

**MOLDOVA STATE UNIVERSITY
LAW SCHOOL
DOCTORAL SCHOOL OF LEGAL SCIENCES**

As Manuscript
CZU: 343.61(478)(043)

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**THREATENING TO KILL, TO CAUSE SEVERE BODILY INJURY
OR DAMAGE TO HEALTH**

SUMMARY

Specialty 554.01 – Criminal Law and Criminal Enforcement Law

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CHISINAU, 2021

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The Thesis defence will take place on October 30, 2021, at 10.00, room no. 119, block II of the State University of Moldova (Chișinău municipality, street Mihail Kogălniceanu, 67).

The Summary and the PhD Thesis are available on the Law School Web Page, Moldova State University (<http://drept.usm.md>).

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RESEARCH CONCEPTUAL MILESTONES

Topicality. Criminal policy in the Republic of Moldova is focused on safeguarding the individual, his/her rights and interests, as well as on ensuring the individual's free development. Having ensured free development of human personality as a guaranteed supreme value, the Legislature shall arrange for the broad use of defence possibilities granted by the criminal law. The individual's attributes are protected by the criminal law against the socially most dangerous offences. One of such possibilities is precisely the prohibition to commit the offence that falls within the scope of Article 155 of the Moldovan Criminal Code (MCC)¹, intended to ensure "the opportunity that is given to each individual to decide in all his/her actions, in the frame of legal order, as he/she deems appropriate, as his/her conscience, feelings and interests tell him/her".²

R.D. Sarapov has stated: "Dealing with an individual includes two areas of his/her existence: biological and psychic. These two areas constitute the vital foundation for the individual's existence. Psychical violence destroys this foundation, having affected the psychic well-being. The significance of such well-being for an individual is twofold. First of all, it is a necessary condition for the normal existence of the individual as a biological being. Second of all, it evolves as a condition for the participation of the individual in the society relationships".³ "A human being shall enjoy the free will without any interference from other subjects"⁴, M.A. Hotca has mentioned.

Quite rightly, the offence of threatening to kill, to cause severe bodily injury or damage to health (incriminated in Article 155 of the MCC) is oriented against an individual. However, this offence "does not involve damaging or endangering the individual's life or health".⁵ In fact, threatening to kill, to cause severe bodily injury or damage to health implies restricting the free will and the freedom of action in all cases. Intimidating the victim is the main feature of any threat. By enforcing the threat, the perpetrator tries to influence the victim's mind and, in this way, to obtain the desired outcome.

We endorse the view of V. Rosca, according to which "the threat harmful feature is emphasised [...] by the circumstances; by enforcing it the threatened individual no longer has the

¹ According to the provisions of this Article, "threatening to kill, to cause severe bodily injury or damage to health, provided that the danger of accomplishing such a threat existed, shall be punished by a fine in the amount of 550 to 750 conventional units or by community service for 180 to 240 hours or by imprisonment for one to three years".

² Ratescu C.G., Ionescu-Dolj I., Perieteanu I.Gr. et al. *Annotated Criminal Code. Vol. III. The Special Part*. Bucharest: Socec & Co., 1937, pp. 245-246. 702 p.

³ Шарапов Р.Д. *Насилие в уголовном праве: понятие, квалификация, совершенствование механизма, уголовно-правового предупреждения* / Диссертация на соискание ученой степени доктора юридических наук. Екатеринбург, 2006, p. 47. 418 p.

⁴ Hotca M.A. *Criminal Code: Comments and Explanations*. Bucharest: C.H. Beck, 2007, pp. 1047-1048. 1593 p.

⁵ Brinza S., Stati V. *Criminal Law Treaty. The Special Part. Vol. I*. Chisinau: Central Printing House, 2015, p. 151. 1328 p.

psychic freedom for a natural behaviour, because being under the fear induced by the threat, the individual is no longer able to decide and act with free will on what he/she is supposed to do”.⁶ In this regard, Gh. Diaconescu mentions: “A threat against an individual may affect (impair) the feeling of safety – having restricted in this way his/her right to psychic freedom and, concurrently, may influence his/her behaviour due to the fear it generates, and this would negatively affect the individual participation in social life”.⁷ T. Toader and M. Safta maintain: “A threat is a dangerous offence as it attempts on the individual’s psychic freedom, having created a status of alarm, fear, concern [...]. On the other hand, this status of fear, alarm may restrict the possibility of the individual subject to threatening to show his/her willingness related to the acts he/she is going to do. The threatened individual no longer acts according to his/her will, but according to the will of the threatening individual”.⁸ In a similar manner, Iu.A. Jdanov stated: “Such a content description of the special legal subject-matter of the crime that involves threatening to kill, to cause severe bodily injury or damage to health is based on the nature of the threatening effect [...]. This threat [...] is aimed to intimidate another individual, and the latter [...] acknowledges that he/she has become dependent on the individual who is limiting his/her freedom of action”.⁹

At the same time, it should not be ignored the effect of twofold prevention described by Article 155 of the MCC. C.V. Obrajiev explains: “The substance of criminal law provisions with twofold prevention is that such provisions are aimed to prevent the commission of some crimes that may trigger the commission of other crimes, and this allows for reaching a twofold preventive effect”.¹⁰

Although it incriminates an offence that infringes the individual’s mental freedom, this Article is aimed to prevent the commission of certain crimes, which are much more dangerous than the threatening to kill, to cause severe bodily injury or damage to health. In particular, we refer to the prevention of crimes covered by Articles 145 and 151 of the MCC. The preventive specificity of Article 155 of the MCC is that the offence it incriminates involves potentialities of committing the crimes referred to in Articles 145 and 151 of the MCC in the future. Hence, the

⁶ Dongoroz V., Fodor I., Kahane S. et al. *Theoretical Explanations of the Romanian Criminal Code. The Special Part – vol. III*. Bucharest: Romanian Academy Publisher, All Beck, 2003, p. 298. 640 p.

⁷ Diaconescu Gh. *Crimes in the Romanian Criminal Code. Vol. I*. Bucharest: Oscar Print, 1997, p. 257. 477 p.

⁸ Antoniu G., Brutaru V., Duvac C. et al. *Explanations of the new Criminal Code. Vol. III (Articles 188-256)* / G. Antoniu, T. Toader (Coordinators). Bucharest: Universul Juridic, 2015, p. 133. 654 p.

⁹ Жданов Ю.А. *Сравнительная уголовно-правовая характеристика угроз убийством или причинением тяжкого вреда здоровью и покушения на убийство* / Диссертация на соискание ученой степени кандидата юридических наук. Елец, 2014, p. 9. 280 p.

¹⁰ Ображиев К.В. Уголовно-правовые нормы с двойной превенцией. In: *Проблемы укрепления законности и правопорядка: наука, практика, тенденции*, 2010, № 3, pp. 167-171.

incrimination of the threatening to kill, to cause severe bodily injury or damage to health (which is a less severe crime) has the purpose to prevent the commission of murder and causing severe bodily injury or damage to health (which are serious, particularly serious or exceptionally serious crimes).

Thus, the social danger of the crime referred to in Article 155 of the MCC shall be treated from a twofold perspective. Such danger has both direct (affecting the individual's freedom of mind) and indirect feature (affecting potentially the individual's life or health).

The opportunity to incriminate the threatening to kill, to cause severe bodily injury or damage to health is undeniable. Nonetheless, since the enactment of the Moldovan Criminal Code, the content of Article 155 has remained unchanged.

The reason of this immutability is not the perfect quality of this Article. Quite the opposite, the practice of applying the provisions of Article 155 of the MCC generates a large number of legal errors, which, in frequent cases, are brought to the Moldovan Supreme Court of Justice (SCJ) for consideration. Part of these errors is due to the estimative feature of some terms and word combinations used in Article 155 of the MCC. Such terms and word combinations are not construed by the legislation. Likewise, the criminal doctrine lacks the unity of opinion in construing them. Along with that, the relevant literature still hosts the polemics regarding the: constitutive signs of the crime referred to in Article 155 of the MCC, which should be considered as mandatory; cataloguing the respective crime as a particular case of disclosing the intention; the moment of committing the crime referred to in Article 155 of the MCC; the capability of Article 155 of the MCC to protect the individual's life and health, etc.

These theoretical, legislative and case-law malfunctioning urges conducting a detailed and comprehensive analysis of the crime referred to in Article 155 of the MCC.

Describing the Situation in the Research Area and Identifying the Research Issue. In the Republic of Moldova, threatening to kill, to cause severe bodily injury or damage to health is the subject-matter of research conducted by: I. Arhiuluc; A. Barbaneagra; A. Borodac; S. Brinza; V. Bujor; L. Girla; V. Guțuleac; V. Holban; V. Stati; Iu. Tabarcea; Gh. Ulianovschi, etc. In other states, scientific investigation of threatening to kill, to cause severe bodily injury or damage to health has been carried out by: V. Cioclei; Gh. Diaconescu; V. Dobrinoiu; M.A. Hotca; V. Pavaleanu; V. Rosca; M. Safta; T. Toader, etc. (Romania); M.K. Dimitrov; I.V. Samoscenko; G.M. Sobko; V.V. Sablistai, etc. (Ukraine); H.H. Absatarov; L.V. Danelean; E.V. Ghertel; M.V. Habarova; Iu.A. Jdanov; L.N. Klocenko; O.I. Korostaliyov; P.N. Levin; D.A. Parhomenko; S.V. Parhomenko; D.A. Razdobudko, etc. (the Russian Federation) et al.

The contradictions revealed amongst these authors, as well as the lack of detailed and comprehensive studies tackling the threatening to kill, to cause severe bodily injury or damage to health, which would mirror the legal realm in the Republic of Moldova, determined both conducting a critical analysis of ideas and concepts promoted by the aforementioned authors and supplementing and elaborating them.

Following the benchmarking analysis of the current situation in the concerned area, we have come up with the following *Research Issue*: developing the conceptual frame of criminal liability for threatening to kill, to cause severe bodily injury or damage to health, as well as re-assessing the regulatory basis of criminal liability for this offence, which should make the criminal defence of mental freedom more efficient, laying down the theoretical approach for applying Article 155 of the MCC in compliance with the principle of lawfulness and ensuring the betterment of the process of criminal defence of mental freedom.

Paper Goal and Objectives. The Thesis pursues the *Goal* to consider the criminal law matters of threatening to kill, to cause severe bodily injury or damage to health, identify the shortcomings typical for the criminal defence of mental freedom, suggest some solutions to the Legislature aimed at improving the quality of criminal defence of this social value, as well as contribute to the application of Article 155 of the MCC in compliance with the principle of lawfulness.

To attain the aforementioned Goal there are some *Objectives* to be accomplished, namely:

- determining the social hazard of the offence incriminated by Article 155 of the MCC;
- conducting a legal-historical and law benchmarking review of regulations related to threatening to kill, to cause severe bodily injury or damage to health;
- determining the scientific validity of the special legal subject-matter derivation of the crime referred to in Article 155 of the MCC from the generic legal subject-matter of crimes covered by the Criminal Code, Special Part, Chapter III;
- identifying the features of the victim of crime referred to in Article 155 of the MCC;
- defining the terms “psychic violence” and “threat”, as well as establishing the correlation between these terms;
- determining the connection between the terms “psychic constraint” and “threat”;
- describing those two binding conditions a threat shall fulfil in the meaning of Article 155 of the MCC;
- construing the term “murder” and the word combinations “causing severe bodily injury or damage to health” and “whether the danger of threat materialisation existed” of Article 155 of the MCC;

- identifying the time of committing the crime referred to in Article 155 of the MCC;
- determining the content of guilt, emotions, reason and purpose describing the crime covered by Article 155 of the MCC;
- establishing the differences between the crime covered by Article 155 of the MCC, and the attempt to commit some offences involving physical violence;
- identifying the role played by threatening to kill, to cause severe bodily injury or damage to health in the frame of crimes laid down by the provisions, which find themselves as competing with Article 155 of the MCC;
- describing the crime subject-matter covered by Article 155 of the MCC;
- determining the conditions under which participation in the crime covered by Article 155 of the MCC becomes possible;
- establishing the deficiencies affecting the quality of Article 155 of the MCC;
- identifying the errors committed in the judicial practice while applying Article 155 of the MCC.

Research Methodology. Several research methods have been applied in the process of reviewing the threatening to kill, to cause severe bodily injury or damage to health.

Based on the dialectic method, psychic violence and threat are investigated as phenomena that are intertwined and are subject to ongoing transformation, the latter being determined by the society evolution.

By resorting to the logical method, we defined the terms “psychic violence”, “threat”, “psychic freedom of an individual”, “life of an individual”, “health of an individual”, “murder”, “causing severe bodily injury or damage to health”, etc.

The historical method has been applied to get acquainted with the evolution of regulations governing the offences on threatening to kill, to cause severe bodily injury or damage to health (Code of Criminal and Correctional Punishments of the Russian Empire of 1845, the Russian Criminal Code of 1903, the Criminal Log of Moldova, the Romanian Criminal Code of 1865, the Romanian Criminal Code of 1936, the Romanian Criminal Code of 1968, the Criminal Code of the Ukrainian Soviet Socialist Republic of 1922, the Criminal Code of the Ukrainian Soviet Socialist Republic of 1926, the Moldovan Criminal Code of 1961).

The method of benchmarking law enabled to distinguish the similarities and differences between Article 155 of the MCC and the correspondent rules stipulated by criminal laws of other countries (Belize, Community of Bahamas, Swiss Confederation, Russian Federation, Greece, Japan, Principality of Andorra, Principality of Liechtenstein, Kingdom of Belgium, Kingdom of Denmark, Kingdom of Norway, Kingdom of Spain, Kingdom of Sweden, Kingdom of

Netherlands, Republic of Albania, Republic of Armenia, Republic of Argentina, Republic of Austria, Republic of Belarus, Republic of Bulgaria, Republic of Costa Rica, Republic of Croatia, Czech Republic, Republic of Estonia, Republic of Finland, Republic of France, Federative Republic of Germany, Republic of Georgia, Republic of Ghana, Republic of Italy, Republic of Kirgizstan, Republic of Latvia, Republic of Lithuania, Republic of Malta, Republic of Poland, Republic of Portugal, Republic of San Marino, Republic of Slovakia, Republic of Slovenia, Republic of Turkey, Romania, State of Arizona, State of West Australia, State of Maine, State of New Hampshire, Ukraine, etc.).

Approximately 50 codes, laws and other regulatory acts applied in the Republic of Moldova have been considered in the process of Thesis development, as well as five draft laws; circa 130 sentences and judgements issued by the Moldovan courts; ten decisions and judgements issued by the Constitutional Court of the Republic of Moldova and by the Constitutional Court of Romania; five explanatory decisions issued by the Moldovan Supreme Court of Justice Plenary.

Scientific Novelty and Originality. This Paper is the first investigation at the level of a PhD Thesis, dedicated to the crime referred to in Article 155 of the MCC. In our opinion, the Thesis is distinguished by the novelty of the following research outcomes: establishing the constituents of the crime covered by Article 155 of the MCC by construing systemically this Article and the rules with which Article 155 of the MCC is competing; considering the crime referred to in Article 155 of the MCC in light of the ideal and real concurrent crimes; establishing the correlation between the crime, covered by Article 155 of the MCC and the attempted offences, which involve the application of physical violence; establishing the vulnerabilities describing the regulatory basis in force governing the criminal liability for threatening to kill, to cause severe bodily injury or damage to health; guiding the practitioners to apply Article 155 of the MCC in compliance with the principle of lawfulness, etc.

Paper Theoretical Significance is materialised through: a) determining the legal substance of psychic violence and threatening; b) resizing the criminal defence of an individual's mental freedom; c) describing thoroughly the constituents of the crime referred to in Article 155 of the MCC; d) establishing the imperfections describing both the content of Article 155 of the MCC and its practical application.

Paper Applicability Value consists of the following: a) revealing the errors in applying Article 155 of the MCC shall contribute to the prevention thereof; b) considering the gaps typical for Article 155 of the MCC could be taken into account by the Legislature while improving the quality of criminal law; c) the conclusions and recommendations formulated in this Thesis could

serve as a milestone for in-depth investigation of the crime covered by Article 155 of the MCC, as well as for teaching activity within education institutions with legal profile.

Core Research Results submitted for Defence can be summarised as follows: a) reassessing the derivative of special legal subject-matter of the crime referred to in Article 155 of the MCC from its generic legal subject-matter; b) establishing the content of psychic violence and its correlation with the term of threat; c) identifying the theoretical and regulatory meaning of threat; d) establishing the correlation between the crime, covered by Article 155 of the MCC, and the attempted murder or attempted deliberate severe bodily injury or damage to health; e) reviewing the conditions describing the threat in case of the crime referred to in Article 155 of the MCC; f) identifying the purpose of this crime; h) determining the features that make the subject-matter of the crime referred to in Article 155 of the MCC particular; i) establishing vulnerabilities that describe the regulatory basis in force governing criminal liability for threatening to kill, to cause severe bodily injury or damage to health; k) guiding the practitioners to apply Article 155 of the MCC in compliance with the principle of lawfulness.

Implementation of Research Results. The research results derived in the process of Thesis development can be implemented in the:

a) *scientific field* – they would contribute to strengthening and augmenting the scientific foundation of criminal liability for the crime covered by Article 155 of the MCC;

b) *education field* – they would positively influence the training process within higher education institutions with legal profile, as well as the continuous education of law practitioners;

c) *legislative field*: i) they would make the regulation of contravention liability for persecution acts more efficient; ii) they would enable construing two terms – “psychic violence” and “threat” – which are used in the Moldovan Criminal Code, but have not been defined by the Legislature; iii) they would address the criminal law gap, which makes it possible to threaten with no legal consequences, having revealed the compromising offence; iv) they would improve the terminology of provisions laid down in Article 189 (2) d), Article 346, Article 272, Article 349 (1), Article 352 (2) c) and Article 367 of the MCC; v) they would enhance the explanatory value of the recommendation comprised by Paragraph 5.2 of SCJ Plenary Decision No. 37/2004; vi) they would hold any individual liable for the threat to commit any crime, not just for the threat to kill, to cause severe bodily injury or damage to health; vii) the liability for the threat to commit a crime would be differentiated depending on the crime severity, which is the threat subject-matter;

d) *case-law field*: i) they would contribute to the application of Article 155 of the MCC in strict conformity with the qualification rules and with the principles of criminal law; ii) they would enable avoiding the commission of errors while applying Article 155 of the MCC.

Approving the Results. The results accomplished following the performed study were presented and approved at many scientific fora, including:

✓ International Scientific Conference “Contemporary scientific challenges and trends” held on 20 September 2019 (Warsaw, Poland);

✓ International Scientific Conference “Current scientific studies in the contemporary world” held on 26-27 September 2019 (Pereiaslav-Hmelnitki, Ukraine);

✓ National Scientific Conference with international participation, organised to celebrate 60 years of the Law Department, MSU, on 01-02 October 2019 (Chisinau, Republic of Moldova);

✓ National Scientific Conference with international participation “Integration through research and innovation” held on 9-10 November 2019 (Chisinau, Republic of Moldova);

✓ International Scientific Conference “Contemporary scientific challenges and trends” held on 30 August 2020 (Warsaw, Poland);

✓ National Scientific Conference with international participation “Integration through research and innovation” held on 10-11 November 2020 (Chisinau, Republic of Moldova);

✓ International Scientific Conference “Contribution of young researchers to the development of public administration” held on 26 February 2021 (Chisinau, Republic of Moldova);

✓ National Scientific Conference with international participation “Offence – Criminal Liability – Punishment. Law and Criminology” held on 25-26 March 2021 (Chisinau, Republic of Moldova).

Likewise, the Thesis outcomes have been published in one scientific journal with impact factor (*Studia Universitatis Moldaviae*).

Thesis coverage: 18 scientific publications.

Thesis volume and structure: Introduction, four chapters, General Conclusions and Recommendations, Bibliography comprising 703 titles, and 278 pages of basic text.

Key words: violence; psychic violence; threat; psychic freedom; murder; severe bodily injury or damage to health; danger to materialise the threat.

THESIS CONTENT

The Thesis comprises four chapters. Each chapter ends up with conclusions.

In *Chapter 1* – Reviewing the situation on threatening to kill, to cause severe bodily injury or damage to health – we considered the research materials dealing with threatening to kill, to cause severe bodily injury or damage to health cases, which have been published in the Republic of Moldova and abroad.

For example, V. Dobrinoiu reviewed the threatening-related crime as per Article 193 of the 1968 Romanian Criminal Code, and published the outcomes in a 1999 textbook, being the co-author thereof.¹¹

As per the opinion of V. Dobrinoiu, the special legal subject-matter of this crime is “the social relationships, which existence is linked with the psychic freedom of an individual”.¹² We support this view, but it does not match the version of *de lege lata* of the crime referred to in Article 155 of the MCC. As a result, we shall prove why it is necessary that the liability for threatening to commit a crime is provided in the Moldovan Criminal Code, Chapter III of the Special Part dedicated, *inter alia*, to crimes against the freedom of an individual.

While considering the subjective dimension of the crime referred to in Article 193 of the 1968 Romanian Criminal Code, V. Dobrinoiu concludes: “When threatening to commit a crime, it does not matter whether the perpetrator has taken or not the decision to commit that crime; it is sufficient that the perpetrator had the representation that by committing that offence he/she would induce a state of anxiety in the victim, alarming the latter, pursuing or accepting the possibility to produce such state”.¹³ We referred to a similar view of V. Holban in Sub-chapter 1.1 of this Thesis. We think that the decision to commit a crime, which is the threatening subject-matter, is important, because as such it influence the qualification. Should the perpetrator decide to commit murder or cause severe bodily injury or damage to health, then the qualification cannot apply pursuant to Article 155 of the MCC. In this case, the liability should apply only for murder or for causing deliberately severe bodily injury or damage to health, or both pursuant to Article 155 of the MCC and for murder or causing deliberately severe bodily injury or damage to health.

¹¹ Nistoreanu Gh., Dobrinoiu V., Boroi A. et al. *Criminal Law. The Special Part*. Bucharest: Europa Nova, 1999. 735 p.

¹² *Ibidem*, p. 153.

¹³ *Ibidem*, p. 154.

In 2003, A. Borodac and V. Bujor were the co-authors of a comment to the Moldovan Criminal Code, where they reviewed, *inter alia*, Article 155 of the MCC.¹⁴

In this Study, A. Borodac and V. Bujor review: the injurious degree of the crime referred to in Article 155 of the MCC; the crime legal subject-matter *per se* (in other words, the special legal subject-matter); the objective dimension of the crime referred to in Article 155 of the MCC; the subjective dimension and its subject-matter.

As for the special legal subject-matter of the crime covered by Article 155 of the MCC, those two co-authors believe that it is composed of “social relationships, which normal existence and occurrence are conditioned by the protection of the individual’s health”.¹⁵

By “threat”, A. Borodac and V. Bujor understand: “the action of psychic influence by which the perpetrator instils fear to the victim to be subject to a severe bodily injury or damage to health or to murder”.¹⁶

Those two authors emphasise: “If the action of the perpetrator does not result in committing the threat or if the threat cannot be enforced objectively, the offence is not treated as a crime”.¹⁷

The following affirmation of A. Borodac and V. Bujor is outstandingly important: “This crime shall be distinguished from revealing the criminal intention, which is a criminal phase that is not criminally liable. The provision of Article 155 of the MCC enables us to ascertain that it stipulates the realisation of the intention through specific threatening actions, which commission does not involve revealing the intention”.¹⁸

In a 2005 textbook, S. Brinza reviewed the crime referred to in Article 155 of the MCC.¹⁹

This author is the first one amongst the local doctrinaires who recognises that “the special legal subject-matter of the crime referred to in Article 155 of the MCC is the social relationships related to psychic freedom of an individual”.²⁰ Having agreed with this opinion, we shall present the appropriate arguments in our review concerning the special legal subject-matter of the crime referred to in Article 155 of the MCC.

¹⁴ *Criminal Code of the Republic of Moldova. Comment* / Edited by A. Barbaneagra. Chisinau: Arc, 2003. 836 p.

¹⁵ *Ibidem*, p. 327.

¹⁶ *Ibidem*, p. 327.

¹⁷ *Ibidem*, p. 327.

¹⁸ *Ibidem*, p. 327.

¹⁹ Brinza S., Ulianovschi X., Stati V. et al. *Criminal Law. The Special Part*. Chisinau: Cartier, 2005. 804 p.

²⁰ *Ibidem*, p. 118.

S. Brinza explains why the considered crime has no tangible object: “This crime has no tangible object because by such threats there is no direct criminal influence on the victim’s body”.²¹

The objective dimension structure of the crime referred to in Article 155 of the MCC, is, according to S. Brinza, the following: “1) the harmful event expressed in the threatening action to kill or to cause severe bodily injury or damage to health; 2) circumstances: existence of danger to enforce that threat”.²² This author defines the term of threatening, details certain peculiarities of threatening in the context of the crime referred to in Article 155 of the MCC, as well as establishes the criteria, which help distinguish this crime from some adjacent events.

Likewise, S. Brinza analyses two conditions to be met by the circumstances of the crime referred to in Article 155 of the MCC: “1) occurrence of fear in the victim for his/her life or health, in case of enforcing the threat (subjective condition); 2) occurrence of danger to enforce the threat (objective condition)”.²³

The Study ends up with the review of the subjective dimension and of the crime subject-matter referred to in Article 155 of the MCC.

The Author’s report on the PhD’s Thesis, defended by *E.V. Ghertel* in 2006, has got criminal liability for threatening as its subject-matter.²⁴

E.V. Ghertel concludes: “A threat could be expressed by psychic violence and by revealing such intention”.²⁵ It is needed to specify that in case of the crime referred to in Article 155 of the MCC, the perpetrator cannot communicate his/her intention to kill the victim or to cause severe bodily injury or damage to health, because, simply, he/she may not have such intention. Should the perpetrator have the intention to kill the victim or cause severe bodily injury or damage to health, then the communication of such an intention to the victim would be the verbal phase (disclosure of intention) of murder or of causing severe bodily injury or damage to health.

E.V. Ghertel thinks that “a threat is criminally liable when it is expressed both with certainty and without certainty”.²⁶ This statement requires an observation: if the doubts concerning the crime, which is the subject-matter of the threat – to kill or to cause severe bodily injury or damage to health – cannot be overcome, pursuant to Article 3 (2) of the MCC, it is advised to opt in the description of the committed offence for a formulation that presupposes

²¹ Ibidem, p. 118.

²² Ibidem, p. 118.

²³ Ibidem, p. 119.

²⁴ Гертель Е.В. *Уголовная ответственность за угрозу* / Автореферат диссертации на соискание учёной степени кандидата юридических наук. Омск, 2006. 23 p.

²⁵ Ibidem, p. 6.

²⁶ Ibidem, p. 6.

restrictive construing of Article 155 of the MCC – “threat to cause severe bodily injury or damage to health”. If the doubts concerning the severity of bodily injury or damage to health, induced by the perpetrator’s threatening could not be overcome, in the absence of concurrent rules, neither Article 155 of the MCC nor any other criminal or contravention provision shall apply.

As per the opinion of E.V. Ghertel, “the reality of an uncertain threat is determined by two objective factors: the environment where the threat is expressed and the perpetrator’s personality”.²⁷ In principle, this view is confirmed by the judicial practice in the Republic of Moldova. Hence, a specific case reads: “The conclusion on the specific form of expressing the threat to exercise violence may be drawn following the consideration of the following circumstances: the content of words, gestures, mimics of the perpetrator at the time of threatening; the vulnerable features of means used by the perpetrator to express his/her threat; the perpetrator’s physical force; the perpetrator’s knowledge of special fighting techniques, etc.”²⁸

L. Gîrla and Iu. Tabarcea are the authors of a textbook published in 2010, where they reviewed, *inter alia*, the crime covered by Article 155 of the MCC.²⁹

According to these authors, “psychic freedom of an individual”³⁰ constitutes the individual social value that is prejudiced by the commission of the crime referred to in Article 155 of the MCC. We support this view, while, in the context of considering the special legal subject-matter of the reviewed crime, we shall bring arguments why the social relationships concerning the psychic freedom of an individual shall be considered as the special legal subject-matter of the crime referred to in Article 155 of the MCC.

In general terms, the opinion expressed by L. Gîrla and Iu. Tabarcea referring to the objective dimension of the crime concerned does not differ from the point of view of S. Brinza, dealt with earlier.

L. Gîrla and Iu. Tabarcea review the threat features in great details, then define the term of threatening: “A threat shall be understood as the type of psychic violence expressed in the intention of the subject to cause damage to the victim (to kill or to cause severe bodily injury or damage to health), which affects the victim’s mind, inducing a state of fear so that the victim perceives it as a real threat, being described by unique and homogenous nature”.³¹

²⁷ *Ibidem*, p. 6.

²⁸ *Sentence issued by Balti Court, Headquarters, on 30.03.2021. File No. 1-534/2020.* Available at: https://jbl.instante.justice.md/ro/pigd_integration/pdf/0cb52fe4-9f5c-4eb5-8003-5a459c19a8e9

²⁹ Гырла Л.Г., Табарча Ю.М. *Уголовное право Республики Молдова. Часть особенная. Том 1.* Кишинэу: Cartdidact, 2010. 712 p.

³⁰ *Ibidem*, p. 154.

³¹ *Ibidem*, p. 155.

Concerning the word combination “whether the danger of threat materialisation existed” of Article 155 of the MCC, L. Girla and Iu. Tabarcea reasonably write the following: “When an individual is held liable pursuant to Article 155 of the MCC, it is necessary to establish whether the danger of enforcing the threat existed. Otherwise, this may lead to unlawful sentencing of people”.³² Further, these two authors detail certain criteria stemming from the word combination “whether the danger of threat materialisation existed” covered by Article 155 of the MCC.

L. Girla and Iu. Tabarcea conclude correctly that “the threat for the purpose of Article 155 of the MCC shall be distinguished from the similar action for which the liability is foreseen under related components (*e.g.*, in those laid down by Articles 171, 172, 188, 189 of the MCC)”.³³ This reflection is determined by the qualification errors frequently committed in the judicial practice, due to which ‘threatening to kill, to cause severe bodily injury or damage to health’ has no precise legal assessment.

The review carried out by L. Girla and Iu. Tabarcea ends-up with considering the subjective dimension and the crime subject-matter referred to in Article 155 of the MCC.

The Author’s Report on the PhD Thesis, defended by V.V. *Sablistai*, tackles the topic of liability for threatening to kill in compliance with the Ukrainian criminal law.³⁴

V.V. *Sablistai* concludes: “There is no real danger for life at the time of expressing the threat. At that particular time, the perpetrator tries to intimidate the victim rather than to kill him/her. Following the disclosure of intimidating information, negative emotions occur in the victim such as fear and uncertainty for life”.³⁵ Indeed, if the crime covered by Article 155 of the MCC attempts to social relationships concerning the life or health of an individual, then this crime should be seen as a disclosure of the intention to kill or to cause severe bodily injury or damage to health. Subsequently, in order to apply Article 155 of the MCC, another specific social value (and related social relationships) should be prejudiced.

In case of the crime referred to in Article 155 of the MCC, the victim is threatened not with a simple offence, but with murder or severe bodily injury or damage to health. Only an individual could be a victim of murder or of severe bodily injury or damage to health. Therefore, only an individual can be the victim of the crime referred to in Article 155 of the MCC. From this standpoint, V.V. *Sablistai* mentions: “Subjects of social relationships, who are the subject-

³² *Ibidem*, p. 156.

³³ *Ibidem*, p. 158.

³⁴ Шаблістий В.В. *Кримінальна відповідальність за погрозу вбивством* / Автореферат дисертації на здобуття наукового ступеня кандидата юридичних наук. Дніпропетровськ, 2010. 22 р.

³⁵ *Ibidem*, p. 9.

matter of threatening to kill, are the individuals seen as bio-social beings, as members of the society who interact amongst them”.³⁶

V.V. Sablistai concludes that “the purpose of the threat to kill may have a diverse content, but the ultimate goal of the perpetrator is always linked with the wish to disrupt the mental balance of the victim in order to dominate his/her will. [...] The task of criminal proceedings and trial is to determine the primary goal, namely the goal to intimidate the victim. The lack of this goal shall exclude the qualification of the offence as per Article 129 of the Ukrainian Criminal Code”.³⁷ We think that intimidation of the victim is the primary goal of the crime referred to in Article 155 of the MCC. The ultimate goal of this crime is to suppress and diminish the victim’s capacity to take decisions and express his/her own opinions. These two goals have binding feature in case of the crime referred to in Article 155 of the MCC, because they are listed amongst the necessary and sufficient conditions for an action to be considered as a threat.

In 2015, S. Brinza and V. Stati published a Treaty where they analysed, *inter alia*, the crime covered by Article 155 of the MCC.³⁸

In this paper, the crime is included in the subgroup of atypical crimes covered by the Criminal Code Chapter II of the Special Part. S. Brinza and V. Stati advocate that “threatening to kill, to cause severe bodily injury or damage to health, covered by Article 155 of the MCC, does not involve any bodily injury or endanger the life or health of an individual”.³⁹

As not all physical violence events may represent the subject-matter of threatening in case of the crime referred to in Article 155 of the MCC, S. Brinza and V. Stati mention: “The conclusion regarding the specific form of a threat to use violence is drawn after having considered the following circumstances: 1) the content of words, gestures, mimics of the perpetrator at the time of expressing the threat; 2) the vulnerant features of the means used by the perpetrator to express the threat; 3) the perpetrator physical force; 4) the perpetrator’s knowledge of specific fighting techniques, etc.”⁴⁰

In the context of considering the objective dimension of the crime referred to in Article 155 of the MCC, the issue of concurrent rules is tackled: “Article 155 of the MCC may represent a general rule relative to other rules that define the liability for having threatened, under special conditions, to kill or to cause severe bodily injury or damage to health. We refer to Article 142 (5), Article 349 (1), Article 367, etc. of the Criminal Code. In such cases, pursuant to Article 116

³⁶ Ibidem, p. 9.

³⁷ Ibidem, p. 12.

³⁸ Brinza S., Stati V. *Criminal Law Treaty. The Special Part. Vol. I*. Chisinau: Central Printing House, 2015. 1328 p.

³⁹ Ibidem, p. 151.

⁴⁰ Ibidem, p. 420.

of the MCC, one of these special rules shall apply, with no need to retain qualification of Article 155 of the MCC.”⁴¹

In terms of distinguishing the crime referred to in Article 155 of the MCC from the attempted murder or attempted severe bodily injury or damage to health, S. Brinza and V. Stati state clearly: “In the assumption of the attempted murder or attempted severe bodily injury or damage to health, the perpetrator undertakes all the efforts to kill or to deliberately cause severe bodily injury or damage to health; however, due to reasons independent from his/her will, these efforts fail to produce the expected result”.⁴² In other words, in case of the crime referred to in Article 155 of the MCC, the perpetrator’s efforts shall be of a different nature, namely, to intimidate the victim, to affect his/her psychic freedom, by threatening to kill or to cause severe bodily injury or damage to health.

M.K. Dimitrov defended his PhD Thesis in 2020.⁴³ In this Thesis, the Author considers the threat in the meaning of the Ukrainian criminal law.

According to M.K. Dimitrov, “the Criminal Code uses different procedures to designate the individual to whom the threat is revealed, and the individual to whom the threat content is referred/addressed: a) the individual to whom the threat is revealed is the same individual to whom the threat content is referred; b) the individual to whom the threat is revealed is not the same individual to whom the threat content is referred; c) there is no indicator on the individual to whom the threat is revealed, and on the individual to whom the threat content is referred”.⁴⁴ In Article 155 of the MCC there is no indicator on the individual to whom the threat is revealed and on the individual to whom the threat content is referred.

In some cases, the legal entity may participate as a subject to social relationships concerning the psychic freedom of an individual. M.K. Dimitrov shows: “Legal entities may also be threatened along with individuals. For example, the threat to destroy the assets (Article 195 of the UCC) has no restriction. This threat refers not only to the assets of an individual, but also to the assets of a legal entity. Or, for instance, Article 258 (1) of the UCC incriminates the terrorist act committed by threatening, *inter alia*, to commit an explosion, a fire or any other offence that may trigger the hazard causing considerable damage to property. Yet again, the hazard to cause damage refers both to an individual and a legal entity. Hence, both individuals and legal entities

⁴¹ *Ibidem*, p. 422.

⁴² *Ibidem*, p. 424.

⁴³ Дімітров М.К. *Погроза за кримінальним правом України / Дисертація на здобуття наукового ступеня доктора філософії*. Львів. 2020, 244 р.

⁴⁴ *Ibidem*, p. 70.

may be victims of threatening”.⁴⁵ However, we shall not forget that, in case of the crime referred to in Article 155 of the MCC, the victim is threatened not by a random offence, but to be killed or caused severe bodily injury or damage to health. The victim of murder or of severe bodily injury or damage to health can be exclusively an individual. Therefore, only an individual could be the victim of the crime referred to in Article 155 of the MCC.

In a research article published in 2021, *L. Girla* analyses the issue of threatening in the Special Part of the Criminal Code.⁴⁶

This article defines the term of threatening and describes the core features of such action. It considers the threat as a method to commit some offences, covered by the Special Part of the Criminal Code. Likewise, it reviews the hypotheses under which the threatening is done immediately or is postponed. The threat involving constraints is distinguished from the one with no constraint.

In another research article published in 2021, the same Author investigates an issue that is of no lesser importance, namely psychic violence in the context of criminal law.⁴⁷

The terms “violence” and “psychic health” are defined. Also, it establishes the subject-matter of mental violence and identifies the hallmarks of this type of violence. The following hypotheses are considered: appeals to commit some offences; insults; threats and other forms of intimidation; exercising mental constraints; determining to commit certain offences, etc. According to *L. Girla*, all these hypotheses are particular cases of psychic violence.

The points of view of doctrinaires we analysed in Chapter I of the Thesis shall contribute in a certain way to establishing the grounds of liability for the crime covered by Article 155 of the MCC. The ideas and concepts promoted by these doctrinaires help us define: the generic legal subject-matter and the special legal subject-matter of the crime referred to in Article 155 of the MCC; victims of the crime; content of psychic violence; types of violence depending on the object of influence; the features and typology of psychic violence; the content of threatening in the Special Part of the Moldovan Criminal Code; the content of guilt in case of the crime referred to in Article 155 of the MCC; the subjective dimension secondary signs in case of the respective crime; the subject-matter of the crime covered by Article 155 of the MCC.

⁴⁵ *Ibidem*, p. 69-70.

⁴⁶ Гырла Л. Угроза в особенной части Уголовного кодекса. In: *National Scientific Conference with international participation “Offence – Criminal Liability – Punishment. Law and Criminology”*, 25-26 March 2021. Chisinau: CEP USM, 2021, p. 585-592.

⁴⁷ Гырла Л. Психическое насилие в уголовном праве. In: *National Scientific Conference with international participation “Offence – Criminal Liability – Punishment. Law and Criminology”*, 25-26 March 2021. Chisinau: CEP USM, 2021, p. 578-584.

The research issue has been formulated under the same Chapter of the Thesis along with the directions of its resolution, having also established the Thesis goal and objectives.

In *Chapter 2* – The subject-matter of the crime of threatening to kill or to cause severe bodily injury or damage to health – we reviewed: the generic legal subject-matter of the crime referred to in Article 155 of the MCC; the special legal subject-matter of the crime concerned; the victim of the crime covered by Article 155 of the MCC.

The derivation of the special legal subject-matter of the crime referred to in Article 155 of the MCC from the generic legal subject-matter of this crime has been considered. The following terms have been defined: “life of an individual” (“by the “life of an individual”, as part of the fundamental social value protected against crimes covered by the Moldovan Criminal Code, Chapter II of the Special Part one should understand the state: a) of the individual from birth till death; b) described by ongoing physiological processes within the individual’s body; c) that ensures the existence of an individual and the possibility to be part of society; d) whose protection is granted by the means of criminal law”) and “health of an individual” (“by the “health of an individual”, as part of the fundamental social value protected against crimes covered by the Moldovan Criminal Code, Chapter II of the Special Part one should understand the (physical and psychological) state on an individual’s body that exists prior to committing a crime against that individual and relative to whom the crime effects are appraised”).

It is shown that the crime covered by Article 155 of the MCC may not attempt to social relationships concerning the life or health of an individual. It is argued that the crime covered by Article 155 of the MCC has got a single special legal subject-matter, namely social relationships concerning the psychic freedom of an individual. The latter is regarded as part of a whole, not separately from the individual’s freedom.

The term “psychic freedom of an individual” is defined (“psychic freedom of an individual, as an individual social value protected by Article 155 of the MCC, may be distinguished by the following typical features: a) *de facto* (but not *de jure*), it is a component of the individual’s freedom, as part of the fundamental social value protected against the crimes covered by the Moldovan Criminal Code, Chapter III of the Special Part; b) is related to the individual’s psychic actions, presupposing his/her consideration and decision regarding the performance of physical actions; c) are performed as the individual sees fit, provided he/she complies with the legal order; d) is suppressed in the presence of the victim’s fear that he/she could be harmed, this affecting negatively his/her participation in social life; e) wishing to suppress, the perpetrator urges the victim to show the will imposed by the former, i.e. the perpetrator shall be the one to deliberate and decide the victim’s actions”).

It is shown that the crime covered by Article 155 of the MCC has neither tangible object nor intangible object. We may not consider, *e.g.*, the individual's mind as the intangible entity through which the special legal subject-matter of this crime is tackled. It is not possible that the crime covered by Article 155 of the MCC can affect – through the individual's mind (which is an inalienable attribute of the individual) – an individual's mental freedom (that is part of an individual as a suprageneric legal subject-matter of the crime referred to in Article 155 of the MCC). Wishing to suppress psychic freedom, the subject of the crime referred to in Article 155 of the MCC influences the victim, although not his/her body. The subject urges the victim to show the will imposed by the former, i.e. the perpetrator shall be the one to deliberate and decide the victim's actions.

The crime victim is described as the individual, whose participation in social relationships concerning psychic freedom, is jeopardised by the commission of the crime concerned. We concluded that due to the special status of the victim, the liability may apply not as per Article 155 of the MCC, but in compliance with special rules of the Criminal Code, namely Article 137 (1) a) and b) and (3) c), Article 142 (5), Article 180¹ (3) a), Article 185¹ (1) g) and (3) c), Article 185² (1) and (7) d), Article 201¹ (1) b), Article 205 (3), Articles 272, 286, 309, and 314, Article 349 (1), Article 367) or of the Contravention Code (Article 287 (16)). In order to apply special provisions it is not sufficient that the victim meets the special state required by them. It is necessary that all other special conditions are met, which enable distinguishing the crime laid down by special provisions from the crime foreseen by general provisions. When lacking any of these special conditions, Article 155 of the MCC shall apply rather than the special provisions.

In *Chapter 3 – Objective dimension of the crime of threatening to kill or to cause severe bodily injury or damage to health –* we analysed: the term of psychic violence (types of violence depending on the influencing object; the features and typology of psychic violence; the criminal regulatory meaning of psychic violence); the term of threatening in the Special Part of the Moldovan Criminal Code (namely, the common matters; the features of threatening in case of the crime referred to in Article 155 of the MCC).

In terms of the influencing object, two types of violence have been defined: physical violence and psychic violence, as well as the differences between them. It is shown that if the criminal law uses the term of violence without specifying its feature – physical or psychical – this term refers to the influence on human body. It is demonstrated that the victim's life, health or bodily integrity are not social values that psychic violence may affect. The injurious effects shall not be considered as a necessary feature of psychic violence. The occurrence of psychic

prejudice may have significance in light of civil law, aimed to recover the tangible and moral prejudice caused to the victim.

It is shown that construing psychic violence shall not be limited to the threat to cause damage/harm. A threat is just one of the types of mental violence, being one of the means to influence the victim's mind by transferring such information from the perpetrator towards the victim. Hence, the threat implies a negative informational influence on the victim's mind. However, not just the threat may have such an impact. Psychological violence has a feature that is close to insults, calumny and cheating: informational influence over the victim. We cannot see non-informational influence as a form of psychic violence. There are differences between the terms "psychological violence" and "psychic violence". We distinguish verbal psychic violence and non-verbal psychic violence. The verbal form of violence may not exist beyond its substance – psychic violence. Any verbal violence, distinct from psychic violence, would be a form without content. The features of hypnosis and stalking have also been determined. Foreign (Austrian, Bulgarian, Croatian, Finnish, German, French, Greek, Italian, Dutch, Polish, Portuguese, Romanian) legislative models have been defined to inspire the Moldovan Legislature to include stalking in the typology of psychic violence in the meaning of criminal provisions.

The conclusion is drawn that in the Criminal Code, the term of threatening designates the injurious action, committed intentionally, that meets the following necessary and sufficient conditions: a) is one of the types of mental violence; b) implies exercising informational influence on the victim; c) has as an effect the victim's intimidation; d) presupposes that the victim is conveyed the information that he/she would be harmed; e) involves partial or full impairment of victim's capacity to take decisions and to express his/her opinions.

It is argued that influencing against the victim's will is specific, in principal, for the threat as type of mental violence. The threat implies that the perpetrator wishes to suppress the victim's will. As for the word combination "against the victim's will", this refers to psychic violence when the victim does not realise that his/her psychic freedom is limited or suppressed. In particular, we refer to influencing the victim via hypnosis. It is proven that not in all cases covered by the Moldovan Criminal Code, the threat is a form of constraint. In case of mental violence, in general, and of threatening, in particular, the perpetrator may resort not just to constraint, but also to persuasion. Constraint and persuasion differ as follows: the latter, although aiming to amend the victim's behaviour, always leaves the possibility to the victim to choose the behavioural option. On the contrary, constraint leaves no such possibility to the victim, as it involves subordinating the victim's will, banning the latter to make decisions. The term of

threatening is also defined. The terms “threatening to use violence dangerous for the life or health of an individual” and “the threat to use a firearm” are considered as well. A threat to kill or to cause severe bodily injury or damage to health, regarded as part of a whole, cannot to be a competitor with the corresponding whole in the context of the same criminal intention.

The term “murder” (“in the context of the crime referred to in Article 155 of the MCC, by “murder” it is meant the crime covered by Article 135 a), Article 135¹ (2) a), Article 137 (4), Article 137³ (5), Article 142 (3), Article 145, Article 148, Article 278 (4), Article 278¹ (5) or Article 342 of the MCC”) is defined along with the word combination “causing severe bodily injury or damage to health” of Article 155 of the MCC (“in the context of the crime referred to in Article 155 of the MCC, the word combination “causing severe bodily injury or damage to health” shall be construed with reference to any of the crimes that imply causing severe bodily injury or damage to health, which are covered by Article 135 b), Article 135¹ (1) i), Article 137 (3) a), Article 151, Article 188 (3) c), Article 201¹ (4), Article 278 (2) d), Article 278¹ (2) a), Article 280 (3) b) and Article 295 (5) c) of the MCC”).

It is argued that the threat in the meaning of Article 155 of the MCC shall fulfil two binding conditions: a) the threat shall have murder as subject-matter or causing severe bodily injury or damage to health; b) the danger of enforcing the respective threatening shall exist. In each specific case where Article 155 of the MCC is to be applied, the bodies empowered to enforce the criminal law shall prove the existence of the danger leading to the enforcement of the threat to kill or to cause severe bodily injury or damage to health. Moreover, attesting the presence of such danger shall be done in a way that does not infringe Article 3 (2) of the MCC.

The auxiliary signs of the objective dimension (method, means, manner, time, place, etc.) may have significance only for individualising the punishment laid down by Article 155 of the MCC. The crime covered by Article 155 of the MCC is considered to have occurred since the time when: a) the victim is notified about the threat to be killed, to be caused severe bodily injury or damage to health, and b) the danger to enforce such threatening evolved. A threat to kill or to cause severe bodily injury or damage to health, that was not brought to the victim’s knowledge due to factors outside the perpetrator’s will, shall be qualified as an attempt to the crime covered by Article 155 of the MCC.

In *Chapter 4 – Subjective elements of the crime on threatening to kill or to cause severe bodily injury or damage to health – we analysed: the subjective dimension of the crime referred to in Article 155 of the MCC (the content of guilt; secondary signs of the subjective dimension); the subject-matter of crime referred to in Article 155 of the MCC.*

It is established that threatening to kill or to cause severe bodily injury or damage to health qualifies as crime only when it constitutes an expression of the perpetrator's conscious and will, i.e. it is a manifestation of the perpetrator's guilt. Indirect intention is not possible in case of the crime referred to in Article 155 of the MCC. Such an emotional state of the perpetrator as the heat of passion can be taken into account to mitigate the punishment laid down by Article 155 of the MCC. It is demonstrated that it is not possible to devise a hypothesis where hooliganism is the reason of the threat to kill or to cause severe bodily injury or damage to health, while this threat is not absorbed by the crime of hooliganism. The reason of the crime referred to in Article 155 of the MCC shall not be confused with the reason of committing this crime. Such a reason may have forensic significance, but cannot be included in the structure of the crime referred to in Article 155 of the MCC. It is argued that in case of threatening to kill or to cause severe bodily injury or damage to health, the perpetrator does not renounce to commit murder or cause severe bodily injury or damage to health. To renounce to such crimes, it is needed to shape the intention to commit them. Such an intention is not present at any phase of committing the threat to kill or to cause severe bodily injury or damage to health.

Victim intimidation is the primary goal of the crime referred to in Article 155 of the MCC. The ultimate goal of this crime is to suppress or diminish the victim's capacity to take decisions and to express his/her own opinions. These two goals have a binding feature in case of the crime referred to in Article 155 of the MCC, because they are listed amongst the necessary and sufficient conditions for the action to be considered as a threat. A threat to kill or to cause severe bodily injury or damage to health cannot be qualified pursuant to Article 155 of the MCC in those cases when it is just a disclosure of the wish to kill the victim or to cause him/her severe, medium or light bodily injury or damage to health or to cause a prejudice with no harm to the health. The crime covered by Article 155 of the MCC does not represent the verbal phase (intention disclosure) of the crime to kill or to cause deliberately severe bodily injury or damage to health. Such a phase may result only in the context of shaping the intention to kill or to cause deliberately severe bodily injury or damage to health. It is not possible to disclose the intention to commit such crimes without having the intention to commit them.

It is shown why it is not advisable to lower the minimum age for criminal liability from 16 to 14 years in case of the crime referred to in Article 155 of the MCC. Any individual, regardless of his/her professional status, relationship with the victim of the crime and other peculiarities, shall be considered to be the subject of the crime referred to in Article 155 of the MCC if he/she is 16 years old and has the capacity to act. It is established that participation does not affect the qualification of the offence pursuant to Article 155 of the MCC. However, participation may be

taken into consideration upon individualising the punishment foreseen by this Article. It is not relevant if the author of the crime referred to in Article 155 of the MCC is also the author of the threatening text or picture conveyed to the victim.

OVERALL CONCLUSIONS AND RECOMMENDATIONS

Following the review conducted in this Thesis we may draw the *overall conclusions* displayed below:

1) the social danger of the crime referred to in Article 155 of the MCC shall be treated from a twofold perspective. Such danger has both direct (affecting the individual's freedom of mind) and indirect feature (affecting potentially the individual's life or health);

2) Article 155 of the MCC is in compliance with the principle of a social value that is lawfully protected and with the *ultima ratio* principle;

3) due to the special status of the victim, the liability may apply not as per Article 155 of the MCC, but in compliance with special rules of the Criminal Code, namely Article 137 (1) a) and b) and (3) c), Article 142 (5), Article 180¹ (3) a), Article 185¹ (1) g) and (3) c), Article 185² (1) and (7) d), Article 201¹ (1) b), Article 205 (3), Articles 272, 286, 309, and 314, Article 349 (1), Article 367) or of the Contravention Code (Article 287 (16)). In order to apply special provisions it is not sufficient that the victim meets the special state required by them. It is necessary that all other special conditions are met, which enable distinguishing the crime laid down by special provisions from the crime foreseen by general provisions. When lacking any of these special conditions, Article 155 of the MCC shall apply rather than the special provisions;

4) in the Criminal Code, the term of threatening designates the injurious action, committed intentionally, that meets the following necessary and sufficient conditions: a) is one of the types of mental violence; b) implies exercising informational influence on the victim; c) has as an effect the victim's intimidation; d) presupposes that the victim is conveyed the information that he/she would be harmed; e) involves partial or full impairment of victim's capacity to take decisions and to express his/her opinions;

5) undermining the victim's capacity to take decisions and to express his/her opinions involves two situations, depending on the extent to which this capacity is affected. The first situation implies undermining partially the victim's capacity to take decisions and to express his/her opinions, the victim being not deprived of the possibility to manage his/her actions. The second situation involves undermining fully the victim's capacity to take decisions and to express his/her opinions, so that the victim is deprived of the possibility to manage his/her actions. The first situation refers to the threat that does not involve constraining the victim as a binding condition (*e.g.*, the threat covered by Article 155 of the MCC). The second situation refers to constraining the victim by threat (*e.g.*, the threat covered by Article 272 of the MCC);

7) the term “murder” mentioned in Article 155 of the MCC shall be construed with reference not only to the crime covered by Article 151 of the MCC, but also to any crime that implies depriving an individual of his/her life deliberately and unlawfully;

8) the word combination “causing severe bodily injury or damage to health” mentioned in Article 155 of the MCC shall be construed with reference not only to the crime covered by Article 151 of the MCC, but also to any crime that implies causing severe bodily injury or damage to health to an individual deliberately and unlawfully;

9) only restrictive construing of the word combination “whether the danger of threat materialisation existed” of Article 155 of the MCC can be accepted. This implies a sufficient number of objective and subjective circumstances that can prove there is danger in place to enforce the threat to kill or to cause severe bodily injury. The lower the number of such circumstances, the greater the probability for extensive unfavourable construing of Article 155 of the MCC;

10) The crime covered by Article 155 of the MCC is considered to have occurred since the time when: a) the victim is notified about the threat to be killed or to be caused severe bodily injury or damage to health, and b) the danger to enforce such threat has evolved;

11) in case of the same victim, it is not possible to have ideal concurrence between the crime covered by Article 155 of the MCC, on the one hand, and the attempted crime covered by Articles 145, 151 or 152 of the MCC or the offence covered by Article 78 (1) or (2) of the MCC, or the occurred crime covered by Articles 151 or 152 of the MCC, or the occurred offence covered by Article 78(1) or (2) of the MCC, on the other hand;

12) Victim intimidation is the primary goal of the crime referred to in Article 155 of the MCC. The ultimate goal of this crime is to suppress or diminish the victim’s capacity to take decisions and to express his/her own opinions. These two goals have a binding feature in case of the crime referred to in Article 155 of the MCC, because they are listed amongst the necessary and sufficient conditions for the action to be considered as a threat.

Taking into account the need to improve the quality of some provisions of the legislation and some explanations of the SCJ Plenary, we have drawn the following *recommendations*:

1)

a) amend the provision of Article 78² of the MCC, reading: “Persecuting repeatedly an individual who was caused a state of anxiety, fear for his/her own safety or for the safety of close relatives, being constrained to alter his/her life behaviour, committed through: a) stalking the individual; b) contacting or attempting to contact the individual by any means or via another

individual” as follows: *“Stalking or contacting repeatedly an individual by any means, directly or indirectly, causing him/her fear or concern, may affect considerable his/her life style or infringe his/her freedom to decide”*;

b) supplement the Criminal Code with the following Article:

“Article 134²⁰. Psychological Violence

For the purpose of Article 206, by psychic violence we shall understand: threat; influence brought to an individual via hypnosis to deprive him/her of the possibility to consciously manage his/her actions or make him/her undertake certain actions or abstain from undertaking certain actions; stalking or contacting the individual repeatedly by any means, directly or indirectly, causing him/her fear or concern, affecting considerable his/her life style or infringing his/her freedom to decide”;

c) supplement the Criminal Code with the following Article:

“Article 134²¹. Threat

By threat we should understand the deliberate action that: affects the victim’s psychic freedom; causing victim’s intimidation; implies that the victim is conveyed the information, according to which he/she would be harmed immediately or in the future; involves partial or full impairment of victim’s capacity to take decisions and to express his/her opinions”;

d) supplement the Moldovan Criminal Code with an Article with the following content:

“Article 169². Threat with Revealing a Compromising Offence

A threat with revealing a real or imaginary offence, which is compromising for the threatened individual or for a close relative of his/her, aimed to acquire unlawfully a non-material benefit for him/herself or for another individual,

shall be punished by a fine in the amount of 750 to 950 conventional units or by imprisonment for three to five years”;

e) replace the word “death” with the term “murder” in Article 189 (2) d), Article 272, Article 349 (1), Article 352 (2) c) and Article 367 of the MCC;

f) supplement Article 346 of the MCC – introduce after the words “Deliberate actions” the text *“(except for the offences referred to in Article 169¹ (5) of this Code)”*;

g) amend Paragraph 5.2 of CSJ Plenary Decision No. 37/2004 as follows: replace “Psychical violence implies threatening the individual’s mind, under the influence of which the victim cannot freely manage his/her will and undertakes an activity upon the wish of the trafficker” with the following wording *“Psychical violence consists of: threatening; influencing an individual via hypnosis with the aim to deprive him/her of the possibility to consciously manage his/her actions or making him/her undertake certain actions or abstain from*

undertaking certain actions; stalking or contacting repeatedly an individual by any means, directly or indirectly, causing him/her fear or concern, affecting considerably his/her life style or infringing his/her freedom to decide”;

2)

a) delete Article 155 from the Criminal Code, Chapter II of the Special Part and supplement Chapter III of the Special Part of the Criminal Code with Article 169¹;

b) designate in Article 169¹ of the MCC as victim of crime both the individual to whom the threat is revealed and the individual to whom the threat content is referred/addressed. A close relative of the individual to whom the threat is revealed should be specified as an individual to whom the threat is not revealed, but to whom the threat content is referred/addressed;

c) incriminate in separate paragraphs of Article 169¹ of the MCC the following provisions: threatening to commit a less serious crime, if the danger of threat materialisation existed; threatening to commit a serious crime, if the danger of threat materialisation existed; threatening to commit a particularly serious crime, if the danger of threat materialisation existed; threatening to commit an exceptionally serious crime, if the danger of threat materialisation existed.

In concreto, we recommend that Article 169¹ of the MCC shall have the following content:

“Article 169¹. Threat to Commit a Crime

(1) Threatening an individual or his/her close relative to commit a less serious crime, if the danger of threat materialisation existed,

shall be punished by a fine in the amount of up to 550 conventional units or by community service for 100 to 160 hours.

(2) Threatening an individual or his/her close relative to commit a serious crime, if the danger of threat materialisation existed,

shall be punished by a fine in the amount of up to 650 conventional units or by community service for 120 to 180 hours, or by imprisonment for up to one year.

(3) Threatening an individual or his/her close relative to commit a particularly serious crime, if the danger of threat materialisation existed,

shall be punished by a fine in the amount of 550 to 750 conventional units or by community service for 140 to 200 hours, or by imprisonment for up to two years.

(4) Threatening an individual or his/her close relative to commit an exceptionally serious crime, if the danger of threat materialisation existed,

shall be punished by a fine in the amount of 650 to 850 conventional units or by community service for 160 to 220 hours, or by imprisonment for two to four years.

(5) Threatening an individual or his/her close relative, due to prejudgement, disregard or hatred, to commit a less serious, serious, particularly serious or exceptionally serious crime, if the danger of threat materialisation existed,

shall be punished by a fine in the amount of 750 to 1000 conventional units or by community service for 180 to 240 hours, or by imprisonment for three to five years”.

The advantages/benefits of these recommendations are highlighted in the following fields:

a) *legislative field*. To this end: i) they would make more efficient the regulation of contravention liability for the acts of persecution; ii) they would legally construe two terms – “psychic violence” and “threat” – which are used in the Moldovan Criminal Code, but which have not been defined by the Legislature; iii) they would address the criminal law gap, which enables threatening, with no legal consequences, to reveal a compromising offence; iv) they would improve the terminology of provisions referred to in Article 189 (2) d), Article 346, Article 272, Article 349 (1), Article 352 (2) c) and Article 367 of the MCC; v) they would enhance the explanatory value of the recommendation covered by Paragraph 5.2 of CSJ Plenary Decision No. 37/2004; vi) they would hold liable the individual for the threat to commit a crime, not just for the commission of murder or for deliberately causing severe bodily injury or damage to health; vii) they would contribute to the differentiation of the liability for the threat to commit a crime depending on the severity of the crime, which is the subject-matter of threatening.

b) *case-law field*. They would: i) contribute to applying Article 155 of the MCC in strict compliance with the qualification rules and with the principle of criminal law; ii) contribute to avoiding the errors committed while applying Article 155 of the MCC.

Future Research Plan includes the following milestones:

- 1) carry out a criminological review of the crime referred to in Article 155 of the MCC;
- 2) carry out a comprehensive analysis of some institutions of the general part of criminal law (freedom of criminal liability, freedom of criminal punishment, individualising the punishments, etc.) from the perspective of the crime covered by Article 155 of the MCC;
- 3) drafting an explanatory decision of the SCJ Plenary concerning the practice of applying the liability for the crime covered by Article 155 of the MCC.

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ADNOTARE

Angheluță Mihaela, „Amenințarea cu omor ori cu vătămare gravă a integrității corporale sau a sănătății”. Teză de doctorat în drept. Școala Doctorală de Științe Juridice a Universității de Stat din Moldova. Chișinău, 2021

Structura tezei: introducere, patru capitole, concluzii generale și recomandări, bibliografie din 703 titluri, 278 pagini de text de bază. Rezultatele obținute sunt publicate în 18 lucrări științifice.

Cuvintele-cheie: violență; violență psihică; amenințare; libertate psihică; omor; vătămarea gravă a integrității corporale sau a sănătății; pericolul de realizare a amenințării.

Domeniul de studiu. Lucrarea face parte din domeniul dreptului penal, partea specială.

Scopul și obiectivele tezei. Scopul tezei rezidă în examinarea aspectelor de drept penal ale amenințării cu omor ori cu vătămarea gravă a integrității corporale sau a sănătății, în stabilirea neajunsurilor ce caracterizează apărarea penală a libertății psihice, în sugerarea legiuitorului a unor soluții de îmbunătățire a calității apărării penale a acestei valori sociale, precum și în contribuirea la aplicarea art. 155 CP RM în conformitate cu principiul legalității. *Obiectivele* necesare pentru realizarea scopului pe care ni l-am propus sunt: determinarea pericolului social al faptei incriminate la art. 155 CP RM; analiza juridico-istorică și de drept comparat a reglementărilor privitoare la amenințarea cu omor ori cu vătămarea gravă a integrității corporale sau a sănătății; fundamentarea științifică a derivației obiectului juridic special al infracțiunii prevăzute la art. 155 CP RM din obiectul juridic generic al infracțiunilor prevăzute în Capitolul III al părții speciale a Codului penal; identificarea caracteristicilor victimei infracțiunii prevăzute la art. 155 CP RM; definirea noțiunilor „violență psihică” și „amenințare”, precum și stabilirea coraportului dintre aceste noțiuni; determinarea conexiunii dintre noțiunile „constrângere psihică” și „amenințare”; caracterizarea celor două condiții obligatorii pe care trebuie să îndeplinească amenințarea în accepțiunea art. 155 CP RM; interpretarea termenului „omor” și a sintagmelor „vătămarea gravă a integrității corporale sau a sănătății” și „dacă a existat pericolul realizării acestei amenințări” din art. 155 CP RM; identificarea momentului de consumare a infracțiunii prevăzute la art. 155 CP RM; determinarea conținutului vinovăției, a emoțiilor, a motivului și a scopului ce caracterizează infracțiunea prevăzută la art. 155 CP RM etc.

Noutatea și originalitatea științifică a tezei. Prezenta lucrare este prima investigație de nivelul unei teze de doctor, dedicată infracțiunii prevăzute la art. 155 CP RM. Considerăm că teza de față se distinge prin noutatea următoarelor rezultate științifice obținute: stabilirea elementelor constitutive ale infracțiunii prevăzute la art. 155 CP RM prin interpretarea sistemică a acestui articol și a normelor cu care art. 155 CP RM se află în relație de concurență; examinarea infracțiunii, prevăzute la art. 155 CP RM, din perspectiva concursului ideal și a concursului real de infracțiuni; stabilirea coraportului dintre infracțiunea, prevăzută la art. 155 CP RM, și tentativa la unele fapte care presupun aplicarea violenței fizice etc.

Semnificația teoretică a tezei se exprimă în: a) determinarea esenței juridice a violenței psihice și a amenințării; b) redimensionarea apărării penale a libertății psihice a persoanei; c) caracterizarea detaliată a elementelor constitutive ale infracțiunii prevăzute la art. 155 CP RM; d) stabilirea imperfecțiunilor ce caracterizează atât dispoziția art. 155 CP RM, cât și practica de aplicare a acestuia.

Valoarea aplicativă a tezei constă în: a) relevarea erorilor de aplicare a art. 155 CP RM contribuie la prevenirea unor astfel de erori; b) analiza neajunsurilor, de care suferă art. 155 CP RM, poate fi luată în calcul de către legiuitor în procesul de îmbunătățire a calității legii penale; c) concluziile și recomandările formulate în cadrul tezei pot constitui un reper pentru investigarea mai aprofundată a infracțiunii prevăzute la art. 155 CP RM, precum și pentru activitatea didactică desfășurată în instituțiile de învățământ cu profil juridic.

АННОТАЦИЯ

Ангелуцэ Михаела, «Угроза убийством или причинением тяжких телесных повреждений или иного тяжкого вреда здоровью». Диссертация на соискание научной степени доктора права. Докторальная школа юридических наук Государственного университета Молдовы. Кишинэу, 2021

Структура диссертации: введение, четыре главы, выводы и рекомендации, библиография из 703 названий, 278 страниц составляют основную часть диссертации. Достигнутые результаты опубликованы в 18 научных работ.

Ключевые слова: насилие; психическое насилие; угроза; психическая свобода; убийство; тяжкое телесное повреждение или иной тяжкий вред здоровью; опасение осуществления угрозы.

Предмет исследования. Работа относится к сфере особенной части уголовного право.

Цель и задачи диссертации. *Целью* диссертации является изучение уголовно-правовых аспектов угрозы убийством или причинением тяжких телесных повреждений или иного тяжкого вреда здоровью, в установлении недостатков, которые характеризуют уголовно-правовую охрану психической свободы, в предложении законодателю путей повышения качества охраны данного правового блага, а также в содействии применению ст. 155 УК РМ в соответствии с принципом законности. *Задачами*, необходимыми для достижения поставленной цели, являются: определение общественной опасности деяния, предусмотренного по ст. 155 УК РМ; историко-правовой и сравнительно-правовой анализ норм, устанавливающих ответственность за угрозу убийством или причинением тяжких телесных повреждений или иного тяжкого вреда здоровью; научное обоснование происхождения непосредственного объекта преступления, предусмотренного ст. 155 УК РМ из группового объекта преступлений, предусмотренных Главой III Особенной части Уголовного кодекса; выявление признаков потерпевшего от преступления, предусмотренного ст. 155 УК РМ; определение понятий «психическое насилие» и «угроза», а также установление взаимосвязи между этими понятиями; определение связи между понятиями «психическое принуждение» и «угроза», и др.

Научная новизна и оригинальность диссертации. Настоящая работа является первым исследованием на уровне диссертации на соискание научной степени доктора права, посвященным преступлению, предусмотренному ст. 155 УК РМ. Считаем, что данная диссертация отличается новизной исходя из следующих научных результатов: установление признаков состава преступления, предусмотренного ст. 155 УК РМ, посредством системного толкования этой статьи и норм, с которыми ст. 155 УК РМ находится в конкуренции; исследование преступления, предусмотренного ст. 155 УК РМ, с точки зрения идеальной совокупности и реальной совокупности преступлений; установление связи между преступлениями, предусмотренными ст. 155 УК РМ, и покушением на деяния, предполагающие применение физического насилия, и т.д.

Теоретическое значение диссертации выражается в: а) определении правовой сущности психического насилия и угрозы; б) переосмысление уголовно-правовой охраны психической свободы личности; с) подробная характеристика признаков состава преступления, предусмотренного ст. 155 УК РМ; г) установление недостатков, характеризующих как положения ст. 155 УК РМ, так и практику его применения.

Прикладное значение диссертации состоит в: а) выявлении ошибок применения ст. 155 УК РМ способствует предотвращению таких ошибок; б) анализ недостатков, характеризующих ст. 155 УК РМ, может быть принят во внимание законодателем в процессе повышения качества уголовного закона; в) выводы и рекомендации, сформулированные в диссертации, могут служить ориентиром для более глубокого исследования преступления, предусмотренного ст. 155 УК РМ, а также для преподавательской деятельности, осуществляемой в образовательных учреждениях юридического профиля.

ANNOTATION

Angheluta Mihaela, „Threatening to kill or cause severe bodily injury or damage to health”. PhD in Law thesis. Doctoral School of Legal Sciences of the State University of Moldova. Chisinau, 2021

The structure of the thesis: Introduction, four chapters, General Conclusions and Recommendations, bibliography of 703 titles, 278 pages of basic text. The results achieved are published in 18 scientific papers.

Key-words: violence; psychic violence; threat; psychic freedom; murder; severe bodily injury or damage to health; the danger of accomplishing the threat.

Field of the thesis. This research refers to the field of criminal law, special part.

The purpose and the objectives of the thesis. The *purpose* of the thesis is to examine the criminal-legal aspects of the threatening to kill or cause severe bodily injury or damage to health, to establish the shortcomings that characterize the criminal-legal protection of psychic freedom, to suggest to the legislature solutions to improve the quality of criminal-legal protection of this social value, as well as to contribute to the application of art. 155 of the MCC in accordance with the principle of lawfulness. The *objectives* necessary to achieve this purpose are: determining the social danger of the act incriminated in art. 155 of the MCC; historical-legal and comparative-legal analysis of the norms establishing liability for the threatening to kill or cause severe bodily injury or damage to health; the scientific substantiation of the derivation of the special legal subject-matter of the offense provided by art. 155 of the MCC from the generic legal subject-matter of the offenses provided by Chapter III of the special part of the Criminal Code; identification of the characteristics of the victim of the offense provided by art. 155 of the MCC; defining the notions of “psychic violence” and “threat”, as well as establishing the correlation between these notions; determining the connection between the notions of “psychic coercion” and “threat”; the characterization of the two obligatory conditions that the threat in the meaning of art. 155 CP RM must fulfil; the interpretation of the word “murder” and of the phrases “severe bodily injury or damage to health” and “provided that the danger of accomplishing such a threat exists” from art. 155 of the MCC etc.

The novelty and the scientific originality of the thesis. This paper is the first investigation at the level of a doctoral thesis, dedicated to the offense provided by art. 155 of the MCC. We consider that this dissertation is distinguished by its novelty based on the following scientific results: the establishment of the constitutive elements of the offense provided by art. 155 of the MCC through a systemic interpretation of this article and of the norms with which art. 155 of the MCC is in a conflict; examination of the offense, provided by art. 155 of the MCC, from the perspective of the ideal cumulation and the real cumulation of offenses; establishing the correlation between the offense, provided by art. 155 of the MCC, and the attempt to commit some acts that involve the application of physical violence, etc.

The theoretical significance of the thesis is expressed in: a) determining the juridical essence of psychic violence and threat; b) resizing the criminal-legal protection of the psychic freedom of a person; c) the detailed characterization of the constitutive elements of the offense provided by art. 155 of the MCC; d) establishing the imperfections that characterize both the provision of art. 155 of the MCC, as well as the practice of its application.

The applicative value of the thesis consists in: a) revealing the errors of application of art. 155 of the MCC contributes to the prevention of such errors; b) analysis of the shortcomings characterizing art. 155 of the MCC, can be taken into account by the legislator in the process of improving the quality of the criminal law; c) the conclusions and recommendations formulated within the thesis may constitute a benchmark for the more in-depth investigation of the offense provided by art. 155 of the MCC, as well as for the didactic activity carried out in the educational institutions with legal profile.

ANGHELUȚĂ Mihaela

**AMENINȚAREA CU OMOR ORI CU VĂTĂMARE GRAVĂ A
INTEGRITĂȚII CORPORALE SAU A SĂNĂTĂȚII**

Specialitatea 554.01 – Drept penal și execuțional penal

Rezumatul tezei de doctorat în drept

Aprobat spre tipar: data
Hârtie ofset. Tipar ofset.
Coli de tipar: ...

Formatul hârtiei: 60x84 1/16
Tiraj ... ex...
Comanda nr.

Centrul Editorial-Poligrafic al Universității de Stat din Moldova,
mun. Chișinău, str. Alexei Mateevici, 60, MD-2016