

**UNIVERSITY OF EUROPEAN POLITICAL AND ECONOMIC STUDIES
"C. STERE"
LAW SCHOOL
DOCTORAL SCHOOL OF LAW, POLITICAL AND ADMINISTRATIVE
SCIENCES, CONSORTIUM OF EDUCATIONAL INSTITUTIONS
ACADEMY OF ECONOMIC STUDIES OF MOLDOVA UNIVERSITY OF
EUROPEAN POLITICAL AND ECONOMIC STUDIES "C. STERE "**

as a manuscript
CZU 343.33(043.2)

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**LEGAL CRIMINAL ANALYSIS OF THE CRIME OF MERCENARY
ACTIVITIES PROVIDED IN ART. 141 CP RM**

**SPECIALTY 554.01 - CRIMINAL LAW AND CRIMINAL EXECUTIONAL
LAW**

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Chișinău 2020

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The summary and the thesis can be consulted at the USPEE library "C. Stere" www.uspee.md and on the website of the National Agency for Quality Assurance in Education and Research (www.cnaa.md).

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Conceptual landmarks of research

The actuality and the importance of the approached topic: The crime of the mercenaries' activity provided in art. 141 of the Criminal Code of the Republic of Moldova, is part of Chapter I of the Criminal Code entitled „Crimes against the peace and security of mankind, war crimes”. The provisions of the International Convention for the Suppression of the Recruitment, Use, Financing and Training of Mercenaries, adopted in New York on 04.12.1989¹, to which the Republic of Moldova acceded by Law no 223 of 13-10-2005 for the accession of the Republic of Moldova to the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, published on: 04-11-2005 in the Official Monitor no. 145 art. 693. In force for the Republic of Moldova of 28.02.2006 and Additional Protocol I adopted to the Geneva Conventions of 12.08.1949 on the protection of victims of international armed conflicts of 08.06.1977.²

In the context of the latest international events, which attest to the increasingly active involvement of third parties in armed conflicts which take place in other states, the negative impact of mercenary activity on compliance with international law and international treaties is evident. Or, the activity of the mercenaries in principle is an international crime, in the conditions in which for the qualification the primary condition is that the perpetrator is not a citizen and/or not to be enlisted in the army of the states involved in the armed conflict.

The Constitution of the Republic of Moldova in art. 8 stipulates that: "(1) The Republic of Moldova undertakes to respect the Charter of the United Nations and the treaties to which it takes part, to build its relationship with other states on the unanimously recognized principles and norms of international law."³

The text of par. (1) art.8 of the Constitution of the Republic of Moldova must be analysed under two aspects: the first - the obligation of the Republic of Moldova to respect the UN

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The Republic of Moldova acceded by Law no. 223 of 13-10-2005 for the accession of the Republic of Moldova to the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, Published on: 04-11-2005 in the Official Monitor no. 145 art. 693. In force for the Republic of Moldova since 28.02.2006

2 The terms of Conventions mean the four Geneva Conventions of 12 August 1949 for the Protection of War Victims: the Geneva Convention for the Improvement of the Condition of the Wounded and Sick in the Armed Forces in the Campaign of 12 August 1949; Geneva Convention for the Improvement of the Condition of the Wounded, Sick and Shipwrecked in the Armed Forces at Sea, of 12 August 1949; The Geneva Convention for the Treatment of Prisoners of War, of 12 August 1949, and the Geneva Convention for the Protection of Civilian Persons in Time of War, of 12 August 1949

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Constitution of the Republic of Moldova, June 29, 1994. In force since 27.08.1994. Published in OJ no. 78 art. no. 140 29.03.2016.

Charter and the treaties to which it is a party, the second - the cooperation of our state with other states of international law.⁴

Chapter I, Article 1 of the UN Charter enshrines the purposes of the United Nations, the primary and fundamental being international peace and security.⁵

According to point 1 of art. I of the UN charter, one of the purposes of the UN is: „ 1. To maintain international peace and security and, to this end, to take effective collective measures to prevent and eliminate threats to the peace and to repress any acts of aggression or other violations of the peace, and to carry them out by peaceful means and in accordance with the principles of justice; international law, settling or resolving international disputes or situations that could lead to a violation of the peace.⁶

In order to achieve the goals set out in the UN Charter, the Organization and its members shall act on the basis of the principles set out in Art. 2 of the UN Charter - The principle of sovereign equality of all its members; Fulfilling in good faith the obligations according to the Charter; Resolving international disputes by peaceful means (emphasis added) in such a way that international peace and security, as well as justice, are not endangered; Refraining, in international relations, from resorting to the threat or use of force, either against the territorial integrity or political independence of a State, or in any other manner incompatible with the purpose of the United Nations; Refraining from aiding a State against which the organization is taking preventive or coercive action; Ensuring that non-UN member states act in accordance with these principles, to the extent necessary to maintain international peace and security; Failure to act in matters essential to the internal competence of States.⁷

Consequently, we find that the activity of mercenaries blatantly contradicts both the international provisions in the field and those of art. 8 of the Constitution, each citizen being obliged to respect the norms of the Supreme Law.

Although the normative framework for criminalizing the activity of mercenaries has existed in our criminal law for 18 years, the practice of courts in the Republic of Moldova in this regard is relatively new in terms of pronouncing sentences based on art.141 CP RM - The activity of mercenaries . Unfortunately, it is expanding with the onset of adverse events in the

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NEGRU B., OSCMOCHESCU N, SMOCHINĂ A and others. Constitution of the Republic of Moldova, Commentary. Arc 2012 Publishing House, page 52 ISBN 978-9975-61-700-0 http://www.constcourt.md/public/files/file/informatie_utilita/Comentariu_Constitutie.pdf

5The Charter of the United Nations was signed in San Francisco on June 26, 1945, at the conclusion of the United Nations Conference on International Organization, and entered into force on October 24, 1945.

6 UN Charter. http://www.anr.gov.ro/docs/legislatie/internationala/Carta_Organizatiei_Natiunilor_Unite_ONU_.pdf

7 NEGRU B., OSCMOCHESCU N, SMOCHINĂ A and others. Constitution of the Republic of Moldova, Commentary. Article 3. Arc Publishing House 2012, page 29 ISBN 978-9975-61-700-0 http://www.constcourt.md/public/files/file/informatie_utilita/Comentariu_Constitutie.pdf

neighboring state of Ukraine, which is currently witnessing an increase in the number of cases involving the citizens of the Republic of Moldova in military actions in the conflict zone.

The activity of mercenaries is a harmful practice, which lately is experiencing a worrying rise worldwide. The military conflicts that have taken place in recent years in various regions of the world (Ukraine, Nagorno-Karabakh, Syria, Libya and others) and in which the clear trend of involving mercenaries is proliferating are causing worldwide concern.

Moreover, the activity of mercenaries through the forms of manifestation and the consequences it produces, far exceeds the limit of the internal law of a state and is an attack on global values related to the general interest of states, including the stability of international relations. However, the activity of mercenaries violates all the norms of peaceful cooperation between nations and thus presents a high degree of danger for the entire international community.

Globally, the outbreak of fighting and civil wars in various geopolitical regions may lead to an acute crisis of compliance with the rules of the Laws of War in such dramatic events. This fact requires the entire international community to make great concerted efforts to overcome this situation.

In the specialized literature it is mentioned that: „...overcoming a crisis, regardless of its kind, it is a complex general-social task. The accomplishment of such a task requires the conjugation of all the moral-intellectual and sometimes also physical forces of the members of the society ...”⁸

Throughout the world, throughout history, there is a practice of using the services of mercenaries regardless of the religion they share, the socio-economic situation in the states from which they come or the form of government of the states to which they are going to activate. Mercenaries become people of any religious denomination and they come from the most diverse states. We do not consider the hypothesis that there is a correlation between the use of mercenary services and the form of government of the states that do so to be valid. The adoption of one or another form of government does not yet prove that it is mainly leading to the training of mercenaries in situations of armed conflict, military action or other violent actions. We fully agree with the opinion of local doctrinaires that "there is no ideal, good, perfect form of government for all countries and for all times." It all depends on the traditions, the culture, the special circumstances that distinguish the life of one people from the others ”.⁹

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AVORNIC GH., GRECU R. The legal work of Constantin Stere - untapped scientific treasure. In: National Law Review no. 6, 2015, pp. 5-10.
pp. 6

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We note, however, the opinion formulated in one of the Russian sources,¹⁰ according to which with the beginning of the modern era, which manifested itself, among others, in the form of nation-states, there was a direct link between the concept of state sovereignty and the definition of war. This connection found its classical form in Karl Clausewitz's definition, according to which "war is a continuation of politics." War was a monopoly of the state. Only the state had the right to declare war and save it from the forces of the regular army. Moreover, his rival could only be another state and his army. In the modern world, mercenaries are increasingly becoming a component part of aggressive politics.¹¹

Throughout human history, the training, development and use of mercenaries is inextricably linked to the general development of society, culture, science and technology. For this reason, the type of mercenary changes, and it begins to adapt to the existing current reality.

The problems of combating mercenarism are associated with a series of political, socio-economic and legal circumstances, the existence of which complicates the unequivocal understanding and uniform application of the legal framework to combat the phenomenon at international level, as well as the development of new theoretical and practical recommendations, aimed at further improving the legislative regulations on criminal liability for mercenary activity.

This fact, however, does not exempt each state from the need to make joint efforts to combat mercenary and, first and foremost, in legal and criminal ways, the phenomenon presenting a real and serious threat to the constitutional order and territorial integrity of a particular state. Public security and the public order of the states of origin of the mercenaries are also endangered, and they often transpose the unacceptably violent standards of behavior into the peaceful daily life of society. In such circumstances, we can state with certainty that the crime of mercenary activity provided in art. 141 of the Criminal Code of the Republic of Moldova is to be analyzed also in terms of the internationalization and globalization of the criminal phenomenon.

In this context, the opinion invoked by the doctrine R. Grecu is noteworthy, according to which: of the national states at the present stage. Unfortunately, the states that have achieved

GRECU R. COPTILEȚ V. The contribution of Constantin Stere to the modernization of the National Institutions. Draft Constitution. In: National Law Review no. 6, 2015. pp. 19.

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KUDELKO K. Modern mercenary: the letter of the law. Mai 2017 available <https://warspot.ru/7256-sovremennoe-naemnichestvo-bukva-zakona>

11. F. V. KOROTKY Mercenary and peculiarities of the influence of criminal migration on it // Economic, legal and spiritual problems of the present. Pyatigorsk, 2006.S. 132-135 (0.2 sq.).

remarkable successes in preventing and combating crime today cannot say loud and clear that they have won in the fight against crime.¹²

The internationalization of crime increasingly requires a re-evaluation of the strategy, methods and means of combating it both at the level of nation states and globally. The attention of criminal scientists in recent years has focused on the criminal policy of states, including criminal law policy as an indispensable part of it.¹³

Analyzing the crime of mercenary activity, most of the time we find an interdependence of the phenomenon of mercenary with the policy of the states involved in armed conflict, military actions or other violent actions. "Dealing with the correlation between politics and law, scientists mention the mutual and often contradictory influence of these two social phenomena. It is noted that politics accompanies law throughout its evolution, possibly preceding it. In terms of direct criminal law, politics is one of the most important factors in its programming, as it is interested in the integral mechanism of regulation and defense of criminal law."¹⁴

On the other hand, the issue of criminal sanctions for mass violations of human rights and in particular for war crimes and crimes against humanity is unacceptable within the limits of national law. Therefore, all these crimes, regardless of the country in which they were committed, must be brought to justice only by an institution of international justice.¹⁵

It is important to note that the rules of international law highlight clear criteria for mercenarism. The main feature of mercenarism is the material criterion. The form of remuneration is not specified in the rules of law, but the remuneration is much higher than that paid to combatants of the same rank who are members of the armed forces of that party. The second distinctive feature of a mercenary is his special recruitment to participate in a specific armed conflict.¹⁶

In the case of the person participating in an armed conflict, the social danger consists in the fact that the person has access to firearms, which facilitates the cultivation of their abilities to use them, and from here to the desire to use these weapons in real life, either in the activity of mercenaries or in terrorist actions it is only a step.

12 GRECU R. Protection of fundamental human rights and freedoms - vector of criminal policy in the era of globalization. In: The state and the law between tradition and modernity. Materials of the national conference with international participation. P. 30-37 ISBN 978-9975-108-77-5. P.

13 Idem

14 GRECU R. The historical evolution of the notion and definition of criminal policy. In the National Law Review no. 7-9 of 2018.

15 NAINER A. KOVALEV SA. War Crimes: Genocide. Terror. Struggle for justice. per. from English Bogdanovsky AS. M. Juurists, 2000 -368 p. from. nineteen

16 F.V. KOROTKY Some questions of regulation of responsibility for mercenary activity in international legal acts // Actual problems of law: theory and practice: Sat. scientific. works of the Faculty of Law. Issue 5. Krasnodar, 2006.S. 173-180 (0.3 pp.).

According to Professor M. Gheorghiuță: "So far, the Republic of Moldova has not been affected by terrorism, but it should not inspire confidence in the invincibility of society or the state against this extremely negative phenomenon."¹⁷ Unfortunately, these statements can also be attributed to the phenomenon of mercenary activity. However, recent events in conjunction with judicial practice demonstrate that more and more citizens of the Republic of Moldova are interested in participating in the military conflict in eastern Ukraine. This phenomenon certainly represents a serious threat to the security of the Republic of Moldova. Referring to the assurance of state security, Professor V. Cușnir considers that this notion: "... is susceptible of interpretation in a broad sense including the system and principles of organization and functioning of the entire system of national security and state security bodies; the objectives of the national security system and the ways to ensure national security; state security presupposes the security of the society and the citizens of the Republic of Moldova, both on the territory of the Republic of Moldova and abroad; threats, risks and vulnerabilities to state security and measures aimed at detecting, preventing and counteracting their time."¹⁸ Security is the defense and assurance, guaranteed by constitutional, legislative and practical means, of the vital interests of the person, society and the state against internal and external threats.¹⁹

The previously invoked, conjugated with the phenomenon of increasing in the last period of mercenary cases involving citizens of the Republic of Moldova, fact confirmed by the increase in the number of convictions by courts in our country for the crime of mercenary activity and existence in society and to this day of some dissensions generated by the conflict on the Dniester, currently frozen, denotes the topicality and the special importance of the topic under investigation in this paper.

Framing the topic in international concerns. Internationally, the activity of mercenaries is mainly found in two most important international acts: the International Convention for the Suppression of the Recruitment, Use, Financing and Training of Mercenaries adopted in New York on 04.12.1989,²⁰ to which the Republic of Moldova acceded by Law no. 223 of 13-10-2005 for the accession of the Republic of Moldova to the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, Published on: 04-11-2005 in the

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GHEORGHIȚĂ, M. Treatise on forensic methodology. Chisinau, CEP USM 2015-532 pp. P.411. ISBN 978-9975-71-606-2

¹⁸ CUȘNIR V. Reflections on the legal regime of special investigative measures for the collection of information on possible events and / or actions that could endanger state security. In: Materials of the National Scientific-Practical Conference "Security Mandate: Current Issues of Interpretation, Legislation and Practice", 2020, Chisinau. ISBN 978-9975-56-783-1. pp. 19

¹⁹ CUȘNIR V. Sanctioning terrorist financing: the international and national legal framework. In the Materials of the Conference "Strategic Security Environment: Trends and Challenges" Chisinau, Moldova, May 18, 2017 P.40

²⁰The Republic of Moldova acceded by Law no. 223 of 13-10-2005 for the accession of the Republic of Moldova to the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, Published on: 04-11-2005 in the Official Gazette no. 145 art. 693. In force for the Republic of Moldova since 28.02.2006

Official Monitor no. 145 art. 693. In force for the Republic of Moldova of 28.02.2006 and the Additional Protocol I adopted to the Geneva Conventions of 12.08.1949 on the protection of victims of international armed conflicts of 08.06.1977.

Framing the topic in an inter- and transdisciplinary context. The research of the topic from a theoretical, empirical and comparative perspective led to the formulation of final conclusions and recommendations, which can be useful in the process of scientific research in such fields as: criminology, forensics, criminal procedure, international criminal law.

Description of the situation in the field of research. Proceeding from the fact that until recently the activity of mercenaries provided in art. 141 CP of the Republic of Moldova in the Republic of Moldova was not current, not being applied practically, in the specialized literature a relatively small number of scientific papers deal with this subject.

Among the most relevant works in the national doctrine we mention the following authors: S. Brînză, V. Stati, I. Macari, A. Cauia, I. Soroceanu, Botezatu I, Rodionova O, Cojocaru R. In the foreign doctrine we mention the authors: Codiță D., Lupulescu N., Gore Gh. (Romania); Hutsch F., Nemeș C., Jost Auf de Maur (Germany) Jean Didier Rosi, Dupaquier JF, Romain Pasteger, Bob Denard, Melik Ozden, Philippe Loubjois and others (French Republic); Osipov KL, Ebzeeva Z., Iyianov D, Kibalnik A, Solomonenco I., Korotkii F, Moliboga O., Kudelko K., and others (Russian Federation); Shevciuc A. Diakur M, Mohonciuc S (Ukraine).

However, the specialized literature and the judicial practice remain unexplained certain aspects which complicate the process of qualification of the crime and application of the criminal law in the case of the crime of the activity of mercenaries provided in art. 141 CP RM.

The important scientific problem that has been solved is in the theoretical-practical analysis of the normative framework of incrimination in both standard variants of the crime of mercenaries provided in art.141 CP RM The activity of mercenaries with the elaboration of the formulation of some conclusions and recommendations of theoretical-practical and normative order, including as a *ferenda* law, oriented towards the deepening of the theoretical conceptualization and the further improvement of the normative framework for regulating the analyzed crime.

Purpose and objectives of the paper: The purpose of the investigation consists in the complex analysis of the constitutive elements of the crime provided in art.141 CP RM The activity of mercenaries and the theoretical-practical evaluation of the constitutive content of the analyzed crimes; in highlighting the situations that appeared in the judicial practice in the process of legal classification of the investigated criminal act with the argumentation of proposals for their solution and the formulation of conclusions and recommendations aimed at

deepening the theoretical-practical conceptualization and further improving the incriminating framework for mercenaries.

In order to achieve the proposed goal, the following objectives were set: researching the existing doctrinal concepts and theses in the literature in the country and abroad related to the topic of investigation; the theoretical-normative analysis of the two standard variants of the crime components provided in art. 141 CP RM Activity of mercenaries; appreciation of the fullness of the normative regulations and identification of the existing imperfections in the incrimination norms stipulated at art.141 CP RM; analysis of the legal framework for criminalizing the activity of mercenaries in the legislation of other states; formulating conclusions and recommendations as a *ferenda law* aimed at optimizing the incriminating framework in the researched matter.

The research hypothesis starts from the presumption of the following:

- the current regulation of the crime of the activity of mercenaries at art. 141 of the Criminal Code of the Republic of Moldova cannot be considered as completed, the existence of legislative gaps generates certain difficulties in applying the content of art. 141 CP RM;
- the standard version of the crime of the mercenaries' activity provided in paragraph (2) of art. 141 of the Criminal Code of Moldova - The activity of mercenaries does not fully cover the possible ways of committing the crime, namely does not provide for recruitment as a way to achieve the objective side of the crime of the activity of mercenaries, which is required by corroboration of the rules in paragraph (2) art.141 CP RM;
- art. 141 CP RM - The activity of mercenaries does not provide for such aggravated forms of crime as: its commission by a public person, a person with a position of public dignity or a person with a position of responsibility with the use of the service situation; the commission of the crime by a legal person; with the attraction of minors, by two or more persons; in the interest of an organized criminal group or criminal organization.

Synthesis of the research methodology and justification of the chosen research methods in the process of scientific research of the actual topic, the following research methods were applied: the historical method; analytical method; comparative method; logical method, induction-deduction; operational method etc. A special role in the investigation of the proposed topic served the comparative method through which the criminal legislation of foreign states was analyzed in terms of similarities and differences. The analytical method served to analyze and systematize the judicial practice in the field of application of art. 141 CP RM - The activity of the mercenaries and the identification of the qualification problems of this crime.

The scientific novelty and scientific originality of the paper and the degree of study.

The innovative dimension of the thesis is marked by the fact that this paper is currently the only scientific research, which analyzes in complexity the issues related to the legal regulation of the crime of mercenaries, including comparative, and the practical application of those incriminating rules.

Following the complex research oriented towards the detailed and deep analysis of the constitutive elements of the crimes of the mercenaries' activity, several problematic aspects of theoretical-normative and practical order of the regulation of the analyzed crime were elucidated and formulated proposals in order to optimize the normative framework. It must comply with the requirements imposed by the principle of legality of incrimination.

The scientific novelty of the paper lies especially in: 1) The analysis of the definition and the notion of mercenary - subject of the standard variant of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP of the Republic of Moldova in close context with international regulations in the field; 2) Analysis and interpretation of the notions of overthrowing or undermining the constitutional order; territorial integrity in the context of their use within the normative regulations from art.141 CP RM; 3). Stating the defining content of the legal object of the crime of mercenary activity provided in paragraph (1) CP RM in conjunction with the purpose and normative ways of achieving the objective side of the standard version of the crime of mercenary activity provided in paragraph (2) art. 141 CP RM; 4). The analysis of the judicial practice in the field under the aspect of evaluating the uniformity of the application of the provisions of art. 141 CP RM in both standard variants of the crime and highlighting the existing difficulties in the process of functioning of the respective criminalization norms; 5) Establishing the entities that may appear as the subject of the crime provided in paragraph (2) of art. 141 CP RM; 6) The argumentation of the need to legislate the “recruitment” as a normative way of achieving the objective side of the standard variant of the crime of the activity of mercenaries provided in paragraph (2) art. 141 CP RM. 7) The comparative analysis of the crime of activity of mercenaries in the criminal law of other states with highlights of similarities and differences in the criminalization of the crime analyzed in the criminal law of the Republic of Moldova and the laws of other states, as well as good legislative practices in in the criminal law of other states.

The theoretical importance and the applicative value of the paper are expressed in the fact that the paper presents a scientific support for further improvement of the legal-criminal conceptualization of the crime of mercenary activity according to its complexity and to supplement some important doctrinal aspects related to the normative regulation of crime.

analyzed. In this sense, the paper can be considered as a significant contribution to the further development of local science of criminal law.

The applicative value of the paper lies in the theoretical-normative approach to the problems of legal regulation of the crime provided in art.141 CP RM The activity of mercenaries and the research of the application of the legal framework of lege ferenda that may be useful in the process of further improving the respective incriminating norms, as well as in resolving controversial situations that arise in the process of applying the existing normative framework in the activity of law enforcement institutions and in the process of examining criminal cases of accusation for the crime of the activity of mercenaries in the courts.

Scientific results submitted for support:

1. Researching the doctrinal concepts and theses existing in the specialized literature in the country and abroad, which constituted an appreciable theoretical support in defining the notions of mercenary and the activity of mercenaries;

2. The complex theoretical-practical analysis of the constitutive elements of the components of the crimes provided in art. 141 CP RM Activity of mercenaries;

3. Clear definition of the normative modalities for committing the criminal acts provided in art. 141 of the Criminal Code of the Republic of Moldova, such as the participation of the mercenary in the armed conflict, military actions or violent actions; the employment, training, financing or other insurance of mercenaries and their use in an armed conflict, in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state;

4. Establishing the moment of consummation of the offenses provided in art.141 CP RM;

5. Research of national judicial practice in the field of criminal liability for the activity of mercenaries with identification of options for interpreting criminal law in concrete cases and analysis of judicial solutions to controversial situations arising in the process of applying the rules provided in art.141 CP RM Activity of mercenaries;

6. Determining the defining characteristics of the mercenary as the subject of the standard variant of the crime of the activity of mercenaries provided in paragraph (1) art. 141 of the Criminal Code of the Republic of Moldova by appealing to the international regulations in the field and of the subject of the standard variant of the crime of the activity of mercenaries provided in paragraph (2) art. 141 CP RM;

7. Identification of some deficiencies of normative regulation of the crime provided in art. 141 CP RM Activity of mercenaries;

8. The formulation of the proposals of „lege ferenda” for the modification and completion of the provisions from art. 141 CP RM in order to further improve the content of the normative framework in the researched matter.

Implementation of scientific results.

The applicability of the obtained scientific results consists in the improvement of the legal instrumentation necessary to identify some problematic aspects related to the incrimination of the crime of activity of the mercenaries provided in art. 141 CP RM and respectively, the uniform and efficient practical application of the existing normative framework in the field in the process of the activity of the institutions of protection of the rule of law and of the examination of the cases by the courts.

The proposals of „lege ferenda” elaborated following the undertaken research can constitute a scientific landmark in the legislative process in order to further optimize the legal regulations in the field.

At the same time, the scientific results obtained can be applied in the training process of students and master students.

Approval of the results The thesis was elaborated and discussed within the Doctoral School in Law, Political and Administrative Sciences, of the Consortium of Educational Institutions USPEE “C. Stere ”- ASEM, its results being approved by the Steering Committee. The results obtained in the research process of the investigated topic were formulated in a series of scientific publications, as well as submitted for approval in communications at the following scientific forums: International Conference "Strategic Security Environment: Trends and Challenges" (Chisinau, Ministry of Defense RM 17.05.2018); International Scientific-Practical Conference “Theory and practice of public administration” (Chisinau, Academy of Public Administration, May 2018); International Scientific Conference “Contemporary Problems of Socio-Humanistic Science ed. Xa ”(Chisinau, ULIM 05-06.12.2019); Workshop of the International Scientific Conference “Contemporary Problems of Socio-Humanistic Science ed. Xa ”(Chisinau, ULIM 12/06/2019).

Thesis publications: 7

Volume and structure of the paper. The doctoral thesis elaborated includes: Introduction; four chapters, general conclusions and recommendations; bibliography of 373 titles; the statement regarding the assumption of responsibility; Author's CV.

Keywords: mercenary, armed conflict, participation, recruitment, crime against security.

CONTENT OF THE THESIS

In the introduction, the topicality and importance of the researched topic is invoked and argued, the purpose of the research is advanced and its objectives are outlined. Presented are: the research hypothesis, the synthesis of the research methodology, the situation in the research field, the innovative dimension of the obtained results, the main scientific results submitted for support, the important scientific research problem, the theoretical importance and the applicative value of the paper, the approval of the results. compartments of the paper.

In Chapter 1. The study of the crime of the activity of mercenaries in the doctrine of criminal law, the analysis of scientific research on the given topic is performed, both in the national doctrine and in the doctrine of foreign states.

As a result, it was found that, although provided by the criminal law of the Republic of Moldova for almost 18 years in art.141 The activity of mercenaries, we can not say that the crime in question is one to which the local specialized doctrine has paid increased attention. The most likely reason would be that, until more recently, the activity of mercenaries was an extraordinary phenomenon in our society. The hypothesis of the existence of rare singular cases cannot be ruled out, which, however, did not reach, for various reasons, the view of the law enforcement bodies.

At least, even in the media sources we do not find too many communications on the given subject until the period preceding 2014, when the first clear indications of the appearance of the phenomenon of mercenary activity in our country are attested. It grew in the Republic of Moldova especially after the outbreak of the armed conflict in eastern Ukraine in 2014.

Respectively, also in the local specialized literature the crime the activity of mercenaries is relatively little researched, imposing, first of all and preponderantly the analysis of the crime composition provided in art.141 CP RM The activity of mercenaries in criminal law textbooks criminal law of the Republic of Moldova since 2009²¹ and in the work of the authors Barbăneagră A. and Gamurari V., which deals with the given topic in the research of a broader topic - that of war crimes.²² And only in the recent period there are some scientific articles in which are researched some aspects related to the crime that is the subject of this study. A monographic study that would deal exclusively and in full with the aspects of the crime of the activity of mercenaries at the moment does not exist.

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Criminal Code of the Republic of Moldova. Comment / Sub red. of A.Barbăneagră. Chisinau: ARC, 2003. 836 pages; Barbăneagră A., Berliba V., Gurschi C. and others. Commented and annotated criminal code. Chisinau: Cartier Juridic, 2005. 656 pages.

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BARBĂNEAGRĂ A., GAMURARI V. War crimes. Chisinau, 2008, Tipografia Reclama SA, 500 pp. ISBN 978-9975-9650-6-40.

Among the scientists who analyze on various occasions the crime of activity of mercenaries we will nominate the doctrinaires Brînză S., Stati V., Ulianovschi X., Macari I, Barbăneagră A., Gurschi C., Alecu Gh., Gîrla L., Tabarcea Iu. , Borodac A., Gamurari V., Berliba V., Xenofontov I., as well as the authors Cauia A., R. Botezatu R., Buza N., Soroceanu I. Frunze M., Mămăligă I. Regardless of the fact that in some sources the crime is studied during the elaboration of textbooks in the discipline of Criminal Law Special Part, other times it is about commenting on the norm of the Criminal Code or about the few scientific articles on the given subject, all sources analyzed are of undisputed scientific interest, highlighting the most various aspects of the analyzed problem.

A valuable work for the research of the proposed topic is that of the doctrinaires Brînză S., and Stati V., Criminal Law Special Part Vol.I out of print in 2011. ²³The advantages of the research of this paper are highlighted by determining and characterizing the special legal object of the crime component provided in art.141 CP RM; distinguishing two factual ways of achieving the objective side of the crime by the activity of mercenaries and determining the specific character of its manifestation as well as the legal classification of the deed and the submission of qualification solutions.

Referring to the criminalization of international crimes in the criminal law of the Republic of Moldova, the authors state that: “Currently in the world a system of repression of the most serious crimes is established, including crimes against peace and security of mankind, as well as war crimes. The system of repression established by humanitarian law enshrines the jurisdiction of national courts to try defendants, which may be civil, military or special, provided that they are impartial and legally constituted and apply the same sanctions to both nationals and foreigners, for the same deeds ”²⁴

The authors point out that this statement is usually called the universal jurisdiction of national courts. Exceptions to this rule are cases of trial of persons accused by ad hoc courts (Nuremberg International Military Tribunal; Tokyo International Military Tribunal; International Criminal Tribunal for the former Yugoslavia; International Criminal Tribunal for Rwanda), and and the International Criminal Court in The Hague.²⁵

23BRÎNZĂ, S., STATI V., Criminal Law Special Part vol.I 1062 p. Chisinau 2011. Central Printing House p.100

24

BRÎNZĂ S., STATI V., Criminal law: Special part, vol. I, Central Printing House, Chisinau, 2011, p.11.

25

Ibidem

The approaches analyzed previously found continuity and perfection in the paper elaborated by Brînză S., and Stati V., "Treaty of criminal law. The Special Part. Volume I", published in 2015.²⁶

In our opinion, this work is of a high theoretical-practical value and is essentially a valuable scientific source for not only young scholars, but which is of great interest to both scientists and practical workers. We would like to mention that the hypotheses put forward by the authors in this paper regarding certain aspects of qualification of the analyzed crimes are consulted both by the employees of the criminal investigation institutions and by the prosecutor's office workers in the investigation of certain categories of crimes. The statement in question refers to the greatest extent to the cases of investigation of the crime provided in art.141 CP RM Activity of mercenaries.

We express our conviction that the authors Brînză S. and Stati V. are the ones who today performed the most comprehensive legal-criminal analysis of the composition of the crime - The activity of mercenaries and we fully agree with the opinion of the author Dorina Gurev according to which, this paper, according to the way of researching the elements of the crime component, can be raised to a higher degree than those previously investigated. (emphasis added).²⁷

Another valuable work from the local doctrine entitled - "Criminal law. The Special Part", is signed by the author Borodac A. and which went out of print in 2004.²⁸ Among the important aspects addressed we can mention: defining the concept of mercenary activity and analyzing the elements of the crime component. We mention that along the way, the scientific concept of the object of the analyzed crime evolves. Thus, according to the author's opinion: "The direct object of the activity of mercenaries is the social relations whose existence and normal development are conditioned by the protection of the humanitarian principles of war."²⁹

The work "Criminal law. The Special Part" published in 2005 by a group of authors: Brînză S., Ulianoschi Gh, Stati V. and others.³⁰ This paper, having a didactic-scientific format, although it is intended, first of all, for students, contains remarkable theses from a scientific point of view. According to the authors: "The special legal object of the given crime is the social relations regarding the security of the international community and international peace. Given

²⁶ BRÎNZĂ, S., STATI.V. Criminal Law Treaty Special Part vol. I. Chisinau 2015. Central Typography.

²⁷ GUREV.D. Criminal liability for the crime of kidnapping. Doctoral thesis in Law. Chisinau, USM 2016.

²⁸ BORODAC. A. Manual of criminal law special part. Central Printing House. Chisinau 2004. 622 pp. P.38

²⁹ BORODAC A. Criminal law manual. The Special Part. Chisinau: Central Printing House, 2004. 424p

³⁰ BRÎNZĂ S., ULIANOVSKI X., STATI V. et al. Criminal law. Vol.II. Chisinau: Cartier Juridic, 2005. 804 p. In online version: <http://drept.usm.md/public/files/Dreptpenalspecialf2f52.pdf>

that mercenaries are often recruited to destabilize the situation in a particular state, this crime also endangers social relations regarding the sovereignty and territorial integrity of the state, its security, values and relationships that appear as a legal object. secondary."³¹

Also in this doctrinal source, the degree of prejudicialness of the analyzed crime is highlighted.

Over time, some special publications have appeared in which topics tangential to our study topic have been specifically addressed. An important scientific article belongs to the author Cauia Alexandru. This is the publication "Legal regulation of the status of mercenary in the armed conflict" published in 2009.³²

In the respective work the author defines the notion of mercenary and establishes his identification characteristics. According to the author: "The mercenary is not assigned to the armed forces of the belligerent party in a way that would generate his responsibility for his actions. Characteristic for mercenaries is the fact that no state that has taken advantage of these services is responsible for their actions. In accordance with the provisions of international humanitarian law, mercenaries are recognized as criminals."³³

Another publication that is of interest for our research and also belongs to the author Cauia Alexandru is the article entitled Legal qualification of participants in the armed conflict in eastern Ukraine.³⁴

In the respective study the author analyzes the notion and formulates the definition of the mercenary. It is noted the private nature of the mercenary's commitment, direct and effective participation in hostilities, the element of alienation from the theater of war or the armed forces of the warring parties and the material motivation of employment. In the respective study, the author highlights the issue of the mercenary phenomenon, referring largely to the example of Ukraine.

The author also proposes the solution of qualifying the facts of the participants in the hostilities in eastern Ukraine in case they are not officially enlisted in the armed forces of this state, in case of non-international armed conflict, as well as non-party official in the armed forces of other states involved, in the case of international armed conflict, referring also to the notion of

31 Idem

32CAUIA A. Legal regulation of the status of mercenary in the armed conflict. In: Building the rule of law and highlighting the cultural and historical heritage of Moldova in the context of European integration. Materials of the annual International Scientific Conference of Young Researchers. Second Edition, March 28, 2008. Chisinau: Institute of History, State and Law of the ASM, 2009.

33 CAUIA A. Legal regulation of the status of mercenary in the armed conflict. In: Building the rule of law and highlighting the cultural and historical heritage of Moldova in the context of European integration. Materials of the annual International Scientific Conference of Young Researchers. Second Edition, March 28, 2008. Chisinau: Institute of History, State and Law of the ASM, 2009.

34CAUIA A. Legal qualification of the participants in the armed conflict in eastern Ukraine. In the Journal of University Legal Studies no. 3-4 of 2014. ULIM. P. 34 available <https://ulim.md/sju/wp-content/uploads/SJU-3-4-2014.pdf>

illegal combatant. The author's principle conclusion is that: "These categories of participants form separate entities of participants who have an illegal and condemnable status a priori through international normative acts, while members of sporadic, voluntary movements of resistance movements not included in the armed forces of to a party to the conflict, partisans or saboteurs fall into the notion of illegal combatant."³⁵ Both articles served as important scientific benchmarks for our research.

Also noteworthy is the scientific article by the authors Botezatu I., and Radionova O., entitled³⁶ "On the practice of application by courts of paragraph (1) art.141 of the Criminal Code of the Republic of Moldova, which provides liability for the activity of mercenaries. " In the respective article, the authors motivate the need to improve the criminal legal framework of the Republic of Moldova regarding the application in practice of the provisions of art.141 CP of the Republic of Moldova - The activity of mercenaries. According to the authors: "The local criminal law should be supplemented by a rule that would establish responsibility for the participation of Moldovan citizens in military conflicts or military operations, in the absence of a promise to be remunerated."³⁷

Referring to the foreign doctrine, we mention the authors: Codiță D., Lupulescu N., Gore Gh. (Romania); Hutsch F., Nemeč C., Jost Auf de Maur (Germany) Jean Didier Rosi, Dupaquier JF, Romain Pasteger, Bob Denard, Melik Ozden, Philippe Loubjois and others (French Republic); Osipov KL, Ebzeeva Z., Iyianov D, Kibalnik A, Solomonenco I., Korotkii F, Moliboga O., Kudelko K., and others (Russian Federation); Shevciuc A. Diakur M, Mohonciuc S (Ukraine).

In the researches of these doctrinaires are found opinions and ideas that can be taken over and transposed in the national doctrine, thus constituting the reference base of the own concepts regarding the crime of the activity of mercenaries provided in art. 141 CP RM.

In the researches of criminal scientists in the CIS, the bibliographic sources of the authors from the Russian Federation are required as volume and depth of research, as well as the works of researchers from other states that analyze the crime of mercenary activity in various aspects.

Referring to the foreign doctrine, we mention the authors: Codiță D., Lupulescu N., Gore Gh. (Romania); Hutsch F., Nemeč C., Jost Auf de Maur (Germany) Jean Didier Rosi, Dupaquier

35 Idem

36 BOTEZATU I., O. RADIONOVA. About the practice of application by the courts of paragraph (1) art.141 of the Criminal Code of the Republic of Moldova, which provides for liability for the activity of mercenaries. Published in: Актуальные научные исследования в современном мире выпуск 6 (26) часть 6 Июнь 2017 г. сборник научных трудов. P. 5-10.

37 BOTEZATU I., O. RADIONOVA. About the practice of application by the courts of paragraph (1) art.141 of the Criminal Code of the Republic of Moldova, which provides for liability for the activity of mercenaries. Published in: Актуальные научные исследования в современном мире выпуск 6 (26) часть 6 Июнь 2017 г. сборник научных трудов. P. 5-10.

JF, Romain Pasteger, Bob Denard, Melik Ozden, Philippe Loubjois and others (French Republic); Osipov KL, Ebzeeva Z., Iyianov D, Kibalnik A, Solomonenco I., Korotkii F, Moliboga O., Kudelko K., and others (Russian Federation); Shevciuc A. Diakur M, Mohonciuc S (Ukraine).

We certify that the concept of mercenary itself is researched, several elements of the investigated crime component are studied - its object, the ways of achieving the objective side, the reasons and the purpose of committing the crime.

The crime of mercenary activity is also the subject of investigation in the works of authors from other countries, such as France, Germany, Ukraine. In these investigations, such aspects are elucidated, such as: the definition of the mercenary, the form and modalities of recruiting mercenaries, the characteristic features of the mercenary subject.

The thorough study of the doctrinal patrimony existing at the moment in the field of the research topic highlighted its importance and theoretical-practical significance in the current juridical-criminal science. Following the finding of some unexplained aspects in the local doctrinal patrimony regarding the legal-criminal regulation of the crime of mercenary activity, the scientific problem to be solved following the current investigation, its purpose and objectives, the main research directions of the study.

Finally, it can be stated that the topic of this investigation is investigated to some extent in local doctrine, several aspects of it are investigated in foreign doctrine, formulating ideas, concepts and definitions that can most successfully complement scientific approaches in science. national. In this investigation are analyzed in detail the scientific sources invoked in this Chapter for a thorough theoretical substantiation of a wide range of theoretical and practical solutions to some problems related to the legal and criminal regulation of the crime of mercenary activity in national criminal law.

In chapter 2. The juridical-criminal analysis of the standard variant of the crime of the mercenaries' activity provided at paragraph (1) art. 141 of the Criminal Code of the Republic of Moldova are subject to analysis the elements of the crime component provided in the standard variant from paragraph (1) art. 141 CP RM - The activity of mercenaries, object, objective side, subject, subjective side.

Deducing the formal character of the crime from the activity of the mercenaries, it was specified that for the qualification of the crime it is not obligatory the occurrence of prejudicial consequences. At the same time, arguments were brought in favor of the custom according to which when committing the crime of mercenary captivity in any of the two standard variants of art. 141 CP The activity of mercenaries, the subject acts exclusively with direct intention.

Also, the notion of mercenary was thoroughly analyzed in the context of the Republic of Moldova in conjunction with the provisions of the International Convention for the Suppression of the Recruitment, Use, Financing and Training of Mercenaries adopted in New York on 04.12.1989,³⁸ to which the Republic of Moldova acceded by Law no. 223 of 13-10-2005 for the accession of the Republic of Moldova to the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, Published on: 04-11-2005 in the Official Monitor no. 145 art. 693. In force for the Republic of Moldova of 28.02.2006 and the Additional Protocol I adopted to the Geneva Conventions of 12.08.1949 on the protection of victims of international armed conflicts of 08.06.1977.

It was concluded that the special legal object of the crime of mercenary activity paragraph (1) art.141 CP RM is represented by social relations regarding the non-admission of mercenaries' participation in military actions or other violent actions aimed at overthrowing or undermining the constitutional order or violation territorial integrity of the state.³⁹

We mention that the analysis of the legal object of the analyzed crime has certain tangents with the problem of the very definition of the term “mercenary”. One aspect of the problem of defining the notion of mercenary which provokes heated debates is the condition that the person in question is not a citizen or a permanent resident of the State in which he carries out his activity. The purpose of this condition is to distinguish between a mercenary and a member of a national liberation or opposition movement that legitimately opposes the government of a particular country. Additional difficulties arise when states grant citizenship to persons solely for the purpose of their employment as mercenaries or when natural persons hold dual or multiple citizenship under the law.⁴⁰

In forming his own opinions on the object of the crime of mercenary activity, served as one of the landmarks the position of the author A. A. Potapov, according to which, the object of the crime of mercenary activity, takes the form of a concrete armed conflict in which mercenaries take part. Thus, if we are in the presence of an international armed conflict, then the object of the crime will be the rules for conducting an international armed conflict. In the event of an internal

38 The Republic of Moldova acceded by Law no. 223 of 13-10-2005 for the accession of the Republic of Moldova to the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, Published on: 04-11-2005 in the Official Gazette no. 145 art. 693. In force for the Republic of Moldova since 28.02.2006

39 MACOVEI, V. The object of the crime of the activity of the mercenaries provided in paragraph (1) art. 141 CP RM. In International Scientific Journal of the Rule of Law no.1-2. 2019

40 BORTNIK O. Definition of the term "mercenary" in international legal acts of a universal nature <https://naub.oa.edu.ua/2011/vyznachennya-ponyattya-najmanets-v-mizhnarodno-pravovyh-aktah-universalnoho-harakteru/>

armed conflict, the object of the crime will be the constitutional order and the territorial integrity of the state.⁴¹

We support this view provided that, in defining the object of the crime by the activity of mercenaries, we must start from a more complex approach than its general reporting to certain internationally established rules. Suffice it to mention here that the social danger posed by this crime is considerably increased by the presence of the element of physical, military, mental violence, etc.

It was invoked that, according to the legal provisions, including in the situation of committing "other violent actions", for the qualification of the deed in accordance with the provisions of the crime of the activity of mercenaries according to paragraph (1) art. 141 of the Criminal Code of the Republic of Moldova, it is necessary that these violent actions be aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state. Respectively, not all violent actions fall under the incidence of art. 141 CP RM. For example, the person employed as a mercenary, outside the limits provided by the action of "participation" in the armed conflict, participates in violent actions against supporters of a football team, or against civilians for the purpose of dispossession of certain property, etc. In that situation, the violent actions of the mercenary are not aimed at undermining or overturning the constitutional order of the state or violating its territorial integrity. Consequently, the "violent actions" committed by it will be qualified in accordance with the article of the penal code, which criminalizes the respective illegal actions committed with the application of violence.⁴²

In the thesis, arguments are made in favor of the concept that the participation of the mercenary in an armed conflict, military action or other violent actions may be individual, as part of a group of mercenaries, mercenary detachments within the military unit that includes both mercenaries as well as non-mercenaries.

During the research of the subject in the field, it was concluded that by armed conflict is meant any state of conflict in which weapons are applied, taking into account any type of weapon. In our opinion, the notion of armed conflict is to be treated under two aspects: internal armed conflict (when the parties to the conflict belong to the same state and the conflict takes place within it) and international armed conflict (when the conflict takes place between at least two states).

41 A. A. POTAPOV Responsibility for mercenary activity: problems of doctrinal interpretation of Art. 359 of the Criminal Code of the Russian Federation // Investigator. 2003. No. 2. P. 6

42 GRECU R., MACOVEI V. The objective side of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP RM. In: National Law Review no. 3. 2020;

It was summarized that it can be considered that by military actions is meant a military act involving a human action, which is carried out with the application of weapons or for their use, with a well-established structure that includes military and other elements such as : political, economic, diplomatic, etc.

Also in this chapter, I found that neither the criminal nor the constitutional doctrine interprets the notion of constitutional order. To pursue the purpose of overthrowing or undermining the constitutional order of a state means, in our belief, to pay attention to the political choice of the citizens regarding the political system of the state which is defined by Professor Arseni Al. as a result of organized human activity and represents the unity of hierarchically structured political and state bodies that act in accordance with constitutional provisions in order to ensure the common good of the sovereign people.⁴³

Therefore, within the meaning of art.141 of the Criminal Code of the Republic of Moldova, by overthrowing or undermining the constitutional order, it can be understood the unconstitutional takeover, the seizure of legitimate power in the state, the secession of public power by bringing to power governing bodies parallel to existing ones, etc. Most often this is done through violent actions with the use of weapons, by participating in such acts of subdivisions of force, paramilitary formations led by military officers or paramilitary commanders belonging to the same state. In some cases, the training of mercenaries is also practiced in carrying out such illegal acts.⁴⁴

It was concluded that under the aspect of the time of committing the deed provided in art.141 par. (1) The Criminal Code of the Republic of Moldova may be committed only during armed conflict, military actions or other violent actions, regardless of whether such a conflict or action is international or domestic. In the absence of this sign of the objective side, the deed cannot be qualified in accordance with par. (1) art.141 CP RM.

It was invoked that the subject of the crime provided in par. (1) art. 141 CP RM The activity of mercenaries is the responsible natural person, aged 16 years who meets the characteristics of a mercenary, as follows:

- is specially recruited in the country or abroad;
- participates in armed conflict, military or other violent actions;
- aims to obtain a personal advantage or promised remuneration;

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ARSENI A. Constitutional Law and Political Institutions: Treaty: [in vol.] / Alexandru Arseni. - 2nd ed., Rev. -Chisinau: CEP USM, 2019 -. Vol.I - ISBN 978-9975-149-40-2, 273 p., P.233.

44 GRECU R., MACOVEI V. The objective side of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP RM. In: National Law Review no. 3. 2020;

- is not a citizen of the party to the conflict;
- is not resident in the territory controlled by a party to the conflict;
- is not a member of the armed forces of a party to the conflict;
- has not been sent by a State other than the Party to the conflict on an official mission as a member of the armed forces of that State.

Analyzing the notion and definition of the mercenary, it was found that the current form of the definition of mercenary includes only the person who was specially recruited in the country or abroad to participate in an armed conflict, military action or other violent actions aimed at overthrowing or undermining the constitutional order. or violation of the territorial integrity of the state.

This characteristic specific to the mercenary is also provided in the norm from art. 130 CP RM. It follows from its normative content that the qualification of a person as a mercenary necessarily implies the existence of an act of his recruitment: the person is specially recruited to participate in the activity of mercenary and, respectively, agrees to participate in an armed conflict, to military or other violent actions as a mercenary, aimed at undermining the constitutional order or violating territorial integrity.

We have come to the conclusion that the subjective side of the crime of mercenary is expressed in direct intent. The person who consciously resorts to mercenary actions is aware of the prejudicial nature of his actions, foresees the consequences and consciously wants to commit acts of violence in exchange for a material remuneration.⁴⁵

The purpose pursued by the mercenaries may be one strictly aimed at remuneration in the promised amount, as well as a large one, for example, participating in illicit activities to establish control over the distribution of the natural wealth of the respective countries to the parties to the conflict. And this will also fit into the notion of promised remuneration.

There is no denying, however, that a mercenary can pursue, in addition to those invoked and other objectives - revenge, personal pseudo-assertion, obtaining military dexterity, etc. It is important, however, that these are not the defining ones, they are conjugated in order to obtain a personal advantage or a promised remuneration. In the absence of the latter, the person does not fall within the legal signs characteristic of a mercenary.

The attitude of the mercenary towards the goal pursued by the party to the armed conflict, military actions or other violent actions that engaged him, involved him in such illicit activities, namely that of overthrowing or undermining the constitutional order or violating the territorial

45 MACOVEI, V. The subject of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP RM. In In: National Law Review no. 3. 2020

integrity of the state, may be diverse. He can fully share this criminal desideratum, incorporating it as a component part in the complex of the subjective determinants of his mercenary activity. But a mercenary can also show total indifference to the purpose pursued by his "employers", he strictly pursuing only the achievement of his personal purpose to obtain the promised advantage or illicit remuneration.⁴⁶

In principle, however, it is the mercenary's awareness of his involvement in activities aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of a state and obtaining from it the advantage or remuneration from its involvement in such illegal activities.

In chapter 3. The judicial-criminal analysis of the standard variant of the crime of the mercenaries' activity provided at paragraph (2) art. 141 of the Criminal Code of the Republic of Moldova, the crime of the activity of mercenaries provided in paragraph (2) art. 141 of the Criminal Code of the Republic of Moldova, expressed by hiring, training, financing or other insurance of mercenaries, as well as their use in an armed conflict in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state.

The object of the crime was defined by the activity of mercenaries as being constituted by the social relations related to the principles of regulation of military conflicts.

It was concluded that the immaterial object of the crime may also be data and information on state secrets or economic-financial information. They could be used both during the armed conflict and until it broke out.

In the sense of information as an immaterial object, the opinion of the doctrinaire Justin V is relevant, which we also share: "There are data and information of an economic nature which, although they do not constitute state secrets, are not intended for publicity. These data and information must be kept strictly, because, even if they are not of the significance of those that constitute state secrets, important interests of the national economy are still linked to them. The disclosure of such data or information, either by the person who knows it due to his duties or by the person who came to know it in any way, presents a social danger."⁴⁷

46MACOVEI V., The form of guilt of the subject of the crime by the activity of the mercenaries provided in art. 141 CP RM In: Materials of the International Scientific Conference dedicated to the 20th anniversary of the founding of the Faculty of Social Sciences and Education, 10th Edition, Chisinau, December 5-6, 2019 / "Contemporary Concerns of Socio-Human Sciences", conference international scientific (10; 2019; Chisinau). Chisinau: ULIM, 2020; ISBN 978-9975-3371-7-5. 082: 378 = 135.1 = 111 = 161.1 pp. 319-329, pp. 323

47 IUSTIN. V. The juridical-criminal analysis of the crimes regarding the dissemination of the information referring to the objects of industrial property, as well as the fraudulent appropriation by a third party of the quality of author or the coercion to co-authorship (art. 1852 par. (1) C.pen.) In the National Law magazine no. 3 from 2010 pp. 57-67, pg. 57.
https://ibn.idsi.md/sites/default/files/imag_file/7.Analiza%20juridico_penala%20a%20infractiunilor%20privind%20raspindirea%20informatiilor%20care%20se%20refera%20de%20la%20proprietate%20obiectele%20industriale.pdf

It was invoked the fact that the objective side of the crime of the activity of mercenaries provided in paragraph (2) art. 141 of the Criminal Code of the Republic of Moldova may cover one, several, or all five ways of carrying out the prejudicial action: hiring, training, financing or other insurance of mercenaries, as well as their use (emphasis added) in an armed conflict, in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state.

In the presence of other means of insurance for mercenaries, the material object of the offense in question may be weapons, ammunition, other explosive devices, or destructive means, other such means or instruments.

The objective side of the crime provided by art.141, par. (2) CP RM includes two characteristic signs, namely: a) the prejudicial deed materialized in the action of hiring, training, financing or other insurance of the mercenaries, as well as their use in an armed conflict, in military actions or in other violent actions. b) the time of the commission of the crime, namely - the time of the armed conflict of military actions or other violent actions.

The incomplete character of the norm from paragraph (2) art. 141 of the Criminal Code of the Republic of Moldova, not being incriminated the action of recruiting mercenaries as a way to achieve the objective side of this standard variant of the crime. Attention was drawn to the fact that although according to art.130 CP RM - Mercenary: “By mercenary is meant the specially recruited person...”, paragraph (2) art. 141 CP RM - The activity of mercenaries does not provide for recruitment as a way to achieve the objective side of the crime.

We argue in favor of the opinion that employment and recruitment cannot be private as synonymous. These are to be regulated as distinct ways of achieving the objective side of the standard variant of the crime from paragraph (2) art. 141 CP RM.

First of all, recruitment means any action, carried out by any means, aimed at a particular person or at an unidentified number of persons for the purpose of the latter's interest in being employed as a mercenary.

Whereas, by hiring the mercenary, one must understand the direct action of the person to make a commitment, to enlist in the mercenary troops. The simple agreement manifested by a person to participate in an armed conflict cannot be understood as a report of his employment within the meaning of paragraph (2) art. 141 of the Criminal Code of the Republic of Moldova.

Secondly, the recruitment and the hiring of the mercenary itself can be carried out by one and the same person or by different people.

We consider that, in the event that recruitment and employment are carried out by different persons, it does not matter whether the persons are known, have a certain understanding or whether the recruiter has such a power of attorney from an authority of the State party to the conflict.

At the same time, the purpose of the employer and the recruiter may not always coincide. In other words, unlike the employer, in the case of the recruiter his goal cannot always be the overthrow or undermining of the constitutional order or the violation of the territorial integrity of the state.

The purpose of the recruiter may be, for example, to obtain a material, personal or other advantage from the activity of recruiting. Also, the recruiter can act for ideological, religious reasons, etc.

And last but not least, from the moment of recruitment and respectively the expression of the agreement to participate in the armed conflict, and the direct employment and participation, an indefinite period of time can pass. Thus, the conditions discussed at the recruitment stage may no longer coincide with those at the employment stage.

In the Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova, Regarding the practice of applying the legislation in cases concerning trafficking in human beings and trafficking in children no. 37 of 22.11.2004, the notion of “recruitment” is defined. Thus, according to point 3.1 of the mentioned act: “Recruitment for the purpose of trafficking in human beings involves attracting persons by selection in a certain activity determined by the purposes stipulated in art.165 and art.206 CP. When recruiting, it does not matter the circumstances in which the recruitment took place: in places of rest, through unconventional networks, by offering jobs or studies, by concluding a fictitious marriage, etc. The means of recruitment may be effected by coercion, abduction, partial or total deception, etc.”⁴⁸ We consider that this notion can be extended and applied in the case of recruitment within the meaning of art.141 CP RM.

In the context of the above, we consider it important to distinguish between the employment action and the recruitment action based on the following considerations: 1) First of all, the semantic meaning of these two notions is different: by employment is meant the action of bargaining (to bargain) on a thing, service, etc., by recruitment is meant the action of attracting someone for a certain activity. 2) Recruitment cannot always be preceded by employment (for example when the recruited person does not agree); 3) In the opposite sense, hiring usually takes

48 Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova, On the practice of applying the legislation in cases concerning trafficking in human beings and trafficking in children no. 37 of 22.11.2004

place after recruitment; 3) It is not obligatory for the recruiter and the employer to be one and the same person, just as it is not obligatory for them to pursue the same purpose; 4). The employer will always aim to overthrow or undermine the constitutional order of the state or violate its territorial integrity; 5). The recruiter may be hired by the employer to carry out mercenary recruitment activities. The purpose of the recruiter could be to obtain financial means or other benefits for himself or for another person. Important for qualification in terms of recruitment is that the recruiter knows and understands the purpose of recruiting people: "to participate in armed conflict, military action or other violent actions aimed at overthrowing or undermining the constitutional order of the state or violating its territorial integrity," . Provided, for example, that the recruiter is instructed to recruit certain persons on the grounds that they are to take part in a peacekeeping mission in a given territory, or to carry out seasonal work, and subsequently without the involvement of the recruiter they were hired as a mercenary, the actions of the recruiter cannot be included in the norm of paragraph (2) art. 141 The activity of mercenaries; 6). Often, the recruiter may not even know who the real employer of the mercenaries is. 7). Recruitment and employment can take place at the same time, but they can also be delimited in time and space. In other words, recruitment can take place in a certain period of time and in a certain territory, while the actual employment can take place in another period of time, in other circumstances and in another territory.⁴⁹

In the research, we concluded that recruitment is not considered if the individual comes with the initiative to hire as a mercenary to perform certain missions in the course of an armed conflict, military action or other actions. violent.

Assuming that the recruiter does not discuss with the person the fact of a possible participation in the armed conflict, leaving to the discretion of the person the decision to participate or not in the conflict, we attest one of the following two hypotheses for interpreting the situation: 1. The person is not considered specially recruited, or, the single person consciously chose to participate in the armed conflict, although he had the opportunity not to do so. 2. It may be a question of indirect "special recruitment" in so far as it is established that the recruiter has done all that was necessary to cause the person the desire to participate in the armed conflict.⁵⁰

49GRECU R., MACOVEI, V. On the need to criminalize the act of recruiting mercenaries, at paragraph (2) art.141 CP RM - The activity of mercenaries. In: International Scientific Journal of the Rule of Law no.4. 2019;

50MACOVEI, V. The subject of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP RM. In In: National Law Review no. 3. 2020;

Recruitment takes place when the recruiter submits an offer which the potential mercenary is to accept. Given that the single person offers his services to participate in an armed conflict, and the employer agrees, we are in the presence of the employment action.

It is evoked the fact that, for the qualification of the crime based on paragraph (2) art.141 CP of the Republic of Moldova, the number of persons recruited or employed does not matter, nor their social status or profession. It is enough to recruit, hire at least one person.

But we are not in the presence of recruitment as a way to achieve the objective side of the crime provided in paragraph (2) art. 141 of the Criminal Code of the Republic of Moldova in the hypothesis that, although the recruiter took the necessary measures for recruitment, the person did not accept the proposal. Important for the qualification is the consumption of the recruitment action which is carried out only if the person has expressed his / her consent.

In this sense, we consider that the recruitment action is to be included in the operative part of the norm from paragraph (2) art.141 CP of the Republic of Moldova as a distinct way of achieving the objective side of this crime being preceded by employment and the other ways. In the context of the analysis of the objective side both of the standard variant of the crime from paragraph (1) and in the case of the one from paragraph (2) art. 141 CP RM were studied a series of cases from the judicial practice with the highlighting in some cases of the qualification problems.

Under the conditions of employment and training of persons for participation in an armed conflict, military actions or other violent actions, which will take place in the future, the actions of the perpetrators are to be qualified as preparation for the crime or attempted crime provided in par. (2) art. 141 of the Criminal Code of the Republic of Moldova, given that the armed conflict did not take place for reasons beyond the control of the perpetrators. In this context, we reiterate that the crime of mercenary activity is formal. So, for the qualification, it matters that the perpetrator took all the actions dependent on him in order for the imputed crime to take place.

At the same time, we cannot but admit the hypothesis of recruiting and training mercenaries until the direct beginning of the armed conflict. However, the norm from paragraph (2) of art.141 of the Criminal Code of the Republic of Moldova does not condition in any way the fact that the armed conflict must be ongoing.

It was concluded that the moment of committing the crime of mercenary activity in the form of mercenary training is considered the moment of undertaking any actions aimed at transmitting knowledge, cultivating skills, occupations of the mercenary to use them in armed conflict, military actions or other violent actions.

As for how to achieve the objective side of the crime of mercenary activity expressed by the act of other insurance of mercenaries, in our opinion, the legislator rightly leaves this list open, as it seems impossible to list specific methods of material support for a mercenary .

We draw attention to the fact that for the qualification of the crime according to the indices of the action of another insurance, it is not required that the perpetrator has some sources and even more it is not necessary to prove that the perpetrator has them. For example, in the event of the delivery of weapons, ammunition, equipment, food, etc., their carrier, if he knows that they are to be used by mercenaries in armed conflict or in military or other violent actions, and agrees to their delivery at the destination, then his actions fall under the incidence of the notion of other insurance according to art.141 CP RM. Moreover, by the fact that the legislator regulated the notion of “other insurance”, the possibility was given to the legal classification of all forms of insurance, the exhaustive regulation being impossible.

The notion of mercenary provided in art. 130 CP of the Republic of Moldova with the provisions of the provision of paragraph (2) art. 141 CP RM. Thus, the lacunar aspect of the norm from paragraph (2) art.141 CP RM was highlighted in the sense of the lack of the way to achieve the objective side “recruitment”.

At the same time, we consider that a person's use of the service situation means committing mercenaries in connection with his official position or status. It was argued the need to complete art. 141 of the Criminal Code of the Republic of Moldova aggravated version paragraph (3) of the actions committed in paragraph (2) art. 141 of the Criminal Code of the Republic of Moldova committed by: a public person, including the public person with special status, foreigner or international official using the service situation;⁵¹ natural person with the use of the service situation; with the attraction of minors; by two or more persons; in the interest of an organized criminal group or criminal organization.

In an attempt to define the notion of using the service situation within the meaning of art. 141 CP RM, we find that the local doctrine refers to this aspect by submitting opinions with which we completely agree. For example, a short, clear and comprehensive notion is proposed by Professor V. Cușnir, according to which: “The use of the service situation implies its application specifically to the commission of criminal acts”.⁵²

At the same time, arguments were brought in the need to complete art. 141 CP RM; the activity of mercenaries with: paragraph (4) having the following content: “(4) The person who

51 MACOVEI V. On the need to increase the criminal liability for the crime of activity of the mercenaries specified in art. 141, para. (2) Criminal Code of the Republic of Moldova. P. 564 in: Theory and public administrative practice 2018

52 CUȘNIR V. Course notes particularities of the qualification of economic crimes (Cycle II). USEM, Chisinau 2013 p. 31.

has committed mercenary activities may be subject to the minimum criminal punishment provided, if he has ceased to take part in an armed conflict, military acts or violent, reported his participation in a conflict, warned the authorities about the facts and thereby actively contributed to counteracting or discovering crimes related to the activity of mercenaries and if his actions do not constitute another component of the crime. " and paragraph (5) "The person who participated in the actions provided in para. (2) of this article shall be released from criminal liability if it, by timely notification to the authorities or by other means, has actively contributed to the prevention of the use of mercenaries in armed conflict, military or other violent actions, and if its actions do not constitute a another component of the crime. "

In the context of the release of criminal liability of the subject of the crime provided in art. 141 CP RM The activity of the mercenaries, the opinion of the author regarding the possibility of amnesty of the mercenary or the person subject of the standard variant of the crime of the activity of the mercenaries provided in paragraph (2) art. 141 CP RM. According to the doctrine: "The application of amnesty to persons who have committed certain categories of crimes, except for those expressly provided in art. 107 paragraph (3), is totally at the discretion of the legislator. The concrete act of amnesty is undoubtedly adopted in order to realize the principle of humanism, but also starting from the strategic orientation and tactical realization of the criminal policy of the state at the respective historical moment. It is unanimously acknowledged that, in view of its incidence, the amnesty always has a real (objective) character and usually operates in rem for certain criminal acts, without taking into account the person of the perpetrators. "⁵³

The opinion is invoked that although the crime of the activity of mercenaries is not found in art. 107 paragraph (3) of the Criminal Code of Moldova - Amnesty, being a serious crime, the subject of this crime should not benefit from it. Or, according to the doctrine of R. Grecu: more negatively, the evolution of the state and structure of crime at that stage. It is a well-established practice, noted by criminal specialists: "Being a human act, amnesty does not usually spread to people who have committed serious, particularly serious and exceptionally serious crimes. The fact in question, like the provisions of art. [...] The principle invoked has an impact, first of all, on the victim and presupposes the protection of human rights and fundamental freedoms, the restoration of justice and the respect of social equity. "⁵⁴

53 GRECU R. On the legal nature and humanistic landmarks of amnesty and pardon. In: Scientific Annals of the University of European Political and Economic Studies "Constantin Stere". Volume 2, Second Edition, Chisinau: USPEE "Constantin Stere" (F.E.P. "Central Printing House"), 2014, p.13-19. ISSN 1857-4858 15

54 Idem

In Chapter 4. Analysis of the criminalization of the activity of mercenaries - comparative aspect we performed an analysis of the crime of activity of mercenaries in comparative criminal law, highlighting the features only for the criminal law of some states and we highlighted their similar criteria to the law of the Republic of Moldova regarding the criminalization of the activity of mercenaries.

Carrying out an analysis of criminal law regulations in various countries of the general and continental law system, some authors conclude that mercenarism is recognized as a separate crime in several countries. However, the criminal law of those States contains differences both in the definition of the mercenary and in the regulation of the composition of the crime of mercenary and, last but not least, in the understanding of the legal object of this crime.⁵⁵

The analysis of those rules in the criminal law of some European countries and in the United States legislation governing the criminal liability of mercenaries shows that, at present, with the exception of the Republic of Poland, they do not stipulate, in most cases, the rules of national law to the responsibility for the mercenary activity in strict accordance with the wording of international law. International law provides for liability for the crime of illegal military service in a foreign country, recruitment and entry into this service under certain conditions, depending on the national norm, usually characterized by the specifics of its regulation.

International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, adopted in New York on 4 December 1989, in force for the Republic of Moldova of 28 February 2006 and the Additional Protocol to the Geneva Conventions of 12 August 1949 on the Protection of Victims of Conflict international armies, of 8 June 1977, which provides in Article 47 that: "The term mercenary means any person: (a) who is specially recruited in the country or abroad to fight in an armed conflict; (b) who is in fact taking part in hostilities; (c) who takes part in hostilities in particular in order to obtain a personal advantage and who is actually promised, by or in the name of the party to the conflict, a remuneration higher than that promised or paid to combatants having a similar rank and function in the armed forces of this party; (d) who is neither a national of a party to the conflict nor a resident of the territory controlled by a party to the conflict; (e) who is not a member of the armed forces of a party to the conflict; and (f) who has not been sent by a State other than a party to the conflict on an official mission as a member of the armed forces of that State. "

55 S. BOBOTOV, D. I. VASILIEV French model of the rule of law // Soviet state and law. 1990. No. 11. S. 105-112.

As we see, the wording does not exclude, but on the contrary - provides for the possibility of prosecuting mercenaries and persons who have organized mercenary actions under the rules of national law.

Respectively, persons are held criminally liable under existing legislation in several states, primarily for their participation as mercenaries in armed conflict, in military actions or for the recruitment of mercenaries. On the other hand, the criminalization of such acts as training, financing of mercenaries and their use in armed conflicts or hostilities is not very common. The plausible explanation probably lies in the difficulty of proving the purpose pursued by mercenaries by participating in hostilities. As mentioned, it is, as a rule, legally stipulated and consists in undermining the constitutional order or territorial integrity of the state. In reality, practice indicates that perpetrators often refer to their guidance in such activities of religious and ideological principles. In the absence of evidence to the contrary, criminal liability for the activity of mercenaries becomes impossible due to the absence of purpose, as it is usually formulated in the criminal law of several states.

The law enforcement institutions of several CIS Member States have at their disposal quite complex regulations on the crime of working as mercenaries, which allows them to bring perpetrators to justice, in accordance with the provisions of national criminal law.

The analysis of the legal-criminal regulations of the mercenary activity in the criminal legislation of the CIS states motivates the conclusion that, in the criminal law of the Republic of Moldova, such regulations may be taken over, such as criminalizing the activity of mercenaries in aggravated forms as stipulated in the legislation. Of the Russian Federation - the commission of a person in a position of responsibility or use of employment, the recruitment of minors and in the criminal law of the Kyrgyz Republic - the commission of offenses by two or more persons with prior consent, in the interest of an organized criminal group or criminal organizations.

We agree with the opinion of the scientist T. Popovici who thinks that: “The Republic of Moldova, being a relatively young state, operates quite modern laws, still remaining in some places to harmonize them with some rigors of treaties, conventions and other international acts. The Republic of Moldova is a party ”. ⁵⁶In the conditions of those mentioned above, we also reiterate the need to take some examples of effective regulation regarding mercenaries from the legislation of other states, which would allow the improvement of the national legal framework for criminalizing the activity of mercenaries.

⁵⁶ POPOVICI T. Decent traditions for young lawyers at the age of 65 of the State University. In the National Law Review no. 6-7, 2011.pg 8-9. https://ibn.idsi.md/sites/default/files/imag_file/Traditii%20decente%20126_127.pdf

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Following the investigation of the topic of this paper, the following results were obtained:

1. Research of the doctrinal concepts and theses existing in the specialized literature in the country and abroad, which constituted an appreciable theoretical support in defining the notions of mercenary and the activity of mercenaries;

2. The complex theoretical-practical analysis of the constitutive elements of the components of the crimes provided in art. 141 CP RM Activity of mercenaries;

3. Clear definition of the normative modalities for committing the criminal acts provided in art. 141 of the Criminal Code of the Republic of Moldova, such as the participation of the mercenary in the armed conflict, military actions or violent actions; the employment, training, financing or other insurance of mercenaries and their use in an armed conflict, in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state;

4. Establishing the moment of consummation of the offenses provided in art.141 CP RM;

5. Research of national judicial practice in the field of criminal liability for the activity of mercenaries with identification of options for interpreting criminal law in concrete cases and analysis of judicial solutions to controversial situations arising in the process of applying the rules provided in art.141 CP RM Activity of mercenaries;

6. Determining the defining characteristics of the mercenary as the subject of the standard type of the crime of the activity of mercenaries provided in paragraph (1) art. 141 of the Criminal Code of the Republic of Moldova by appealing to the international regulations in the field and of the subject of the standard variant of the crime of the activity of mercenaries provided in paragraph (2) art. 141 CP RM;

7. Identification of some deficiencies of normative regulation of the crime provided in art. 141 CP RM Activity of mercenaries;

8. The formulation of the proposals of lege ferenda for the modification and completion of the provisions from art. 141 CP RM in order to further improve the content of the normative framework in the researched matter.

The analysis of doctrinal meanings and theses both nationally and from other states led to the formulation of the following **conclusions**:

- At the current stage in the local doctrine, there is no monographic work that would have as object of study the juridical-criminal characteristic of the crimes provided in art.141 CP RM The activity of mercenaries;

- The doctrinal treatment of the legal object of the crimes of the activity of mercenaries is a complex theoretical subject with concrete practical implications. The standardization of theoretical interpretations is able to contribute to the correct application of the respective norm in the judicial practice of the states that face the phenomenon of mercenarism, the combat of which supposes to the greatest extent the conjugation of efforts based on common theoretical-practical approaches;

- The legal object of the crime of the activity of the mercenaries in the standard version of the crime from paragraph (1) art. 141 of the Criminal Code of the Republic of Moldova is the non-admission of the person's participation as a mercenary in armed conflict, military actions or other violent actions;

- The objective side of the crime of activity of mercenaries provided in par. (1) art. 141 of the Criminal Code of the Republic of Moldova includes the following two signs: 1) the prejudicial act expressed in the action of the mercenary's participation in an armed conflict, in military actions or in other violent actions; 2) the time of the commission of the crime, namely - the time of the armed conflict, of the military actions or of the commission of other violent actions;

- The examined crime is formal, it is considered consumed from the moment of the mercenary's participation in an armed conflict, in military actions or in other violent actions;

- Participation in an armed conflict, in military actions or in other violent actions may not absorb: participation in the activity of a paramilitary formation not provided for by the legislation of the Republic of Moldova; participation in the activity of an armed gang; active participation in mass riots; participation in the armed rebellion, etc. In such cases, it is necessary the additional application of art.282 - The organization of an illegal paramilitary formation or the participation in it; 283- Banditry; par. (1) art.285-Mass disorders; art. 340 - Armed rebellion or others from the Criminal Code;

- The application of the weapon in the process of committing other crimes by mercenaries within the participation in an armed conflict to military actions or other violent actions, exceeds the criminalization framework of the crime provided in paragraph (1) art.141 CP RM. This presupposes additional qualification according to other appropriate norms of the Criminal Code (for example letter g) paragraph (2) art.164; lit. f) paragraph (2) art.166 or others);

- The subject of the crime of the activity of the mercenary is the responsible natural person who has reached the age of 16 years.

In addition to responsibility and age, the person is to meet the characteristics attributed to a mercenary by international acts and the provisions of the CP of the Republic of Moldova previously invoked, namely:

- be specially recruited in the country or abroad;
- to take part in armed conflict, military action or other violent actions;
- pursue the purpose of obtaining a personal advantage or promised remuneration;
- not to be a citizen of the party to the conflict;
- not to be resident in the territory controlled by a party to the conflict;
- not to be a member of the armed forces of a party to the conflict;
- has not been sent by a State, other than the Party to the conflict, on an official mission as a member of the armed forces of that State.

- The subjective side of the crime by the activity of mercenaries is committed with guilt expressed only in direct intent.

- The purpose pursued by the perpetrators of the crime of the activity of the mercenary is to obtain a personal advantage or a promised remuneration. We mention that, although in his activity the mercenary can be guided by other objectives, the purpose of obtaining a personal advantage or a remuneration promised by a party to the conflict or on its behalf is the defining one and he is always to be identified and proven in the complex. subjective determinants of the criminal behavior of the mercenary. The reasons for committing the analyzed crime can be the most diverse: material needs, selfish impulses, ideological, religious reasons, etc .;

- The current form of the definition of mercenary includes only the person who has been specially recruited in the country or abroad to participate in an armed conflict. In this context, we consider that people who individually enlist in the mercenary troops on their own, without being recruited by anyone, remain outside the criminal framework;

- At present, both the constitutional doctrine and the criminal doctrine do not interpret the meaning of the phrase "undermining or overturning the constitutional order", which may create difficulties in the application of Article 141 of the Criminal Code of Moldova and which motivated the attempt to interpret the phrase;

- It was revealed the outlining of a legislative vacuum related to the qualification of the deed of the person who alone addresses companies / military troops to be enlisted by them in order to participate in the armed conflict, not being specially recruited. In this case, there is a risk that the persons concerned could not be prosecuted, except for committing other crimes in their participation in the armed conflict, other military actions or other violent actions;

- The special legal object of the crime provided for in the second standard variant of the crime of the activity of mercenaries provided in paragraph (2) art.141 CP RM is formed by the social relations regarding the non-admission of insurance in any way of the activity of mercenaries or their use in violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state;

- In the presence of the method of financing the mercenaries, the material or immaterial object of the crime specified in paragraph (2) art. 141 of the Criminal Code of the Republic of Moldova is the goods of any nature acquired by any means or financial services (in the presence of the method of financing the mercenaries);

- The objective side of the crime provided in paragraph (2) art. 141 of the Criminal Code of the Republic of Moldova is achieved through 5 alternative normative ways of achieving the objective side of the crime: hiring mercenaries; training of mercenaries; financing of mercenaries; other mercenary insurance; the use of mercenaries, interpreted in detail in the content of the paper;

- Due to its specificity, the crime from par. (2) art. 141 CP RM has no victims;

- The offense of the activity of the mercenaries provided in paragraph (2) art. 141 CP RM is performed only with direct intention;

- The purpose is a mandatory secondary sign of the subjective side of the crime provided in paragraph (2) art.141 of the Criminal Code of the Republic of Moldova, the norm expressly stipulating the purpose of overturning or undermining the constitutional order or violating the territorial integrity of the state. If this purpose is missing, the deed cannot be qualified according to paragraph (2) of art. 141 CP RM. The perpetrator's motives consist in the perpetrator's desire to facilitate the activity of the mercenaries or the perpetrator's desire to transmit to the mercenary the accumulated criminal experience, etc.

- At the current stage, the norm from paragraph (2) of art. 141 CP RM The activity of mercenaries does not regulate the recruitment as a way to achieve the objective side of this standard variant of the crime, this compartment being detailed in the investigation.

- In the current version, the norm from paragraph (2) art. 141 is not incriminated as aggravated forms of the actions of recruitment, employment, training, financing or other insurance of mercenaries in the presence of such special qualities of the subject, such as: person with responsibility, the public person, the person with public dignity, the foreign public person and the international official with the use of service or the commission of the crime in question by two or more persons, in the interest of an organized criminal group or criminal organization, or with the attraction of minors.

In principle, although we recognize that any legal system has its own characteristics that sometimes do not allow the full adoption of the provisions of international law, we consider necessary the joint effort of states to bring as close as possible the rules of criminal law providing for liability for mercenaries. This need is dictated by the conditions of globalization of crime in general, the transnational nature of the crime analyzed in particular and the increased social danger it poses for each state and for the community of civilized states, which aspires to peace and an international system of interstate relations based on solidarity and mutual assistance.

In order to exclude the missing character of art. 141 CP RM The activity of mercenaries as well as in order to improve the criminalization framework of this crime were formulated the following **recommendations**:

1. Completing the norm from par. (2) art.141 CP RM before the word “employment”, with the word “recruitment”, formulating the norm, as follows: “Recruitment, employment, training, financing or other insurance of mercenaries, as well as their use in a armed conflict, in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state ”.

2. Completing art.141 CP RM with par. (3) having the following content: „, The actions indicated in paragraph (2) of this article committed:

a) using the service situation;

b) by a person in a position of responsibility, a public person, including a public person with a special status, a person in a position of public dignity, a foreign public person or an international official using the service situation,

c) attracting minors;

d) by two or more persons by prior agreement;

e) in the interest of an organized criminal group or criminal organization shall be punished by imprisonment from 16 to 20 years. (under the conditions of publication until the amendment is supported according to the draft law, the sanction from paragraph (2) from 10 to 15 years);

3. Completion of art.141 of the Criminal Code of Moldova The activity of mercenaries with paragraph (4) having the following content: “(4) The minimum criminal punishment, provided, if he has ceased to take part in a armed la ict, to military or violent acts, reported his participation in a fl ict, prevented the authorities from the facts and thereby actively contributed to counteracting or discovering crimes related to the activity of mercenaries and if his actions do not constitute another component of crime .

4. Completion of art. 141 CP RM The activity of the mercenaries with paragraph (5) having the following content: "The person who participated in the actions provided in paragraph (2) of this article shall be released from criminal liability if it, by timely notification to the authorities or by other means, has actively contributed to the prevention of the use of mercenaries in armed conflict, military or other violent actions, and if its actions do not constitute a another component of the crime. "

The advantages of implementing the recommendations submitted in this paper will be expressed in:

1. The formulation of the normative-theoretical support necessary for the correct interpretation of the norms from art. 141 CP RM Activity of mercenaries;

2. Further improvement of the normative framework for criminalizing the act of mercenaries.

3. Facilitating the process of applying the provisions of art. 141 CP RM activity of mercenaries;

4. Optimizing the achievement of the purpose of the criminal punishment by aggravating the liability for the activity of the mercenaries provided in paragraph (2) art. 141 CP of the Republic of Moldova committed by a special subject; with the attraction of minors; by two or more persons; in the interest of an organized criminal group or criminal organization.

Perspective research plan on the topic of the paper:

1. Analysis of the paradigm of interfering with the crime of the activity of mercenaries with some crimes against public darkness and public order;

2. Identifying the legal nature of the activity of private military companies carried out for the purpose of recruiting, hiring, training, financing or other insurance of mercenaries, as well as their use in armed conflict, military action or other violent actions aimed at overthrowing or undermining the order constitutional violation or violation of the territorial integrity of the state;

3. Extensive research into the legislation in the field of states that do not criminalize the activity of mercenaries.

Bibliography

1. ARSENI AI. Constitutional Law and Political Institutions: Treaty: [in vol.] / Alexandru Arseni. - 2nd ed., Rev. -Chisinau: CEP USM, 2019 -. Vol.I - ISBN 978-9975-149-40-2, 273 p., P.233.
2. AVORNIC GH., GRECU R. The legal work of Constantin Stere-untapped scientific treasure. In: National Law Review no. 6, 2015, pp. 5-10. pp. 6
3. BARBĂNEAGRĂ A., GAMURARI V. War crimes. Chisinau, 2008, Tipografia Reclama SA, 500 pp. ISBN 978-9975-9650-6-40.
4. BORODAC. A. Manual of criminal law special part. Central Printing House. Chisinau 2004. 622 p.
5. BOTEZATU I., O. RADIONOVA. About the practice of application by the courts of paragraph (1) art.141 of the Criminal Code of the Republic of Moldova, which provides for liability for the activity of mercenaries. Published in: Актуальные научные исследования в современном мире выпуск 6 (26) часть 6 Июнь 2017 г. сборник научных трудов. P. 5-10.
6. BRÎNZA S., ULIANOVSKI X., STATI V. et al. Criminal law. Vol.II. Chisinau: Cartier Juridic, 2005. 804 p. In online version: <http://drept.usm.md/public/files/Dreptpenalspecialf2f52.pdf>
7. BRÎNZA, S., STATI.V., Criminal Law Special Part vol.I 1062 p. Chisinau 2011. Central Printing House
8. BRÎNZA, S., STATI.V. Criminal law treaty Special part vol. I. Chisinau 2015. Central Printing House.
9. CAUIA A. Legal regulation of the status of mercenary in the armed conflict. In: Building the rule of law and highlighting the cultural and historical heritage of Moldova in the context of European integration. Materials of the annual International Scientific Conference of Young Researchers. Second Edition, March 28, 2008. Chisinau: Institute of History, State and Law of the ASM, 2009, p.100.
10. CAUIA A. Legal qualification of the participants in the armed conflict in eastern Ukraine. In the Journal of University Legal Studies no. 3-4 of 2014. ULIM. P. 34 available <https://ulim.md/sju/wp-content/uploads/SJU-3-4-2014.pdf>;
11. CRIMINAL CODE of the Republic of Moldova. Comment / Sub red. of A. Barbăneagră. Chisinau: ARC, 2003. 836 pages; Barbăneagră A., Berliba V., Gurschi C. and others. Commented and annotated criminal code. Chisinau: Legal District, 2005. 656 pages;
12. CONSTITUTION OF THE REPUBLIC OF MOLDOVA, Commentary. Arc Publishing House 2012 .http://www.constcourt.md/public/files/file/informatie_utilita/Comentariu_Constitutie.pdf;
13. CUȘNIR V. Course notes particularities of the qualification of economic crimes (Cycle II). USEM, Chisinau 2013;
14. CUȘNIR V. Reflections on the legal regime of special investigative measures for the collection of information on possible events and / or actions that could endanger state security. In: Materials of the National Scientific-Practical Conference "Security Mandate: Current Issues of Interpretation, Legislation and Practice", 2020, Chisinau. ISBN 978-9975-56-783-1. pp. 19
15. CUȘNIR V. Sanctioning terrorist financing: the international and national legal framework. In the Materials of the Conference "Strategic Security Environment: Trends and Challenges" Chisinau, Moldova, May 18, 2017 P.40
16. GHEORGHITĂ, M. Treatise on forensic methodology. Chisinau, CEP USM 2015-532 pp. ISBN 978-9975-71-606-2;

17. GRECU R. On the legal nature and humanistic landmarks of amnesty and pardon. In: Scientific Annals of the University of European Political and Economic Studies "Constantin Stere". Volume 2, Second Edition, Chisinau: USPEE "Constantin Stere" (F.E.P. "Central Printing House"), 2014, p.13-19. ISSN 1857-4858 15;
18. GRECU R. The historical evolution of the notion and definition of criminal policy. In the National Law Review no. 7-9 of 2018.
19. GRECU R. Protection of fundamental human rights and freedoms - vector of criminal policy in the era of globalization. In: The state and the law between tradition and modernity. Materials of the national conference with international participation. P. 30-37. ISBN 978-9975-108-77-5.
20. GRECU R. COPTILEȚ V. The contribution of Constantin Stere to the modernization of the National Institutions. Draft Constitution. In: National Law Review no. 6, 2015. pp. 19.
21. GRECU R., MACOVEI V. The objective side of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP RM. In: National Law Review no. 3. 2020;
22. GRECU R., MACOVEI, V. On the need to criminalize the act of recruiting mercenaries, at paragraph (2) art.141 CP RM - The activity of mercenaries. In: International Scientific Journal of the Rule of Law no.4. 2019 ;
23. GUREV. D. Criminal liability for the crime of kidnapping. Doctoral thesis in Law. Chisinau, USM 2016;
24. IUSTIN. V. The juridical-criminal analysis of the crimes regarding the dissemination of the information referring to the objects of industrial property, as well as the fraudulent appropriation by a third party of the quality of author or the coercion to co-authorship (art. 1852 par. (1) C.pen.) In the National Law magazine no. 3 from 2010 pp. 57-67, pg. 57. https://ibn.idsi.md/sites/default/files/imag_file/7.Analiza%20juridico_penala%20a%20infractiunilor%20privind%20raspindirea%20informatiilor%20care%20se%20refera%20de%20la%20obiectele%20industriale.pdf 20proprietate%;
25. LAW No. 223 of 13-10-2005 for the accession of the Republic of Moldova to the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, Published on: 04-11-2005 in the Official Gazette no. 145 art. 693. In force for the Republic of Moldova since 28.02.2006;
26. MACOVEI, V. The form of guilt of the subject of the crime of the activity of the mercenaries provided in art. 141 CP RM. In: Contemporary Concerns of the Social Sciences. 10th edition, December 5-6, 2019, Chisinau. Chisinau, 2019: "Print-Caro" SRL, 2019, pp. 319-329. ISBN 978-9975-3371-7-5.
27. MACOVEI, V. On the need to increase the criminal liability for the crime of activity of mercenaries provided in art. 141, para. (2) Criminal Code of the Republic of Moldova. In: Theory and practice of public administration. May 17, 2018, Chisinau. Chisinau, Republic of Moldova: Academy of Public Administration, 2018, pp. 561-567.
28. MACOVEI, V. The object of the crime of the activity of the mercenaries provided in paragraph (1) art. 141 CP RM. In International Scientific Journal of the Rule of Law no.1-2. 2019:
29. MACOVEI, V. The subject of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP RM. In In: National Law Review no. 3. 2020;
30. MACOVEI, V .. The Subjective side of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP RM. In: International Scientific Journal of the Rule of Law no.4. 2019;

31. POPOVICI T. Decent traditions for young lawyers at the age of 65 of the State University. In the National Law Review no. 6-7, 2011.pg 8-9.
https://ibn.idsi.md/sites/default/files/imag_file/Traditii%20decente%20126_127.pdf
32. BOBOTOV ST., VASILIEV D. I. French model of the rule of law // Soviet state and law. 1990. No. 11. S. 105-112.
33. BORTNIK O. Vyznachennya priest "naimanets" in international legal acts of a universal character <https://naub.oa.edu.ua/2011/vyznachennya-ponyattya-najmanets-v-mizhnarodno-pravovyh-aktah-universalterho>
34. FV SHORT Mercenary and peculiarities of the influence of criminal migration on it // Economic, legal and spiritual problems of the present. Pyatigorsk, 2006.S. 132-135 (0.2 sq.).
35. FV SHORT Some questions of regulation of responsibility for mercenary activity in international legal acts // Actual problems of law: theory and practice: Sat. scientific. works of the Faculty of Law. Issue 5. Krasnodar, 2006.S. 173-180 (0.3 pp.).
36. KUDELKO K. Modern mercenarism: the letter of the law. Mai 2017 disponibil <https://warspot.ru/7256-sovremennoe-naemnichestvo-bukva-zakona>
37. POTAPOV A. A. Responsibility for mercenary activity: problems of doctrinal interpretation of Art. 359 of the Criminal Code of the Russian Federation // Investigator. 2003. No. 2. P. 6.
38. NAINER A. KOVALEV SA. War Crimes: Genocide. Terror. Struggle for justice. per. from English. Bogdanosvsky AS. M. Juurists, 2000 -368 p. from. Nineteen

List of author's publications on the topic of the thesis

1. GRECU R., MACOVEI V. The objective side of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP RM. In: National Law Review no. 3. 2020;
2. GRECU R., MACOVEI, V. On the need to criminalize the act of recruiting mercenaries, at paragraph (2) art.141 CP RM - The activity of mercenaries. In: International Scientific Journal of the Rule of Law no.4. 2019;
3. MACOVEI, V. The form of guilt of the subject of the crime of the activity of the mercenaries provided at art. 141 CP RM. In: Contemporary Concerns of the Social Sciences. 10th edition, December 5-6, 2019, Chisinau. Chisinau, 2019: "Print-Caro" SRL, 2019, pp. 319-329. ISBN 978-9975-3371-7-5;
4. MACOVEI, V. On the need to increase the criminal liability for the crime of activity of mercenaries provided in art. 141, para. (2) Criminal Code of the Republic of Moldova. In: Theory and practice of public administration. May 17, 2018, Chisinau. Chisinau, Republic of Moldova: Academy of Public Administration, 2018, pp. 561-567;
5. MACOVEI, V. The object of the crime of the activity of the mercenaries provided in paragraph (1) art. 141 CP RM. In International Scientific Journal of the Rule of Law no.1-2. 2019;
6. MACOVEI, V. The subject of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP RM. In In: National Law Review no. 3. 2020;
7. MACOVEI, V .. The Subjective side of the crime of the activity of mercenaries provided in paragraph (1) art. 141 CP RM. In: International Scientific Journal of the Rule of Law no.4. 2019.

Annotation

Vera Macovei “Legal-criminal analysis of the crime of mercenary activity provided in art. 141 CP RM ”. Doctoral thesis in law. Doctoral School in Law, Political and Administrative Sciences, USPEE “C. Stere ”-ASEM, Chisinau 2020

The structure of the work: The doctoral thesis elaborated includes: Introduction; 4 chapters, general conclusions and recommendations; bibliography of 373 titles; the statement regarding the assumption of responsibility; Author's CV.

Field of study: Criminal law Special part

Purpose and objectives of the work: The purpose of the investigation consists in the complex analysis of the constitutive elements of the crime provided in art.141 CP RM The activity of mercenaries and the theoretical-practical evaluation of the constitutive content of the analyzed crimes; in highlighting the situations that appeared in the judicial practice in the process of legal classification of the investigated criminal act with the argumentation of proposals for their solution and the formulation of conclusions and recommendations aimed at deepening the theoretical-practical conceptualization and further improving the incriminating framework for mercenaries.

In order to achieve the proposed goal, the following objectives were set: researching the existing doctrinal concepts and theses in the literature in the country and abroad related to the topic of investigation; the theoretical-normative analysis of the two standard variants of the crime components provided in art. 141 CP RM Activity of mercenaries; appreciation of the fullness of the normative regulations and identification of the existing imperfections in the incrimination norms stipulated at art.141 CP RM; analysis of the legal framework for criminalizing the activity of mercenaries in the legislation of other states; formulating conclusions and recommendations as a *ferenda* law aimed at optimizing the incriminating framework in the researched matter.

Scientific novelty and originality: The innovative dimension of the thesis is marked by the fact that this is a first attempt at a comprehensive and complex analysis of the theoretical and practical problems of criminal liability for crimes under art.141 CP RM, in which they found, in particular, the expression: analysis of the specific features of the “mercenary” as the subject of the crime provided in paragraph (1) art.141 CP RM; accurate detection of the purpose of the mercenary activity; arguing the opportunity to complete the regulations from paragraph (2) art.141 of the Criminal Code of the Republic of Moldova with another normative way of committing the criminal act - “recruitment”; motivating the opportunity to complete the normative framework for criminalizing the analyzed crime with new aggravating circumstances.

The theoretical importance and appliance value of the work lies in the fact that it is a scientific support for further deepening theoretical and practical research in the field of criminal law, formulates proposals aimed at improving the legislative framework of criminalization and overcoming controversial practical situations of application of art.141 CP RM.

MACOVEI, VERA

**LEGAL-CRIMINAL ANALYSIS OF THE CRIME OF THE A MERCENARIANS
CTIVITY PROVIDED IN ART. 141 CP RM**

SPECIALTY- 554.01 CRIMINAL LAW AND CRIMINAL EXECUTIONAL LAW

Summary of the doctoral thesis

Approved for printing: 17.11.2020

Paper size 60x84 1/16

Offset paper. Offset printing.

Circulation 10 ex

Printing sheets:,

Order no .:

Poligraphic Publishing Company Central Printing House
Florilor Street 1, Chisinau

