

## **Alibi in Criminal Proceedings: Between the Guarantee of Defense and the Risk of Obstruction of Justice**

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**ABSTRACT:** This article represents a complex and multidimensional research of the legal concept of alibi in the context of modern criminal proceedings. Starting from the historical origins and theoretical evolution of the notion, the study analyzes alibi both as a fundamental guarantee of the rights of the defense and as a potential method of obstruction of justice. The research approaches the issue from multiple perspectives: theoretical-conceptual, criminal-procedural, forensic and comparative, examining the legislation and jurisprudence of the Republic of Moldova, Russia, Belarus, Ukraine, Romania, as well as the standards of the European Court of Human Rights. Special attention is paid to the issue of digital alibi - an emerging challenge of the contemporary era - and the methodology for verifying and unmasking false alibi. The research results highlight the need for a balanced approach that harmonizes the protection of the fundamental rights of the accused person with the imperative of discovering the truth and preventing miscarriages of justice. The article formulates concrete proposals *de lege ferenda* for optimizing the legal framework in the Republic of Moldova and offers practical recommendations for professionals in the field of criminal justice.

**KEYWORDS:** alibi, procedural guarantees, false alibi, digital alibi, fair trial, presumption of innocence, fundamental rights, forensics, miscarriages of justice

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### **Introduction**

In the context of democratic transformations and the consolidation of the rule of law in the Republic of Moldova, the issue of guaranteeing and respecting the fundamental rights of the individual in criminal proceedings acquires particular importance. Alibi, as a fundamental legal institute, is located at the intersection of the right to defense - a fundamental guarantee enshrined in both the Constitution of the Republic of Moldova (Article 26) and the European Convention on Human Rights (Article 6) - and the imperative of establishing the truth in criminal proceedings.

Although the term “alibi” has its origins in Latin (“alibi” - elsewhere, in another place) and is frequently used in judicial practice, in specialized literature and even in everyday language, this concept presents a number of peculiarities and challenges that justify an in-depth scientific analysis. First of all, the criminal procedural legislation of the Republic of Moldova, similar to that of many other states, does not contain an express definition of alibi, nor detailed regulations on the procedure for invoking and verifying it. This normative gap generates divergent interpretations both in doctrine and in judicial practice, affecting both the efficiency of the criminal process and the guarantee of the rights of the parties.

Secondly, the dual legal nature of the alibi - simultaneously a means of legitimate defense and a potential method of obstruction of justice - requires a balanced and nuanced approach. On the one hand, the verified and confirmed alibi represents the most powerful means of proving innocence, being able to categorically exclude the person’s participation in the commission of the crime, based on the elementary physical impossibility: a person cannot be in two different places at the same time. On the other hand, the invocation of a false alibi constitutes a serious form of misleading the judicial bodies, which can lead to the conviction of innocent persons and the escape from criminal liability of the real perpetrators.

Thirdly, technological evolution has generated new forms of confirming or refuting the alibi - the so-called “digital alibi” - based on electronic records, GPS geolocation data, images from surveillance cameras, telephone records, bank card transactions, online activities and interactions with computer systems. These modern means of evidence raise new issues related to their authenticity, integrity and procedural admissibility, requiring the adaptation of classical forensic tools to the realities of the digital age (Ponomarev, 2011).

Fourthly, the international and comparative dimension of the alibi issue is of particular interest in the context of harmonizing national legislation with European and international standards. The experience of other states, both from the Romano-Germanic law system and from the common law system, offers valuable legislative and practical solutions that can be adapted and implemented in the legal system of the Republic of Moldova (Epstein, 1964; Grossman, 2002).

## **1. Theoretical Foundations of Alibi**

### ***1.1. Historical evolution and doctrinal sources of the concept of alibi***

The term “alibi” has its origins in Latin, where “alibi” literally means “elsewhere”, “in another place” or “elsewhere”. This etymology perfectly reflects the essence of the legal concept: a person accused of committing a crime cannot be guilty if, at the time of the crime, he was in a place different from the place where the criminal event occurred, thus making his participation in the commission of the crime impossible. Hans Gross, considered one of the founders of modern forensics, in

his famous work "Handbuch für Untersuchungsrichter als System der Kriminalistik" (Handbook for Judicial Investigators as a System of Criminalistics), first published in 1892, paid special attention to the issue of alibi. Gross observed that alibi represents "one of the preferred and previously prepared means of defense of guilty persons" (Gross, 2002, p. 234). He emphasized that in certain regions where crime was organized and systematic, the alibi had become a common and perfected tool for avoiding criminal liability.

In 1910, the Russian jurist Lev Evstafievich Vladimirov, in his fundamental treatise "Uchenie ob ugolovnykh dokazatelstvakh" (Doctrine of Criminal Evidence), highlighted the particularly powerful character of the alibi as a means of defense, noting that it "completely destroys all suspicions and accusations formulated", being considered "the favorite and pre-prepared means of defense of guilty persons" (Vladimirov, 2000, p. 156). Vladimirov argued that the alibi has this exceptional probative force because it demonstrates not only the absence of concrete evidence of guilt, but the physical impossibility of the accused having committed the crime. In the post-war period, with the accelerated development of forensics as an autonomous science in the Soviet Union and other socialist countries, the issue of alibi was approached in a more systematic and in-depth manner. Fundamental works were published by researchers such as A.T. Timerbaev, N.V. Kruchinina and V.I. Shikanov, who in 1992 published the monograph "Alibi. Theoretical problems and their applicative significance in criminal proceedings", considered one of the most complete works dedicated to this topic (Kruchinina & Shikanov, 1992). In the Ukrainian academic space, researcher Elena Ivanenko published in 2017 an important study entitled "Alibi as a legal guarantee of protection of the rights and freedoms of the person against false accusations", in which she analyzes the protective dimension of the alibi (Ivanenko, 2017, pp. 35-39).

### ***1.2. Definition and legal nature of alibi***

The precise definition of the concept of alibi is a complex theoretical and practical problem, generated in particular by the absence of an express legislative enshrinement in most contemporary legal systems, including in the Republic of Moldova. In contemporary Russian doctrine, researcher V.M. Logvin, professor at the Academy of the Ministry of Internal Affairs of the Republic of Belarus, in a fundamental study published in 2015 and dedicated to the theoretical and applied aspects of alibi, proposes a definition that distinguishes between two fundamental meanings of the concept. In the first meaning, alibi is defined as "an argument subject to verification or a fact established by the investigation or the court, which certifies that the suspect (defendant) was at the time of the commission of the crime in another place and, consequently, proves (assumes) his non-participation in the commission of the crime under investigation" (Logvin, 2015, p. 89).

In common law systems, the concept of alibi is treated in a relatively uniform manner. In the judicial practice of the United States of America, Great Britain and Canada, alibi is consistently defined as “a defense raised by the accused as evidence that he could not have committed the crime because he was in another place at the time when the alleged crime was committed” (Williams v. Florida, 1970). An important peculiarity of common law systems is the existence of express procedural rules regarding the disclosure of the alibi to the prosecution, usually with a reasonable period before the trial (Epstein, 1964, pp. 29-40). By comparatively analyzing these multiple doctrinal definitions, we can identify a common conceptual core: an assertion or established fact regarding the presence of the accused person in a place different from the place of the crime; reporting on the time or period of the commission of the crime; the legal consequence - the physical impossibility of participating in the commission of the crime; and the probative effect - the proof or presumption of innocence.

### ***1.3. Doctrinal classifications of alibi***

The specialized legal literature proposes various classifications of alibi, each with a specific theoretical and practical relevance. The first important classification, proposed by A.T. Timerbaev in the 1970s and later developed by V.M. Logvin (Logvin, 2015), distinguishes between presumptive alibi and established alibi. Presumptive alibi is the initial statement of the suspect or defendant regarding his presence in another place at the time of the crime, a statement that requires verification to confirm or refute it. Established alibi is the result of the verification, when the evidence administered confirms with certainty that the accused person was actually in a place different from the scene of the crime. Another important classification distinguishes between objective alibi and subjective alibi (Kruchinina & Shikanov, 1992, pp. 87-95). The objective alibi is one that is based on material evidence, documents and technical records that confirm the presence of the person in a certain place: transport tickets, tax receipts, bank statements, video recordings from surveillance cameras, GPS geolocation data, records of access control systems. The subjective alibi is one that is based predominantly or exclusively on oral testimonies of people who claim to have seen or interacted with the suspect at the place and time of the alibi.

In the context of contemporary technological evolution, a new classification between traditional alibi and digital alibi has emerged. The digital alibi, a concept introduced in forensic literature by the Russian researcher I.P. Ponomarev in 2011, represents that form of alibi that is based on electronic and digital evidence: geolocation data from mobile phones, recordings from digital video surveillance systems, electronic transactions, activities in the online environment, authentications in computer systems, recordings of telephone conversations (Ponomarev, 2011, pp. 437-445).

## 2. Alibi as a Procedural Guarantee

### 2.1. *Alibi in the system of defense rights*

The alibi, viewed from its functional perspective in the criminal process, represents one of the most important guarantees of the right to defense, enshrined in both national legislation and international human rights instruments (Ivanenko, 2017, p. 35). The right to defense, as a fundamental principle of the criminal process, implies not only the formal right to have a lawyer and to be informed about the charges, but also the substantive right to present evidence and arguments in one's favor, to challenge the evidence of the prosecution and to obtain an objective investigation of all relevant circumstances of the case.

In the Constitution of the Republic of Moldova (1994, Art. 26), the right to defense is enshrined in Article 26, which provides that "the right to defense is guaranteed." Although the Constitution does not expressly mention alibi, constitutional doctrine and the jurisprudence of the Constitutional Court have interpreted that the right to defense also includes the right of the accused person to present all the circumstances and evidence that plead in his favor, including alibi. Moreover, the principle of presumption of innocence, enshrined in Article 21 of the Constitution, imposes on criminal prosecution bodies and courts the obligation to examine with equal attention both the evidence of the accusation and the evidence of the defense (Jitariuc & Bria, 2023).

In the European context, the European Convention on Human Rights, through Article 6, guarantees the right to a fair trial, which includes the right of the accused to present evidence in his defense and to benefit from the same procedural treatment as the accusation (European Convention on Human Rights, 1950, Art. 6). The jurisprudence of the European Court of Human Rights has ruled in multiple cases that national authorities have the obligation to objectively investigate not only the elements of the accusation, but also those of the defense, including the alibi invoked by the accused person.

### 2.2. *Alibi and the presumption of innocence*

The relationship between alibi and the presumption of innocence is of fundamental importance for understanding the legal nature of this procedural institute. The presumption of innocence, as a cardinal principle of democratic criminal procedure, establishes that any person accused of committing a crime is considered innocent until his guilt is legally proven and established by a final court decision (Jitariuc, Calendari, 2025, pp. 83-85). This presumption has multiple legal consequences, including: the burden of proof lies with the prosecution, not the defense; in case of doubt, the accused benefits (*in dubio pro reo*); the accused is not obliged to prove his innocence, it being sufficient to raise reasonable doubts about his guilt (Jitariuc & Bria, 2025).

In this context, the invocation of an alibi should be seen not as an obligation of the accused person to prove his innocence (which would contravene the presumption of innocence), but as a procedural right to present circumstances that militate in his favor (Logvin, 2015, p. 91). The mere invocation of an alibi, even if it is not subsequently confirmed by evidence, cannot be interpreted to the detriment of the accused and cannot constitute an indication of guilt. Moreover, the absence of invocation of an alibi cannot be considered a tacit admission of guilt or an indication against the person, since the person has the constitutional right to remain silent and not to contribute to his own incrimination. The case law of the European Court of Human Rights has repeatedly clarified that, although the accused has the right to invoke an alibi, he does not bear the burden of proof to prove it in the strict legal sense of the term. Once an alibi is invoked and there are minimal elements of plausibility, the onus is on the investigative bodies to verify the statements made objectively and exhaustively. Ignoring or superficially verifying a plausible alibi may constitute a violation of the right to a fair trial and the presumption of innocence, and may incur international state responsibility.

### ***2.3. International standards and ECHR jurisprudence on alibi***

Although the European Convention on Human Rights does not contain express provisions on alibi, the case-law of the European Court of Human Rights (ECHR) has over time developed important principles governing the treatment of alibi in criminal proceedings. These principles derive from the interpretation of Article 6 of the Convention, which guarantees the right to a fair trial, and are applicable to all States Parties, including the Republic of Moldova.

A first principle established by the case-law of the ECHR is that national investigative authorities have the obligation to investigate objectively all the relevant circumstances of the case, including those which favour the accused. In the case of *Barberà, Messegué and Jabardo v. Spain* (1988), the Court held that “the defence procedure consisting in invoking an alibi forms part of the exercise of the rights of the defence” and that the authorities must seriously examine such an alibi when it is invoked.

A second important principle is that the mere failure to confirm an alibi cannot be automatically interpreted as evidence of guilt or as an aggravating circumstance against the accused. In the case of *Telfner v. Austria* (2001), the ECtHR emphasised that “the alibi was not confirmed” cannot be equated with “the alibi was refuted” or “the alibi proved false”. The absence of confirmation may result from a variety of reasons, including the objective impossibility of detaining potential witnesses, the involuntary destruction of relevant documents, or the expiry of the retention periods for electronic records. A third principle established by the ECtHR’s case-law concerns the obligation of national courts to give adequate reasons for rejecting an alibi. In the case of *Suominen v. Finland* (2003), the Court held that national courts must provide clear and convincing reasoning

when they consider that an alibi is not credible or unconfirmed, explaining on what evidence and reasoning they based this conclusion.

### **3. Alibi Verification - Tactical and Methodological Aspects**

#### **3.1. Principles of Alibi Verification**

Verifying the alibi is a complex and delicate tactical operation that must respect certain fundamental principles in order to ensure both the efficiency of the criminal trial and the guarantee of the rights of the accused (Kruchinina & Shikanov, 1992, pp. 125-140). These principles have been developed in the criminalistic doctrine and are enshrined in national and international jurisprudence.

The first and most important principle is that of objectivity. The investigative bodies must investigate with the same attention and diligence both the elements that confirm the alibi and those that refute it, without having a preconceived or biased attitude (Criminal Procedure Code of the Republic of Moldova, 2003, art. 6). This principle derives directly from the presumption of innocence and from the constitutional obligation of complete, multilateral and objective investigation of all the circumstances of the case.

The second principle is that of exhaustiveness. The verification of the alibi must be complete and cover all aspects, details and circumstances invoked by the accused. A superficial or partial verification, which leaves aspects unexplained or circumstances neither confirmed nor refuted, cannot be considered sufficient and may lead to miscarriages of justice. The principle of exhaustiveness requires verification of: the exact place where the accused claims to be; the precise time frame of presence in that place; the means of transport used for travel; the people with whom he interacted; the activities carried out; the documents and objects that could confirm the presence; the relevant technical records.

The third principle is that of efficiency (Safronova & Turkina, 2020, p. 473). The verification of the alibi must be initiated promptly, immediately after its invocation, in order to prevent: the disappearance or alteration of material evidence; the influence or disappearance of potential witnesses; the destruction or deletion of electronic records; the subsequent construction of a more elaborate false alibi. Forensic practice demonstrates that the faster the verification, the greater the chances of categorical confirmation or refutation of the alibi.

The fourth principle is that of rigorous documentation. All acts of verifying the alibi must be recorded in detail in procedural documents: hearing minutes, search minutes, resolutions requesting documents, expert reports. Rigorous documentation serves multiple purposes: ensures transparency and controllability of the investigative activity; allows the court to verify the correctness and completeness of the verification; protects the rights of the accused person by

ensuring a clear formal procedure; prevents subsequent challenges to the conduct of the investigation.

### **3.2. Stages in verifying the alibi**

Alibi verification is a logical sequence of operations and procedural acts that must be carried out in a certain order and in compliance with certain methodological requirements (Vinberg & Mitrichev, 1950, pp. 187-195). The forensic literature identifies several distinct stages of this complex process.

The first stage consists of obtaining the suspect or defendant's detailed statement regarding the alibi. At this stage, the investigator must ask the person being questioned to present all the details and circumstances of the alibi invoked: the exact place where he claims to have been at the time of the crime; the precise time interval (arrival time, departure time); the means of transportation used; the people he interacted with or who saw him; the activities carried out; the documents or objects that could confirm his presence there. It is essential that all these details be recorded in the interview report, as they will constitute the basis for subsequent verification.

The second stage consists of planning the alibi verification. Based on the statement obtained, the investigator must develop a detailed verification plan, which includes: identifying all witnesses to be heard; listing the documents to be requested; identifying relevant technical records (surveillance cameras, access control systems, geolocation data); establishing the need for technical-scientific expertise or findings; determining the optimal order for carrying out verification acts. A well-developed plan ensures the efficiency of the verification and prevents the omission of important aspects.

The third stage consists of hearing the alibi witnesses. Witnesses indicated by the suspect or defendant must be heard in compliance with all procedural guarantees and with the application of appropriate hearing tactics. It is important that the hearing be conducted as soon as possible after the alibi is invoked, in order to avoid influencing the witnesses or losing relevant memories. During the hearing, the investigator must obtain detailed statements about: the circumstances in which the witness saw the suspect; the exact time and place; the duration of the presence; the activities carried out; other persons present; any memorable features of the situation.

The fourth stage consists of requesting and examining technical documents and records. This stage may include: obtaining transport tickets, tax receipts, bank statements; requesting recordings from surveillance cameras in the area of the alibi location; obtaining geolocation data from mobile phone operators; requesting recordings from access control systems; obtaining attendance registers from the place of work or studies; requesting other relevant documents mentioned by the suspect or witnesses to the alibi. All these documents and records must be carefully examined to verify whether they confirm or refute the alibi invoked.



### 3.3. *Evidence specific to verifying the alibi*

Alibi verification involves the administration of a varied set of evidence, each with its own particularities and limitations. Forensic practice and jurisprudence have highlighted the efficiency and degree of certainty offered by the different categories of evidence in the context of alibi verification.

Testimonies are the most common means of evidence used in alibi verification. People who saw or interacted with the suspect at the place and time of the alibi can provide valuable information for confirming or disproving it (Kruchinina & Shikanov, 1992, p. 156). However, testimonies have certain limits and vulnerabilities: they can be affected by errors of perception or memory; they can be influenced by the personal relationship between the witness and the suspect (kinship, friendship, enmity); they can be the result of a fraudulent agreement (false alibi); they can be incomplete or vague due to the passage of time. For these reasons, testimonies must always be corroborated with other means of evidence to ensure a sufficient degree of certainty.

Official documents are a more reliable means of proof in verifying an alibi. Transportation tickets (train, plane, bus), tax receipts with the date and time of the transaction, bank statements showing card transactions at specific locations, medical certificates or other official documents attesting to presence in a specific place at a specific time, all of which can provide objective confirmation of the alibi. The advantage of official documents is that they are more difficult to forge (although not impossible) and provide precise information about the spatio-temporal coordinates of the person's presence.

Video recordings from surveillance cameras represent one of the most valuable means of evidence in the verification of contemporary alibi. These recordings provide direct visual confirmation of the presence of a person in a certain place at a specific time. Surveillance cameras are located in numerous public and private locations: transport stations, shops, public institutions, parking lots, road intersections, office buildings, hotels. Prompt identification and obtaining of relevant recordings can definitively confirm or disprove an alibi.

Geolocation data from mobile phones represents a relatively new category of evidence, specific to the digital age (Ponomarev, 2011, p. 440). Modern smart mobile phones continuously record the geographical position of the user through GPS, Wi-Fi and triangulation of mobile phone antennas. These data, kept by mobile phone operators or phone manufacturers (Apple, Google), can provide a precise reconstruction of the person's movements over a certain period of time. However, the use of these data raises important privacy issues and requires compliance with strict procedural safeguards.

## **4. The False Alibi - Problem and Exposure**

### ***4.1. The legal nature and forms of the false alibi***

False alibi is one of the most serious forms of obstruction of justice and misleading the judicial authorities (Vladimirov, 2000, p. 158; Vlasov, 2021, p. 156). By its nature, false alibi is a false statement regarding the presence of the accused person in a place different from the place of the crime at the time of its commission, a statement intended to fraudulently exclude participation in the commission of the criminal act. The forensic literature distinguishes several forms or types of false alibi depending on the method of construction and the degree of complexity (Safronova & Turkina, 2020, p. 474). Simple false alibi is the most basic type and consists of a simple false statement by the accused person, without its support by other evidentiary elements or without the involvement of other persons. This type of alibi is relatively easy to unmask by simply verifying the circumstances invoked and by providing contrary evidence.

The complex false alibi is much more elaborate and requires careful prior preparation (Gross, 2002, p. 236). This type of alibi usually involves: creating false testimonies by getting people (relatives, friends, accomplices) to make false statements confirming the accused person's presence in another place; fabricating or falsifying documents to support the alibi (transport tickets, tax receipts, bank statements); creating false material traces in place of the alibi (fingerprints, DNA, personal belongings); destroying or altering real evidence that would disprove the alibi. The complex false alibi is much more difficult to unmask and requires a thorough investigation and the application of sophisticated forensic techniques. The false alibi prepared in advance is the most dangerous form and consists of constructing the alibi before the crime is committed, as an integral part of the criminal plan (Vladimirov, 2000, pp. 159-160). This form demonstrates the premeditation and organization of the crime and is characteristic of organized crime or carefully planned serious crimes.

### ***4.2. Indicators of a false alibi***

Identifying a false alibi requires a careful and critical analysis of all the evidentiary elements and the circumstances invoked (Safronova & Turkina, 2020, pp. 474-475). Forensic literature and judicial practice have identified a series of indicators or "red flags" that can signal the false nature of an alibi. These indicators do not in themselves constitute evidence of falsity, but justify a more thorough and rigorous verification.

A first important indicator is the presence of internal contradictions in the statements of the person invoking the alibi or between their statement and the statements of the alibi witnesses. Such contradictions may concern: the exact time at which the person claims to have arrived at the alibi location; the duration of the stay; the activities carried out; the people met; the means of transportation used;

other essential details. Significant and unexplained contradictions usually indicate that the statements do not reflect real events, but are fictitious constructions of memory.

A second indicator is the physical or logistical impossibility of the circumstances invoked. For example: the distance between the crime scene and the alibi location cannot be covered in the time available with the indicated means of transport; the schedule of the institutions or means of transport mentioned does not correspond to the statements made; weather conditions or other external circumstances make the described journey impossible or unlikely. Verification of these objective aspects can quickly reveal the false nature of the alibi.

A third indicator is the overly detailed, too perfect or too coherent nature of the alibi (Kruchinina & Shikanov, 1992, p. 167). Paradoxically, an alibi that seems “too good to be true”, with extremely precise memories of insignificant details and an impeccable narrative, without hesitations or minor natural inaccuracies, may indicate a premeditated construction.

A fourth important indicator is the nature of the relationships between the accused person and the witnesses to the alibi. If all the witnesses are close relatives, close friends or people with common interests with the accused, the degree of credibility of their testimonies is diminished. Furthermore, if there are indications that the witnesses were contacted by the accused or his associates after the commission of the crime and before their interrogation, there is an increased risk that the testimonies are the result of a fraudulent agreement.

#### ***4.3. Methods for exposing a false alibi***

Unmasking a false alibi requires the application of a set of forensic methods and techniques, combined with a rigorous logical analysis of all evidentiary elements (Safronova & Turkina, 2020, pp. 475-476). The specialized literature and judicial practice have identified several effective methods for detecting and unmasking false alibis. The first method consists of repeated and detailed questioning of the person invoking the alibi and his witnesses, requesting additional clarifications and verifying the consistency of the statements over time. This method is based on the principle that a person reporting real events experienced will provide relatively constant statements over time, even if some minor natural differences due to memory may occur. In contrast, a person reporting fictitious events will have difficulty maintaining the consistency of their statements, especially when asked to provide additional details about unforeseen aspects or when a longer period of time passes between hearings.

The second method consists of a detailed verification of all objective elements that can confirm or refute the alibi: consulting video recordings from all surveillance cameras in the area of the alibi location and in the area of the crime scene; obtaining geolocation data from mobile phone operators; checking bank statements to identify transactions made during the relevant period; requesting

records from building access control systems; checking attendance registers; consulting weather reports and other objective data about the conditions during the relevant period. This exhaustive verification of objective data may reveal incompatibilities or contradictions that expose the false nature of the alibi.

The third method consists of conducting forensic findings or experiments to verify the plausibility of the alibi. For example: measuring the time needed to travel the distance between the crime scene and the alibi location by the indicated means of transport; checking the operating schedules of the institutions mentioned; checking the availability of means of transport during the relevant period; Reconstructing events to verify whether the sequence described is temporally possible. These practical checks may reveal physical or temporal impossibilities that expose the false alibi.

## 5. Digital Alibi - Contemporary Challenges

### 5.1. *The concept and sources of digital alibi*

The concept of “digital alibi” was introduced into the forensic literature by the Russian researcher I.P. Ponomarev in 2011, in response to the profound technological transformations affecting both the ways of committing crimes and the means of evidence available in criminal proceedings (Ponomarev, 2011, p. 437). Digital alibi is that specific form of alibi that relies predominantly or exclusively on electronic and digital evidence to confirm the presence of the accused person in a place different from the place of the crime at the time of its commission. The sources of digital alibi are extremely varied and constantly expanding with technological development (Ponomarev, 2011, pp. 438-440). The first important category is represented by geolocation data from mobile devices. Modern smartphones, tablets, GPS devices in cars and other connected gadgets continuously record the user's geographical position through the GPS (Global Positioning System), available Wi-Fi networks and triangulation of mobile phone antennas.

The second important category is video recordings from digital surveillance systems. Unlike old analog systems that recorded on VHS tapes, modern digital systems store recordings on servers, with precise timestamps and the possibility of quick indexing and searching. These systems are located in numerous locations: airports, train stations, metro stations, shops, hotels, restaurants, office buildings, public institutions, road intersections, parking lots.

The third category is electronic transactions and digital financial activities. Every transaction made with a bank card, every cash withdrawal from an ATM, every online payment, every bank transfer generates electronic records containing precise information about: the exact date and time of the transaction; the geographical location (the store address, the IP address from which the online

transaction was made, the location of the ATMs); the transaction amount; details about the merchant.

The fourth category, increasingly relevant, is represented by activities in the online environment and interactions with computer systems (Ponomarev, 2011, pp. 441-442): logins to email accounts, social networks, online services (with registration of the IP address and connection time); posts on social networks (Facebook, Instagram, Twitter) that contain time stamps and, often, location; activities in multiplayer online games that generate detailed logs of the user's presence and actions; participation in video conferences (Zoom, Skype, Teams) that generate records of participants and connection times.

### ***5.2. Issues of authenticity and integrity of digital evidence***

Although the digital alibi offers significant advantages in terms of the accuracy and objectivity of evidence, it also poses serious challenges related to the authenticity and integrity of electronic data (Ponomarev, 2011, pp. 442-443). Unlike traditional physical evidence, digital evidence is easier to manipulate, falsify, or destroy without leaving visible traces. This vulnerability imposes special requirements for the collection, preservation, and valorization of digital evidence in criminal proceedings. The issue of authenticity refers to ensuring that the digital data presented as evidence is actually generated by the respective system and has not been created or modified later. For example: a digital video recording can be edited to remove or add sequences; a timestamp can be modified by changing the device's date and time settings; a social media post can be antedated or postdated; computer system logs can be altered by persons with administrative access; Geolocation data can be falsified by using special applications or by changing GPS settings.

The issue of integrity refers to ensuring that digital data has not been modified, compromised or damaged from the moment of its generation to the moment of its presentation as evidence in the trial. Integrity can be affected by: accidental changes (storage errors, degradation of the storage medium); intentional changes (fraudulent manipulation, partial deletions); compromising the security of the system (unauthorized access, malware, cyber attacks). A specific problem of the digital alibi is the phenomenon of "spoofing" or falsification of the location (Ponomarev, 2011, p. 444). There are multiple technical methods by which a person with minimal computer knowledge can falsify the location reported by his mobile device: GPS spoofing apps; VPN (Virtual Private Network) networks that hide the real location of the user; proxy servers that make the online activity appear to be carried out from another location; emulation of GPS devices through specialized equipment.

### **5.3. Procedural guarantees in obtaining and using digital evidence**

Obtaining and using digital evidence in the context of verifying alibi raises important issues related to the respect for the fundamental rights of the individual, in particular the right to privacy and the right to the protection of personal data (European Convention on Human Rights, 1950, art. 8). These guarantees are enshrined in both national legislation and international human rights instruments.

The first fundamental guarantee is that access to a person's digital data, including geolocation data, communications records, online activities, must be authorized by a judicial authority (usually the investigating judge or the court) and cannot be carried out arbitrarily by investigative bodies (Criminal Procedure Code of the Republic of Moldova, 2003, art. 132). This requirement derives from the need to ensure judicial control over measures that affect fundamental rights and to prevent abuses.

The second important guarantee is that of proportionality and necessity. Access to a person's digital data must be strictly necessary for the investigation and proportionate to the seriousness of the crime under investigation. Not every crime justifies access to every type of digital data. For example, obtaining complete geolocation data for a long period of time (weeks or months) for a minor crime could be considered disproportionate.

The third guarantee is that of the confidentiality and security of the data obtained. Digital data collected in the context of an investigation must be protected against unauthorised access, against public disclosure and against use for purposes other than those for which they were obtained. This requirement is essential to protect the privacy of the person and to prevent abuse. At the end of the criminal trial, data that is no longer needed must be destroyed or returned, except for those that are to be kept as part of the final file.

### **Conclusions and Recommendations**

The complex and multidimensional research of the legal concept of alibi in the context of contemporary criminal proceedings allows the formulation of the following fundamental conclusions:

1. Alibi represents a fundamental legal institute with a dual and complementary nature: on the one hand, it constitutes an essential guarantee of the right to defense and an effective tool for preventing judicial errors; on the other hand, it can be used as a sophisticated method of obstructing justice by invoking a false alibi.
2. The absence of an express legislative regulation of alibi in the criminal procedural legislation of the Republic of Moldova generates interpretative uncertainties and inconsistent applications in practice. The intervention of the legislator is necessary to expressly enshrine the definition of alibi, the procedure

for invoking and verifying it, as well as the legal consequences of its confirmation or denial.

3. The accelerated technological evolution has generated new forms of manifestation of the alibi - the so-called "digital alibi" - which raise new and complex challenges in terms of verification methods, the issue of authenticity and integrity of digital evidence, compliance with procedural guarantees in obtaining them, as well as procedural admissibility.

4. Verification of the alibi is a complex and delicate tactical operation, which requires compliance with fundamental principles: objectivity, exhaustiveness, efficiency and rigorous documentation. Investigative bodies must show the same diligence and attention to the evidence of the defense as to the evidence of the accusation.

5. Exposing the false alibi is an essential aspect of combating obstruction of justice. However, this activity must be carried out with full respect for the procedural rights of the accused person. The mere non-confirmation of the alibi invoked does not automatically equate to proof of guilt.

6. The comparative analysis of legislation and judicial practice in various states highlights the existence of valuable legislative and practical solutions, which can serve as a model for optimizing the legal framework in the Republic of Moldova.

### *Lege ferenda proposals*

1) Introduction into the Criminal Procedure Code of the Republic of Moldova of a distinct article that would expressly define the concept of alibi and regulate the procedure for invoking, verifying and capitalizing on it;

2) Supplementing the legislation with express provisions on the obligation of criminal investigation bodies to inform the suspect/accused of their right to invoke an alibi;

3) Express regulation of the obligation of criminal investigation bodies to carry out all criminal investigation acts necessary to verify the invoked alibi;

4) Development and adoption of special regulations on the administration and capitalization of digital evidence in the process of verifying the digital alibi;

5) Introduction of express provisions on the consequences of invoking a false alibi, differentiating between situations in which it was knowingly invoked by the accused person.

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