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**JURIDICO-PENAL ANALYSIS OF THE ORGANIZATION OF
ILLEGAL MIGRATION**

**SPECIALTY 554.01 - PENAL AND PENAL
EXECUTIONAL LAW**

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CONTENTS

Conceptual research benchmarks	4
The substent of the thesis.....	7
General conclusions and recommendations.....	18
Bibliography	22
Annotation.....	25

CONCEPTUAL RESEARCH BENCHMARKS

Since the universalisation of human rights protection standards, fundamental human values have been conceived as priorities that help to formulate a definition of human dignity. The evolution of the definition gives every person the freedom to engage in work and other spheres of society, with a positive impact on the economic, social and political situation of the state. Meanwhile, it has a negative impact on the development of organised crime.

When there is a threat to the territorial integrity and constitutional order of the state, organised crime is seen as a fundamental vice mentioned in the case law of the European Court of Human Rights (hereinafter referred to as the ECtHR), and protection against it must be ensured by each individual state through the adoption of rules that would incriminate the fundamental vice. The protection of fundamental values is not a simple process, as both the State and the victims of this fundamental flaw, and the perpetrators, enjoy fundamental rights under the European Convention on Human Rights (hereinafter ECHR). In this context, every State has an obligation to ensure respect for everyone's right, and the ECtHR shall seek a consensus as to when the applicability of the penal norm will be deemed appropriate to protect a public interest. In the absence of such a consensus, states, in pursuing the legal purpose stipulated in the ECHR, have a broader margin of appreciation of the provisions.

The actuality of the subject derives from the international community's concern for the protection of humanity from slavery or the conditions in which it begins, and from the common effort to prevent smuggling of migrants. The actuality is also dictated by: the existing situation of the Republic of Moldova in the Transnistrian region; the signing of the Association Agreement with the European Union; the liberalisation of the visa regime; the signing and ratification of the ECHR and many others. In the context of the war in Ukraine, as of 6 December 2022, about 4.8 million refugees are registered for temporary protection in the territory of the European Union member states and migration is constantly increasing.¹ According to operational information, irregular immigration processes at the borders of the Republic of Moldova have intensified considerably.²

Thus, according to the data presented by the Ministry of Internal Affairs, in 2021 only 18 cases of organizing illegal migration were registered, compared to 2022 when 313 cases were registered, which represents a sudden increase of criminality approximately 1583.3%.³ Pursuant to the guarantee of the commitments undertaken, the state shall comply with its positive obligation and establish a rule for the protection of victims and the public interest protected by the state for the relations of entry, exit, stay or transit of the territory of the Republic of Moldova under the Protocol against the Smuggling of Migrants (hereinafter - TIM Protocol), respecting the right of

¹ Information on the flow of refugees from Ukraine in the period 24.02.2022- 06.12.2022. Council of the European Union. Available on 05.01.2023: <https://www.consilium.europa.eu/ro/policies/eu-migration-policy/refugee-inflow-from-ukraine/>

² Operational information on the state of crime (unclassified) on the territory of the Republic of Moldova for May 2021. Available: http://mai.md/sites/default/files/date%20statistice/date%20statistice%202021/mai_0.xls
Operational information on the state of crime (not classified) on the territory of the Republic of Moldova for April 2021. Available: <http://mai.md/sites/default/files/date%20statistice/date%20statistice%202021/aprilie.xls>
Operational information on the state of crime (without cases) on the territory of the Republic of Moldova for March 2021. Available: <http://mai.md/sites/default/files/date%20statistice/date%20statistice%202021/martie.xls>
Operational information on the state of crime (without cases) on the territory of the Republic of Moldova for August 2022. Available: https://mai.gov.md/sites/default/files/date%20statistice/date%20statistice%202022/august_0.xls;
<https://mai.gov.md/sites/default/files/date%20statistice/date%20statistice%202022/august.xls>

³ Operational information on the state of crime (unclassified) on the territory of the Republic of Moldova for November 2022. Available: <https://www.mai.gov.md/sites/default/files/date%20statistice/date%20statistice%202022/Noiembrie.xls>

everyone, and the ECtHR shall seek a consensus on the situation in which the applicability of the criminal rule will be considered appropriate to protect a public interest. In the absence of such a consensus, States, in pursuing the legal purpose stipulated in the ECHR, have a broader margin of appreciation of the legal provisions.

This conclusion is also drawn from statistics presented by the United Nations Office on Drugs and Crime, which estimates that at least 2.5 million migrants were trafficked in 2016, generating nearly \$7 billion for migrant smugglers.⁴ According to a European Parliament report, most migrants from outside the European Union (hereafter EU) come through legal channels, but many migrants try to stay or reach the EU by illegal means: by overstaying in the EU or illegally crossing external borders.⁵ This is unacceptable for a democratic society and the topicality of this issue has an impact on the combat against organised illegal migration and organised transnational crime.

Framing the issue in international concerns. Investigations on the subject we are addressing may have an impact on the search for consensus in defining the notions of migrant and persons benefiting from international humanitarian protection. The importance of the theme also lies in the elucidation of all comparative aspects with reference to state priorities on the dimension of social relations established at the state border. Therefore, the value of the juridical penal analysis of the norm that incriminates the organization of illegal migration derives from the following: whether there is compliance with international standards for the protection of human rights; whether it includes the protection of the rights of migrants or of the public interests of the state arising from the relations arising from the entry, exit, stay or transit of the territory of the Republic of Moldova; whether the victim of the crime is only the migrant or the right of other persons is protected (for example: the right of persons benefiting from international humanitarian protection).

The results obtained from the research of the stipulated theme can lead to the development of the science of penal law, public international law or international human rights law. The thesis will elucidate the links with these sciences through the prism of international standards of human rights protection, which will reflect the uniqueness of the system of fundamental values and the influence of the penal norm in their case. The conclusions obtained will contribute, in the above mentioned sciences, to the search for consensus in the establishment of the public interest and to the definition of the term migrant smuggling. The thesis will have an impact on the legislative framework in order to introduce amendments to the Penal Code of the Republic of Moldova (hereinafter - PC RM), which will improve the legal framework and ensure the protection of fundamental human values in a way to effectively ensure the protection of migrants' rights. The paper may serve as a reference for a Decision of the Plenary of the Supreme Court of Justice (hereinafter - SCJ) on the dimension of relations arising in connection with the entry, exit, stay or transit of the territory of the Republic of Moldova by persons who are neither residents nor citizens of the Republic of Moldova. Thus, the jurisprudence of the courts will be adapted to the conditions of international standards of human rights protection. The results obtained will help the courts to correctly apply the criminal law criminalising the organisation of illegal migration.

Framing the theme in national and regional concerns. Our scientific approach in the juridico-penal field is initiated on the basis of doctrinal sources of undisputed reputation in criminal doctrine and in other scientific fields (constitutional law, administrative law, information law, civil law, penal procedural law; philosophy, sociology, informatics, etc.), elaborated by: S. Agachi, G. Alecu, G. Avornic, A. Barbăneagră, V. Berliba, S. Brînză, V. Budeci, T. Carpov, R.

⁴ The information provided by INTERPOL on complex criminal networks facilitate the illegal passage of migrants across borders – for a price. Disponibil la 06.12.2022: <https://www.interpol.int/Crimes/People-smuggling#:~:text=The%20United%20Nations%20Office%20on,7%20billion%20for%20people%20smugglers.>

⁵ Luyten, K. Brenda-Smialowski, S. Understanding EU action against migrant smuggling. Briefing, EU policies – Insights. E 659.450 – January 2021. Available: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659450/EPRS_BRI\(2021\)659450_EN.pdf?fbclid=IwAR1_cR7Lv1d9ifGnAkIuzgCuOwqN_wo-t-dU5Y86iEidawSnTtiIYvuYQ00](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659450/EPRS_BRI(2021)659450_EN.pdf?fbclid=IwAR1_cR7Lv1d9ifGnAkIuzgCuOwqN_wo-t-dU5Y86iEidawSnTtiIYvuYQ00)

Cojocaru, V. Cuşnir, R. Cuciurcă, L. Gîrla, D. Gurev, M. Hadârcă, A. Marin, M. Megherea, T. Popovici, M. Răilean, V. Stati, I. Tabarcea, G. Ulianoschi, X. Ulianoschi, N. Ursu, V. Volcinschi. In addition, basic works published in other countries are considered to be those of authors: S. Abresheva, V. Andriushencov, E. Baiburina, I. Bantekas, E. Begalov, Y. Boretschi, K. Boyle, K. J. Brown, W. Butler, M. Chapman, J. F. Chacon, Ku Charlotte, N. Ceremnova, C. Cerna, B. Custers, S. Decker, Paul F. Diehl, J. Donnelly, M. Duguit, K. Dzehtsiarou, V. Fedoseev, K. Ferzan, N. Frolkin, F. De Londras, T. Gaicova, J. Gerards, S. Gingeras, G. Glonti, I. Goldin, F. Gordon, C. Gregory, P. Guyer, E. Guild, O. Iachimov, S. Iachimova E. Jurgens, V. Kozlov, K. Kernaghan, T. Kruessmann, M. Kuhnen, J. Langford, I. Larionov, A. Larry, S. Legomsky, J. Lougford, G. Lobjanidze, D. Luban, A. Madjlisi, Lida J. Maki, J. Malan, A. Mashabaev, O. Mihali, I. Miroslavovici, I. Mitrofanova, S. Morse, S. Muhametgalieva, A. Musabecov, B. Nabarro, C. Nunlist, L. Oette., I. Pohila, K. Polner, Mark A. Pollack, A. Pott, A. Pritula, M. Rahimov, C. Rodriguez, J. Rowles, A. Tanislav, Jens T. Theilen, G. Sanchez, D.L. Shelton, A. Shidlovshi, D. Sokolov, J. Stefanelli, E. Strelitsov, A. Suominen, F. Zimring, S. Zane ş.a.

The object of the research is to assess the real basis of penal liability for the crime of organising illegal migration from the point of view of the framing of the criminal act.

The aim of the thesis is a comparative juridico-penal analysis of the doctrine and legislation of the Republic of Moldova and foreign legislation on penal liability for the crime of organising illegal migration, in order to argue and formulate proposals for reconceptualising the norm and increasing the effectiveness of its application.

Research hypothesis. Migrant smuggling seriously affects the protection of human rights, especially of foreigners, which is of particular concern for people in need of international humanitarian protection in a country where their life and/or freedom could be at risk. Thus, if the juridico-penal norm will be precise from the point of view of human rights protection, then we will be able to improve the national law and the jurisprudence of the courts, using the verticality of the national law harmonised with the international human rights protection standards to which the Republic of Moldova is a party. As a result, it will be possible to determine whether the offence of organising illegal migration effectively protects the rights of migrants.

Summary of research methodology and justification of chosen research methods. General scientific research methods, methods specific to the juridical sciences, classical and modern, were used to achieve the proposed objectives.

The juridico-comparative method has been used both vertically, horizontally (in the case of other systems) and diagonally (in other countries). The comparative juridical method was used to establish the correlation between the crime of organising illegal migration and migrant smuggling, as required by international standards. The horizontal comparative juridical method was applied in order to elucidate the theoretical and practical differences in form and content of the organisation of illegal migration in the legislation of other states.

The philosophical method was used to justify the need to reconceptualise the rule criminalising the organisation of illegal migration in migrant smuggling. According to the method, the connection between fundamental human rights and the science of penal law was determined, based on Immanuel Kant's theories of the hypothetical and categorical imperative. Kant's theses were used to seek a national and international consensus on the violation of the sanctity of human dignity arising in connection with the entry, exit, stay or transit of the territory of the Republic of Moldova.

The historical method, in conjunction with the systemic and functional method, has helped us to determine the occurrence of harmful facts related to the crossing of state borders in connection with entry, exit, stay or transit of the territory of the Republic of Moldova. The interpolation and extrapolation method was correlated with the statistical method and the logical method. Thus, the analysis and synthesis of the research represents a deductive answer to some contradictory issues raised in the research.

An empirical method through observation was used to prove the hypothesis. Thus, the purpose of the monitoring is to determine the limits of the legal system of which the Republic of Moldova is a part and to find a national and international consensus on the prevention of migrant smuggling. Therefore, the definition of organised irregular migration was compared with the definition of migrant smuggling in the TIM Protocol supplementing the United Nations Convention against Transnational Organised Crime (hereafter-TOC).

Thus, various researches were carried out in the thesis in comparison with the legislation of other countries, such as Belarus, Kazakhstan, Poland, Romania, Russian Federation, Ukraine, etc. Following the analysis, it was established that there is no international consensus on the correct definition of what constitutes a crime of organising illegal migration. And, according to international human rights standards, it was determined that the margin of appreciation of the international definition lies with the state. Therefore, in order to identify a national consensus on the prevention of migrant smuggling, the definition of the crime of organising illegal migration was analysed in the light of Moldovan judicial practice. Thus, within the empirical research the relevant judicial practice was identified using the comparative and systemic method. It was established as a result that the definition of the organisation of illegal migration according to the judicial practice is uneven, as it contradicts the definition of smuggling of migrants in the TIM Protocol. Therefore, in order to verify and justify the results obtained, the phrases stipulated in the provision of the offence of organising illegal migration were analysed in the light of the case law of the ECtHR, having established that the protection of migrants' rights is closely linked to their dignity, which is the object of Article 8 ECHR (right to respect for private and family life). However, it has been pointed out that the definition of migrant smuggling differs from the definition of trafficking in human beings. And in fact, in the offence of organising illegal immigration, the Moldovan legislator focuses on Moldova's borders instead of protecting the rights of immigrants. Finally, the penal concept of migrant smuggling was modelled, which reconceptualises the crime of organising illegal immigration, treats it according to international human rights standards and does not violate the rules and restrictions of the penal legislation of the Republic of Moldova.

THE SUBSTENT OF THE THESIS

In Chapter 1" **ANALYSIS OF THE SITUATION IN THE FIELD OF CRIMINAL REPRESENTATION FOR THE OFFENCE OF ORGANIZING ILLEGAL MIGRATION**, the scientific materials published both in the Republic of Moldova and abroad are analyzed. The evolution of the scientific materials published in the country with reference to the penal norm incriminating the organisation of illegal migration can be divided into two periods:

1. publications until the adoption of the norm incriminating the organisation of illegal migration;
2. publications after the adoption of the norm incriminating the organisation of illegal migration.

The scientific material that was published before the adoption of the norm incriminating the organisation of irregular migration is difficult to relate to international human rights standards. However, those published after its adoption are based on an analysis of the law providing for penal liability for organising illegal migration. In our view, the scientific materials referring to the penal norm criminalising the organisation of illegal migration published in the country can be classified into: publications that refer directly to it and publications that partially cover it, but can contribute to a broader study of the theses set out in the penal norm.

The following researchers in the country have examined the subject of research: S. Agachi, G. Alecu, G. Avornic, A. Barbăneagră, V. Berliba, S. Brînză, V. Budeci, T. Carpov, R. Cojocaru, V. Cusnir, R. Cuciurcă, L. Gîrla, D. Gurev, M. Hadârcă, A. Marin, M. Megherea, T. Popovici, M. Răilean, V. Stati, I. Tabarcea, G. Ulianovschi, X. Ulianovschi, N. Ursu, V. Volcinschi.

The thesis pays particular attention to the textbook "Treatise on Penal Law", published in 2015, edited by S. Brînză and V. Stati,⁶ which proposes a scientific-practical approach. The authors investigate the degree of compatibility between the international regulations on the subject and the domestic ones and remove the divergences of interpretation; the contribution of the study being: clarification of the legal status of the crime of illegal migration of the status of the victim of illegal migration; arguing the appropriateness of expressing the consent of the victim to the demarcation of trafficking in human beings, trafficking in children, illegal crossing of the state border and the organization of illegal migration. The authors identify the final purposes that can be pursued in the commission of the crime, which proves to be problematic in the literature, being determined by the ambiguous and non-exhaustive nature of the incriminating text, and use judicial practice. Thus, we consider appropriate the conclusion of dividing the types of documents in the context of organized activity by the subject of the offence provided for in Article 362¹ of the Penal Code of the Republic of Moldova: official documents issued on the territory of the Republic of Moldova; documents issued by other states (other than the Republic of Moldova and the state of entry; other than the state of entry - if the document is intended for transit through the territory of the Republic of Moldova).⁷

Besides, it is also relevant to conclude that the use of false official documents exceeds the limits of the composition provided for in Article 165 (trafficking of human beings) and Article 206 (trafficking of children) of the PC RM and qualifies under Article 361 (making, possession, sale or use of false official documents, prints, stamps or seals) of the Penal Code of the Republic of Moldova.⁸ Since the term "deception" is used in this context, which is directed against the trafficked victim, in this case the documents are fraudulently forged, being known to the trafficking victim. Therefore, the above-mentioned article also supports the thesis that the offence of organising illegal migration for the purpose of sexual exploitation cannot be considered as a crime.⁹ Thus, the authors note that if the legislator had wanted to specify it, this would certainly have been included in the content of Article 362¹ of the PC RM.¹⁰

The thesis also takes into account the conclusions formulated in the PhD thesis " Crimes affecting the state border regime of the Republic of Moldova ", defended in 2018 by M. Megherea.¹¹ The author analyzes two types of juridical and penal crimes: illegal crossing of the state border and organization of illegal migration. However, he does not relate the norm incriminating the organisation of illegal migration to international human rights standards, nor to the TIM Protocol. The author makes a first attempt to introduce into the provision of Article 362¹ of the Moldovan Penal Code the terms used by the legislator in Articles 165 and 206 of the Moldovan Penal Code, namely: recruitment, transportation, harbouring, transfer and reception of migrants, as well as the modification of the offence of organising illegal migration into smuggling of migrants.¹² His views are also relevant to our thesis, as it is the only scientific work that proposes *de lege ferenda* amendments to the penal law incriminating the organisation of illegal migration.

Accordingly, we note that much of the literature is concerned with identifying definitions of migrant, emigrant or immigrant.¹³ Others are concerned with analyses of the terms trafficking,

⁶ BRÎNZĂ, S., STATI, V., Treatise on Penal Law, Special Part. Volume II, Chisinau, 2015.

⁷ Ibidem.

⁸ Idem, pag. 1155.

⁹ Ibidem

¹⁰ Ibidem.

¹¹ MEGHEREA, M. Crimes affecting the state border regime of the Republic of Moldova, PhD Thesis in Law, Free International University of Moldova, Chisinau 2018. Available: http://www.cnaa.md/files/theses/2018/54168/marin_meghera_thesis.pdf

¹² Ibidem.

¹³ ГЫРЛА, Л., ТАБАРЧА, Ю., Уголовное право, часть особенная. / Учебник с изменениями и дополнениями на 10 октября 2010 г., том.2, Кишинэу 2010.

transportation or vulnerability of victims.¹⁴ These interpretations are intended to develop society towards an internal consensus that protects both victims of crime and perpetrators from abuse by the authorities. The views set out in the literature in the Republic of Moldova are necessary in the search for domestic consensus on the protection of migrants' rights in relation to the jurisprudence of national courts.

In addition, the authors' works published in other countries are considered as basic works: S. Abresheva, V. Andriushencov, E. Baiburina, I. Bantekas, E. Begalov, Y. Boretschi, K. Boyle, K. J. Brown, W. Butler, M. Chapman, J. F. Chacon, Ku Charlotte, N. Ceremnova, C. Cerna, B. Custers, S. Decker, Paul F. Diehl, J. Donnelly, M. Duguit, K. Dzehtsiarou, V. Fedoseev, K. Ferzan, N. Frolkin, F. De Londras, T. Gaicova, J. Gerards, S. Gingeras, G. Glonti, I. Goldin, F. Gordon, C. Gregory, P. Guyer, E. Guild, O. Iachimov, S. Iachimova E. Jurgens, V. Kozlov, K. Kernaghan, T. Kruessmann, M. Kuhnen, J. Langford, I. Larionov, A. Larry, S. Legomsky, J. Lougford, G. Lobjanidze, D. Luban, A. Madjlisi, Lida J. Maki, J. Malan, A. Mashabaev, O. Mihali, I. Miroslavovici, I. Mitrofanova, S. Morse, S. Muhametgalieva, A. Musabecov, B. Nabarro, C. Nunlist, L. Oette., I. Pohila, K. Polner, Mark A. Pollack, A. Pott, A. Pritula, M. Rahimov, C. Rodriguez, J. Rowles, A. Tanislav, Jens T. Theilen, G. Sanchez, D.L. Shelton, A. Shidlovshi, D. Sokolov, J. Stefanelli, E. Strelitsov, A. Suominen, F. Zimring, S. Zane ș.a.

Correspondingly, the juridico-penal analysis of the criminal norm in question includes two types of foreign scientific material:

a) foreign scientific materials analysing the penal norm incriminating the organisation of illegal migration;

b) scientific material analysing international standards for the protection of migrants' rights.

On the basis of the study of foreign scientific materials, it can be seen that the researchers' opinions converge on the dimension of the existence of a European and international consensus on the protection, promotion, fulfilment and respect of human rights and freedoms in the fight against migrant smuggling. We consider that the Republic of Moldova is a sovereign and independent state and therefore the imposition of certain external conditions through the ratification of the UNTOC Convention and its additional protocols may contravene the principle of subsidiarity in its material aspect.¹⁵ The Republic of Moldova is in a better position to define the criminal name criminalising the organisation of illegal migration under the TIM Protocol. However, according to the ECHR, the state has the priority to establish its own rules regarding the crossing of the state border, thus any relationship can reach national security interests. However, according to ECtHR case law, the state has a broader margin of interpretation of the law, as it can place restrictions on a fundamental right if it is contrary to a public interest, provided that it is well balanced and based on a social need necessary in a democratic society.¹⁶ The explanation comes from the fact that the legitimate interest rule of the national legislator can be quite interpretative, and some explanations are provided by rules describing a specific limitation.

Per initio, it is presumed that the penal norm incriminating the organisation of illegal migration provided for in Article 362¹ of the PC RM corresponds to the provisions of international

¹⁴ VIDAICU, V., DOLEA, I., *Combaterea traficului de ființe umane (Drept material și procesual penal)*. Seria suport de curs. Institutul Național al Justiției (ISBN 978-9975-9792-4-5). Cartea XXI. Chișinău, 2009. Disponibil: https://www.unodc.org/documents/human-trafficking/Combating_Trafficking_-_Moldova.pdf?fbclid=IwAR1CJ15qIxxvJUI_Qp_R7C9QV5N484PuCWpqVyYlpSF8dnv9nSa5hdeKxN60

¹⁵ Constituția Republicii Moldova, din 29.07.1994. În: Monitorul Oficial, Data intrării în vigoare 27.08.1994. Nr. 1. Disponibilă: https://www.legis.md/cautare/getResults?doc_id=111918&lang=ro
A se vedea : *Interhandel Case (Switz. v. U.S.)*, 1959 I.C.J. 6 (Mar. 21) Disponibil: http://www.worldcourts.com/icj/eng/decisions/1959.03.21_interhandel.htm;

Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms, in force August 01, 2021. Disponibil: https://www.echr.coe.int/Documents/Protocol_15_ENG.pdf;

¹⁶ DE LONDRAS, F., DZEHTSIAROU, K., *Great Debates on the European Convention on Human Rights* (ISBN 978-1-137-60731-7), Palgrave Macmillan Education, London 2018.

human rights protection standards.¹⁷ Each state has a positive obligation to create a domestic system that will protect a public interest. This system may comprise either a public interest, such as national or public security, or a private, individual interest of the migrant. One of the basic ideas concerning the legal status of the migrant is that the movement of persons from one State to another is exercised for the purpose of employment.¹⁸ Furthermore, it should be noted that the term 'actual residence' means the country in which the migrant is actually naturalised.¹⁹ Thus, a migrant is a person who changes his/her country of residence. It is a different situation when someone is persecuted in the country of origin on grounds of race, religion, membership of a social group or public opinion, such a person is called a refugee.²⁰ The norm incriminating the organisation of illegal migration is a type of crime, which is not found in most former Soviet states. This penal norm can be identified in the Russian Federation, Kazakhstan, Belarus and the Republic of Moldova. In Tajikistan and Kyrgyzstan it has been abrogated.²¹ Thus, here the penal offences were analogous to those in Kazakhstan and the Russian Federation.²² In the literature of Tajikistan and Kyrgyzstan, some published scientific materials can be mentioned: "Juridical-penal analysis of the organisation of illegal migration", author K. Djaianbaev;²³ "Penal liability for illegal crossing of the state border" by I. Miroslavocici;²⁴ M. Rahimov's work "Delimitation of trafficking in human beings from other related criminal acts".²⁵

Referring to the penal legislation of the Republic of Belarus, it cannot be the subject of comparative law. The Republic of Belarus is not a member of the EU and the Council of Europe, so it has not signed the ECHR and other international standards on this subject. The Republic of Belarus relies on its common experience with the Russian Federation and Kazakhstan, members of the Commonwealth of Independent States (hereinafter: CIS). However, this mechanism does not reflect a high degree of confidence in the legitimacy of the legal purpose pursued, as the Moldovan legislator looks at it horizontally.

¹⁷ Hotărârea Curții Constituționale privind incriminarea organizării migrației ilegale/ Comunicatul prezentat la 0702.2017. Disponibilă: <http://constcourt.md/libview.php?l=ro&idc=7&id=946&t=/Media/Noutati/Prevederile-privind-incriminarea-organizarii-migratiei-ilegale-constitucionale>

¹⁸ COJOCARI, I., Răspunderea penală pentru organizarea migrației ilegale: analiza materialelor științifice publicate în alte state (ISBN 978-9975-88-037-4). În: Conferința științifică: Rolul științei în reformarea sistemului juridic și politico-administrativ, Ediția a IV-a, US Bogdan Petriceicu Hasdeu din Cahul, 2019. A se vedea și International Organization for Migration of the United Nations. International Organization for Migration/Glossary on Migration, ISSN 1813-2278, pag. 14-16. Geneva 2019. Disponibil:

https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf

¹⁹ Case of Nottebohm, Liechtenstein versus Guatemala/International Court of Justice, second phase judgment of april 6th, 1955, Disponibil: <http://www.icj-cij.org/files/case-related/18/018-19550406-JUD-01-00-EN.pdf>

²⁰ Convenția și Protocolul ONU privind statutul refugiaților. / Definiția completă este mai lungă și mai tehnică, dar este în linii mari conformă cu definiția dată la art.1. Disponibilă:

<http://www.unhcr.org/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html>

²¹ COJOCARI, I., Răspunderea penală pentru organizarea migrației ilegale: analiza materialelor științifice publicate în alte state (ISBN 978-9975-88-037-4). În: Conferința științifică: Rolul științei în reformarea sistemului juridic și politico-administrativ, Ediția a IV-a, US „Bogdan Petriceicu Hasdeu” din Cahul în 2019, pag. 52.

²² COJOCARI, I., Răspunderea penală pentru organizarea migrației ilegale: analiza materialelor științifice publicate în alte state (ISBN 978-9975-88-037-4). In: Conferința științifică: Rolul științei în reformarea sistemului juridic și politico-administrativ, Ediția a IV-a, US Bogdan Petriceicu Hasdeu din Cahul, 2019, pag. 52; Уголовный кодекс Республики Таджикистан, ст.335² Организация незаконной миграции, Ахбори Маджлиси Оли Республики Таджикистан, 1998 год, № 9, ст. 68; №22, ст. 306; 1999 год; Уголовный Кодекс Киргизской Республики, г.Бишкек, от 1 октября 1997 года N 68. (В редакции Законов КР от 21 сентября 1998).

²³ ДЖАЯНБЕКОВ, К. Уголовно-правовая характеристика, организации незаконной миграции. In: Вестник ном.1, 2015 г. Disponibil la 20.02.2021: https://www.ksla.kg/media/vestnik/2015_1/dzhayanbaev_k_i.pdf

²⁴ МИРОСЛАВОВИЧ, И. Уголовная ответственность за незаконной пересечение государственной границы. На правах рукописи УДК 343.3 (575.2) (043.3), Disponibil: <http://lawtheses.com/ugolovnaya-otvetstvennost-za-organizatsiyu-nezakonnoy-migratsii>

²⁵ РАХИМОВ, М. Разграничение торговли людьми со смежными составами преступлениями. In: Государство и Право, 2008, № 10, с. 97-100

In the literature of the Republic of Belarus we have not recorded many scientific works on this topic. A. Shidlovschi,²⁶ in his article "Organisation of illegal migration of citizens of other states and stateless persons", does not differentiate between the penal norm incriminating the organisation of illegal migration and other related acts. Similarly, we note that it focuses more on the territorial interests of the state than on the interests of migrants under the TIM Protocol. The author does not clearly clarify the distinction between the rule incriminating the organisation of illegal migration and trafficking in human beings, which is provided for by the provision of Article 181 of the PC RM, and the article mentions that the motive for committing the offence of organising illegal migration may even be revenge.²⁷ Thus, the literature of the Republic of Belarus does not identify the acquittal of migrants from penal liability. The named penal law does not provide for special conditions regarding the status of victims under the TIM Protocol.

The crime of organising illegal migration is also provided for in Article 394 of the Penal Code of Kazakhstan and has the following content: organising illegal migration by providing forged vehicles or documents or residential or other premises, as well as providing citizens, foreigners and stateless persons with other services for illegal entry, exit, movement on the territory of the Republic of Kazakhstan.²⁸ In addition, the main normative acts regulating relations in this area are the following legal provisions: the Law on Migration of the Population; the Law on the Legal Status of Foreigners; the Regulations on Entry and Stay of Foreign Citizens approved by Government Decree No. 136 of 28 January 2000.²⁹ Thus, the rule incriminating the organisation of illegal migration to Kazakhstan contains two aggravating circumstances set out in paragraphs 2 and 3 respectively of Article 394 of the Penal Code of the Republic of Kazakhstan: the same act committed by a person using official capacity or a group of persons by prior agreement; the same acts committed by an organised criminal group.³⁰

A scholarly study of the norm incriminating the organisation of illegal migration, edited by S. Ambresheva, is entitled "On the improvement of national criminal legislation in the field of combating trafficking in human beings and slavery". The article does not contain a full juridical and penal analysis of the crime of organising illegal migration, and the author draws particular attention to the transnational nature of the organisation of illegal migration and trafficking in human beings.³¹

From our point of view, the authors of the Republic of Kazakhstan admit the content of the rule incriminating the organisation of illegal migration. Nevertheless, they perceive the offence of organising illegal migration more as a mitigating circumstance to the offence of trafficking in human beings. As in the case of the Republic of Belarus, the penal legislation of the Republic of Kazakhstan cannot have any relevance on the legislation of the Republic of Moldova, because the

²⁶ ШИДЛОВСКИЙ, А. Организация незаконной миграции иностранных граждан и лиц без гражданства в республике Беларусь. In: Белорусская юридическая энциклопедия: В 4 т., Т. 2. Минск, 2009. pag. 510-511. Disponibil: <http://www.elib.bsu.by/handle/123456789/91138?mode=full>

²⁷ COJOCARI, I. Răspunderea penală pentru organizarea migrației ilegale: analiza materialelor științifice publicate în alte state (ISBN 978-9975-88-037-4). In: Conferința științifică: Rolul științei în reformarea sistemului juridic și politico-administrativ, Ediția a IV-a, US „Bogdan Petriceicu Hasdeu” din Cahul, 2019, pag. 51.

²⁸ Уголовный Кодекс Республики Казахстан от 03.07.2014 N 226-V ЗПК. Disponibil: <https://pavlodar.com/zakon/index.html?dok=00087&oraz=08&noraz=330-2>

²⁹ Незаконная миграция в СНГ. Проблемы, пути решения. Disponibil: <http://cis.minsk.by/page.php?id=13734>⁸³ Уголовный Кодекс Республики Казахстан от 03.07.2014 N 226-V ЗПК. art. 394 alin.2 Disponibil: <https://pavlodar.com/zakon/index.html?dok=00087&oraz=08&noraz=330-2>

³⁰ Уголовный Кодекс Республики Казахстан от 03.07.2014 N 226-V ЗПК. art. 394 alin.2 Disponibil: <https://pavlodar.com/zakon/index.html?dok=00087&oraz=08&noraz=330-2>

³¹ АБРЕШЕВА, С. К вопросу о совершенствовании национального уголовного законодательства в сфере противодействия торговле людьми и рабству. In: Вестник КазНУ, Алматы, 2017. Disponibil: <https://articlekz.com/article/18916>; COJOCARI, I. Răspunderea penală pentru organizarea migrației ilegale: analiza materialelor științifice publicate în alte state (ISBN 978-9975-88-037-4). In: Conferința științifică: Rolul științei în reformarea sistemului juridic și politico-administrativ, Ediția a IV-a, US „Bogdan Petriceicu Hasdeu” din Cahul, 2019, pag. 52.

strategy of the Republic of Moldova on the dimension of promotion and protection of migrants' rights has a particular certainty in relation to European values.³²

Following our research, we identified the following relevant scientific materials published in the Russian Federation: V. Andriushenkov is the author of the paper "Penal Liability for Organizing Illegal Migration";³³ E. Baiburina defended the thesis "Organizing Illegal Migration: Juridical, Penal and Criminological Aspects";³⁴ N. Cermnova and O. Mihali are the authors of the research "Qualifying signs of the organization of illegal migration";³⁵ O. Iachimov and S. Iachimova published the study "Organization of illegal migration: problems of penal liability";³⁶ V. Kozlov and N. Fronklin wrote about "Organization of illegal migration: juridico-penal and criminological analysis";³⁷ I. Larionov published "Juridico-penal and criminological analysis of the organization of illegal migration";³⁸ D. Sokolov - "Criminological analysis of the organization of illegal migration".³⁹ The Russian literature actually elucidates the same explanations and positions as that of the Republic of Belarus and Kazakhstan.

Interesting in our context is the study "Organisation of illegal migration: problems of criminal liability", written by O. Iachimov and S. Iachimova, which problematises the unclearness of holding perpetrators penally liable for the harmful act of organising illegal migration and raises a number of questions regarding the consummation of the crime.⁴⁰ In our view, the interpretation here is similar to that of the Kazakh authors, identifying the notion of "organisation" with the preparation of the offence. They question from what point in time the actions should be accepted as organisational for illegal entry into the territory of the Russian Federation and when they should be considered consummated.⁴¹ It is noted that it remains unclear why the subject may carry out all the organisational actions for illegal entry into the territory of the Russian Federation of other persons, but their entry may not follow. However, if the perpetrator has taken all the organisational actions for illegal entry, there is the actual consummation of Article 322.1 CP FR.⁴² We consider

³² Hotărîrea Guvernului nr.468 din 22.05.2018 Strategia Națională privind combaterea traficului de ființe umane pentru anii 2018-2023. Disponibil: http://www.antitrafic.gov.md/public/files/anexa_nr.1_461.docx

³³ АНДРЮШЕНКОВ, В. А. Уголовная ответственность за организацию незаконной миграции. Специальность 12.00.08. – Уголовное право и криминология; уголовно исполнительное право. Дисс. на соискание ученой степени кандидата юридических наук, Омск, 2016.

³⁴ БАЙБУРИНА, Э. Р. Организация незаконной миграции/уголовно-правовые и криминологические аспекты”, специальность: 12.00.08 - уголовное право и криминология; уголовно-исполнительное право, Дисс. на соискание ученой степени кандидата юридических наук. Челябинск, 2010. Disponibil: <http://www.disserscat.com/content/organizatsiya-nezakonnoi-migratsii>

³⁵ ЧЕРЕМНОВА, Н., МИХАЛЬ, О. Квалифицирующие признаки организации незаконной миграции. In: Юридическая наука и правоохранительная практика 4 (38), 2016.

³⁶ ЯКИМОВ, О., ЯКИМОВА, С. Организация незаконной миграции. Проблемы уголовной ответственности. In: Уголовное право, 2005 г., № 1.

³⁷ КОЗЛОВ, В., ФРОЛКИН, Н. Организация незаконной миграции. Уголовно-правовая и криминалистическая характеристика: Монография. М.: Юрлитинформ, 2011, pag. 151-153. Disponibil: <https://cyberleninka.ru/article/v/2013-01-047-kozlov-v-f-frolkin-n-p-organizatsiya-nezakonnoy-migratsii-ugolovno-pravovaya-i-kriminalisticheskaya-harakteristika-m>

³⁸ ЛАРИОНОВ, И.А. Уголовно-правовая и криминологическая характеристика организации незаконной миграции. Статья представлена научной редакцией «Право» 11 мая 2012 г. Disponibil: <https://cyberleninka.ru/article/v/ugolovno-pravovaya-i-kriminologicheskaya-harakteristika-organizatsii-nezakonnoy-migratsii>

³⁹ СОКОЛОВ, Д.А. Криминологическая характеристика организации незаконной миграции. Диссертация на соискание ученой степени кандидата юридических наук, Академия Генеральной прокуратуры Российской Федерации, 2013 Disponibilă: <https://www.twirpx.com/file/1916966/>

⁴⁰ ЯКИМОВ, О., ЯКИМОВА, С. Организация незаконной миграции/ проблемы уголовной ответственности. In: Уголовное право, 2005 г., № 1.

⁴¹ Ibidem, pag.5-6.

⁴² СОЈОСАРІ, І. Răspunderea penală pentru organizarea migrației ilegale: analiza materialelor științifice publicate în alte state (ISBN 978-9975-88-037-4). In: Conferința științifică: Rolul științei în reformarea sistemului juridic și politic-administrativ, Ediția a IV-a, US Bogdan Petriceicu Hasdeu din Cahul, 2019. pag. 53. ЯКИМОВ, О.,

that O. Iachimov and S. Iachimova formulate a number of unknowns with reference to foreign citizens and stateless persons mentioned in the provision of Part 1 of the CP FR in the plural. They aim to provide some explanations and recommendations applicable in practice. However, the article is not structured by reference to subjective and objective elements. No attention is paid to the comparative legal-criminal analysis of the harmful act of organising illegal migration.⁴³ O. Iachimov and S. Iachimova attempt to explain the statement that the person concerned simultaneously organises, i.e. participates in, the illegal crossing of the state border (Part 3 of Art. 33, Art. 322 of the Penal Code of Russian Federation).⁴⁴ According to the authors, the existence of an organised group is probably the most difficult to prove in practice.⁴⁵ The authors recommend that it would be more correct to use the notion of a group of persons, as has been done, for example, in Part 2 of Art. 322 CP RF.⁴⁶

The crime of organising illegal migration in Ukraine is different from that in the Republic of Moldova. It is provided for by the provision of Article 332 of the Penal Code of Ukraine (hereinafter - PCU) in the following content: "Illegal transfer of persons across the state border of Ukraine".⁴⁷ The offence has two aggravating circumstances: para. 2 provides for criminal liability for the illegal transfer of persons across the state border of Ukraine committed in a manner dangerous to the life or health of a person, against several persons, either repeatedly or by prior agreement of a group of persons or by an official using his official position, and para.3 committed by an organised criminal group or criminal organisation.⁴⁸

In the Ukrainian literature, several scientific materials published on the subject can be noted. Thus, a first work is "The current state of scientific research of illegal transfer of persons along the state border of Ukraine", under the edition of Y. Begalov.⁴⁹

With regard to the work "Circumstances to be established in the illegal transfer of persons across the state border of Ukraine", written by I. Pohila,⁵⁰ in our study we found that in the author's view the objective side of the crime may be broader than the meaning of the text included by the Ukrainian legislator.⁵¹

In Romania, the penal norm that incriminates the organization of illegal migration is entitled "smuggling of migrants" and is provided for by the provision of Article 263 of the Penal Code of Romania (hereinafter - PCR), with the content: the abduction, guidance, guiding, transporting, transferring or sheltering of a person, with the purpose of fraudulently crossing the state border of Romania.⁵² In para. 2 of the penal norm mentioned, three aggravating circumstances are foreseen: with the aim of obtaining, directly or indirectly, a financial gain; by means that endanger the life, integrity or health of the migrant; by subjecting the migrant to

ЯКИМОВА, С. Организация незаконной миграции/ проблемы уголовной ответственности. In: Уголовное право, 2005 г., № 1, pag. 2.

⁴³ Ibidem.

⁴⁴ ЯКИМОВ, О., ЯКИМОВА, С., Организация незаконной миграции/ проблемы уголовной ответственности. In: Уголовное право, 2005 г., № 1, pag.4

⁴⁵ Idem, pag.5

⁴⁶ Ibidem.

⁴⁷ Уголовный кодекс Украины, действующий с изменениями и дополнениями на 04.10.2018, от 05.04.2001 № 2341-III.

⁴⁸ A se vedea alin.3 al art. 332, CPU.

⁴⁹ BEGALOV, Y. The current state of scientific investigation of the investigation of illegal transfer of persons across the state border of Ukraine. In: Visegrad Journal on human rights, Applicant of the research laboratory on problems of expert-forensic provision National Academy of Internal Affairs, No 5, 2017.

⁵⁰ ПОХИЛА, І.Б.. Обставини, що підлягають установленню, у справах про незаконне переправлення осіб через державний кордон України. In: Актуальні проблеми держави і права, <http://www.apdp.in.ua/v27/35.pdf>

⁵¹ COJOCARI, I. Răspunderea penală pentru organizarea migrației ilegale: analiza materialelor științifice publicate în alte state (ISBN 978-9975-88-037-4). In: Conferința științifică: Rolul științei în reformarea sistemului juridic și politic-administrativ, Ediția a IV-a, US „Bogdan Petriceicu Hasdeu” din Cahul, 2019,. pag. 55

⁵² A se vedea art. 263 CPR.

inhuman or degrading treatment.⁵³ This rule has been little changed since the 1961 CPR. It is noted that it is similar to the offence provided for in Article 165 (Trafficking of human beings) and to that provided for in Article 206 (Trafficking of children) of the PC RM through the actions of the objective side of the offence, which are as follows: "Transportation, harbouring and reception". In this thesis, we pay special attention to the meaning and importance of the term "migrant". Thus, the norm that incriminates the smuggling of migrants provided for in the provision of paragraph 2 of Article 263 CPR, in the sense of "direct or indirect obtaining of a pecuniary benefit", includes the meaning of coercion, which differs from the penal norm that incriminates the organization of illegal migration provided for in Article 362¹ PC RM and the definition included in the TIM Protocol.

In conclusion, it has been established that the literature and the legislation of the States are different. In this context, in order to assess the impact on the development of the examined norm, the legislation of several states and the literature of the states that belong to the same family of law compared to the Republic of Moldova were analysed. At the same time, it was observed that the term "migrant" is understood differently, which means that there is no international consensus on the subject. Additionally, it has been established that the literature and the laws of the states differ. Therefore, in order to assess the impact on the development of the rule under consideration, the legislation of several states and the literature of the states which, compared to the Republic of Moldova, belong to the same family of law, were analysed. However, it was noted that the term "migrant" is understood differently, which means that there is no international consensus on the subject.

Analyzing the scientific problem to be solved, we established that there is no international consensus on the correctness of the definition of the crime of smuggling of migrants under the TIM Protocol. We believe that the lack of international consensus on the subject addressed in the fight against organised crime diminishes the protection of migrants' rights to freedom from torture, discrimination, freedom of movement, privacy and family life. Thus, we have identified that the scientific problem lies in the elaboration of the conceptual framework of liability for smuggling of migrants under the TIM Protocol, which will guarantee and ensure the following: it will exclude the arbitrary application of the penal rule criminalizing the organization of illegal migration when the rights of migrants, asylum seekers or refugees will be affected, as it will correspond to the principle of legal certainty and the rule of law; it will harmonize the provisions of Art. 362¹ PC RM to international standards on the prevention of transnational organised crime, as it will ensure compliance with the positive obligation of the State to make trafficking in migrants a criminal offence under paragraph 1 Article 6 of the TIM Protocol.

Scientific results that have contributed to the solution of an important scientific problem are derived from the scientific-practical formulations and interpretations set out in the definition of the terms: abuse of trust and deception; shelter of the migrant; stay and stay of the migrant on the territory of the Republic of Moldova; assurance; national and international consensus in the protection of migrants' rights and combating smuggling of migrants; consent of the victim; misdirected migrant; false documents; emigrant, immigrant and migrant; international civil servant, person of public dignity, public official, foreign public person; exit, entry and transit of the territory of the Republic of Moldova; migrant manipulation; illegal or irregular migrant; organisation of illegal migration; reception, transfer, transfer, recruitment, harbouring of migrant; sole purpose and motive; trafficking in children (minors), human beings (persons), migrants; sole intent. Therefore, on the basis of the scientific material, a clear delimitation of the similarities and differences between the offence of organising illegal migration, trafficking in human beings, children and other offences, such as the illegal crossing of the border of the Republic of Moldova, has been formed in practice in the qualification of the offence. Therefore, the application of Article

⁵³ A se vedea alin.2 al art. 263 CPR.

3621 of the PC RM establishes an internal consensus on the issue of effective protection of migrants' rights and justifies the unification of judicial practice.

The directions of solving the research problem consist in the legal-criminal analysis of the organization of illegal migration from the perspective of guaranteeing and ensuring migrants' rights, which will be expressed in the following: identification of the appropriateness of naming the crime as organization of illegal migration; establishment of the notion of smuggling of migrants according to the TIM protocol; establishment of the correlation between the norm criminalizing the organization of illegal migration and trafficking in human beings, children of migrants; determination of the appropriateness of classifying the crime in Chapter III of the special part of the PC RM crimes against freedom, honesty and dignity of the person; determination of the compatibility of the inclusion in one article of the crimes of entry, exit, stay or transit of the territory of the Republic of Moldova; establishment of the status of the victim of the crime of organization of illegal migration.

Chapter 2 "The objective constituent elements of the offence of organising illegal migration" examines the generic legal object and the specific legal object of the offence of organising illegal migration. The juridical and penal analysis of the offence is carried out in conjunction with the definition of smuggling of migrants provided by the TIM Protocol. Therefore, the relevance of international standards on the protection of human rights and their connection with the TOC Convention in the fight against migrant smuggling is determined. In the research on the subject of the crime, the researchers' conclusions play a decisive role in arguing a justified position. Thus, the authors' opinions are also taken into account in determining the specific legal object of the offence in relation to the legal purpose pursued by the authorities when applying the provisions of the ECHR, in order to clarify the divergences existing both in theory and in practice. The status of the victim of the crime and the importance of the material object of the crime, which may also constitute the body of the migrant, are also analysed. Therefore, victims of the crime of organising illegal migration may include persons who do not intend to settle or work in the Republic of Moldova, but persons seeking to avoid torture or inhuman treatment in their country of origin.

In conclusion, the status of victim of the crime comprises two mandatory elements:

- a) Not to be a resident or citizen of the Republic of Moldova;
- b) To be the object of the crime within the meaning of Article 5 of the TIM Protocol, namely: "Migrants shall not be liable to prosecution under this Protocol for having been the object of the acts referred to in Article 6".⁵⁴ Thus, the legislator is referring to the offence of smuggling of migrants.

Therefore, an opportunity to reconceptualise the offence of organising illegal migration is elucidated by placing it in Chapter III entitled: Offence against the freedom of honesty and dignity of the person, Special Part of the PC RM. In the section on the legal object of the offence, the aggravating circumstance of the offence of organising illegal migration committed against two or more persons is also discussed. Thus, there are no scientific works published in the Republic of Moldova or in other countries on this aggravating circumstance. An analysis of the crime is attempted on the basis of international human rights standards with reference to the plurality of victims. As a method, the philosophical method is used to identify the definition of human dignity, in order to demonstrate the similar attitude of the subject of the crime towards a plurality of victims, taking into account the position of the literature on the crime of murder. The comparison of the offence of organising illegal migration with that of murder is aimed at determining the general rules of applicability of the legal rule when the offence involves several victims. The investigation is carried out with a view to identifying a common rule in the PC of the RM, with a view to its use in the case of the offence of organising illegal migration.

The objective side of the offence of organising illegal migration, which manifests itself in

⁵⁴ A se vedea art. 5 Protocolul TIM.

the illegal execution of documents for entry, exit, stay or transit of the territory of the Republic of Moldova, is also investigated in Section 2. Particular attention is drawn to the moment when the offence is considered to have been committed. In order to obtain relevant results, we use the legal and systemic method, coming to the conclusion that international conventions and their additional protocols prescribe ways of creating social priorities on the basis of which the Republic of Moldova can limit a fundamental right, in order to harmonise it with another value that it defends. Limiting a fundamental right therefore distinguishes between criminal acts of completion of documents intended for entry into, exit from or transit through the territory of the Republic of Moldova and illegal residence on the territory of the Republic of Moldova. Thus, it is clarified that in the context of illegal stay it is not obligatory for the person to illegally cross the border of the Republic of Moldova, therefore it is advocated that, for illegal stay, it is required to complete another type of documents than those required to cross the border. The chapter examined the aggravating circumstances of committing the offence of organising illegal migration and the conditions in which they resulted in particularly high damage to public interests or the rights and interests protected by law of natural and legal persons, which determines that, in essence, the offence is formal, but it becomes material in the post of mandatory signs.

Chapter 3, entitled: Subjective constituent elements of the offence of organising illegal migration, is intended to analyse the subjective elements of the offence: the subject and the subjective side. A sub-chapter sets out the conditions under which the migrant is both victim and subject of the offence. The notion of "subject of the offence" is not covered by the provisions of the General Part of the Criminal Code of the Republic of Moldova. However, the distinguishing marks of the "subject of the offence" can be identified on the basis of Article 21(1) of the Moldovan Penal Code. The questions of establishing the conditions for criminal liability of the person are closely linked to the domestic legislation of the state. Thus, the person must meet the appropriate age and be responsible, a statement that can be deduced from the fact that the state often uses its own tendencies and measures in preventing the crime. Another explanation may be the following: with regard to the minimum age and responsibility of the subject of the offence, there is no international or European consensus that would elucidate the conditions under which the person is liable to be held criminally responsible. In most European countries, the age of criminal liability is 14.⁵⁵ However, there is no international, regional or European consensus on the minimum age of criminal liability.

In the Republic of Moldova penal liability for the crime of organising illegal migration arises from the age of 16.⁵⁶ In countries such as Belarus, the Russian Federation and Kazakhstan, the conditions regarding the age of the subject of the offence for the offence in question do not differ from those in the Republic of Moldova.⁵⁷ This leads to the conclusion that there are similarities in the legislation of these countries with regard to the provision of the offences of organising illegal migration. However, it is certain that we cannot say whether or not there is an international consensus on this dimension in the absence of international case law. But the situation remains unchanged even when there are agreements between states on the prevention of the crime of organising illegal migration.

Further, the thesis states that the perpetrator's status as a resident and citizen of the Republic of Moldova makes it more possible for him to obtain information or to present false information in statements. The paper therefore tries to identify a difference between the illegal migrant, who is the subject of the offence, and the citizen or resident of the Republic of Moldova, who is also a subject of the crime. In defining the status of the migrant, the position of the authors who argue for defining the passive subject of the crime, i.e. the victim of the crime, is also taken into account. In order to identify the status of the victim, the extrapolation, statistical and logical methods are

⁵⁵ ZIMRING, F., *Juvenile Justice in Global Perspective* (ISBN 9781479890446). NYU Press. 2015. Pag. 21

⁵⁶ A se vedea art.21 și 362¹ din Codul penal al Republicii Moldova.

⁵⁷ A se vedea art.27 și 371¹ din Codul penal al Republicii Belarus; art. 20 și 322.1 din Codul penal al Federației Ruse; art. 15 și 394 din Codul penal al Kazahstanului.

used, establishing the clarity and predictability of the law, which must offer sufficient guarantees and immunities to persons seeking international humanitarian protection (refugees and asylum seekers). The chapter examined the aggravating circumstances for the offence of organising illegal migration committed by two or more persons; by a public person; by a person in a position of responsibility; by a person in a position of public dignity; by a foreign public person or international official; by an organised criminal group or criminal organisation. The terms "criminal association" and "public interest" are also analysed.

Equally, a migrant in certain situations can direct the criminal process by being in their country of origin. Being in a dominant position, he or she can influence or, where appropriate, persuade other migrants to consent, with a personal agenda, perhaps even a material interest. However, in this chapter the law primarily protects the genuine interests of migrants who are victims of criminal activities, as the immigrant does not have the broad scope of the law to organise a harmful act of organising illegal migration. The same circumstances apply to persons with international humanitarian protection status, who cannot be held criminally liable for the named act. And the lack of residence and/or citizenship status makes the difference between perpetrator and victim.⁵⁸ Therefore, the conditions exempting the subject of the offence from criminal liability, i.e. migrants, relate strictly to the status of resident and/or citizen of the Republic of Moldova, with the exception of the organisation of the harmful act.

Particular attention should be paid to the subjective aspect of the offence, which plays an important role in identifying the situation where the subject of the offence is the migrant himself. However, international legal provisions clearly stipulate that the migrant is absolved from criminal liability if he/she is the object of the offence. Thus, if the State has introduced a norm incriminating the organisation of illegal migration, this is its prerogative and justified strategy. However, in order to bring the text of the CP RM into line with the provisions of the TIM Protocol, the rule must include the human body of the migrant as the material object of the offence. This conclusion is based on the assertion that the subjective side of the offence is committed with the consent of the victim. Thus, the purpose and motive of the crime play an absolutely necessary role, being a key element in establishing guilt and helping to resolve all legal differences in relation to the qualification of the crime. However, the law must be clear and predictable when the state respects the public interest of protecting social relations arising in connection with the entry, exit, stay or transit of the territory of the Republic of Moldova in relation to the fundamental rights of migrants.

Determining how to obtain the victim's consent often depends on the mental and emotional state of the perpetrator. Often a single manipulation can mislead. In this case, it can be said that the potential migrant does not know the perpetrator's true intention.⁵⁹ So the vulnerability of the victim will depend on the perpetrator's action, the living conditions of the migrant. At the same time, the specificity of the hidden purpose of the perpetrator is that it is closely linked to the harmful action and the attitude towards respecting the rights of migrants not to be trafficked.

In our view, the legislator introduced the definition of migrant smuggling in the TIM Protocol in order to ensure penal liability also in situations where the victim of the crime knew about the commission of the crime and intended its consequences. However, even if the victim knows about the exploitation or admits possible risks, this is not tolerated in a democratic society. However, such circumstances contradict the content of human dignity and we can say that they are fundamental flaws that run counter to international human rights protection standards.

In the literature there is a view that the aim pursued by the perpetrator in "organising illegal

⁵⁸ COJOCARI, I. Infrațiunea de organizarea migrației ilegale: subiectul infracțiunii. In: Revista Națională de Drept (ISSN 1811-0770). Publicație periodică științifico-practică Nr. 2 (244), anul 22 Chișinău 2021. Pag.142. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/136-143_8.pdf

⁵⁹ COJOCARI, I. Infrațiunea de organizarea migrației ilegale: Consimțământul victimei. In: Academia de Administrare Publică: Conferința internațională științifico-practică a studenților-doctoranzi: Sintezele investigațiilor doctorale în domeniul științelor politico-administrative, juridice și economice din 19 noiembrie 2022. Pag.236-240. Chișinău, 2022. ISBN 978-9975-3418-2-0. Disponibil: <https://aap.gov.md/files/conferinte/19.11.21/19.11.21.pdf>

migration" differs from that of "trafficking in human beings" or "child trafficking". The difference manifests itself in the permanent or temporary change of residence in another state, and in the case of trafficking in human beings in the exploitation of the victim (e.g. organ harvesting). So, as mentioned above, the organisation of illegal migration involves an agreement between the perpetrator who has a hidden interest and the victim, which may take the form of a civil legal act.

Chapter 4 Scientific results obtained on the analysis of the crime of organising illegal migration studies the results obtained in the scientific publications carried out by the author of the research, in the theses and in the relevant expositions identified in the literature, examined in chapters 2 and 3. The aim of the analysis of the published scientific materials is to identify solutions and elucidate all relevant and conclusive findings for application in practice. Interpolation and extrapolation methods were used to obtain the material scientific results. Therefore, the following were established: the lack of national and international consensus on the definition of migrant smuggling and the organisation of irregular migration was identified; the correlation between the subject matter of the offence and international standards for the protection of migrants' rights was established; the moment when the offence is considered to have been committed and the apparent problems with the offence of organising irregular migration were clarified; the status of the victim and of the subject of the offence has been determined; it has been established that for the illegal stay the person may perform acts of illegal transportation and illegal recruitment of migrants; the conditions under which the consent of the victim is illegally obtained and the hidden purpose of the subject of the offence have been identified.

In Chapter 4 results are also obtained based on the analysis of case law of national and international courts. Thus, the problem of the lack of domestic consensus on the treatment of certain legal-criminal issues, such as the definition of public interest, the distinction between the offence of organising illegal migration and other related criminal offences, is noted. Therefore, the offence is analysed in a multi-aspectual manner, taking into account the position of higher courts, such as the Constitutional Court of the Republic of Moldova.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Throughout the present research it has been demonstrated *hypothesis* that the organization of illegal migration seriously affects human rights and, in particular, the rights of foreigners who are not resident or resident on the territory of the Republic of Moldova. Likewise, the hypothesis that the precision of the law will improve the national law in the protection of migrants' rights and guarantees, as well as the jurisprudence of the courts, has been justified.

Due to the exhaustive and complex treatment of the *object of research*, a *current problem of major importance has been solved*, which consists in the following: scientific substantiation of the objective and subjective elements and signs of the crime through the prism of international standards for the protection of human rights and the submission of a set of recommendations under the aspect of *lege ferenda*, able to contribute to actions to prevent transnational organized crime, in the fight against smuggling of migrants, which threatens national security and the fundamental rights of migrants. The lack of an effective analysis in the specialized literature of the Republic of Moldova and other countries with reference to the crime of organizing illegal migration, taking into account the frequency of application of Article 362¹ of the PC RM, justifies the need to research the subject in the light of international human rights protection standards.

In order to elucidate the objectives achieved, the following *conclusions are proposed*:

- 1) The crime of organising illegal migration relates to the transportation of migrants across state borders, although in some cases such transportation across state borders is not mandatory.
- 2) There are interdependencies between the particular legal object of the offence and the provisions of the ECHR. This interdependence is characterised by: the definition of trafficking in migrants under the TIM Protocol aims to ensure the protection of the fundamental rights of the person; therefore, the social relations arising in connection with

the entry, exit, stay or transit of the territory of the Republic of Moldova are not exclusively related to the interests of the state with regard to national security, but primarily to the fundamental interests of the victim of the crime not to be trafficked.

- 3) It is the prerogative of the State to define the rule that will incriminate smuggling of migrants. Thus, the notion of "smuggling of migrants" differs from "organising illegal migration". And in order to comply with the commitments made, the Moldovan authorities shall reconceptualise the criminal offence of organising illegal migration.
- 4) Domestic courts have a wide margin of appreciation of legal terms such as "victim of the crime", "public interest" or "interests protected by law". Therefore, when applying the penal rule in question, courts shall balance the public and private interests of the migrant by specifying the public interest protected.
- 5) The terms used in the literature "directing" and/or "manipulating" have no legal definition and are open to wide interpretation. And the term "illegal migrant" refers not so much to the harmful act as to the status of the victim. Therefore, the term "illegal migrant" can be equated with the subject of the crime.
- 6) The migrant may not only be the victim of the crime, but also the perpetrator if he/she organises the illegal migration. And in relation to persons seeking international humanitarian protection, they must have sufficient guarantees of protection to avoid persecution.
- 7) The term "illegal stay" differs from "presence" on the territory of the Republic of Moldova. Therefore, in order to comply with measures to prevent organised crime, we consider it appropriate to introduce a new offence, which will be entitled "organising illegal stay on the territory of the Republic of Moldova".

From an interdisciplinary point of view (in penal law, civil law, constitutional law, international humanitarian law and international human rights law), the protection of migrants' rights is ensured and guaranteed through national and international legal norms governing respect for private and family life or freedom of movement. Therefore, the private life of the person is related to the definition of human dignity enshrined in the PCR, PC RM, international humanitarian and human rights standards. Failure to respect these scientific currents brings back circumstances that are not tolerated in a democratic society: violence, slavery and its similar conditions, the assimilation of the human being with an object, etc.

The theoretical significance of the thesis lies in the lack of international consensus in preventing migrant smuggling. From the research carried out, we observed that there is not enough research on the dimension of juridical-penal analysis of the crime of organising illegal migration. And in order to resolve the divergences that have arisen in practice, we propose conclusions and recommendations to improve the regulatory framework.

The practical value of the doctoral thesis results from the correct identification and multi-spectral interpretation of the norm provided by the provision of art.3621 of the PC RM, which will have an impact on the search for a consensus in jurisprudence, on the elaboration of an effective policy to prevent trafficking in migrants in accordance with the principle of the rule of law and legal certainty. Thus, the theoretical aspects of the thesis will have an impact on the unification of judicial practice.

Indication of the limits of the results obtained, with the establishment of remaining unresolved issues. The results obtained are limited in several ways: 1) the research is devoted exclusively to juridical and penal aspects, taking into account the chosen speciality; 2) the legal nature of the facts that form national security and freedom of the person; 3) by the legislative changes made in the PC RM. Based on the above limitations, we note that some aspects of the research include other areas of research that are in development, such as: international humanitarian law or international law for the protection of human rights and public international law. Therefore, we also managed to obtain some interdisciplinary data of criminological, psychological and sociological nature that contributed to the foundation of the juridical-penal concept of the crime of organizing illegal migration provided for in art.362¹ PC RM.

Following the above, we propose the following **recommendations**:

1) Reformulation of the name and content of the legal norm that incriminates the organization of illegal migration according to the provision of Article 362¹ of the Penal Code of the Republic of Moldova, in the smuggling of migrants, by placing it in Chapter III of the Special Part of the Penal Code of the Republic of Moldova.

„Art. 165² CP RM Smuggling of migrants

(1) Unlawfully recruiting, transporting, transferring, receiving or harbouring a person in the territory of the Republic of Moldova, without that person being a permanent resident or a citizen of the Republic of Moldova, for the purpose of obtaining, directly or indirectly, a financial or other material benefit,

is punishable by a fine in the amount of 650 to 850 conventional units or by imprisonment for a term of 1 to 3 years, with deprivation of the right to hold certain positions or to carry out a certain activity for a term of 1 to 3 years, and the legal entity is punishable by a fine in the amount of 2000 to 3000 conventional units, with deprivation of the right to carry out a certain activity, or with liquidation of the legal entity.

(2) Same actions committed:

a) on two or more persons;

b) by two or more persons;

c) by a public person, a person holding a public office, a foreign public person or an international official,

is punishable by a fine in the amount of 850 to 1350 conventional units or by imprisonment for a term of 3 to 5 years, or by deprivation of the right to hold a certain office or to engage in a certain activity for a term of 1 to 3 years, and the legal person is punishable by a fine in the amount of 3000 to 4000 conventional units, or by deprivation of the right to engage in a certain activity, or by liquidation of the legal person.

(3) The actions referred to in para. 1 or 2:

a) committed by an organized criminal group or criminal organization;

b) resulting in particularly serious damage to the legally protected interests of natural and legal persons,

is punishable by a fine in the amount of 1150 to 1350 conventional units or by imprisonment for a term of 5 to 7 years, or by deprivation of the right to hold a certain office or to engage in a certain activity for a term of 3 to 5 years, and the legal person is punishable by a fine in the amount of 4000 to 6000 conventional units, or by deprivation of the right to engage in a certain activity, or by liquidation of the legal person.

(4) The victim of the offence is absolved from penal liability for the acts of possession and use of false official documents."

2) Introduction of Article 165³ in Chapter III of the Special Part of the Criminal Code of the Republic of Moldova, which would incriminate the organization of illegal stay on the territory of the Republic of Moldova.

"Article 165³ Organisation of illegal stay on the territory of the Republic of Moldova

(1) Organising the illegal stay in the territory of the Republic of Moldova of a person who is neither a citizen nor a permanent resident in the territory of the Republic of Moldova for the purpose of obtaining, directly or indirectly, a financial or other material benefit, is punishable by a fine in the amount of 650 to 850 conventional units or by imprisonment for a term of 1 to 3 years, with deprivation of the right to hold certain positions or to carry out a certain activity for a term of 1 to 3 years, and the legal entity is punishable by a fine in the amount of 2000 to 3000 conventional units, with deprivation of the right to carry out a certain activity, or with liquidation of the legal entity.

(2) Same actions committed:

a) on two or more persons;

b) by two or more persons;

*c) by a public person, a person holding an office of public dignity, a foreign public person or an international official,
is punishable by a fine in the amount of 850 to 1350 conventional units or by imprisonment for a term of 3 to 5 years, or by deprivation of the right to hold a certain office or to engage in a certain activity for a term of 1 to 3 years, and the legal person is punishable by a fine in the amount of 3000 to 4000 conventional units, or by deprivation of the right to engage in a certain activity, or by liquidation of the legal person.*

(3) The actions referred to in para. 1 or 2:

a) committed by an organized criminal group or criminal organization;

b) resulting in particularly serious damage to the interests protected by law of natural and legal persons,

is punishable by a fine in the amount of 1150 to 1350 conventional units or by imprisonment for a term of 5 to 7 years, or by deprivation of the right to hold a certain office or to engage in a certain activity for a term of 3 to 5 years, and the legal person shall be punishable by a fine in the amount of 4000 to 6000 conventional units, or by deprivation of the right to engage in a certain activity, or by liquidation of the legal person.

(4) The victim of the offence is absolved from penal liability for the acts of possession and use of false official documents."

3) adding the phrase "of smuggling of migrants" to the offence of using the results of the work or services of a person who is a victim of trafficking in human beings provided for in Article 1651 of the Moldovan Penal Code.

„Art. 1651 CP RM Use of the results of the work or services of a person who is a victim of trafficking in human beings and smuggling of migrants

(1) The use of products and/or services which are the result of exploitation in human trafficking or migrant smuggling offences provided by a person known to the recipient to be a victim of such offences, if this does not meet the elements of human trafficking or smuggling of migrants,

is punishable by imprisonment for a term of two to five years, with a fine imposed on the legal person in the amount of 2 000 to 4 000 conventional units and deprivation of the right to engage in a specific activity.

(2) The person who has committed the act referred to in para. (1) shall be released from penal liability if he or she has voluntarily reported the commission by other persons of the offences of trafficking in human beings or smuggling of migrants has helped to uncover the respective offences or has actively contributed to the investigation of such cases."

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ADNOTARE

Cojocari Ion „Analiza juridico-penală a organizării migrației ilegale”.
Teză de doctor în drept la specialitatea 554.01- Drept penal și execuțional penal.
Chișinău, 2023

Structura tezei: Introducere, 4 capitole, concluzii generale și recomandări, bibliografie din 400 de titluri, 223 de pagini (182 de bază). Rezultatele obținute sunt publicate în 10 lucrări științifice și utilizate în cadrul procesului de instruire a avocaților la Centrul de Instruire a Avocaților.

Cuvinte-cheie: organizare, migrație ilegală, migrant, rezident, cetățean, refugiat, solicitant de azil, persoană publică, funcționar internațional, persoană publică străină.

Domeniul de studiu: Drept penal, partea specială.

Scopul cercetării: Implementarea standardelor internaționale de protecție a drepturilor migranților în Republica Moldova, prin reconceptualizarea normei penale care incriminează organizarea migrației ilegale.

Obiectivele cercetării: Identificarea principalelor probleme cu care se confruntă autoritățile din Republica Moldova atunci când aplică norma penală care incriminează organizarea migrației ilegale; analiza juridică sistemică și comparativă a legislației și a literaturii de specialitate din Republica Moldova și a cadrului juridic internațional, a lucrărilor științifice publicate în alte state referitoare la conținutul tezei; stabilirea coraportului între organizarea migrației ilegale și alte fapte penale conexe.

Noutatea și originalitatea științifică. Caracterul novatoriu este caracterizat de conceptele, tezele și noțiunile elucidate din perspectiva protecției drepturilor migranților, adaptate la standardele internaționale de prevenire a traficului de migranți. Originalitatea științifică rezidă în analiza celor mai recunoscute și relevante lucrări științifice ale autorilor notorii în domeniu, pe dimensiunea infracțiunii care incriminează organizarea migrației.

Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante rezultă în elaborarea unor concepte, teze și noțiuni menite să stabilească o previzibilitate și claritate a normei penale care incriminează organizarea migrației ilegale în conformitate cu standardele internaționale de protecție a drepturilor migranților.

Importanța teoretică și valoarea aplicativă a cercetării derivă din definirea bazelor conceptuale a studiului științific de drept penal privind protecția drepturilor migranților. La fel, identificarea anumitor perspective asupra cadrului științific care vizează limitele și condițiile răspunderii penale pentru organizarea migrației ilegale. În urma analizei efectuate, s-a stabilit că nu există suficiente cercetări pe dimensiunea analizei juridico-penale a infracțiunii de organizare a migrației ilegale, iar norma juridică trebuie reconceptualizată în traficul de migranți. În vederea soluționării divergențelor apărute în practica judecătorească se propun concluzii și recomandări de perfecționare a cadrului normativ.

Implementarea rezultatelor științifice. Aspectele teoretice ale tezei vor avea un impact la unificarea practicii judiciare; în activitatea practică a organelor de ocrotire a normelor de drept, atunci când vor aplica sau interpreta dispoziția art.362¹ CP RM; la elaborarea publicațiilor științifice atât pentru studenți și cercetători științifici, cât și pentru mediul academic în general.

АННОТАЦИЯ

**Кожокарь Ион "Уголовно-правовой анализ организации незаконной миграции".
Диссертация на соискание ученой степени доктора права, по специальности 554.01-
Уголовное право и уголовно-исполнительное право. Кишинэу, 2023 г.**

Структура диссертации: Введение, 4 главы, общие выводы и рекомендации, библиография из 400 научных источников, 223 страниц (182 основных). Полученные результаты опубликованы в 10 статьях и используются в процессе обучения адвокатов в Центре Обучения Адвокатов.

Ключевые слова: организация, незаконная миграция, мигрант, резидент, гражданин, беженец, лицо ищущее убежище, публичное лицо, международное должностное лицо, иностранное публичное лицо.

Область исследования: Уголовное право, особенная часть.

Цель исследования: Внедрение международных стандартов защиты прав мигрантов в Республике Молдова путем переосмысления уголовного законодательства, криминализирующего организацию незаконной миграции.

Задачи исследования: Выявить основные проблемы, с которыми столкнулись молдавские власти при применении уголовной нормы предусматривающей уголовную ответственность за организацию незаконной миграции; системный и сравнительно-правовой анализ законодательства и специальной литературы Республики Молдова и международно-правовой базы, научных работ, опубликованных в других государствах, по содержанию диссертации; установление связи между организацией незаконной миграции и иными связанными с ней преступными деяниями.

Научная новизна и оригинальность. Новаторский характер характеризуют концепции, положения и понятия, освещенные в свете защиты прав мигрантов, адаптированные к международным стандартам предотвращения торговли мигрантами. Научная новизна заключается в анализе наиболее признанных и актуальных научных трудов известных авторов в области масштабов преступления, криминализирующего организацию незаконной миграции.

Полученные результаты, способствующие решению важной научной проблемы, являются результатом разработки концепций, положений и понятий, призванных установить предсказуемость и ясность уголовно-правовой нормы, криминализирующей организацию незаконной миграции, в соответствии с международными стандартами защиты прав мигрантов.

Теоретическая значимость и прикладная ценность исследования вытекает из определения концептуальных основ научного исследования уголовного права по защите прав мигрантов. Кроме того, выявление определенных перспектив развития научной базы, рассматривающей пределы и условия уголовной ответственности за организацию незаконной миграции. В результате проведенного анализа было установлено, что исследований в аспекте уголовно-правового анализа преступления по организации незаконной миграции недостаточно, а правовая норма нуждается в переосмыслении при незаконном ввозе мигрантов. С целью разрешения разногласий, возникших в судебной практике, предлагаются выводы и рекомендации по совершенствованию правовой базы.

Апробация результатов диссертационного исследования. Теоретические аспекты диссертации окажут влияние на унификацию судебной практики; в практической деятельности правоохранительных органов, когда они будут применять или толковать положения статьи 362¹ Уголовного кодекса Республики Молдова; развитию научных публикаций как для студентов и научных сотрудников, так и для всей академической среды.

ANNOTATION

**Cojocari Ion " Juridical-penal analysis of the organization of illegal migration ".
PhD in law thesis in the specialty 554.01- Penal and penal executorial law. Chisinau, 2023**

Thesis structure: Introduction, 4 chapters, general conclusions and recommendations, bibliography from 400 titles, 223 pages (182 basic). Obtained results are published in 10 articles and are being used within the Lawyers' Training Centre of the Bar Association of Moldova.

Keywords: organization, illegal migration, migrant, resident, citizen, refugee, asylum seeker, public person, international official, foreign public person.

Field of study: Penal law, special part.

The purpose of the research. Implementation of international standards for the protection of migrants' rights in the Republic of Moldova by rethinking the penal law that criminalizes illegal migration organization.

Research objectives. Identification of the main problems encountered by Moldovan authorities when applying the penal law that criminalizes the organization of illegal migration; systemic and comparative legal analysis of the Republic of Moldova's legislation and specialized literature, as well as international legal frameworks, of scientific papers published in other countries, in relation to the dissertation's content; and establishment of the relationship between the organization of illegal migration and the penal law that criminalizes it.

Scientific novelty and originality. The concepts, theses, and notions elucidated in the light of migrant rights protection, adapted to international standards of migrant trafficking prevention, define the innovative character. The scientific originality lies in the analysis of the most recognized and relevant scientific works by the field's most infamous authors, on the scale of the crime that criminalizes migration organization.

The results obtained that contribute to solving an important scientific problem as a result of the development of concepts, theses, and notions aimed at establishing predictability and clarity in the criminal law that criminalizes the organization of illegal migration in accordance with international standards for the protection of migrants' rights

The importance and applicative value of the research derives from the definition of the conceptual basis of the scientific study of penal law on the protection of migrants' rights. Likewise, the identification of certain perspectives on the scientific framework that addresses the limits and conditions of penal liability for organising illegal migration. Following the analysis carried out, it was established that there is not enough research on the dimension of juridical-penal analysis of the crime of organising illegal migration, and the legal norm needs to be reconceptualised in migrant smuggling. With a view to resolving the divergences that have arisen in judicial practice, conclusions and recommendations for improving the legal framework are proposed.

The implementation of the obtained scientific results. The theoretical aspects of the dissertation will have an impact on the unification of judicial practice, the practical activities of law enforcement agencies when they apply or interpret the provisions of Article 362¹ of the Penal Code of the Republic of Moldova, and the development of scientific publications for both students and researchers, as well as the entire academic environment.

ION COJOCARI
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SPECIALTY 554.01 - PENAL AND
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