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**CRIMINAL LIABILITY FOR ATTRACTING MINORS TO CRIMINAL
ACTIVITY OR DETERMINING THEM TO COMMIT IMMORAL ACTS**

SUMMARY OF THE PHD THESIS

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CONCEPTUAL REFERENCES OF RESEARCH

The actuality and importance of the problem addressed lies in perpetuating the need to protect minors against temptations that entice them and attract them to commit criminal and immoral acts, at a stage of life in which they find it difficult to understand the social danger of the actions in which they are attracted by adults, being sure that they want all the good in the world for them. Moreover, when a crime is committed by minors, in complicity with adults, it gives them an unprecedented experience of criminal conduct. In such situations, favorable conditions are created to exchange information and share criminal experiences.

The accelerated development of technologies, of society as a whole, plus the curiosity and thirst of children for information, tempting and attractive activities, are favorable conditions for malicious adults to attract the minors in their criminal activity. For these reasons, today it is necessary as a priority to modernize and connect all the legal instruments aimed at protecting minors to the requirements of the time in which we live, especially those of criminal nature, which are much more energetic and aggressive towards those who intend to use the physical and intellectual qualities of the minor to achieve their criminal purpose.

Given the existence of the rule of law, it is inconceivable to tolerate facts that threaten the safety of minors, and against this background, their proper incrimination acquires a special relevance.

Currently, taking into account the main role of the family in the education of the minor, the state intervention has been essentially reduced, having a subsidiary character, it intervening only when the family is not able to act. In our opinion, this concept is to be reviewed, and the specialized state institutions should be given as priority the intervention through measures of protection of the minor and more accentuated support, as well, by temporary or permanent measures, including legislative measures, to make them resistant to criminal temptations.

In order to protect the minor from involvement in the commission of criminal acts, the local legislator has enshrined a special norm (art. 208) in the content of the Criminal Code, which has the task of criminalizing the act of "Attracting minors to criminal activity or determining them to commit immoral acts". The regulation of this category of facts in the Romanian Criminal Code has contributed enormously to the reduction of the criminal phenomenon among minors, where the role of adults was decisive in their determination to commit immoral acts.

However, the statistics of recent years record cases of attracting minors into criminal activity. However, according to the data submitted by the General Directorate of Information and Operative Records of the Information Technologies Service of the Ministry of Internal Affairs, we find that during the years 2014-2023, 481 offenses of attracting minors to criminal activity or their determination to commit immoral acts were recorded on the territory of the Republic of Moldova.

Description of the situation in the research field and identification of the research problem. A remarkable contribution to the study of the mentioned issues was made by the authors in the country and those abroad.

At national level, a valuable contribution to the investigation of crimes committed with the involvement of minors was made by the following authors: S. Brînză, V. Stati, A. Borodac, S. Copețchi, R. Cojocar, X. Ulianovschi, N. Vladliuc, G. Gladchi, D. Vasiloî, M. Buciuneanu, O. Rotaru, Ig. Dolea, V. Zaharia, A. Țurcan, M. Mutu-Strulea, I. Ciobanu, T. Carpov, M. Gherman, V. Bujor, L. Gîrla, M. Bârgău, M. Dascălu, A. Corcenco and others.

At international level, a considerable contribution to the study of the crime analyzed was made by the following authors: M. Basarab, A. Ungureanu, I. Pitulescu, M. Hotca, I. Casandra, R. Ionuș, I. Oancea, N. Vetrov, N. Kadnikova, E. Hudeakov, S. Ojogov, D. Ușakov, A. Kibalnik, I. Solomenko, Iu. Pudovocikin, Z. Hanova, R. Șevcenko, B. Gladchih, E. Korovin, M. Bavsun, P. Popov, G. Șerbakova, I. Odnoliko, N. Babii, M. Cornejo, E. Chauffard, J. Echegaray, R. Worms, A. Kiskis, S. Justickaja, R. Uscila, N. Bassou, A. Kid etc.

Carrying out the study of the theme subjected to scientific research is conditioned by: the need to concretize and define the concepts of: attraction to criminal activity, incitement to crime, determination to commit immoral acts; arguing the need to decriminalize the factual modality “determining to commit immoral acts” and rendering it a contravention content; materializing and grading the types of violence applied to minors into the non-hazardous and dangerous for the life and health of the victim; arguing a set of recommendations in the form of lege ferenda, etc.

Purpose and objectives of the paper. The purpose of this paper is to carry out an extensive and multifaceted study of the spectrum of legal and criminal problems regarding the crime of attracting minors to criminal activity or their determination to commit immoral acts, as well as to submit recommendations to improve the existing national regulatory framework.

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

- the study of doctrinal sources and international and national normative regulations of the crime of attracting minors to criminal activity or determining them to commit immoral acts;
- examination of the objective and subjective elements of the offence provided for in art. 208 Criminal Code of the Republic of Moldova;
- elucidation of the aggravating circumstances of the crime of attracting minors to criminal activity or determining them to commit immoral acts;
- comparative analysis of criminal laws of other states;
- establishment of clear criteria for delimiting the attraction of minors to criminal activity or determining them to commit immoral acts from other crimes;
- materialization and differentiation of the violence types applied to the minor in the process of carrying out the deed in question;

- establishment of the moment of consummation of the analyzed crime;
- concretization of the reason and purpose pursued by the perpetrator following the attraction of minors to criminal activity or determining them to commit immoral acts;
- submitting proposals of lege ferenda, which will improve the existing legal framework of the given crime.

Methodology of scientific research. In order to achieve the purpose and objectives indicated above, the normative material (conventions, international agreements, codes, laws, decisions, etc.) and doctrinal material (treaties, manuals, monographs, doctoral theses, guides, materials of scientific-practical conferences, magazines, scientific articles, electronic databases, etc.) aimed at the crime of attracting minors to criminal activity or determining them to commit immoral acts. Also, the theoretical side of the paper was combined with case studies taken from national judicial practice.

In order to achieve the predetermined objectives, the most effective and recognized methods of investigation in the legal field were used during the research, such as: the historical-legal method (used in the process of exploring the historical past of the evolution of criminal rules in the field of criminalization of the offenses of attracting minors to criminal activities); the comparative method (used in the process of comparing national regulations with those of other states); the deductive method (widely used in the selection and interpretation of doctrinal ideas launched on the occasion of the investigation of the norm provided by art. 208 of the Criminal Code of the Republic of Moldova); the method of literary interpretation (used to research the lexical meaning of words, expressions, terms), the prospective method (used to choose the most effective ways of approaching the problematic in the matter of qualifying the act of attracting into criminal activity or determining to commit immoral acts), as well as the systemic one (applied to the identification of the consecutive regulation of the act provided in art. 208 of the Criminal Code of the Republic of Moldova among the other components of crimes to which minors are attracted); the survey (necessary to identify the practices applied by the criminal investigation bodies and the courts).

Novelty and scientific originality. This study represents a complex research of the theoretical and practical problems regarding the crime of attracting minors to criminal activity or determining them to commit immoral acts. Carrying out the study of the theme subjected to scientific research is conditioned by: the need to concretize and define the concepts of: attraction to criminal activity, incitement to crime, determination to commit immoral acts; arguing the need to decriminalize the factual modality of “determining to commit immoral acts” and rendering it a contravention content; materializing and grading the types of violence applied to minors into the non-hazardous and dangerous for the life and health of the victim; arguing a set of recommendations in the form of lege ferenda, etc.

Theoretical significance of the work. The theoretical importance of the thesis results from the resolution of legal and criminal problems with regard to the crime of attracting minors to criminal activity or their determination to commit immoral acts, and the conclusions drawn could complement the theoretical bases of criminal law, including by removing some revealed legislative gaps and submitting concrete proposals under the aspect of lege ferenda.

The applicative value of the paper will be appreciated from a practical point of view, as a matter of priority, for the law enforcement bodies, in particular: criminal investigation officers, investigative officers, prosecutors, judges, lawyers, etc., who will benefit from the scientific-practical benchmarks for the legal classification of the crime of attracting minors to criminal activity or determining them to commit immoral acts. At the same time, the materials of this scientific study can serve as support in the process of training both the students of the I-III cycles of studies, the audiences of the initial and managerial training courses, as well as for other categories of readers.

The main scientific results submitted for support are represented by the theoretical and practical analysis of the crime regarding the attraction of minors to criminal activity or determining them to commit immoral acts, provided in art. 208 of the Criminal Code of the Republic of Moldova, the delimitation of the offense of attracting minors to criminal activity or their determination to commit immoral acts from other similar acts, as well as the formulation of normative solutions, which, in a perspective, will facilitate the filling of the existing gaps in the national legislation on the protection of minors.

Implementation of scientific results. Most of the topics in this paper, as well as some recommendations, have been discussed in various scientific events, being published both in recognized scientific journals and in the materials of national scientific conferences. Also, the content and conclusions formulated in this thesis can be used in the process of training students from higher education institutions, in the work of practitioners, at the same time being the basis for the perspective improvement of the national regulatory framework.

Approval of results. The research carried out in this paper has been discussed at several national and international scientific conferences. At the same time, the basic concepts of the study were presented in various scientific journals: Scientific Annals of the “Ștefan cel Mare Academy” of the Ministry of Internal Affairs; Scientific-Practical Journal “Law and Life”; National Journal of Law; Journal “Supremacy of Law”.

Publications on the thesis theme. There were published in 10 scientific papers on the topic of the doctoral thesis.

Keywords: attraction, instigation, determination, criminal activity, crime, immoral acts, minor, parent, legal guardian, pedagogue, coercion, violence, victim, criminal liability.

THE CONTENT OF THE THESIS

In **Chapter I**, entitled: “*Analysis of scientific materials published on the topic of the doctoral thesis*”, consisting of three chapters, devoted to the study of scientific materials on the crime of attracting minors to criminal activity or their determination to commit immoral acts, published both in the Republic of Moldova and abroad, which allowed a complex and multifaceted investigation of the nominated crime.

The analysis in complexity of the theories and ideas promoted by the local researchers allowed the examination of such problems as: the theoretical concept of the notion of attracting minors to criminal activity or removing them from committing immoral acts, its interpretation and application under the condition of the existence of several ideas, theories, but also practical approaches to the subject concerned, including the designation of specific peculiarities of the reference crime, along with the analysis of theories, as well as those existing in the specialized scientific environment outside the Republic of Moldova.

The improvement of the legislation regarding the minor is a requirement that is addressed not only to the legislative body, but also to the entire society. The prevention of juvenile delinquency, as well as the recovery of the minor delinquent in ways as appropriate as possible to his age, must be one of the fundamental concerns of contemporary society [33, p. 239].

The author Mariana Buciuceanu, in the paper “Social problems of delinquent behavior among youth”, doctoral thesis in 2007, examines the phenomenon given on the basis of sociological studies. [8, p. 50-51].

The authors Gladchi G. and Popa V., in the paper “The concept and criminological peculiarities of the crime of minors”, mention that the crime of minors, being part of the phenomenon of crime as a whole, at the same time has its specific peculiarities, which allow its investigation as an independent object of criminology. Thus, the personality of the minor offender has specific biopsychosocial features. These include the lack of life experience, the indefinite formation of social orientation, the degree of influence, the increased conformity, the orientation towards informal groups, the desire to self-affirmation within them, the tendency to demonstrate independence, the defiant attitude towards moral and legal norms, the predisposition to assign blame to others, the total submission to the authority of recidivists, the irresponsibility of one’s own actions, the orientation towards momentary satisfaction [22, p. 36].

The author Oxana Rotaru, in “Crime of minors: criminal, psychological and criminological aspect”, doctoral thesis of 2007, examines the problem under three aspects and questions the origin of the notions of “juvenile delinquency” and “criminal minority” [30, p. 67].

Regarding the investigation of the problem of delinquency, we consider it

necessary to specify the course support "Juvenile delinquency", developed at the Moldova State University (Chisinau, 2008) of the author Maria Mutu-Strulea, in which the phenomenon of juvenile delinquency is characterized [26, p. 5].

At the same time, among the researchers of the local doctrinal space it is worth mentioning the author Stanislav Copetchi who, through the content of his doctoral thesis, was directly concerned with the problem of criminal accountability for the crime of attracting minors into criminal activity or determining them to commit immoral acts [17, p. 83].

In the monograph "Criminal liability for attracting minors to criminal activity or their determination to commit immoral acts", Copețchi S. points out that a large number of crimes are committed by minors or with the participation of minors. And one of the causes that determines the crime existence among minors lies in the negative influence exerted by adults on minors, including by attracting them to criminal activity. It is convenient for adults to attract minors as executors to commit criminal acts, at least due to the fact that the latter benefit from a milder sanctioning treatment. Thus, the need to protect minors from such criminal influence, exercised by adults, is explained by the lack of moral and affective stability in the former, being easily influenced, including by committing crimes and immoral acts [17, p. 5].

In the scientific article entitled "The criminological characteristic of juvenile and juvenile delinquency in the Republic of Moldova", I. Ciobanu mentions that the problem of combating juvenile and minor delinquency is one of the main directions of the fight against crime.

During the study of the problem of juvenile crime, the author I. Ciobanu came to the following conclusions: the delinquent minor is a disharmonious, unbalanced, ill-formed personality, but he/ she is not a lost person; there are still or can be created premises for the restructuring of his/ her personality, for his/ her recovery [12, p. 74].

In the scientific article entitled "Criminal liability of minors. Proposals of lege ferenda", the author Botnaru S. argues that minors, being in full physical and mental development, show, from a psychological point of view, a mentality and ability to think different from that of adults. At the same time, they are more receptive to negative influences, to which they can be subjected, and also can be easier to be re-educated after having violated the criminal law [4, p. 231].

Important suggestions and research bring to the national doctrine also the distinguished authors Brînză S. and Stati V., through their numerous works dedicated to criminal *Criminal law. Special Part. Volume I*. Among the issues investigated is the crime of attracting minors to criminal activity or their determination to immoral acts. With reference to this crime, the authors mention that the special legal object is social relations regarding the *social, spiritual and*

moral development of the minor, defended against attracting minors to criminal activity or determining them to commit immoral acts [6, p. 766].

A remarkable contribution to the investigation of the qualified crime according to the signs of the composition provided for in art. 208 of the Criminal Code belongs to the authors Alexandru Borodac and Marian Gherman who, in the work "*Qualification of offenses*", claim that the subject of the offense discussed is the interest of the minor, a mandatory element, inherent to each offense, given that there can be no offenses without object of attack [2, p. 90].

Another work of great value for the Moldovan criminal doctrine is the one signed by M. Dascălu, "*The criminal phenomenon among minors*", in which the author pays special attention to the investigated phenomenon, calling juvenile offenders in a more unusual way - aged deviants or juvenile delinquents. Also in this paper, the renowned author claims that the delinquent minor is the elderly, whose biological, affective, intellectual, social-educational needs were not met in time and in the manner appropriate to the culture or subculture in which he/ she lives [21, p. 12].

The doctrinaire A. Corcenco in her work "*Evolution of criminal law on juvenile offenders. Historical references*", examines multidimensionally the historical evolution of the criminal phenomenon involving the actions of the minor, independent or directed by adults. The author notes that the teenager, including the offender, is a personality in training, with his/ her own psycho-moral content and that the defense reaction against his/ her socially dangerous conduct cannot disregard this specificity and must focus, first of all, on the problem of poor education that he/ she has previously received [18, p. 34].

In the work of the authors Radion Cojocar and Valentina Rusu "*Criminal liability of the minor in some European countries*" the authors argue that, following the experience of foreign states in the field of regulating the criminal liability of minors, it is appropriate to systematize the norms regarding the minority in a separate chapter of the Criminal Code of the Republic of Moldova [16, p. 46].

Thus, it becomes mandatory to adapt the national legislation, including the one regarding minors, to the European regulations, at least in terms of its fundamental principles, from the moment when our country committed to the legal reform, claimed by the transition to an open and democratic society.

An overwhelming contribution to the development of the world criminal doctrine in the segment of the investigation of the crime of attracting the minor in the criminal activity is made by the Romanian authors.

In this context, we mention the Romanian author Matei Basarab, who defines the special legal object as the value against which the action (inaction) provided by the criminal law is directed, a value characterized by certain special features that serve to individualize a crime within the same group or subgroup [1, p.147].

The Romanian author Augustin Ungureanu manages to draw attention to the

fact that the special legal object of the crime constitutes a social value or a special relationship regarding it, injured or endangered by committing a crime [32, p.75].

Pitulescu I. is another Romanian author, who completes the Romanian doctrine with valuable papers that also address the issue of criminalizing the act of attracting minors into criminal activity. He begins his study by defining the status of a minor. In this regard, it argues that the criminal minority is not equivalent to the civil minority, their upper limits being different [28, p.40].

Another work that comes to enrich the range of Romanian doctrinal approaches on the crime segment among minors is that of the author Casandra I., with the title "Criminal punishments applied to minors". This paper elucidates the significance of the criminal liability of minors according to the Criminal Code of the Republic of Moldova and Romania, in particular by carrying it out in the form of criminal punishment, which contributed to highlighting the need to change the sanctioning minors model, according to the Criminal Code of the Republic of Moldova, into a liberal model, which would allow the connection of the criminal liability system of minors to European and international standards in this field [10, p. 6].

During the entire study, we encountered many complex investigations of the criminal phenomenon involving minors, coming from the former USSR, especially from the *doctrine of the Russian Federation*. The Russian literature abounds in scientific papers that thoroughly treat the targeted issue, starting with the debate on the legal essence of the action of attracting to criminal activity.

In this regard, the Russian professor N. I. Vetrov, in his work *Criminal law. Special part*", argues that, by the term "attraction", various actions must be understood (mental or physical influence), aimed at awakening in the minor the desire to participate in committing one or more crimes [35, p. 119].

Another Russian author, Kadnikova N.D., in the work "Commentary on the Criminal Code of the Russian Federation", claims that the term "attraction" refers to the action aimed at awakening the minor's desire, aspiration, determination to participate as an author, accomplice in committing the crime [37, p. 352].

The author I. E. Pudovocikin, who recognizes as a special legal object of that crime the social relations that ensure the child's right to be protected from information, propaganda or agitation, which could cause damage to health, physical and mental development [38, p. 97], also has remarkable contributions to the development of Russian doctrine in the field of the examination of crimes against minors.

The works of the author Z. P. Hanova who, in her "Involvement of minors in committing anti-social actions, criminal law and criminological problems", claims that the special legal object of the investigated crime is the social relations that ensure the rights of the minor to be protected from information that causes damage to his/ her social and spiritual development [41, p. 8].

The Ukrainian doctrine does not overlook the issue of criminal incrimination

of the acts of attracting minors to criminal activities. The studies carried out in this regard are quite complex and relevant. Although in a smaller number, however, Ukrainian specialized works provide concise and extremely necessary studies to inspire all states in the region, where there is much in common on the segment of regulating and combating the phenomenon of juvenile crime.

The paper "Methods of involving a minor in criminal activity", with a great impact on the science of criminal law, written by the author Şcerbacova G. V., refers exclusively to the issue of qualification of the act of attracting minors in criminal activities [42].

Another valuable work, in the Ukrainian doctrinal space, is that of the group of authors Ganova G.O., Priseajniuk I.I., Turkot M. S., where it is mentioned that in those cases where an adult is accused of a crime, according to the amendment provided in art. 304 of the Criminal Code of Ukraine, in the suspicion notification and in the indictment it must be clearly stated what specific actions were used to influence the minor, aimed at making him/ her want to participate in committing at least one crime [36, p.32].

Some relevant research on the subject of the involvement of minors in criminal activities we also identify *in the Belarusian literature*, belonging to the renowned author N. Babii.

In one of his works, "Criminal liability for drunkenness of minors", the author indicates that, as a result of attracting the minor to criminal activities, the damage is caused to the harmonious development of the minor [34, p. 14].

Therefore, reviewing the doctrinal works from the mentioned countries, it is easy to see that judicial practice, along with the science of criminal law, has made colossal efforts over the years to develop a comprehensive and effective incriminating framework in the matter of investigating criminal cases involving a minor.

Examining the specifics *of the European doctrine* on the segment of juvenile crime, especially that involving the actions of minors, we find a reluctance to investigate that phenomenon, but also a reluctance to regulate the act of attracting minors to criminal activities. However, it should be noted that most European countries do not include in the content of the Criminal Codes the crime in question, and the chapters that protect the minor and the family incriminate acts related to the involvement of minors in criminal activities or, in other cases, provide for a certain number of crimes in which the minor is involved (child trafficking, begging, pandering, prostitution, etc.).

So, as I mentioned, in the science of European criminal law on the regulation of crimes involving minors, special attention is paid to the protection of the family, as the European legislators do in the text of the Criminal Codes, considering that, once it is protected, the minor will also be protected as a member of it.

Thus, our observation finds confirmation in the work "General Sociology" of

the authors M. H. Cornejo, E. Chauffard, J. Echegaray and R. Worms, who consider that “the family is, first of all, an economic group, in which solidarity of interests is strengthened by the sexual instinct, by authority, by the community of property and home” [19, p. 405]. According to the same authors, the family environment is considered decisive for the exercise of the minor’s rights, as his/her rights start from the family.

Of all European doctrine, only in the content of the Lithuanian one we find imposing studies in the examination field of the criminal acts that attack the social relations for the protection of minors. Namely in this context, we present the monograph signed by the authors Kiškis A., Justickaja S., Uscila R., Justickis V. Nusikalstamumas, who are concerned with researching the phenomenon of crime prevention, where a special department is dedicated to juvenile delinquency. According to the authors, the growth of this phenomenon testifies to the great socialization problems of the growing generation. It turns out that family, school and other social institutes do not cope with their tasks and are not able to ensure an adequate upbringing of the young generation [19, p. 405].

The diversity of European institutional types of response to juvenile delinquency, which are currently found in the rest of the world, is given by the diversity of social reactions to the phenomenon and to some legislative models related to the diversity of requirements, situations and interpretation of deviant and delinquent behaviors in society, their variety and current claims to the human condition in general and, last but not least, the peculiarities and interventions of the state in matters of prevention and control.

In **Chapter II**, entitled: “*Retrospective of normative regulations and comparative law aspects regarding the crime of attracting minors to criminal activity or their determination to commit immoral acts*”, includes three subchapters and contains a retrospective on the criminal regulations of the act of attracting minors to criminal activity or their determination to commit immoral acts. At the same time, a comparative study of the crime investigated in the light of the criminal laws of other states (Romania, Ukraine, Russian Federation, Belarus, Armenia, Azerbaijan, Kazakhstan, Tajikistan, Turkmenistan, Uzbekistan, Georgia, France, Poland, Lithuania, Switzerland, Germany, Italy, Bulgaria, Spain, Greece, Malta, Latvia, Estonia, Finland, etc.) was carried out, as well as the study of a wide variety of scientific materials aimed at elements of comparative criminal law written on the topic of the thesis.

The first regulations in the field of legal recognition of the status of the child in society become known to mankind on the occasion of delimiting the social category to which they belonged. Thus, according to the Hammurapi Code, the child born in marriage, whose mother was free, had the quality of a free man [20, p. 31].

In Greek and Roman antiquity there are the first references to the legal status

of the child, where the child was considered to be a “miniature man”, devoid of speech, completely dependent on adults.

Addressing the status of the child in criminal matters, the author Pitulescu I., argues that the criminal minority is a concept known to some people from ancient times and has found its legal expression in the written legislation or in the customary law of the first state organizations. Since ancient times, the child and, to some extent, the adolescent have been considered as a distinct discuss, legal category with limited rights and responsibilities [28, p. 40-41].

The first social values, related to the coexistence and development of the child, are related to the introduction of compulsory school (17th century); the school trained children by imitating adults. During this period, the instinct to protect the child within the family also develops.

The 19th century and the first half of the 20th century are marked by a serious interest in the child, especially through the state’s awareness of the obligation to protect the child. As a consequence, the first initiatives to develop legal instruments to protect children against labor exploitation activities appear.

The emergence of the first legal instruments to defend children against labor exploitation activities and the manifestation of an increased interest in the child are noted in the 19th century and the first half of the 20th century.

The first international document laying the legal foundations for the protection of children’s interests, including through criminal law, is the Declaration of the Rights of the Child of 1924, drafted by the International Organization “Save the Children” and subsequently adopted by the Member States of the League of Nations.

International collaboration initiatives in the field of child rights protection are referred to after World War II, with various international law norms on ensuring and protecting children’s rights in all spheres of life, the fight against slavery, issues regarding the trafficking of women and children and the international regulation of child and adolescent labor.

After 1924, at international level, acts were continuously adopted providing for the obligation to regulate the field of legal protection of the child through acts of a general or special nature. In 1951, the United Nations Convention on the Status of Refugees was adopted, in 1966 - the International Covenant on Civil and Political Rights, also this year - the International Covenant on Economic, Social and Cultural Rights. In 1996, the act specific to the matter to which we refer, namely the European Convention on the Exercise of the Rights of the Child, was adopted.

The express legal framework regulating the matter of juvenile delinquency begins to develop after 1985, with the adoption of the United Nations Minimum Rules on the Administration of Juvenile Justice, which mentions the importance of social protection of young people in order to reduce the need for law intervention, with the

involvement of the family for the purpose of the well-being of the minor.

International provisions directly related to the protection of the interests of minors contain the Council of Europe Convention on Personal Relationships with regard to Children of May 15, 2003 and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted on October 25, 2007.

The evolution of criminal regulations on the territory of the Republic of Moldova does not know a developed history. This is both due to the fact that, in general, the crime of attracting minors into criminal activity is much more recent compared to many crimes in the Criminal Code, but also because many jurisdictional regimes have been in place throughout history that have not allowed to establish and develop a consistent criminal legal framework. However, reference can be made to the Criminal Codes of the countries that governed in the Republic of Moldova today, we refer here to the Ukrainian Criminal Code, but also to that of Romania between 1918-1940 of the last century, later that of the USSR, after 1940.

Generally, until 1917, during the rule of Tsarist Russia, on the territory of Bessarabia no clear codification of the rules in criminal matters is known, not to mention the regulation of the crime of attracting minors into criminal activity.

After 1918, passing under another jurisdiction, the provisions of the Romanian Criminal Code of 1865, promulgated and published on October 30, 1864, in force until 1936, were applied on the territory of Bessarabia. So, the first Romanian Criminal Code, which entered into force on May 01, 1865, regulated the criminal treatment of minors in Title "About causes that protect from punishment or reduce punishment" [5, p. 87].

Analyzing the content of the criminal legislation applied on our territory after 1940, when the regime of socialist governance was established, we notice that with the signing of the Decree of the Supreme Soviet of the USSR on the provisional application of the USSR legislation on the territory of the MSSR on September 14, 1940, the provisions of the Criminal Code of the USSR from 1927 already become applicable.

In 1957, once the Union republics were allowed to adopt their own codes, but without deviating from the basics of Union legislation, the Criminal Code of MSSR was drawn up in the Republic of Moldova, voted on March 24, 1961 and implemented on July 01, 1961.

It should be noted that this code did not contain a separate chapter aimed at criminalizing and punishing crimes against the family and minors. Most of the offences concerned were displaced under Chapter II of the Special Part of the Criminal Code, which was entitled "Offences against the life, health, liberty and dignity of the person".

Other crimes against the family and minors in the previous criminal legisla-

tion were concentrated in Chapter XI of the Special Part of the Criminal Code of the MSSR of 1961, called “*Crimes against public security, public order and public health*”. Among these were: attracting minors to criminal activity or determining them to immoral acts (art. 224 Criminal Code), attracting minors to drunkenness (art. 224 Penal Code), attracting minors to the non-medicinal consumption of drugs and other narcotic drugs (art. 224 Criminal Code) [15, p. 19].

Meanwhile, when the Republic of Moldova became an independent state, there appears a need to adopt a new Constitution. Therefore, on August 27, 1994, the supreme law declaring the Republic of Moldova as a sovereign, independent, unitary and indivisible state, having the form of a republic, rule of law, democratic state in which human dignity, rights and freedoms, the free development of human personality, rights and public pluralism represent supreme and guaranteed values, enters into force [29, p. 188].

At the same time, pursuing the purpose of child protection, the local legislator drafted and adopted Law no. LP338/1994 of 15.12.1994 on the rights of the child, where article 6 specifies *the right to inviolability of the person, to protection against physical and mental violence* - the state protects the inviolability of the child, protecting him/ her from any form of exploitation, discrimination, physical and mental violence, not allowing cruel, rude, contemptuous behavior, insults and ill-treatment, involvement in criminal actions, initiation in the consumption of alcoholic beverages, illicit use of narcotic and psychotropic substances, gambling, begging, incitement or coercion to practice any illegal sexual activity, exploitation for the purpose of prostitution or other illegal sexual practice, pornography and pornographic materials, including from parents or legal subrogation holders, relatives [24].

After a long period of adapting the national legal framework to international standards, the Criminal Code was adopted in 2002, which devotes a special chapter (Chapter VII) to crimes against the family and minors. Thus, in art. 208 it is provided for the offense of attracting minors to criminal activity or their determination to commit immoral acts.

With the passage of time and the socio-economic evolution, new amendments were imposed in the Criminal Code, such as No. 985 of 18.04.2002, the version entered into force on 12.01.2019, with the subsequent tightening of the penalties of pecuniary nature. Respectively, in para. 1) the size of the fine increases from 200-500 conventional units (in the old code) to 550-850 in the amended code; para. 2) the size of the fine increases from 300-700 conventional units to 650-1050 in the modified code [13].

Following the criminalization of the act of attracting minors to criminal activity, there is also the need to draw up an interpretative act, which would interpret the order of its application in the examination of such cases. Therefore, on

22.11.2004, the Decision no. 39 of the Plenum of the Supreme Court of Justice of the Republic of Moldova “On the Judicial Practice in Cases Concerning Minors” [23] is elaborated and approved.

Of undeniable importance for the study of comparative law is the consultation of the *legislation of neighboring states*, given that we are bound by common regulatory traditions, the same approach to the values defended by criminal law, the same geographical specificity, the common history of the evolution of many criminal norms, etc.

In the special part of the Criminal Code of Romania, the criminal liability for offenses affecting social relationships for the protection of the family is provided for in Chapter II, entitled “Offenses against the family”, of Title VIII with the marginal name of offenses affecting relationships regarding social coexistence. These crimes include: bigamy (art. 376 of the Criminal Code of Romania), incest (art. 377 of the Criminal Code), family abandonment (art. 378 of the Criminal Code), failure to comply with the measures regarding the custody of the minor (art. 379 of the Criminal Code), preventing access to compulsory general education (art. 380 Criminal Code) [14].

The criminal legislation of Ukraine does not enshrine a separate rule that would criminalize the act of attracting minors into criminal activity. However, different chapters identify rules that would regulate crimes similar to the involvement of minors in criminal activities. For example, Chapter III of the “Special Part. Crimes against freedom, honesty and dignity of the person” contains rules intended to incriminate acts against minors, such as: exploitation of minors (art. 150), the use of the child for begging (art. 150-1) [40].

The criminal legislation of the Russian Federation devotes a special chapter to crimes against the family and minors Chapter XX – “Crimes against the family and minors”, in Title VII of the Criminal Code – “Crimes against the person”[39].

In the category of crimes against the family and the minor, the following facts are attributed: the involvement of minors in committing a crime (art. 150 Criminal Code of the Russian Federation); involvement of minors in committing antisocial acts (art. 151 of the Criminal Code); retail sale of alcoholic beverages to minors (art. 151 of the Criminal Code); replacement of the child (art. 153 Criminal Code); illegal adoption (art. 154 of the Criminal Code); disclosure of the adoption secret (art. 155 Criminal Code); failure to fulfill the obligation to educate the minor (art. 156 of the Criminal Code); the evasion from the payment of the child support or of the parents unable to work (art. 157 Criminal Code) [39].

The criminal laws of European countries lack special rules to sanction the attraction/ incitement by adults of minors to commit crimes, applying the rules of criminal participation. Some legislation provides for the action of determining minors to commit immoral acts such as prostitution or begging, attracting mi-

nors to illegal drug use, determining minors to systematically consume alcoholic beverages, focusing on crimes that affect the family and good cohabitation, etc.

In **Chapter III**, entitled „*Elemente constitutive obiective și subiective ale infracțiunii de atragere a minorilor la activitate criminală sau determinarea lor la săvârșirea unor fapte imorale*”* (*“*Objective and subjective constituents of the offense of attracting minors to criminal activity or determining them to commit immoral acts*”), it includes five subchapters and includes a complex investigation of the objective and subjective elements of the offense of attracting minors to criminal activity or their determination to commit immoral acts, such as: the legal object, the material object, the objective side, the subject, the subjective side. At the same time, relevant cases from national judicial practice and qualification rules specific to each element of the crime composition were presented.

By analyzing the legal object of the offense regarding the attraction of minors to criminal activity or determining them to commit immoral acts, we establish that the *generic legal object* of the offense of attracting minors to criminal activity or determining them to commit immoral acts is the social relations that are conditioned by the protection of the family and minors, as well as the social relations regarding the good coexistence in the family, the protection and development of minors from all points of view.

The *special legal object* of the investigated crime is the totality of social relations regarding the physical, social, spiritual and moral (intellectual), socio-emotional and spiritual development of minors, which aim to prevent the commission of crimes.

In the situation created, we consider it necessary to specify that the special legal object of the offence provided for in para. (1.) art. 208 of the Criminal Code of the Republic of Moldova is simple, meaning it consists of social relations regarding a single social value, namely social relations regarding the physical, social, moral (intellectual), socio-emotional and spiritual development of minors. However, in the hypothesis provided for in letter a) para. (3) of art. 208 of the Criminal Code of the Republic of Moldova, the *special legal object becomes complex*, as it consists of social relations aimed at two or more social values, damaged by the illicit act. In this case we will be in the presence of a main special legal object and a secondary special legal object, meaning we will have a plurality of objects of the crime of attracting minors into criminal activities or their determination to commit immoral acts.

Therefore, if the object of the offense is an abstract category, that is inaccessible to direct perception, then the material object of the offense is always a material substance, that is, it is material according to its nature, being accessible for perception with the help of human sense organs [3, 263].

We are in the presence of the *material object* of the crime provided for in art.

208 of the Criminal Code of the Republic of Moldova only in the case of the aggravation provided for in section a) para. (3) of art. 208 of the Criminal Code of the Republic of Moldova, when the touch is carried out by influencing the victim's body – “the application of violence”.

The status of victim, in all cases, must be acknowledged only to the minor, given that only he is directly affected by the crime.

The objective side of the crime provided for in art. 208 of the Criminal Code of the Republic of Moldova is expressed in the harmful act that is characterized by action. The composition of the crime of “attracting minors to criminal activity or determining them to commit immoral acts” can be achieved by three alternative normative ways:

- 1) attracting the minor to criminal activity;
- 2) incitement to commit crimes;
- 3) determination to commit immoral acts (begging, gambling, debauchery).

These normative modalities of the harmful act have an alternative character, meaning the presence of at least one of them is necessary for the examined crime to take place. It is important to note that the crime occurs only through action. At the same time, we draw attention to the fact that the current version of the legislator's expression may create some confusion, creating the impression that in order to qualify, it would be necessary to carry out all these three actions (attraction, instigation and determination), when, in fact, the attraction can be carried out through instigation actions, which would be a synonym for determination, carried out in turn by different ways and by different means.

In this context, in the title of the criminal rule from art. 208 of the Criminal Code of the Republic of Moldova, the legislator used the phrase “criminal activity”. It is also used in the case of the first normative way of attracting criminal activity, while throughout the rest of its text it refers to the essence of the act of incitement to crime and determination to commit immoral acts.

Analyzing the judicial practice on the crime provided for in art. 208 of the Criminal Code of the Republic of Moldova, we found that there are cases when criminal acts are also qualified as an attraction to criminal activity and as an incitement to commit crimes. Therefore, it is not clear for what reason two alternative ways of committing the harmful act are confused, being treated as having the same meaning, although they have different meanings and significance.

Following the terminology analysis, we were able to formulate the following definitions:

Attraction to criminal activity represents any action to determine, by exerting unspecified influence over the minor in order to convince him/ her to participate in criminal activities. Manifestation of unconsolidated influence can be achieved through: luring, tempting, fascinating, appeasing, making promises,

intimidating, rewarding, etc.

Inciting a crime is manifested by arousing the minor's interest in committing a concrete, well-thought-out crime by the adult, by presenting and exposing certain advantages that the minor could benefit from, as a result of committing the crime. The instigation action takes the form of a concrete attraction and involves the application of the following procedures: improving, praising certain character traits of the minor, propagating the parasitic lifestyle, training criminal skills and abilities, giving advice and instructions in order to facilitate the commission of a concrete crime, etc.

The determination to commit immoral acts can be achieved through: promises, deception, threats, intimidation, triggering the desire for revenge, the feeling of envy, flattery, assurances of impunity, etc. in order to convince the minor to commit immoral acts (begging, gambling, debauchery) that are detrimental to the individual and society.

It is important to specify that the understanding of the actions of attraction, instigation and determination, as normative-alternative ways of committing the investigated crime, have common meanings, and the action of instigation includes both the action of attraction and that of determination.

In order to streamline the practice of applying the rule provided for in art. 208 of the Criminal Code of the Republic of Moldova, as well as to avoid confusion in the qualification process, we consider it absolutely necessary to change the title of art. 208 of the Criminal Code of the Republic of Moldova, as follows: *"Inciting the minor to commit crimes"*. With the express indication in para. (1) *"Determining the minor, by any method, when committing a crime"*.

For the purposes of the proposal submitted, the term incitement to offense would include both actions to attract and determine, with the ultimate goal of attracting the minor to the offense. So, instigation would mean nothing more than attracting and/ or determining to a certain criminal act by luring, tempting, awakening the interest to commit crimes, etc. As a result, in the light of the proposals submitted, the purpose of standardizing the terms and expressions of the Criminal Code would be achieved, as this formulation would be similar to the provisions of art. 42 para. (4) Criminal Code of the Republic of Moldova.

Changing the title of the article would significantly ease its perception by practitioners. The determination, within the meaning of the proposal submitted, would provide for the action of the perpetrator aimed at convincing the minor to commit an offense.

The phrase "by any method" shall mean absolutely all possible methods of committing the offence. Thus, the incriminating provision would include the entire spectrum of existing methods and procedures for committing the offense in question, without exception.

In turn, we specify that immoral acts are the set of deeds (actions or inactions) that, once committed, are detrimental to the individual and society.

According to the provision of the incrimination rule provided for in art. 208 of the Criminal Code of the Republic of Moldova, immoral acts are expressly indicated in the text of the law: *begging, gambling and debauchery*.

By “immoral acts” one must understand non-criminal acts (contraventions, disciplinary violations, civil offenses), which involve a violation of ethical norms, such as: vagrancy, disturbance of freedom of conscience, disturbance of public peace or any other actions through which social existence is achieved.

Starting from the considerations that the express enumeration in the text of the law of immoral acts (begging, gambling, debauchery) leads to the thought that others that are not indicated do not fall under art. 208 of Criminal Code of the Republic of Moldova, which is not correct. In this context, we propose to renounce the enumeration of immoral acts in parenthesis. On the same note, it is absolutely certain that begging, gambling, debauchery, practiced by minors, pose a degree of danger of contravention nature respectively for those who admit or encourage minors to such acts.

Moreover, we recommend that the normative method “determining minors to commit immoral acts (begging, gambling, debauchery)” to be excluded from the composition of art. 208 of the Criminal Code with its rendering of contravention content. Both the action of attracting minors to criminal activity and the incitement to commit crimes have degrees of social danger different from the determination to immoral acts, the latter having a contravention nature.

It should be noted that the offense of attracting minors to criminal activity or their determination to commit immoral acts is a formal offense, that is, a crime that does not cause certain harmful consequences, the recognition of social danger refers only to action or inaction. The direct intention in the case of such a criminal act is distinguished by the awareness by the perpetrator of the prejudicial nature of his/ her actions, the provision of the occurrence of the prejudicial consequences and the manifestation of the desire to occur.

The essence of the subjective side of the crime provided for in art. 208 of the Criminal Code of the Republic of Moldova implies that the perpetrator knows with certainty that the victim has not reached the age of majority, this being a necessary aspect to be demonstrated for the individualization of the criminal punishment.

The direct form of intention is characterized by the following three concepts: awareness, foresight, and desire. The first two concepts refer to the intellectual factor of intention (consciousness), which includes the awareness by the perpetrator of the harmfulness of his/ her actions and the ability to foresee the possibility of negative consequences as a result of the committed act. The third concept refers to the volitional factor of intention (will), which provides for the

conscious orientation of the person's actions in order to achieve the intended goals [27, p. 42].

The study of the judicial practice of the Supreme Court of Justice of the Republic of Moldova attests that the reasons for committing the offense, provided for in art. 208 of the Criminal Code of the Republic of Moldova, are various: revenge, envy, materials, the desire to transmit criminal skills, etc., but these do not matter for the qualification of the offense, but they can be taken into account when establishing the criminal punishment.

The purpose pursued by the perpetrator, as well as the reason for the crime, does not matter for qualification, but can be expressed by: asserting the minor in criminal activity, committing the crime or committing the immoral act by the minor, forming in the minor's conscience an antisocial way of life, awakening the enthusiasm and desire to commit crimes, etc.

The features of the special subject in the theory of criminal law have been called optional conditions, because they are not necessary for all the components of specific crimes.

We fully subscribe to the vision of those authors who recognize the subject of the crime provided for in art. 208 of the Criminal Code of the Republic of Moldova as a general subject, except for the rule from para. (2) of art. 208 of the Criminal Code of the Republic of Moldova. However, here are actions committed by the parent, pedagogue, legal guardians of the child, which aggravate criminal liability. The qualifying sign in this case refers to the subject of the offence, which is a special one - parent, pedagogue, adopter, guardian, curator, educator [9, p. 425].

According to the authors Brînză S. and Stati V., in light of the provisions of art. 208 of the Criminal Code of the Republic of Moldova, "*other legal guardian of the child*" (other than the parent) is considered: the guardian, the curator, the parent educator, etc. [7, p. 1057].

Pursuant to art. 2 of the Adoption Act, the adopter is a person or family (husband and wife) who has filed an application for adoption and who has been taken into account by the adoption authorities [25].

The term "*pedagogue*" means the person authorized by law to handle training and education, who possesses the necessary knowledge, holds a position in an educational institution or carries out an individual pedagogical activity. They have the quality of a pedagogue: the educator, the teacher, the group supervisor, the social pedagogue, the psycho-pedagogue, the tyflop pedagogue, the mimic-gestual language teacher, etc. [7, p. 1057].

Concluding with those examined in the present section of the paper, we note that the subject of the offence provided for in art. 208 of the Criminal Code of the Republic of Moldova is a general one, except for para. (2), and in order to be

in its presence it is necessary to meet the conditions, such as physical character, age (18 years) and responsibility for the purposes of criminal law.

In **Chapter IV**, entitled *Aggravating forms and delimiting aspects of the crime of attracting minors to criminal activity or their determination to commit immoral acts*”, includes three sub-chapters and contains a delimiting study of the crime of attracting minors to criminal activity or determining them to commit immoral acts by other similar acts, as well as the study of the aggravating circumstances of that crime with the argumentation of the proposals to introduce new aggravating circumstances in the content of art. 208 Criminal Code of the Republic of Moldova.

Examining the aggravating circumstances of the crime of attracting minors to criminal activity or their determination to commit immoral acts, we start from the fact that currently para. (2) of art. 208 of the Criminal Code of the Republic of Moldova provides for criminal liability for the actions indicated in paragraph (1), committed by the parents or other legal guardians of the child, as well as by his/ her pedagogues, and para. (3) - the actions provided in para. (1) or (2), committed:

- a) with the application of violence or the threat of its application;
- b) by attracting minors to an organized criminal group or criminal organization,
- c) by attracting the minor to commit a terrorist offence,

As regards to the conduct of the subjects indicated in para. 2, we do not encounter difficulties of understanding and legal classification, these being described in the previous paragraph related to the subject of the crime.

Identify in para. 3 of art. 208 of the Criminal Code, as an aggravating circumstance, “*the application of violence or the threat of its application*”. Thus, by violence, within the meaning of the aggravating circumstance at let. a) para. (3) art. 208 of the Criminal Code of the Republic of Moldova, we are to understand only physical violence. This is because the legislator uses at the same time the phrase “or the threat of its application”, which leads us to the thought of the physical application of violence.

Moreover, the subjects handling the criminal cases initiated on the basis of the crime indices provided at letter a) para. 3 of art. 208 of the Criminal Code, it is difficult for them to understand what type of violence the legislator referred to in the text of this norm: dangerous, non-hazardous, physical or mental violence (see Annex 1).

In our opinion, the gradation of the violence type is absolutely necessary, namely in the context mentioned above, given that we cannot equate the application of non-hazardous violence to the life or health of the person with dangerous violence. So there is a considerable difference when the application of violence

resulted in average or slight harm to bodily integrity or health, in the case of the application of dangerous violence, and minor harm that did not cause a health disorder for more than 6 days, in the case of the application of non-hazardous violence. It is easy to see, that the damage caused by the application of dangerous violence is more serious, and in the case of the application of non-hazardous violence - less serious.

In order to accurately understand the meaning of the aggravation provided at letter a) para. (3) of art. 208 of the Criminal Code of the Republic of Moldova: a) with the application of violence or with the threat of its application, as well as for the purpose of proportionate and gradual application of the criminal punishment, it is necessary to graduate the type of violence that threatens the life and/ or health of the minor, in dangerous and non-hazardous. Certainly, the application of dangerous violence or the threat of its application presumes a higher degree than the application of non-hazardous violence to the life or health of the person or the threat of its application. Therefore, we propose the following changes: supplementing art. 208 of the Criminal Code of the Republic of Moldova with new aggravating circumstances that will find their headquarters in para. (2) “the same actions committed”: d) “with the application of non-hazardous violence to the life or health of the person or the threat of its application”; and in para. (3) “the actions referred to in para. (1) or (2), committed”: a) “with the application of dangerous violence to the life or health of the person or the threat of its application”.

Attracting minors to an organized criminal group or criminal organization is another aggravating circumstance of the crime provided by letter b) para. (3) of art. 208 Criminal Code of the Republic of Moldova.

Given the pronounced dangerous nature of the criminal acts committed by a plurality of perpetrators, the legislator rightly decided to aggravate the criminal liability for the adult person’s act, given that those committed are accompanied by the attraction of minors within an organized criminal group or a criminal organization.

Referring to the above legal definition of the investigated crime, we mention that the aggravating circumstance analyzed will be incidental, when the actions of the perpetrator referred to in para. (1) or para. (2) art. 208 of the Criminal Code of the Republic of Moldova are committed by attracting the minor in a stable meeting of persons, organized in advance to commit one or more crimes.

The following defining features of the organized criminal group emerge from the rule cited: a) it constitutes a meeting of persons; b) it forms a stable meeting of persons; c) it is a meeting organized in advance; d) the purpose of the meeting lies in committing one or more crimes [31, p. 94].

Attracting the minor to commit a terrorist offense is another aggravating cir-

cumstance of the offense provided in letter c) para. (3) art. 208 Criminal Code of the Republic of Moldova.

Please note that in not a few cases, minors participate in terrorist offenses, if not in the Republic of Moldova, then in other states. Obviously, for the Republic of Moldova, the phenomenon of terrorism is a little widespread. At the same time, the alignment with certain international instruments, designed to prevent and counter terrorist acts and not only, but also other terrorist crimes, has led the legislator to criminalize such acts.

The aggravation of the criminal liability for attracting the minor by a person, who has reached the age of 18, to commit a terrorist offense is dictated by the increased social danger posed by terrorist offenses, to whose commission the minor is attracted, as well as by the social resonance of such criminal offenses.

The authors V. Chirița and A. Cazacicov mention that the harmful degree of terrorist offences is extremely high. It is determined, on the one hand, by the fact that the given crimes encroach both on public security, peace, the security of mankind, transport, public authorities and state security, as well as on the life, health, integrity, freedom of the person, heritage, environment, and, on the other hand, by the fact that those facts have lately obtained a wide distribution [11, p. 7].

Starting from the considerations that, often, the offense provided by the legislator in art. 208 Criminal Code of the Republic of Moldova is committed on two or more minors, we recommend filling in with the following aggravating circumstance that will find its headquarters in para. (2) letter c) on two or more minors. The need to introduce it is dictated by the increased degree of prejudice of the deed committed, in such circumstances, having a wider impact if the fate and good development of several minors committed by an action is affected.

In order to comply with the principle of equality and non-discrimination, as well as based on the opportunity to individualize the punishments imposed on offenders, it is necessary to have, at legislative level, the provisions designed to provide for harsher sanctions for committing the investigated crime guided by the perpetrator's preconceived ideas based on considerations of: race, color, religion or religious beliefs, political opinions, disability, sexual orientation, gender identity, health status, age, marital status, etc. Therefore, we consider it absolutely indispensable to supplement art. 208 of the Criminal Code of the Republic of Moldova with an aggravating circumstance that will be found in para. (2) with the following content: "the same actions committed for reasons of prejudice".

Considering, the internationalization and globalization of the criminal phenomenon through the training, development and use of mercenaries is inextricably linked to the general development of society, and minors, by virtue of their

young age, can easily be persuaded to fight in an armed conflict, to take part in military operations in order to obtain a personal advantage or money remuneration. Therefore, we propose to supplement art. 208 of the Criminal Code of the Republic of Moldova with an aggravating circumstance that will be found in para. (3) letter d) the actions referred to in para. (1) and (2) committed: “by attracting minors into the activity of mercenaries”.

The offence, specified in art. 208 of the Criminal Code of the Republic of Moldova, in terms of objective and subjective elements, has some signs similar to other types of offences such as child trafficking, provided in art. 206 of the Criminal Code of the Republic of Moldova, both offenses directly affect the interests and good development of minors, being part of the same chapter of the special part of the Criminal Code - Chapter VII entitled “Offenses against the family and minors”. Another offence involving signs similar to the offence under investigation is pimping provided for in art. 220 of the Criminal Code of the Republic of Moldova, which although provided for in Chapter VIII “Crimes against public health and social coexistence” violates the rights of minors, causing them irreparable damage. The delimitative study allowed the revealing and formulation of the new normative regulation modalities as well as the submission of the proposals meant to liquidate the existing uncertainties in the incriminating matter regarding the investigated crime.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The scientific results obtained as a result of this study are:

1) retrospection of international and national normative regulations on the crime of attracting minors to criminal activity or determining them to commit immoral acts;

2) conducting the comparative study of the crime of attracting minors to criminal activity or determining them to commit immoral acts in the light of the criminal laws of other countries;

3) elucidation of the objective and subjective signs of the offense provided for in art. 208 Criminal Code of the Republic of Moldova;

4) carrying out a thorough study of the forms of aggravation of the crime of attracting minors to criminal activity or determining them to commit immoral acts;

5) carrying out the delimitation of the offense of attracting minors to criminal activity or determining them to commit immoral acts from some similar acts;

6) submitting the proposals of lege ferenda in order to perfect the studied criminal norm, in order to consonance it with the quality criteria and the principles of humanism of the criminal law.

Among the most relevant **conclusions** of a general nature we mention the following:

- Attraction to criminal activity represents any action to determine, by exerting unspecified influence over the minor in order to convince him/ her to participate in criminal activities. Manifestation of unconsolidated influence can be achieved through: luring, tempting, fascinating, appeasing, making promises, intimidating, rewarding, etc.

- Inciting a crime is manifested by arousing the minor's interest in committing a concrete, well-thought-out crime by the adult, by presenting and exposing certain advantages that the minor could benefit from as a result of committing the crime. The instigation action takes the form of a concrete attraction and involves the application of the following procedures: improving, praising certain character traits of the minor, propagating the parasitic lifestyle, training criminal skills and abilities, giving advice and instructions in order to facilitate the commission of a specific crime, etc.

- The determination to commit immoral acts can be achieved through: promises, deception, threats, intimidation, triggering the desire for revenge, the feeling of envy, flattery, assurances of impunity, etc. in order to convince the minor to commit immoral acts (begging, gambling, debauchery) that are detrimental to the individual and society.

- The actions of attraction, incitement and determination, as normative-alternative ways of committing the investigated crime, have common meanings,

and the action of instigation includes both the action of attraction and the one of determination. In such circumstances, in order to standardize the terms and expressions of the Criminal Code, but also to exclude the possibility of misinterpretation, we consider it appropriate to make changes to the current title and provision of art. 208 of the Criminal Code of the Republic of Moldova.

- The criminal experience of the Republic of Moldova, in terms of penalizing the facts, is oriented by the principle of humanism, which is to be dosed proportionally, in strict accordance with the principles of equity and the inevitability of criminal liability (punishment). As a result, it was revealed that, in the case of incriminating the action of determining minors to commit immoral acts, along with attracting the minor to criminal activity and inciting to commit a crime, the normative overestimation of its harmful degree takes place. In this context, we consider it appropriate to render it a contravention content.

- For the purpose of proportionate and gradual application of the criminal punishment, it is appropriate to materialize and graduate the types of physical violence applied to the minor following the commission of the offense provided for in art. 208 of the Criminal Code of the Republic of Moldova, in a dangerous and non-hazardous manner. Thus, the composition of para. (2) art. 208 of the Criminal Code of the Republic of Moldova would include only non-hazardous violence for the life and health of the victim, which consists in causing minor injuries (which did not cause a health disorder for more than six days, nor loss of work capacity), or intentionally applying blows or committing other violent actions that caused physical pain. The composition of para. (3) of the same criminal offense would include violence dangerous to the life or health of the minor, which is characterized by violence resulting in average or slight harm to bodily integrity or health or which, although it did not cause these consequences, at the time of its application, due to the method of operation, poses a real danger to life and health. The recommendation to amend the text of the criminal rule provided for in art. 208 of the Criminal Code of the Republic of Moldova is consistent with the logic of using the notions and expressions of the Criminal Code and favors the action of the principle of equity of criminal punishment.

- The study of the judicial practice of the Supreme Court of Justice of the Republic of Moldova attests that the reasons for committing the offense, provided for in art. 208 of the Criminal Code of the Republic of Moldova, are various: revenge, envy, materials, the desire to transmit criminal skills, etc., but they do not matter for the qualification of the offense, but they can be taken into account when establishing the criminal punishment.

- The purpose pursued by the perpetrator, as well as the reason for the crime, does not matter for qualification, but can be expressed by: asserting the minor in criminal activity, committing the crime or committing the immoral act by the

minor, forming in the minor's conscience an antisocial way of life, awakening the enthusiasm and desire to commit crimes, etc.

- The composition of the offence provided for by art. 208 of the Criminal Code of the Republic of Moldova is a formal one, it is considered consumed from the moment of influencing the victim, regardless of whether or not he/ she has committed a criminal or immoral act [191, p. 144].

The current scientific problem, of major importance, which has been solved consists of the following: revealing some gaps admitted to the formulation of the legal-criminal rule provided by art. 208 of the Criminal Code; developing a conceptual framework that meets the quality standards of the criminal law and facilitates the interpretation and application of the legal-criminal rule provided by art. 208 of the Criminal Code, in particular by formulating the concept of inciting the minor to commit crimes; gradation of the types of violence applied to them, the transfer to the sphere of contraventional applicability of the factual way of determining minors when committing immoral acts; amending the wording of art. 208 of the Criminal Code by reformulating the title, the provision and introducing a number of new aggravating circumstances.

As a **result** of the study carried out, we consider it necessary to submit **recommendations of lege ferenda**, which, in our opinion, could improve the content and structure of the legal-penal norm under investigation.

Amendment of the wording of art. 208 of the Criminal Code of the Republic of Moldova as follows:

Art. 208. Incitement of minors to commit crimes

(1) Determining the minor, by any method, when committing a crime, by a person who has reached the age of 18,

shall be punished by a fine in the amount of 550 to 850 conventional units or by unpaid community service from 150 to 200 hours, or by imprisonment for up to 5 years.

(2) The same actions committed by:

a) parents or other legal guardians of the child, as well as his/ her pedagogues;

b) for reasons of prejudice;

c) on two or more minors;

d) with the application of non-hazardous violence to the person's life or health or with the threat of its application;

shall be punished by a fine in the amount of 650 to 1050 conventional units or by unpaid community service from 180 to 240 hours, or by imprisonment for up to 6 years.

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

a) with the application of non-hazardous violence to the person's life or

health or with the threat of its application;

b) by attracting minors to an organized criminal group or criminal organization;

c) by attracting the minor to commit a terrorist offence;

d) by attracting minors into the activity of mercenaries;

shall be punished by imprisonment from 3 to 7 years.

Rephrasing the title and the provision of art. 209 Criminal Code of the Republic of Moldova as follows: from “Attracting minors to the illegal consumption of narcotic, psychotropic and/ or other substances with similar effect” in “Instigating minors to the illegal consumption of narcotic, psychotropic and/ or other substances with similar effects” and its provision, provided in para. (1), from “Attracting by a person who has reached the age of 18 years to the illegal consumption of narcotic, psychotropic and/ or other substances with similar effects” in “Determining the minor, by any method, to the illegal consumption of narcotic, psychotropic and/ or other substances with similar effects, by a person who has reached the age of 18 years”.

Supplementing the Contravention Code of the Republic of Moldova with an article that would provide for the contravention liability for “Inciting minors to commit immoral acts”, the provision of which would be limited to “Determining the minor, by any method, to commit immoral acts, by a person who has reached the age of 18”.

Suggestions on potential future research directions related to the topic addressed: 1) development of a guide aimed at aspects of interpretation and qualification of the crime of attracting minors to criminal activity or determining them to commit immoral acts; 2) analysis of the criminological aspects of the nominated crime; 3) investigation of the crime provided for in art. 208 of the Criminal Code of the Republic of Moldova in terms of forensic methodology.

BIBLIOGRAFIE

1. BASARAB, M. Drept penal. Partea generală. București: „Lumina Lex”. 2001. 480 p. ISBN 978-973-1720-65-4.
2. BORODAC, A. GHERMAN, M. Calificarea infracțiunilor. Chișinău: F.E.-P. „Tipografia Centrală”, 2006. 264 p. ISBN 978-9975-78-136-7.
3. GLADCHI G. *Drept penal. Partea generală: Manual pentru facultățile de drept. Vol. I. Ed. a 2-a, rev. și ad.* Chișinău, 2022. 636 p. ISBN 978-9975-64-346-7.
4. BOTNARU, S. Răspunderea penală a minorilor. Propuneri de lege ferenda. În: *Materialele Conferinței științifico-practice internaționale „Rolul pedepsei în societatea de tranziție”*. Chișinău: Universitatea de Criminologie, 2002, 320 p. ISBN 9975-9694-37.
5. BREZEANU, O. Din istoria regimului sancționator al minorului infractor în România. În: *Revista de drept penal nr. 2/1995*, București. pp. 83-93.
6. BRÎNZĂ, S., STATI, V. Drept penal. Partea specială. Volumul I. Chișinău: „Tipografia Centrală”, 2011. 1062 p. ISBN 978-9975-53-028-6.
7. BRÎNZĂ, V., STATI, S. *Tratat de drept penal. Partea specială. Volumul I.* Chișinău: „Tipografia Centrală”, 2015. 1326 p. ISBN 978-9975-53-469-7.
8. BUCIUCEANU, M. Probleme sociale ale comportamentului delicvent în rândul tineretului. Teză de doctor în științe sociologice. Chișinău: Universitatea de stat din Moldova, 2007. 163 p.
9. CARPOV, T. Codul penal al Republicii Moldova: Comentariu. Chișinău: Tipografia „Reclama”. 2009. 860 p. ISBN 978-9975-105-20-0.
10. CASANDRA, I. Pedepse penale aplicate minorilor. Teză de doctor în drept. Chișinău: Universitatea Liberă Internațională din Moldova, 2018. 179 p.
11. CHIRIȚA, V., CAZACICOV, A. *Infracțiuni cu caracter terorist. Suport de curs. Seria: Drept penal (Partea specială)*. Chișinău: Tipografia „Academiei Ștefan cel Mare”, 2016. 165 p. ISBN 978-9975-121-22-4.
12. CIOBANU, I. Caracteristica criminologică a delicvenței juvenile și a minorilor în Republica Moldova. În: *Analele științifice ale Universității de Stat*, 1999. Nr. 2, 74-79 p.
13. Cod penal al Republicii Moldova nr.985 din 18.04.2002. În: *Monitorul Oficial al Republicii Moldova*, 14.04.2009 nr. 72-74 art. 195.
14. Codul penal al României. În: *Codex penal, Codurile penale ale statelor membre ale Uniunii Europene*, proiect editorial elaborat sub coordonarea prof. T. Toader. [citată la 14.12.2022]. Disponibil: <https://codexpenal.just.ro/laws/Cod-Penal-Romania-RO.html>.
15. COJOCARU, R., CARP, T. Elemente de drept penal comparat privind infracțiunile contra familiei și minorilor. În: „*Legea și viața*”, nr. 10. Chișinău, 2016. p. 18-23. ISSN 1810-309X.

16. COJOCARU, R., RUSU, V. Răspunderea penală a minorului în unele țări europene. În: Analele științifice ale Academiei „Ștefan cel Mare” a MAI, nr. 14/ 2021. p. 43-58. ISSN 1857-0976.

17. COPETȚCHI, S. *Răspunderea penală pentru atragerea minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale*. Monografie. Chișinău: Tipografia „Foxtrot”, 2014. 346 p. ISBN 978-9975-120-41-8.

18. CORCENCO, A. Evoluția dreptului penal privind infractorii minori. Referințe de ordin istoric. În: Revista Națională de Drept, 2002, Nr. 7. 34-35 p.

19. CORNEJO, M.H., CHAUFFARD, E., ECHEGARAY, J. și WORMS, R. Sociologie generale. Paris: V. Giard et E. Briere, 1911. 512 p.

20. CUȘMIR, L. Protecția drepturilor mamei și copilului în condițiile dezvoltării sociale stabile. Teză de doctor în drept. Chișinău, 2005. 184 p. ISBN 978-9975-9522-0-0.

21. DASCĂLU, M. Fenomenul infracțional în rândul minorilor. Comportamentul uman în procesul judiciar - o lucrare ce prezintă interes. În: „Legea și viața”, 2000, Nr. 4. 12-15 p.

22. GLADCHI, G., POPA, V. Conceptul și particularitățile criminologice ale criminalității minorilor. În: Revista Națională de Drept, 2016, nr. 5, pp. 31-3, Chișinău. ISSN: 1811-0770.

23. Hotărârea Plenului Curții Supreme de Justiție a Republicii Moldova „Cu privire la practica judiciară în cauzele penale privind minorii” pentru modificarea și completarea Hotărârii Plenului Curții Supreme de Justiție nr.39 din 22.11.2004.

24. Legea Republicii Moldova privind drepturile copilului, nr.338 din 15.12.1994. În: Monitorul Oficial al Republicii Moldova, 02-03-1995, nr.13.

25. Legea Republicii Moldova privind regimul juridic al adopției nr.99 din 28.05.2010. În: Monitorul Oficial al Republicii Moldova, 30.07.2010, nr. 131-134.

26. MUTU-STRULEA, M. Suport de curs. Declinvența juvenilă. Chișinău, 2008. 233 p. ISBN 978-9975-70-783-1.

27. PILAT, S. Latura subiectivă a infracțiunii de vandalism. Chișinău. În: „Legea și viața”, Nr. 5. 2017. P. 40-45. ISSN 2587-4365.

28. PITULESCU, I. Delincvența juvenilă. București: Editura Ministerului de Interne, 1995. 376 p.

29. ROTARU, M. Istoria Dreptului Românesc. Curs Universitar. Editura ASEM. Chișinău-2008. 331 p. ISBN 978-9975-75-407-1.

30. ROTARU, O. Criminalitatea minorilor: aspect penal, psihologic și criminologic. Teză de doctor în drept penal. Chișinău: Universitatea Liberă internațională din Republica Moldova, 2008. 165 p.

31. STAHURSCHI, A. Circumstanțele agravante ale infracțiunii de atrag-

ere a minorilor la activitate criminală sau determinarea lor la săvârșirea unor fapte imorale. În: Revista științifico-practică „Legea și Viața”. Ediție specială. Chișinău, 2020. pp. 93-96. ISSN 1810-309X.

32. UNGUREANU, A. Drept penal român. Partea generală. București: „Lumina LEX”, 1995. 460 p. ISBN 978-606-39-0123-2.

33. VLADIUC, N., VASILOI, D. Particularitățile pedepsei penale privative de libertate aplicate minorului. În: Materialele Conferinței științifico-practice internaționale „Rolul pedepsei în societatea de tranziție”. Chișinău: Centrul Editorial al Universității de Criminologie, 2002. pp. 235-239.

34. БАБИЙ, Н.А. Уголовная ответственность за спаивание несовершеннолетних. Диссертация на соискание ученой степени кандидата социологических наук. Минск, 1986 г. 147 с.

35. ВЕТРОВ, Н. И. Уголовное право. Общая часть. Москва, 1999. 542 с. ISBN 5-7990-0228-8.

36. ГАНОВА, Г.О. и др. Притягнення до кримінальної відповідальності неповнолітніх: процесуальне керівництво досудовим розслідуванням та підтримання державного обвинувачення: Навчально-практичний посібник / К.: нау; тов «центр учбової літератури», 2015. 82 с. ISBN 978-617-673-172-6.

37. Комментарий к Уголовному кодексу Российской Федерации/Под ред. КАДНИКОВА, Н.Г. Москва, 2019. 1069 с. ISBN 978-5-9516-0828-4.

38. ПУДОВОЧКИН, Ю.Е. Ответственность за преступления против несовершеннолетних по российскому уголовному праву. Санкт-Петербург: Изд. «Юридический центр пресс», 2002. 293 с. ISBN 5-94201-060-9.

39. Уголовный кодекс Российской Федерации № 63-ФЗ от 13.06.1996 (ред. от 01.07.2021, с изм. и доп., вступ. в силу с 22.08.2021). [citat la 23.12.2022]. Disponibil: https://www.consultant.ru/document/cons_doc_LAW_10699/?ysclid=luv05_svx_87595499258.

40. Уголовный кодекс Украины, No 2341-III от 05.04.2001. В: Відомості Верховної Ради України, No 25-26, 2001. [citat la 15.12.2022]. Disponibil: https://online.zakon.kz/Document/?doc_id=30418109.

41. ХАНОВА, З.В. Вовлечение несовершеннолетних в совершение антиобщественных действий: уголовно-правовые и криминологические проблемы. Автореферат диссертации на соискание ученой степени кандидата юридических наук. Махачкала, 2008. 208 с.

42. ЩЕРБАКОВА, Г.В. Способи втягнення неповнолітнього у злочинну діяльність. [citat la 21.02.2022]. Disponibil: <https://dspace.onua.edu.ua/server/api/core/bitstreams/12b1125c-ecf4-40ce-a48c-2d5b2f0e8711/content>.

LIST OF THE AUTHOR'S PUBLICATIONS ON THE THEME OF THE THESIS

Articles in national and international scientific journals (10):

1. CHIRIȚA V., STAHURSCHI A. „Latura subiectivă a infracțiunii de atragere a minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale”. În: Revista științifico-practică „Legea și Viața”, nr.12, **tipul „C”**, decembrie 2019;

2. STAHURSCHI A. „Circumstanțele agravante ale infracțiunii de atragere a minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale”. În: Revista științifico-practică „Legea și Viața”. Ediție specială, **tipul „C”**, august 2020;

3. STAHURSCHI A. „Subiectul infracțiunii de atragere a minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale”. În: Revista științifico-practică „Legea și Viața”, **tipul „C”**, ianuarie 2020;

4. STAHURSCHI A. „Obiectul infracțiunii de atragere a minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale”. În: Revista științifico-practică „Legea și Viața”, nr.2, **tipul „C”**, aprilie 2021;

5. CHIRIȚA V., STAHURSCHI A. „Attracting minors to criminal activity - normative method of committing harmful deed provided by the art.208 criminal code of the Republic of Moldova”. În: Матриали міжнародной наукової конференції молодих учених „Полицейська mediaція як інструмент захисту прав та інтересів громадян”, м. Одеса: ОДУВС, 04.06.2021;

6. STAHURSCHI A. „Atragerea minorilor la activitatea criminală – modalitate normativă de comitere a faptei prejudiciabile prevăzute la art. 208 Cod penal al Republicii Moldova”. În: Revista științifico-practică „Legea și Viața”, **tipul „C”**, martie 2022;

7. CHIRIȚA V., STAHURSCHI A. „Atragerea minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale: parametrii statistic-criminologici și unele aspecte privind latentitatea”. În: Revista Anale științifice ale Academiei „Ștefan cel Mare” a MAI al RM, ed. 16, **tipul „B”**, 2022;

8. CHIRIȚA V., STAHURSCHI A. ”Проблемы определения объекта и предмета преступления, предусмотренного ст. 208 УК Республики Молдова Вовлечение несовершеннолетних в преступную деятельность или склонение их к аморальным действиям”). În: Уголовно-правовые, уголовно-процессуальные и криминалистические проблемы преступлений, совершенных несовершеннолетними. Материалы Международной научно-практической конференций. Азербайджан, г. Баку, 17 апреля 2023, с. 259-269;

9. STAHURSCHI A. „Comparative criminal law elements regarding the offense provided for in article 208 criminal code of the Republic of Moldova”, În: Revista „Supremația Dreptului” SD, nr.1, 2023, **tipul „B”**, 11 decembrie 2023;

10. **STAHURSCI A.** Elemente constitutive subiective privind atragerea minorilor la activitate criminală sau determinarea lor la săvârșirea unor fapte morale. În: Revista Națională de Drept, Nr.1 (249), anul 24(2023), **tipul „B”**, noiembrie 2023.

PARTICIPATION IN SCIENTIFIC FORUMS

International:

a. Conferința internațională științifico-practică a tinerilor cercetători „Medierea polițienească ca instrument al ocrotirii drepturilor și libertăților cetățenilor”, organizată de către Academia de Poliție din Odesa, Ucraina, în parteneriat cu EUAM, 04.06.2021.

b. Conferința științifică cu participare internațională „Protecția drepturilor și libertăților fundamentale ale omului în procesul asigurării ordinii și securității publice”. Ediția I-a. Chișinău, Academia „Ștefan cel Mare” a M.A.I., 9.12.2021.

c. Conferința internațională științifico-practică cu genericul „Probleme de drept penal, procesual-penal și criminologic”, cu participare on-line, organizată de Academia de Poliție a Republicii Azerbaidjan, 17.04.2023.

National:

a. Conferința științifică a doctoranzilor „Criminalitatea în Republica Moldova – tendințe, probleme de prevenire și combatere”. Chișinău, Academia „Ștefan cel Mare” a M.A.I., 25.09.2018.

b. Conferința științifică a studenților doctoranzi „Prevenirea și combaterea criminalității -probleme, soluții și perspective”. Chișinău, Academia „Ștefan cel Mare” a M.A.I., 24.01.2020.

c. Conferința științifică a studenților doctoranzi „Prevenirea și combaterea criminalității -probleme, soluții și perspective”. Ediția II-a. Chișinău, Academia „Ștefan cel Mare” a M.A.I., 26.06.2020.

d. Conferința criminologică interuniversitară „Învățământul și cercetarea criminologică: aspecte naționale și regionale”, organizată de Institutul de Științe Penale și Criminologie Aplicată. Chișinău, Academia „Ștefan cel Mare” a M.A.I., 20.03.2021,

e. Conferința științifică interuniversitară a studenților-doctoranzi cu genericul „Prevenirea și combaterea criminalității - probleme, soluții și perspective”. Ediția a III-a. Chișinău, Academia „Ștefan cel Mare” a M.A.I., 25.03.2021.

f. Conferința științifică națională cu participare internațională „Rolul științei în asigurarea securității naționale și a activității anticrimă”. Chișinău, Academia „Ștefan cel Mare” a M.A.I., 21.12.2021.

g. Conferința științifică națională interuniversitară a studenților-doctoranzi cu genericul „Prevenirea și combaterea criminalității – probleme, soluții și perspective”. Ediția a IV-a. Chișinău, Academia „Ștefan cel Mare” a M.A.I., 27.01.2022.

ADNOTARE

Stahurschi Alina. Răspunderea penală pentru atragerea minorilor la activitate criminală sau determinarea lor la săvârșirea unor fapte imorale. Teză de doctor în drept. Chișinău, 2024

Structura tezei: introducere, patru capitole, concluzii generale și recomandări, bibliografia din 271 titluri, 142 pagini text de bază. Rezultatele obținute sunt publicate în 10 lucrări științifice.

Cuvinte-cheie: atragere, instigare, determinare, activitate criminală, infracțiune, fapte imorale, minor, părinte, ocrotitor legal, pedagog, constrângere, violență, victimă, răspundere penală.

Scopul lucrării: scopul prezentei lucrări constă în realizarea unui studiu amplu și multispectual al speculii de probleme juridico-penale referitoare la infracțiunea de atragere a minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale, precum și înaintarea unor recomandări de perfecționare a cadrului normativ național existent.

Obiectivele cercetării. În vederea atingerii scopului vizat, au fost formulate următoarele obiective: studiul surselor doctrinare și al reglementărilor normative internaționale și naționale ale infracțiunii de atragere a minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale; examinarea elementelor obiective și subiective ale infracțiunii prevăzute la art. 208 CP al RM; elucidarea circumstanțelor agravante ale infracțiunii cercetate; analiza comparativă a legislațiilor penale ale altor state; stabilirea unor criterii clare de delimitare a atragerii minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale de alte infracțiuni; concretizarea și diferențierea tipurilor de violență aplicate asupra minorului în procesul realizării faptei date; stabilirea momentului de consumare a infracțiunii analizate; concretizarea motivului și scopului urmărit de făptuitor în urma atragerii minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale; înaintarea unor propuneri de lege ferenda, care vor îmbunătăți cadrul legal existent al infracțiunii în cauză.

Noutatea și originalitatea științifică. Prezentul studiu reprezintă o cercetare complexă a problemelor teoretico-practice privind infracțiunea de atragere a minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale. Principalele elemente inovative ale studiului sunt: concretizarea și definirea conceptelor de: atragere la activitatea criminală, instigare la infracțiune, determinare la săvârșirea unor fapte imorale; argumentarea necesității decriminalizării modalității faptice „determinarea la săvârșirea faptelor imorale” și redarea acestuia unui conținut contravențional; concretizarea și gradarea tipurilor de violență aplicate asupra minorilor în cea nepericuloasă și periculoasă pentru viața și sănătatea victimei; argumentarea unui set de recomandări sub formă de lege ferenda etc.

Problema științifică importantă soluționată constă în următoarele: relevarea lacunelor admise la formularea normei juridico-penale prevăzute de art.208 CP; elaborarea unui cadru conceptual care să corespundă standardelor de calitate a legii penale și să faciliteze interpretarea și aplicarea normei juridico-penale prevăzute de art.208 CP, în special prin formularea conceptului de instigare a minorului la săvârșirea infracțiunilor; gradarea tipurilor de violență aplicate asupra acestora, transferarea în sfera aplicabilității contravenționale a modalității faptice de determinare a minorilor la săvârșirea faptelor imorale; modificarea redacției art.208 CP prin reformularea titlului, a dispoziției și introducerea unui șir de circumstanțe agravante noi.

Semnificația teoretică. Importanța teoretică a tezei rezultă din soluționarea unor probleme de ordin juridico-penal cu referire la infracțiunea de atragere a minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale, iar concluziile formulate ar putea completa bazele teoretice ale dreptului penal, inclusiv prin înlăturarea unor lacune legislative relevante și înaintarea unor propuneri concrete sub aspect de lege ferenda.

Valoarea aplicativă a lucrării va fi apreciată din punct de vedere practic, în mod prioritar, pentru organele de drept, în deosebi: ofițeri de urmărire penală, ofițeri de investigații, procurori, judecători, avocați etc., cărora le vor fi de folos reperele științifico-practice de încadrare juridică a infracțiunii de atragere a minorilor la activitatea criminală sau determinarea lor la săvârșirea unor fapte imorale. Totodată, materialele prezentului studiu științific pot servi drept suport în procesul de instruire atât a studenților ciclurilor I-III de studii, audienților cursurilor de formare inițială și managerială, cât și pentru alte categorii de cititori.

Implementarea rezultatelor științifice. Majoritatea subiectelor din prezenta lucrare, precum și unele recomandări, au fost dezbătute în cadrul diferitor manifestații cu caracter științific, fiind publicate atât în reviste științifice recunoscute cât și în materialele conferințelor științifice naționale. De asemenea, conținutul și concluziile formulate în prezenta teză pot fi utilizate în procesul de instruire a studenților din cadrul instituțiilor de învățământ superior, în activitatea practicienilor, totodată pot sta și la baza perfecționării de perspectivă a cadrului normativ național.

АННОТАЦИЯ

Стахурски Алина. Уголовная ответственность за вовлечение несовершеннолетних в преступную деятельность или склонение их к аморальным действиям. Диссертация на соискание ученой степени доктора юридических наук. Кишинев, 2024 год

Структура работы: введение, 4 главы, общие выводы и рекомендации, библиография из (271 источников), 142 страниц основного текста работы. Результаты исследования опубликованы в 10 научных работах.

Ключевые слова: вовлечение, подстрекательство, склонение, преступная деятельность, преступление, аморальные действия, несовершеннолетний, родитель, законный защитник, педагог, принуждение, насилие, жертва, уголовная ответственность.

Цель научной работы: заключается в проведении комплексного и многоаспектного исследования спектра уголовно-правовых вопросов, относящихся к преступлению вовлечения несовершеннолетних в преступную деятельность или склонения их к аморальным действиям, а также выдвигении рекомендаций по совершенствованию существующей национальной нормативной базы.

Задачи исследования: Для достижения поставленной цели были сформулированы следующие задачи: исследование доктринальных источников и международных и национальных нормативных положений преступления вовлечения несовершеннолетних в преступную деятельность или склонения их к аморальным действиям; рассмотрение объективных и субъективных признаков преступления, предусмотренного ст. 208 УК Республики Молдова; выяснение отягчающих обстоятельств расследуемого преступления; сравнительный анализ уголовных законодательств других государств; установление четких критериев отграничения вовлечения несовершеннолетних в преступную деятельность или склонения их к аморальным действиям от иных преступлений; уточнение и отличие видов насилия, применяемого к несовершеннолетнему в процессе осуществления данного деяния; установление момента поведения анализируемого преступления до конца; уточнение мотивов и целей, преследуемых виновным при вовлечении несовершеннолетних в преступную деятельность или склонения их к аморальным действиям; выдвигение предложений по *lege ferenda*, способствующих совершенствованию существующей правовой базы по данному преступлению.

Научная новизна и оригинальность. Настоящее исследование представляет собой комплексное исследование теоретико-практических вопросов, связанных с преступлением вовлечения несовершеннолетних в преступную деятельность или склонение их к аморальным действиям. Основными инновационными элементами исследования являются: конкретизация и определение понятий: вовлечение в преступную деятельность, побуждение к совершению преступления, склонение к аморальным действиям; обоснование необходимости декриминализации фактического способа «склонения к аморальным действиям» и придание ему правонарушительного содержания; уточнение и классификация видов насилия, применяемого к несовершеннолетним, на неопасное и опасное для жизни и здоровья жертвы; обоснование ряда рекомендаций в виде *lege ferenda* и др.

Важными научными вопросами, решаемыми в работе, являются выявлению допущенных недостатков при формулировании уголовно-правовой нормы, предусмотренной ст. 208 УК РМ; разработке концептуальной основы, соответствующей стандартам качества уголовного закона и облегчающей толкование и применение уголовно-правовой нормы, предусмотренной ст. 208 УК РМ, в частности, путем формулирования понятия побуждения несовершеннолетнего к совершению преступлений; классификация видов применяемого к ним насилия, перенесение фактического способа склонения несовершеннолетнего к аморальным действиям в сферу правонарушительной применимости; внесение изменений в редакцию ст. 208 УК РМ путем повторного формулирования заголовка, положения и введения ряда новых отягчающих обстоятельств.

Теоретическая значимость **диссертационного исследования** обусловлена решением ряда уголовно-правовых вопросов применительно к преступлению вовлечения несовершеннолетних в преступную деятельность или склонения их к аморальным действиям, а сформулированные выводы могут дополнить теоретические основы уголовного права, в том числе путем устранения некоторых выявленных законодательных пробелов и выдвигения конкретных предложений в аспекте *lege ferenda*.

Практическая применимость диссертации будет оценена с практической точки зрения, преимущественно для правоохранительных органов, в частности: офицеров по уголовному преследованию, розыскных офицеров, прокуроров, судей, адвокатов и др. которым будут полезны научно-практические ориентиры по правовой квалификации преступления вовлечения несовершеннолетних в преступную деятельность или склонения их к аморальным действиям. При этом, материалы настоящего научного исследования могут служить подспорьем в учебном процессе студентов I, II и III циклов обучения, слушателей курсов начальной и управленческой подготовки, а также любого читателя.

Внедрение результатов диссертационного исследования. Большинство тем настоящей работы, а также некоторые рекомендации обсуждались на различных научных мероприятиях и публиковались как в признанных научных журналах, так и на национальных научных конференциях. Содержание и выводы настоящей диссертации также могут быть использованы в процессе обучения студентов высших учебных учреждений, в работе практикующих специалистов, а также при дальнейшем совершенствовании национальной нормативной базы.

ANNOTATION

Alina Stahurschi. Criminal liability for involving juveniles in criminal activity or encouraging them to commit immoral acts. PhD Thesis in Law. Chisinau, 2024

Thesis structure: Introduction, 4 chapters, general conclusions and recommendations, bibliography of 271 sources, 142 pages of basic text. The results achieved are published in 10 scientific papers.

Keywords: involvement, incitement, encouragement, criminal activity, crime, immoral acts, juvenile, parent, legal protector, pedagogue, coercion, violence, victim, criminal liability.

Purpose of the paper: this paper aims to conduct a comprehensive and multi-aspectual study of the spectrum of legal-criminal issues related to the crime of involving juveniles in criminal activity or encouraging them to commit immoral acts, as well as to put forward recommendations for improving the existing national normative framework.

Objectives of the research: to achieve the intended purpose, the following objectives were formulated: study of the doctrinal sources and international and national normative regulations of the crime of involving juveniles in criminal activity or encouraging them to commit immoral acts; examination of the objective and subjective elements of the crime provided for in Art. 208 of the Criminal Code of the Republic of Moldova; elucidation of the aggravating circumstances of the crime under investigation; comparative analysis of the criminal laws of other States; establishment of clear criteria for distinguishing the involvement of juveniles in criminal activity or their encouragement to commit immoral acts from other crimes; objectification and differentiation of the types of violence inflicted on juveniles in the process of accomplishing the given crime; determination of the moment of commission of the analysed crime; objectification of the reason and aim pursued by the perpetrator in involving juveniles in criminal activity or encouraging them to commit immoral acts; putting forward proposals of *lege ferenda*, which will improve the existing legal framework of the given crime.

Scientific novelty and originality. The present study is a comprehensive research on the theoretical and practical issues concerning the crime of involving juveniles in criminal activity or encouraging them to commit immoral acts. The main innovative elements of the research are: objectification and definition of the concepts of: involvement in criminal activity, incitement to crime, encouragement to commit immoral acts; argumentation of the need to decriminalize the factual modality of “encouragement to commit immoral acts” and giving it a contraventional content; objectification and grading of the types of violence inflicted on juveniles into non-dangerous and dangerous for the victim’s life and health; argumentation of a set of recommendations in the form *lege ferenda* etc.

The important scientific issue addressed consists of the following: emphasizing gaps in the formulation of the legal-criminal rule provided for in Art. 208 of the Criminal Code; development of a conceptual framework, meeting the quality standards of the criminal law and facilitating the interpretation and application of the legal-criminal rule provided for in Art. 208 of the Criminal Code, in particular by formulating the concept of incitement of juveniles to commit crimes; gradation of the types of violence inflicted on them, transferring the factual modality of encouraging juveniles to commit immoral acts to the field of contraventional applicability; amendment of the wording of Art. 208 of the Criminal Code by reformulating the title, and the provision and introducing a series of new aggravating circumstances.

Theoretical significance. The theoretical significance of the thesis derives from the settlement of some legal-criminal issues with reference to the crime of involving juveniles in criminal activity or encouraging them to commit immoral acts, and the conclusions formulated could supplement the theoretical basis of criminal law, including by removing some legislative gaps revealed and putting forward concrete proposals under the aspect of *lege ferenda*.

The practical value of the paper will be experienced from a practical point of view, primarily for law enforcement bodies, in particular: criminal prosecution officers, investigating officers, prosecutors, judges, lawyers, etc., who will find useful the scientific-practical landmarks of legal classification of the crime of involving juveniles in criminal activity or encouraging them to commit immoral acts. Therewith, the materials of the present scientific study can serve as a support in the training process of students of cycles I, II and III of studies, audiences of initial and managerial training courses, as well as any reader.

Implementation of scientific results. Most of the topics in this paper, as well as some of the recommendations, have been discussed at various scientific events and have been published both in recognised scientific journals and in the materials of national scientific conferences. In addition, the content and conclusions formulated in the present thesis can be used in the process of training students in higher educational institutions, and in the work of practitioners, and can also form the basis for the further improvement of the national normative framework.

STAHURSCHI Alina

**CRIMINAL LIABILITY FOR ATTRACTING MINORS
TO CRIMINAL ACTIVITY OR DETERMINING THEM
TO COMMIT IMMORAL ACTS**

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