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**COJOCARU Violeta M.**

**THE TERRORIST ACT WITHIN THE FRAMEWORK OF THE  
CRIMINAL LAW**

**SUMMARY**

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Author:	_____	Cojocaru Violeta M.
Supervisor of doctoral studies:	_____	Manea Vladislav, Doctor of Law, Assistant professor
Guidance commission:	_____	Brînza Serghei, Dr. hab. in Law, Professor
	_____	Stati Vitalie, Doctor of Law, Assistant professor
	_____	Gîrla Lilia, Doctor of Law, Assistant professor

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The thesis was elaborated within the Doctoral School of Legal Sciences, Moldova State University

**Author:**

COJOCARU Violeta M.

**Supervisor of doctoral studies:**

MANEA Vladislav, Doctor of Law, Assistant professor

**Doctoral Commission:**

*The President of the Commission:* BRÎNZA Serghei, Dr. hab. in Law, Professor

*Supervisor of doctoral studies:* MANEA Vladislav, Doctor of Law, Assistant professor

*Official reviewers:* STATI Vitalie, Doctor of Law, Assistant professor

CUȘNIR Valeriu, Dr. hab. in Law, Professor

BERLIBA Viorel, Dr. hab. in Law, Assistant professor

The defence will take place on 31 of October 2020, hour 14:00, office 119, building 2, Mihail Kogălniceanu Street, nr. 67, Chișinău municipality.

The summary and the doctoral thesis can be consulted on the web page of the Doctoral School of Legal Sciences (<http://drept.usm.md/>).

Author: \_\_\_\_\_ COJOCARU Violeta M.

Secretary of

Doctoral Commission: \_\_\_\_\_ COPETȘCHI Stanislav, Doctor of Law, Assistant professor

## CONCEPTUAL GUIDELINES OF RESEARCH

### Topicality of theme

At the current stage of the existence and development of the society, terrorism became, without a doubt, one of the most dangerous phenomena. This scourge is spread all over the world, from the underdeveloped to the highly developed states. In the last period it is observed the magnitude of terrorist acts committed in the European area. In case of these terrorist acts, most often, the states appear as the recipients of the claims submitted by the perpetrators. At the same time, we observe the fact of the inflow of these claims from particularly dangerous terrorist criminal organizations, capable of creating panic and fear in any society.

The latest terrorist acts committed in New York, Las Vegas, Barcelona, Nice, Paris, Berlin, Brussels, London, Istanbul, Saint Petersburg, Manchester, etc. demonstrates the danger they pose, the fact resulted from their intensity and repeatability, as well as from a large number of people that suffered.

The terrorist acts constitute the offenses directed against the large public, causing the mass losses of human lives. Innocent people often appear as victims. Moreover, the pronounced negative effect of terrorist acts lies in the fear created among the integral society.

According to the point 59 of the Opinion No. 11 (2016) of the Consultative Council of European Prosecutors on the quality and efficiency of the network of prosecutors, including in the fight against terrorism and organized and serious crime, adopted by the CCEP at those the 11<sup>th</sup> plenary session (Strasbourg, November 17<sup>th</sup>-18<sup>th</sup>, 2016),<sup>1</sup> “majority of member states within the Council of Europe found that those serious crimes and organized criminality became more complex and more international. Terrorism hit cruelly many countries and currently presents a major priority of the activity of criminal prosecution services”.

Pursuit to the point 4 of the Preamble to Directive (EU) 2017/541 of the European Parliament and of the Council of March 15<sup>th</sup>, 2017 on combating terrorism and replacement of the Framework Decision 2002/475/JAI of the Council and of the amendment of the Decision 2005/671/JAI of the Council<sup>2</sup> (hereinafter – Directive (EU) 2017/541)<sup>3</sup>: “terrorist threat

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<sup>1</sup> *Opinia nr. 11 (2016) a Consiliului Consultativ al Procurorilor Europeni privind calitatea și eficiența rețelei de procurori, inclusiv în lupta împotriva terorismului și a crimei organizate și grave, adoptată de CCPE la cea de-a 11-a ședință plenară (Strasbourg, 17-18 noiembrie 2016).* Disponibil: [http://www.mpublic.ro/sites/default/files/PDF/avizul\\_ccpe\\_nr\\_11.pdf](http://www.mpublic.ro/sites/default/files/PDF/avizul_ccpe_nr_11.pdf)

<sup>2</sup> *Decizia 2005/671/JAI a Consiliului Uniunii Europene din 20 septembrie 2005 privind schimbul de informații și cooperarea referitoare la infracțiunile de terorism.* Disponibil: <https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX%3A32005D0671>

intensified and evolved rapidly in the recent years. The people called “foreign terrorist fighters” travel abroad for the terrorist purposes. The returning foreign terrorist fighters represent an increased security threat in all member states. Foreign terrorist fighters were associated with the recent attacks and conspiracies in several member states. In addition, the Union and its member states face the increasing threats from people that are inspired or trained by the terrorist groups abroad but that remain in Europe”.

At the same time, in the Preamble to the Convention of the Council of Europe on the prevention of terrorism, adopted in Warsaw on May 16<sup>th</sup>, 2005,<sup>4</sup> ratified by the Republic of Moldova by the Law of the Republic of Moldova for the ratification of the Convention of the Council of Europe on the Prevention of Terrorism, No. 51 of March 07<sup>th</sup>, 2008,<sup>5</sup> it is underlined the deep concern of the member states of the Council of Europe determined by the “increase of terrorist offenses and of the threat represented by terrorism”; it is emphasized the idea according to which the “terrorist offenses and offenses stipulated by the Convention, regardless of their perpetrators, are in no way justified by the considerations of political, philosophical, ideological, racial, ethnic, religious or any other similar nature”; it is pointed out “the necessity to strengthen the fight against the terrorism”.

The conjugation of the forces of all European states in order to stop the terrorism as a phenomenon results obviously from the provisions of the European Convention for the suppression of terrorism, signed in Strasbourg on January 27<sup>th</sup>, 1977.<sup>6</sup>

Finally, the offenses of terrorist nature were also taken into consideration by the European Court of Human Rights.

The theme of the thesis is current due to new legal reference frame, related to the norms recorded in the article 278 of the Criminal Code of the Republic of Moldova (hereinafter – the CC of the RM)<sup>7</sup>. *Specifically*, we have in mind the new Law of the Republic of Moldova on prevention and combating of terrorism, No. 120 of September 21<sup>st</sup>, 2017,<sup>8</sup> the fact that determines the realization of a legal-theoretical radiography of terrorist acts through the prism of

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<sup>3</sup> *Directiva (UE) 2017/541 a Parlamentului European și a Consiliului din 15 martie 2017 privind combaterea terorismului și de înlocuire a Deciziei-cadru 2002/475/JAI a Consiliului și de modificare a Deciziei 2005/671/JAI a Consiliului*. Disponibil: <https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX:32017L0541>

<sup>4</sup> *Convenția Consiliului Europei privind prevenirea terorismului*, semnată la Varșovia la 16 mai 2005. Disponibil: [https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22018A0622\(01\)&from=ES](https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22018A0622(01)&from=ES)

<sup>5</sup> Monitorul Oficial al Republicii Moldova, 2008, nr. 63-65.

<sup>6</sup> *Convenția europeană pentru reprimarea terorismului*, semnată la Strasbourg la 27.01.1977. Disponibil: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=359671>

<sup>7</sup> Monitorul Oficial al Republicii Moldova, 2002, nr. 128-129, republicat în Monitorul Oficial al Republicii Moldova, 2009, nr. 72-74.

<sup>8</sup> Monitorul Oficial al Republicii Moldova, 2017, nr. 364-370.

new regulations related to the incriminating framework recorded in the article 278 of the CC of the RM.

Despite the lack of a local judicial practice on the cases regarding the offenses provided in the article 278 of the CC of the RM, we consider that the topicality of the theme addressed in the given paper cannot be questioned, at least for reasons of solidarity with states and, implicitly, with their citizens who suffered from the commission of terrorist acts. In addition, being a transnational phenomenon, terrorism can cross easily the ordinary borders. In the context, in the Informative Note to the above-mentioned draft law it is mentioned: “[...] analyzing the ongoing processes at the regional and international level, we can observe that the terrorist risks against the Republic of Moldova are becoming more pronounced. It is worth mentioning that the terrorist organization SI set concrete, geographically located objectives. Thus, on social networks appeared the map of the future Caliphate of the “Islamic State”, being highlighted the territories that the group plans to “include” in the composition of the Caliphate in the next 5 years, including the territory of the Republic of Moldova”.<sup>9</sup>

Finally, we conclude that all states, undoubtedly, and the Republic of Moldova must wage a fierce fight against the phenomenon of terrorism by its eradication, including through the criminal sanctioning of such criminal behaviour, as well as through continuous improvement of the incriminating framework.

The latter goal can be achieved only by the elaboration of a thorough scientific research seconded by a solid comparative analysis of the criminal legislations of foreign states in the matter of norms that incriminate the terrorist acts.

### **Description of situation in the domain of research and identification of the issue of research**

We mention that scientific papers intended exclusively for the doctrinal analysis of the offenses provided in the article 278 of the CC of the RM were signed in a sufficient number. However, some papers contain approaches in accordance with the old incriminating framework, being consequently obsolete. Others address tangentially some or other aspects. In the last period it is attested the lack of some papers of such magnitude, characteristic of a doctoral thesis, in which the terrorist acts are approached from the legal-criminal perspective, despite the fact that the phenomenon of terrorism has spread in the European area. All these emphasize the necessity of the execution of a complex research, focused exclusively on the analysis of the offenses provided in the article 278 of the CC of the RM, including from a comparative perspective.

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<sup>9</sup> *Notă informativă la Proiectul de lege cu privire la prevenirea și combaterea terorismului*. Disponibil: [http://www.sis.md/sites/default/files/transparenta/nota\\_proiect.pdf](http://www.sis.md/sites/default/files/transparenta/nota_proiect.pdf)

Among the eminent works subjected to analysis can be highlighted those signed by the following authors: A. Barbăneagră, V. Berliba, S. Brînză, V. Cușnir, L. Dumneanu, V. Efremov, Gh. Gladchi, L. Gîrla, I. Macari, R. Pleșca, A. Rusnac, I. Richicinski, V. Stati, V. Sili, Iu. Tabarcea, V. Țaulean, X. Ulianoschi (*Republic of Moldova*); A. G. Bezverhov, S. U. Dikaev, V. P. Emelianov, L. Ermakova, M. M. Galacieva, O. V. Gavrilova, A. A. Grigoriev, V. G. Kirșin, M. Komarova, V. L. Kudreavtev, A. A. Kurbanmagomedov, Z. S. Matcianova, D. M. Mineazev, M. F. Musaelean, M. Iu. Pavlik, H. S. Safarov, B. V. Sidorov, S. I. Sobolevskaia, V. V. Sviridov, I. V. Sevchenko, D. I. Tislenko (*Russian Federation*); F. A. Mirzoahmedov (*Republic of Tajikistan*); R. I. Mocanu, M. Rusu, R. Simus (*Romania*); M. Kovač (*Croatia*); Marcello Di Filippo (*Italy*) etc.

**The important scientific problem of research** consists in the elaboration of a complex conceptual framework regarding the content of the constitutive signs of the offenses reunited under the name of terrorist act in correspondence with the current theoretical-normative framework that allowed the identification of the imperfections from which, in our opinion, suffer the norms of incrimination provided in the article 278 of the CC of the RM and, accordingly, submission of a series of proposals aimed to improve the examined incriminating text in order to prevent and combat as effectively as possible the criminality in this area.

#### **Purpose and objectives of thesis**

The *purpose* of the given doctoral thesis consists in the conduct of a thorough comparative research in regard to the criminal liability for the offenses reunited under the generic name of terrorist act, in the identification and solving of the theoretical-legislative problems arising from the stated offenses, as well as in the formulation of some proposals of *lege ferenda* meant to optimize the incriminating framework in the matter.

In order to achieve the nominated purpose, the following *objectives* were set:

- analysis of doctrinal meanings enunciated in the specialized literature on the legal-criminal aspects concerning the offenses reunited under the name of terrorist act;
- identification of *sui generis* social value infringed by the commission of the terrorist acts;
- analysis of the alternative normative modalities of the expression of the prejudicial action provided in the paragraph (1) of article 278 of the CC of the RM;
- determination of the content of the typical variants of offense provided in the letter c), d) of paragraph (2), paragraph (4) of article 278 of the CC of the RM;
- establishment of the moment of the consummation of the offenses provided in the article 278 of the CC of the RM;

- determination of the mandatory subjective signs inserted in the provisions of the article 278 of the CC of the RM;
- delineation of conditions under which it is operable the clause of impunity recorded in the paragraph (6) of article 278 of the CC of the RM, as well as those that characterize the special circumstance of the mitigation of criminal liability for the commission of terrorist acts, specified in the paragraph (5) of article 278 of the CC of the RM;
- display of the defining aspects of the aggravating circumstances provided in the paragraph (2)-(3) of article 278 of the CC of the RM;
- delimitation of the offenses provided in the article 278 of the CC of the RM from some related actions, including from some offenses of terrorist nature;
- comparative analysis of criminal regulations in the legislations of some foreign states in the field of the offenses reunited under the name of terrorist act;
- identification of legislative deficiencies that complicate the applicability of the incrimination norms provided in the article 278 of the CC of the RM;
- formulation of the *lege ferenda* proposals able to improve the incriminating framework aimed at the terrorist acts.

### **Methodology of scientific research**

In the process of the achievement of the purpose and objectives proposed in the given doctoral thesis were used mainly the following methods: logical method (at the clarification of the content of the constitutive signs of the offenses reunited under the name of terrorist act, as well as at the solving of the problems of the qualification of those committed in the form of the article 278 of the CC of the RM), historical method (at the finding out of the content of the norms that incriminate the terrorist acts, from the perspective of the evolution of the incriminating framework and of those connected (of reference)), systematic method (at the identification of the legal solutions of the inclusion of the actions reunited under the name of terrorist act from the perspective of the competition of the norms recorded in the article 278 of the CC of the RM with other incriminating norms), etc. A special role assigned to comparative method that was used in the process of analysis of the norms recorded in the article 278 of the CC of the RM in comparison with the criminal regulations of a number of foreign states in the matter of the offenses reunited under the name of terrorist act, such as: Romania, Russian Federation, Ukraine, Armenia, Republic of Belarus, Kazakhstan, Tajikistan, Uzbekistan, Turkmenistan, Georgia, Macedonia, Czech Republic, Latvia, Australia, Denmark, Netherlands, Norway, Spain, Finland, France, Bosnia and Herzegovina, Lithuania, Liechtenstein, Albania, Italy, Austria, Bulgaria, Croatia, Estonia, Hungary, Malta, Montenegro, Poland, Serbia, Slovenia,

Slovakia, Iceland, Malaysia, Afghanistan, Bolivia, Colombia, Costa Rica, Cuba, Mexico, Ecuador, Venezuela, Peru.

Likewise, the concerned method was used at the delimitation of the offenses provided in the article 278 of the CC of the RM from some related criminal acts.

### **Novelty and scientific originality of paper**

The scientific novelty of the obtained results is concretized in the realization of a thorough legal-criminal research of the offenses provided in the article 278 of the CC of the RM.

The scientific novelty of the elaborated paper also consists in: 1) plenary argumentation of the fact that the offenses reunited under the name of terrorist act (article 278 of the CC of the RM) threaten, mainly, the social relations in organic derivation with public security, but not with the security of state or with the international security (of humankind); 2) display of the defining peculiarities of the victim of terrorist acts; 3) identification of the correlation between the norms fixed in the article 278 of the CC of the RM and those provided in the paragraph (3) of the article 279<sup>1</sup>, 290 and 292 of the CC of the RM; 4) demonstration of the fact that the estimative signs “other actions” and “other serious consequences” from the text of the paragraph (1) of article 278 of the CC of the RM agrees with the requirement of predictability of criminal law; 5) determination of some additional arguments for the purpose of the relocation of threat with the commission of the terrorist act within a separate incriminating norm; 6) emphasis of the public manner of action of perpetrator at the commission of terrorist acts; 7) comparative approach of terrorist act provided in the paragraph (1) of article 278 of the CC of the RM in the modality of the provocation of explosion, fire or in the commission of other similar acts and the terrorist act committed with the application of firearms or explosive substances (letter c) of paragraph (2) of article 278 of the CC of the RM); 8) dissociation of threat with the commission of the terrorist act from the criminal act provided in the article 281 of the CC of the RM; 9) solving of dilemma regarding the structure of the objective side of the offenses reunited under the name of terrorist act; 10) specification of the construction of the objectives pursued by the perpetrator at the commission of the terrorist acts; 11) indication of the reasons of the establishment of criminal liability of legal persons for the commission of terrorist acts; 12) delimitation of the clause of impunity recorded in the paragraph (6) of article 278 of the CC of the RM from the general basis of release from criminal liability provided in the article 56 of the CC of the RM; 13) elucidation of the role of special mitigating circumstance included in the paragraph (5) of article 278 of the CC of the RM; 14) comparative analysis of criminal regulations from the legislations of some foreign states in the matter of criminal liability for the commission of terrorist acts, etc.

### **Theoretical significance and applicative value of paper**

The executed research has both theoretical and practical value, having the purpose to arouse interest for the specialized literature, as well as for the persons entitled to the application of the criminal law.

Theoretically, the given doctoral thesis constitutes a paper in which are investigated thoroughly and multiaspectually the constitutive elements of the offenses recorded in the article 278 of the CC of the RM in the light of new regulations related to the norms provided in this article. The given thesis is part of the series of papers in which the terrorist acts are subjected to a legal-criminal approach from a comparative perspective. *Specifically*, at the conduct of the given research, including at the formulation of legislative proposals of the improvement of the national legal framework, the regulations of the criminal legislations of over 45 states were taken into account.

We consider useful the results of our research also for the process of training of the students of the faculties of law of the higher educational institutions, as well as of the audients within the National Institute of Justice.

Finally, the importance of the paper lies in the possibility to contribute to the improvement of the incriminating framework of the article 278 of the CC of the RM, in this sense being submitted the recommendations of *lege ferenda* meant to remove the deficiencies that reduce the applicability of the analyzed norms of incrimination.

### **Main scientific results submitted for support**

The main scientific results submitted for support consisted in: argumentation of the opportunity of the relocation of the threat of commission of the terrorist act within a distinct incriminating norm; demonstration of the reduced practical applicability of the paragraph (1) of article 278 of the CC of the RM (in the event of the terrorist act expressed in the modality of the causing of explosion), the fact due to the creation of the Moldavian legislator of incrimination within a distinct norm of the terrorist act committed with the application of the firearms or of the explosive substances; identification of legislative deficiencies from which suffer the article 278 of the CC of the RM, as well as the formulation of the *lege ferenda* proposals meant to remove the detected shortcomings; proof of the fact that, in the conjuncture of the article 278 of the CC of the RM, the intimidation of the population of a state or of a part of it occurs in the position of the primary (initial) purpose of the offense, while forcing of a state, an international organization, a legal or natural person to commit or refrain from the commission of any action, as well as drawing of attention of society to the political, religious ideas or ideas of other nature of perpetrator evolves in the position of the final purpose; determination of the inopportuneness

of the keeping of the aggravating circumstantial sign “resulting in death of person by inadvertence” in the text of the article 278 of the CC of the RM etc.

#### **Implementation of scientific results**

The obtained scientific results are applied in the process of training of the students of the faculties of law of the higher educational institutions, in the practical activity of the law authorities, as well as of the legislator.

#### **Approval of results**

The thesis was elaborated and discussed within the Doctoral School of Legal Sciences of Moldova State University (MSU). The results of the research were approved by the guiding commission within the Doctoral School and by the Department of Criminal Law of MSU.

#### **Publications on topic of thesis**

The obtained results are published in 12 scientific papers.

#### **Volume and structure of paper**

The paper consists of the introduction, four chapters, general conclusions and recommendations, ending with the list of the used bibliographic references. The main part of the thesis has 237 pages, including 230 pages of basic text, and the complementary part of the thesis has 27 pages, including 23 pages of bibliography. In the bibliographic list are included 374 titles.

**Keywords:** explosion, fire, terrorist act, terrorist organization, threat, intimidation of population, clause of impunity, fire-arm, explosive substances, etc.

## CONTENT OF THESIS

In the **Introduction** it is argued the topicality and importance of the researched topic, are presented the purpose and objectives of the paper, the chosen methodology and methods of research, it is described the situation in the field of research, at the same time being indicated: the scientific novelty of the obtained results; the main scientific results submitted for support; the important scientific issue of research; the theoretical importance and applicative value of the paper; approval of the results, structure and summary of the compartments of the paper.

In the **Chapter 1 – Analysis of situation in the matter of criminal liability for the offenses reunited under the name of terrorist act** – it is performed the analysis of the doctrinal situation in the matter of criminal liability for the offenses reunited under the name of terrorist act.

The analysis was performed in the chronological order. Thus, the papers of the following authors were investigated: A. Barbăneagră, V. Berliba, S. Brînza, V. Cușnir, L. Dumneanu, V. Efremov, Gh. Gladchi, L. Gîrla, I. Macari, R. Pleșca, A. Rusnac, I. Richicinski, V. Stati, V. Sîli, Iu. Tabarcea, V. Țaulean, N. Ursu, X. Ulianovschi (*Republic of Moldova*); A. G. Bezverhov, S. U. Dikaev, V. P. Emelianov, L. Ermakova, M. M. Galacieva, O. V. Gavrilova, A. A. Grigoriev, V. G. Kirșin, M. Komarova, V. L. Kudreavtev, A. A. Kurbanmagomedov, Z. S. Matcianova, D. M. Mineazev, M. F. Musaelean, M. Iu. Pavlik, H. S. Safarov, B. V. Sidorov, S. I. Sobolevskaia, V. V. Sviridov, I. V. Șevcenko, D. I. Tislenko (*Russian Federation*); F. A. Mirzoahmedov (*Republic of Tajikistan*); R. I. Mocanu, M. Rusu, R. Simus (*Romania*), M. Kovač (*Croatia*), Marcello Di Filippo (*Italy*) etc.

As a result of the research of various points of view expressed on some aspects related to the offenses reunited under the name of terrorist act, several doctrinal divergences were found that impelled the attempt of the author to find adequate solutions to the emerged problems.

Among the scientific materials published on the topic of the thesis in the Republic of Moldova it is distinguished the paper elaborated by *Gh. Gladchi and V. Sîli* published in 2004.<sup>10</sup> It is a study in which the authors approach the terrorist act from the legal-criminal and criminological perspective.

It is defined the *lato sensu* and *stricto sensu* public security, as a fundamental social value infringed by the commission of the terrorist acts. With regard to the special legal object, the authors claim that the terrorist acts are the offenses with several legal objects.

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<sup>10</sup> Gladchi Gh. și Sîli V. *Terorismul: studiu criminologic și juridico-penal*. Chișinău: Editura Academiei „Ștefan cel Mare”, 2004.

According to the authors, violence in the structure of the terrorist act plays a strictly informational role and represents a modality of threatening aimed to impose certain actions on the basis of the state of fear.

In detail are analyzed those two modalities of expression of prejudicial action provided in the paragraph (1) of article 278 of the CC of the RM. It is argued that in order to be in the presence of the threat of the commission of the terrorist act, it shall be a real one and shall come from a person that is preparing or has already prepared the commission of the terrorist act. On the basis of these features, underline, rightly, Gh. Gladchi and V. Sîli, it is carried out the delimitation between the terrorist act and the communication knowingly about the terrorist act.

The paper signed by *L. Dumneanu*<sup>11</sup> also dates from 2004. It is a monographic material in which are reflected the legal-criminal and those criminological aspects of other offenses provided in the article 278 of the CC of the RM. The concerned paper ranks among few doctrinal attempts to conduct a complex investigation of the phenomenon of terrorism, on the one hand, and of terrorist acts, on the other hand.

The main reference points of the paper aim at: identification of the essence of terrorism; characterization of the types of terrorism; emphasis of the basic trends of contemporary terrorism; analysis of the objective and subjective constitutive elements of the offenses provided in the article 278 of the CC of the RM; comparative research of the regulations provided in the article 278 of the CC of the RM in relation to those in the criminal legislations of some foreign states; delimitation of terrorist acts from other related offenses; delineation of the criminological aspects of terrorism, etc.

L. Dumneanu defines the public security as being the system of social relations in accordance with the creation and maintenance of the conditions of security in which will operate the society, ensuring the functioning and development of its institutions. According to the author, the public security relates to the security of a large, undetermined number of the members of society. At the same time, claims that the victim of the terrorist act can become either a concrete person, who is of particular importance for society, or a representative of state, diplomat, pilot of an airship, etc., or a person who was occasionally in the place of the commission of offense.

In terms of the subjective side, she states that against the background of some special purposes pursued by the perpetrator at the commission of the prejudicial action, the terrorist acts can be committed only with direct intention.

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<sup>11</sup> Dumneanu L. *Analiza juridico-penală și criminologică a terorismului*. Chișinău: CEP USM, 2004.

Worth noting is the remark of the author, according to which the intimidation of the population or of a part of it constitutes an intermediate purpose, while other objectives appear as the final purpose. We support this vision. Subsequently, L. Dumneanu emphasizes that the intimidation of the population appears as a mandatory purpose, but not as an alternative, suggesting that any terrorist act involves eminently the intimidation of a segment of the population.

It dates from 2009 the paper elaborated by A. Barbăneagră, Gh. Alecu, V. Berliba and others.<sup>12</sup> For the given study arouses interest the segment of the paper dedicated to the analysis of the offenses provided in the article 278 of the CC of the RM performed by X. Ulianoschi.

The author investigates the terrorist acts in accordance with the elements of the components of offense. It is identified the generic and special legal object of terrorist acts. The author defines the public security, as a fundamental social value infringed by the commission of the terrorist acts, as the state of protection of vital interests of person, society and state against the internal and external threats.

Regarding the subjective side of the terrorist acts, X. Ulianoschi claims that this is carried out through the guilt expressed by direct intention and existence of a special purpose, indicated directly in law.

Regarding the aggravating circumstance recorded in the letter a) of paragraph (3) of article 278 of the CC of the RM, the author underlines that the organization is considered criminal if at least one of its structural subdivisions conducts an activity classified as terrorist.

The paper signed by L. Gîrla and Iu. Tabarcea, published in 2010,<sup>13</sup> was taken into view. Interest is provoked, in particular, by the segment of the paper that contains the legal-criminal characterization of the offenses provided in the article 278 of the CC of the RM. Their analysis is performed through the prism of the elements of the components of offense. In the view of the authors, the special legal object of the terrorist act constitutes the public security in a broad sense.

The categories “other actions”, “other serious consequences” from the text of the paragraph (1) of article 278 of the CC of the RM are defined. The authors claim that the offense provided in the paragraph (1) of article 278 of the CC of the RM in the modality of the causing of explosion, fire or other similar actions is assigned to the category of endangering offenses, while in the modality of threatening with the causing of explosion, fire or other similar acts the

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<sup>12</sup> Barbăneagră A. et al. *Codul penal al Republicii Moldova. Comentariu. (Adnotat cu jurisprudența CEDO și a instanțelor naționale)*. Chișinău: Sarmis, 2009.

<sup>13</sup> Гырла Л. Г. și Табарча Ю. М. *Уголовное право Республики Молдова. Часть Особенная*, том II. Кишинэу: Cartdidact, 2010.

composition of the offense is formal. It is argued that the public manner constitutes a mandatory sign of the offenses reunited under the name of terrorist act. A part of study is aimed at the elucidation of the conditions in the presence of which may be applicable the clause of impunity recorded in the paragraph (6) of article 278 of the CC of the RM.

One of the distinguished papers on the topic of the thesis published in the Republic of Moldova is the monograph signed by V. Sîli, V. Armaşu, A. Donciu and others, published in 2011.<sup>14</sup> It is a material in which are subject to analysis the offenses of terrorist nature, offenses related to terrorism, as well as some offenses of terrorization nature, in accordance with the criminal law of the Republic of Moldova. For the given research the relevance have the doctrinal approaches performed on the offenses provided in the article 278 of the CC of the RM, belonging to V. Sîli.

Undoubtedly, the given material is of particular importance for the given research, as it is among few complex papers published in the Republic of Moldova in which are investigated multilaterally, from the legal-criminal perspective, the offenses provided in the article 278 of the CC of the RM.

It is noteworthy the thesis of the author, according to which the terrorist act provided in the paragraph (1) of article 278 of the CC of the RM in the modality of causing of explosion, fire or in commission of other similar actions is considered consumed even if the prejudicial consequences stipulated in the provision of the norm have not occurred. Within the perimeter of the subjective side, V. Sîli analyses the guilt, purpose and reason of the offenses provided in the article 278 of the CC of the RM. The purposes pursued by the perpetrator in the commission of the terrorist acts are defined. It is demonstrated that intimidation of the population presupposes the tendency of the subject to stimulate the appearance in a large, indeterminate number of people of the feeling of fear for their life, health and property or of their close relatives.

In other words, the paper signed by S. Brînză and V. Stati, published in 2015,<sup>15</sup> is of interest. For the given thesis is of interest the segment of the paper in which the authors characterize the offenses provided in the article 278 of the CC of the RM. From the theses presented by S. Brînză and V. Stati, emerges the idea that the main special legal object of the offenses reunited under the name of terrorist act is in organic derivation with the public security, as a fundamental social value. In this sense, the authors indicate that, unlike the personal security related to the individuals taken in part (*ut singuli*), public security concerns the community as a

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<sup>14</sup> Sîli V. et al. *Infraţiuni cu caracter terorist, infraţiuni conexe terorismului şi unele infraţiuni cu caracter de terorizare*. Chişinău: Garamont-Studio, 2011.

<sup>15</sup> Brînză S. şi Stati V. *Tratat de drept penal. Partea Specială*, vol. II. Chişinău: Tipografia Centrală, 2015.

whole (*ut universi*). They mention that when the criminal law incriminates certain actions that affect the public security, thereby it is reacted against a danger of nature to produce collective effects, i.e. to affect the interests of an indeterminate number, more or less important, of individuals.

It is argued rightly that in the letter c) of paragraph (2) of article 278 of the CC of the RM it is recorded a standard variant of the offense, but not an aggravating circumstance attachable to the offense provided in the paragraph (1) of article 278 of the CC of the RM. Remarkable are the arguments brought by S. Brînza and V. Stati in the support of the concerned position: „[...]in one of its normative modalities, the offense provided in the paragraph (1) of article 278 of the CC of the RM involves causing of an explosion or of a fire or commission of another such action that creates the danger to cause death or injury of the bodily integrity or health, essential damage to property or environment or other serious consequences. However, in the context of the offense specified in the paragraph (1) of article 278 of the CC of the RM, causing of an explosion or a fire involves the use not of any means, but of means such as natural gas, chlorine, ammonia, steam under pressure, flammable substances, etc. It may not involve the application of firearms or explosive substances. Otherwise, the liability will be applied according to the letter c) of paragraph (2) of article 278 of the CC of the RM. It turns out that the hypothesis from the letter c) of paragraph (2) of article 278 of the CC of the RM cannot overlap with the hypothesis from the paragraph (1) of article 278 of the CC of the RM, because they would exclude each other”.<sup>16</sup>

The analytical insight into scientific materials published in the country ends with the article signed by X. Ulianoschi and V. Sîli in 2019.<sup>17</sup> It is an article dedicated to the analysis of the generic legal object of the offenses of terrorist nature.

In it is pointed out that in case of the offenses of terrorist nature, unlike other categories of offenses, it is highlighted particularly the tendency of the delinquents to damage several social values.<sup>18</sup> The authors are of the opinion that all offenses of terrorist nature, detached from the text of the article 134<sup>11</sup> of the CC of the RM, shall be included in a single chapter of the Special Part of the Criminal Code. In this regard, the authors consider that the Special Part of the Criminal Code needs to be supplemented with a separate chapter entitled “Offenses of terrorist nature”.<sup>19</sup> In the opinion of X. Ulianoschi and V. Sîli, the generic legal object of the offenses of

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<sup>16</sup> Brînza S. și Stati V. *Tratat de drept penal. Partea Specială*, vol. II, p. 522.

<sup>17</sup> Ulianoschi X., Sîli V. *Unele sugestii cu privire la obiectul juridic generic al infracțiunilor cu caracter terorist*. În: *Revista Națională de Drept*, 2019, nr. 1-3, p. 31-43.

<sup>18</sup> *Ibidem*, p. 32.

<sup>19</sup> *Ibidem*, p. 36.

terrorist nature consists of the totality of homogeneous social values and relations in respect to the national and international security.<sup>20</sup>

Among the distinguished papers published in other states there is the work belonging to V. P. Emelianov, published in 2002.<sup>21</sup>

In the given paper that, moreover, constituted a serious pillar for the given investigation, the constitutive elements of the offenses reunited under the name of terrorist act are thoroughly investigated. A part of the study is focused on the comparative analysis of the criminal regulations in other states in the field of terrorist acts. At the same time, the author tries to make delimitation between the terrorist acts and other related offenses.

In terms of the subjective side, V. P. Emelianov mentions that the special purpose pursued by the perpetrator determines the presence of the direct intention to commit the terrorist act. It is worth noting the position of the author, in accordance with which at the commission of the terrorist acts the perpetrator pursues the achievement of an initial (intermediate) goal that consists in the intimidation of the population, as well as of a final purpose expressed in the coercion of state, international organization, natural or legal person or a group of persons to commit concrete actions or to refrain from committing them in the interests of the perpetrators and to the detriment of the recipients of the claims.

The next paper taken into consideration is the summary of the doctoral thesis defended in 2004 by S. U. Dikaev.<sup>22</sup> *Inter alia*, the author offers an objection to the doctrinal view of the relocation of the terrorist acts within the chapter of the Special Part of the Criminal Code dedicated to the protection of peace and security of mankind. It is remarkable the argument of the author: the main criterion of the classification of the terrorist acts as the offenses against the public security is that any member of society, in the absence of a victimological behaviour on his/her part, is a potential victim of these offenses. In another regard, the author considers incorrect the position of the legislator to reunite within the same rule the terrorist act as such and the threat of the commission of the terrorist act.

Another scientific material worthy to be noted is the summary of the doctoral thesis defended in 2006 by the Russian author M. Iu. Pavlik.<sup>23</sup> It is a material in which the author

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<sup>20</sup> *Ibidem*, p. 41.

<sup>21</sup> Емельянов В. П. *Терроризм и преступления с признаками терроризирования: уголовно-правовое исследование*. Санкт-Петербург: Юридический центр Пресс, 2002.

<sup>22</sup> Дикаев С. У. *Терроризм: феномен, обусловленность и меры противодействия: уголовно-правовое и криминологическое исследование* / Автореферат диссертации на соискание ученой степени доктора юридических наук. Санкт-Петербург, 2004.

<sup>23</sup> Павлик М. Ю. *Уголовная ответственность за насильственные преступления против общественной безопасности: Современное состояние, сущность и противоречия* / Автореферат диссертации на соискание ученой степени доктора юридических наук. Санкт-Петербург, 2006.

makes a theoretical-practical incursion on the violent offenses that threaten the public security. For the given research, arouses the interest the segment of the paper intended for the legal-criminal analysis of the offenses reunited under the name of terrorist act. It is remarkable the effort of the author to explain the meaning of the term “public safety”.

It is commendable the intervention of the author to comment in detail on the special clause of impunity inscribed under the print of the article that incriminates the terrorist acts. In this sense, he elucidates the conditions in the presence of which functions the indicated clause of impunity.

Another material subjected to the analysis represents the scientific article elaborated by *M. Rusu* in 2006.<sup>24</sup> In this article the author conducts a research of the objective and subjective constituent elements of the offenses reunited under the name of terrorist act. The subjective side of the terrorist acts is subject to analysis, among which also some non-normative forms of the intention with which the perpetrator can act at the commission of the prejudicial action.

It appears unclear the position of the author, according to which the special legal object of the offense of terrorism is, *inter alia*, the social relations related to the public order.

Another noteworthy material is the scientific article elaborated by *D. I. Tislenko* in 2010.<sup>25</sup> The main reference points of the article consist in the: emphasis of the public character and of the social resonance as the auxiliary tools at the intimidation of the population pursued by the perpetrator at the commission of the terrorist acts; determination of the relationship between terrorism and extremism; identification of the addressees of the claims submitted by the perpetrators; determination of the defining aspects of the objectives pursued by the perpetrators in the process of the commission of the terrorist acts.

There are taken into account the scientific articles signed in 2013 by *V.L. Kudreavțev*.<sup>26</sup> In them, the author tries to dissociate the terrorist acts from other similar offenses, at the same time investigates the objective side of the terrorist act recorded in the paragraph (1) of article 205 of the Criminal Code of the Russian Federation.

From the same year, 2013, dates the paper elaborated by the Romanian author *R. I. Mocanu*.<sup>27</sup> It is a material in which the following aspects are pointed out: the analysis of the historical evolution of the first terrorist groups; approach of contemporary terrorism;

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<sup>24</sup> Rusu M. *Infrațiunea de terorism. Noua reglementare*. În: Revista de drept penal, 2006, nr. 4.

<sup>25</sup> Тисленко Д. И. *Анализ и значение признаков терроризма*. În: Вестник ТГУ, 2010, № 10 (90).

<sup>26</sup> Кудрявцев В. Л. *Отграничение террористического акта от иных смежных составов преступлений: теоретический анализ*. În: Вестник Южно-Уральского профессионального института, 2013, №1 (10); Кудрявцев В. Л. *Объективная сторона преступления, предусмотренного ч. 1 ст. 205 УК РФ «Террористический акт»: некоторые вопросы теории и практики*. În: Вестник Института законодательства Республики Казахстан, 2013, № 1-2 (29-30).

<sup>27</sup> Mocanu R. I. *Fenomenul terorist: analiza legislației anti-teroriste*. București: Universul Juridic, 2013

accentuation of the tools of fight against the terrorism; emphasis of the incriminating framework of Romania in the part related to the terrorist acts, as well as the analysis of the concerned offenses.

It is revealed that terrorism consists in the actions committed in the premeditated manner. The actions are committed after long preparations meant to ensure the success of the attack. The terrorist acts cannot be committed on impulse, even if they constitute the embodiment of a feeling of hatred or are of vindictive nature. However, the gravity of the terrorist phenomenon is generated also because of the specific degree of prior preparation.

The scientific article elaborated by *B. V. Sidorov* in 2015 is another material subject to research.<sup>28</sup> The main reference points of this study consist in the: establishment of correlation between the notions “terrorism”, “terrorist act”, “offenses of terrorist nature”; determination of the primary and final purpose pursued by the perpetrator at the commission of the terrorist acts; identification of the decisive impulses in the appearance of the intention to commit the terrorist acts; elucidation of the correlation between the objectives the accomplishment of which wants the perpetrator and the political motivation that determines him/her to resort to the commission of the terrorist acts, etc.

Another article that deserves to be pointed out is those signed by the Romanian author *R. Simus* in 2016.<sup>29</sup> The analyzed material includes the legal-criminal valences, as well as of another nature: sociological, criminological, etc. For the given investigation, the legal-criminal aspects of the terrorist acts are of interest. Relevant are the ideas of the author in the part related to the circle of the victims of the terrorist acts, as well as the purposes pursued by the perpetrator at the commission of several such criminal actions.

Another paper worth noting is the doctoral thesis defended in 2016 by *F. A. Mirzoahmedov*.<sup>30</sup> It is a paper in which are researched, from comparative positions, the regulations of the Criminal Code of the Republic of Tajikistan and of the Russian Federation, in regard to the offenses reunited under the name of terrorist act.

Remarkable are the following findings of the author: in order to be in the presence of the terrorist act it is sufficient that the danger created by the causing of the explosion, fire or by commission of other similar actions to be related to life or health of a single person; the essential

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<sup>28</sup> Сидоров Б. В. *Терроризм и террористическая деятельность: вопросы соотношения, системный анализ и проблема совершенствования уголовно-правового и криминологического противодействия*. În: Вестник экономики, права и социологии, 2015, № 4

<sup>29</sup> Simus R. *Evoluția terorismului*. În: Acta Universitatis George Bacovia. Juridica - Volume 5, 2016, nr.2.

<sup>30</sup> Мирзоахмедов Ф. А. *Уголовная ответственность за терроризм по законодательству Республики Таджикистан и Российской Федерации (сравнительно-правовое исследование)* / Диссертация на соискание ученой степени кандидата юридических наук. Москва, 2016.

damages of the property subject to causing by the provocation of the explosion, fire or by the commission of other similar actions are determined depending on the parameters of the potential damage, value of goods, their importance for potential victim, as well as type of concrete action used by the perpetrator at the commission of the terrorist acts.

The following papers subject to research are those signed in 2018 by X. *Ulianovschi* and V. *Sili*.<sup>31</sup> There are two papers in which the authors point out the specific features of the object of the offenses of terrorist nature, as well as the purpose of these offenses.

Finally, the scientific investigation is concluded by the article elaborated by D. V. *Erohin* in 2019.<sup>32</sup> The author subjects to critical analysis the norms of the criminal legislation of the Russian Federation corresponding to those recorded in the article 278 of the CC of the RM. It is emphasized that the term “terrorism” represents the ideology and practice of the application of violence, therefore, the author argues, it is irrational to use this term in the description of the composition of offense. At the same time the author argues on the solutions of qualification in case of the terrorist act accompanied by death of two or more persons.

In the **Chapter 2 – Objective signs of offenses reunited under the name of terrorist act** – are highlighted the peculiarities of the object and of the objective side of the offenses provided in the article 278 of the CC of the RM.

The author claims that the terrorist act is the expression preferable for the description of the actions of the offenses reunited under the rule of the article 278 of the CC of the RM, since, on the one hand, it is a legal notion, and, on the other hand, it designates strictly the prejudicial actions provided in the article 278 of the CC of the RM.<sup>33</sup>

From the perspective of the legal object of the offense it is demonstrated that by the commission of the terrorist acts are infringed the rights and interests of a group of persons, usually undetermined, but not of a single (determined) person. *De jure*, this finding derives from the technique of the legislator of the placement of the offenses reunited under the name of

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<sup>31</sup>Ульяновски К. și Сьли В. *Scopul infracțiunilor cu caracter terorist*. În: Матеріали Міжнародної науково-практичної інтернет-конференції «тенденції та перспективи розвитку науки і освіти в умовах глобалізації», 28 листопада 2018 року Вип. 41, Переяслав-Хмельницький, 2018; Ульяновски К. și Сьли В. *Unele trăsături specifice ale obiectului infracțiunilor cu caracter terorist*. În: Матеріали Міжнародної науково-практичної інтернет-конференції «тенденції та перспективи розвитку науки і освіти в умовах глобалізації», 28 листопада 2018 року Вип. 41, Переяслав-Хмельницький, 2018.

<sup>32</sup>Ерохин Д. В. *Уголовно-правовое регулирование противодействия терроризму*. În: Вестник Омского университета, 2019, № 1.

<sup>33</sup>Cojocaru V. M. *Evoluția normativă a titlaturii art. 278 CP RM (actul terorist)*. În: Materialele Conferinței științifice naționale cu participare internațională „Integrare prin cercetare și inovare” (Chișinău, 08-09 noiembrie 2018). Seria „Științe juridice”. Chișinău: CEP USM, 2018, p. 241.

terrorist act in the chapter of the Special Part of the Criminal Code dedicated to the protection of public security.<sup>34</sup>

The offenses reunited under the name of terrorist act (article 278 of the CC of the RM) threaten, mainly, on the social relations in the organic derivation with the public security, not with the security of the state or with the international security (of humankind).

In case of the terrorist act provided in the paragraph (1) of article 278 of the CC of the RM (except for the situation in which the prejudicial action takes the form of the threat with the commission of the terrorist act), only one of the secondary social values is mandatory. The others are of optional nature.

It is pointed out that the difference between the terrorist act provided in the paragraph (1) of article 278 of the CC of the RM, when it appears in the manner of the causing of the explosion or fire, and the terrorist act recorded in the letter c) of paragraph (2) of article 278 of the CC of the RM resides in the means used at the commission of the offense.

The author proposes the establishment of a new letter - a<sup>1</sup>) – within the paragraph (3) of article 278 of the CC of the RM that would sanction the terrorist act committed by the use of the mass destruction weapons.

The establishment of such an incriminating model is based on the following judgements: a) terrorist acts represent the mass offenses, thereby, in order to frighten the population and, implicitly, to meet the submitted requirements, the perpetrators can use the mass destruction weapons; b) at the international level it is attested a fulminating development of the biological, chemical and, especially, nuclear weapons, these constituting a serious danger for the society; c) use of poisonous substances, of those radioactive, of biological weapons, of those chemical, as well as of nuclear weapons can lead to the human losses in colossal proportions.<sup>35</sup>

It is stated that the illegal purchase, storage, etc. of firearms or explosive substances for the purpose of the commission of the terrorist act provided in the letter c) of paragraph (2) of article 278 of the CC of the RM shall be included according to the: a) article 26, letter c) of paragraph (2) of article 278 of the CC of the RM (in event in which the intention of the perpetrator was interrupted at the stage of the preparatory actions because of the causes independent of his/her will, i.e. before the beginning of the execution of the intention to commit the terrorist act); b) letter c) of paragraph (2) of article 278 of the CC of the RM (in event in

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<sup>34</sup> Cojocaru V. M. *Obiectul infracțiunilor prevăzute la art. 278 CP RM (actul terorist)*. În: Revista Națională de Drept, 2017, nr. 8, p. 47.

<sup>35</sup> Cojocaru V. M. *Actul terorist săvârșit cu aplicarea armelor de foc sau a substanțelor explozive (lit. c) alin. (2) art. 278 CP RM)*. În: Revista științifică a USM „Studia Universitatis Moldaviae”. Seria „Științe sociale”, 2017, nr. 8 (108), p. 108.

which the intention of the perpetrator to commit the terrorist act was carried out to the end). In these cases, it is not necessary the execution of an additional qualification according to the article 290 and/or article 292 of the CC of the RM. The latter norms are absorbed by the norms of the article 26, letter c) of paragraph (2) of article 278 of the CC of the RM or, as the case may be, by the norm inserted in the letter c) of paragraph (2) of article 278 of the CC of the RM.

It is revealed that in the event of the preparation at the commission of one of the offenses provided in the article 278 of the CC of the RM (in the modalities provided expressly in the paragraph (3) of article 279<sup>1</sup> of the CC of the RM) those committed do not require the qualification according to the article 26 and one of the norms inserted in the article 278 of the CC of the RM, but only according to the paragraph (3) of article 279<sup>1</sup> of the CC of the RM as being a special case of preparation at the commission of the terrorist act. Obviously, in order to operate this competition, it is necessary that the behaviour of the perpetrator not to be an independent one, but a contribution (complicity) to the conduct of another participant in the offense.

It is observed that, due to the creation of Moldavian legislator, paragraph (1) of article 278 of the CC of the RM seems to be inapplicable when the terrorist act appears in the manner of the causing of explosion, as the practical probability of the causing of an explosion by the use of means other than the explosive substances is completely reduced.

Appears as unclear the position of the legislator to differentiate within some distinct norms of incrimination the criminal liability for the terrorist act expressed in the commission of the explosion by the use of the explosive substances or by the use of other means. This can be left on the account of practitioners, by the exclusion of the letter c) of paragraph (2) of article 278 of the CC of the RM, so that those empowered with the application of the criminal law have the task to individualize the criminal punishment (but not to differentiate the criminal liability) when the explosion is committed by the use of the explosive substances or by the use of other means. In addition to this, it is less widespread (if not at all) the possibility of the causing of an explosion by the use of the means other than the explosive substances.

At the same time, the author notes that in the legislation of most states it is absent a separate norm that would incriminate, analogically to the criminal legislation of the Republic of Moldova, the terrorist act committed with the application of the firearm or of the explosive substances.

For the reasons mentioned above, the author comes with the recommendation that Moldavian legislator to exclude the letter c) of paragraph (2) of article 278 of the CC of RM, so

that under the incidence of the paragraph (1) of article 278 of the CC of RM to fall the causing of the explosion both by the use of the explosive substances and by the use of other means.

Consequently, it is proposed that the “application of the firearm” be inserted expressly in the provision of the norm of the paragraph (1) of article 278 of the CC of the RM, following to constitute, together with the causing of the explosion, the fire, one of the modalities of the expression of the prejudicial action. The arguments of the author are the following: *first* – at the description of the prejudicial action recorded in the paragraph (1) of article 278 of the CC of the RM, the legislator is to specify for illustrative purposes the most common modalities of the commission of the terrorist act. Namely the most widespread and typical modalities of the concretization of the prejudicial action confer to the terrorist act provided in the paragraph (1) of article 278 of the CC of the RM a distinct physiognomy in relation to other offenses. The author is of the opinion that the application of the firearm relates to the essence of the terrorist act, the consideration from which it is to be expressly dedicated in the disposition of the norm of the paragraph (1) of article 278 of the CC of the RM. Eloquent in this respect is the most recent judicial practice of the European foreign states, where the application of the weapon, especially of the firearm, constitutes one of the most common modalities of the commission of the terrorist acts; *second* – in compared plan, the application of the firearm represents one of the modalities of the prejudicial action, specified explicitly or implicitly in the text of the norm of incrimination, along with other socially dangerous actions/inactions (such as causing of explosion, fire, etc.).

It is noted that, in accordance with the criminal legislation of the Republic of Moldova, the list of the prejudicial actions recorded in the article 278 of the CC of the RM has an open content, the reason for which may involve other socially dangerous actions/inactions.

It is demonstrated that although the estimative signs “other actions” and “other serious consequences” have a general character, they are in accordance with the requirement of predictability of the criminal law. The legal nature of the terrorist acts confers to the addressee of the criminal law the possibility to stipulate what other actions may constitute the modalities of the expression of the criminal offense, as well as what other prejudicial consequences may be caused as a result of the causing of explosion, fire or of the commission of some similar actions.<sup>36</sup>

The author concludes that the phrase “other actions” from the content of the norm inscribed in the paragraph (1) of article 278 of the CC of the RM comprises an extremely varied

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<sup>36</sup> Manea V. și Cojocaru V. M. *Latura obiectivă a actului terorist prevăzut la alin. (1) art. 278 CP RM*. În: Revista Națională de Drept, 2017, nr. 10, p. 10.

list of the actions/inactions liable to evolve as the prejudicial actions. To these, for illustrative purposes, can be attributed: collapse of buildings, installations, as well as any other buildings; causing of floods, landslides, avalanches, collapses; contamination of soil, air, water, food products with various pathogenic agents; blocking and/or destroy of transport routes; spread of epidemics and epizootics; interruption of water supply, electricity or other natural resources, etc. In no small measure, here can be attributed the clashes carried out through the transport means, as being one of the most recent modalities used by the perpetrators in the process of the commission of the terrorist acts in the European states (France, Spain, Germany).<sup>37</sup>

In order not to admit the infringement of the principles of equity, equality of citizens before the law and of humanism, differentiated application of punishment, the author concludes that the threat of the commission of the terrorist act and the terrorist act itself shall not be within the same norm of incrimination, but within some distinct norms.<sup>38</sup> As a consequence, the author recommends the incrimination of the threat of the commission of the terrorist act within a separate norm, and namely: in the article 278<sup>1</sup> of the CC of the RM. As a consequence, the current article 278<sup>1</sup> of the CC of the RM is to be renumbered in the article 278<sup>2</sup> of the CC of the RM.<sup>39</sup>

It is highlighted that the special purpose pursued by the perpetrator, as well as the social relations infringed by the commission of the prejudicial actions recorded in the article 278 of the CC of the RM, confers to the terrorist act the nature of an offense committed in public manner.

The author notes that in the structure of the objective side of the terrorist act provided in the paragraph (1) of article 278 of the CC of the RM the danger of causing of death, injury of bodily integrity or of health, essential damages to property or environment or other serious consequences does not constitute a prejudicial consequence, but an objective circumstance (mandatory secondary sign).

It is demonstrated that as the main action/inaction of the offense provided in the letter d) of paragraph (2) of article 278 of the CC of the RM may evolve the causing of explosion, fire or commission of other similar action, not the threat of the commission of the above-indicated actions, as serious or medium injury of bodily integrity or health of the person, in essence, cannot accompany the threat of the commission of the terrorist act.

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<sup>37</sup> *Ibidem*, p. 6.

<sup>38</sup> Cojocaru V. M. *Inechitați legislative la incriminarea unor comportamente infracționale: cazul – art. 278 CP RM (actul terorist)*. În: *Materialele Conferinței științifice naționale cu participare internațională „Integrare prin cercetare și inovare”* (Chișinău, 09-10 noiembrie 2017). Seria „Științe juridice”. Chișinău: CEP USM, 2017, p. 311.

<sup>39</sup> Cojocaru V. M. *Amenințarea cu săvârșirea actului terorist: formă de exprimare a infracțiunii prevăzute la alin. (1) art. 278 CP RM*. În: *Revista Institutului Național al Justiției*, 2018, nr. 4 (47), p. 44.

The author emphasizes that Moldavian legislator, compared with others, including with the Romanian one, establishes in a separate norm the criminal liability for the terrorist act committed with serious or medium damage of the bodily integrity or health of the person. In the legislation of other states, the serious or medium injury constitutes one of the forms of expression of the prejudicial action, being inserted together with other forms of material element, but not separately.<sup>40</sup>

From the comparative perspective, the author notes that Moldavian, Bosnian, Serbian, Russian and Belarusian legislators went on the path of the reunification in a single norm of the terrorist act and the intentional murder, thus forming a complex offense.

In the **Chapter 3 – Subjective signs of offenses reunited under the name of terrorist act** – it is performed the detailed characterization of the subject and the subjective side of the offenses provided in the article 278 of the CC of the RM.

In terms of the subject of the offense, the author notes that the article 278 of the CC of the RM does not establish the legal person as the subject of the terrorist acts, although the reference legislative act for the article 278 of the CC of the RM (Law of the Republic of Moldova on prevention and combating of terrorism) contains regulations on the liability of legal person for the conduct of the terrorist activity. The same is realized in case of some international legal instruments (for example: article 10 of the Convention of the Council of Europe on the prevention of terrorism, signed in Warsaw on May 16<sup>th</sup>, 2005, article 17 of Directive (EU) 2017/541).

In the comparative plan also are attested sufficient legislative models where the legal person evolves as the subject of the offenses reunited under the name of terrorist act (this is the case of the article 323 of the Criminal Code of Georgia,<sup>41</sup> art. 250 of the Criminal Code of Lithuania,<sup>42</sup> §237 of the Criminal Code of Estonia,<sup>43</sup> articles 421-1, 421-2 of the Criminal Code of France<sup>44</sup>, etc.).

The author considers lacunary the position of Moldavian legislator concretized in the omission to specify the criminal punishments subject to application to the legal person for the commission of the terrorist acts.<sup>45</sup>

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<sup>40</sup> Cojocaru V. M. *Studiu de drept comparat în materia tehnicilor legislative de inserare în textul normei a elementului material al infracțiunilor reunite sub denumirea de act terorist*. În: Dezvoltarea economico-socială durabilă a euroregiunilor și a zonelor transfrontaliere. Vol.XXXII, Iași, 2018, p. 192.

<sup>41</sup> *Уголовный кодекс Грузии*. Disponibil: <https://matsne.gov.ge/ka/document/download/16426/143/ru/pdf>

<sup>42</sup> *Criminal Code of Lithuania*. Disponibil: <http://legislationline.org/documents/section/criminal-codes>

<sup>43</sup> *Criminal Code of the Republic of Estonia*. Disponibil: <http://legislationline.org/documents/section/criminal-codes>

<sup>44</sup> *Criminal Code of the French Republic*. Disponibil: <http://legislationline.org/documents/section/criminal-codes>

<sup>45</sup> Cojocaru V. M. *Subiectul activ al actelor teroriste potrivit legii penale a Republicii Moldova*. În: Materialele Conferinței științifice internaționale a doctoranzilor în drept, ediția a X-a, Timișoara, 2018, p. 541.

In these conditions, the author proposes the establishment of criminal liability of the legal person for the commission of terrorist acts, by introduction in the text of the norms of the article 278 of the CC of the RM of the criminal penalties subject to application to legal person.

It is argued that at the establishment of the age of criminal liability for the commission of the offenses provided in the article 278 of the CC of RM (16 years old), Moldavian legislator proceeded from the ability of person to be aware of the prejudicial nature of those committed, to foresee the potential prejudicial consequences, as well as to pursue the objectives characteristic of the terrorist acts. Also in the conjuncture of the age of criminal liability, it is found that the incriminating norms that are in the relation of competition with the norms of the article 278 of the CC of the RM (for example, the norms of the articles 145, 151, 197 of the CC of the RM, etc.) are inapplicable in the event in which the one that causes explosions, fires, etc., in the presence of one of the purposes inscribed in the disposition of the article 278 of the CC of the RM, has the age between 14 and 16 years old. To reason *per a contrario* means to disregard the rules of qualification in case of competition of norms.

In situation in which an adult person instigates a minor to the commission of one of the offenses provided in the article 278 of the CC of the RM, and he/she commits the offense to the commission of which was instigated, then: a) the adult person will be liable on the basis of the letter c) of paragraph (3) of article 208 of the CC of the RM and according to one of the norms of the article 278 of the CC of the RM reported to the paragraph (4) of article 42 of the CC of the RM, b) the minor will be liable on the basis of one of the norms inscribed in the article 278 of the CC of the RM (provided that reached the age of 16 years old). In the event in which he/she did not reach the age of 16 years old, the minor is acquitted of criminal liability, while the adult person will be liable, in the capacity of the mediated perpetrator, for the terrorist act committed by the minor.

In the context of this segment of research, the author submits to investigation the special clause of individualization of the criminal penalty, stipulated in the paragraph (5) of article 278 of the CC of the RM, as well as the special clause of impunity, provided in the paragraph (6) of article 278 of the CC of the RM.

It is demonstrated that the special circumstance of individualization of the criminal penalty for the commission of the terrorist acts stipulated in the paragraph (5) of article 278 of the CC of the RM constitutes a real measure of prevention of the causing of some particularly serious criminal results by the commission of the terrorist acts. For the retention of the paragraph (5) of article 278 of the CC of the RM, it is sufficient that by the prevention of the authorities about the commission of the action would be avoided the causing of death of people, injury of bodily

integrity or of health of persons, other serious consequences, as it is enough that by the prevention of authorities would be disclosed other perpetrators. Beneficiaries of the mitigating circumstance provided in the paragraph (5) of article 278 of the CC of the RM can be both the perpetrators and other participants in the offense (instigators, organizers or accomplices).

Compared to the clause of the article 56 of the CC of the RM, the one from the paragraph (6) of article 278 of the CC of the RM does not prescribe the condition that the perpetrator has renounced voluntarily the commission of the terrorist act. Therefore, the clause of impunity inscribed in the paragraph (6) of article 278 of the CC of the RM operates even in the conditions in which the perpetrator did not act voluntarily when announced the law enforcement authorities or by another means prevented the accomplishment of the terrorist act.<sup>46</sup> The clause of impunity provided in the paragraph (6) of article 278 of the CC of the RM operates only when the perpetrator reached the stage of the acts of preparation, while the basis of the article 56 of the CC of the RM functions also in case in which the perpetrator renounces to continue his/her criminal activity at the stage of the acts of execution. For the purpose of the non-admission of the annihilation of the expected preventive effect of the clause of impunity provided in the paragraph (6) of article 278 of the CC of the RM, the author suggests, *de lege ferenda*, that the exemption from criminal liability for the preparation of the terrorist act be involved whenever the perpetrator renounces the commission of the terrorist act, regardless of whether or not in his/her actions are present the signs of another components of the offense.

In terms of the subjective side, it is revealed that the purpose pursued by the perpetrator at the commission of the offenses provided in the article 278 of the CC of the RM implies the manifestation of direct intention towards the committed ones, not having relevance, in this sense, the concrete structure of the objective side. The possibility of the evolution of indirect intention in case of some material components of the offense inscribed in the pattern of the article 278 of the CC of the RM, is eclipsed by the objective pursued by the perpetrator, inserted expressly in the disposition of the incriminating norms.<sup>47</sup> Also within the perimeter of the guilt with which the perpetrator can act at the commission of the terrorist acts, the author points out that, in most cases, at the commission of the terrorist act, the perpetrator acts on the basis of a premeditated

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<sup>46</sup> Cojocaru V. M. *Analiza circumstanței speciale de individualizare a pedepsei penale, precum și a clauzei de impunitate consemnate la art. 278 din Codul penal al Republicii Moldova (actul terorist)*. În: Dezvoltarea economico-socială durabilă a euroregiunilor și a zonelor transfrontaliere. Vol.XXXII, Iași, 2018, p. 274.

<sup>47</sup> Cojocaru V. M. *Vinovăția în contextul actelor teroriste potrivit legislației penale a Republicii Moldova*. În: «Актуальные научные исследования в современном мире», Переяслав-Хмельницкий, 2020, Выпуск 8 (64) ч. 5, p. 8.

intention, but not on the basis of a spontaneous intention that entails often the premeditation of the terrorist act.

In the conjuncture of the secondary signs of the subjective side, the author states that at the commission of the terrorist acts the perpetrator may tend towards the achievement of some objectives of both political and apolitical nature (for example, towards the achievement of some goals of religious, cultural etc.).

It is demonstrated that in order to be in the presence of the offenses reunited under the name of the terrorist act, it is not enough for the perpetrator to have sought to draw attention of society to his/her political, religious ideas or of other nature or to force a state, an international organization, a legal or natural person to commit or refrain from the commission of any action. It is necessary that the concerned purposes be pursued by the tendency of the perpetrator to intimidate the population of the state or part of it. In other words, one of those two basic objectives shall be preceded by the intimidation of the population of a state or a part of it. It is the latter objective that offers to the perpetrator the possibility of the achievement of the final objectives. Such an objective determines the specificity of the victims of terrorist acts. And the same objective serves as the starting point for the identification of the object of attempt of the offenses reunited under the name of terrorist act.<sup>48</sup>

It is concluded that the intimidation of the population of a state or of a part of it appears, in conjuncture of the article 278 of the CC of the RM, in the position of the primary (initial) purpose of the offense. At the same time, coercion of a state, an international organization, a legal or natural person to commit or refrain from the commission of any action, as well as drawing attention of society to the political, religious ideas or of other nature of the perpetrator evolves as the final purpose. The statement that does not result from the text of the article 278 of the CC of the RM. It follows that the intimidation of the population of a state or part of it forms, alternatively, one of the objectives pursued by the perpetrator. Moreover, it is observed that the respective objective appears as the final purpose, not the initial (primary).

For the purpose of the remediation of the existing legislative situation, the author suggests the execution of some reorganizations in the disposition of the norm of the paragraph (1) of article 278 of the CC of the RM, so that the intimidation of the population of a state or part of it to form the initial (primary), but mandatory purpose, and other two purposes to appear as the final goals, of alternative nature.

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<sup>48</sup> Cojocaru V. M. *Scopul și motivul infracțiunilor prevăzute la art. 278 CP RM (actul terorist)*. În: Revista științifică a USM „Studia Universitatis Moldaviae”. Seria „Științe sociale”, 2018, nr. 3 (113), p. 178.

Intimidation of the population cannot be viewed as an independent objective. Each time, the perpetrator intends to intimidate the population for the purpose of the achievement of some much more distant objectives. Provocation of fear among society is related to the essence of the terrorist act. Consequently, the committed prejudicial action that is not able to produce fear in society does not constitute the terrorist act. Such a prejudicial action is susceptible to classification according to another norm of incrimination than in correspondence with those provided in the article 278 of the CC of the RM.

It is also highlighted the conclusion according to which other objectives than those indicated in the disposition of the article 278 of the CC of the RM cannot be prosecuted by the perpetrator at the commission of the terrorist acts. Otherwise, those committed are to be classified according to other norms of incrimination.

In another context, the author notes that in the criminal legislations of the most European states, as the purpose of the terrorist acts is provided the “destabilization or destruction of the fundamental political, constitutional, economic or social structures of a country or international organization”. The same purpose is found in the paragraph (2) of article 3 of the Directive (EU) 2017/541. This demonstrates that the European states (members of the European Union) try to align with the standards imposed by the European Union. From the perspective of the political vector established by our country, the author considers that the Republic of Moldova also, as the state that intends to become the member of the European Union, shall comply with the regulations and recommendations of the European Union, including in the criminal matter. Therefore, Moldavian legislator also is to introduce as the purpose of the terrorist acts the “destabilization or destruction of the fundamental political, constitutional or social structures of a country or international organization” the reason for which the author advances the proposal *de lege ferenda* that this objective be inserted expressly in the text of the article 278 of the CC of the RM.

Finally, the author emphasizes that, compared to the purpose of the offense the reason does not constitute the obligatory sign of the terrorist acts, not being established expressly in the text of the article 278 of the CC of the RM, as is not even deduced in the implicit manner.

In the **Chapter 4 – Aggravating circumstantial elements of offenses reunited under the name of terrorist act** – are elucidated the qualifying signs provided in the art. 278 of the CC of the RM.

In the context of the terrorist act committed by an organized criminal group (letter b) of paragraph (2) of article 278 of the CC of the RM), the author emphasizes that, in order to be in the presence of the terrorist act committed by such a form of criminal participation, it is

necessary and sufficient that at least two persons participate in the commission of the terrorist act, the fact resulting from the legal definition of the criminal participation. In the absence of a prior agreement of the members of group to commit the terrorist act, the imputation of the letter b) of paragraph (2) of article 278 of the CC of the RM is inadmissible.

It is demonstrated that in case of the terrorist act committed by an organized criminal group, in the qualification will not be taken into account the norm of the General Part of the Criminal Code that designates the participants in the offense. Taking into account at the qualification of the article 46 of the CC of the RM is superfluous in the event of the commission of the terrorist acts by an organized criminal group, because the mentioned circumstance is inserted directly in the text of the article 278 of the CC of the RM. Reference to the article 46 of the CC of the RM would determine the doubling of the norms that describe the action committed by an organized criminal group.

Creation or management of an organized criminal group for the purpose to commit a terrorist act shall be qualified according to the paragraph (2) of article 284 of the CC of the RM. This is the so-called “qualified organization”. In the event in which the organized criminal group created in advance resorted to the commission of the terrorist act, at the qualification will be taken into account, additionally, the norm from the letter b) of paragraph (2) of article 278 of the CC of the RM.

It is evoked that at the inclusion of those committed in accordance with the letter b) of paragraph (2) of article 278 of the CC of the RM, in the process of the individualization of the criminal punishment disappears the necessity of the reference to the letter c) of paragraph (1) of article 77 of the CC of the RM (commission of offense by any form of participation).

In terms of the aggravating circumstance provided in the letter e) of paragraph (2) of article 278 of the CC of the RM (the terrorist act committed with the causing of material damages in particularly large proportions) it is revealed that although the composition of the offense is material, the perpetrator can act only with direct intent, as tends towards the achievement of a concrete criminal purpose. Therefore, it is impossible for the perpetrator not to wish, but to admit the occurrence of prejudicial consequences in the form of material damages in particularly large proportions, given that he/she wishes to achieve the targeted criminal purpose.

It is also noted that in this event the object of criminal protection is a complex one: in the main plan it focuses on social relations in organic derivation with public security as a fundamental social value, while in the secondary plan are damaged the social relations regarding the integrity, substance and potential of the use of goods.

Regarding the aggravating circumstance recorded in the letter a) of paragraph (3) of article 278 of the CC of the RM (the terrorist act committed by a criminal organization), it is pointed out that between the notions “terrorist organization” and “criminal organization” there is the relationship of the part-whole type.

In order to be incident the aggravating circumstance recorded in the letter a) of paragraph (3) of article 278 of the CC of the RM, it is necessary to exist a clear division, within the terrorist organization, of administrative, insurance and execution functions of criminal intentions aimed at the commission of the terrorist acts. Division of functions depends on the essence of a criminal organization in general and of a terrorist organization in particular. In the absence of such a division of roles, it is impossible to achieve a consolidation of the formed association.

Indispensable for the terrorist act committed by a criminal organization is the stable nature of the created association. Unlike the organized criminal group, in case of the criminal organization it is observed the presence of a more pronounced stability of the created association.

In the context of the aggravating circumstance provided in the letter b) of paragraph (3) of article 278 of the CC of the RM (the terrorist act resulting in the death of a person by inadvertence), it is argued that the legal nature of the terrorist acts expressed for the special purpose pursued by the perpetrator, the basic social value susceptible of damage by the commission of such criminal actions, as well as the public manner of the action of the perpetrator reduce, practically to zero, the possibility of the evolution of inadvertence as the form of guilt manifested in relation to death of person.<sup>49</sup>

Also, the author observes that at the adoption of the article 278 of the CC of the RM, the legislator manifested the inconsistency, establishing an unjustified sanctioning treatment of the terrorist act resulting in the death of the person by inadvertence in relation to the sanctioning treatment of the terrorist act provided in the letter d) of paragraph (2) of article 278 of the CC of the RM (terrorist act with serious or medium damage of bodily integrity or health). For these reasons, the author suggests to Moldavian legislator the abrogation of the letter b) of paragraph (3) of article 278 of the CC of the RM.

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<sup>49</sup> Manea V. și Cojocaru V. M. *Actul terorist: analiza elementelor circumstanțiale agravante*. În: *Materialele Conferinței științifice naționale cu participare internațională „Realități și perspective ale învățământului juridic național”* (Chișinău, 01-02 octombrie 2019). Vol. II. Chișinău: CEP USM, 2020, p. 283.

## GENERAL CONCLUSIONS AND RECOMMENDATIONS

**The results obtained** from the research consist in:

1. Analysis of doctrinal meanings enunciated in the specialized literature on the legal-criminal aspects concerning the offenses reunited under the name of terrorist act.
2. Identification of social value *sui generis* damaged by the commission of the terrorist acts.
3. Analysis of the alternative normative modalities of the expression of prejudicial action provided in the paragraph (1) of article 278 of the CC of the RM.
4. Determination of the content of the standard variants of the offense provided in the letters c), d) of paragraph (2), paragraph (4) of article 278 of the CC of the RM.
5. Determination of the moment of consummation of the offenses provided in the article 278 of the CC of the RM.
6. Determination of mandatory subjective signs inserted in the provisions of the article 278 of the CC of the RM.
7. Delineation of the conditions under which it is operable the clause of impunity inscribed in the paragraph (6) of article 278 of the CC of the RM, as well as of those that characterize the special circumstance of the mitigation of criminal liability for the commission of the terrorist acts, specified in the paragraph (5) of article 278 of the CC of the RM.
8. Presentation of the defining aspects of the aggravating circumstances provided in the paragraphs (2)-(3) of article 278 of the CC of the RM.
9. Delimitation of the offenses provided in the article 278 of the CC of the RM from some related actions, including from some offenses of the terrorist nature.
10. Comparative analysis of criminal regulations of the legislations of some foreign states in the matter of the offenses reunited under the name of the terrorist act.
11. Identification of legislative shortcomings that complicate the applicability of the norms of incrimination provided in the article 278 of the CC of the RM.
12. Formulation of proposals *de lege ferenda* able to improve the incriminating framework aimed at terrorist acts.

Summarizing the presented in the given paper, formulate the following ***general conclusions***:

- 1) In the case of the terrorist act provided in paragraph (1) of article 278 of the CC of the RM (except for the situation in which the prejudicial deed takes the form of the threat of committing the terrorist act), only one of the secondary social values is mandatory. The others are optional. In contrast, in the case of the crime provided in paragraph (1) of article 278 of the

CC of the RM, expressed in the threat of committing the terrorist act, the secondary legal object has no alternative. This is unique, being at the same time mandatory, which indicates that, *de facto*, under the aegis of that norm, two components of crime are inserted, not one.

2) In the event of the preparation for the commission of one of the offenses provided in the article 278 of the CC of the RM (in the modalities provided expressly in the paragraph (3) of article 279<sup>1</sup> of the CC of the RM), when behaviour of perpetrator represents a contribution (complicity) to the conduct of another participant in the offense those committed do not need the qualification according to the article 26 and of one of the norms inserted in the article 278 of the CC of the RM, but only according to the paragraph (3) of article 279<sup>1</sup> of the CC of the RM as being a special case of preparation for the commission of the terrorist act.

3) Due to creation of Moldavian legislator, paragraph (1) of article 278 of the CC of the RM seems to be inapplicable when the terrorist act appears in the modality of the causing of explosion, as the practical probability of causing of an explosion by the use of means other than the explosive substances is completely reduced.

4) Although the estimative signs “other actions” and “other serious consequences” from the text of the paragraph (1) of article 278 of the CC of the RM have a general character, they are in accordance with the requirement of predictability of the criminal law. The legal nature of terrorist acts gives the recipient of the criminal law the possibility to provide what other acts may constitute ways of expressing the criminal offense, as well as what other harmful consequences may be caused as a result of provoking the explosion, fire or similar acts.

5) In order not to admit the violation of the principle of equity, of differentiating the application of punishment, of the principle of equality of citizens before the law and of humanism, the threat of committing the terrorist act and the terrorist act itself must not be found in the same criminality rule. separate rules.

6) The position of the Moldovan legislator is deficient, materialized in the omission to specify some criminal punishments punishable by the legal person for committing terrorist crimes, in general, and terrorist acts, in particular, a fact derived from the analysis of the Law of the Republic of Moldova no. 120/2017, of some international instruments, as well as of some good practices in the matter.

7) At the determination of the age of the criminal liability for the commission of the offenses provided in the article 278 of the CC of the RM, Moldavian legislator proceeded from the ability of person to be aware of the prejudicial nature of those committed, to foresee the potential prejudicial consequences, as well as to pursue the objectives characteristic of the terrorist acts.

8) In order not to admit the annihilation of the expected preventive effect of the clause of impunity provided in the paragraph (6) of article 278 of the CC of the RM, *de lege ferenda*, it is required that the release of criminal liability for the preparation of the terrorist act be involved whenever the perpetrator renounces the commission of the terrorist act, regardless of whether or not the signs of another composition of offense are present in his/her actions.

9) Intimidation of the population of a state or of a part of it appears, in the conjuncture of the article 278 of the CC of the RM, in the position of the primary (initial) purpose of the offense, while coercion of a state, an international organization, a legal or natural person to commit or refrain from the commission of any action, as well as drawing of attention of society to the political, religious ideas or of other nature of the perpetrator evolves as the final purpose.

10) Provoking fear in society is the essence of the terrorist act. Consequently, the harmful act committed which is not capable of producing fears in society does not constitute a terrorist act. Such a prejudicial act is susceptible to classification according to another norm of incrimination than in correspondence with those provided in article 278 CP RM.

11) In the case of the terrorist act committed by an organized criminal group, only the norm from letter b) of paragraph (2) of article 278 of the CC of the RM, without reference to article 42 or article 46 CP RM.

12) The legal nature of the terrorist acts expressed in the special purpose pursued by the perpetrator, basic social value susceptible of infringement by the commission of such criminal actions, as well as the public mode of action of perpetrator reduce, practically to zero, the possibility of the evolution of imprudence as a form of guilt manifested in relation to death of person.

13) When adopting article 278 of the CC of the RM, the legislator showed inconsistency, establishing an unjustified sanctioning treatment of the terrorist act resulting in the death of the person recklessly in relation to the sanctioning treatment of the terrorist act provided in letter d) paragraph (2) article 278 CP RM (terrorist act with serious or moderate damage to bodily integrity or health).

*The solved important scientific problem* consists in the elaboration of a complex conceptual framework regarding the content of the constitutive signs of the offenses reunited under the name of the terrorist act in accordance with the current theoretical-normative framework that allowed the identification of the imperfections of which, in our opinion, suffer the norms of incrimination provided in the article 278 of the CC of the RM and, accordingly, the submission of a series of proposals aimed at the improvement of the incriminating text examined for the purpose of the prevention and as effective as possible control of criminality in this area.

For the purpose of the improvement of the national criminal law, advance the following *recommendations*:

1) Substitution of the term “act of terrorism” inscribed in the paragraph (5) and (6) of article 278 of the CC of the RM with the term “terrorist act”.

2) The exclusion of the letter c) of paragraph (2) of article 278 of the CC of the RM, so that under the incidence of the paragraph (1) of article 278 of the CC of the RM to fall the causing of the explosion both by the use of the explosive substances as well as by the use of other means.

3) The express insertion of the application of the firearm in the disposition of the norm from the paragraph (1) of article 278 of the CC of the RM, following to constitute, together with the causing of explosion, the fire, one of the modalities of expression of the prejudicial action.

4) The modification of the disposition of the norm provided in the paragraph (3) of article 279<sup>1</sup> of the CC of the RM so that it sanctions, including, the preparation for the independent commission of a terrorist offense.

5) Establishment of a new letter – a<sup>1</sup>) – within the paragraph (3) of article 278 of the CC of the RM that would sanction the terrorist act committed by the use of the poisonous, radioactive substances, biological, chemical, nuclear or other weapons of mass destruction.

6) The incrimination of the threat of the commission of the terrorist act within a special norm, and namely: in the article 278<sup>1</sup> of the CC of the RM. As a consequence, the current article 278<sup>1</sup> of the CC of the RM to be renumbered in the article 278<sup>2</sup> of the CC of the RM.

7) Institution of criminal liability of legal person for the commission of the terrorist acts, by inclusion in the text of the norms of the article 278 of the CC of the RM of the criminal penalties subject to the application to the legal person.

8) Exclusion from the content of the paragraph (6) of article 278 of the CC of the RM of the expression „and if its actions do not contain another composition of the offense”.

9) Replacement of the text “if this action is committed for the purpose of the intimidation of the population of a state or part of it, to draw attention of society to the political, religious ideas or of other nature of the perpetrator or to force a state, an international organization, a legal or natural person to commit or refrain from the commission of any action” within the paragraph (1) of article 278 of the CC of the RM with the text “if this action is committed in order to intimidate the population of a state or a part of it, in order to draw the attention of the society to the political, religious ideas or of other nature of the perpetrator or to force a state, an international organization, a legal or natural person to commit or to refrain from the commission of any action”.

10) The introduction as the purpose of the terrorist acts “the destabilization or destruction of fundamental political, constitutional or social structures of a country or international organization”

11) Abrogation of the aggravating circumstance recorded in the letter b) of paragraph (3) of article 278 of the CC of the RM.

The **advantages** of such recommendations will be expressed in:

a) Improvement of the efficiency of the process of interpretation and application of the criminal law in the eventual concrete practical cases.

b) Harmonization of the criminal legislation of the Republic of Moldova with that of the European Union, taking into account the latest trend of the Republic of Moldova to settle in the European area.

c) Aggravation of criminal liability for the commission of the terrorist acts by the use of the socially dangerous means.

d) Non-admission of the avoidance of the criminal liability of the legal person for the commission of the terrorist acts as being the most dangerous offenses of terrorist nature.

e) Improvement of the efficiency of the process of prevention and control of the phenomenon of terrorism.

Taking into account all the proposals *de lege ferenda* submitted, we recommend the following incriminating model of the article 278 and 278<sup>1</sup> CC of the RM:

#### **Article 278. Terrorist act**

(1) A terrorist act meaning setting an explosion, arson, firing from the fire-arm or any other action that creates the danger of causing death, bodily injury, damage to health, vital damage to property or to the environment or other severe consequences when such an act is committed to intimidate the population or a part thereof, to draw the attention of society to the political, religious or other ideas of the perpetrator, or to force the state, international organization, legal entity or individual to commit or to refrain from committing an action, or to destabilize or destroy the fundamental political, constitutional or social structures of a state or an international organization,

shall be punished by imprisonment for 6 to 12 years, whereas a legal entity shall be punished by a fine in the amount of 8000 to 11000 conventional units by the liquidation of the legal entity.

(2) The same actions:

[*Letter a) excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009*]

b) committed by an organized criminal group;

c) *excluded*;

d) causing severe or less severe bodily injury or damage to health;

e) causing material damage on an especially large scale,

shall be punished by imprisonment for 8 to 15 years, whereas a legal entity shall be punished by a fine in the amount of 10000 to 20000 conventional units by the liquidation of the legal entity.

(3) The actions set forth in par. (1) or (2):

a) committed by a criminal organization;

a<sup>1</sup>) committed with the use of poisonous substances, radioactive substances, biological, chemical, nuclear or other weapons of mass destruction;

b) *excluded*,

shall be punished by imprisonment for 12 to 20 years, whereas a legal entity shall be punished by a fine in the amount of 15000 to 25000 conventional units by the liquidation of the legal entity.

(4) A terrorist act involving the murder of one or more persons for purposes specified in par. (1),

shall be punished by imprisonment for 16 to 20 years or by life imprisonment, whereas a legal entity shall be punished by a fine in the amount of 30000 to 40000 conventional units by the liquidation of the legal entity.

(5) The person who commits a terrorist act and other participants may be sentenced to minimal punishment set by this article if they warn the authorities about the respective acts and by doing so contributed to the prevention of the death of people, of bodily injury, of damage to health, of other severe consequences or to the identification of other perpetrators.

(6) The person who participates in the preparation of a terrorist act shall be exempted from criminal liability if he/she contributes to the prevention of the terrorist act by notifying the authorities in due time or by other means.

**Article 278<sup>1</sup>. Threat of committing the terrorist act**

The threat of causing an explosion, fire, firing of a fire-arm or other act capable of creating danger of death or injury to bodily integrity or health, essential damage to property or the environment or other serious consequences,

shall be punished by imprisonment for 3 to 7 years, whereas a legal entity shall be punished by a fine in the amount of 4000 to 8000 conventional units by the liquidation of the legal entity.

**The plan of perspective researches on the topic of the paper is oriented towards:**

1. Initiation of investigation on the terrorist act committed in cyberspace (cyber-terrorism).
2. Investigation of terrorist acts in relation to the offenses of the extremist orientation.
3. Display of the criminological connotations of the terrorist acts.

## ADNOTARE

### **Cojocaru Violeta M., „Actul terorist în contextul dreptului penal”. Teză de doctorat în drept. Școala Doctorală Științe Juridice a Universității de Stat din Moldova. Chișinău, 2020**

**Structura tezei.** Teza cuprinde: introducere, 4 capitole, concluzii generale și recomandări, bibliografia din 374 titluri; 237 pagini – partea principală a tezei, inclusiv 230 pagini text de bază, 27 pagini – partea complementară a tezei, inclusiv 23 pagini bibliografia. Rezultatele obținute sunt publicate în 12 lucrări științifice.

**Cuvinte-cheie:** explozie, incendiu, act terorist, organizație teroristă, amenințare, intimidarea populației, clauză de impunitate, armă de foc, substanțe explozive etc.

**Domeniul de studiu.** Lucrarea face parte din domeniul Dreptului penal, Partea specială.

**Scopul și obiectivele.** Scopul lucrării rezidă în efectuarea unei cercetări temeinice comparative în partea ce vizează răspunderea penală pentru infracțiunile reunite sub denumirea generică de act terorist, în identificarea și soluționarea problemelor teoretico-legislative iscate pe marginea infracțiunilor enunțate, precum și în formularea unor propuneri *de lege ferenda* menite să optimizeze cadrul incriminator în materie. În calitate de *obiective* au fost stabilite: analiza modalităților normative alternative de exprimare a faptei prejudiciabile prevăzute la alin. (1) art. 278 CP RM; relevarea semnelor subiective obligatorii inserate în dispozițiile art. 278 CP RM; conturarea condițiilor în care este operabilă clauza de impunitate înscrisă la alin. (6) art. 278 CP RM, precum și a celor ce caracterizează circumstanța specială de atenuare a răspunderii penale pentru săvârșirea actelor teroriste, prevăzută la alin. (5) art. 278 CP RM; analiza comparativă a reglementărilor penale din legislațiile unor state străine în materia infracțiunilor reunite sub denumirea de act terorist; identificarea curenților legislative care îngreunează aplicabilitatea normelor de incriminare prevăzute la art. 278 CP RM etc.

**Noutatea și originalitatea științifică** se concretizează în realizarea unei cercetări juridico-penale temeinice a infracțiunilor prevăzute la art. 278 CP RM. Noutatea științifică a lucrării elaborate consistă și în: 1) argumentarea plenară a faptului că infracțiunile reunite sub denumirea de act terorist (art. 278 CP RM) atentează, în plan principal, asupra relațiilor sociale aflate în derivație organică cu securitatea publică, nu însă cu securitatea statului ori cu securitatea internațională (a omenirii); 2) identificarea coraportului dintre normele fixate la art. 278 CP RM și cele prevăzute la alin. (3) art. 279<sup>1</sup>, 290 și 292 CP RM; 3) precizarea construcției finalităților urmărite de făptuitor la săvârșirea actelor teroriste; 4) punctarea asupra raționamentelor instituirii răspunderii penale a persoanelor juridice pentru săvârșirea actelor teroriste etc.

**Semnificația teoretică.** Cercetarea realizată prezintă valoare teoretică, dat fiind faptul că este o lucrare în care sunt investigate temeinic și multiaspectual elementele constitutive ale infracțiunilor consemnate la art. 278 CP RM prin prisma noilor reglementări conexe normelor prevăzute la acest articol. Teza de față se înscrie în șirul lucrărilor în care actele teroriste sunt supuse abordării juridico-penale din perspectivă comparativistă.

**Valoarea aplicativă.** Prezenta teză comportă relevanță: a) în procesul de instruire în instituțiile de învățământ superior cu profil juridic, b) pentru persoanele îndrituite cu aplicarea legii penale și c) pentru legiuitor, în procesul îmbunătățirii continue a calității legii penale.

## АННОТАЦИЯ

**Кожокару Виолета М., «Террористический акт в контексте уголовного права». Диссертация на соискание учёной степени доктора права. Докторальная школа юридических наук Государственного университета Молдовы. Кишинэу, 2020**

**Структура.** Диссертация включает: введение, 4 главы, общие выводы и рекомендации, библиографию включающую 374 наименований; 237 страниц составляют основную часть диссертации, включая 230 страниц основного текста, 27 страниц составляют дополнительную часть диссертации, включая 23 страницы библиографии. Достигнутые результаты опубликованы в 12 научных работах.

**Ключевые слова:** взрыв, поджог, террористический акт, террористическая организация, угроза, устрашение населения, клаузула безнаказанности, огнестрельное оружие, взрывчатые вещества и т.д.

**Предмет исследования.** Исследование относится к области Особенной части Уголовного права.

**Цель и задачи исследования.** *Цель* исследования заключается в углубленном сравнительном анализе уголовной ответственности за преступления под общим названием «террористический акт», в выявлении и решении законодательных и теоретических вопросов, возникающих в связи с указанными преступлениями, а также в формулировании предложений *de lege ferenda*, направленных на совершенствование законодательства в данной области. *Задачи* исследования составляют: анализ альтернативных нормативных способов выражения деяния, предусмотренного ч. (1) ст. 278 УК РМ; выделение обязательных субъективных признаков, содержащихся в положениях ст. 278 УК РМ; изложение условий, в которых применяется норма ч. (6) ст. 278 УК РМ о непривлечении к ответственности, а также условий, характеризующих особое обстоятельство смягчения уголовной ответственности за совершение террористических актов, предусмотренное в ч. (5) ст. 278 УК РМ; сравнительный анализ уголовно-правовых норм зарубежного законодательства, предметом которых являются преступления под общим названием «террористический акт»; выявление законодательных погрешностей, которые отрицательно сказываются на применение инкриминирующих положений ст. 278 УК РМ, и т.д.

**Научная новизна и оригинальность** исследования проявляется в углубленном изучении преступлений, предусмотренных в ст. 278 УК РМ. Научная новизна диссертации состоит в: 1) полном и убедительном аргументировании того, что преступления под общим названием «террористический акт» (ст. 278 УК РМ) представляют собой главным образом посягательство на общественные отношения, находящиеся в органической связи с общественной безопасностью, но не с безопасностью государства или международной безопасностью (человечества); 2) выявлении существующего соотношения между положениями ст. 278 УК РМ и положениями ч. (3) ст. 279<sup>1</sup>, 290 и 292 УК РМ; 3) уточнении целей преследуемых преступником при совершении террористических актов; 4) изложении рассуждений на предмет введения уголовной ответственности для юридических лиц за совершение террористических актов и др.

**Теоретическая значимость.** Данное исследование имеет теоретическую значимость благодаря углубленному и всестороннему изучению признаков состава преступлений, предусмотренных в статье 278 УК РМ, в свете новых положений смежных с нормами данной статьи. Диссертация дополняет перечень работ, в которых проводится, с точки зрения уголовного права, анализ террористических актов в сравнительном плане.

**Практическая применимость.** Диссертация имеет существенное значение для: а) учебного процесса в высших учебных заведениях юридического профиля; б) лиц в чьи полномочия входит применение уголовного закона на профессиональном уровне и в) законодателя в процессе непрерывного совершенствования качества уголовного закона.

## ANNOTATION

**Cojocaru Violeta M., „The Terrorist Act within the Framework of the Criminal Law”. PhD Thesis in Law. Doctoral School of Legal Studies of Moldova State University. Chisinau, 2020**

**Structure of thesis.** The thesis encompasses an introduction, four chapters, general conclusions and recommendations, a bibliography of 374 titles; 237 pages – the core part of the thesis, including 230 pages of main text, and 27 pages – the complementary part, including 23 pages of sources. The obtained results were published in 12 scientific articles.

**Key words:** explosion, arson, terrorist act, terrorist organisation, threat, intimidation of population, impunity clause, fire-arm, explosives etc.

**Area of study.** This thesis belongs to the domain of Special Part of the Criminal Law.

**Research aim and objectives.** *The aim* of the research is to carry a fundamental comparative investigation into the criminal liability for all crimes falling under the generic name of terrorist act; to identify and solve theoretical and legislative issues related to the aforementioned crimes and to formulate some *de lege ferenda* proposals aiming at enhancing the incriminating framework in this matter. The *objectives* set for this thesis are: to analyse the alternative normative means to convey the prejudicial action provided by paragraph (1) article 278 of the CC of the RM; to highlight the mandatory subjective signs embedded in article 278 of the CC of the RM; to outline the conditions under which the impunity clause provided for in paragraph (6) article 278 of the CC of the RM becomes operational, including the ones that characterise the special circumstance attenuating the criminal liability for the commission of terrorist acts foreseen in paragraph (5) article 278 of the CC of the RM; to conduct a comparative analysis of the criminal regulations found in certain foreign legislations in the area of the crimes that fall into the category of terrorist act; to identify the legislative gaps hindering the enforcement of the incriminating norms laid down in article 278 of the CC of the RM etc.

**Scientific novelty and originality** ensue from the comprehensive legal-criminal research on the crimes laid down in article 278 of the CC of the RM. The scientific novelty of this dissertation consists of: 1) full argumentation of the fact that the crimes falling under the name of terrorist act (article 278 of the CC of the RM) mainly encroach to the social relations being in organic derivation with public security, not with state security or international (human) security; 2) identification of the correlation between the norms embedded in article 278 of the CC of the RM and those laid down in paragraph (3) article 279<sup>1</sup>, 290 and 292 of the CC of the RM; 3) specification of the construction of the outcomes pursued by the offender when committing the terrorist acts; 4) approach to the rationale for establishing the criminal liability for the legal entities committing terrorist acts etc.

**Theoretical significance.** The theoretical value of this dissertation emerges from the fact that it is a profound and multi-aspectual investigation into the constitutive elements of the crimes provided for in article 278 of the CC of the RM through the lenses of the new provisions related to the norms laid down in the article. This thesis contributes to the series of comparative studies approaching the terrorist acts from the legal and criminal standpoints.

**Applied value.** The results of this thesis can be applied in the educational process of the law schools, will be relevant for the professionals entitled to enforce the criminal legislation and for the lawmakers in the process of constant improvement of the quality of criminal law.

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**COJOCARU VIOLETA M.**

**THE TERRORIST ACT WITHIN THE FRAMEWORK OF THE  
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