

THE „PROPAGANDA” CONCEPT IN THE CONTEMPORARY DOCTRINE AND THE CRIMINAL LAW OF ROMANIA AND THE REPUBLIC OF MOLDOVA

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Abstract

This scientific article aims at the interdisciplinary research of the concept of propaganda through the perspective of sociological, political and legal sciences, as well as the substantiation of a relevant study in the field of criminal liability for criminal acts that are committed in the form of propaganda. Therefore, as the objectives proposed for this study will serve the following: research into the contemporary doctrine in the field of sociology, political science and jurisprudence for the formulation of a concept relevant to the science of criminal law; the synthesis of characteristic traits of propaganda (deliberate action in the form of systematic communication) as ways of committing crimes that are incriminated in the contemporary criminal law of Romania and the Republic of Moldova; conducting a differentiated comparative study of the legal-criminal norms in the Special Part of the Criminal Code of Romania, as well as the Special Part of the Criminal Code of the Republic of Moldova; demonstrating inconsistencies in legislative technique that have been dropped from the legislator's view and suggesting suggestions for improving both criminal science and the criminal legislation in force in both countries. Methods of research have been chosen systemic method, comparative method, analysis and synthesis. The author carried out the investigation of comparative comparative criminal and extrapenal norms (Romania, Republic of Moldova), identified some gaps in the legal technique, and demonstrated the need to revise some legislative concepts that will ultimately contribute to the reconceptualization of the criminal law in force crimes involving elements of propaganda.

Keywords: *propaganda; deliberate communication; conviction; influencing the public; criminality of extremist nature; war propaganda; propaganda of extremism; the extremist-terrorist offense; extremism; terrorism.*

JEL Classification: K14

1. The introductory section

The research department of this study consists of the interdisciplinary approach of the concept of propaganda, as well as its differentiated analysis in the process of application in the doctrine and incriminating text of the criminal law of Romania and the Republic of Moldova.

The research focuses mainly on the in-depth study not only of some provisions of the Special Part of the New Criminal Code of Romania² and, implicitly, of the Special Part of the Criminal Code of the Republic of Moldova³ (CP RM) but, to an equal extent, attention is paid to the questionable issues of extrapenal legislation on arms and ammunition in both states.

From the doctrinal point of view, we find the presence of interdisciplinary scientific studies necessary both in Romania and in the Republic of Moldova (sociology, politics, law), but we observe the lack of thorough comparative criminal law studies on the concept of propaganda.

In this respect, we will notice that propaganda is a deliberate, sometimes deliberate act (timely thought) as a form of systematic communication but accompanied by a specific purpose, such as influencing public opinion through various non-violent methods, also instigating to hate and violence, so that the subject to whom the message is addressed accepts it willingly.

Not every form of propaganda has the socially advanced danger enough to reach the threshold of prejudice of criminal law, but only those forms that involve signs of extremism (hate speech, etc.) or even its extreme form of war propaganda. In our opinion, war propaganda correlates with extremist propaganda as part and whole, in other words, war propaganda is the propaganda of extremism, but not any form of propagation of extremism is war propaganda.

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² Law no. 187/2012 for the enforcement of the Law no. 286/2009 on the Criminal Code. Originally published in the Official Gazette of Romania no.757 of 12.11.2012.

³ Criminal Code of the Republic of Moldova, no. 985 of 18.04.2002. Republished in the Official Gazette of the Republic of Moldova, 2009, no. 72-74.

Propaganda as a deliberate act in the form of systematic communication addressed to a target group in order to convey certain ideas, values, settings does not affect the degree of prejudice of the criminal law, and therefore does not constitute an offense. At the same time, if the speech spoken or disseminated in any way, it will contain elements of hatred based on discriminatory signs provided by the criminal law, it will constitute, as the case may be, an offense.

2. Concept of "propaganda" in contemporary doctrine

Propaganda is a concept associated with an ambition or totalitarian practice, which has led to its degradation. This term can be interpreted as exerting influence on the human intellect in order to impose a person's opinions, attitudes or ideas. B-A.Teodor authors and V-I.Nicula believes that propaganda is "*an act of persuasion through instigating, tends to replace reason with impresionabilitatea, erasing the line between truth and false*"⁴. The author, R. Herjeu, emphasizes that any message is intended to get a reaction from the other. Every word hides in it a kernel of manipulation, of propaganda⁵. In its most basic formulation, propaganda is a neutral term for spreading ideas. In principle, propaganda is dialogue without interlocutor. The dialogue is conducted with the beliefs, the perceptions and the sensations of the people we are trying to get a certain idea of. The other is present only to accept or reject ideas transmitted.

The origin of the word comes from the Latin expression "*congregatiode propaganda fid*" - a congregation of the propagation of faith. The term obviously implies the transmission of information to a public, which is to be welcomed to it and which is not perceived by the informant as a liar but, on the contrary, as an expression of the only truth. Propaganda actions are diverse after 1) contained; 2) form and 3) techniques of spreading the message⁶, and as mentioned by S. Roșca, the key to the success of the propaganda on the people is the predominance of the image on the explanation, the sensible frustration over the rational⁷.

In the author's opinion, the ability to perceive the masses is limited, the level of understanding is low, but the ability to forget is great. This really is concluded that any propaganda effect should be limited to a few points that should be used as passwords, as long until you clearly even last be understood in such a password which is meant to be understood⁸.

Propaganda is an independent form of communication. The notion of communication began to be used in the fourteenth century and comes from the Latin "*communis*", which means sharing, being in a relationship, sharing. In the next century, as a result of road development and post, it is enriched with the sense of transmission⁹. A communication process is "*individual acts of transmission and reception*" of a message. Communicating involves the action of "transmitting a message" about "something" to someone who is the "receiver," a message from an entity called "transmitter".

Over time, the term "propaganda" has gained a depreciative connotation due to the implications of the use of propaganda by totalitarian regimes. Practice is often considered treacherous, deceitful and manipulative term "propaganda" was replaced by "information" or "education", the difference is reflected in hate propaganda purposes. In this context, the author, C. Pavel, argues: "*While the information provides its public with a direct assertion of the facts, propaganda "packs" these facts into a package designed to evoke a certain answer. While education teaches recipient how to think, so as to form their own intellect, propaganda trying to tell people what to think (emphasis ours - the author's note). Information and education seek to expand*

⁴ Teodor B.-A., Nicula V.-I., *Propaganda versus comunicare politică: perspective teoretice în era informațională*. Analele Universității „Constantin Brâncuși” din Târgu-Jiu, Seria Litere și Științe Sociale, 2012, no. 2, p.32-46.

⁵ Herjeu R. *Tehnici de propaganda, manipulare și persuasiune în televiziune*, p.9-12. <https://dorinpopa.files.wordpress.com/2008/04/herjeu-radu-tehnici-de-propaganda-manipulare-si-pers-in-tv.pdf>. (accessed: 20.07.2018).

⁶ Teodor B.-A., Nicula V.-I., *op.cit.*, p.32-46.

⁷ Roșca S. *Reflecții conceptuale asupra noțiunii de propagandă: istorie și actualitate*. Institutul de Relații Internaționale din Moldova. „Revistă științifico-practică”, 2016, no. 1, p.51-67.

⁸ *Idem*, p.51-52.

⁹ Teodor B.-A., Nicula V.-I., *op. cit.*, p.32-46.

public outlook and open up the rationale, while propaganda strives to reduce it, eventually stop it"¹⁰.

In this context, author S. Roșca reports: "Since the dawn of human consciousness, it has been and has remained in the nature of people this need to convince, influence, persuade, deceive, lie to each other. The boundary between persuasion, influence, deception, persuasion and lie is very easy to pass. It depends only on the interests or, in other words, on the individual's motivation. Only when he fails "by talking", the "civilized and educated" man resorts to force, violence, war"¹¹. The quoted author continues to argue: "Citizens are cultivating a certain image that, professionally, seems to be reality itself. They come to believe in such a picture and do not question whether it is true or not. All this must be understood in the context of the period of assertion of the masses, the mass media and especially the revolutions. Just as revolutions can not be accomplished without the direct participation of the masses, propaganda was also needed by revolutionary leaders to trigger, and then maintain, the spirit and the revolutionary psychic energy among the crowds. Along with public speeches, the media of that era was the preferred vehicle for transporting messages and revolutions from leaders to masses"¹².

In other words, in our opinion, studying the concept of "propaganda" can not be done outside the knowledge of the sociological phenomenon of propaganda. Thus, propaganda should be investigated at the intersection of a goal defined by a political leader with the obedience effect achieved by the masses through non-violent means (in a physical sense).

In this sense, sociologist D. Dungaciu brings "Theorem of Thomas"¹³. The most popular application of this theorem is the attack on a bank or financial-banking system. A suite of rumors related to a bank that is bankrupt though it is not (fake), once believed by the public (perceived as real), leads to the action of depositors to withdraw money, both concomitantly and unexpectedly, from banks. As a result, the bank goes bankrupt (the fake fact becomes real through consequences). This example and many others fuel the idea that propaganda and false rumors irrepressibly and decisively influence social life on all its levels. In fact, no. The admitted error can be seen in the previous example: for the original rumor (the bank is bankrupt or incapacity to pay) to be perceived as real, there must have been, in the population, mistrust, and the feeling of precariousness of the financial and banking system, and, of the respective bank. In other words, before the crisis itself (the fall of the bank) there must be another crisis, less visible but essential - *the crisis of confidence*¹⁴. When the company is already in crisis, then propaganda has an indisputable chances to change the profile of a society. Sociologist D. Dungaciu therefore demonstrates that the effectiveness of propaganda/misinformation is directly proportional to the crises of trust in our societies¹⁵.

In the opinion of author A. Jefflea, the concept of propaganda involves systematic actions aimed at inserting into the public consciousness of certain ideas or in the formation of certain settings and beliefs¹⁶. According to R. Herjeu, the propaganda techniques are not very many, because the ideas to be transmitted are few simple and linear. Manipulation is mainly through omission, not by lying¹⁷.

In a different way, sociologist Jean Marie Domenach issued the following rules of propaganda:

I. *Orchestration rule*. In a propaganda action, the themes of instigation must be repeated in various forms, adapting to different audiences.

¹⁰ Pavel C. *Publicitatea și propaganda în societatea contemporană: asemănări și deosebiri*. „Management Intercultural”, Vol. XV, No.3 (29), 2013, p. 258.

¹¹ Roșca S., *op. cit.*, p.51-52.

¹² *Idem*, p.51-52.

¹³ Dungaciu D., *Gândirea în doi pași sau cum trebuie gândit războiul informational* „Revista de Științe politice și Relații internaționale”, 2017, XIV, Vol.2, p.22-26.

¹⁴ *Ibidem*.

¹⁵ Dungaciu D., *op. cit.* (*Gândirea în doi pași...*), p. 22-26.

¹⁶ Jeflea A., Moraru V. *Infrațiuni ce implică semne de extremism religios: aspecte de drept penal*. „Studia Universitatis Moldaviae”, 2016, no. 8(98), Seria „Științe sociale”, p.175.

¹⁷ Herjeu R., *op. cit.*

II. *The rule of simplification and the unique enemy.* The political message has to be vulgarized to the fullest. The slogan and graphic symbols need to be simplified, mystically loaded and not necessarily explained

III. *The rule of deformation and caricature.* It is based on news deformation, which is a journalistic process currently used by the partisan press, which only highlights the convenient information. In parallel, the context quotes process is frequently used.

IV. *Transfer rule.* The message must always take into account the cultural background, information baggage and the level of education of the target group.

V. *The rule of unanimity and contagion.* It is based on the studies of psychologists who have shown that opinions in a group are strengthened under the pressure of the values of the group to which the individual belongs.

From the literature we synthesized the following characteristic traits of propaganda: it is a species of communication - the induction through the systematic effort of the desired behavior of a group using only communicative means, involves a process of transmitting ideas and values derived from conscious reasons, a social interaction symbolic (based on symbols) - manipulation of the beliefs and behavior of the population through the use of symbols and speeches, is planned and executed only under the authority of an authority, awakens the interest of the audience and determines the subject to which the communication is addressed to willingly accept this as a deliberate action, determined by a certain purpose (hidden, camouflaged or unknown) - changing the attitudes and behaviors of a selected target audience.

Thus, in our opinion, propaganda is a deliberate action in the form of systematic communication, which is a process of transmitting ideas and values, based on symbols, in order to influence public opinion to think and act in a particular, being planned and executed only under the authority of an authority.

In the literature, three types of propaganda have been outlined, depending on the veracity of the information promoted, as follows: *white propaganda* - comes from a correctly identified source and communicates correct information, but the presentation is a tendentious one; *gray propaganda* is the form of propaganda that comes from a source that might or may not be correctly identified and the accuracy of the information is not certain; is frequently used in misinformation because it contains real-world information, combined with false information, and which, on the whole, creates an apparently accurate but difficult to verify aspect; *black propaganda* - the hidden propaganda (misinformation or big lie), which claims a false source of message origin and metapropaganda, which discredits the propaganda of the other camp, the source is false and its contents encompass inventions, fabrications, lies of the most varied types.

In this sense, *misinformation* is the dissemination of false willful information, in order to confuse the enemy about its own position or intentions of action. It also refers to the distortion of real information to make them unusable. Misinformation is the technique that allows the provision of misleading general information to third parties, causing them to commit collective acts or to disseminate the desirable judgments of misinformers. There are many ways to treat information so that it becomes fit for an act of misinformation: denying facts; reversing the facts; the mixture of truth and lie; changing the reason; blurring; generalization; the use of unequal parts.

According to the criterion of the conception of the propaganda message, three types of propaganda were identified: rational propaganda - using only concrete and real facts and facts, exposed in a certain logic, convincing by selecting arguments favorable to the proposed goal; rational-emotional propaganda-uses especially the allusion, association or transfer of image, suggesting without concrete assertion, being the most difficult to perceive and emotional propaganda-the form that uses any way of exploiting emotional states: indoctrination and expansion- having the right objectively attracting and convincing indifferent or oscillating; of agitation (prepropaganda) - is based on the exploitation of a single idea or message and integration propagation-specific to totalitarian regimes, with the aim of consolidating and maintaining sympathizers or those already convinced.

In principle, the formation of beliefs has four stages: presentation of ideas (transmission of the message); perceptual conceptualization (association of ideas with notions); the third stage is the most important and presupposes acceptance of the ideas submitted. If he rejects them, propaganda failed because of construction deficiencies (ignorance of people's previous convictions, ignorance of unconscious sensations, lack of logic and coherence), or because of transmission deficiencies (use inappropriate communication channel, wrong choice of time and duration of transmission or ignoring the circumstances of the transmission); the objectification of values in subsequent behaviors (application of ideas and attitudes derived from their acceptance)¹⁸.

Manipulation is a propaganda technique, an action designed to make us think or act as the manipulator dictates. It is the method by which one's ideas are induced to accept them, this implying on our part the reactions desired by the one who manipulates us. It can be done in several ways, most often encountering the use of truncated truths and arguments a bit arranged. With the right message, any information reaches directly to the emotional center of our consciousness, and it is the surest way that we are served with various major impact information, carefully hidden among things known, banal, uninteresting. Banality creates a state of safety, quietness, comfort, while the new always puts us on guard. The most used are the use of falsified arguments or some truths arranged in false sequences and the combination of the message with those elements that appeal to the non-rational emotional centers of human consciousness. While the first form of manipulation is coarse and is used with large groups of people with a low level of intelligence and culture, the latter is put into practice by professionals trying to influence the hardest to induce error with lies relatively easy to discover by using logic, common sense, culture and information¹⁹.

Persuasion - the second propaganda technique for changing the opinions of a person (or group of people) and getting desirable reactions on their part(s). Unlike manipulation, it is a belief activity based on such an organization of influences that leads to the personal adoption of personal change. Following manipulation, a person may have a certain reaction (possibly the one that the manipulator wants) in an instinctual and less rational way. Essential persuasion is the sensation the other person needs to understand that he understands what he is told, that he has integrated the motives of change, and that subsequent decisions belong entirely to him, without influences from the outside. Another difference between manipulation and persuasion is that the former is based on that personal factor called suggestiveness while persuasion is based on persuasiveness, that is, the tendency to be responsive to influences. Unlike suggestiveness, persuasiveness involves the individual's awareness of accepting and internalizing transmitted messages.

Persuasion may also resemble with *negotiation*, but they are different, not as a way of putting them into practice, but by reference to the other. When you negotiate, you are not interested in whether the other person shares your point of view or not, as long as you can reach a mutually accepted conclusion. You need persuasion when you want to reach a mutually accepted decision, but you also want the other person to better understand your position and share your own views.

For propaganda to be effective, it must be: continuous (without giving the subject "wake-up breaks"); symphonic (transmitted on all channels of communication available to the propagandist); long-term; partisan (presents only one point of view, never two points of view in competition or dispute); affirmative but not documented (the propagandist affirms something but never indicates the source from which he knows that). Propaganda, together with military, economic and/or political measures, is also a component part of the psychological warfare²⁰.

From a geopolitical and social perspective, propaganda can be seen as a form of informational warfare, owing to a degree of globalization in the media. At present, a new component of the military conflict is considered the informational one. The main features of the informational war are detached from its very complex nature: the difficulty of specifying opponents; absence of

¹⁸ *Idem*, p. 9-12.

¹⁹ Șerban (Marin) Gh.T., *Social-media – o nouă dimensiune a raporturilor dintre securitatea societală și mass-media*: summary of the PhD thesis. Specialty "Public order and national security" - Bucharest: 2016, p.5-6.

²⁰ Enachi V. *Comunicarea interculturală versus propaganda: aspect istorice*, „Analele Științifice ale Universității de Studii Europene din Moldova”: 5th ed., University of European Studies of Moldova, col. red.: Sedlețchi Iurie (ed. chief) [et al.]. – Chișinău: USEM, 2016, p.67.

geographic and/or temporal borders; the multitude of targets; the lack of rapid ways to address the consequences it generates; the use of relatively simple, cheap and widespread technology; the difficulty of establishing clear and precise responsibilities for domain management; the relatively low costs of running information operations relative to the results that can be obtained; increased handling possibilities; deleting differences between command levels.

3. Propaganda in the criminal law of Romania and the Republic of Moldova

According to Article 5 of the *Convention on the Elimination of All Forms of Racial Discrimination*, no. 1965 of 21.12.1965²¹, States Parties undertake to incriminate and punish the dissemination of ideas based on superiority or racial hatred, any incitement to racial discrimination and any acts of racial discrimination, violence or provocation against such acts, directed against a race or group of persons, of another color or other ethnic origin.

The definition of the concept of discrimination belongs to the Convention on the Elimination of All Forms of Discrimination which, in Article 1, refers to any distinction, exclusion, restriction or preference based on race, color, ascendancy or national or ethnic origin, which has as its purpose or effect destroy or compromise the recognition, use or exercise on equal terms of human rights and fundamental freedoms in the public, economic, social and cultural spheres or in any other sphere of public life.

State obligations also include criminalization and punishment of organization or propaganda activities that incite and encourage racial discrimination, acts of participation in such organizations or activities, and the incitement or encouragement of racial discrimination carried out by public authorities or institutions.

A form of extremist propaganda is the hate speech materialized in criminal law in hate crimes. Thus, in Council of Europe Recommendation R (97) 20a of the Committee of Ministers, the "hate speech" is defined as follows: "*all forms of expression that propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressing aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, immigrants and people from immigration*"²².

As a result of the existence of this Recommendation, the term "hate speech" has been introduced in the literature in different countries of the Council of Europe, and there is no generally accepted and binding definition for this concept. If we use the meaning of Recommendation (97) 20 to compare hate speech with hate crimes, we note that hate speech is by no means an offense, but may become, in certain contexts. For example, when it is spoken in public, it may be constituted by the offense referred to in Article 346 of the CP RM (enhancement of national, ethnic, racial or religious discrimination, division or division). Depending on the ways of communication through which the hate speech is transmitted, they can be verbal, on-line, in paper publications, or even through comic symbols. For example, hate speech in the form of racist and xenophobic propaganda propagated through the Internet are facts that the Council of Europe considers to be sufficiently serious to propose their sanction by criminal penalties when they are the following: - the distribution of racist and xenophobic materials through computer systems; - the threat based on a racist and xenophobic motivation; - denying, grossly minimizing, approving or justifying genocide or crimes against humanity²³.

In accordance with the provisions of Article 369 of the New Romanian Criminal Code (*Article 369. Incitement to Hate or Discrimination*) it criminalizes the incitement of the public, by

²¹ Convention on the Elimination of All Forms of Racial Discrimination, no. 1965 of 21.12.1965. International Treaties, No. 1, art. 78. 30.12.1998.

²² Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech". https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-no-r-97-20-of-the-committee-of-ministers-to-member-states-on-hate-speech-?_101_INSTANCE_aDXmrol0vvsU_viewMode=view (accessed: 22.07.2018).

²³ Jeflea Alexe, *Spre clarificarea conceptului terorismului religios în accepțiunea criminologică*, „Buletinul Științific al Universității de Stat „Bogdan Petriceicu Hasdeu din Cahul”, no. 1 (5), 2017 Științe Sociale, p.133-144.

any means, to hatred or discrimination against a category of persons. At the same time, the art.346 of the Criminal Code of the Republic of Moldova (art.346, *Intentional actions directed towards the enchantment of national, ethnic, racial or religious distinction or discrimination*) criminalizes intentional actions, public exhortations, including through mass-media, written and electronic, directed to the pursuit of national, ethnic, racial or religious dishonesty, differentiation or division, to the abolition of national honor and dignity, and to the direct or indirect limitation of rights or the establishment of direct or indirect advantages to citizens according to their national affiliation, ethnic, racial or religious. Although the definitions in the criminal laws of Romania and the Republic of Moldova are slightly differentiated, the meaning remains the same. By hatred of racial or national hatred it is meant to stir up, incite or encourage racial or national hatred of feelings within a nation or racial group against another nation or racial group.

At the same time, the literature uses the doctrinal category - "hate crimes", which is an umbrella term that refers to all those crimes committed by the perpetrator on the basis of a discriminatory motivation. In the explanation provided by the Organization for Security and Cooperation in Europe (OSCE), hate crimes contain two elements: they are acts that the criminal law provides as crimes and the commission of the offense, the perpetrator acts on the basis of prejudices²⁴.

State criminal law treats hate crimes differently, depending on the characteristics of the criminal law systems in question. The differences relate, among other things, to the treatment of hate crimes as standing or ground crimes, as well as to the number of protected features expressly recognized by law as part of the discriminatory motivation. The way in which hate crimes are effectively defined in state criminal law also influences how authorities collect data on these offenses. For example, data on offenses containing discriminatory motivation in their definition is easier to collect than data on the number of offenses to which the penalty for discriminatory motivation has been applied²⁵.

It is not propaganda to show a critical attitude, disapproving of mistakes, inappropriate attitudes of representatives of national, political, religious groups, etc.

Another form of extremist propaganda is the propaganda of the war. Article 20 of the International Covenant on Civil and Political Rights states directly: "*Any propaganda in favor of war is forbidden by law. Any exhortation to national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence is prohibited by law*".

By resolution no. 110 of 3 November 1947, the UN General Assembly condemned "*war propaganda in any form and in any country that has the purpose or potential to create or amplify a threat of peace, a violation of it or an act of aggression*". In 1970, the UN declared that, in accordance with the purposes and principles of the United Nations, States have the duty to refrain from any propaganda in favor of the aggression war.

In line with the National Defense Strategy of the Republic of Moldova in 2016, foreign propaganda constitutes an element of the informational warfare, and is manifested through media manipulation techniques with destructive potential; it is capable of negatively influencing the domestic public opinion, affecting the strategic vectors of foreign policy, and damaging the image of national government institutions, in particular, of the institutions of the defense system. Foreign propaganda is one of the most serious threats to national values and interests, diminishing the trust of society in the institutions of the national defense system and their ability to protect the country's territory and its population. Propaganda, especially that manifested through various sources of information (mass media, social networking, etc.), favors radicalism and extremist-terrorist actions²⁶.

²⁴ "Hate Crime Laws: Practical Guide". Office for Democratic Institutions and Human Rights of the OSCE in 2009. <https://www.osce.org/ro/odihr/36428?download=true>; Combating hate crimes. Guide for practitioners and decision-makers © Center for Legal Resources, Bucharest, June 2015. <http://www.crj.ro/wp-content/uploads/2015/01/Combatarea-infractiunilor-motivate-de-ura.Ghid-pentru-practicieni-si-decidenti.pdf> (accessed: 23.07.2018).

²⁵ *Ibidem*.

²⁶ National defense strategy. Chisinau: 2016. <http://www.army.md/img/userfiles/doconline/sna.pdf> (accessed: 23.07. 2018).

War is an armed conflict (lasting) between two or more groups, social categories or states, to achieve economic and political interests. The propaganda of war is characterized by a lower level of concretisation and a higher level of ideology. The instigation is committed to concrete persons, and war propaganda targets a broader, undetermined circle of people, an action of warfare, of apology, by spreading the theories and concepts that support war or the spread of biased or invented news capable of serving the war. So, the essential requirement is that all these material acts follow incitation to war.

The notion of propaganda of war means the spread of ideas, doctrines in favor of the war. The spread of tendentious or inventive incitement to war means bringing to the attention of the public (to an indeterminate number of persons) the totally or partially denatured facts aimed at rooting in the conscience of the members of society a state of psychological tension or psychosis of the war through interviews with attendees at various meetings, rallies, demonstrations, the publication of such information in newspapers, the broadcasting of various TV and radio reports, etc.

Any other action aimed at triggering a war means any form and type of manifestation, of warring encouragement. The actions in question can be done orally or in writing, via radio, television, cinema, internet, etc. By tendentious or invented information, incitement to war means that information that does not correspond to truth and which promotes the cult of war. Other actions aimed at triggering a war include the development of films, the example of the governments of states promoting a militarist policy, etc., all of which awaken a sense of acceptance of the war as a form of resolving the differences between states, promoting a positive attitude towards war, as an acceptable behavior within the international community²⁷.

The Moldovan lawmaker, unlike the Romanian one (Article 401 New Criminal Code), expressly lists various methods of committing the offense - verbal, in writing, by means of radio, television, cinema - to which they do not attribute an exhaustive character, the offense may be committed by any other means or by any other means. At the same time, the Romanian criminal law uses the term "*war of aggression*" (which, in our opinion, is close to the terms used in the Rome Statute, 1998), and creates a sanctioning regime differentiated from the aggression war (paragraph (1) art. 401 New Criminal Code of Romania) and war of aggression against Romania (paragraph (2) art. 401 New Criminal Code of Romania).

Moreover, we can deduce that the Romanian legislature, using the expression "as well" in the content of paragraph (1) of art. 401 New Romanian Criminal Code, distinguishes two categories of criminal offenses:

- 1) propaganda for aggression war and
- 2) the spread of biased or invented news for the purpose of provoking a war of aggression.

From the current wording of this legal-criminal norm, it is clear that propaganda and the spread of biased or invented news are two distinct facts, although in our opinion this is not the case, because the spreading of news is a form of propaganda among other forms.

The offense is formal and is consumed with the spread of information either from the time of any other propaganda action, irrespective of the fact that the war was triggered.

Thus, we conclude that the prohibition of informational influence on the public that affects the state security and the peaceful coexistence of peoples acquires different traits in the criminal law of the Republic of Moldova in the following juridical-criminal norms:

- art.140 CP RM (*Propaganda of the war*). In accordance with the provisions of paragraph (1) of article 140 CP RM, the propaganda of war is the dissemination of tendentious or invented information, instigators of war or any other action aimed at the outbreak of a verbal warfare committed in writing through radio, cinema or other means;

- paragraph (1) art. 279² CP RM (*Terrorist Incitement or the Public Justification of Terrorism*). Incitement to a terrorist purpose, that is, to distribute or otherwise make available to the public a message intended to instigate or knowing that such a message may incite a terrorist offense;

²⁷ Sergiu Brânză, Xenofon Ulianoschi, Vitalie Stati (coord.), *Drept penal*, 2nd ed., Vol. 2, Ch. Cartier, Combinatul Poligr., 2005, p. 25-26.

- paragraph (2) art. 279² CP RM (*Terrorist Incitement or the Public Justification of Terrorism*). Publicly justifying terrorism, ie distributing or otherwise making available to the public a message about the recognition of an ideology or practice of committing terrorist offenses as fair, which needs to be sustained or is worthy of being followed;

- paragraph (1) art. 341 CP RM (*Calls to the overthrow or change by violence of the constitutional system of the Republic of Moldova*). Public calls for the overthrow or change of constitutional order or violation of the territorial integrity of the Republic of Moldova through violence, as well as the dissemination for this purpose of materials with such calls.

- art. 346 CP RM (*Intentional actions aimed at enforcing national, ethnic, racial or religious indignation, division or division*). Deliberate actions, public urges, including through media, print and broadcast, aimed at incitement hatred, differentiation or division national, ethnic, racial or religious hatred, to humiliate the national honor and dignity and limitation, direct or indirect rights or the establishment of direct or indirect benefits to citizens by virtue of their national, ethnic, racial or religious affiliation.

Analyzing the content of these norms from the perspective of techniques and methods of informational influence on the general public, we note that these criminal deeds are common to a special purpose: "triggering a war" (paragraph (1) art. 140 CP RM); "*The intention to instigate or knowing that such a message may induce the commission of a terrorist offense*" (paragraph (1) art. 279² CP RM); the overthrow or change of the constitutional order or the violation of the territorial integrity of the Republic of Moldova (paragraph (1) art. 341 CP RM); "*The enticement of national, ethnic, racial or religious divisions, differentiation or division, to the devaluation of national honor and dignity*" (art. 346 CP RM). In our opinion, such goals can be generalized as having an extremist end to challenge the need, divide, differentiate, trigger public conflicts, war.

Some rules aim extremist criminal acts is one that is causing hatred, division and differentiation, to arouse public conflicts based on certain discriminatory features, and other criminal acts for this purpose acquires the public conflict intensified and proliferated war.

From this hypothesis we can deduce that the criminal act of war propaganda is a special case of extremist propaganda, which proves the interconnection of war propaganda and other extremist crimes. However, here we are dealing with a problem: the criminal law of the Republic of Moldova does not use the term "*extremism*" and defined by extrapenetal legislation (Law of the Republic of Moldova on *counteracting extremist activity*, no. 54 of 21.02.2003) - *extremism like attitude, doctrine of currents political, which, on the basis of extreme theories, ideas or opinions, seek through violent or radical measures to impose their program*.

Extremist activity, according to the Law of the Republic of Moldova *on counteracting extremist activity*, no. 54 from 21.02.2003, comprises several forms of manifestation:

a) the activity of the public or religious association, the mass media or other organization or the physical person in order to plan, organize, prepare or carry out actions aimed at: the violent change of the foundations of the constitutional regime and violation of the integrity Of the Republic of Moldova; undermining the security of the Republic of Moldova; usurpation of state power or official qualities; the creation of illegal armed formations; the conduct of terrorist activity; the challenge of racial, national or religious hatred, as well as social hatred, linked to violence or violence; humiliating national dignity; causing mass disorder, committing acts of hooliganism or acts of vandalism on the grounds of hate or ideological, political, racial, national or religious hatred, as well as for hatred or hostility towards any social group; the propagation of exclusivity, superiority or inferiority of citizens according to their attitude to religion or to the criterion of race, nationality, ethnic origin, language, religion, gender, opinion, political affiliation, wealth or social origin;

b) displaying, making, spreading, and holding for the public dissemination of fascist, national-socialist (Nazi) or extremist symbols or symbols, as well as attributes or symbols created by stylizing fascist, national-socialist symbols or symbols (Nazi) or an extremist organization that can be confused with them.

From the analysis of the extrapenal legislation of the Republic of Moldova we note that propaganda is only a form of manifestation of an extremist activity.

According to A. Jefflea, extremism is the attitude or doctrine of religious, political, etc., which, based on extreme theories, ideas or opinions, seeks, through violent or radical measures, to impose their program with a goal of change, through violence, the foundations of the constitutional regime and the violation of the state's integrity; undermining state security; usurpation of state power or official qualities; the creation of illegal armed formations; the conduct of terrorist activity; the challenge of religious hatred; humiliating personal dignity; the challenge of mass disorder; committing acts of hooliganism or acts of vandalism on grounds of hatred or hostility; as well as the propagation of the exclusivity, superiority or inferiority of citizens according to their attitude towards religion or the criterion of religion. The positive attitude expressed towards extremist organizations and personalities from the eras that have fallen within the limits of a historical-scientific discourse is not the formulation of extremist ideas²⁸.

What is characteristic of an extremist act is the uproar of discord (a verbal negative condemnation in public or an action directed against the person in connection with her belonging to an unmarried group that may be characterized by a discriminatory sign or any negative expression in public with reference to a group). As an example, they can serve: calls for murder; striking or deporting people belonging to a group; organization, commission or instigation of such acts.

Thus, an ECHR case (*Abedin Smajič versus Bosnia and Herzegovina*, ECHR Judgment of 16 January 2018) must be relevant, the complainant claimed that the elements of the offense in question had not been committed because a "*closed forum*" on the Internet could not be considered a "*public place*". He further argued that he did not incite hatred, but only expressed his personal opinion about a hypothetical scenario that had a correlation with the "*real world*" - namely the frequent appeals from the highest political authorities in Serbia for secession. Moreover, the complainant pointed out that the case caught the attention of the media only after it had been made public by the prosecutor and subsequently written in several national newspapers.

Concerning the interpretation of the relevant law, it was concluded that the Internet forum was "*closed*" only in terms of participation, but the content was fully available to anyone and could be considered a "*public place*". It was also concluded that for the use of the offense of incitement to hatred or intolerance it was not necessary for the applicant's action to have had adverse effects, but only that "*they were able to produce such effects*". Although the posts were written in a hypothetical form, the court concluded that they can not be considered expressions of free thinking on topics of general interest, but rather an inappropriate form of dialogue that advocates a behavioral strategy towards an ethnic group in Brčko. The court concluded that freedom of expression was significantly reduced in multiethnic communities, especially when it has led to the offending of religious or national feelings of members of religious or ethnic groups in these communities²⁹.

The public character is the indispensable feature of extremist facts, therefore we will not be in the presence of a criminal act provided by art.140, paragraph (1) art.279², paragraph (2) art.279², paragraph (1) art.341 CP RM, art.346 CP RM in the case of interpersonal conflicts, when the parties to this conflict, in order to offend and insult each other, resort to the use of the personal characteristics related to their private life, taking into account the attitude towards certain discriminatory aspects.

Taking into account the fact that there is an inconsistency in the criminal and extrapenal law of the Republic of Moldova conditioned by the lack of express provisions regarding the act of extremism in the criminal law in order to ensure the uniformity of the criminal and extrapenal law in order to exclude its extensive unfavorable interpretation, we advocate for the amendment to the General Part of the Criminal Code of the name of article 134¹¹ from "*Terrorist offenses*" in "*Extremist terrorist offenses*" with the amendment of the list of articles in the Special Part by

²⁸ Jeflea Alexe, *Vulnerabilități și amenințări de natură religioasă în mediul de securitate publică: aspect criminologice*. „Revista Națională de Drept”, 2017, no. 2, p.49.

²⁹ Application no.48657/16Abedin Smajič against Bosnia and Herzegovina, The European Court of Human Rights (Fourth Section), sitting on 16 January 2018. <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Smaji%20%22%5D%2C%22itemid%22:%5B%22001-180956%22%5D%7D> (accessed: 20.07.2018).

extending them, including art.140, art.341 and art. 346 CP RM. Another reason for widening the list is the argument that the extremist act is the predecessor of the terrorist offense and, as the analysis of the already existing norms that criminalizes such crimes shows, the extremist activity itself already reaches the threshold of the prejudice of a crime.

However, as expressly provided by the Law of the Republic of Moldova *on Counteracting Extremist Activity* no. 54 of 21.02.2003, it should be taken into account that their representation in manuals/books or other scientific/educational support, nor their exposure to in scientific/educational exhibitions, their manufacture, possession or use in theatrical/film performances or in the historical reconstruction activities in which the participants carry out a program according to a predefined plan to recreate various aspects of an event or a historical period.

The criminal law is to be revised in such a way as to introduce other rules that would incriminate the manifestation of extremism. To compensate for this loophole, we believe that the Penal Code requires that changes be made, and other forms of extremism (including the religious one) are introduced, as follows:

Art.346¹ Criminal Code. Violation of legislation on preventing and combating extremism:

1) The display, manufacture, distribution and possession for public broadcasting of extremist attributes or symbols or of an extremist organization, including those stylized or camouflaged, which may be confused with them, shall be punished by a fine in the amount of up to 400 conventional units or by community service from 120 to 180 hours or by imprisonment for up to one year

2) Mass distribution of extraneous science materials and their manufacture or preservation for mass broadcasting purposes, shall be punished by a fine in the amount of up to 650 conventional units or by community service from 180 to 240 hours or by imprisonment for up to 3 years.

In addition, in order to prevent and counteract the manipulation of public opinion by defamation of a person holding a position of responsibility, of a public person or of a person with public dignity in committing a criminal offense of a character extremistically analyzed during the exercise of his/her duties, it is proposed to criminalize this fact in the criminal law of the Republic of Moldova. At the same time, the political polemic, which sometimes admits rationality and harsh statements from public slander, is to be diffused, which is to be confirmed by judicial process.

The completion of the Special Part of the Criminal Code of the Republic of Moldova shall read as follows:

Art. 346² Penal Code. Liability of a person with a position of responsibility, public persons and persons with a public dignity function:

Calmniation (a knowingly publicly accused public prosecution) of a person in charge of a public office, of a public person or of a person with a public dignity function in the commission of an extremist criminal offense analyzed during the performance of his duties shall be punished by a fine of up to 400 conventional units or community service from 120 to 180 hours or by imprisonment for up to one year.

4. Conclusions

1. In our opinion, propaganda is a deliberate action in the form of systematic communication, which is a process of transmitting ideas and values, based on symbols, in order to influence the public opinion to think and act in particular, being planned and executed only under the authority of an authority.

2. The characteristic features of propaganda are: is a species of communication - the induction by the systematic effort of the desired behavior of a group using only communication means; involves a process of transmitting ideas and values stemming from conscious thoughts; a symbolic (symbol-based) social interaction - manipulation of the beliefs and behavior of the population through the use of symbols and speeches; is planned and executed only under the authority of an authority; awakens the interest of the audience and determines the subject to which the

communication is addressed to willingly accept this view as if it were his own; a deliberate action, determined by a certain purpose (hidden, camouflaged or unknown) - changing the attitudes and behaviors of a selected target audience.

3. The Moldovan lawmaker, unlike the Romanian one (Article 401 New Criminal Code), expressly lists various methods of committing the offense - verbal, in writing, by means of radio, television, cinema - but which does not give them an exhaustive character, the offense being committed by any other means or by any other means. Moreover, we can deduce that the Romanian legislature, using the expression "as well" in the content of paragraph (1) of art. 401 New Romanian Criminal Code, differentiates two categories of criminal offenses: 1) propaganda for aggression war; 2) and the spread of biased or invented news for the purpose of provoking a war of aggression. From the current wording of this legal-criminal norm, it is clear that propaganda and the spread of biased or invented news are two distinct facts, which is incorrect, since spreading news is a form of propaganda among other forms.

4. A form of extremist propaganda is the hate speech materialized in criminal law in hate crimes. Another form of extremist propaganda is the propaganda of the war. The purpose of any propaganda that reaches the threshold of prejudice within the meaning of criminal law can be generalized as having an extremist end to the challenge of hatred, division, differentiation, triggering public conflicts, war. Thus, in some norms, the purpose is an extremist one, which consists in aggravating public conflicts based on certain discriminatory features, and in the case of other propaganda crimes, this goal acquires the level of public conflict that has become intense and proliferated in the war.

5. The criminal propaganda act of war is a special case of extremist propaganda, attesting to the interconnection of war propaganda and other extremist crimes.

6. The Criminal Law of the Republic of Moldova does not use the term "extremism". Taking into account the fact that there is an inconsistency in the criminal and extrapenal law of the Republic of Moldova conditioned by the lack of express provisions regarding the act of extremism in the criminal law in order to ensure the uniformity of the criminal and extrapenal law in order to exclude its extensive unfavorable interpretation, we advocate for the amendment to the General Part of the Criminal Code of both the name of Article 134¹¹ from "Terrorist offenses" in "Extremist terrorist offenses" with the amendment of the list of articles in the Special Part by extending them, including art. 140, art. 341 and art. 346 CP RM. Another reason for widening the list is the argument that the extremist act is the predecessor of the terrorist offense and, as the analysis of the already existing norms that criminalizes such crimes shows, the extremist activity itself already reaches the threshold of the prejudice of a crime.

7. The criminal law is to be revised in such a way as to introduce other norms that would incriminate the manifestation of extremism. To compensate for this loophole, we believe that the Penal Code requires the necessary changes to be made, and other forms of extremism (such as religion) are introduced as follows:

Art.346¹ Criminal Code. Violation of legislation on preventing and combating extremism:

1) *The display, manufacture, distribution and possession for public broadcasting of extremist attributes or symbols or of an extremist organization, including those stylized or camouflaged, which may be confused with them, shall be punished by a fine in the amount of up to 400 conventional units or by community service from 120 to 180 hours or by imprisonment for up to one year*

2) *Mass distribution of extraneous science materials and their manufacture or preservation for mass broadcasting purposes, shall be punished by a fine in the amount of up to 650 conventional units or by community service from 180 to 240 hours or by imprisonment for up to 3 years.*

8. In order to prevent and counteract the manipulation of public opinion by defamation of a person with a position of responsibility, of a public person or of a person with public dignity in committing an extremist criminal offense analyzed above during the exercise of his/her duties, it is proposed to criminalize this fact in the criminal law of the Republic of Moldova. At the same time,

the political polemic, which sometimes admits rationality and harsh statements from public slander, is to be diffused, which is to be confirmed by judicial process. The completion of the Special Part of the Criminal Code of the Republic of Moldova shall read as follows:

Art.346² Penal Code. The calumniation of a person with a responsible position, public figures and a person with public dignity

Calumniation (a knowingly publicly accused public prosecution) of a person in charge of a public office, of a public person or of a person with a public dignity function in the commission of an extremist criminal offense analyzed during the performance of his duties shall be punished by a fine of up to 400 conventional units or community service from 120 to 180 hours or by imprisonment for up to one year.

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