted intervention or crowded areas. If the intercepted person refuses to present the identity document or provide details regarding his identity, the policeman will inform him that his act constitutes a contravention, and he will be sanctioned according to the law. If the person refuses to present the requested documents this time, the policeman will perform a brief body check, and in the event of discovery of the act, after establishing the identity, the contravention penalty will be applied.

When, after carrying out the physical control, the identity document is not found on him, the policeman will lead the person to the police headquarters in order to establish the identity.

The establishment of the identity of the persons and the application of the legal measures are carried out in no more than 24 hours, in the case of bringing the person to the police headquarters for the establishment of the identity, the policeman draws up an identification report. Establishing the identity of persons is carried out taking into account the protection of personal data. At the end of the duty hours, the policeman has the obligation to record in the report the identity data of the authorized persons and the measures applied to them.

"The policeman takes the measure of identification when:

- a) the person violates the legal provisions;
- b) there is substantial evidence that the person is preparing or has committed an illegal act:
- c) the person is suspicious (according to his behavior, luggage, clothing, where he is, he creates suspicion among the police officers on duty);
- d) the person can give clarifications or other aspects that are of interest for solving the duties of the policemen;
- e) the person requests entry into a legally restricted perimeter;

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<sup>3</sup>Anane Ivan , *The investigation of criminal investigation bodies* , Pro Universitaria Publishing House, Bucharest, 2014

f) the authorized person is used as an assistant witness;"<sup>4</sup>

Establishing the identity of Romanian citizens is established through the identity card, a document used to prove the identity of a person. Identity documents arose out of the need for a centralization of natural persons, each individualized through a document containing a set of unique identification data. Identity documents are registered in the national registers of people, they constitute an important administrative resource. The identity card consists of two transparent outer layers, between which the photo holder is inserted. The text of the identity card is printed on a color printer, using the standardized coding for each card printed through the standard Romanian keyboard.

The provisional identity card is issued when the natural person does not possess all the documents necessary for the issuance of the identity card, applied only to Romanian citizens residing abroad, for a maximum period of 1 year, who live temporarily in Romania.

The documents are submitted to the community public service for records of persons within the radius of which the applicant has domicile or residence. Applications for the issuance of identity documents are submitted in person, and identity cards are issued to the holders. In the situation where the applicant is not in the country, the agent will present a special power of attorney on which the photo of the holder is affixed, authenticated by the diplomatic mission or the career consular office of Romania in the state where the applicant is located.

Romanian citizens living abroad can submit the application for the issuance of the identity document together with the documents required by law at the diplomatic missions or consular offices of Romania in the respective state.

The documents proving the name, surname, citizenship and domicile, necessary for the issuance of the identity document, are presented in original and copy.

In the case of the expiration of the validity period of the identity document, citizens can present themselves at the community public service for the records of persons with whom they are domiciled or resided no more than 180 days before, but not less than 15 days, to request the legally with a certificate of validity, until the new identity card is issued. In the other situations listed above or upon reaching the age of 14, citizens are required to request the issuance of an identity document within 15 days of the occurrence of the event.

" The identity card is issued as follows:

- a) the first identity card is issued upon reaching the age of 14;
- b) for persons aged between 14-18 years, the term of validity of the identity card is 4 years;
- c) for persons aged between 18-25 years, the term of validity of the identity card is 7 years;
- d) identity cards issued after reaching the age of 25 have a validity period of 10 years."

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Romanian citizenship is acquired, kept or lost depending on the legal provisions, Romanian citizenship cannot be withdrawn from the one who acquired it by birth.

Non-compliance with the legal provisions attracts contravention liability, which is sanctioned with a fine between 40 lei and 80 lei, without the possibility of payment within 48 hours, of half of the minimum amount provided.

Regarding the validity of the identity document, it is established as follows:

- a) 4 years for persons aged between 14-18 years;

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<sup>4</sup> Buzescu Gheorghe, *Elements of public order* , Publishing House Pro Universitaria, Bucharest, 2016

<sup>5</sup> [http://www.cdep.ro/pls/legis/legis\\_pck.htm\\_act\\_text?id=65141](http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=65141)

- b) 7 years for persons aged between 18-25 years;
- c) 10 years after the holder has reached the age of 25;
- d) permanently after reaching the age of 55;

The identity card presents a personal numerical code, CNP, consisting of 13 digits, unique for each person born in Romania. It is assigned at birth to each child and is recorded on the birth certificate, the personal numerical code appears both in the identity documents and in the driving license.

"By the legality of the personal numerical code, we understand, on the one hand, that the CNP is recognized, as an aptitude, by law, and on the other hand, the conditions for acquiring, modifying or changing the personal numerical code are established by the methodological norms issued in the unitary application of to it."<sup>6</sup>

In case of theft of the identity document, the owner must report the act to the nearest police unit within 24 hours of the occurrence of the event, and the loss or destruction of the identity document will be reported to the community service for records of people on the spot of domicile or residence. The identity document declaring lost or stolen and later found by the holder must be handed in within 48 hours to the community service of records of persons where the event was declared, because the documents declared stolen or lost are null and void.

#### II.2 Establishing the identity of foreign citizens

According to the legislation in force, the notion of "foreigner" means a person who does not have Romanian citizenship.

Foreigners on the territory of Romania will prove their identity with the passport or with another identity document issued by the state of which they are a citizen. In the case of a stateless person, proof of identity and stateless status is provided with a passport or other document issued by the state in which he resides.

In Romania, foreigners benefit from the general protection of the person and property, guaranteed by the Constitution and other laws, as well as the rights stipulated in the international treaties to which Romania is a party.

Foreigners on the territory of Romania do not benefit from the privilege of establishing political parties or other similar activities or notions, nor can they be part of them, they cannot occupy positions and dignities in the public, civil or military administration and they cannot initiate, coordinate or participate in demonstrations or activities that affect public order and peace or national and local security.

Likewise, foreigners cannot finance parties, organizations, groups or demonstrations or meetings, during the stay of foreigners on the territory of Romania they are obliged to respect the laws of the country

Foreigners can enter Romania for the following activities: business, press activities, employment or studies, in transit, as a tourist or for other interests, under the terms of this law.

Foreigners enter Romania by presenting valid documents for crossing the state border, which are recognized and accepted by the Romanian state, as well as the Romanian visa.

The government can establish by decision the exemption of certain citizens of other states from the requirement of visas.

The entry of foreigners into the territory of Romania can be done through any control point for crossing the state border open to domestic and international traffic.

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<sup>6</sup>Anane Ivan, *Elements of computerized personal records*, Pro Universitaria Publishing House, Bucharest 2015

Crossing the Romanian state border by foreigners can also be done through other places, under the conditions established by treaties between Romania and the neighboring states. The Romanian visa is granted, upon request, by the state institutions or consular offices of Romania.

The government can unilaterally decide to destroy or obtain the Romanian visa by the citizens of some states at the control points for crossing the state border. Depending on the purpose of the foreigner's trip, the visa can be: diplomatic, service, simple or transit.

The visa is issued as follows:

- diplomatic visa and service visa: by the Ministry of Foreign Affairs,
- simple visa and transit visa: by the diplomatic missions or consular offices of Romania, the control points for crossing the state border, the Ministry of Foreign Affairs or the Ministry of the Interior.

The simple visa is issued for business, media activities, for applying for employment or for studies, for tourism purposes, visit or for other needs for which the foreigner requests the acquisition of the visa, under the conditions provided by the laws of the Romanian state.

The conditions by which residence visas are acquired on the territory of Romania are regulated by common instructions established by the Ministry of Foreign Affairs, the Ministry of the Interior and the Ministry

Public Finance.

Citizens of the states with which Romania has concluded agreements on the abolition of visas are exempt from obtaining a visa.

Foreigners who also have Romanian citizenship will be treated in this capacity on Romanian territory, if they prove it with appropriate documents, even if they entered the country with passports issued by the authorities of other states.

Establishing the identity of foreigners on the territory of Romania is carried out by the competent authorities, organizations belonging to the Ministry of Internal Affairs, and last but not least structures belonging to the border police.

The validity period of the visas can be successively extended by the competent bodies of the Ministry of the Interior, for periods determined on the basis of the reasons justifying the request.

The extension of the validity period of the visa cannot exceed the validity period of the travel document.

On the basis of equivalent treatment, visas can be extended for a period longer than one year. Romanian diplomatic missions and consular offices can grant visas that exceed the 30-day period, under conditions of equality between the member states. In motivated situations, the foreigner can be granted a simple visa for personal or family interest, valid until the dissolution of the causes that prevent him from leaving the territory of Romania.

Entry into the territory of Romania can be refused to the foreigner who has an entry visa when, from the time the visa was granted until the presentation for entry, the acquired documents have expired.

Foreigners holding simple passports, who are known to come from one of the known states with a tendency to emigrate, are granted the right to enter Romania under the laws of the Romanian state, if they present to the representatives or diplomatic councils of Romania a request in written form, received from a natural or legal person who lives or resides in Romania, and who provides proof of medical insurance valid for the entire stay.

The invitation authenticated in accordance with the law, is registered with the competent bodies of the Ministry of the Interior, must contain the commitment of the natural or legal person

who makes the call to bear the expenses related to the foreigner's stay on the territory of Romania, but also for his eventual return to the country of origin, its departure or return.

If a foreigner has an uninterrupted stay of more than 15 days, the natural or legal person who provides the foreigner's accommodation or the land for the installation of the mobile home is obliged to notify the police of the place of his stay within 3 days.

Individuals and legal entities cannot host foreigners who do not possess documents that prove their identity, they cannot provide proof of travel documents and a valid visa, they have the obligation to immediately notify the nearest local police body about this incident.

If the foreigner in Romania wishes to extend the period of stay, he must request the competent authorities at least 24 hours before its end.

When the measure of interruption or non-grant of the visa has been decided on the foreigner, this decision can be contested based on administrative litigation.

A foreigner who could not establish his identity or has reduced the privilege of staying on the territory of Romania has the obligation to leave the territory of the Romanian state on the established date, and the person who has suspended his right or has been declared undesirable, within a maximum of 48 hours from the date on which this provision was brought to his attention.

After establishing the identity, the foreigner may be prohibited from leaving the territory of Romania under the following conditions:

- does not present legal documents for leaving the country;
- he is accused or accused of a crime and the magistrate orders the establishment of the prohibition measure, leaving the locality where he is, for the purpose of the correct execution of the criminal procedure, regardless of the stage of its development;

### II.3. Refusal of legalization and application of contraventional sanctions

In order to guarantee a climate of order and public tranquility necessary for the normal development of economic, social and cultural activity, the promotion of civil relations in everyday life, citizens are obliged to have a civilized, moral and responsible behavior in the spirit of the country's laws and the rules of coexistence social. According to police regulations, citizens are obliged to respond to all their requests and demands.

Citizens who are on the territory of Romania have the legal obligation to identify themselves before a police officer who asks them to present an identity document, otherwise the law provides for a contravention fine.

The identification of persons is a police measure with a predominantly preventive character, the police officer in the exercise of his duties resorts to this measure for a simple check or when the intercepted person presents suspicions.

When the verified document is in order, and legal measures are not applied to the person with the ID, the policeman hands over the identity document and continues the service.

More and more often, police officers encounter difficulties in establishing the identity of people, but when the intercepted person does not have an identity document on him, but provides information about his identity, the police officer will check the received information in the databases, and if the situation requires will take the necessary legal measures.

"If the person refuses to identify himself or to give statements regarding his identity, the policeman draws his attention to the fact that his act constitutes a contravention and is sanctioned according to the law.

If the person continues to refuse to present the identity document or to provide the identification data, the policeman performs a brief body control, in compliance with the legal

provisions in force, and in the situation where he finds the document, after establishing the identity, he applies the contravention sanction."<sup>7</sup>

If, after performing the physical control, the identity document was not found on the registered person, the policeman will resort to driving the person to the police headquarters to establish the identity.

The refusal of legalization, according to the laws in force, constitutes a contravention, therefore the application of the contraventional law raises problems at the community level, any society exists and evolves on the basis of some laws, every act that violates the rules applied in a state, attracts legal liability, and this liability it differs according to the nature of the norm or the social danger.

"According to Government Ordinance no. 2/2001- regarding the legal regime of misdemeanors, with subsequent amendments and additions, the misdemeanor is defined as the deed committed with guilt, established and sanctioned by law, ordinance, by decision of the Government or, as the case may be, by decision of the local council of the commune , the city, the municipality or the sector of the municipality of Bucharest, the county council or the General Council of the Municipality of Bucharest."<sup>8</sup>

Starting from the definition of the contravention, we can affirm the fact that its structure is highlighted by a multitude of specific elements intended to regulate administrative law

The contravention is composed of the following features:

- the act is committed with guilt;
- the deed presents a lesser danger than the crime;
- the act is foreseen and sanctioned by a decision of the Government or the Council of the Municipality of Bucharest;

The contravention is characterized by a manifestation of the perpetrator in the social environment, his action against social values, but which is not characterized as a criminal act.

The refusal of a person to avoid the procedure of establishing the identity, to present the identity document, to maintain public order and tranquility or to appear at the police headquarters at the request of the competent bodies, constitutes a misdemeanor and is sanctioned with a fine from 100 lei to 500 lei.

The normative acts that regulate the establishment and sanctioning of contraventions are determined by the public administration authorities and will be applicable in the territory where they operate, the implementation of the contravention fine requires the establishment of the place where the act was committed.

"The place of committing the contravention is determined by the commission or omission nature of the contravention. If the contravention is committed by action, the place of commission of the contravention is the place where the result of the illegal action occurred."<sup>9</sup>

The offense has two characteristics in order for it to be carried out, the first condition is the age of the offender at the time of committing the act, the second condition is represented by the status of the offender, he must be a natural person to be the subject of the offence.

The responsibility for committing the offense is represented by the totality of the mental traits that the individual possesses, these traits make him understand the freedom and nature of

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<sup>7</sup> Buzescu Gheorghe, *Police Law - university course* , Sitech Publishing House, Craiova, 2019

<sup>8</sup>Buzescu Gheorghe, *Peculiarities of contraventional law*, Sitech Publishing House, Craiova 2017

<sup>9</sup> Buzescu Gheorghe, *The place and role of the civil servant in the state apparatus* , Sitech Publishing House, Craiova, 2017

his actions, in accordance with the laws of society, and be aware of the consequences of his actions when he acts against these units .

"Responsibility must exist at the time of committing the contravention and is distinguished from contraventional liability. Responsibility is a psychological category, while contraventional liability represents the obligation of the person who committed a contravention to bear the consequences of his act."<sup>10</sup>

The biggest fine cannot be given to the person who refuses to show identification, but to the person who prevents a policeman from requesting the identity documents of a citizen. According to the law, the fine in these cases can reach up to 6,000 lei.

It is a misdemeanor " preventing, in any form, the bodies charged with maintaining public order from fulfilling their service obligations regarding the identification or management of a person at the headquarters of the police or another state body or from taking the necessary measures to maintain or restore order public."<sup>11</sup>

It is also useful to know that, for those who are used to frequenting bars or restaurants, the owner or employee of the premises may request police assistance if a customer refuses to leave the premises at their request. It is a misdemeanor and is punishable by a fine from 100 lei to 500 lei.

According to this law, the sanctioning of crimes against public order, which involves the consumption of alcoholic beverages in the public domain, it is known that in the USA, for example, citizens of this state are not allowed to move or use bottles of alcoholic beverages on the street, with even less the consumption of the contents, but there is also an exception to the rule, in which the consumption of these alcoholic substances is allowed if the bottle is wrapped in a matte package. Romanian law prohibits the consumption of alcohol in public areas, but does not allow consumption if the container is masked with a paper bag.

### **III. Participation of witnesses in the process of establishing identity**

BLANK is a person who has direct knowledge of the factual facts or circumstances that constitute evidence in a civil or criminal case, meaning that the person participated in a discussion, event or accident and can relate the circumstances of the facts before the court or other organization Research.

According to art. 315/ New Criminal Procedure Code, a witness cannot be a person who is in one of the following situations:

1. The person seeks to obtain a certain advantage following the resolution of the conflict or may claim the same rights as the plaintiff;
2. Is in hostility or seeks to gain an advantage;
3. He was punished for perjury, or made false statements, did not tell the whole truth about the circumstances about which he was asked;
4. Was placed in legal custody; is a measure ordered by the court to protect a person without the necessary discernment to attend to his interests due to mental problems;
5. The person to be heard as a witness is a spouse, ex-spouse, fiancé or common-law partner;

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<sup>10</sup> Buzescu Gheorghe, *Peculiarities of contraventional law* , Sitech Publishing House, Craiova 2017

<sup>11</sup>Law 61/1991, for the sanctioning of acts of violation of *social norms , order and public peace* , Article 2, point 36

In addition, parties and main procedural subjects cannot be witnesses in a trial, according to art. 115 of the Code of Criminal Procedure, i.e. the plaintiff, the defendant, third parties who voluntarily or forcibly intervene in the process and the injured person.

It is also important to mention the fact that, in a trial, the parties can agree, expressly or tacitly, to be heard as witnesses and relatives and relatives up to the third degree inclusive, the spouse, ex-spouse, fiancé or cohabitant, but also those who is at enmity or nexus of interest with any of the parties.

Article 317/New Code of Civil Procedure establishes the persons exempted from testifying:

"1. ministers of religion, doctors, pharmacists, lawyers, notaries public, bailiffs, mediators, midwives and medical assistants and any other professionals who are required by law to maintain professional secrecy or professional secrecy regarding the facts they became aware of during the service or in the exercise of their profession, even after the termination of their activity; it is important, therefore, that the person became aware of these facts during the exercise of their profession or within the service;

2. judges, prosecutors and civil servants, even after the termination of their position, on the secret circumstances of which they were aware in this capacity;

3. those who, through their answers, would expose themselves or expose their spouse, ex-spouse, fiancé, concubine, or any relative or relative to criminal punishment or public contempt."<sup>12</sup>

Exceptionally, the Civil Procedure Code continues to explain, doctors, pharmacists, lawyers, notaries public, bailiffs, mediators, midwives and medical assistants and any other professionals who are required by law to maintain professional secrecy or professional secrecy, will be able to submit testimony, if they have been released from official or professional secrecy by the party interested in maintaining secrecy, unless the law provides otherwise.

In order to establish the identity of the persons and to establish the circumstances of the facts, "any person who has knowledge of the facts or circumstances that constitute evidence in the criminal case can be heard as a witness.

Any person summoned as a witness has the following obligations:

- to appear before the judicial body that summoned it at the place, day and time indicated in the summons;

- to take an oath or solemn declaration before the court;

- to tell the truth;"<sup>13</sup>

The identification of persons can be ordered when it is necessary for the purpose of clarifying the circumstances of the facts, the person participating in the identification process must be heard regarding the person to be identified. During the hearing, the witness must relate all the characteristics of the person, as well as the circumstances in which he was seen. The person making the identification is asked if he has participated in another identification procedure regarding the same person or if the person to be identified has been presented or described to him previously.

"The person to be identified is presented together with 4-6 other unknown persons, with features similar to those described by the person making the identification. These rules are also applicable in the situation of identifying people from photographs. The identification is carried out in such a way that the persons to be identified do not see the person identifying them. The

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<sup>12</sup> <https://legeaz.net/noul-cod-de-procedura-civila/art-317>

<sup>13</sup> Anane Ivan, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest 2015

performance of the activity of identifying persons, as well as the statements of the person making the identification, are recorded in a report."<sup>14</sup>

The minutes recorded after the identification must contain mentions with reference to the order that ordered the measure to be taken, the place where it was completed, the date, the time at which the identification process began and the time at which it ended, the names of the persons present and the capacity in which they participate, the name and surname of the person making the identification, the name, surname and address of the persons who have been entered into the identification group, the name and surname of the identified person.

During the criminal investigation, if the criminal investigation bodies deem it necessary, the identification activity can be audio-video recorded, the recording will be attached to the minutes and can be used as evidence.

If the judicial bodies consider it necessary to interview several people in order to identify the same person, the necessary measures will be taken to avoid communication between the people who made the identification and those who are going to identify them.

If the same person is to participate in several processes for the identification of certain persons, the competent bodies take measures so that the person to be identified is positioned among persons different from those who participated in the previous procedures, respectively the person subject to identification is placed among other different people previously used.

The process of evaluating the witness's statements is also one that deserves special attention because the incorrect assessment of the statements can generate some ambiguities, which sometimes in order to be clarified require the undertaking of additional measures, the repeated hearing of the witnesses, which not only creates discomfort for the witness but it also leads to the loss of trust in the respective structure of the witness, it creates an unpleasant precedent for the witness who in turn in the future knowing data about an illegal act may deny that he has knowledge about the identified person or even worse may share his experience with relatives, friends, acquaintances who can follow his example, a fact that can hinder the entire process of establishing the identity of people or in finding out the truth.

### III.1. Establishing the identity of people through portrait photography

Identification of persons by portrait photography is carried out through the administration of evidence, comparison and study of all objectives and means of examination. Identification involves the presentation of all the essential features, the place, the method of action, the objects, the tools used, in this way the kidnapped, missing persons, the persons who are the subject of crimes are identified.

The photograph is used as a technical-scientific means of evidence used to find out the truth in the criminal process or to identify people, it is one of the most used methods used by criminal investigation agencies for on-site research.

There are situations in which establishing the identity of persons cannot be established on the basis of the evidence discovered at the scene of the crime, so the criminal investigation bodies resort to establishing the identity through portrait photography, most often the criminal investigation bodies are put in a situation where the identification of the person it is made on the basis of the statements of the victim or the eyewitness, who retained some external signs of the criminal

The judicial bodies use a number of elements in the process of identifying the criminal: the appearance of the face, the gait, the existence of genital or accidental anomalies, some outward appearance.

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<sup>14</sup> Buzescu Gheorghe, *Police Law - university course*, Sitech Publishing House, Craiova, 2019

The examination of the photographs is carried out through various comparison procedures:

" a) Comparison by confronting traits

It is a simpler procedure constituting the initial stage in performing the comparative exam and consists of placing the two photos (the one of the unknown person on the left and the one of the known person on the right), after which the common elements are looked for that must coincide in terms of shape, size, position, as well as a particular signs, when the two images represent different people.

The most frequently used are the elements related to:

- the distance between the pupils;
- the distance between the iris and the tip of the nose;
- the distance between the nose and the tip of the chin;
- the length of the earlobe and the distance from the face;
- moles, scars, etc.;

The discovered elements (similarities and differences) will be noted and described in the expert report, and depending on the conclusion reached, mark these elements on both photos.

b) Measurement of angular values:

This procedure consists in choosing one or more fixed elements of the figure from which tangent lines are drawn to the extremities of other elements, thus forming angles, determined by the shape, size and position of the details of the figure.

c) Designing common points:

The procedure requires that the two photographs being compared are taken at different scales, but the images are taken in the same plane (from the front).

The larger image is pasted at the bottom of a sheet of paper, and the smaller image on top of it.”<sup>15</sup>

Establishing the identity of people through portrait photography is most often done with the help of the photo robot in which fragments of the photos are presented to the person who makes the identification, selects the images that present the features of the suspect, with the help of the identified elements, the specialists will obtain a complete image.

In the action of recognition of unknown persons, together with the methods of reporting and identification of fingerprints, the method of describing the signs identified based on certain rules derived from the method of description which is used as an access method in the identification process.

The description of external signs is used in the detection of criminals who are hiding, in the identification of criminals with the help of declarants, in the identification of foreign persons.

The basis for identifying people by signals is, on the one hand, the great variability of individual characteristics that distinguish one person from another, and on the other hand, the approximately constant nature of these characteristics.

So that the signs of different people can be compared with each other, their description must be done according to certain scientific methods, using a specific technology, certain norms for evaluating the dimensions of the various characteristics.

Without this unique method of describing and classifying data, it is not possible to organize any form of evidence.

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<sup>15</sup><http://www.creeaza.com/tehnologie/criminalistica/EXPERTIZA-FOTOGRAFIEI-DE-PORTR627.php>

The methods based on establishing the identity with the help of signs, for example photography, have the advantage, it complements the moral traits thanks to the facial characteristics and other attributes, thus the characterization and classification of the traits being much easier.

The description of the signs refers to the characteristics of the whole body, insisting on the anatomical construction and on its morphological peculiarities, especially on the peculiarities of the structure of the face and the right ear. The presentation of bodily and facial signs is performed both statically and dynamically.

In the description of the static aspect we insist on the various morphological changes, as well as on pronounced defects and abnormalities, as well as in the description of the dynamic aspect we insist on the functional presentation, on the characteristics of the movement action.

"Special attention is paid to the description of the features of the face and the right ear, looking at the person from the front and from the right profile, just like in the two mandatory positions of the identification photo.

Both the description of the facial features and the body characteristics will be done taking into account the volume, shape, color, position and particularities of the described part, as well as the whole ensemble of which it is a part. Thus, a nose, a mouth, a forehead, etc., are described as large, fit or small, not by reference to an external standard or to the metric system, but to the other elements of the face of which they are a part, to make it easier to appreciate. So a nose, a mouth, or a forehead of the same size will be appreciated differently, according to the contour of the head and face in which it fits." <sup>16</sup>

The presentation of a person according to the data obtained from the statements of the eyewitnesses of the crime is always short and mostly incomplete or incorrect. For the recognition of people through witnesses, it is preferable to use one of the technical methods of identification, integrated through the intuitive composition of images or through acquired scientific meanings.

In addition, the visual form presents direct characteristics than the form of the characteristics acquired by scientific methods, often perceived as unsatisfactory. The same considerations are the basis of identification with the help of witnesses or of some persons presented together with others, in a group.

The details of the description will be more or less multiple in relation to the purpose pursued by the presentation of the characteristics and the probability of use.

Therefore, the presentation of an individual for active analysis is more concise than the description of a person for identification by relatives or friends.

The constitution of the different described parts of the body is evaluated according to the outline of the outer line, these presenting two imaginary planes placed vertically and horizontally.

### III.2. Establishing the identity of people by voice signals

Establishing the identity of persons based on voice signals is carried out through modern technical-scientific methods aimed at helping to find out the truth. The identification and validity of audio recordings is given by the particularities of voice and speech.

According to specialist research, an individual can be identified according to the signals of the photorespiratory apparatus. In order to accurately determine the features of the voice, the

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<sup>16</sup> <https://andreivocila.wordpress.com/2010/04/19/identificarea-persoanei-la-controlul-de-frontiera-conform-metodei-portretului-vorbit/>

specialists resort to technical methods, especially of the sonograph type, which allow a detailed phonoacoustic analysis.

The expertise of the voice and speech is carried out by general characteristics for identification, the witness or the audit can identify a person only by the signals of the voice, each individual having unique particularities, the method of identification with the help of sonographers being a practice increasingly used by judicial bodies.

The identification of the person, through the voice signals, can provide useful answers to the questions addressed by the judicial bodies.

" Ah . Establishing the authenticity of audio (or video) recordings, in order to determine fakes ;

B. Identification of the person of the speaker in compliance with certain quality conditions regarding registration in litigation and, of course, having available comparison models;

C. Establishing possible disguise of voice and speech, attempted disguise or modification by covering the microphone with a handkerchief, speaking in a whisper, changing the tonality, plugging his nose;

Computerized speech recognition systems today allow analog recordings to be enhanced by their digitization, filtering and spectral analysis by computer"<sup>17</sup>

Over the years, the techniques have diversified, thus scientific methods allow for the faster identification of people, this development also came from the need to combat the criminal phenomenon, acts of terrorism, human trafficking, which have been reported more and more in recent years.

### III.3. Establishing the identity of people according to external signals

Establishing the identity of the perpetrators proved to be a real challenge for the judicial organs, they being confronted, that after the commission of a crime the only identification data is reported by the eyewitness who managed to retain the image of the perpetrator.

In essence, the identification of persons is carried out with the help of special methods and techniques, in the criminal investigation with the help of witnesses or victims.

The identification of people with the help of external signals is carried out with the help of the spoken portrait, it is a method frequently used by specialists and perfected over time that identifies the individual based on the external signals described by the person making the identification.

In the description of the one who makes the identification, the features of the one who is wanted will be taken into account, the static forms and the dynamic forms, on the basis of these features the portrayal of the individual will be carried out.

Sketch portrait or portrait sketch is a technical method by which the descriptions of a person are portrayed, this method eliminates, at least temporarily, the shortcomings in which a person appreciates or describes external signs.

" Description of static forms. This segment of the description covers the characteristic elements regarding the person's waist, physical constitution or general appearance, head and face shape, possible infirmities

The person's head, both in its entirety and in terms of its morphological aspect, seen from the front and in profile, naturally holds the main place in the realization of the spoken portrait . E.g:

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<sup>17</sup> <http://www.stiucum.com/drept/criminologie/Tehnici-de-identificare-a-pers31114.php>

A. The shape of the head , seen from the front, can be elongated, oval, rectangular, triangular, with the base up or down, square, angular, rhomboid, etc.;

B. Face it is usually divided into three areas: frontal, nasal and oral. The frontal area comprises the region between the base of the nose and its base; the mouth area including the region between the base of the nose and the tip of the chin. Depending on the needs, five areas can be taken into account, namely the forehead, eyes, nose, mouth and chin;

Each component element of the face is described separately, what is more characteristic of it .

The description of the dynamic forms, named and functional, is meant to complete the possibilities of identification and refers, in particular, to the body posture, the way of walking, mimicry, look, the different forms of manifestation. E.g:

- The walk to a person it can be normal, relaxed, supple, sporty, heavy, hesitant , with large or small steps, bouncy, with other particularities determined by the morphology of the foot.

- The way of manifestation , viewed in the broad sense, understanding, for example, gesture or speech, is according to the individual's personality and temperament."<sup>18</sup>

The signals of the static description of a person refer to the structural aspect of the head and face, first of all, and then to the full rendering of the body and clothing. The still presentation of the head from the front and in profile can be done in a reduced form, starting from a redistribution of shapes, such as: oval, rectangular and round shape, or in a more developed reproduction, which can fit more morphological structures with greater precision. Police practice has shown that the too brief presentation of the shape of the head attracts a series of ambiguities due to the lack of accuracy and, for this reason, the description of the head will be made after a greater number of distinctions.

The different particular signs found on the face and body constitute a group of very precious characteristic elements for the identification of the person and especially for the identification of unknown corpses; in the case of the latter, they can be examined on the whole body and measured exactly. These particular signs may be due to morphological variations, anatomical anomalies, pathological conditions, injuries or surgical interventions, artistic or professional tattooing, professional tattoos, etc.

The variation of individual signs located on the body is done by indicating the nature of the sign, the position it occupies, they can be examined all over the body and measured with exactness. These distinct features may be due to morphological variations, pathological conditions, injuries or surgical interventions. The description of the marks found on the body indicates the nature of the place where it was procured, if it is on the surface or deep in the skin, if it is a permanent or temporary mark.

For individuals, the size of the marks is indicated only by approximation, unlike those of corpses, which are measured to scale. Particular importance is given to birthmarks, scars and tattoos.

*The scars* can be white, red or purple; the former have a definitive form, while the latter are in formation.

Some scars disappear over time, move or change depending on the body's growth process. If the shape of the visible scar is erased by the medical treatment, or is hardly perceptible, that part of the body is gently patted with the hand, to appear white on the pink background of the tissue.

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<sup>18</sup> <http://www.stiucum.com/drept/criminologie/Tehnici-de-identificare-a-pers31114.php>

The complexion is described in terms of color matching the color of the skin on the face, the dilation of the pores and the particular marks. In terms of color, the skin is described as: white, pink, olive, pale yellow, reddish yellow, brown, black or depigmented.

Abundant pimples, warts, dilated pores and scars are mentioned as a peculiarity of the skin. Some scars appear only as a difference in color compared to the rest of the skin color, others, however, appear as a result of relief injuries.

Abusively made-up skin due to professional constraints, such as the case of theater, opera or circus artists, or the skin of individuals who work for a long time in steam shows a specific expansion of the pores, for a period of time, even if the respective cause has ceased.

When we describe the skin, it is necessary to mention if certain areas of the skin have different colors, such as the beard and mustache, which in some people the hair density is higher, the different color of the nose or its tip, etc.

The description of the external signs is completed with the description of the portrait, vocal characteristics, but also the moral character of the organism. Some functions of individuals appear only when they perform several movements, such as: body position, walking, looking, tone of voice, coughing, laughing, etc.

Because the general attitude of the body is not stable and definitive, it can be easily "disguised" by "playing a certain role" according to the interest of each person in certain situations, but certain basic aspects are preserved and are discovered in the behavior of each individual.

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