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**BOLDESCU ANASTASIA**

**CRIMINAL LIABILITY FOR ILLEGAL HUNTING**

**SPECIALTY 554.01 – CRIMINAL LAW AND CRIMINAL  
ENFORCEMENT LAW**

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## RESEARCH CONCEPTUAL MILESTONES

**Topicality.** The review of the provision specified in Article 233 of the Moldovan Criminal Code (hereinafter referred to as the MCrC) enables us to infer that certain criteria have been taken into account upon assessing the social threat of the event criminalised in this Article, namely: 1) the significance, for the society, of social value adversely affected by illegal hunting; 2) the feature and severity of harmful consequences generated following the commission of this offence; 3) the peculiarities (place, time, means/tools, etc.) describing the harmful event unlawfulness specified in Article 233 of the MCrC; 4) the features of the subject of offence. The social threat of the offence specified in Article 233 of the MCrC means that abusive acquisition of live natural resources may lead to quick and significant reduction in the number of wild animals from the natural environment, can slow-down the recovery processes of such resources, extinguish certain wild animal species in some cases, cause irreparable damage to the existing ecosystems and shrink the opportunities for humankind to live in a healthy and diverse environment, to be in harmony with Mother-nature, and to benefit from psychological and emotional welfare. No doubt, one of the most effective levers for influencing the negative processes mentioned above is to apply criminal liability for illegal hunting. However, due to its poor quality, the provisions of Article 233 of the MCrC fail to ensure positive outcomes in preventing and fighting this offence. To this end, it is paramount to conduct an in-depth research of constitutive elements of the offence laid down in Article 233 of the MCrC, as well as of the issues related to Article interpretation and use. Solutions aimed at remedying the imperfections that affect the predictability, clarity and efficiency of Article 233 of the MCrC would be suggested afterwards.

*Framing the Topic into International Concerns.* To achieve the established goals, namely to ensure environmental security and prevent and fight illegal hunting, it is essential that all states cooperate. Due to increased globalization and interdependence among the states, none of the countries would be able to achieve these goals if acting alone. Therefore, to prevent and fight illegal hunting, international legal tools that provide rights and obligations for states, as well as prohibitions, sanctions and accountability measures are indispensable.

Against this background, the Preamble to the Convention on the Protection of the Environment through Criminal Law, adopted on 04.11.1998 at Strasbourg, underlines that “criminal law has an important role to play in protecting the environment. [...] Environmental violations having serious consequences must be established as criminal offences subject to appropriate sanctions”.<sup>1</sup> Pursuant to Article 2 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, “«environmental damage» means a measurable adverse change in a natural resource [...] which may occur directly or indirectly.”<sup>2</sup> For the offence laid down in Article 233 of the MCrC, the damage exceeding 200 conventional units due to illegal hunting “without proper authorisation either during periods when hunting is prohibited or in prohibited places, or using prohibited tools and methods”<sup>3</sup> occurs directly. In this way, the Moldovan lawmakers suggest that any damage worth more than 200

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<sup>1</sup> *Convention on the Protection of the Environment through Criminal Law.* [accessed on 19.07.2023] Available at: <https://rm.coe.int/168007f3f4>

<sup>2</sup> *Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.* [accessed on 07.06.2023] Available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex:32004L0035>

<sup>3</sup> The Criminal Code of the Republic of Moldova: No. 985 dated 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 128-129, 1012.

conventional units represents the negative impact highlighted in the aforementioned Convention and Directive.

Biodiversity is that key attribute that enables us to identify the specific social value which is protected against the offence specified in Article 233 of the MCrC. The definition of biodiversity is given in Article 2 of the UN Convention of 05.06.1992 on Biological Diversity: “biological diversity means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems”.<sup>4</sup> By this it is suggested that biodiversity implies diversity within species, between species and of ecosystems. In this assumption, social threat is conditioned by the reduction in biological diversity of wild birds and animals, as well as by the negative inherent changes of the environment as a whole.

Another equally important international legal tool is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as the CITES).<sup>5</sup> Article 233 of the MCrC makes no differentiation between illegal hunting of wild animals specified in the Convention attachments, and illegal hunting of wild animals that are not mentioned therein. The increased social threat of illegal hunting of wild fauna species in danger of extinction is thereby neglected. This leads us to suggest, within this Thesis, to criminalise the event of illegal capture, kill or injury of animals specified in the CITES Attachments.

Against a different background, three EU Directives, namely – Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora<sup>6</sup> (hereinafter referred to as Directive 92/43/EEC), Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law<sup>7</sup> (hereinafter referred to as Directive 2008/99/EC) and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds<sup>8</sup> (hereinafter referred to as Directive 2009/147/EC) – recommend to criminalise the whole range of events concealing fauna poaching. This leads us to suggest, within this Thesis, supplementing the criminal law with an article covering the liability for concealing fauna poaching.

*Framing the topic into national and regional concerns.* This Research has got a consistent scientific base, which comprises monographs, treaties, doctoral theses, research articles and other reference works developed by Moldovan and other countries’ researchers, namely: Gr. Ardelean, A. Borodac, S. Brinza, R. Cojocaru, S. Copetchi, Iu. Diaconu, R. Eremciuc, L. Girla, Iu. Larii, V. Manea, V. Moraru, M. Pascal, L. Spinu (Dumneanu), V. Stati, E. Stoleru, Iu. Tabarcea, I. Terus, X. Ulianoschi (*the Republic of Moldova*); V. Kereži (*Canada*); G. Ege (*the Swiss Confederation*); M.G. Abdulmutalibov, A.B. Baumstein, J.A. Beghenova, N.I. Bratasova, V.A. Ciugaev, G.M. Gadjilov, A.A. Gartfeld, S.I. Golubev, D.B. Gorohov, D.M. Gusarenko, D.A. Hasimov, O.L.

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<sup>4</sup> *Convention on Biological Diversity*. [accessed on 06.03.2022] Available at: [https://treaties.un.org/doc/Treaties/1992/06/19920605%2008-44%20PM/Ch\\_XXVII\\_08p.pdf](https://treaties.un.org/doc/Treaties/1992/06/19920605%2008-44%20PM/Ch_XXVII_08p.pdf)

<sup>5</sup> See: *Convention on International Trade in Endangered Species of Wild Fauna and Flora*. [accessed on 16.08.2022] Available at: <https://cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf>

<sup>6</sup> See: *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora*. [accessed on 04.06.2022] Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:31992L0043>

<sup>7</sup> See: *Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law*. [accessed on 16.03.2022] Available at: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32008L0099>

<sup>8</sup> See: *Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds*. [accessed on 01.07.2022] Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0147>

Dubovik, E.N. Jevlakov, A.M. Kablov, A.S. Kurmanov, N.A. Lopasenko, A.M. Plesakov, E.M. Snâtko, D.A. Sutulina, E.V. Vinogradova, R.A. Zabavko, L.A. Zueva (*the Russian Federation*); O. Krange, K. Skogen (*the Kingdom of Norway*); B. Arroyo, M. Mateos-Delibes (*the Kingdom of Spain*); E. von Essen, A. Fischer, H.P. Hansen, H. Nordström Källström, N. Peterson, T. Rai Peterson (*the Kingdom of Sweden*); R. Duffy (*the United Kingdom of Great Britain and Northern Ireland*); V. Homici, V.V. Marciuk, V.V. Misiurin, A. Soltanovici (*the Republic of Belarus*); D. Tadie (*the Federal Democratic Republic of Ethiopia*); A.T. de Azevedo Chagas, M.A. da Costa, A.P.V. Martins, L.C. Resende, E. Kalapothakis (*the Federative Republic of Brazil*); S.D. Bekişeva, D.S. Ighilmanova, V.A. Novikov, R.T. Nurtaev (*the Republic of Kazakhstan*); L.S. Baekova (*the Republic of Kyrgyzstan*); A. Lowassa (*the United Republic of Tanzania*); E. Botian, F. Brasoveanu, T. Dascal, R. Dinu, M. Dobrinou, M.A. Hotca, R. Ionescu, R. Jurj, C. Manta, V. Nicolcescu, M. Rotaru, E.-G. Simionescu, S.A.E. Vernea (*Romania*); S.L. Eliason (*the USA*); O.O. Dudorov, S.B. Gavras, S.A. Golub, M.V. Gospodaret, I.O. Har, D.V. Kamenski, O.O. Maslova, S.V. Matveev, V.K. Matviiciuk, L.D. Neciporuk, L.O. Prokopovici, N.G. Taran, O.A. Uşîtki, M.P. Volak (*Ukraine*); B.S. Elek (*Hungary*); A. Schloenhardt (*Commonwealth of Australia*), etc.

*Framing the topic into an inter- and cross-disciplinary context.* Of course, this Research has not stuck merely to the criminal law aspects of the offence specified in Article 233 of the MCrC. Hunting, in general, and illegal hunting, in particular, have common points with areas that go beyond the framework of criminal law. As a result, we used some works relating to other branches or legal disciplines as sources, including criminology, forensic science, environmental law, civil law, criminal procedural law, etc. The authors of such works are as follows: A.T. de Azevedo Chagas, N.I. Bratasova, M.M. Brinciuk, M.A. da Costa, L. Dogaru, R. Duffy, G. Ege, V.V. Egosin, S.L. Eliason, L. Florea, G.M. Gadžilov, V.V. Gucikov, E. Gugulan, E. Kalapothakis, V. Kereži, O. Krange, T. Kurilo, A.S. Kurmanov, A. Lowassa, E. Lupan, D. Marinescu, A.P.V. Martins, E.-M. Minea, C. Negrei, A. Pinzari, L.C. Resende, A. Rotaru, A. Schloenhardt, K. Skogen, etc.

**Research purpose:** to carry out an in-depth research of the offence specified in Article 233 of the MCrC (taking into consideration the provisions (recently entered into force) of Law No. 298/2018 and GD No. 254/2021), having revealed the difficulties occurring while interpreting Article 233 of the MCrC and/or classifying the offence covered by this Article, and laying down solutions to overcome such difficulties.

**Research goals:** to review the opinions stated in the speciality doctrine concerning the liability for the offence specified in Article 233 of the MCrC; to consider non-criminal referencing rules for Article 233 of the MCrC, which are needed to interpret it; to investigate, for the sake of comparison, the illegal hunting regulations laid down in the criminal law of other countries, as well as the rules under which this offence is criminalised, which applied on the current territory of the Republic of Moldova in the past; to estimate the matching level between the international and European rules on preventing and fighting against illegal hunting, on the one hand, and Article 233 of the MCrC and related misdemeanour rules, on the other hand; to address the controversies occurring in the content of generic and special legal subject-matters of the offence specified in Article 233 of the MCrC; to determine the material subject-matter of the offence specified in Article 233 of the MCrC, as well as the criteria that allow distinguishing this subject-matter from the material subject-matter of other offences; to present the arguments supporting a more efficient criminal protection against illegal hunting of wild fauna species in danger of extinction; to review the concept of hunting under the offence specified in Article 233 of the MCrC; to investigate the conditions outlined in Article 233 of the MCrC, under which hunting becomes illegal; to determine the peculiarities that describe the harmful consequences related to the offence specified in Article 233 of the MCrC; to define the

guilty act content of the offence specified in Article 233 of the MCrC; to identify the peculiarities that describe the reason, purpose and emotions of the offence specified in Article 233 of the MCrC; to determine the general conditions concerning the natural person – subject of the offence laid down in Article 233 of the MCrC and legal person – subject of this offence; to consider the intrinsic feature of the offence subject under the assumption laid down in Article 233 (2) of the MCrC; to identify the peculiarities describing the shared participation in the offence specified in Article 233 of the MCrC; to analyse the judicial practice cases when Article 233 of the MCrC and related misdemeanour rules applied; to define the imperfections affecting the predictability, clarity and efficiency of Article 233 of the MCrC; to recommend solutions aimed at remedying such imperfections.

*The research hypothesis* is based on the presumption that the word combination “ambient environment” is able to clearly express the idea that only the habitat of natural/human environment where people cohabitate with the wild flora and fauna shall be protected against the offences laid down in Chapter IX, Special Part of the MCrC; the offence specified in Article 233 of the MCrC has a material subject-matter even though it is not specified in this Article. The subject-matter is represented by the wild fauna living in the wild/semi-wild that ensures their connection with natural environment, and, at the time the offence is committed, are located outside the water fund area (for the purpose of Article 1 of Law No. 272/2011) or outside the airspace/underground adjacent to that area; Article 233 of the MCrC makes no differentiation between illegal hunting of wild fauna, specified in the Red Book of the Republic of Moldova and in the CITES Attachments, and illegal hunting of wild fauna that are not specified in those documents. Such state of affairs defy some provisions of Law No. 325/2005; Law No. 1246/2000; Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Directive 2008/99/EC; Directive 92/43/EEC. In the Moldovan legislation in force, harnessing of illegal hunting product, as well as activities related to it are subject to insufficient sanctions. The misdemeanour sanctions applied for the sales of animals included in the Red Book of the Republic of Moldova or in the CITES Attachments are not dissuasive enough to reduce the incentives for committing the offence specified in Article 233 of the MCrC; the referencing rules are an objective need when talking about setting the limits for applying Article 233 of the MCrC. It is imperative to resort to the regulatory acts used as references for Article 233 of the MCrC in order to understand which authorisation for hunting is appropriate and which is not; when hunting is prohibited and when is not; what place for hunting is prohibited and what is not; what tool for hunting is prohibited and what is not; what method for hunting is prohibited and what is not; how the size of the damage caused is identified; what special purpose the offence has. Interpretation of Article 233 of the MCrC is hindered by the controversies used to describe the terms “hunting” and “poaching” specified in Article 233 of the MCrC and by the rules referred to in Law No. 298/2018.

*Summary of research methodology and justification of the selected research method.* Several methods have been applied in the process of reviewing the Thesis legal and empirical bases, namely:

1) the formal (dogmatic) legal method that implies studying the regulatory content with its interpretation in a logical sequence. In this way we defined the semantics of Article 233 of the MCrC and of other criminal rules that proved their significance in the process of interpreting Article 233 of the MCrC and/or of classifying the offence covered by this Article; of related regulations stipulated by the Moldovan Contravention Code; of Law No. 298/2018, GD No. 254/2021 and other regulatory acts provisions referred to in Article 233 of the MCrC; of regulations on illegal hunting covered by the criminal legislation of other countries, as well as of rules under which the offence was criminalised that applied on the current territory of the Republic of Moldova in the past; of relevant explanations covered by the judgements issued by the Plenary of the Supreme Court of Justice of the

Republic of Moldova; of certain decisions and judgements issued by the Constitutional Court of the Republic of Moldova and by the Constitutional Court of Romania, etc.;

2) the method of systemic analysis, pursuant to which Article 233 of the MCrC is correlated with other parts of the legal system of the Republic of Moldova. Therefore, the notions used in this Article reveal their meaning only when referrals to non-criminal rules are made where they are either defined or used to describe certain assumptions. Hence, the notions used in Article 233 of the MCrC are as follows: “hunting”; “proper authorisation”; “periods when hunting is prohibited”, “prohibited places”; “prohibited tools”; “prohibited methods”; “poaching”; “person with senior position”; “public official”; “public office holder”. Except for the last three, these notions are not defined by the criminal law. Nonetheless, even for the last three notions, the definitions laid down in Article 123 of the MCrC are not sufficient for the criminal law user to grasp their significance. As a result, it is mandatory to resort to the relevant provisions of Law No. 298/2018, GD No. 254/2021 and of other regulatory acts comprising provisions Article 233 of the MCrC makes referrals to;

3) the comparative legal method intended to define the content of Article 233 of the MCrC by means of comparison. Under this method we distinguish two levels: a) macro level; and 2) micro level.

The first level implies a comparison of Article 233 of the MCrC with the regulations on illegal hunting stated in the criminal rules belonging to other countries. In its turn, the micro level implies comparing Article 233 of the MCrC with other criminal rules and with certain misdemeanour rules comprised by Moldovan law. Such rules stipulate liability for events that are similar to some extent with the offence specified in Article 233 of the MCrC. We have in mind the following: Articles 186-190, 191, 234 of the MCrC; Article 128 (1) or (2), Article 139, Article 140 (1) of the Moldovan Contravention Code (MCoC);

4) the historical-legal method that enabled finding out both the precedents Article 233 of the MCrC had in the laws applied prior to the Moldovan criminal law currently in force and the transformations it was subject to along the time of its use.

## **THESIS CONTENT**

The Thesis consists of three chapters. Each chapter ends with a sub-chapter depicting the summary of the described issue and the achieved outcomes.

Chapter 1 – *Analysis of scientific materials concerning the liability for illegal hunting* – reviews: the materials describing the liability for illegal hunting published both in the Republic of Moldova and abroad.

The core objective of the review conducted in Chapter 1 is to consider the opinions stated in the specialty doctrine concerning the liability for the offence specified in Article 233 of the MCrC. To a lesser extent, it is envisaged to: make a comparison among the regulations on illegal hunting laid down in the criminal law of other countries; address the controversies relating to the content of generic and special legal subject-matters of the offence specified in Article 233 of the MCrC; determine the material subject-matter of the offence specified in Article 233 of the MCrC, as well as the criteria that make it possible to distinguish this subject-matter from the material subject-matter of other offences; consider the special feature of the offence subject in the assumption laid down in Article 233 (2) of the MCrC.



The scientific article written by S. Brinza<sup>9</sup> was published in 2000. It reviews the offence specified in Article 170 “Illegal hunting” of the Moldovan Criminal Code adopted in 1961 (hereinafter referred to as of the 1961 MCrC). The notion of hunting is defined in the first place, followed by the rules applying to illegal hunting: without proper authorisation; during periods when hunting is prohibited; in prohibited places; with prohibited tools and methods. As Article 170 of the 1961 MCrC is a reference rule, the conducted analysis is based on the provisions of the Wildlife Regulation (hereinafter referred to as WR) (Annex 1 to Law No. 439/1995). Likewise, the Author reviews the notions used in Article 170 (2) of the 1961 MCrC: “large-scale damage”<sup>10</sup> and “wild animals and birds, whose hunting is absolutely prohibited”<sup>11</sup>. In this case the Author makes referrals to the provisions of Attachments 3, 4 and 6 to Law No. 439/1995.

A collective work was published in 2003, having A. Barbaneagra, V. Berliba, M. Birgau, *etc.* among the authors. The comment to Article 233 of the MCrC made in this work belongs to X. Ulianoschi.<sup>12</sup> The purpose of Article 233 of the MCrC is described first, followed by the review of its constitutive elements.

X. Ulianoschi points out that “the offence subject-matter is the animal kingdom in its natural status”.<sup>13</sup> Although it is not explicitly stated, the Author, most likely, had in view the special legal subject-matter of the offence laid down in Article 233 of the MCrC. Concerning the opinion of X. Ulianoschi on the content of that subject-matter: nobody questions that the animal kingdom in its natural status could represent a particular social value being derived from the ambient environment. However, we should not forget that the scientific concept on the offence legal subject-matter relies on a relational-value approach. In the next Chapter of the Thesis we would build on this approach to identify the special legal subject-matter of the offence laid down in Article 233 of the MCrC.

After having considered the material subject-matter of the offence laid down in Article 233 of the MCrC, X. Ulianoschi uses the word combination “animals and birds”<sup>14</sup>. The lexical constructions used in the domestic criminal doctrine have close semantics: “animals”<sup>15</sup>; “mammals and birds”<sup>16</sup>. In the context of considering the material subject-matter of the offence laid down in Article 233 of the MCrC, we shall review such wording and express our own opinion regarding this constitutive element of the offence subject-matter specified in Article 233 of the MCrC.

As for the objective aspect of the offence subject to review, X. Ulianoschi has suggested his own vision relating to the meaning of the notion “hunting” used in Article 233 of the MCrC. To this end, the Doctrinaire points out that “hunting, as action, means seeking, arousing, pursuing, chasing, injuring, killing or catching the wild game or any other activity aiming to acquire it”.<sup>17</sup> We shall take

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<sup>9</sup> BRINZA, Sergiu. Illegal hunting as governed by the Moldovan criminal legislation. In: *Statement on Scientific Activity conducted by MSU in 1998/99. Conference of faculty and researchers. Summaries of communications. Socio-human sciences*. Chisinau: MSU, 2000, pp. 9-10. ISBN 9975-917-56-9.

<sup>10</sup> The Criminal Code of the Republic of Moldova: No. 41 of 24.03.1961. In: *Вештиле Советулуй Сунрем ал PCCM*, 1961, No. 10, 41.

<sup>11</sup> *Ibidem*.

<sup>12</sup> BARBANEAGRA, Alexei et al. *The Criminal Code of the Republic of Moldova. Commentary / Under the editorship of A. Barbaneagra*. Chisinau: Arc, 2003. 836 p. ISBN 9975-61-291-1.

<sup>13</sup> *Ibidem*, p. 488.

<sup>14</sup> *Ibidem*, p. 350.

<sup>15</sup> BRINZA, Serghei, STATI, Vitalie. *Criminal Law Treaty. Special Part. Vol. I*. Chisinau: Central Printing House, 2015, p. 1298. 1328 p. ISBN 978-9975-53-469-7.

<sup>16</sup> GIRLA, L., TABARCEA, Iu. *Criminal Code of the Republic of Moldova, Special Part, Vol. I / ГЫРЛА, Л.Г., ТАБАРЧА, Ю.М. Уголовное право Республики Молдова. Часть особенная. Том I*. Кишинэу: Cartdidact, 2010, с. 562. 712 с. ISBN 978-9975-4158-2-8.

<sup>17</sup> BARBANEAGRA, Alexei et al. *The Criminal Code of the Republic of Moldova. Commentary / Under the editorship of A. Barbaneagra*. Chisinau: Arc, 2003, p. 488. 836 p. ISBN 9975-61-291-1.

account of this definition while investigating the harmful event laid down in Article 233 of the MCrC.

Further X. Ulianoschi investigates: the circumstances under which hunting becomes illegal; the notion of poaching; the harmful consequences of illegal hunting; the subjective constitutive elements of this offence.

A textbook developed by A. Borodac<sup>18</sup> was published in 2004.

According to the opinion of this Author, the objective aspect of the offence laid down in Article 233 of the MCrC (“Illegal hunting”) is composed of three constitutive elements: “1) illegal hunting actions; 2) large-scale damage; 3) causal relationship between the actions and consequences stated in the criminal law”.<sup>19</sup> Further, the regulatory ways of illegal hunting are considered, namely: hunting without proper authorisation; during periods when hunting is prohibited; hunting in prohibited places; hunting with prohibited tools and methods; hunting with the use of public office for personal gain. Unlike S. Brinza<sup>20</sup>, A. Borodac also considers the subjective aspect and the subject of illegal hunting. As regards the special legal subject-matter and the material subject-matter of the offence in question, A. Borodac formulated general findings without taking account of the specificity of the offence laid down in Article 233 of the MCrC.

Another textbook was developed by L. Girla and Iu. Tabarcea<sup>21</sup> in 2010.

Just like X. Ulianoschi, these authors begin the review of illegal hunting by defining the content of special legal subject-matter and material subject-matter of this offence. According to L. Girla and Iu. Tabarcea, the special legal subject-matter of the offence laid down in Article 233 of the MCrC is the “social relationship in the area of protection and use of wild animals”.<sup>22</sup> As for the material subject-matter of the offence subject to review, the two authors believe that it is represented by “the wild animals (mammals, birds) who enjoy natural freedom, live in forests, fields and marshlands and are located permanently or temporarily on the Moldovan territory. A mandatory condition is that the existence of such birds and animals is not due to human activity”.<sup>23</sup>

Unlike A. Borodac, S. Brinza and X. Ulianoschi, L. Girla and Iu. Tabarcea believe that the lack of proper authorisation; hunting during periods when it is prohibited; hunting in prohibited places; the use of prohibited tools and methods for hunting; the use of public office for illegal hunting are secondary components of the illegal hunting objective aspect. Just like S. Brinza, L. Girla and Iu. Tabarcea review the regulatory ways and harmful consequences of illegal hunting, making referrals to the appropriate annexes to Law No. 439/1995.

The review conducted by L. Girla and Iu. Tabarcea ends with the consideration of the offence subjective aspect and its subject.

S. Brinza and V. Stati<sup>24</sup> developed a paper that was published in 2015. It is devoted, inter alia, to the review of the offence specified in Article 233 of the MCrC.

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<sup>18</sup> BORODAC, Alexandru. *Criminal Law Textbook. Special Part*. Chisinau: Central Printing Office, 2004. 622 p. ISBN 9975-9788-7-8.

<sup>19</sup> Ibidem, p. 296.

<sup>20</sup> See: BRINZA, Sergiu. Illegal hunting in criminal legislation of the Republic of Moldova. In: *Statement on Scientific Activity conducted by MSU in 1998/99. Conference of faculty and researchers. Summaries of communications. Socio-human Sciences*. Chisinau: MSU, 2000, pp. 9-10. ISBN 9975-917-56-9.

<sup>21</sup> GIRLA, L., TABARCEA, Iu. *Criminal Law of the Republic of Moldova. Special Part. Vol. 1* / ГЫРЛА, Л.Г., ТАБАРЧА, Ю.М. *Уголовное право Республики Молдова. Часть Особенная. Том 1*. Кишинэу: Cartdidact, 2010, 592 c. ISBN 978-9975-4158-2-8.

<sup>22</sup> Ibidem, c. 562.

<sup>23</sup> Ibidem, c. 562.

<sup>24</sup> BRINZA, Serghei, STATI, Vitalie. *Criminal Law Treaty. Special Part. Vol. I*. Chisinau: Central Printing House, 2015. 1328 p. ISBN 978-9975-53-469-7.

In many respects, the offence review relies on the benchmarks describing the analysis of illegal hunting, conducted by S. Brinza and V. Stati in their works, which were considered above.

The notion of environmental offences is defined as follows: “Environmental offences represent the group of offences laid down in Chapter IX, Special Part of the MCrC”<sup>25</sup>; “These are socially dangerous acts committed with intent or done recklessly that adversely affect or jeopardise – exclusively or primarily – social relations regarding environmental integrity”.<sup>26</sup> The generic legal subject-matter of these offences has been defined as well. In the context of identifying the types of environmental offences it is also mentioned that illegal hunting is part of the subgroup of offences affecting the conservation of fauna biodiversity.

It is emphasised that “for the purpose of Article 233 of the MCrC, hunting a) without a hunting permit; b) without an authorisation to carry and use hunting firearms; c) with an invalid hunting permit; [etc.] shall not be treated as hunting without proper authorisation.”<sup>27</sup> All assumptions referring to the regulatory way of hunting during periods when hunting is prohibited are specified. As a novelty, it mentions that “according to Article 26 (2) of the Law on State Border of the Republic of Moldova, hunting at the state border, within the border lane and within the state border protection strip is prohibited. Shooting and chasing animals across the state border is prohibited”.<sup>28</sup> Prohibited tools and methods of hunting are also described.

Further, the time of consummation of the offence laid down in Article 233 of the MCrC is established, the misdemeanour rules supplementing this Article, the illegal hunting subjective aspect and subject-mater are identified.

The review of research materials on criminal liability for illegal hunting published in the Republic of Moldova continues with an article developed by S. Brinza and V. Manea<sup>29</sup> in 2017.

It is primarily focused on analysing Article 233 of the MCrC and the draft law on amendments and addenda to this Article.<sup>30</sup> S. Brinza and V. Manea consider the shortcomings of both Article 233 of the MCrC and the draft law. They suggested replacing the word “game” in the title of Article 234 of the MCrC and in its content with “hunting”. Likewise, the Authors recommend supplementing Article 233 of the MCrC with paragraph (2), having the following content: “The same action committed by a public office holder shall be punished with a fine in the amount of 700 to 1000 conventional units or with the deprivation of the right to hold certain positions for up to 3 years or with imprisonment for 5 to 7 years”.<sup>31</sup> Concurrently, the Authors recommended deleting the words “use of public office for personal gain”<sup>32</sup> from Article 233 (1) of the MCrC, having presented the appropriate arguments.

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<sup>25</sup> Ibidem, p. 1199.

<sup>26</sup> Ibidem, p. 1200.

<sup>27</sup> Ibidem, p. 1299.

<sup>28</sup> Ibidem, p. 1302.

<sup>29</sup> BRINZA, Serghei, MANEA, Vladislav. A new vision regarding the criminalisation of illegal hunting by using public office for personal gain. In: *Studia Universitatis Moldaviae (Social Science Series)*, 2017, No. 3, pp. 57-63. ISSN 1814-3199.

<sup>30</sup> *Draft Law on Amendments and Addenda to Some Legislative Acts*. [accessed on 30.11.2021] Available at: <http://particip.gov.md/proiectview.php?l=ro&idd=2854>

<sup>31</sup> BRINZA, Serghei, MANEA, Vladislav. A new vision regarding the criminalisation of illegal hunting by using public office for personal gain. In: *Studia Universitatis Moldaviae (Social Science Series)*, 2017, No. 3, pp. 57-63. ISSN 1814-3199.

<sup>32</sup> The Criminal Code of the Republic of Moldova: No. 985 dated 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 128-129, 1012.

We shall conclude the review of research papers related to the Thesis topic with lecture notes developed by X. Ulianoschi<sup>33</sup> in 2023.

This paper (which is one of the few works devoted to the analysis of environmental offences through criminal law) reviews all offences laid down in Chapter IX, Special Part of the MCrC. Of course, it also deals with the offence specified in Article 233 of the MCrC.

X. Ulianoschi distinguishes two subgroups of environmental offences: 1) environmental offences of general scope; and 2) environmental offences of special scope. Likewise, on page 116 of his work and, accordingly, on page 123, the Doctrinaire defines the generic legal subject-matter for each of these subgroups. Nonetheless, at a closer look, one may conclude that the description is the same in both cases. Once again, this proves the axiom that a group of offences laid down in a chapter of the Special Part of the MCrC may have just one generic legal subject-matter, not two or several. A subgroup of offences broken down as a result of classifying the offences laid down in a chapter of the Special Part of the MCrC cannot have a generic legal subject-matter specific for this subgroup. In such case we may discuss eventually one subgroup legal subject-matter. Such category of the offence legal subject-matter may have a theoretical, scientific significance, but is not based on chapter-structured criminal law that represents the exclusive prerogative of lawmakers.

X. Ulianoschi reports the offence specified in Article 233 of the MCrC to the subgroup of environmental offences with special feature. The type of “offences affecting the fauna biodiversity” is distinguished in this subgroup,<sup>34</sup> which covers the offence referred to in Article 233 of the MCrC and the one specified under Article 234 of the MCrC.

Describing the special legal subject-matter of illegal hunting, X. Ulianoschi believes it is composed of a “group of homogenous social relations relating to the conservation of fauna biodiversity.”<sup>35</sup> It should be noted that the same content of the special legal subject-matter is highlighted for the offence laid down in Article 234 of the MCrC. In other words, pursuant to X. Ulianoschi, two different environmental offences may have not only one common generic legal subject-matter, but also one common special legal subject-matter. While reviewing the special legal subject-matter and the material subject-matter of the offence specified in Article 233 of the MCrC, we shall argue that they must be differentiated from the special legal subject-matter and material subject-matter of the offence specified in Article 234 of the MCrC.

When considering the material subject-matter of the offence laid down in Article 233 of the MCrC, X. Ulianoschi talks about the “entire body of wild animals [...]”.<sup>36</sup> The Doctrinaire’s originality is that he focuses on the physicality, materiality, and tangibility of the entity representing the material subject-matter of the offence. In this regard, the entire body of wild animals is the physical expression of wild animals, without any confusion with the animals themselves. If we make a parallel, then we should state that a person shall not be confounded with his/her body. In the context of considering the material subject-matter of the offence laid down in Article 233 of the MCrC we did not insist to emphasise the physicality of wild animals that shapes the corresponding subject-matter. This is because, as we mentioned above, the wild fauna cannot be treated as victims of illegal hunting. In case of offences against a person it is important to delimit the person from his/her body as the person represents the social value at the juncture of the suprageneric legal subject-matter of offences against the person. The person’s body is the material subject-matter of

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<sup>33</sup> ULIANOVSKI, Xenofon. *Environmental offences: Lecture notes*. Chisinau: CEP MSU, 2023. 275 p. ISBN 978-9975-62-5081.

<sup>34</sup> *Ibidem*, p. 124.

<sup>35</sup> *Ibidem*, p. 249.

<sup>36</sup> *Ibidem*, p. 249.

these offences. Therefore, the person and his/her body have distinct legal roles in the context of offences against the person. As for the offence laid down in Article 233 of the MCrC, the wild fauna fulfil a single role – as a material subject-matter of the offence. This is the reason why we decided not to emphasise their physicality when we defined the material subject-matter of illegal hunting.

When considering the objective aspect of the offence laid down in Article 233 of the MCrC, X. Ulianovschi makes referrals to Annex 1 to Law No. 439/1995.

As regard the objective aspect of the offence laid down in Article 233 of the MCrC, we reckon that Law No. 439/1995 has lost its former significance. According to Article 34 (3) of Law No. 298/2018, this Annex was repealed as of 01.03.2021. Nowadays, the core referencing rules for defining the objective aspect of the offence laid down in Article 233 of the MCrC are those stipulated by Law No. 298/2018 and by Annex 3 to Government Decision No. 254 of 13.10.2021 for approving the regulatory acts on setting up and managing the National Wildlife Fund (hereinafter referred to as GD No. 254/2021).

While considering the objective aspect of the offence laid down in Article 233 of the MCrC the notion of poaching is reproduced from Annex 1 to Law No. 439/1995. Indeed, the word “poaching” appears in Article 233 of the MCrC. We believe that this word cannot have the content of poaching referred to in Annex 1 (which was repealed, as we mentioned above) to Law No. 439/1995. The ways of illegal hunting, specified in Article 233 of the MCrC are similar to the ones stated in Annex 1 to Law No. 439/1995 only to some extent. Besides, when considering the objective aspect of the offence laid down in Article 233 of the MCrC, we will show that the term “poaching” is used inaccurately by lawmakers. It must be used in Article 233 of the MCrC, but in a different way it is used now.

The analysis of the offence laid down in Article 233 of the MCrC conducted by X. Ulianovschi ends with considering the offence subjective aspect and subject. The Doctrinaire believes that not every person with senior position, public official and public office holder can be subjects of the offence specified in Article 233 (2) of the MCrC. Pursuant to X. Ulianovschi, such attribution belongs to “people who have the duty to exercise state control over the protection and use of renewable resources, employees of the Department of Environment Protection and of local public authorities”<sup>37</sup>, who, in addition, have one of the qualities required by Article 233 (2) of the MCrC.

Our position is as follows: Article 233 (2) of the MCrC does not comprise such wording as “persons responsible for their compliance [...]”<sup>38</sup> (Article 223 of the MCrC); “persons in charge for protecting and guarding forest vegetation”<sup>39</sup> (Article 231 (a) of the MCrC). The lawmakers did not consider it reasonable to narrow the circle of people with senior positions, public officials and public office holders that may commit the offence specified in Article 233 (2) of the MCrC. In our opinion, even the people who interpret and/or apply this rule have no ground to resort to such a limitation of the incidence of the regulatory wording comprised by Article 233 (2) of the MCrC.

While considering the special subject of illegal hunting we shall bring arguments why we believe that any person with senior position, any public official and any public office holder can be subjects in the assumption recorded in Article 233 (2) of the MCrC. It is important that these people commit illegal hunting by the abuse of office/duties, misuse of power or job duties. At the same time, we shall pay attention to certain categories of people with senior positions, public officials or public

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<sup>37</sup> Ibidem, p. 251.

<sup>38</sup> The Criminal Code of the Republic of Moldova: No. 985 of 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 128-129, 1012.

<sup>39</sup> Ibidem.

office holders who have got duties related to the cynegetic area and may commit the offence specified under Article 233 (2) of the MCrC.

Chapter 2 – *Legal and criminal review of the offence laid down in Article 233 of the MCrC* – the subject-matter of the conducted research is represented by: the subject-matter of the offence specified in Article 233 of the MCrC (the legal subject-matter and the material subject-matter of this offence); the objective aspect of the offence laid down in Article 233 of the MCrC (the harmful event; harmful consequences; causal relationship); the subjective aspect of the offence laid down in Article 233 of the MCrC (the guilt in the offence context; the reason, purpose and emotions); the subject of the offence specified in Article 233 of the MCrC (natural person; legal person; special subject in the assumption referred to in Article 233 (2) of the MCrC; shared participation in the offence specified in Article 233 of the MCrC).

In the review conducted in Chapter 2 the following goals have been pursued: review the opinions stated in the speciality doctrine concerning the liability for the offence specified in Article 233 of the MCrC; consider non-criminal referencing rules for Article 233 of the MCrC, which are needed to interpret it; investigate, for the sake of comparison, the illegal hunting regulations laid down in the criminal law of other countries, as well as the rules under which this offence is criminalised, which applied on the current territory of the Republic of Moldova in the past; estimate the matching level between the international and European rules on preventing and fighting against illegal hunting, on the one hand, and Article 233 of the MCrC and related misdemeanour rules, on the other hand; address the controversies occurring in the content of generic and special legal subject-matters of the offence specified in Article 233 of the MCrC; determine the material subject-matter of the offence specified in Article 233 of the MCrC, as well as the criteria that allow distinguishing this subject-matter from the material subject-matter of other offences; depict the arguments supporting a more efficient criminal protection against illegal hunting of wild fauna species in danger of extinction; review the concept of hunting under the offence specified in Article 233 of the MCrC, etc.

Offences laid down in Chapter IX, Special Part of the MCrC affect the social relations on ambient environment rather than those on environment. In this vein, E.-M. Minea mentions: “The meaning of interest for us is the entirety of factors external to human body – that include non-live geographical factors (atmosphere, hydrosphere, and landscape) – as well as the other beings (biosphere). The view is strictly anthropocentric emphasised also by the wording “ambient environment” – meaning everything that surrounds us, the people”.<sup>40</sup> L. Dogaru’s position may not be neglected either: “The Constitution of Romania, revised in 2003, uses (in Article 35) the term “ambient environment” [...] Such terminology enshrined in the fundamental law should naturally be complied with in a rigorous way and to the fullest extent possible in the national body texts of laws on environmental protection, having ensured a consistent approach”.<sup>41</sup>

Biodiversity means the diversity within a species, between species and of ecological systems. In this assumption, the social threat is conditioned by the shrink in biological diversity of wild birds and animals, as well as by the negative changes inherent to the whole ambient environment. Biodiversity is the key component that allows us to identify the special legal subject-matter of the offence specified in Article 233 of the MCrC.

The definition of hunting in Article 2 of Law No. 298/2018 cannot be applied mechanically in the circumstances of the offence described in Article 233 of the MCrC. This definition has not been

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<sup>40</sup> MINEA, Elena-Maria. *Environmental protection. Learning materials*. Cluj-Napoca, 2015, p. 6. 129 p.

<sup>41</sup> DOGARU, Lucretia. *Environmental law*. Bucuresti: Pro Universitaria, 2020, p. 11. 350 p. ISBN 978-606-26-1219-1.

designed to show that this offence is considered to be consummated at the moment the harmful consequences occur.

The vagueness of the word combination “without proper authorisation” stated in Article 233 (1) of the MCrC is caused by the absence of conjunction “either” in front of that word combination. The reason behind such a situation is poor translation from Russian. The wording “without proper authorisation either during periods when hunting is prohibited and in prohibited places or using prohibited tools and methods”<sup>42</sup> of Article 233 of the MCrC has been taken up from Article 170 of the Moldovan Criminal Code of 1961<sup>43</sup>. The Russian version of this Code uses the following wording: “without proper authorization, or during prohibited times, or at prohibited places, or using prohibited tools and methods” / «без надлежащего разрешения, или в запретное время, или в запрещенных местах, или запрещенными орудиями и способами».<sup>44</sup> The 1961 MCrC used the 1960 Criminal Code of the Russian Soviet Federative Socialist Republic (RSFSR), where Article 166 “Illegal hunting” had the following wording: “without proper authorization for that purpose or at the prohibited places, or during the prohibited timeframes, using prohibited tools and methods” / «без надлежащего на то разрешения или в запрещенных местах, либо в запрещенные сроки, запрещенными орудиями и способами».<sup>45</sup> According to the rule of using the conjunction “or” / “или”, it shall not appear before the word combination “without proper authorization” / «без надлежащего разрешения». Those who translated Article 166 “Illegal hunting” from the 1960 Criminal Code of the RSFSR to be used as a template for Article 170 of the 1961 MCrC, failed to take account of that aspect.

In conclusion, the word combination “without proper authorisation” of Article 233 of the MCrC refers to an optional condition rather than to a mandatory invariable condition, which is associated with any of the subordinated circumstances, characterised by the word combination “either during periods when hunting is prohibited or in prohibited places or using prohibited tools and methods”.

The notion of damage, used in Article 233 of the MCrC, refers exclusively to the real damage, not to the lost profit. As I. Selevestru stated, “the lost income, having a presumptive nature, cannot be withdrawn from the victim’s dominion.”<sup>46</sup> S. Brinza and I. Botezatu claimed that “the lost income may not be estimated at the time of theft, being outside of the act of guilt. Therefore, the criminal law rule of predictability would be infringed, should it be taken into account when assessing the theft harmful effects”.<sup>47</sup> There is no reason against the extrapolation of this vision over the offence laid down in Article 233 of the MCrC. Therefore, “failure to get by the [state or by a person holding a hunting authorisation] the benefit the offender deprives [them] from”<sup>48</sup> may not be reported to the damage caused through the offence specified in Article 233 of the MCrC. For the same reason, this

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<sup>42</sup> The Criminal Code of the Republic of Moldova: No. 985 dated 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 128-129, 1012.

<sup>43</sup> The Criminal Code of the Republic of Moldova: No. 41 dated 24.03.1961. In: *Вестник Советулуй Сунрем ал РСММ*, 1961, No. 10, 41.

<sup>44</sup> *Ibidem*.

<sup>45</sup> The Criminal Code of the RSFSR of 27 October 1960 / *Уголовный кодекс РСФСР от 27 октября 1960 г.* [accessed on 14.04.2023] Available at: [https://lawrussia.ru/bigtexts/law\\_3558/page4.htm](https://lawrussia.ru/bigtexts/law_3558/page4.htm)

<sup>46</sup> SELEVESTRU, Irina. The harmful effects and causal link in the assumption of offence covered by Article 191 “Appropriation of Another Person’s Property” of the Criminal Code. Part I. In: *National Law Journal*, 2015, No. 9, pp. 41-47. ISSN 1811-0770.

<sup>47</sup> BOTEZATU, Igor, BRINZA, Serghei. Some considerations over the harmful effects generated by fraud (Article 190 of the Cr.C RM). In: *National Law Journal*, 2010, No. 3, pp. 67-70. ISSN 1811-0770.

<sup>48</sup> *Ibidem*.

damage may not cover the “cost of restoration measures, plus the cost of works aimed to assess the loss and establish the restoration measures to be undertaken.”<sup>49</sup>

The intent to commit the offence specified in Article 233 of the MCrC can be straightforward only. The purpose of this offence is special, namely to kill and capture the hunted game. As for the offence laid down in Article 233 of the MCrC, the special purpose is derived not from the interpretation of Article 233 of the MCrC but from non-criminal regulatory provisions this Article makes referrals to.

With respect to the offence laid down in Article 233 (2) of the MCrC, the lawmakers mention the special feature of the offence subject. Article 123 of the MCrC comprises the definitions of notions used to specify this feature. Nonetheless, these criminal law provisions are not sufficient to understand the special feature’s legal substance of the offence subject specified in Article 233 (2) of the MCrC. As a result, certain non-criminal provisions are required to facilitate such understanding, namely: Law No. 158 of 04.07.2008 on Public Function and the Status of Civil Servant<sup>50</sup>; Law No. 199 of 16.07.2010 on the Status of People holding Senior State Positions<sup>51</sup>; Law No. 80 of 07.05.2010 on the Status of Personnel Working in the Office of People holding Senior State Positions<sup>52</sup>, etc.

R.T. Nurtaev claimed: “Upon describing a special subject of the offence it is necessary to take account of the specificity of social relations the person who committed the criminally-sanctioned event is involved in. Because human activity serves as basis for social relations, the specificity of social relations in the committed offence context should be clarified by taking into consideration the offence subject’s area of activity.”<sup>53</sup> If we report this opinion to Article 233 (2) of the MCrC, then we should claim that the service activity of the special subject of the offence specified in Article 123 (2) of the MCrC is relevant. Without service activity, such notions like “person with senior position”, “public official” and “public office holder” have no content.

At the same time, it is less relevant if the service activity of the person holding a senior position, public official or public office holder has any link with the cynegetic area.

Chapter 3 – *Outcomes derived from the legal and criminal review of the offence laid down in Article 233 of the MCrC* – is devoted to the Author’s inputs.

Among the Author’s most prominent inputs one should mention the following: proof that the fundamental social value defended against the offences laid down in Chapter IX, Special Part of the MCrC, may not be represented by: environment in general (without stating that only ambient environment is envisaged); ecology; environmental security; natural resources; heritage; national economy; environmental protection; defining the significance that “fauna” and “animal kingdom” bear in the context of the illegal hunting material subject-matter; detailing the circle of animals that may represent the material subject-matter of the offence laid down in Article 233 of the MCrC and, accordingly, the circle of animals that may not represent it; identify the relation between “hunting”

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<sup>49</sup> GUGULAN, Eugenia, KURILO, Tatiana. Peculiarities in assessing the damage caused when practicing illegal hunting. In: *Scientific proceedings of “Stefan cel Mare” Academy of the MIA RM: Legal Sciences*, 2019, No. 10, pp. 109-122. ISSN 1857-0976.

<sup>50</sup> See: Law on Public Function and the Status of Civil Servant: No. 158 of 04.07.2008. In: *Official Gazette of the Republic of Moldova*, 2008, No. 230-232, 840.

<sup>51</sup> See: Law on the Status of People holding Senior State Positions: No. 199 dated 16.07.2010. In: *Official Gazette of the Republic of Moldova*, 2010, No. 194-196, 637.

<sup>52</sup> See: Law on the Status of Personnel working in the Office of People holding Senior State Positions: No. 80 dated 07.05.2010. In: *Official Gazette of the Republic of Moldova*, 2010, No. 117-118, 357.

<sup>53</sup> NURTAEV, R., About the environmental crime subject / НУРТАЕВ, Р.Т. О субъекте экологического уголовного правонарушения. In: *Кўқық жэне мемлекет*, 2018, № 1-2, с. 120-129.



and “poaching” in the context of reviewing the harmful event laid down in Article 233 of the MCrC; setting the meaning of the notion “proper authorisation” referred to in Article 233 of the MCrC, taking account of the provisions stipulated by Law No. 298/2018 and by GD No. 254/2021, etc.

The main goal of the review conducted in Chapter 3 is to recommend solutions aimed at remedying the imperfections affecting the predictability, clarity and efficiency of Article 233 of the MCrC. Other goals are as follows: address the controversies relating to the content of generic and special legal subject-matters of the offence specified in Article 233 of the MCrC; determine the material subject-matter of the offence specified in Article 233 of the MCrC, as well as the criteria that make it possible to distinguish this subject-matter from the material subject-matter of other offences; depict the arguments to support a more efficient criminal protection against illegal hunting of wild fauna species in danger of extinction; review the concept of hunting under the offence specified in Article 233 of the MCrC; investigate the conditions outlined in Article 233 of the MCrC, under which hunting becomes illegal; determine the peculiarities that describe the harmful consequences related to the offence specified in Article 233 of the MCrC; define the content of the guilty act for the offence specified in Article 233 of the MCrC, etc.

The outcomes derived from the legal and criminal review of the offence laid down in Article 233 of the MCrC are grouped as follows: the outcomes derived from the legal and criminal review of the offence subject-matter laid down in Article 233 of the MCrC; the outcomes derived from the legal and criminal review of the objective aspect of this offence; the outcomes derived from the legal and criminal review of the offence subjective aspect laid down in Article 233 of the MCrC; the outcomes derived from the legal and criminal review of the subject of this offence.

The special legal subject-matter of the offence laid down in Article 233 of the MCrC is represented by social relationship on biodiversity of wild fauna living in the wild/semi-wild that ensures their connection with natural environment, and, at the time the offence is committed, are located outside the water fund area (for the purpose of Article 1 of Law No. 272/2011) or outside the airspace/underground adjacent to that area. The special legal subject-matter of illegal hunting has a complex feature only in the assumption specified in Article 233 (2) of the MCrC. More precisely, the special legal subject-matter of the offence, laid down in Article 233 of the MCrC, has a complex feature when the offence subject to review absorbs the events laid down in Articles 312 and 313 of the MCoC or Article 327 (1), Article 328 (1), Article 370 (1) of the MCrC. In the context of reviewing the special legal subject-matter of the offence laid down in Article 233 of the MCrC, we claimed that we would be able to define the content of the secondary legal subject of this offence only after reviewing the subject special feature described by Article 233 (2) of the MCrC. Once we have identified that feature, we may argue that the secondary legal subject of the offence, laid down in Article 233 of the MCrC, is represented by social relationship that occurs when a person with senior position, a public official or a public office holder exercises his/her “job duties in a correct manner, without abuse [and without excesses], having complied with [...] the rights and interests of natural and legal persons protected by law.”<sup>54</sup> This social value of secondary feature is protected against the events laid down in Article 312 and 313 of the MCoC, as well as against those specified by Article 327 (1), Article 328 (1) and Article 370 (1) of the MCrC.

Vermin (for the purpose of Point 7 (1) b) of Annex 3 to Government Decision No. 254/2021) cannot represent the material subject-matter of the offence laid down in Article 233 of the MCrC. According to O.O. Dudorov and D.V. Kamenski, “vermin that are not protected by law shall not be

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<sup>54</sup> BRINZA, Serghei, STATI, Vitalie. *Criminal Law. Special Part: Compendium*. Chisinau: CEP MSU, 2021, p. 334, 335. 370 p. ISBN 978-9975-158-47-3.

considered as material subject-matter of illegal hunting, though they are killed and captured in the manner provided by law (for instance, wolves, vagabond cats and dogs, gray ravens, magpies, starlings)".<sup>55</sup> Such interpretation is consonant in broad terms with the provision of Point 7 (1) b) of Annex 3 to GD No. 254/2021 that mentions "combating of hunting vermin (vagabond cats and dogs without collars, magpies, crows, etc.)".<sup>56</sup>

In order to represent the material subject-matter of the offence laid down in Article 233 of the MCrC, it is mandatory that at the time of committing the offence, the wild animal is located on the Moldovan territory. It is possible that the animal is located outside the state border of the Republic of Moldova, on the Romanian or Ukrainian territory. This possibility stems from the content of a legal rule. Hence, according to Article 26 (2) of Law No. 215 of 04.11.2011 on State Border of the Republic of Moldova, "hunting at the state border, within the border lane and within the state border protection strip is prohibited. *Shooting and chasing animals across the state border is prohibited* (Author's emphasis)".<sup>57</sup> In such case, criminal liability for illegal hunting applies pursuant to either the Moldovan or the Ukrainian criminal law. It is not possible to apply liability pursuant to both criminal laws for the same offence of illegal hunting though it bears a cross-border feature.

The harmful event specified in Article 233 of the MCrC should not be described only by "capturing" and "killing". The third one of this type is injuring. In this context, for the purpose of Article 197 of the MCrC, we may mention, by analogy, the destruction or deterioration of assets. If animal kill corresponds to asset destruction, then animal injury corresponds to asset deterioration. As a result of corroborating Article 455 and Article 458 of the Moldovan Contravention Code<sup>58</sup> with Article 3 of Law No. 439/1995<sup>59</sup>, the wild fauna represent assets under the state ownership. As for the offence laid down in Article 197 of the MCrC, asset deterioration is liable to cause large-scale damage. By analogy, in the offence laid down in Article 233 of the MCrC, injury of wild animals is liable to cause damage exceeding 200 conventional units.

Law No. 298/2018 provides for the possibility to amend the hunting permissible terms. The Ministry of Environment holds the competence to amend the hunting terms set up by law. Amending hunting permissible terms carried out through the Order issued by the Ministry of Environment shall expand a fortiori over the hunting permissible terms defined by GD No. 254/2021.

In case of pellets with the diameter >5 mm, we have found a divergence between the Annex to Order No. 322/2020, issued by "Moldsilva" Agency, on the one hand, and Law No. 298/2018 and Annex 3 to GD No. 254/2021, on the other hand. This divergence is addressed in favour of Point 38 of Annex to Order No. 322/2020 issued by "Moldsilva" Agency that represents a special rule as compared to Article 22 of Law No. 298/2018 and Point 38 of Annex 3 to GD No. 254/2021.

By default, pursuant to Article 126 of the MCrC, the damage caused through the offence specified in Article 233 of the MCrC is expressed by the value of the loss caused by a person or by a group of persons, which exceeded 200 conventional units at the time the offence was committed. This loss is

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<sup>55</sup> DUDOROV, O, KAMENSKYI, D. Some problems of criminal liability for illegal hunting / ДУДОРОВ, О.О., КАМЕНСЬКИЙ, Д.В. Проблеми кримінальної відповідальності за незаконне полювання. In: *Часопис цивільного і кримінального судочинства*, 2012, № 2, с. 84-97. ISSN 2310-6166.

<sup>56</sup> Government Decision approving the regulatory acts on setting up and managing the National Wildlife Fund: No. 254 dated 13.10.2021. In: *Official Gazette of the Republic of Moldova*, 2021, No. 266-272, 542.

<sup>57</sup> Law on State Border of the Republic of Moldova: No. 215 dated 04.11.2011. In: *Official Gazette of the Republic of Moldova*, 2012, No. 75-80, 243.

<sup>58</sup> Contravention Code of the Republic of Moldova: No. 1107 dated 06.06.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 82-86, 661.

<sup>59</sup> Law on Animal Kingdom: No. 439 dated 27.04.1995. In: *Official Gazette of the Republic of Moldova*, 1995, No. 62-63, 688.

reflected in capturing, killing or injuring of animals that represent the material subject-matter of illegal hunting. The size of this loss matches the value of animals that are the material subject-matter of the offence in question. Article 233 of the MCrC stipulates liability not for the omission of paying such levies. Moreover, the loss worth more than 200 conventional units, which represents the harmful consequences of the offence stipulated by this Article, does not match the size of such levies. The losses specified by Article 233 of the MCrC cannot be linked causally with the omission of paying certain fees for the issuance of permits, authorisations, trophies or service charges. The value of animals that represent the material subject-matter of illegal hunting shall be set in compliance with Attachments No. 3, 4, 4<sup>1</sup> or 6 to Law No. 439/1995.

When the offender shows intent relative to the harmful event described by Article 233 of the MCrC, and imprudence relative to the damage exceeding 200 conventional units, there is no reason to apply Article 233 of the MCrC. This conclusion stems from the systemic interpretation of Article 3 (2), Articles 18 and 233 of the MCrC. As for the offence laid down in Article 233 of the MCrC, the offender shows intent towards both the harmful event and the harmful consequences. Any other conclusion would be in disagreement with the law in force. Therefore, we acknowledge there is a gap in the criminal law of the Republic of Moldova: it stipulates no liability for the illegal hunting that caused damage exceeding 200 conventional units due to imprudence. We believe this gap must be addressed.

Regardless of the peculiarities describing the actual error types, a common feature for all these types is that the representation in the offender's mind differs from the objective reality where he/she commits the offence. When the offence impact (in the parameters conceived in the offender's representation) does not match the objective reality where he/she commits the offence, and such mismatch is due to some circumstances beyond the offender's will, we have an attempt to commit the offence. The actual error and its impact shall be treated through the lens of Article 27 of the MCrC. In the assumption of the actual error, the classification of the committed offence is based on the principle of subjective criminalisation, and the offender's targeted intent is taken into account in this case.

The offence specified in Article 233 of the MCrC may be committed by a person who has neither a hunting permit nor a firearm licence. When the latter is missing, besides Article 233 of the MCrC, Article 128 (2) of the MCoC shall apply. It is worth underlining that as it follows from Article 16 of the Contravention Code, this misdemeanour rule may apply only when the subject "is 18 years old at the time of committing the offence."<sup>60</sup> Likewise, we shall note that Article 128 (2) of the MCoC stipulates liability for hunting carried out, *inter alia*, "without a hunting permit or a licence to hold, bear and use hunting firearms."<sup>61</sup> As for hunting without a licence to hold, bear and use hunting firearms, in fact, this implies illegal use of hunting firearms. If the offender, besides this, is involved in "carrying, holding, purchasing, manufacturing, repairing or trading firearms, as well as in their stealing, except for the smoothbore shotguns, or ammunitions without proper authorisation"<sup>62</sup>, then, besides Article 233 of the MCrC and Article 128 (2) of the MCoC, Article 290 of the MCrC shall apply.

In some cases, the offence specified in Article 233 of the MCrC cannot have the role of an absorbing offence. Under such circumstances we cannot talk, even with probability, about Article

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<sup>60</sup> The Contravention Code of the Republic of Moldova: No. 218 dated 24.10.2008. In: *Official Gazette of the Republic of Moldova*, 2009, No. 3-6, 15.

<sup>61</sup> *Ibidem*.

<sup>62</sup> The Criminal Code of the Republic of Moldova: No. 985 dated 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 128-129, 1012.

233 (2) of the MCrC as a full rule. Hence, Article 233 (2) of the MCrC is not a full rule relative to Article 327 (2), (3), Article 328 (2), (3) and Article 370 (2), (3) of the MCrC. Based on the interpretation of Article 118 of the MCrC, it follows that a full rule shall comprise a penalty that is comparatively tighter than the one applied by the partial rule. Otherwise, Article 118 (2) of the MCrC would be in breach of Article 61 (2) of the MCrC, as it would not pursue “the goal to reinstate social justice.”<sup>63</sup> The considered issue does not have theoretical connotations alone. Obviously, the following question may emerge: what solution shall apply if, for instance, illegal hunting is committed by a public office holder who misused his/her powers? The use of Article 233 (2) of the MCrC in this case would imply the violation of the aforementioned principles and rules. The use of Article 328 (3) b) of the MCrC would mean an incomplete qualification, a neglect of the fact that a public office holder misused his/her powers, focusing instead on the illegal hunting offence committed by the public office holder who misused his/her powers. In the aforementioned circumstances the only qualification solution is the following: Article 128 (1) or (2), Article 139 or Article 140 (1) of the MCoC and Article 327 (2) or (3), Article 328 (2) or (3) or Article 370 (2) or (3) of the MCrC.

Except for shooting and capturing, everything else does not relate to the act of hunting ending with an outcome, but to a hunting process that has ended with no outcome. In other words, except for shooting and capturing, everything else relates to the preparation stages or to an attempt to commit an offence, not to a consummated offence. The preparation or attempt to commit an offence cannot be linked causally, directly, with the harmful consequences. Arguing the contrary would mean equating a non-consummated offence activity with a consummated one. This conclusion refers, inter alia, to the way of chasing. At the same time, the inputs of secondary participants do not generate nor imply causing damage exceeding 200 conventional units. The occurrence of such consequences is linked causally with illegal hunting committed by the offender as per the provisions laid down in Article 233 of the MCrC. It means that the chaser can be a mere complicit in the offence specified in Article 233 of the MCrC. The chaser cannot be a co-author of this offence. The chaser’s input does not imply causing damage that exceeds 200 conventional units. In case of “chase” hunting, only the marksman is the author of the offence laid down in Article 233 of the MCrC. This has the “task to collect the game after shooting”.<sup>64</sup> Therefore, the marksman’s act is linked causally with the harmful consequences.

## CONCLUSIONS AND RECOMMENDATIONS

The Thesis outcomes are as follows: 1) we reviewed the opinions stated in the specialty doctrine concerning the liability for the offence specified in Article 233 of the MCrC; 2) we considered non-criminal referencing rules for Article 233 of the MCrC, which are needed to interpret it; 3) we investigated, for the sake of comparison, the illegal hunting regulations laid down in the criminal law of other countries, as well as the rules under which this offence is criminalised, which applied on the current territory of the Republic of Moldova in the past; 4) we estimated the matching level between the international and European rules on preventing and fighting against illegal hunting, on the one hand, and Article 233 of the MCrC and related misdemeanour rules, on the other hand; 5) we addressed the controversies occurring in the content of generic and special legal subject-matters of

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<sup>63</sup> Ibidem.

<sup>64</sup> Government Decision approving the regulatory acts on setting up and managing the National Wildlife Fund: No. 254 dated 13.10.2021. In: *Official Gazette of the Republic of Moldova*, 2021, No. 266-272, 542.

the offence specified in Article 233 of the MCrC; 6) we determined the material subject-matter of the offence specified in Article 233 of the MCrC, as well as the criteria that allow distinguishing this subject-matter from the material subject-matter of other offences; 7) we depicted the arguments supporting a more efficient criminal protection against illegal hunting of wild fauna species in danger of extinction; 8) we reviewed the concept of hunting under the offence specified in Article 233 of the MCrC; 9) we investigated the conditions outlined by Article 233 of the MCrC, under which hunting becomes illegal; 10) we determined the peculiarities that describe the harmful consequences related to the offence specified in Article 233 of the MCrC; 11) we defined the guilty act content of the offence specified in Article 233 of the MCrC; 12) we identified the peculiarities that describe the reason, purpose and emotions of the offence specified in Article 233 of the MCrC; 13) we determined the general conditions concerning the natural person – subject of the offence laid down in Article 233 of the MCrC and legal person – subject of this offence; 14) we considered the intrinsic feature of the offence subject under the assumption laid down in Article 233 (2) of the MCrC; 15) we identified the peculiarities describing the shared participation in the offence specified in Article 233 of the MCrC; 16) we analysed the judicial practice cases when Article 233 of the MCrC and related misdemeanour rules applied; 17) we defined the imperfections affecting the predictability, clarity and efficiency of Article 233 of the MCrC; 18) we recommended solutions aimed at remedying such imperfections.

*The important scientific issue* addressed as a result of achieving the described outcomes is expressed in conceptualising the interpreting paradigm of Article 233 of the MCrC, taking account of numerous and sometimes controversial referencing rules, which would ensure the use of Article 233 of the MCrC under predictable, clear and efficient conditions, having channelized the process of using Article 233 of the MCrC in the course of legality.

#### **I. Conclusions:**

The important scientific issue has been demonstrated through the *conclusions* developed on the basis of the research hypothesis as follows:

**1. The term “ambient environment” can clearly express the idea that only the habitat composed of natural/human environment where people cohabitate with the wild flora and fauna shall be protected against the offences laid down in Chapter IX, Special Part of the MCrC.** The opportunity to catalogue the ambient environment as a fundamental social value protected against the offences laid down in Chapter IX, Special Part of the MCrC derives from Articles 37, 46, 59 and 126 of the Moldovan Constitution. Likewise, Article 2 (1) of the MCrC mentions ambient environment among the social values that compose the legal order. Nonetheless, Article 233 of the MCrC is placed within a chapter titled “Environmental offences” rather than “Offences against the ambient environment”. The review shows that ecology cannot represent the fundamental social value protected against the offences laid down in Chapter IX, Special Part of the MCrC. Ambient environment shall be seen as a habitat composed of natural/human environment where people cohabitate with the wild flora and fauna. By definition, the generic legal subject-matter must mirror the essence of all social values protected against the offences that make the group covered by a chapter within the Special Part of the Criminal Code. The animal world, as a component of natural environment, ensures, together with other components (atmospheric air, water, ground, underground, etc.), favourable conditions required for human life on Earth. This axiom corroborates that ambient environment is the one to be considered a fundamental social value protected against the offences laid down in Chapter IX, Special Part of the MCrC, in general, and against illegal hunting, in particular (*see: Chapter 2, Sub-chapter 2.1; Chapter 3, Sub-chapter 3.1*).

**2. The offence laid down in Article 233 of the MCrC has got a material subject-matter even though it is not specified in the provision of this Article. This subject-matter is represented by the wild fauna living in the wild/semi-wild that ensures their connection with natural environment, and, at the time the offence is committed, is located outside the water fund area (for the purpose of Article 1 of Law No. 272/2011) or outside the airspace/underground adjacent to that area.** Through the material subject-matter lens, such definition enables dissociating the offence, laid down in Article 233 of the MCrC, from some offences against heritage and from the offence specified in Article 234 of the MCrC. The captive animals, totally deprived of freedom, having no link with natural environment and completely dependent on humans, cannot represent the material subject-matter of the offence laid down in Article 233 of the MCrC. Illegal acquisition of such animals affects the social relations on heritage, and has to be qualified based on the appropriate rules of Chapter VI, Special Part of the Criminal Code. When a captive wild animal is released and becomes part of natural environment, this animal becomes a material subject-matter of the offence laid down in Article 233 of the MCrC. As for the offence laid down in Article 233 of the MCrC, the material subject-matter may not be represented by the wild fauna which, at the time of offence, are outside the water fund area (for the purpose of Article 1 of Law No. 272/2011) or outside the airspace/underground adjacent to that area. In such case liability shall be enforced pursuant to Article 234 of the MCrC (*see: Chapter 2, Sub-chapter 2.1; Chapter 3, Sub-chapter 3.1*).

**3. Article 233 of the MCrC does not distinguish between illegal hunting of wild fauna, specified in the Red Book of the Republic of Moldova and in the CITES Attachments, and illegal hunting of wild fauna that are not specified in those documents. Such state of affairs defy some provisions of: Law No. 325/2005; Law No. 1246/2000; Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Directive 2008/99/EC; Directive 92/43/EEC.** Unlike the lawmakers of other countries (Georgia, the Kingdom of Spain, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Belarus, the Republic of Croatia, the Republic of Finland, the Republic of Italia, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Latvia, the Republic of Lithuania, the Republic of Slovenia, Hungary), the Moldovan lawmakers have set misdemeanour liability for capturing and killing the animals included in the Red Book of the Republic of Moldova and in the CITES Attachments. Thereby, the increased social threat of illegal hunting of wild fauna species in danger of extinction is neglected. As a result, it is not possible to ensure proportionate sanctioning of illegal hunting of wild animals from species in danger of extinction, depending on the social threat level of such act. When talking about the level of social threat occurring in the process of hunting the animals included both in the Red Book of the Republic of Moldova and in the CITES Attachments, what matters is not the material value of those animals. What really matters is the special status of such animals that implies greater protection than the one granted to other animals (*see: Chapter 2, Sub-chapter 2.1; Chapter 3, Sub-chapter 3.1*).

**4. In the Moldovan legislation in force, harnessing the product derived from illegal hunting, as well as the events related to such activity are penalised insufficiently. The misdemeanour sanctions applied for selling the animals included in the Red Book of the Republic of Moldova or in the CITES Attachments are not dissuasive enough to reduce the incentives for committing the offence specified in Article 233 of the MCrC.** The act of trading the animals included in the Red Book of the Republic of Moldova or in the CITES Attachments shall be covered by criminal law. Directive 92/43/EEC, Directive 2008/99/EC and Directive 2009/147/EC recommend criminalising not just the trading (sale) of wild animals from species in danger of extinction, but also other activities that can be carried out after illegal hunting of such animals: exchange; offering for

exchange or sale; possession (storage); transportation. Criminalisation of the whole range of acts of concealing fauna poaching would curb the number of offences specified in Article 233 of the MCrC. Any animals acquired through illegal hunting must be the material subject-matter of these acts, not just the animals included in the Red Book of the Republic of Moldova or in the CITES Attachments and hunted illegally. Should the act of harnessing the product derived through illegal hunting, as well as the activities related to such harnessing be subject to criminal penalties, this would considerably reduce the motivation to commit the offence specified in Article 233 of the MCrC. (*see: Chapter 2, Sub-chapter 2.1; Chapter 3, Sub-chapter 3.1*).

**5. When talking about setting the limits for the use of Article 233 of the MCrC, the referencing rules become an objective need. It is of vital importance to resort to the regulatory acts referred to in Article 233 of the MCrC in order to understand: which authorisation for hunting is appropriate and which is not; during which periods hunting is prohibited and during which it is not; what place for hunting is prohibited and what is not; what tool for hunting is prohibited and what is not; what method for hunting is prohibited and what is not; how the size of the damage caused is identified; what special purpose the offence has.** It is not possible the hunting rules infringed by the subject of the offence laid down in Article 233 of the MCrC to be established within this Article or in another article of the criminal law. Neither a simple nor a descriptive provision, not even a referral would be potentially able to give a full picture of the complexity borne by illegal hunting. Such complexity may be described through referrals only. For the purpose of Article 233 of the MCrC, unlawful hunting means not just infringing the legal provisions that govern the hunting activity. For the purpose of Article 233 of the MCrC, unlawful hunting may also imply infringing the provisions of other regulatory acts subordinated to a law that governs the hunting activity. Nowadays, the core referencing rules for Article 233 of the MCrC are those stipulated by Law No. 298/2018 and by Annex 3 to GD No. 254/2021. In this regard, Law No. 439/1995 has lost its significance it borne in the past (*see: Chapter 2, Sub-chapter 2.2; Chapter 3, Sub-chapter 3.2*).

**6. Interpretation of Article 233 of the MCrC is hampered by the controversies that characterise the terms “hunting” and “poaching” used in Article 233 of the MCrC and in the referencing rules of Law No. 298/2018.** For the purpose of Article 2 of Law No. 298/2018, the term “game” refers to the material subject-matter of an event. The term “hunting”, defined by the same Article 2 of Law No. 298/2018, refers to the event itself. For the sake of comparison, in Article 233 of the MCrC, the term “game” refers to a harmful event, not to the material subject-matter of the offence. Concurrently, in Article 233 of the MCrC, the term “poaching” is used to describe the harmful event of illegal hunting. Article 2 of Law No. 298/2018 defines “poaching” in a way to represent not a specific notion related to hunting, but a notion that is opposite to it, that does not dovetail with it. In Article 22 (1) and (2) of Law No. 298/2018, illegal hunting is equated to poaching. In this case, “poaching” is not opposite to hunting, being a specific notion related to it (*see: Chapter 2, Sub-chapter 2.2; Chapter 3, Sub-chapter 3.2*).

**Description of personal inputs, having emphasised their theoretical significance and practical value.** The personal input is proven by the conceptualised paradigm for interpreting Article 233 of the MCrC, taking account of scientific priorities and practical challenges. In light of Article 233 of the MCrC, we have investigated the legal ground of the liability for the offence covered by the Article. In line with the practical arrangements set for Article 233 of the MCrC, we have reviewed the real ground of the liability for illegal hunting. Please note that this Thesis is the first research paper of such class where the offence laid down in Article 233 of the MCrC is reviewed through the referencing rules comprised by Law No. 298/2018 and GD No. 254/2021.

Among the most important personal inputs one can mention the following: 1) proving that the fundamental social value defended against the offences laid down in Chapter IX, Special Part of the MCrC, cannot be represented by: environment (without specifying that ambient environment is meant); ecology; environmental security; natural resources; heritage; national economy; environmental protection; 2) defining the significance of “fauna” and “animal kingdom” in the context of the material subject-matter of illegal hunting; 3) providing circumstantial evidence of the circle of animals that can represent the material subject-matter of the offence laid down in Article 233 of the MCrC and, accordingly, of the circle of animals that cannot represent it; 4) arguing that the offence specified in Article 233 of the MCrC has no victim; 5) identifying the relation between “game” and “poaching” while reviewing the harmful event laid down in Article 233 of the MCrC; 6) distinguishing the controversies that describe the rules referred to in Article 233 of the MCrC; 7) setting the meaning of “proper authorisation” stipulated by Article 233 of the MCrC, while taking account of the provisions of Law No. 298/2018 and of GD No. 254/2021; 8) determining the peculiarities on causal relationship between the harmful event specified in Article 233 of the MCrC and the harmful consequences specified in this Article; 9) reviewing the attempt and preparation of the offence specified in Article 233 of the MCrC; 10) considering the actual error in the context of this offence, as well as the error impact; 11) identifying the special purpose of the offence laid down in Article 233 of the MCrC; 12) arguing that indirect intent is not possible in this offence; 14) identifying the assumptions where we certify the primary and secondary purposes of the offence laid down in Article 233 of the MCrC; 15) proving that a person who has neither a hunting permit nor a firearm licence can be the subject of this offence; 16) setting the limits where Article 233 (2) of the MCrC shall apply; 17) determining the legal role (for the purpose of Article 42 of the MCrC) of people involved in “chase” hunting, etc.

When talking about the previous doctrine heritage, we note a shortage of research papers having the offence specified in Article 233 of the MCrC as its in-depth research subject-matter, regarded as a whole. There are only two works that either briefly reviewed the criminal law aspects of the offence specified in Article 233 of the MCrC (regarded as a whole) or investigated certain aspects to clarify the offence in question.

*The legal and empirical base* of this research comprises: 1) the title, the provision and the penalties specified in Article 233 of the MCrC; 2) other articles of the Moldovan Criminal Code stipulating liability for offences that, where appropriate: a) must be delimited from the offence specified in Article 233 of the MCrC; b) are stipulated by rules that do not concur with Article 233 of the MCrC; c) compete with the offence specified in Article 233 of the MCrC; 3) other criminal rules that prove their significance while interpreting Article 233 of the MCrC and/or qualifying the offence covered by that article; 4) the adjacent regulations of the Moldovan Contravention Code; 5) the provisions of Law No. 298/2018, GD No. 254/2021 and of other regulatory acts that contain provisions Article 233 of the MCrC makes referrals to; 6) regulations on illegal hunting covered by the criminal law of other countries, as well as the rules criminalising this event, which applied on the current territory of the Republic of Moldova in the past; 7) the international and European rules on preventing and fighting against illegal hunting; 8) judicial practice cases where Article 233 of the MCrC and adjacent misdemeanour rules applied; 9) relevant explanations contained in the judgments of the Plenary of the Moldovan Supreme Court of Justice; 10) certain decisions and judgments issued by the Moldovan Constitutional Court and by the Romanian Constitutional Court, etc. *The scientific basis* of this Thesis comprises monographs, treaties, doctoral theses, research articles and other reference works developed by the researchers of the Republic of Moldova, Romania, Ukraine, etc.



**Theoretical importance of the Thesis** is corroborated by: a sustainable foundation built in order to launch scientific discussions concerning the criminal law aspects of the offence specified in Article 233 of the MCrC; in-depth research of the offence laid down in Article 233 of the MCrC, taking into consideration the provisions (recently entered into force) of Law No. 298/2018 and of GD No. 254/2021; detecting the imperfections and windings that mark the interpretation process of Article 233 of the MCrC and/or qualification of the offence covered by that article.

**Practical value of the Thesis** is proved through: interpretation of Article 233 of the MCrC through the lens of the provisions (recently entered into force) of Law No. 298/2018 and GD No. 254/2021; identifying the errors and gaps in the cases where Article 233 of the MCrC applied; defining the reasons behind the lack of predictability, clarity and efficiency of some provisions of Article 233 of the MCrC, of misdemeanour rules supplementing the former, as well as of Law No. 298/2018, GD No. 254/2021 and of other regulatory acts containing provisions Article 233 of the MCrC makes referrals to.

**Information regarding the approval of outcomes.** The main conclusions of this research paper have been depicted in 13 scientific publications. The outcomes achieved in this Thesis were presented at international and national scientific fora in the course of 2021-2023.

**Stating the limits of the achieved outcomes and the issues to be addressed.** In our opinion, the achieved outcome limits stem from the following: 1) the offence laid down in Article 233 of the MCrC and subject to review in this Thesis has predominantly a legal and criminal feature; 2) there is modest possibility to conduct scientific debates, keeping in mind the shortage of research papers that have the offence specified in Article 233 of the MCrC, regarded as a whole, as their in-depth research subject-matter; 3) there is a relatively small number of cases where Article 233 of the MCrC applied in practice. We acknowledge no unresolved issues so far as the Thesis goals have been attained in full. However, it does not mean that future research targets related to this topic cannot be outlined. Hence, such targets will be displayed *hereafter*.

## **II. Recommendations:**

1) Change the title of Chapter IX, Special Part of the MCrC: from “Environmental offences” to “*Offences against the ambient environment*”;

2) Supplement Chapter XIII, General Part of the Moldovan Criminal Code with Article 134<sup>25</sup> “Animals” with the following content:

*“(1) By animals, for the purpose of Articles 233 and 233<sup>1</sup> of this Code, it is understood wild fauna living in the wild/semi-wild that ensures their connection with natural environment, and, at the time the offence is committed, are located outside the water fund area (for the purpose of Article 1 of Law No. 272/2011) or outside the airspace/underground adjacent to that area.*

*(2) By animals, for the purpose of Article 234 of this Code, it is understood wild fauna living in the wild/semi-wild that ensures their connection with natural environment, and, at the time of offence, are located inside the water fund area (for the purpose of Article 1 of Law No. 272/2011) or inside the airspace/underground adjacent to that area”;*

3) Change the title and content of Article 233 of the MCrC, as follows:

*“Article 233. Wildlife Poaching*

*(1) Unlawful capture, kill or injury of animals if the offence caused damage worth more than 200 conventional units,*

*shall be punished with a fine in the amount of 550 to 850 conventional units or with community service for 180 to 240 hours or with imprisonment for up to 3 years, whereas a legal person shall be punished with a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities.*

*(2) The same action committed by a person holding a senior position, a public official or a public office holder*

*shall be punished with a fine in the amount of 700 to 1000 conventional units or with the deprivation of the right to hold certain positions for up to 3 years or with imprisonment for 3 to 5 years.*

*(3) Unlawful capture, kill or injury of animals included in the Red Book of the Republic of Moldova or in Attachments to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*

*shall be punished with a fine in the amount of 850 to 1350 conventional units or with imprisonment for up to 5 years, whereas a legal person shall be punished with a fine in the amount of 4000 to 7000 conventional units with the deprivation of the right to practice certain activities or be liquidated.*

*(4) The actions covered by paragraphs (1) and (2) that caused large-scale damage, shall be punished with a fine in the amount of 850 to 1350 conventional units or with imprisonment for up to 5 years, whereas a legal person shall be punished with a fine in the amount of 4000 to 7000 conventional units with the deprivation of the right to practice certain activities or be liquidated.*

*(5) The actions covered by paragraphs (1), (2), (3) or (4) committed by two or more people shall be punished with a fine in the amount of 1000 to 1500 conventional units or with imprisonment for 4 to 6 years, in both cases with (or without) depriving them of the right to hold certain positions or to exercise certain activities for 3 to 5 years, whereas a legal person shall be punished with a fine in the amount of 4500 to 8000 conventional units with the deprivation of the right to practice certain activities.*

*(6) The actions covered by paragraphs (1), (2), or (3)) that caused, due to imprudence, damage worth more than 200 conventional units,*

*shall be punished with a fine in the amount of 300 to 500 conventional units or with the deprivation of the right to hold certain positions for up to 3 years or with community service for 100 to 120 hours, whereas a legal person shall be punished with a fine in the amount of 1500 to 2500 conventional units.”;*

**4) supplement the Moldovan Criminal Code with the following Article:**

*“Article 233<sup>1</sup>. Concealment of Wildlife Poaching*

*(1) The sale, exchange, offer to exchange or sale, possession, transportation or consignment of live or dead animals, their parts or derivatives, knowing that such animals were acquired through illegal hunting,*

*shall be punished with a fine in the amount of 300 to 500 conventional units or with community service for 180 to 240 hours, whereas a legal person shall be punished with a fine in the amount of 1200 to 2000 conventional units with the deprivation of the right to practice certain activities.*

*(2) The same event committed over live or dead animals included in the Red Book of the Republic of Moldova or in Attachments to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), their parts or derivatives,*

*shall be punished with a fine in the amount of 500 to 750 conventional units or with imprisonment for up to 2 years, whereas a legal person shall be punished with a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities.”;*

5) in Article 234 of the MCrC, replace: the title “Illegal Fishing, Hunting or other Exploitation of Waters”<sup>65</sup> with the title “Aquatic Poaching”; in the provision, replace the word “hunting” with the word combination “*capture, kill or injury of animals*”;

6) in the provision of Article 128 MCoC (2), replace the text “Hunting without an authorisation (licence), a hunting permit or an authorization for holding, bearing and using hunting firearms, exceeding the limits established for hunting, as well as hunting in prohibited places and during periods when hunting is prohibited, using prohibited weapons, tools and methods”<sup>66</sup> with the word combination “*Unlawful capture, kill or injury of animals*”;

7) in Article 140 (1) of the MCoC, delete: the word combination “unlawful trading”<sup>67</sup>; the word combination “as well as committing other actions or inactions that may cause a reduction in the number of such plants and animals or their extinction”<sup>68</sup>;

8) in the provisions of Article 140 (1) and (2) of the MCoC, between the word combination “Red Book of the Republic of Moldova”<sup>69</sup> and “in Attachments to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)”<sup>70</sup>, replace the word “and” with the word “or”;

9) in Article 2 of Law No. 298/2018, replace the definition “poaching – unlawful action carried out to obtain the same effects as hunting, but without observing the legal circumstances for its performance”<sup>71</sup> with the definition “*fauna poaching – hunting in the absence of legal conditions*”;

10) in the text of Law No. 298/2018, replace the word “poaching” with the word combination “*fauna poaching*”, as appropriate;

11) amend the provision of Article 22 (1) o) of Law No. 298/2018 as follows: “*In order to ensure sustainable protection and management of fauna of hunting interest and their habitat it is prohibited: [...] to hunt at night, save for the species whose hunting is allowed at night, pursuant to the regulations on hunting organisation and practicing.*”

**Suggestions concerning potential future research targets related to the Thesis topic:** 1) in-depth legal and historical review of regulations on illegal hunting, applied on the current territory of the Republic of Moldova; 2) in-depth research of international and European rules on preventing and fighting against illegal hunting; 3) consider the categories of sanctions set by Article 233 of the MCrC in terms of their effectiveness.

**Proposals for using the achieved outcomes in the socio-cultural and economic areas:** in scientific activity to boost scientific interest towards the offence specified in Article 233 of the MCrC; enhance the level of knowledge and skills of those empowered to use Article 233 of the MCrC in practice, as well as of PhD, Master’s degree and undergraduate students; in lawmaking activities, to ensure better predictability, clarity and efficiency of Article 233 of the MCrC; in the process of fostering legal literacy of citizens who perceive the social threat of the offence laid down in Article 233 of the MCrC in a distorted or superficial way.

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<sup>65</sup> The Criminal Code of the Republic of Moldova: No. 985 dated 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 128-129, 1012.

<sup>66</sup> The Contravention Code of the Republic of Moldova: No. 218 dated 24.10.2008. In: *Official Gazette of the Republic of Moldova*, 2009, No. 3-6, 15.

<sup>67</sup> *Ibidem*.

<sup>68</sup> *Ibidem*.

<sup>69</sup> *Ibidem*.

<sup>70</sup> *Ibidem*.

<sup>71</sup> Hunting and Wildlife Fund Law: No. 298 dated 30.11.2018. In: *Official Gazette of the Republic of Moldova*, 2019, No. 76-85, 135.

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## ADNOTARE

**Boldescu Anastasia, „Răspunderea penală pentru vânatul ilegal”. Teză de doctorat în drept. Școala Doctorală de Științe Juridice a Universității de Stat din Moldova. Chișinău, 2023**

**Structura tezei:** introducere, trei capitole, concluzii și recomandări, bibliografie din 487 de titluri. Rezultatele obținute sunt publicate în 19 lucrări științifice.

**Cuvintele-cheie:** vânat (vânătoare); animal; autorizația corespunzătoare; perioada interzisă; locurile interzise; unelte nepermise; metode nepermise; braconaj.

**Scopul lucrării** este de a cerceta aprofundat infracțiunea prevăzută la art. 233 CP RM (cu luarea în considerare a prevederilor (recent intrate în vigoare) ale Legii nr. 298/2018 și ale HG nr. 254/2021), stabilindu-se dificultățile ce apar în procesul de interpretare a art. 233 CP RM și/sau de calificare a infracțiunii prevăzute de acest articol, și propunându-se soluții pentru depășirea acestor dificultăți.

**Obiectivele cercetării:** analiza punctelor de vedere din doctrina de specialitate, referitoare la răspunderea pentru infracțiunea prevăzută la art. 233 CP RM; examinarea normelor extrapenale de referire pentru art. 233 CP RM, necesare interpretării acestui articol; investigarea în plan comparativ a reglementărilor privind vânatul ilegal din legislația penală a altor state, precum și a normelor în care a fost incriminată această faptă, care au fost aplicate în trecut pe teritoriul actual al Republicii Moldova, etc.

**Noutatea și originalitatea științifică a tezei** o dovedește faptul că teza de față este prima lucrare științifică de o asemenea talie, în care analiza infracțiunii, prevăzute la art. 233 CP RM, se face prin prisma normelor de referire din Legea nr. 298/2018 și din HG nr. 254/2021. Aportul personal îl demonstrează conceptualizarea paradigmei de interpretare a art. 233 CP RM, cu luarea în considerare a priorităților de ordin științific și a provocărilor de ordin practic. Din perspectiva dispoziției art. 233 CP RM, este investigat temeiul juridic al răspunderii pentru infracțiunea prevăzută de acest articol. Din perspectiva practicii de aplicare a art. 233 CP RM, se analizează temeiul real al răspunderii pentru infracțiunea de vânat ilegal.

**Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante:** conceptualizarea paradigmei de interpretare a art. 233 CP RM cu luarea în considerare a numeroaselor și uneori controversatelor norme de referire, fapt care va asigura aplicarea art. 233 CP RM în condiții de previzibilitate, claritate și eficiență, prin aceasta contribuindu-se la canalizarea în albia legalității a procesului de aplicare a art. 233 CP RM.

**Semnificația teoretică a tezei:** construirea unei temelii durabile pentru lansarea de discuții științifice referitoare la aspectele de drept penal ale infracțiunii prevăzute la art. 233 CP RM; investigarea aprofundată a infracțiunii prevăzute la art. 233 CP RM, cu luarea în considerare a prevederilor (recent intrate în vigoare) ale Legii nr. 298/2018 și ale HG nr. 254/2021; detectarea imperfecțiunilor și sinuozițiilor ce marchează procesul de interpretare a art. 233 CP RM și/sau de calificare a infracțiunii prevăzute de acest articol.

**Valoarea aplicativă a tezei:** interpretarea art. 233 CP RM din perspectiva prevederilor (recent intrate în vigoare) ale Legii nr. 298/2018 și ale HG nr. 254/2021; identificarea erorilor și inadvertențelor din spețele în care a fost aplicat art. 233 CP RM; stabilirea cauzelor imprevizibilității, neclarității și ineficienței unor prevederi ale art. 233 CP RM, ale normelor contravenționale care sunt complementare acestui articol, precum și ale Legii nr. 298/2018, ale HG nr. 254/2021 și ale altor acte normative care conțin dispoziții la care face referire art. 233 CP RM.

**Implementarea rezultatelor științifice:** în activitatea științifică, pentru a se contribui la sporirea interesului științific față de infracțiunea prevăzută la art. 233 CP RM; în vederea aprofundării nivelului de cunoștințe și de deprinderi ale celor abilitați cu aplicarea în practică a art. 233 CP RM, precum și ale doctoranzilor, masteranzilor și studenților; în activitatea de legiferare, pentru a se asigura o mai bună previzibilitate, claritate și eficiență a art. 233 CP RM.



## АННОТАЦИЯ

Болдеску Анастасия, «Уголовная ответственность за незаконную охоту». Диссертация на соискание научной степени доктора права. Докторальная школа юридических наук Государственного университета Молдовы. Кишинэу, 2023

**Структура диссертации:** введение, три главы, выводы и рекомендации, библиография из 487 названий. Достигнутые результаты опубликованы в 19 научных работах.

**Ключевые слова:** охота; надлежащее разрешение; запретное время; запрещенные места; запрещенные орудия; запрещенные способы; браконьерство.

**Целью работы** является углубленное исследование преступления, предусмотренного ст. 233 УК РМ (с учетом положений (недавно вступивших в силу) Закона № 298/2018 и ПП № 254/2021), с выявлением сложностей, возникающих в процессе толкования ст. 233 УК РМ и/или квалификации преступления, предусмотренного данной статьей, а также с предложением путей преодоления указанных сложностей.

**Задачи исследования:** анализ доктринальных точек зрения относительно ответственности за преступление, предусмотренное ст. 233 УК РМ; исследование внеуголовных норм, к которым отсылает ст. 233 УК РМ, необходимых для толкования данной статьи; сравнительный анализ положений, касающихся незаконной охоты, предусмотренных уголовным законодательством других государств, а также норм, которые предусматривали такое деяние, применявшихся в прошлом на современной территории Республики Молдова и др.

**Научная новизна и оригинальность результатов исследования** определяется тем, что настоящая диссертация является первой научной работой такого уровня, в которой анализ преступления, предусмотренного ст. 233 УК РМ, проводится через призму отсылочных норм Закона № 298/2018 и ПП № 254/2021. Личный вклад подтверждается определением модели толкования ст. 233 УК РМ, с учетом научных приоритетов и практических вызовов. Через призму положений ст. 233 УК РМ исследуется юридическое основание ответственности за преступление, предусмотренное данной статьей. С точки зрения практики применения ст. 233 УК РМ анализируется реальное основание ответственности за незаконную охоту.

**Полученные результаты, способствующие решению особо значимой научной проблемы, разрешенной в рамках проведенного диссертационного исследования** состоят в определении модели толкования ст. 233 УК РМ, с учетом многочисленных и порой противоречивых отсылочных норм, имея целью обеспечить применение ст. 233 УК РМ в условиях предсказуемости, ясности и эффективности, тем самым способствуя направлению в русло законности процесса применения ст. 233 УК РМ.

**Теоретическая значимость:** создание прочной основы для инициирования научных дискуссий об уголовно-правовых аспектах преступления, предусмотренного ст. 233 УК РМ; углубленное исследование преступления, предусмотренного ст. 233 УК РМ, принимая во внимание положения (недавно вступившие в силу) Закона № 298/2018 и ПП № 254/2021; обнаружение несовершенств и сложностей, которые влияют на процесс толкования ст. 233 УК РМ и/или квалификации преступления, предусмотренного данной статьей и т.д.

**Практическая применимость исследования:** толкование ст. 233 УК РМ с точки зрения положений (недавно вступивших в силу) Закона № 298/2018 и ПП № 254/2021; выявление ошибок и упущений в случаях применения ст. 233 УК РМ; установление причин непредсказуемости, неясности и неэффективности некоторых положений ст. 233 УК РМ, норм о правонарушениях, взаимодополняющих эту статью, а также норм Закона № 298/2018, ПП № 254/2021 и других нормативных актов, содержащих понятия, указанные в ст. 233 УК РМ и т.д.

**Апробация результатов диссертационного исследования:** в научной деятельности, в целях содействия повышению научного интереса в отношении преступления, предусмотренного ст. 233 УК РМ; в целях углубления уровня знаний и навыков лиц, уполномоченных на практическое применение ст. 233 УК РМ, а также докторантов, магистрантов и студентов; в законотворческой деятельности, для обеспечения большей предсказуемости, ясности и эффективности ст. 233 УК РМ.

## ANNOTATION

**Boldescu Anastasia, “Criminal liability for illegal hunting”. PhD in Law Thesis. Doctoral School of Legal Sciences of Moldova State University. Chisinau, 2023**

**The structure of the Thesis:** introduction, three chapters, conclusions and recommendations, bibliography of 487 titles. The results achieved are published in 19 scientific papers.

**Keywords:** hunting; proper authorization; periods when hunting is prohibited; prohibited places; prohibited tools; prohibited methods; poaching.

**The purpose of the Ph.D. Thesis** is to investigate in depth the offense laid down in art. 233 MCrC (taking into account the provisions (recently entered into force) of Law No. 298/2018 and GD No. 254/2021), identifying the difficulties that appear in the process of interpreting the art. 233 MCrC and / or qualification of the offense laid down in this Article, and to come up with a proposal for ways to overcome these difficulties.

**The goals of investigation:** analysis of doctrinal points of view regarding liability for the offense laid down in art. 233 MCrC; examination of non-criminal rules of reference for art. 233 MCrC, necessary for the interpretation of this article; the comparative investigation of provisions regarding illegal hunting laid down in the criminal legislation of other states, as well as the rules in which this act was criminalised, which applied on the current territory of the Republic of Moldova in the past, etc.

**The scientific novelty and originality of the obtained results** is proven by the fact that the present Thesis is the first scientific work of such class, in which the analysis of the offense laid down in Art. 233 MCrC, is done through the lens of the reference rules of Law No. 298/2018 and GD No. 254/2021. The personal input is demonstrated by the conceptualization of the interpretation paradigm of Art. 233 MCrC, taking into account scientific priorities and practical challenges. From the perspective of the provision of Art. 233 MCrC, the juridical basis of liability for the offense laid down in this Article is investigated. From the perspective of the practice of applying Art. 233 MCrC, the real basis of liability for the offense of illegal hunting is analysed.

**The obtained results which contribute to solving the foremost scientific problem:** the conceptualization of the interpretation paradigm of the Art. 233 MCrC, taking into account the numerous and sometimes controversial reference rules, which will ensure the application of Art. 233 MCrC under conditions of predictability, clarity and efficiency, thereby contributing to the direction towards the legality of the process of application of Art. 233 MCrC.

**Theoretical importance:** creation of a solid basis for launching scientific discussions regarding the criminal law aspects of the offense laid down in Art. 233 MCrC; in-depth investigation of the offense laid down in Art. 233 MCrC, taking into account the provisions (recently entered into force) of Law No. 298/2018 and GD No. 254/2021; detecting the imperfections and deviations that mark the process of interpretation of Art. 233 MCrC and/or of the qualification of the offense laid down in this Article, etc.

**Practical value of the research paper:** interpretation of the Art. 233 MCrC in terms of the provisions (recently entered into force) of Law No. 298/2018 and GD No. 254/2021; identification of errors and omissions in cases of application of Art. 233 MCrC; establishing the causes of unpredictability, ambiguity and inefficiency of certain provisions of Art. 233 MCrC, of the contravention rules that are complementary to this article, as well as of the rules of Law No. 298/2018, of GD No. 254/2021 and of other normative acts containing reference provisions for Art. 233 MCrC, etc.

**Implementation of the scientific results:** in scientific activity, in order to contribute to the increase of scientific interest in relation to the offense laid down in Art. 233 MCrC; in order to deepen the level of knowledge and skills of those empowered with the practical application of Art. 233 MCrC, as well as of doctoral students, master's students and students; in the legislative activity, to ensure better predictability, clarity and efficiency of Art. 233 MCrC.

**BOLDESCU ANASTASIA**

**CRIMINAL LIABILITY FOR ILLEGAL HUNTING**

**SPECIALTY 554.01 – CRIMINAL LAW AND CRIMINAL  
ENFORCEMENT LAW**

Summary of the Thesis for the Award of a PhD degree in Law

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