

CZU: 343.32(478)

DOI: <https://doi.org/10.5281/zenodo.20825275>**THE OFFENCE OF TREASON AGAINST THE STATE (ARTICLE 337 OF THE CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA) IN LIGHT OF THE QUALITY STANDARDS OF CRIMINAL LAW ENSHRINED IN ARTICLE 7 OF THE ECHR**

Radion COJOCARU,
PhD, University Professor,
Director, Doctoral School “Criminal Sciences and Public Law”,
“Ștefan cel Mare” Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-3809-7392

Mihai CURTEANU,
PhD Student, Police Chief Commissioner,
“Alexandru Ioan Cuza” Police Academy, Bucharest,
Romania
ORCID: 0009-0000-1775-793X

Abstract

This study examines the offence of treason against the state, regulated by Article 337 of the Criminal Code of the Republic of Moldova, from the perspective of the requirements regarding the quality of criminal law enshrined in Article 7 of the European Convention on Human Rights. The analysis is grounded in the principle of legality of offences and penalties (*nullum crimen, nulla poena sine lege*), highlighting the defining requirements of a criminal-law provision: accessibility, clarity, and foreseeability.

The scientific inquiry aims to assess the normative content of the incriminating provision, with particular emphasis on the manner in which the constituent elements of the offence of treason against the state are formulated, in order to determine the extent to which the norm enables its addressees to adjust their conduct accordingly and to exclude the risk of arbitrary application of criminal law.

By reference to the case-law of the European Court of Human Rights, the research assesses the conformity of the provisions of Article 337 of the Criminal Code with European standards concerning the foreseeability and certainty of criminal-law norms, while also highlighting the risks of an extensive interpretation that could undermine the principle of legal certainty and the guarantees of fundamental rights.

The study argues for the need for precise, clear, and foreseeable regulation of the offence of treason against the state, in full compliance with the requirements of Article 7 of the ECHR, with a view to ensuring a fair balance between the imperatives of protecting state security and respecting the fundamental rights and freedoms of the individual.

Keywords: criminal offence, treason against the state, accessibility, clarity, foreseeability.

INFRAȚIUNEA DE TRĂDARE DE PATRIE (ARTICOLUL 337 CODUL PENAL AL REPUBLICII MOLDOVA) ÎN LUMINA STANDARDELOR DE CALITATE ALE LEGII PENALE CONSACRATE DE ARTICOLUL 7 CTEDO**Abstract**

Studiul examinează infracțiunea de trădare de patrie, reglementată de Art. 337 din Codul penal al Republicii Moldova, prin prisma exigențelor de calitate ale legii penale consacrate de Art. 7 din Convenția Europeană a Drepturilor Omului. Analiza este fundamentată pe principiul legalității incriminării și pedepsei („*nullum crimen, nulla poena sine lege*”), fiind evidențiate cerințele definitorii ale normei penale: accesibilitatea, claritatea și previzibilitatea.

Demersul științific vizează evaluarea conținutului normativ al dispoziției de incriminare, cu accent asupra modului de formulare a elementelor constitutive ale infracțiunii de trădare de patrie, în vederea determinării gradului în care norma oferă destinatarilor săi posibilitatea de a-și conforma conduita și de a exclude riscul aplicării arbitrare a legii penale.

Prin raportare la jurisprudența Curții Europene a Drepturilor Omului, cercetarea apreciază conformitatea prevederilor Art. 337 C.pen. cu standardele europene privind previzibilitatea și certitudinea normei penale, fiind totodată evidențiate riscurile unei interpretări extensive ce ar putea aduce atingere principiului securității juridice și garanțiilor drepturilor fundamentale.

Se argumentează necesitatea unei reglementări precise, clare și previzibile a incriminării trădării de patrie, în deplină concordanță cu exigențele Art. 7 CtEDO, în vederea asigurării unui just echilibru între imperativele protecției securității statului și respectarea drepturilor și libertăților fundamentale ale persoanei.

Cuvinte-cheie: infracțiune, trădare de patrie, accesibilitate, claritate, previzibilitate.

Introduction. The legal regime governing treason against the state lies at the intersection of two inseparable requirements. On the one hand, the State has the right and the obligation to defend its sovereignty, independence, unity, indivisibility, security, and defence capacity. On the other hand, precisely in the field of offences against state security, the requirement of clarity of criminal law calls for a well-delimited formulation of the incrimination, since the margin of discretion left to law-enforcement authorities is, naturally, broader than in the case of many ordinary offences. These values are enshrined at the constitutional level and are incorporated into the criminal-law provision on treason against the state [1; 2, Art. 1; 4, Art. 337]; however, their protection does not relieve the legislature of the obligation to describe the prohibited conduct in strict accordance with the requirements of the principle of legality of incrimination.

The text of Article 337 of the Criminal Code of the Republic of Moldova was amended by Law No.136 of 6 June 2024, under which treason against the state is defined as “an act committed intentionally by a citizen of the Republic of Moldova against the sovereignty, independence, unity, indivisibility, security, or defence capacity of the Republic of Moldova, in the interest of a foreign state, a foreign organisation, an unconstitutional entity, or their representatives, expressed through: a) going over to the enemy in time of war or armed conflict; b) espionage; c) disclosure of state secrets; d) providing assistance for the purpose of carrying out hostile activities against state security” [1].

From the perspective of the present study, the central issue concerns the extent to which the legislative text satisfies the standards of accessibility and foreseeability developed in the case-law of the European Court of Human Rights.

Discussions and results obtained. I. The Evolution of the Law and the 2024 Legislative Intervention. In the previous wording, Article 337 of the Criminal Code described treason against the state as an act committed intentionally by a citizen of the Republic of Moldova to the detriment of the sovereignty, territorial inviolability, or state security and defence capacity of the Republic of Moldova, by going over to the enemy, espionage, disclosure of state secrets, or aiding a foreign state in carrying out hostile activity against the Republic of Moldova [4, Art. 337].

Law No.136/2024 introduced several major legislative amendments concerning the scope of incrimination of the offence of treason against the state [1]. One of the legislature’s primary concerns was to create a legislative model of incrimination capable of allowing a clearer and more effective individualisation of criminal liability for the act of treason against the state. Such individualisation is strictly calibrated according to the seriousness of the various forms of treason established by the legislature within the criminal-law framework.

Accordingly, the incriminating provision in Article 337 of the Criminal Code was structured into four paragraphs: paragraph (1) provides for the basic composition or standard form of the offence; paragraph (2) concerns the commission of treason against the state for material gain or by a public person, a person holding a position of responsibility, or a person holding a position of public dignity; paragraph (3) refers to the act that caused the death of a person; and paragraph (4) regulates the special form of exemption from criminal liability [1].

Another legislative amendment concerns the reformulation of the phrase “sovereignty, territorial inviolability or state security and defence capacity” as “sovereignty, independence, unity, indivisibility, security or defence capacity”, thereby bringing the criminal-law text more closely into line with the social values provided for in Article 1 of the Constitution [1; 2, Art. 1]. Through this legislative amendment, the sphere of social relations subject to criminal-law protection through the incrimination of treason against the state was substantially expanded. Thus, whereas the previous incriminating text listed four social values subject to criminal-law protection, the current list has been extended to six social values, through the inclusion of the “unity” and “indivisibility” of the State [1]. Such clarification is justified in the context of the geopolitical vulnerability of the Republic of Moldova, especially with reference to the experience of the separation of the Transnistrian region.

The third legislative amendment concerns the clarification of “going over to the enemy” as a normative manner of committing the offence. Thus, the wording “going over to the enemy” became “going over to the enemy in time of war or armed conflict” [1]. Through this intervention, the legislature specified the temporal element of the act, with the aim of distinguishing this manner of commission from other hostile acts that may be carried out to the detriment of the security of the Republic of Moldova. Therefore, the act of going over to the enemy may be committed either in time of war or during an armed conflict [1; 4, Art. 337].

In fact, even before the entry into force of Law No.136/2024, the act of going over to the enemy was treated as a criminal activity that could be carried out only in time of war: “Going over to the enemy means both the movement of a citizen of the Republic of Moldova to the enemy camp, on its territory, within the disposition of enemy troops, and the commission of other acts capable of favouring the enemy’s activity or weakening the combat strength of our army or of allied armies, acts committed on the territory of our country in time of war” [3, p. 525]. We consider, however, that such clarification by the legislature is welcome, since not every military conflict reaches the scale of a war within the meaning of Article 127 of the Criminal Code, which defines wartime as “the interval from the date of declaration of mobilisation or the commencement of war operations until the date on which the army is placed on a peacetime footing” [4, Art. 127].

Another legislative amendment consists in the reformulation of the act of “aiding a foreign state in carrying out hostile activity against the Republic of Moldova” as “aiding for the purpose of carrying out hostile activities against state security” [1]. The rationale for this clarification is explained, on the one hand, by the legislature’s concern to distinguish this normative manner from going over to the enemy, by removing the word “hostile” in its former form associated with the enemy, and, on the other hand, by the intention to expand the scope of incrimination of the offence of treason against the state to the new emerging threats affecting state security. In the current geopolitical context, shaped by hybrid warfare, separatism, the dangers of their expansion, the massive manipulation of electoral processes through the external corruption of voters, and the energy vulnerabil-

ity of the Republic of Moldova, such clarification of the normative text may be explained by the need to adapt criminal law to constantly evolving security threats [5].

II. The Standard of Quality of Criminal Law in the Case-Law of the Strasbourg Court. Following its accession to the ECHR, the Republic of Moldova assumed the obligation to guarantee the respect and protection of fundamental rights and freedoms to all persons within its jurisdiction [7, Art. 1]. According to the principle of subsidiarity, the primary responsibility for ensuring fundamental rights and freedoms lies with the State. This principle means that, before applying to the Convention bodies, any applicant must have submitted his or her complaint to the competent national authorities capable of providing an effective and adequate remedy in the circumstances of the case [7, Art. 35]. At the same time, this principle reflects not only the existence of effective remedies, but also the primary obligation of all authorities, especially the courts, to prevent violations by directly applying the European Convention in their own judgments.

Article 7 § 1 of the Convention enshrines not only the prohibition of the retroactive application of a more severe criminal law, but also the prohibition of the extensive application of criminal law to the detriment of the accused [7, Art. 7; 8, para. 2]. In *Kokkinakis v. Greece*, the Court held that the law must clearly define offences and penalties [9, § 52]. In *The Sunday Times v. the United Kingdom*, the Court formulated the requirements of accessibility and foreseeability, stating that a norm is “law” only if it is formulated with sufficient precision to enable a person to regulate his or her conduct [10, § 49].

In *Cantoni v. France*, the Court clarified that the requirement of foreseeability is not excluded merely because the addressee of the norm must seek appropriate legal advice in order to assess the consequences of his or her conduct, especially where persons engaged in professional activities are concerned. However, this possibility does not exempt the legislature from the obligation to formulate the criminal-law norm in a sufficiently accessible and foreseeable manner [11, § 35].

Furthermore, in *Kafkaris v. Cyprus*, the Court emphasised that Article 7 concerns punishment as well, not only the definition of the offence [12, §§ 137-142]. In *Del Río Prada v. Spain and Kononov v. Latvia*, emphasis was placed on the foreseeability of judicial interpretation and on the limits of the jurisprudential development of criminal law [13, §§ 91-93, 111-117; 14, § 185]. In *G.I.E.M. S.R.L. and Others v. Italy*, the Court held that there must be a sufficient intellectual link between the perpetrator’s conduct and the criminal liability incurred [15, §§ 241-242, 246].

In *Sud Fondi S.R.L. and Others v. Italy*, and subsequently in *Pessino v. France*, the Court stated that the interpretative function of the courts cannot compensate for the lack of determinacy of the legal text [16, §§ 105-117; 17, §§ 35-36]. In a related context, the judgment in *Rotaru v. Romania* affirmed that legal norms must indicate with sufficient clarity the scope of the authorities’ discretion and the manner of its exercise, in order to prevent arbitrariness [18, §§ 55, 61].

III. Hostile Activities against State Security and the Problem of Criminal Legality. The core of the criticism lies in the phrase “hostile activities against state security”. The Criminal Code does not contain a definition of this notion [4]. Nor does Law No.249/2025 on the National Security of the Republic of Moldova define the term “hostile” separately, although it regulates notions such as “threat”, “risk”, “danger”, “vulnerability”, and “national security” [6, Art. 3]. This gives rise to the first difficulty: the legislature has transferred to judicial practice the task of giving content to a formula with a very broad semantic scope.

In recent literature, the conduct of “providing assistance for the purpose of carrying out hostile activities against state security” is explained by reference to acts such as

recruiting citizens in the interest of a foreign intelligence service, supporting the activity of foreign spies, or carrying out other actions directed against the sovereignty, independence, unity, indivisibility, security, or defence capacity of the Republic of Moldova [5].

From an explanatory point of view, the doctrinal approach is useful. From the perspective of Article 7 of the Convention, however, doctrinal clarification cannot take the place of a legal definition. There is also the view that the former Article 337 no longer responded to new manifestations affecting national security, but this solution also signals the risk that the new regulation may shift the problem from the insufficiency of the old wording to the elasticity of the new one [5].

It is not irrelevant that, in August 2025, the Constitutional Court declared inadmissible an objection of unconstitutionality concerning the former phrase “providing assistance to a foreign state in carrying out hostile activity against the Republic of Moldova” [19]. Among the arguments relied on by the Court was the following reasoning: “The Court notes that, although the legislature used broader wording in the phrase ‘aiding a foreign state in carrying out hostile activity against the Republic of Moldova’ in the context of the offence of treason against the state, other wording in the challenged provision clarifies its scope of application. For example, by using the phrase ‘aiding a foreign state,’ the legislature specifies the condition of collaboration between the citizen of the Republic of Moldova and a foreign state. Likewise, by using the phrases ‘to the detriment of the sovereignty, territorial inviolability or state security and defence capacity of the Republic of Moldova’, as well as ‘against the Republic of Moldova’, the legislature specifies the purpose of the assistance in question and the values against which the criminal actions are directed, namely the special legal object. At the same time, the legislature sanctions only the act committed intentionally” [19, § 27].

The Court also held: “Having regard to the variety of situations that may arise in practice, the Court considers that it is neither possible nor reasonable for the legislature to provide in the Criminal Code an exhaustive list of the ways in which assistance may be provided to a foreign state and, respectively, of the hostile activities carried out against the Republic of Moldova, which may occur in the context and essence of the offence of treason against the state. Moreover, such a list could omit the regulation of situations that would reasonably justify criminal liability under Article 337 of the Criminal Code” [19, § 29].

The finding of inadmissibility does not, however, amount to a substantive validation of the quality of the text. On the contrary, the mere fact that the former wording generated constitutional litigation confirms the persistence of an area of normative uncertainty. Since the new text neither provides a list of the acts concerned nor lays down a legal criterion for delimitation, the reservations have not disappeared.

Conclusions. Any assessment of the clarity of the text must also take into account the place of Article 337 of the Criminal Code within the overall framework of offences against state security. Indeed, the more Article 337 of the Criminal Code uses terms with a high degree of generality, the more difficult it becomes to distinguish treason against the state from other offences against state security.

With regard to the modality consisting in “providing assistance for the purpose of carrying out hostile activities against state security”, the law does not expressly specify which hostile activities are envisaged, only doctrinal examples being indicated, such as recruitment for a foreign intelligence service, facilitating the activity of foreign spies, or committing acts likely to seriously affect the security of the Republic of Moldova [5].

From the perspective of Article 7 of the Convention, such a margin of interpreta-

tion must be treated with caution, since a criminal-law norm must enable its addressee to foresee, to a reasonable degree, whether a certain conduct falls within the scope of criminal incrimination [7, Art. 7; 8, para. 2]. Amnesty International's reaction following the adoption of Law No.136/2024 moved precisely in this direction, pointing to the risk that the expanded definition of treason against the state could be used abusively against critical voices [20]. Even though such a position belongs to a non-governmental actor, not to a judicial body, the warning remains valid.

The criticism concerning the lack of clarity of Article 337 of the Criminal Code also has a broader Convention dimension, since an incrimination formulated in open-ended terms may produce collateral effects on freedom of expression. The Court held in *Rotaru v. Romania* that the law must provide adequate protection against arbitrariness [18, §§ 55, 61]. In criminal matters, this requirement becomes all the more important where the norm may affect conduct situated in the proximity of the exercise of fundamental freedoms.

At the European level, a criminal-law norm formulated in vague terms may raise issues both from the perspective of Article 7 of the Convention, with regard to the foreseeability of incrimination, and, in a related manner, from the perspective of Article 10, where it risks producing a chilling effect on the exercise of freedom of expression [7, Arts. 7 and 10].

Within this framework, phrases such as “hostile activities”, if not delimited by clear criteria from lawful conduct, may create an area of uncertainty incompatible with the requirement of quality of criminal law.

Bibliographical references

1. Law No.136 of 06.06.2024 amending certain normative acts (amending the Criminal Code and the Contravention Code). In: Official Gazette of the Republic of Moldova, 07.06.2024, No.245-246, Art. 353. Available: <https://monitorul.gov.md/ro/monitorul/view/pdf/2912/part/1#page=19>.
2. Constitution of the Republic of Moldova, adopted on 29.07.1994. In: Official Gazette of the Republic of Moldova, 12.08.1994, No.1.
3. Borodac A. Criminal Law Handbook. Special Part (for university education). Chișinău: Central Printing House, n.d.
4. Criminal Code of the Republic of Moldova No.985-XV of 18.04.2002. In: Official Gazette of the Republic of Moldova, 13.09.2002, No.128-129.
5. Cojocaru R. The offence of treason against the state in the criminal legislation of the Republic of Moldova – vulnerabilities, challenges and solutions. In: Scientific Annals of the “Ștefan cel Mare” Academy of the Ministry of Internal Affairs of the Republic of Moldova, 2024, No.20, pp. 29-42.
6. Law No.249 of 10.07.2025 on the National Security of the Republic of Moldova. In: Official Gazette of the Republic of Moldova, 04.09.2025, No.463-466, Art. 627.
7. Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950.
8. European Court of Human Rights. Guide on Article 7 of the European Convention on Human Rights. No punishment without law. Strasbourg: Council of Europe/European Court of Human Rights, updated on 28 February 2026. Available: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_7_eng.
9. *Kokkinakis v. Greece*, application No.14307/88, ECtHR judgment of 25 May 1993.
10. *The Sunday Times v. the United Kingdom*, Application No.6538/74, ECtHR judgment of 26 April 1979.

11. *Cantoni v. France*, application No.17862/91, ECtHR judgment of 15 November 1996.
12. *Kafkaris v. Cyprus* [GC], application No.21906/04, ECtHR judgment of 12 February 2008.
13. *Del Río Prada v. Spain* [GC], application No.42750/09, ECtHR judgment of 21 October 2013.
14. *Kononov v. Latvia* [GC], application No.36376/04, ECtHR judgment of 17 May 2010.
15. *G.I.E.M. S.r.l. and Others v. Italy* [GC], Applications Nos. 1828/06, 34163/07 and 19029/11, ECtHR judgment of 28 June 2018.
16. *Sud Fondi S.r.l. and Others v. Italy*, application No.75909/01, ECtHR judgment of 20 January 2009.
17. *Pessino v. France*, application No.40403/02, ECtHR judgment of 10 October 2006.
18. *Rotaru v. Romania* [GC], application No.28341/95, ECtHR judgment of 4 May 2000.
19. Decision of the Constitutional Court of the Republic of Moldova No.108 of 12.08.2025 declaring inadmissible Referral No.52g/2025 concerning the objection of unconstitutionality of certain provisions of Article 337 para. (1) of the Criminal Code, in the wording prior to Law No.9 of 2 February 2023.
20. Amnesty International. Moldova: New definition of treason against the state passed by parliament threatens freedom of expression. 31 May 2024. Available: <https://www.amnesty.org/en/latest/news/2024/05/moldova-new-definition-of-high-treason-passed-by-parliament-threatens-freedom-of-expression/>.