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## **SOME CONSIDERATIONS REGARDING THE OBJECT OF THE CRIME PROVIDED FOR IN ART. 2461 CRIMINAL CODE OF THE RM (UNFAIR COMPETITION)**

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### **Ursu V., Musteața E. Some considerations regarding the object of the crime provided for in art. 2461 Criminal code of the RM (unfair competition).**

Crimes are always based on the existence of a certain relationship or situation that is violated by the act of conduct that constitutes the crime. This relationship or situation is what is called the object of the crime.

The Constitution of the Republic of Moldova in article 9 paragraph (3) proclaims that «The market, free economic initiative, fair competition are the basic factors of the economy», and in article 126 paragraph (2) letter b) it is provided that «The State must ensure the freedom of trade and entrepreneurial activity, the protection of fair competition, the creation of a favorable framework for the exploitation of all production factors»

Starting from the mentioned requirement, the legislator established a complex mechanism that would ensure its fulfillment, among which there is a corresponding normative framework.

Considering the diversity of the actions that constitute unfair competition, the fields in which they can be committed, determining the object to which the crime of unfair competition is aimed is of significant importance.

In this scientific article, a detailed analysis of the concept of «object of the crime of unfair competition» was carried out under the provisions of the legislation of the Republic of Moldova. The article highlighted the importance of the object of the offense in the context of unfair competition, showing how it serves as a central pillar for establishing guilt and enforcing the law. It was emphasized that the object of the crime of unfair competition consists of protecting commercial and economic interests, as well as preventing unfair practices that harm the competitive environment. This scientific article provides a clear and informed perspective on the object of the crime of unfair competition in the Republic of Moldova, highlighting the importance of this concept in law enforcement and in maintaining a fair and equitable competitive environment.

**Key words:** competition, the national economy, unfair competition, the object of the crime, fair competition, economic interests.

### **Урсу В., Мустяца Е. Деякі міркування щодо об'єкта злочину, передбаченого ст. 2461 Кримінального кодексу РМ (нечесна конкуренція).**

Злочини завжди ґрунтуються на наявності певних відносин або ситуації, які порушуються актом поведінки, що становить злочин. Цей зв'язок або ситуація є тим, що називається об'єктом злочину.

Конституція Республіки Молдова в частині (3) статті 9 проголошує, що «Ринок, вільна економічна ініціатива, чесна конкуренція є основними чинниками економіки», а в частині б) частини (2) статті 126 передбачено, що «Держава повинна забезпечити свободу торгівлі та підприємницької діяльності, захист чесної конкуренції, створення сприятливих умов для експлуатації всіх факторів виробництва»

Виходячи із зазначеної вимоги, законодавець встановив комплексний механізм забезпечення її виконання, серед якого є відповідна нормативна база.

Враховуючи різноманіття дій, що становлять недобросовісну конкуренцію, сфер, у яких вони можуть бути вчинені, важливе значення має визначення об'єкта, на який спрямований злочин недобросовісної конкуренції.

У даній науковій статті проведено детальний аналіз поняття «об'єкт злочину недобросовісної конкуренції» відповідно до положень законодавства Республіки Молдова. У статті підкреслено важливість об'єкта правопорушення в контексті недобросовісної конкуренції, показано, як він є центральною опорою для встановлення вини та забезпечення виконання закону. Наголошено, що об'єктом злочину недобросовісної конкуренції є захист комерційних та економічних інтересів, а також запобігання недобросовісним діям, які завдають шкоди конкурентному середовищу. У цій науковій статті представлено чітке та обґрунтоване бачення об'єкта злочину недобросовісної конкуренції в Республіці Молдова, підкреслюючи важливість цього поняття в правоохоронній діяльності та підтримці справедливого та конкурентного середовища.

**Ключові слова:** конкуренція, національна економіка, недобросовісна конкуренція, об'єкт злочину, добросовісна конкуренція, економічні інтереси.

**Introduction.** Crimes are always based on the existence of a certain relationship or situation that is violated by the act of conduct that constitutes the crime. This relationship or situation is what is called the object of the crime.

The Constitution of the Republic of Moldova in Article 9 paragraph (3) proclaims that «The market, free economic initiative, fair competition are the basic factors of the economy», and in Article 126 paragraph (2) letter b) it is provided that «The State must ensure the freedom of trade and entrepreneurial activity, the protection of fair competition, the creation of a favorable framework for the exploitation of all production factors»

Starting from the mentioned requirement, the legislator established a complex mechanism that would ensure its fulfillment, among which there is a corresponding normative framework. Thus, the Parliament of the Republic of Moldova adopted Competition Law no. 183 of 11.07.2012 which establishes the legal framework for the protection of competition, including the prevention and countering of anti-competitive practices and unfair competition, the realization of economic concentrations on the market, establishes the legal framework regarding the activity and competence of the Competition Council and the responsibility for the violation of legislation in the field of competition, the purpose of the law consisting in the regulation relations related to the protection, maintenance, and stimulation of competition to promote the legitimate interests of consumers.

«The provisions of this law apply to actions or inactions that have as their object or have or may have the effect of restricting, preventing or distorting competition, as well as actions of unfair competition...», mentions art. 2 of the above-mentioned law. The law also defines unfair competition as any action, carried out by enterprises in the process of competition, which is contrary to honest practices in economic activity. The law forbids companies to carry out actions of unfair competition, listing and defining such actions in art. 15–19. Such an extensive list indicates that unfair competition and monopolization of economic activity have a wide range of objects to which the consequences of such activities are directed.

Considering the diversity of the actions that constitute unfair competition, the fields in which they can be committed, determining the object to which the crime of unfair competition is aimed is of significant importance

Fewer problems exist in the case of determining the general and generic or group legal object, the actions of unfair competition primarily harm the economic activity of companies and are contrary, as mentioned, to honest customs in this activity.

We believe that there are certain difficulties in establishing the specific object of offenses related to unfair competition. In our opinion, this is due to the lack of uniformity in the classification of economic crimes according to the object of the attack.

I have mentioned in the text above the list of actions that, in the opinion of the legislator, constitute actions of unfair competition. Thus, art. 15 of the law qualifies discrediting competitors as unfair competition, art. 16 prohibits instigating the termination of the contract with the competitor, in turn, art. 17 prohibits the illegal obtaining and/or use of the competitor's trade secret, art. 18 – diversion of the competitor's clientele, and art. 19 prohibits any actions or facts that are likely to create, by any means, confusion with the enterprise, products or economic activity of a competitor. At the same time, the concrete factual methods by which the confusion is created, or the actions by which the other forms or varieties of unfair competition are carried out, are very varied, for which reason, the legislator did not even risk to provide them expressly in the provisions of the invoked norms.

The situation described, but also the variety of opinions expressed in the specialized literature regarding the object of the crime of unfair competition led us to elaborate the present study.

**Applied methods and materials.** To achieve the proposed goal, taking into account the specificity and complex character of the investigated theme, the following research methods were used: logical, systematic, and comparative. The research undertaken is based on studying the doctrine and legislation of the Republic of Moldova.

**Basic content.** The criminalization of unfair competition is of significant importance for several reasons, such as:

- Protecting fair competition: Fair and honest competition is essential to keeping markets efficient and society free from unfair or fraudulent business practices.
- Consumer Protection: Consumers benefit from healthy competition because it can lead to better choices and lower prices.
- Promoting innovation: A healthy competitive environment stimulates innovation and economic development. When companies can compete fairly, they are motivated to improve their products and services and invest in research and development.
- Supporting small and medium-sized enterprises: In the absence of unfair competition, small and medium-sized enterprises have a better chance of thriving in the market.
- Enforcing ethical and legal standards: By criminalizing unfair competition, it sets ethical and legal standards for business and discourages unfair practices, which can improve public confidence in the private sector.

In general, *the reason for the incrimination of crimes to combat unfair competition* consists of protecting the market economy by ensuring fair competition. Moreover, this is reflected in bringing extra protection conferred by the criminal law to the subjective rights of the legal person against any anti-competitive practices, contributing to maintaining a fair and open competitive environment. It encourages innovation, ensures compliance with ethical and legal standards, and protects the interests of consumers and small and medium-sized businesses.

Thus, analyzing the legal-criminal side of unfair competition, we must start with the analysis of the object of the offense provided for in art. 2461 of the Criminal Code of the Republic of Moldova.

The object of the crime essentially represents the values and social relations against which the facts that constitute the material element of the crime are directed and which are harmed or endangered by their commission [1, page 70].

The social values shown in para. (1) of art. 2 of the Criminal Code of the Republic of Moldova, namely: the person, 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, the entire legal order, as well as the social relations created in around them and which are protected against crimes, become the object of the crime.

In criminal law, it is important to determine what object or relationship is affected by a crime, as this helps to determine guilt and the correct application of the law. Without a relationship or object affected, the offense could not exist.

Crime, as an act of individual behavior, does not target all social relations. Rather, the criminal act violates a specific value, and consequently affects particular social relations that are formed around and because of this value. In reality, no crime does not go against social values protected by criminal law.

In specialized literature, the object of the crime appears in several forms, namely: the general legal object, the generic (group) legal object, and the special (specific) legal object.

A large part of crimes have a material object, which consists of objects, things, goods, or the body of the person towards whom or against whom the criminal action or inaction was directed. Not all crimes

have a material object, because not in every crime the social value that constitutes the legal object is susceptible to incorporation into a thing, good or person.

The general legal object is made up of all the relationships and social values protected by the rules of criminal law.

The generic legal object consists of a group of similar social values, protected by legal norms and which can only be violated by certain specific actions or inactions. These social values may include individual rights, goods, public interests, or other aspects considered important in society. The generic legal object serves as a criterion for classifying crimes in the Special Part of the Criminal Code, thus, the legislator uses the generic legal object to organize and classify crimes in different categories, depending on their impact on these social values, thus facilitating the application of the criminal law and highlighting the importance of protecting these values in society.

The special (specific) legal object consists of the value against which the action (inaction) provided by the criminal law is directly directed, a value characterized by certain own, special features, which serve to individualize a crime within the same group. Each crime in a certain chapter damages all the values in that group, but, at the same time, only a certain aspect of these values [2, page 131].

As it follows from the name of Chapter X of the Criminal Code of the Republic of Moldova – «Economic crimes» – social relations regarding the national economy are those that form the generic legal object of the crime of unfair competition, provided for in art. 2461 of the Criminal Code of the Republic of Moldova.

In this context, there is a constitutional justification for the fact that precisely the social relations regarding the national economy represent the generic legal object of the crime in question.

According to paragraph (1), art. 126 of the Constitution of the Republic of Moldova: «The economy of the Republic of Moldova is a market economy, of social orientation, based on private property and public property, engaged in free competition». In addition, according to para. (3) art. 9 of the Constitution: «The market, free economic initiative, and fair competition are the basic factors of the economy».

The special legal object of the crime of unfair competition is social relations regarding unfair competition.

In a broader sense, the crime of unfair competition has as its special legal object the social relations that protect the right of traders to fair competition, the right of the holders of protection titles for factory, trade and service marks, for emblems, companies, names or other commercial designations, for inventions and technical achievements, for drawings and industrial models applied to products, etc. [3, page 63].

In one opinion, the special legal object of unfair competition consists in social relations regarding the regime established to ensure probity in terms of indicating the origin, provenance, and quality of products manufactured or put into circulation, as well as in terms of the use of trade names or of the name of trade or industrial organizations, in such a way that the attraction and maintenance of clientele is achieved only through loyal means [4, page 332].

In another sense, the special legal object of unfair competition is represented by social relations related to the honest conduct of economic relations and the defense of the interests of producers and consumers against acts of unfair competition [5, page 235].

In the following, we will analyze more broadly what competition represents, as a social value protected by the criminal offense provided for in art. 2461 of the Criminal Code of the Republic of Moldova.

Through its origin, the notion of competition was formed and is used concerning any social relations. In this order of ideas, by «competition» we mean a confrontation between opposing tendencies, that converge towards the same goal [6, page 222].

From the perspective of market relations, competition fulfills more specialized functions: 1) it facilitates the adjustment of demand and supply in any field of economic activity. In markets dominated by demand, the specialization of the company in an individualized sector of demand is pursued, concerning potential consumers; 2) the exercise of competition prevents the achievement of monopoly profit by certain economic subjects; 3) competition stimulates innovations, the creation of new products and increasingly perfected production techniques, the optimal way to conquer advantageous positions on the market; 4) competition ensures a rational allocation of resources between the various uses requested on the market; 5) competition establishes a distribution of benefits proportional to the effective contribution of economic subjects in the process of production and distribution of goods.

As an object of protection, competition is an element of social relations with economic characteristics, namely social relations that develop in the sphere of the economy in connection with the production, exchange, distribution, and consumption of material goods (as a generic object) and social relations that regulate the procedure established for entrepreneurial activities or other economic activities in connection with the production, distribution, exchange, and consumption of material goods and services (as a specific object) [7, page 35-36].

Thus, competition is inherent to entrepreneurial activity as a type of economic activity resulting from the production, distribution, exchange, and consumption of goods, in the presence of a plurality of economic entities on the same market of goods. It is only because of this quality of competition that the category of «competitive relations» appears in entrepreneurship.

Why should competition (competitive relations) be distinguished as a separate object of legal-criminal protection? The answer to this question is predetermined by the constitutional norms that were previously enunciated, by the action of a special law (Competition Law no. 183 of 11.07.2012), by the policy in the field of competition, which aims to support, develop, and protect competition. It can be said with certainty that competition policy is one of the most current areas of activity of the state and the international and regional community. And, probably, no activity of the state authorities in the sphere of the economy causes such a strong reaction from the representatives of the business environment as its anti-monopoly measures.

The existence of competition allows choosing from different ways of satisfying needs based on different preferences. Competition as a social function is important, first of all, for economic entities. In the economic literature, it is noted that competition is a professional function of the daily economic activities of economic entities, in the achievement of which both these and other participants are interested [8, page 68]. How this function is performed and the level of professionalism depends on the assessment of this activity by society and the state.

Here it seems important to pay attention to the concept of «interest», which has a different content and meaning. Interest is considered an important element of social relations in the sphere of economic activity, contributing to its development. Interest is also a legal-criminal category, which is important for understanding the object of legal-criminal protection.

Economic interests are seen as a social orientation of the subjects' activity to create the most favorable social conditions, necessary to satisfy their material needs and requirements, and to ensure the highest possible physical and social vitality [9, page 102].

The legislator highlighted the public interest of the state in the presence of competition in the country's economy, although, in the structure of protected relations, there is also a private interest of commercial entities - bona fide competitors and consumers. Due to the existence of criminal law measures in the system of measures to protect competition, the issue of the balance between private and public interest cannot remain unnoticed, especially since it is one of the most current issues in criminal law.

Competition is that point of connection that connects, on the one hand, commercial entities that operate on the same market of goods and, therefore, compete with each other, on the other hand - commercial entities and consumers of their goods (works, services), as well as the state.

Relations based on the principle of fair competition represent a qualitative state of competitive relations with the participation of economic entities whose economic activity respects the constitutional principle of good faith. This principle creates a certain regime for a social relationship, as a result of which it acquires a property that meets the requirements of fairness, integrity, and reasonableness, reflecting the balance of interests within it. Therefore, we consider that there is a compromise: fair competitive relations represent the essence of social relations based on the principle of fair competition [10, page 91].

Summarizing the above, we consider that the object of legal-criminal protection is fair competition. Taking into account the traditional vision in the science of criminal law on the object of legal-criminal protection as social relations, it is necessary to consider fair competition through the prism of social relations and, thus, to define the object of protection through one of the manifestations of its essence, namely competition relations loyal as a type of economic (entrepreneurial) relations based on the presumption of good faith competition of economic entities.

Fair competition implies honest competition, with respect for legal norms, customs, traditions, and ethical norms that operate in the field of entrepreneurial activity. Fair competition is characterized by the non-discriminatory use by economic agents of some of the following tools: the implementation in the production process of the achievements of technical and scientific progress; raising the quality of

goods produced or services provided; expanding the assortment of goods produced or services provided; lowering the prices of goods or services as a result of reducing their costs below those of competitors; the development of the forms and methods of serving consumers after the sale of the goods or the provision of the service; raising the quality of goods packaging; granting some facilities to consumers, under the conditions of free access to the market and the full possibility of knowing the means of regulating relations between the producer and the consumer or between the provider and the consumer; the promotion of ways to advance goods or services to the consumer, etc. [11, page 229].

In Romanian specialized literature, the point of view is widespread, according to which the crime of unfair competition always has a material object [12, page 645].

According to the authors Brînză S., and Stati V., the material (immaterial) object of the crime of unfair competition is represented by:

- the products of a competitor, with which the perpetrator creates confusion, by any means;
- the products of a competitor, which are discredited by the spread by the perpetrator, in the process of trade, of false statements;
- the competitor's goods, regarding whose nature, manufacturing method, characteristics, suitability for use, or quantity the consumer is misled;
- the company name or trademark used by the perpetrator in a way that confuses with those used legitimately by another economic agent;
- the goods produced or sold by an economic agent, compared for advertising purposes with the goods of other economic agents [13, page 235].

By committing the crime of unfair competition, certain rights and interests of people, who are called victims, are harmed. The doctrine mentions that the victim of the crime is the subject of social relations, whose defense is exercised by the corresponding criminal law. Social relationships are protected by criminal laws precisely because, through them, the subjects of these relationships are protected, and viewed as natural or legal persons [14, page 171].

Thus, from the aforementioned and the provisions of the criminal law, it appears that victims of unfair competition can be people who can compete with the perpetrator, as well as those who have the capacity of consumers.

Per Art. 4 of the Competition Law [15], a competitor means an independent enterprise that is active in a relevant market. The relevant market is the market within which a certain competition issue must be evaluated and which is determined by relating the product's relevant market to the relevant geographic market. The relevant market of the product is the market of products considered by consumers as interchangeable or substitutable due to their use, their physical, and functional characteristics, and price. In the same context, the relevant geographic market means the area where the companies are involved in the supply or demand of the relevant market of the product, where the conditions of competition are sufficiently homogeneous and which can be distinguished from the neighboring geographical areas by conditions of competition that differ appreciably.

Regarding the victim-consumer, in the legislation, there are different notions regarding the qualification of legal and natural persons as consumers. Law no. 105 of 13.03.2003 on consumer protection defines the consumer in Art. 1 as any natural person who intends to order or procure or who orders, procures, or uses products, or services for needs unrelated to entrepreneurial or professional activity. On the other hand, the Competition Law, in Art. 4 defines the consumer as the user, directly or indirectly, of the products, including the manufacturer who uses the products for processing, the wholesaler, the retailer, or the final consumer. At the same time, the same article of the Competition Law expressly provides that for this law, the main notions used are autonomous notions of the field of competition [16, page 172]. As a consequence, we agree with the opinion that they can be victims of the offense of unfair competition among consumers, both natural and legal persons.

**In conclusion**, the clear definition of the object of the offense of unfair competition in the Republic of Moldova helps to establish a clear line between permitted and prohibited behaviors in the business environment. It ensures a coherent legal framework and provides effective mechanisms for protecting the legal rights and interests of economic agents in a society based on competition.

Thus, the object of the offense of unfair competition in the Republic of Moldova is focused on protecting fair competition and appropriate social relations, thus ensuring a fair and fair business environment for all participants. This is an essential component in maintaining integrity and ethics in the business world and in protecting legal economic interests.

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