



# **The Legal 500 Country Comparative Guides**

## **Romania**

### **WHITE COLLAR CRIME**

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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Romania.

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## ROMANIA

### WHITE COLLAR CRIME



#### 1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

As per the Romanian case law, the criminal investigation authorities are focusing mainly on the crimes of tax evasion provided by Law no. 241/2005, and money laundering provided by Law no. 129/2019. Nevertheless, according to the Romanian Criminal Code, there are several crimes that can trigger the criminal liability of both companies and of the individuals, such as:

- embezzlement (provided by Art. 295 of the Romanian Criminal Code);
- the fraudulent management (provided by Art. 242 of the Romanian Criminal Code);
- work-related abuse (provided by Art. 297 of the Romanian Criminal Code);
- fraud (provided by Art. 244 of the Romanian Criminal Code).

With respect to tax evasion, according to Law no. 241/2005, although there are multiple methods for perpetrating this crime, the criminal investigation bodies were frequently intimidated by the fiscal authorities in relation to fictitious expenses/commercial activities, not registering in book-keeping the activities performed or the concealment of the property or of the taxable or chargeable source.

With respect to money laundering, as per our case law, in order for the criminal investigation authorities to hold a person (individual or a company) liable for perpetrating this crime, the authority must prove that the money comes from illegal activities, such as tax evasion, embezzlement, using the company's credit in bad faith, etc. Money laundering cannot exist within our legislation unless we have a "parent" crime that generated the dirty money.

#### 2. Can corporates be held criminally liable? If yes, how is this determined/attribution?

The criminal liability of legal persons has been provided for, for the first time in the Romanian Criminal Code, through Law No. 278/2006, introduced through Art. 191, stipulating the necessary conditions for said criminal liability. In the new Criminal Code, the criminal liability of the legal person is stipulated in a different chapter - chapter 9.

According to Art. 135 of the Criminal Code, a legal person, with the exception of the State and the public authorities, shall be criminally liable for the crimes perpetrated in pursuit of the object of its activity or in the interest or on behalf of the legal person. Public institutions are not criminally liable for offences committed in the exercise of an activity that cannot be the subject of the private domain. The criminal liability of the legal person does not exclude the criminal liability of the individual who contributed to the perpetration of the crime.

As a rule, a legal person can perpetrate any crime regardless of its nature, yet for every case it is necessary to establish whether the conditions for being held criminally liable are met. In other words and as opposed to other EU countries - where the legislation allows criminal liability for a limited and specific number of crimes for the legal person, we do not have a limited legal framework for a legal person's criminal liability - depending on a case-by-case basis. According to Art. 135 para. 1 from the Romanian Criminal Code, the legal person can be held criminally liable for the crimes perpetrated in pursuit of the object of its activity or in the interest/on behalf of the legal person.

Therefore, facts relating to the legal person's general policy and object of activity shall be taken into consideration when establishing its criminal liability.

#### 3. What are the commonly prosecuted

## offences personally applicable to company directors and officers?

As per our case law, the criminal investigation authorities, when investigating legal persons and individuals, they are focusing, depending on the object of the file, on (i) financial crimes such as tax evasion, embezzlement, fraud, money laundering, work related abuse, (ii) labour crimes such as failure to take labour health and safety measures (Art. 349 of the Romanian Criminal Code) or non-compliance with labour health and safety rules (Art. 350 of the Romanian Criminal Code), (iii) corruption crimes such as giving bribe (Art. 290 of the Romanian Criminal Code), influence peddling (Art. 291 of the Romanian Criminal Code), buying influence (Art. 292 of the Romanian Criminal Code).

## 4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

In determining the jurisdiction for prosecuting financial crimes in Romania, a crucial factor lies within the capacity and quantity of individuals involved. Certain offences, due to their complexity and potential impact, may need the involvement of specialized institutions such as the Directorate for Investigating Organized Crime and Terrorism (DIICOT) or the National Anticorruption Directorate (DNA), both entities being part of the Prosecutor's Office within the High Court of Cassation and Justice, which possess the expertise to tackle organized and high-stakes financial wrongdoing. On the other hand, less intricate cases might fall under the jurisdiction of regular prosecutor's offices, which handle a broader range of offences.

The scale and scope of financial crimes can vary widely – from isolated incidents to large-scale operations involving multiple parties. This disparity in the number of individuals further guides the allocation of jurisdiction. Cases involving numerous suspects or extensive networks might benefit from the resources and experience of institutions like DIICOT or DNA, capable of managing intricate investigations and effectively addressing the challenges posed by such cases.

Therefore, the dynamic interplay between the nature of the offence, the capacity of individuals involved, and the number of participants all contribute to the determination of jurisdiction among institutions.

## 5. Which courts hear cases of financial crime? Are trials held by jury?

In Romania, the concept of a jury in criminal matters is absent from the legal framework. Instead, criminal trials are conducted within panels of judges, as stipulated by the law. The number of judges on these panels can vary, with configurations comprising a single judge, two judges, three judges, or even five judges, contingent upon the specifics of each case.

Unlike jurisdictions that consist of juries, Romania employs a system where judges, who possess legal expertise and special training for different types of crimes, assume the role of decision-makers in criminal trials. These panels of judges collectively evaluate the evidence presented during the trial, apply the relevant legal provisions, and render judgments based on their professional understanding of the law.

This approach is rooted in the belief that judges, through their legal training and experience, are well-equipped to assess the complexity of criminal cases and arrive at informed impartial decisions. By employing panels of judges with varying compositions, Romania's legal system seeks to uphold the principles of fairness, legal accuracy, and the expertise necessary for delivering just verdicts in criminal proceedings.

Within the Romanian judicial landscape, the jurisdiction over cases involving financial crimes can be performed in the first instance trial either by a County Court or by a Tribunal. As previously addressed in question 4, the first instance trial can also be conducted by a Court of Appeal or by the High Court of Cassation and Justice under specific circumstances, where defendants have a certain capacity provided by law.

## 6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

In the legal context of Romania, the concept of "raids" does not exist. A criminal investigation can only be initiated when judicial authorities are invested through a complaint, a report, or when certain high-ranking public officials inform them. In addition, the authorities may autonomously or *ex officio* initiate an investigation when they become aware, through sources other than those specified, of the perpetrating of a criminal act (e.g. press or anonymous whistleblowers). This autonomous initiation involves instances where they proactively begin an inquiry without a direct complaint or report. In such cases, Romanian law does not provide for the practice of spontaneous or unplanned enforcement operations colloquially referred to as "raids". Rather, the initiation of criminal proceedings is strictly governed by

the prescribed legal procedures and notices.

## 7. What powers do the authorities have to conduct interviews?

In the procedural law of Romania, hearings are exclusively conducted by the criminal investigation authorities, and primarily, if a criminal investigation has been initiated in relation to an act (*in rem*). This underlines that hearings, a pivotal aspect of the legal procedure, are carried out solely by the criminal investigation authorities. Moreover, such hearings typically occur following the commencement of criminal proceedings concerning an alleged offense, emphasizing the procedural significance of these interactions within the legal framework. Additionally, it's essential to note that, within a criminal investigation, any individual can be subjected to questioning, except for a few specific cases explicitly outlined by the law.

## 8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

The criminal proceedings in the Romanian legislation with respect to the persons who are interviewed stipulate several rights, depending on the capacity of the person who is summoned for an interview; should a person be summoned as a suspect, they will have the right to refuse to give a statement before the criminal investigation bodies, as they have the right to not give a statement. Furthermore, the same right is provided for the defendant during the criminal investigation phase and in front of the Courts. Nevertheless, should the person interviewed consent to issue a statement in front of the criminal authorities, they are informed that everything that they declare can and will be used against them.

An extremely debatable issue regarding the rights of the persons interviewed is in respect of the witness. As per the Romanian legislation, the witness, once summoned, has the obligation to issue a statement answering the questions they are asked; however, the witness has the right to decline the obligation of giving a statement as per the self-incrimination right. Furthermore, the injured party or the civil party, when being interviewed by the criminal authorities, has the right to give a statement, to request civil damages from the suspect/defendant.

Our legislation does not provide pre-interview disclosure, with instances in which the interviewed person does not even know the capacity in which they will be interviewed, right until the interview takes place. When summoned by the criminal investigation bodies, the suspect/defendant is informed in a nutshell regarding the object of the file, the crime for which the criminal investigation was started and what is the *de facto* situation. After being informed, the suspect/defendant has the possibility to refuse to give a statement and at the same time to submit a request for studying the file in order to better understand the allegations against him.

Interviews are always transcribed and can be recorded. Within the legal framework, interviews are subject to audio-video recording concerning the suspect, defendant, minor victim, and minor or protected witness, in accordance with the latest amendments imposed by European legislation.

For other capacities in interviews, recording can be requested. Nevertheless, it is noteworthy that in more than 90% of instances, logistical constraints hinder recording, or investigative authorities utilize this excuse to avoid complicating the interviewing process.

There is no absolute right to silence, neither at the national level nor guaranteed by European legislation and jurisprudence. However, the right to remain silent and not contribute to self-incrimination can be exercised by suspects, defendants, and witnesses who might expose themselves to self-accusation. This provision underscores the careful balance between legal requirements and individual rights within the context of criminal proceedings.

Concluding the matter, it's imperative to note that any person appearing before judicial authorities retains the right to be accompanied by a selected lawyer, and in specific instances, by a legal counsel appointed by the court in cases where no personal choice has been made. This provision underscores the commitment to ensuring legal representation for all individuals, thereby upholding the principles of fairness and equitable legal proceedings.

Regarding the key specific rights granted to those being interviewed, the following rights are prominent (however, not limited to): *the right to freely recount all knowledge about the facts, the right to request medical assistance or seek a pause in the interview in cases of illness or excessive fatigue, the right to be interviewed via videoconference when in detention, the right to consult with their lawyer at any point during the interview, the right to lodge a complaint against the conduct of the interview, the right to have a licensed translator or interpreter if not proficient in or unable to*

speak Romanian.

### **9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?**

Regarding the extraterritorial character of Romanian criminal law, three principles are outlined within the Romanian Criminal Code. The Romanian criminal law applies to offences committed abroad by a Romanian citizen or a Romanian legal entity if the punishment under Romanian law is life imprisonment or imprisonment exceeding 10 years.

In other cases, Romanian criminal law applies to offences committed abroad by a Romanian citizen or a Romanian legal entity if the act is also considered a crime under the foreign law where it occurred or if it was committed in a place under no jurisdiction of any state.

Lastly, Romanian criminal law is applicable to offences committed abroad by a foreign citizen or a stateless person, targeting the Romanian state, a Romanian citizen, or a Romanian legal entity. Indeed, based on this final principle, we can conclude that even regarding financial crimes committed against the Romanian state, Romanian citizens, or Romanian legal entities, criminal liability can be pursued for actions taken outside the territory of Romania. This legal provision underlines that acts contrary to the interests of the Romanian state, its citizens, or Romanian entities are subject to prosecution, regardless of where they occur, aligning with Romania's commitment to upholding the rule of law and protecting its national interests.

### **10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?**

The authorities in Romania engage in cooperation both at the European and international levels through the framework of Law no. 302/2004. Specific legal provisions concerning international cooperation in criminal matters are also present within the Romanian Code of Criminal Procedure.

At European level, the full legislative framework can be found here:

<https://www.europarl.europa.eu/factsheets/ro/sheet/155/cooperarea-judiciara-in-materie-penala>

### **11. What are the rules regarding legal professional privilege? Does it protect communications from being produced/seized by financial crime authorities?**

In order to ensure professional secrecy, the lawyer is under an obligation to oppose the search of their home, their main place of business, their secondary place of business, and their office, as well as the personal search, in respect of documents or papers of a professional nature located in the aforementioned places or on their person. The professional secrecy and the confidentiality of the lawyer-client relationship are vastly defined in the special legislation on the practice and organization of the legal profession, with the observation that even the Criminal Procedure Code contains provisions guaranteeing compliance for these two values of the exercise of the profession.

In action, the lawyer-client privilege is seen as a means of protecting professional secrecy and confidentiality, and there is no specific provision enshrining this concept *expressis verbis*. The protection of the confidentiality of communications between clients and their lawyers arises from the procedural rights of clients or from the obligation of professional secrecy which is imposed on lawyers, and which creates a relationship of professional confidentiality. The preservation of professional secrecy implies that any communication or professional correspondence between lawyers, between lawyer and client or between lawyer and professional bodies, in whatever form, is confidential and strictly tamper-proof.

### **12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?**

In Romania, data protection related to individuals or legal persons was established through the Law no. 190/2018 concerning measures applying Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. According to the Romanian Criminal Procedure Code, the criminal investigation phase is not public, thus it can be ascertained that this phase is secret, regardless of the object of the investigation performed.

In this respect, it must be underlined the fact that in front of the authorities, and specifically the criminal investigation authorities, the companies, as well as the



individuals, are obliged to provide all the requested information, even though some might violate their data protection, with the exception of the communication between the latter and their attorneys.

### 13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

The principle of the personal nature of criminal liability is one of the fundamental principles of the criminal law, according to which only those who perpetrated a crime as perpetrator, instigator or accomplice can be held criminally liable. The principle of the *intuitu personae* of the criminal liability is the rule according to which both the obligation arising from a criminal rule to behave in a certain way and the liability arising from failure to comply with that obligation are incumbent on the person who failed to comply with the obligation by perpetrating the prohibited act and not on another person or group of persons. In our criminal law, criminal liability cannot be incurred for the act of another person.

Yet, according to Art. 151, marginally entitled “*Effects of merger and division of the legal person Regime of complementary penalties applied to the legal person*”:

(1) In case of loss of legal personality by merger, absorption or division occurring after the commission of the offence, criminal liability and its consequences shall be incurred: a) to the legal person formed by the merger; b) on the acquiring legal person; c) against the legal persons created by division or which have acquired parts of the assets of the divided person.

These provisions are intended to prevent the legal person from avoiding criminal liability and its consequences. Moreover, as per the provisions of Art. 496 para. 2 of the Romanian Criminal Code: “*The legal person resulting from a merger, absorption or which has acquired fractions of the assets of the divided person shall take over the obligations and prohibitions of the convicted legal person, the provisions of Art. 151 of the Criminal Code applying accordingly*”.

### 14. What factors must prosecuting authorities consider when deciding whether to charge?

When being invested, the criminal investigation bodies have the obligation to gather all the necessary evidence for establishing whether the person against whom the complaint was submitted or against whom the authorities have the suspicion that a crime has been perpetrated is the one responsible.

Thus, the criminal investigation bodies have multiple factors to rely upon when conducting the investigation, such as statements, findings reports, expert reports, denunciations, search operations, telephone conversations etc. In this respect, after analysing all the above-mentioned shreds of evidence, the latter can continue with the investigation and officially inform the person of the capacity of the suspect/defendant or even issue the indictment act and send the file in front of the Court.

### 15. What is the evidential standard required to secure conviction?

As per the Romanian Criminal legislation, there is no special recipe to secure a conviction. Yet, the authorities have the obligation to administrate both the evidence in favour and against the defendant to ascertain the truth beyond any reasonable doubt. If all the evidence was administrated accordingly and none were not excluded by the Court of Law, thus proving that the crime was perpetrated and there are no legal impediments for a person to be convicted, the Court shall rule a decision of conviction.

### 16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

The Romanian Criminal Code provides a certain statute of limitations for the crimes perpetrated under the Romanian Criminal Law. Yet, there are some crimes for which the legislator considered that no statute of limitation must ever be enforced.

Such a hard rule is imposed on the following crimes: crimes of genocide, crimes against humanity and war crimes, regardless of when they were committed; the crime of homicide and the aggravated homicide, provided by Art. 188 and 189 of the Romanian Criminal Code and in case of intentional crimes resulting in the death of the victim.

### 17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

Considering the case law, once the criminal investigation authorities are intimidated, there is the possibility, even in relation to the financial crimes, that the latter issue a solution for dropping the charges or a plea-bargaining agreement to be established, which must be ratified by the Court.

With regard to the financial crimes not being investigated by the criminal investigation authorities, this kind of approach is highly improbable to take place as per the internal legislation, as the fiscal authorities, once they have clues that a financial crime was perpetrated, the latter has the obligation to invest the criminal authorities.

### **18. Is there a mechanism for plea bargaining?**

The mechanism of plea bargaining exists in Romanian legislation, as the Romanian Criminal Procedure Code clearly stipulates the cases in which such bargaining can be set in place. During the criminal investigation phase, the defendant has the possibility to conclude such plea bargaining with the prosecutor, with the condition that it must further be ratified by the preliminary chamber judge.

Furthermore, in front of the Court, once the defendant was indicted, at the first hearing, when all parties were legally summoned, the Court informs the defendant in respect of his right to acknowledge the accusation as it was described in the indictment act, thus his sentence shall be reduced to a third.

Concluding, a defendant can conclude a plea bargain before being indicted, but after their indictment he can only admit to the crime he's being charged with in front of the judge, reducing his punishment by a third.

### **19. Is there any requirement or benefit to a corporate for voluntary disclosure to a prosecuting authority? Is there any guidance?**

The disclosure of a crime in front of the criminal investigation bodies can have a favourable impact in relation to the sentence which may be applied to the person who performs the disclosure. The issuing of a denunciation (the notice made by an individual or a legal person about the perpetration of a crime, as this is the term used in Romanian criminal legislation) is, under certain conditions, a ground for non-punishment for certain offences (bribery, buying influence, organised criminal group – in specific conditions to be met).

As per the obligation for investigating the criminal investigation bodies, there are some instances that impose informing the authorities (non-compliance resulting in criminal punishment), such as the act of a person who, having knowledge of the perpetration of a crime against life or resulting in the death of a person, does not immediately notify the authorities.

### **20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?**

The sole guidelines in determining the sentencing in a criminal trial are the evidence analyzed during the criminal investigation phase of the trial and the ones in front of the court (*witness statements, findings report, expert reports, telephone conversations, social media posts etc*). Although intuitively, all of this evidence must be legally obtained and also corroborated with the entire criminal allegation beyond any reasonable doubt.

Nonetheless, the Romanian Criminal Code provides certain discount policies. In this respect, we can discuss legal and judicial mitigating circumstances. The mitigating circumstances are those factual “circumstances” that the legislator intended to exploit in favour of the suspect or defendant, in the sense that they reflect the reduced dangerousness of the offender, in relation to the crime committed.

The mitigating circumstances are divided into two broad categories, a division which also leads to different effects in terms of the mandatory nature of their application by the judge. Thus, whereas in the case of legal mitigating circumstances, the court is obliged to reduce the special limits of the penalty provided by law by one-third, when the judicial mitigating circumstances are raised, the court will determine whether or not to apply the reduction of the sentence according to its own appreciation.

The court's assessment should not be understood as arbitrary, in the sense that it could choose to apply or not apply the provisions of the law regarding judicial mitigating circumstances, the application of the law itself being imperative. What the court will be able to decide, on a case-by-case basis, is whether the situation invoked falls within the text of the law on judicial mitigating circumstances and how to apply such reductions.

### **21. In relation to corporate liability, how are compliance procedures evaluated by**

## the financial crime authorities and how can businesses best protect themselves?

The compliance procedures can prevent the starting of a criminal investigation file against a company or its representatives. In this respect, operations such as yearly trainings to the upper management of a company can eventually prevent criminal investigation. Yet, once a criminal file is initiated against the company or/and its representative, the fact that the latter conducted a pro-active, preventative activity of criminal compliance, thus informing and training its employees in respect of what their actions can arise, the authorities will conduct further their investigation, regardless of the compliance policy of the company.

Such a pro-active attitude from a company can determine whether liability will exist for the legal person and the individual perpetrator, or only for the latter.

## 22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

The Romanian Criminal legislation provides punishment with imprisonment for individuals and criminal fines for companies, with the possibility of additional penalties. The criminal fine is the only main penalty that can be imposed on legal persons and consists of the amount of money that the legal person is ordered to pay to the State. The amount of the fine is determined by the day-fine system. The amount corresponding to one day-fine, between 100 and 5.000 lei, is multiplied by the number of days-fines, which is between 30 days and 600 days.

The court determines the number of days of the fine considering the general criteria for the individualization of the penalty, provided by the specific crime provision. The amount corresponding to one day-fine is determined taking into account the turnover, in the case of a profit-making legal person, respectively the value of the assets in the case of other legal persons, as well as the other obligations of the legal person.

The additional punishments applicable to the legal person are: *dissolution of the legal person, suspension of the legal person's activity, closure of some of the legal person's workplaces, prohibition to participate in public procurement procedures, placement under judicial supervision, and publication of the conviction decision.*

## 23. What rights of appeal are there?

Against the first court's solution, all the parties from the criminal file can submit an appeal within a 10-day period

since the sentence was delivered to them. The appeal represents the ordinary remedy. The solution which is delivered by the panel of judges in the appeal phase is final and mandatory for all the parties and can only be challenged in certain conditions and through the extraordinary remedies, these being limited by the legislation to the cassation appeal, the revision of the decision, the annulment contestation.

## 24. How active are the authorities in tackling financial crime?

As financial crimes are considered a national danger, as it was part of the meeting held in the Supreme Council of National Defence, we can deem that the criminal investigation bodies have zero tolerance for these crimes. Moreover, the criminal authorities are working very closely with the fiscal authorities in order to diminish the negative effects of such criminality, being proactive in investigating and indicting these crimes.

## 25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

The criminal authorities have focused in the last 5 years on economic crimes such as tax evasion, money laundering and organised group. Nevertheless, a very important field which was the object of a very large number of criminal cases was drug trafficking and human trafficking, as criminality grew significantly in the past years. Nonetheless, a very important field for the criminal authorities is the crimes against the European budget, as per the EPPO's recent birth.

## 26. Have there been any landmark or notable cases, investigations or developments in the past year?

In the past year, there were no notable cases, investigations or developments, yet the Courts of law declared multiple conviction sentences for financial crimes, as well as drug trafficking, human trafficking and other type of crimes which are not in the eyes of the media, although they represent a significant percentage in the criminal field.

## 27. Are there any planned developments to the legal, regulatory and/or enforcement framework?

Starting from 2014, with the arrival of the new Criminal



and Criminal Procedure Code, with considerable influence from social media and internet frauds, our legal framework tried to improve its criminal policy, in order to cover all the new aspects and punish the persons responsible for perpetrating the crimes for which they are investigated, which include but are not being limited to the financial crimes.

## 28. Are there any gaps or areas for improvement in the financial crime legal framework?

For financial crimes, we deem that considering society's rapid, yet degrading evolution, the criminal authorities

together with the legislative power must improve their methods in conducting the criminal investigation activity and the latter must help the authorities with the legislative framework.

While 10 years ago the methods for perpetrating the crime of tax evasion were quite easy to discover by the authorities, currently, as the internet grew, the methods for the perpetration of this crime in particular and financial ones in general changed reason for which the criminal investigation authorities have to stay up to date.

With the current evolution of cryptocurrency and AI, now more than ever the legislative power must keep an eye on the enterprising ways perpetrators find in committing crimes, concealing them and escaping them.

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