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**THE GENERAL CONCEPT OF CRIME PREVENTION, WAR
CRIMES IN THE LEGISLATION OF THE
REPUBLIC OF MOLDOVA**

Abstract:	<i>Crime includes all the transgressions that are committed in a certain territorial-administrative space. Preventing them from being committed is essential in order not to admit the damage to the supreme values of society.</i> <i>War crimes directly attack the constitutional order, peace and security of mankind. Therefore, within the framework of this research, we intend to carry out an analysis of the general concept of crime prevention, including the general prevention of war crimes.</i>
Keywords:	Prevention; crime; war crimes; legal liability; Criminal Code
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Introduction

Analyzing the concept of *prevention*, we understand at first sight that this represents nothing but the prevention/anticipation of an event, process and/or action that could eventually take place in the objective reality. According to the dex-online information platform, the term *prevention* is associated with the verb *prevent*, "which also means the action of drawing someone's attention to the (negative) consequences of some actions; informing in advance; taking precautions to remove something (unpleasant) or fulfill someone's wishes in advance"¹.

The Romanian researcher Aurel Dincu, in his work under the marginal name *Basics of Criminology*, supports the idea that "prevention is a set of measures

¹ *Prevention*, <https://dexonline.ro/definitie/prevenire>, (12.05.2022)

directed at the factors that determine or favour the appearance of the facts that present social danger, to restrict and annihilate their harmful effects”¹.

Reporting the generic explanation of the term prevention on the level of lawlessness, it is worth mentioning that the prevention of crime represents an important stage in the process of ensuring the observance of the legal framework, thus ensuring the independence and integrity of the state against crimes, as well as guaranteeing the respect for the fundamental rights and freedoms of citizens.

The local author Mihail Bîrgău takes the view that ”the prevention of crimes is a special specific activity that ensures the reorganization of social relations, as a result of which the determinants of criminal behavior are removed, neutralized and blocked; social-criminological prophylaxis is oriented towards the prevention of different types of crime”².

Materials used and methods applied

In the process of elaborating the scientific article, we were guided by the following methods of scientific research: the method of analysis, the method of synthesis, the method of deduction, as well as the comparative method. The applicative material in the respective research is relevant, namely the Criminal Law of the Republic of Moldova, the publishing research and the specialized literature, which directly or indirectly address the essence and content of the subject under investigation.

The basic content

The concept of crime prevention as a basic stage in the development of society – dates back to ancient times. In the specialized literature, the opinions of researchers vary from one to another concerning the conceptual definition of crime prevention, because it forms the object of study and analysis of various branches of law, primarily being a basic part of criminology, criminal law, criminal procedural law, criminal execution law, etc.

Professor Gheorghe Gladchi argues in some of his studies that, ”criminology has a certain priority in addressing the issue of social reaction against crime compared to other sciences; being the science about the causes and conditions of the criminal phenomenon, criminology can propose the most effective measures and means of fighting it”³.

Thus, analyzing this scientific position, we can deduce that criminology as a science is the basic discipline that has as its object of study in its record – crime prevention.

¹ Aurel Dincu, *Bazele criminologiei*, Proarcadia, București, Vol. I, 1993, p. 175

² Mihail Bîrgău, *Criminologie*, Print-Caro, Chisinau, 2010, p. 183

³ Gheorghe Gladchi, *Fight against crime and the role attributed to criminology*, ”Revista Națională de Drept”, No. 4, 2002, p. 17

Moreover, the methodology for preventing and combating crimes, as an object of study of criminology, is fully supported by the author Igor Ciobanu¹.

At the same time, professor Gheorghe Gladchi, in one of his works, quotes the Russian researchers, as well as that, "the prevention of crime in the criminological sense, is a permanent, complicated and complex social process, an organized whole, a specific form of social management that involves the application of a set of measures designed to prevent the perpetration of antisocial deeds. In other words, crime prevention represents unity in diversity, i.e. an integrated social system consisting of various elements, dependent on each other (spheres of action, levels and directions of preventive effort; subjects of prevention, set of preventive measures and means, etc.). Therefore, this type of social practice requires a systemic approach. Moreover, at present, crime prevention has been established not only as a type of social practice but also as a criminological theory that reflects the regularities of this kind of socially useful activity"².

Under the described conditions, we can say with certainty that crime prevention is a process specific to criminological science, which involves first of all the identification of the causes and conditions that would determine/favor the commission of a crime, to prevent its commission. Subsequently, following a complex plan of measures that would include the other fields of criminology, such as the identification of the types of crimes that would be allegedly committed in the objective reality, the behavior of the criminal personality of the subject of the wrongful act, etc.

Moreover, in the opinion of professor Iurie Larii, crime prevention represents a complex system of measures sized in the following four directions:

- 1) revealing, neutralizing and removing the causes and conditions of crime or some separate types thereof;
- 2) revealing and removing the situations in certain geographical areas or a certain environment (entourage) that provoke the commission of crimes;
- 3) identification of groups of persons with a high degree of criminal risk and its reduction by applying various influence measures;
- 4) identification of specific persons, whose conduct indicates that they could in reality commit crimes, as well as the exercise of preventive influence in respect of them³.

In another context, the author Elena Duda, in one of her publishing analyses, mentions that "the prevention of crime means, first of all, the prevention of committing for the first time those human actions or inactions that society considers harmful for its values, for its normal evolution towards progress"⁴.

¹ Igor Ciobanu, *Criminologie*, Cartdidact-Reclama, Chisinau, Vol. I, 2003, p. 16

² Gheorghe Gladchi, *Criminologie*, CEP USM, Chisinau, 2019, p. 526

³ Iurie Larii, *Criminologie*, Cartea Militară, Chisinau, 2020, pp. 267-268

⁴ Elena Duda, *Study on preventing and combating violent crime*, "Studii Juridice Universitare", No. 1-2, 2014, p. 204

In the given circumstances, we cannot agree that the general concept of crime prevention essentially presupposes anticipating the commission of lawlessness for the first time. Because prevention means continuous prevention or whenever there are supposedly credible indications of the commission of a crime in objective reality. In this case, the statement of the author Elena Duda can be qualified as a special opinion to prevent crime.

Thus, we can conclude from a generic point of view that, "crime prevention is a social activity oriented on the processes of determining and causation of crime. The causes and conditions of crime can be removed, minimized or neutralized by influencing criminals, potential offenders (people who have not committed crimes, but their conduct indicates the real possibility of committing antisocial deeds) or on situations (circumstances), social phenomena that determine crime. Preventive measures aimed at potential offenders or offenders are aimed at retaining some from the transition to the act, and others from returning to criminal activity, i.e. their resocialization"¹.

Regarding the socially dangerous deeds directed against the peace and security of mankind, it is worth mentioning that their prevention is of prime importance for a state governed by the rule of law, as in our case the Republic of Moldova would be.

The local legislator has consecrated a whole and separate chapter on the limits of the Criminal Law to these types of crimes. The incipient stage of the Special Part of the Criminal Code of the Republic of Moldova has its normative starting point with the chapter I with the generic name *Crimes against peace and security of mankind, war crimes*. In the context of this chapter, the Criminal Law sanctions the subject of offences intending or committing illicit acts aimed against the independence and integrity of the state, as well as aimed at harming the fundamental rights and freedoms of citizens².

Or, under the conditions of Art.2 of the Criminal Code of the Republic of Moldova, we note that "The Criminal Law protects the person against crimes, his rights and freedoms, property, the environment, the constitutional order, the sovereignty, independence and territorial integrity of the Republic of Moldova, *the peace and security of mankind*, as well as the entire order of law"³.

In the context of the above, we infer that the Criminal Law defends the most important values of mankind, including peace and security, which can be harmed in the context of committing illicit acts. Thus, the socially dangerous

¹ Gladchi Gheorghe, *Op. cit.*, pp. 527-528

² *Criminal Code of the Republic of Moldova*, No. 985 of 18.04.2002, Official Gazette of the Republic of Moldova No. 72-74 of 14.04.2009, in force according to the latest amendments and adjustments from 20.04.2022

³ *Criminal Code of the Republic of Moldova* No. 985 of 18.04.2002, Official Gazette of the Republic of Moldova No. 72-74 of 14.04.2009, in force according to the latest amendments and adjustments from 20.04.2022, art. 2

transgressions that can harm these values are also war crimes. These acts are considered illegal that directly harm the peace and security of mankind.

In the meaning of Chapter I of the Special Part of the Criminal Code of the Republic of Moldova, we note that the Moldovan legislator has provided for criminal liability for the following war crimes, which once committed in the objective reality, can bring serious consequences on the sovereignty, independence and territorial integrity of the country¹:

1). Article 137, marginally called *War offences against persons*, the following typical ways of the offences shall be punishable for criminal liability:

1. Committing, in the context of an armed conflict of an international nature, one of the following acts:

a) coercion, through violence or threat, one or more protected persons within the meaning of the Geneva Conventions of 12 August 1949² on the protection of victims of war and of Additional Protocol I of 8 June 1977 on the protection of victims of international armed conflict³, in particular the sick, wounded, shipwrecked, prisoners of war and civilians, to enlistment in the enemy armed forces;

b) coercing the citizens of the enemy party to take part in the military operations directed against their country, even if they were enlisted in the armed forces of this enemy party before the beginning of the armed conflict;

c) illegal retention in detention or unjustified delay in the repatriation of one or more of the persons mentioned above, in letter a);

d) the transfer, directly or indirectly, by an agent of the occupying party, of a part of the civilian population to which he belongs, in the occupied territory, the deportation or transfer by him within or outside the occupied territory of all or part of the civilian population in that territory. These acts are punishable by a prison sentence of 3 to 10 years⁴.

2. The exposure, in the context of armed conflict with or without an international character, of a person protected by international humanitarian law to a danger of death or serious harm to health by:

a) carrying out experiences of any kind, which are not determined by a medical, therapeutic, hospital treatment, in respect of which the person has not voluntarily, expressly and prior consented and which are not carried out in his interest;

¹ *Criminal Code of the Republic of Moldova* No. 985 of 18.04.2002, Official Gazette of the Republic of Moldova No. 72-74 of 14.04.2009, in force according to the latest amendments and adjustments from 20.04.2022

² *Geneva Conventions of 12 August 1949 on the protection of victims of war*

³ *Additional Protocol I of 8 June 1977 on the protection of victims of international armed conflict*

⁴ *Criminal Code of the Republic of Moldova* No. 985 of 18.04.2002 // Official Gazette of the Republic of Moldova No. 72-74 of 14.04.2009, in force according to the latest amendments and adjustments from 20.04.2022, art. 137, align. 1

b) the removal of tissues or organs for transplantation, except for the taking of blood or skin, carried out for therapeutic purposes following generally recognized medical principles and with the voluntary, express and prior consent of the person;

c) submission to unrecognized methods of treatment, without these being necessary for the health of the person and without his having voluntarily, expressly and prior consent. Such lawlessness is punishable by imprisonment from 8 to 12 years with the deprivation of the right to occupy certain positions or to exercise a certain activity for a period of 3 to 5 years¹.

3. committing, in the context of an armed conflict with or without an international character, against one or more persons protected by international humanitarian law, one of the following acts:

a) intentionally causing serious physical or mental suffering or serious injury to bodily integrity or health;

b) the application of torture or submission to inhuman or degrading treatment, as well as mutilation;

c) rape, sexual exploitation, coercion to prostitution, illegal detention of a woman who has become forcibly pregnant, to alter the ethnic composition of a population, forced sterilization or any other violent sexual act;

d) hostage-taking;

e) the deportation or forced transfer, in violation of the general rules of international law, of persons legally staying on the territory where the armed conflict takes place;

f) recruiting and incorporating children who have not reached the age of 18 in the national armed forces, as well as determining them, by any means, to actively participate in military operations;

g) deprivation of the right to be tried by a legally constituted and impartial court, the pronouncement of the conviction or its execution without observing a legal and impartial procedure, which provides the guarantees imposed by international law. These regulatory modalities are punishable by imprisonment from 10 to 20 years².

4. Committing, in the context of an armed conflict with or without an international character, the murder of one or more persons protected by international humanitarian law shall be punishable by imprisonment from 15 to 20 years or by life imprisonment.

2). Article 137¹, entitled *War offences against property and other rights*, provides for criminal liability for the following socially dangerous acts:

¹ *Criminal Code of the Republic of Moldova* No. 985 of 18.04.2002, Official Gazette of the Republic of Moldova No. 72-74 of 14.04.2009, in force according to the latest amendments and adjustments from 20.04.2022, art. 137, align. 2

² *Criminal Code of the Republic of Moldova* No. 985 of 18.04.2002, Official Gazette of the Republic of Moldova No. 72-74 of 14.04.2009, in force according to the latest amendments and adjustments from 20.04.2022, art. 137, align. 3

1. Committing, in the context of an armed conflict with or without an international character, one of the following acts:

a) the destruction, appropriation or confiscation of assets of the enemy party, in violation of international law and without its being justified by military needs;

b) the looting of a locality, including the one taken by storm, is punishable by imprisonment from 3 to 10 years.

2. Declaring, within the framework of an armed conflict of an international character, as extinguished, suspended or inadmissible in court the rights and actions of one or more citizens of the enemy party. Such an act is punishable by imprisonment for a term of 5 to 10 years.

3. The looting on the battlefield of the dead or wounded committed in the framework of an armed conflict with or without an international character, is punishable by imprisonment from 8 to 15 years.

3). Article 137², entitled "The use of prohibited means of conducting war", establishes criminal liability for the following form of illegal actions:

The use, in the context of an armed conflict with or without an international character, of:

a) poisoning or poisoned weapons;

b) asphyxiating, toxic or assimilated gases and any liquids, materials or similar processes;

c) weapons, projectiles, and materials likely to cause unnecessary physical suffering;

d) bullets that expand or flatten easily in the human body, such as bullets whose hard coating does not fully cover the middle or are punctured by cuts, shall be punished by imprisonment from 7 to 15 years.

4). Article 137³, marginally called *The use of prohibited methods of conducting war*, expressly provides that:

1. Injury to members of the armed forces and combatants of the enemy party who have laid down their weapons or who, for any other reason, are no longer able to defend themselves and who are not under the power of the enemy party, or the perfidious wounding of a member of the enemy armed forces or a combatant of the enemy forces, committed in the framework of an armed conflict with or without an international character, is punishable by imprisonment from 5 to 8 years;

2. Declaring, within the framework of an armed conflict with or without an international character, that there will be no mercy for the losers, constitutes a criminal offence and is punishable by imprisonment from 7 to 12 years;

3. Triggering, within the framework of an armed conflict with or without an international character, an attack:

a) against the civilian population or civilians who do not participate directly in hostilities;

b) against civil property protected by international humanitarian law, in particular buildings devoted to religious worship, education, art, science or charitable actions, against historical monuments, hospitals and places where the

sick or injured are gathered, as well as against localities, dwellings or buildings which are not defended and which are not used as military objectives;

c) against the staff of the humanitarian aid or peacekeeping mission, against the installations, equipment, units or vehicles used therein following the Charter of the United Nations, provided that they are entitled to the protection that international humanitarian law guarantees to civilians and property of a civil character;

d) against buildings, equipment, establishments and means of transport and personnel using the hallmarks provided for in the Geneva Conventions of 12 August 1949;

e) knowing that it will cause loss of human life among the civilian population, injuries to civilian persons, damage to civilian property or extensive, lasting and serious damage to the environment, which would be manifestly disproportionate to all the concrete and directly expected military advantage. Such transgressions are punishable by a prison sentence of 8 to 15 years;

4. Use, in the context of an armed conflict with or without an international character, of:

a) methods of struggle likely to cause unnecessary physical suffering;

b) the intentional starvation of civilians by depriving them of the goods indispensable for their survival or intentionally preventing them from receiving aid, contrary to international humanitarian law;

c) a person protected by international humanitarian law to avoid certain points, areas or military forces becoming the target of the military operations of the enemy party, shall be punished by imprisonment from 8 to 15 years;

5. The killing of one or more members of the armed forces and combatants of the enemy party who have laid down their weapons or who, for any other reason, are no longer able to defend themselves and who are not under the power of the enemy party, committed by perfidy in the context of an armed conflict with or without an international character. Such an offence is punishable by imprisonment from 15 to 20 years or life imprisonment.

5). Article 137⁴ *The use without right of distinctive signs of international humanitarian law*, implies:

The use without right of the distinguishing signs provided for in the Geneva Conventions of 12 August 1949, of the parliamentary flag, of the flag, of the military badges or the uniform of the enemy or the United Nations, as a means of protection in the context of an armed conflict with or without an international character, if this has caused:

a) serious injury to the bodily integrity or health of one or more persons;

b) the death of one or more persons. This wrongdoing is punishable by imprisonment from 7 to 15 years.

6). Article 138 entitled *Giving or executing a manifestly unlawful order. Failure to exercise or improper exercise of due control* provides for criminal liability for the following normative modalities of the war offence component:

1. The execution of a manifestly illegal order aimed at committing the offences provided for in Articles 135-137⁴ of the Criminal Code of the Republic of Moldova shall be punished with imprisonment from 5 to 10 years;

2. The giving, by the hierarchical superior or by the person holding the command of the armed forces, within an armed conflict with or without international character, of a manifestly illegal order aimed at committing the offences provided for in Articles 135-137⁴ of the Criminal Code of the Republic of Moldova, shall be punished with imprisonment from 8 to 15 years;

3. Failure to exercise or improperly exercise the proper control by a military chief or by the person who holds the command of the armed forces, which led to the commission of the offences provided for in Articles 135-137⁴ of the Criminal Code of the Republic of Moldova, shall be punished with imprisonment from 6 to 12 years.

7). Article 141, marginally called *The activity of mercenaries*, provides for criminal liability for the following normative modalities:

1. The participation of the mercenary in an armed conflict, in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state, shall be punished with imprisonment from 5 to 10 years;

2. The employment, training, financing or other insurance of mercenaries, as well as their use in an armed conflict, in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state, shall be punished with imprisonment from 10 to 15 years¹.

In the context of what was said, it is worth mentioning that, once the criminal responsibility for the socially dangerous acts of war is criminalized, the peace and security of mankind as supreme values are always protected by the Criminal Law of the Republic of Moldova. But preventing the commission of these kinds of crimes is much more essential in a rule of law.

Conclusions

Following the study, it is worth mentioning that prevention is a key step, which should exist in democratic states. This is primarily intended to prevent the occurrence of various phenomena, in our case – we are talking about the prevention of crimes in general and war crimes in particular. Thus, we can conclude that war crimes directly attack the peace and security of mankind. And the measures to prevent them can be aligned with the general measures of crime prevention, which were stated in the content of the research:

1) revealing, neutralizing and removing the causes and conditions of crime or some separate types thereof;

¹ *Criminal Code of the Republic of Moldova* No. 985 of 18.04.2002, Official Gazette of the Republic of Moldova No. 72-74 of 14.04.2009, in force according to the latest amendments and adjustments from 20.04.2022

- 2) revealing and removing the situations in certain geographical areas or a certain environment (entourage) that provoke the commission of crimes;
- 3) identification of groups of persons with a high degree of criminal risk and its reduction by applying various influence measures;
- 4) the identification of specific persons, whose behaviour indicates that they could in reality commit crimes, as well as the exercise of a preventive influence on them.

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