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GALAN Doina-Cezara

VICTIM CONSENT IN THE CONTEXT OF OFFENCES AGAINST SEXUAL LIFE

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Autor:	_____	GALAN Doina-Cezara
Conducător de doctorat:	_____	BUJOR Valeriu, doctor în drept, profesor universitar
Comisia de îndrumare:	_____	CUȘNIR Valeriu, doctor habilitat în drept, profesor universitar
	_____	GRECU Raisa, doctor habilitat în drept, conferențiar universitar
	_____	IUSTIN Viorel, doctor în drept, conferențiar universitar

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Author: GALAN Doina-Cezara

Doctoral Supervisor: BUJOR Valeriu, PhD in Law, Professor

Doctoral Committee:

AVORNIC Gheorghe, Doctor Habilitatus in Law, Professor, "Constantin Stere" University of Political and Economic Studies of Europe – Chair;

BUJOR Valeriu, PhD in Law, Professor, "Constantin Stere" University of Political and Economic Studies of Europe – Doctoral Supervisor;

CUȘNIR Valeriu, Doctor Habilitatus in Law, Professor, Institute for Legal, Political and Sociological Research of Moldova State University – Official Reviewer;

COJOCARU Radion, PhD in Law, Professor, "Ștefan cel Mare" Academy of the Ministry of Internal Affairs – Official Reviewer;

SORBALA Mihail, PhD in Law, Associate Professor, Free International University of Moldova – Official Reviewer.

Secretary of the Doctoral Committee: BUJOR Valeriu, PhD in Law, Professor.

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Author: _____ Doina-Cezara GALAN

Secretary of the Doctoral Committee: _____ Valeriu BUJOR, PhD in Law, Professor

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CONCEPTUAL FRAMEWORK OF THE RESEARCH

Relevance and Importance of the Research Problem

With the introduction of Article 132² into the Criminal Code, the institution of victim consent has attracted increased interest in the doctrine concerning offences against sexual life. The absence of express provisions defining the concept of consent in domestic criminal law may create difficulties in the application of consent-based legislation due to challenges related to legal certainty, a principle requiring the law to enable those subject to it to regulate their conduct with certainty.[1]

The limited scholarly attention devoted to the investigation of this issue, combined with the complexity of correctly identifying and legally classifying acts involving victim consent in the context of offences against sexual life, gives this problem particular relevance. The issue has attracted the attention of both Moldovan and foreign researchers: V. Bujor, V. Cușnir, A. Paladii, A. Borodac, S. Brînza, V. Stati, S. Copețchi, V. Grosu, I. Macari, M. Botnarenco, G. Ulianovschi et al. (Republic of Moldova); H. Diaconescu, I. Miron, R. Glăvan, Radu M.N., D.A. Marinciu, G.C. Ioan et al. (Romania); I.V. Pantiuhina, A.S. Kapitunov, A.S. Kondratenkova, A.A. Bimbinov (Russian Federation); and L. Ullrich, N. Hilgert et al. (USA).

As long as criminal law lacks clarity regarding consent in general, the legal classification of offences against sexual life will continue to generate divergences in practice.

We conclude that the relevance of the research topic is determined by:

- recent legislative amendments to the Criminal Code of the Republic of Moldova, particularly the redefinition of the concept of a “non-consensual sexual act”;

[1] GALAN D-C. Legislative Models for the Criminalization of Offences against Sexual Life at the International Level. In: Journal of the Prosecutor’s Office of the Republic of Moldova., 2024, nr. 13, pp. 72-76. ISSN 2587-3601.

- the need to harmonize national legislation with European standards (the Istanbul Convention and the case law of the European Court of Human Rights);
- the emergence of new forms of sexual offending in the digital environment;
- practical difficulties in distinguishing between the offences provided for in Articles 171–175¹ of the Criminal Code of the Republic of Moldova.

Research Problem

The research problem addressed in this thesis concerns the need to substantiate an integrated conceptual model of the relationship between sexual self-determination, sexual consent and criminal-law protection. Such a model would provide coherent criteria for defining legally valid consent, establishing its limits, identifying the circumstances in which sexual autonomy is impaired, and substantiating criminal-law intervention.

Purpose of the Research

The purpose of the research is to provide a theoretical foundation for a criminal-law conception of sexual consent by elucidating its essence, content, conditions of validity, forms of manifestation and limits, as well as by evaluating the criminal-law mechanisms for protecting sexual freedom and sexual inviolability, with a view to substantiating solutions for improving the normative framework and judicial practice.

Research Objectives

In order to achieve the proposed purpose, the following objectives were established:

to critically analyse and systematize doctrinal models of sexual consent by examining relevant publications by domestic and foreign researchers;

- to assess the compatibility of the current legislation of the Republic of Moldova with European standards and the case law of the European Court of Human Rights regarding the protection of victim consent in offences against sexual life, in order to identify potential deficiencies and formulate practical recommendations;

- to evaluate national criminal-law regulations and judicial practice concerning victim consent in offences affecting sexual freedom and sexual inviolability;
- to identify and examine international legislative models concerning the criminalization of conduct related to consent in sexual offences;
- to identify problems concerning the interpretation, legal classification and proof of consent or its absence in the application of criminal-law provisions;
- to elucidate the philosophical, sociological, psychological and legal foundations of sexual autonomy and consent in order to identify the conceptual premises of sexual consent;
- to substantiate sexual consent as a legally relevant form of manifestation of sexual self-determination by determining its essence, function and criminal-law significance;
- to determine the structure and conditions of validity of sexual consent, identify its forms of expression, maintenance and withdrawal, and establish legal criteria for assessing the existence or absence of sexual consent;
- to substantiate victim consent as a circumstance excluding the criminal nature of the act;
- to outline a typology of sexual consent;
- to particularize the consent of minors in the context of offences against sexual life;
- to identify the specific features of victim consent in the digital environment;
- to develop a criminal-law model of sexual consent and formulate proposals for improving legislation and judicial practice in order to ensure effective protection of sexual freedom and sexual inviolability in the Republic of Moldova.

Research Hypothesis

The research is based on the hypothesis that a person's sexual self-determination constitutes the fundamental social value justifying the criminal-law protection of sexual freedom and sexual inviolability, while sexual consent represents the principal

legal mechanism through which the exercise of such self-determination is manifested externally and may be legally assessed. Accordingly, the existence or absence of consent should not be assessed exclusively on the basis of the external manifestation of will, but also with reference to the conditions under which consent was formed and expressed.

It is therefore assumed that substantiating a criminal-law concept of sexual consent would make it possible to establish more coherent criteria for distinguishing consensual from non-consensual sexual conduct and could provide a theoretical basis for the interpretation and application of criminal-law provisions, as well as for improving the normative framework and judicial practice.

Summary of the Research Methodology and Justification of the Selected Research Methods

The research is based on national and foreign legal doctrine, national criminal and non-criminal legislation, the criminal legislation of foreign states, domestic judicial practice, and other relevant sources.

The research methods applied in this study were selected according to the specific nature and relevance of the bibliographical sources analysed.

The investigation is based on the analysis of doctrinal works in the field of criminal law and relevant interdisciplinary literature, together with the case law of the European Court of Human Rights. The legislation of the Republic of Moldova was used as a primary reference, alongside the legislation of several foreign states, including Romania, Ukraine, the Republic of Belarus, Sweden, Switzerland, France, Spain, Germany and Italy.

The **logical method** constituted a fundamental instrument for selecting scientific material, systematizing the information collected, defining key concepts and coherently presenting the conclusions reached. This method facilitated a rigorous analysis of legislative and doctrinal texts and ensured consistency of argumentation throughout the research.

The **comparative, systemic and legal-technical methods** were used as priority methods in the research. The comparative-law method enabled the examination of legal regulations and related criminal offences from a comparative-law perspective, while the systemic and legal-technical approaches facilitated the identification of gaps and shortcomings in the criminalization provisions contained in Chapter IV of the Criminal Code. Based on these findings, *de lege ferenda* proposals and recommendations were developed with a view to improving the relevant normative framework.

The **comparative method** was applied in two directions: first, through comparative-law analysis, by comparing national legislation with that of other European states in order to identify legislative trends and effective solutions regarding the criminalization of offences against sexual life; and second, by comparing related criminal offences, which enabled a precise distinction between related offences and the identification of overlaps or gaps in criminal-law provisions.

The **systemic method** was used to examine the legal institutions under analysis in correlation with the criminal-law system as a whole and with other branches of law, in order to identify interdependencies and possible normative contradictions.

The **legal-technical method** was applied to analyse legislative texts and to formulate *de lege ferenda* proposals aimed at optimizing the normative framework regulated by Chapter IV of the Criminal Code of the Republic of Moldova.

The **literary method** was used to determine the precise meaning of certain legal terms, with particular emphasis on their etymology and the meanings attributed to them in specialized literature, thereby ensuring a correct and consistent interpretation of the concepts employed.

The **heuristic method** made it possible to substantiate the author's own views by identifying new and original solutions based on hypotheses formulated during the research. It contributed to the formulation of essential scientific questions and the

identification of appropriate answers, thereby enhancing the innovative character of the research.

The **hypothetical method** played a particular role in the research by providing the basis for formulating and testing hypotheses concerning the effectiveness of the current legal provisions, their impact on judicial practice and the need for legislative reforms.

The **documentary research method** was indispensable for developing the practical component of the research. It involved examining relevant criminal case files, decisions of the Plenum of the Supreme Court of Justice and the case law of the European Court of Human Rights, which provided concrete examples and practical arguments supporting the conclusions of the research.

Scientific Novelty and Originality

The scientific novelty and originality of the doctoral thesis derive from the multidimensional analysis of a field that has been insufficiently explored in the criminal-law doctrine of the Republic of Moldova, offering a new perspective on victim consent in the context of offences against sexual life.

Theoretical Importance and Practical Value of the Research

The thesis provides a systematic analysis of victim consent in the context of offences against sexual life, thereby contributing to the development of national criminal-law doctrine. The research findings may serve as a scientific resource for the academic community and legal practitioners, as well as a doctrinal basis for improving national legislation concerning the protection of sexual freedom and sexual inviolability.

The **practical value** of the research also lies in the *de lege ferenda* proposals aimed at optimizing the current legislative framework. The research findings may be used in scientific activities and legal professional training at all levels of education, as well as in the practical activities of institutions responsible for ensuring compliance with the law. The conclusions may also be taken into consideration in the legislative drafting process.

Main Scientific Results Submitted for Defense

- substantiation of the criminal-law concept of victim consent and its distinction from other forms of manifestation of will;
- development of a classification of the types of sexual consent and establishment of criteria for assessing its validity;
- determination of the role of victim consent in the legal classification of offences provided for in Articles 171–175[1] of the Criminal Code of the Republic of Moldova;
- identification of difficulties in the interpretation and application of the provisions concerning offences against sexual life and formulation of criteria for distinguishing between them;
- formulation of *de lege ferenda* proposals aimed at improving the normative framework and ensuring greater consistency in judicial practice.

Implementation of Scientific Results

The research findings may be used to improve the normative framework, in the interpretation and application of Articles 171–175[1] of the Criminal Code of the Republic of Moldova, in ensuring consistency of judicial practice, as well as in legal education, scientific research and the development of methodological recommendations in the field of protection of sexual freedom and sexual inviolability.

Approval of the Results

The research findings were presented and discussed at national and international scientific conferences and were subject to evaluation and debate within the scientific community.

Publications on the Thesis Topic

The research findings have been disseminated through 10 articles published in the proceedings of international and national conferences, as well as in scientific journals in the Republic of Moldova and abroad.

Keywords

consent, victim, offences against sexual life, factual consent, legal consent, vitiated consent, sexual freedom, sexual integrity.

CONTENT OF THE THESIS

The **structure of the doctoral thesis** is determined by the purpose and objectives of the research and reflects the logical sequence of the stages of analysis, from the doctrinal and normative substantiation of the institution of victim consent to the examination of its criminal-law implications and the formulation of proposals for improving national legislation.

The doctoral thesis **"Victim Consent in the Context of Offences against Sexual Life"** consists of an introduction, four chapters structured into nineteen subchapters, general conclusions and recommendations, bibliography, the list of the author's publications on the thesis topic, annotations in Romanian, English and Russian, keywords, as well as the list of abbreviations used throughout the research.

The **Introduction** substantiates the relevance and importance of the research in the context of legislative amendments concerning sexual offences and the transition towards a model based on the absence of consent. It presents the scientific problem, the purpose, objectives, hypothesis and methodology of the research, as well as its novelty, theoretical importance, practical value, main results and their implementation.

Chapter I, entitled **"Doctrinal Approaches and Normative Regulations concerning the Criminalization of Offences against Sexual Life"**, is devoted to the analysis of legal doctrine, the evolution of criminal legislation and comparative law in the field of victim consent. The first chapter examines the main contributions of national legal doctrine concerning victim consent in the context of offences against sexual life, highlighting the findings relevant to the present research.

Among the earliest relevant works is the monograph by V. Bujor and I. Miron, entitled *Sexual Violence: Criminal-Law*

and Criminological Aspects[2], which, although published prior to the adoption of the current Criminal Code, develops concepts that anticipated the subsequent evolution of the institution of sexual consent. The authors propose the redefinition of certain fundamental concepts concerning offences against sexual life, the broadening of the concept of sexual intercourse, recognition of women as possible perpetrators of rape, and emphasize that the essence of these offences lies in the violation of the victim's freedom to determine their own sexual life. At the same time, they provide one of the earliest doctrinal explanations of the relationship between coercion and the absence of consent, as well as the idea of the existence of consent specific to relations between spouses.

The research conducted by V. Stati[3] follows the same direction, analysing judicial practice concerning offences against sexual life and paying particular attention to the consent of minors. The author argues that an apparent manifestation of a minor's will cannot always constitute legally valid consent, as it is necessary to assess the victim's capacity to understand the meaning of sexual acts.

A distinct contribution is represented by the research of R. G. Ionuș[4], who demonstrates the decisive role of victim consent in the criminal-law classification of acts. The author emphasizes that the existence or absence of consent may constitute an element of the offence, being regulated either expressly or implicitly, depending on the structure of the criminal-law provision. In subsequent research, she develops the idea that victim consent may constitute a circumstance excluding

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[2] BUJOR, V., MIRON, I. *Sexual Violence: Criminal-Law and Criminological Aspects*. Chișinău: Elan-Poligraf, 2001, p. 80. ISBN 9975-9620-9-2.

[3] STATI, V. *On the Practice of Applying Liability for Offences against Sexual Life: Theoretical and Practical Considerations*. In: National Law Review, 2007, No. 8, pp. 16–22. ISSN 1811-0770.

[4] IONUȘ, R. G. *Criminal-Law Implications of Victim Consent*. PhD Thesis. Chișinău: CEP USM, 2011, p. 232.

the criminal nature of the act due to the absence of one of the constituent elements of the offence.

A particular contribution was made by Professor Sergiu Brînza, who, together with V. Stati, analyses the impact of legislative amendments on the offences provided for in Articles 173–175[1] of the Criminal Code of the Republic of Moldova and, subsequently, the reform introduced by Law No. 316/2022[5]. The authors highlight the transformation of the traditional concept of rape through the transition from the notion of "sexual intercourse" to that of a "non-consensual sexual act", the broadening of the scope of the criminal-law provision and the strengthening of victim protection irrespective of sex. At the same time, they examine the appropriateness of introducing a legal presumption regarding the absence of sexual consent of minors, with reference to Romania's legislative experience and the need to improve the national normative framework.

The analysis of foreign literature relevant to the research demonstrates that foreign authors examine consent from criminal-law, philosophical, psychological and sociological perspectives, thereby allowing for the development of an interdisciplinary approach to the concept.

An important contribution was made by Professor G. Antoniu, who emphasizes that the legal relevance of consent is determined by the nature of the protected social value[6]. Consent may exclude the criminal nature of an act only where the holder of the right is free to dispose of the interest protected by law. At the same time, the author stresses that autonomy of will is limited by the non-disposable nature of certain social values, an aspect of

[5] BRÎNZA, S., STATI, V., TAMAZLÎCARU, A. "Rape and Non-Consensual Acts of a Sexual Nature: An Approach from the Perspective of Law No. 316/2022". In: *Juridice Moldova*. [cited: 07.11.2024]. Available at: https://juridicemoldova.md/17060/violul-si-actiunile-cu-caracter-sexual-neconsimtite-o-abordare-din-perspectiva-legii-nr-316-2022-2.html

[6] ANTONIU, G. Victim Consent. In: *Criminal Law Review*, 2003, No. 4, p. 14.

particular importance for the analysis of offences against sexual life.

With regard to the sexual consent of minors, D. A. Marinciu emphasizes the importance of establishing a minimum age for validly expressing consent, arguing that this age must reflect the physical and psychological maturity necessary to understand the meaning of sexual relations and their consequences.[7]

A distinct contribution was made by M. P. Meniaeva, who develops the concept of a "culture of consent", analysing consent as a cultural and axiological mechanism through which personal autonomy, mutual respect and social responsibility are promoted. The author demonstrates that the development of a culture of consent contributes to preventing abusive behaviour and strengthening the protection of individuals in social relationships, including those of a sexual nature.[8]

The studies of Peter K. Westen have exerted a significant influence on contemporary research[9]. He highlights the existence of conceptual confusion surrounding the notion of consent. The author demonstrates that consent cannot be reduced exclusively to an external manifestation of will and that it is necessary to distinguish between the victim's mental state, expression of will, physical resistance and the use of force. These conclusions contribute to clarifying the criteria for assessing the existence of legally valid consent.

The research conducted by Alan Reed follows the same line and focuses on the effects of fraud on the validity of sexual

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[7] MARINCIU, D. A. *Prevention and Combating of Sexual Assaults against Potential Victims*. PhD Thesis in Law. Bucharest: "Alexandru Ioan Cuza" Police Academy, 2020.

[8] MENYAEVA, M. P. *Culture of Consent: Essence, Formation, and Reproduction*. Doctoral Dissertation in Philosophy. Chelyabinsk, 2015, p. 41.

[9] WESTEN, P. K. Some Common Confusions About Consent in Rape Cases. In: *Ohio State Journal of Criminal Law*, 2004, vol. 2, pp. 333–359, especially p. 335. [cited: 09.06.2024]. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=637541

consent[10]. The author demonstrates that not every form of deception excludes consent, but only those circumstances that substantially affect the freedom of sexual self-determination and prevent the expression of genuine will. At the same time, he emphasizes the need to examine all the specific circumstances of the case when assessing the validity of consent.

Recent studies by N. Hilgert, Joanna Demaree-Cotton, Vanessa K. Bohns and L. Ullrich reflect the orientation of contemporary doctrine towards the standard of affirmative consent.[11] The authors emphasize that valid consent requires the expression of free, voluntary and informed agreement and that its existence must be assessed with reference both to the external manifestation of will and to the psychological, social and contextual factors influencing the individual's decision-making process.

The chapter also analyses the evolution of criminal-law regulations concerning the protection of sexual freedom and sexual inviolability in the Moldovan legal space, highlighting the successive transformations of the legal conception of victim consent.

The research reveals that *Legea Țării*, *Pravila lui Vasile Lupu* and subsequent regulations did not recognize victim consent as an autonomous legal institution, whereas the Criminal Code of the Moldavian SSR of 1961 recognized the absence of consent through coercion or taking advantage of the victim's helpless state. The adoption of the Criminal Code of the Republic of Moldova in 2002 and subsequent legislative amendments strengthened the protection of sexual freedom, while the reform introduced by Law No. 316/2022 established sexual consent as a

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[10] REED, A. An Analysis of Fraud Vitiating Consent in Rape Cases. In: *The Journal of Criminal Law*, 1995, vol. 59, No. 3, pp. 310–315. DOI: 10.1177/002201839505900309.

[11] BOHNS, V. K. Toward a Psychology of Consent. In: *Perspectives on Psychological Science*, 2022, vol. 17, No. 4, pp. 1093–1100. ISSN 1745-6916. DOI: 10.1177/17456916211040807.

central element of criminalization, redefining rape as a non-consensual sexual act and aligning national legislation with international standards.

The comparative analysis of the criminal legislation of European Union Member States reveals different legislative models regulating offences affecting sexual freedom and sexual inviolability, although all share the common objective of protecting freedom of sexual self-determination and effectively combating sexual violence. The study examined the criminal legislation of Romania, Austria, France, Germany, Belgium, Bulgaria, Italy, the Czech Republic and Spain in order to identify the principal European trends in the regulation of sexual consent.

The analysis of national and foreign doctrine, the evolution of the normative framework and comparative law demonstrates that, although consent is recognized as an essential element of offences against sexual life, the legislation of the Republic of Moldova provides neither an express legal definition nor clear criteria concerning the conditions for its validity.

Chapter II, entitled **"General Criteria for the Analysis of Consent in the Context of Offences against Sexual Life"**, constitutes the theoretical core of the research and substantiates the criminal-law concept of victim consent in the field of offences against sexual life.

The chapter seeks to define the legal content of consent, identify its legal nature, distinguish it from other manifestations of will and establish general criteria for assessing the existence or absence of consent.

The interdisciplinary analysis demonstrates that the concept of consent extends beyond the sphere of criminal law and is grounded in concepts developed in philosophy, sociology and psychology. From a philosophical perspective, John Stuart Mill grounds consent in the principle of individual liberty[12], while

[12] MILL, J. S. *On Liberty*. London: John W. Parker and Son, 1859. [cited: 31.07.2025]. Available: https://ect.pixel-online.org/files/etranslation/original/Mill,%20On%20Liberty.pdf

Immanuel Kant relates it to autonomy of will and human dignity.[13]

Along the same lines, Franklin G. Miller and Alan Wertheimer emphasize that valid consent requires an autonomous, informed and uncoerced manifestation of will, with the mere formal expression of agreement being insufficient to confer legal relevance upon it.[14]

From a sociological perspective, Émile Durkheim[15]demonstrates that the expression of consent is influenced by social norms and values, while Max Weber analyses it as a form of social action oriented towards the behaviour of others, emphasizing its relational and contextual nature.[16]

From a psychological perspective, Vanessa K. Bohns emphasizes that the legal validity of consent does not always correspond to the individual's psychological experience, since freedom of choice may be influenced by social pressures and power relations. [17]Along the same lines, Joanna Demaree-Cotton argues that decisional autonomy must be analysed in relation to the actual manner in which individuals make decisions, without

[13] KANT, I. *Groundwork of the Metaphysics of Morals*. Cambridge: Cambridge University Press, 1998. [cited: 31.07.2025]. Available: https://cpb-us-w2.wpmucdn.com/blog.nus.edu.sg/dist/c/1868/files/2012/12/Kant-Groundwork-ng0pby.pdf

[14] MILLER, F. G., WERTHEIMER, A. (eds.). *The Ethics of Consent: Theory and Practice*. New York: Oxford University Press, 2009. 400 p. ISBN 978-0-19-533514-9.

[15] DURKHEIM, É. *The Rules of Sociological Method*. New York: Free Press, 1982. ISBN 9780029079409, p. 272.

[16] WEBER, M. *Economy and Society*. Berkeley: University of California Press, 1978. ISBN 978-0520035004, p. 1469.

[17] BOHNS, Vanessa K. Toward a Psychology of Consent. In: *Perspectives on Psychological Science*, 2022, vol. 17, No. 4, p. 6. ISSN 1745-6916. DOI: 10.1177/17456916211040807.

contextual influences automatically resulting in the invalidation of consent.[18]

The research examines consent as a legal institution by analysing its regulation in civil law, family law, labour law, international law and criminal law. It considers the general conditions governing the validity of manifestations of will, requirements concerning the freedom and awareness of agreement, the limits of autonomy of will, and the legal effects produced by consent in different categories of legal relationships. At the same time, similarities and differences between these branches of law are highlighted with regard to the role and functions of consent.

Consent as a criminal-law institution constitutes the conceptual core of the research and is examined with a view to substantiating the criminal-law nature of victim consent and determining the place of this institution within the criminal-law system. Based on the interdisciplinary analysis conducted in the preceding subchapters, the present research defines victim consent as an external, free, specific, informed and unambiguous manifestation of will through which the holder of a protected social value accepts the production of legal consequences affecting that value.

The research demonstrates that, in criminal law, consent may take three principal forms: a circumstance excluding the criminal nature of the act, a mitigating circumstance, and an element of certain offences. The analysis of comparative legislation reveals that most states recognize the justificatory effect of consent only in relation to social values over which the holder may freely dispose and only where consent is expressed freely, knowingly and without any vitiating factor.

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[18] DEMAREE-COTTON, J. *Philosophy, Psychology, and the Ethics of Consent*. PhD Dissertation, Department of Philosophy, Yale University, New Haven, 2022, p. 273. [cited: 15.09.2025]. Available: https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=1584&context=gsas_dissertations

An important result of the research consists in the analysis of Article 132² of the Criminal Code, which demonstrates that the legislature does not expressly define the concept of sexual consent, but merely establishes the situations in which a sexual act or an act of a sexual nature is deemed non-consensual. Consequently, the criminal-law content of consent must be inferred by interpreting the requirements concerning the existence of a free, conscious and uncoerced will expressed by a person capable of accepting or refusing the sexual act.

Following the interdisciplinary and criminal-law analysis carried out in the research, the principal characteristics of sexual consent were identified and substantiated, allowing legally valid consent to be distinguished from its factual manifestations.

It was demonstrated that the validity of sexual consent is conditional upon the existence of a free and voluntary manifestation of will, expressed without physical or psychological coercion, as well as upon the clarity and precision of the agreement so that it leaves no room for ambiguous interpretations. It was also established that valid consent presupposes the person's capacity to consent, determined by the existence of discernment and the actual ability to understand the nature and consequences of the sexual act.

The interdisciplinary and criminal-law analysis also enabled the identification of criteria for classifying the types of consent in the field of offences against sexual life.

An original result of the research is the author's own classification of the types of sexual consent, based on the criminal-law relevance of the manifestation of will and its effects on the existence of the constituent elements of the offences provided for in Chapter IV of the Criminal Code of the Republic of Moldova.

In this regard, the following types are identified and analysed: presumed consent, attitudinal consent, expressive consent, voluntary consent, forced consent, vitiated consent and specific consent, as opposed to generalized consent.

The research reveals that Article 132² para. (3) of the Criminal Code of the Republic of Moldova does not positively define sexual consent, but establishes the circumstances in which a sexual act or an act of a sexual nature is considered non-consensual. Four statutory situations involving the absence of consent have therefore been identified: physical coercion, psychological coercion, taking advantage of the victim's inability to defend themselves, and taking advantage of the victim's inability to express their will.[19]

The results obtained confirm that the absence of sexual consent cannot be reduced to the mere existence of violence, but requires an examination of all circumstances affecting the victim's decisional autonomy. These conclusions contribute to the consistent interpretation of Article 132² of the Criminal Code and to a clear distinction between consensual and non-consensual sexual relations.

The analysis of the amendments introduced by Law No. 316/2022 and of judicial practice demonstrates that the institution of sexual consent constitutes the principal criterion for distinguishing between the offences provided for in Chapter IV of the Criminal Code.[20] The research demonstrates that offences against sexual life may be divided into two categories: offences committed in the absence of the victim's consent (Articles 171, 172, 172¹, 173 and 175¹ of the Criminal Code of the Republic of Moldova) and offences involving consent that lacks legal relevance due to the victim's age (Articles 174 and 175 of the Criminal Code of the Republic of Moldova).

The analysis of legal provisions and judicial practice reveals that redefining rape as a non-consensual sexual act has

[19] Criminal Code of the Republic of Moldova No. 985-XV, adopted by the Parliament of the Republic of Moldova on 18 April 2002. In: *Official Gazette of the Republic of Moldova*, Nos. 128–129 of 13 September 2002.

[20] Law No. 316 amending certain normative acts (ensuring the rights of victims in cases of offences against sexual life and domestic violence). In: *Official Gazette of the Republic of Moldova*, 2022, Nos. 394–400.

broadened the scope of Article 171 of the Criminal Code of the Republic of Moldova by including all forms of sexual penetration and eliminating the distinctions existing under the previous regulation. Consequently, where there is a single criminal intent, different forms of penetration constitute alternative forms of the same offence rather than a concurrence between Articles 171 and 172 of the Criminal Code of the Republic of Moldova.

The research makes it possible to distinguish the constituent elements of the offences provided for in Articles 172, 172[1], 173 and 175[1] of the Criminal Code of the Republic of Moldova with reference to the nature of the sexual act, the form of coercion, the purpose pursued and the legal relevance of the victim's consent. At the same time, the analysis demonstrates that, in the case of the offences provided for in Articles 174 and 175 of the Criminal Code, a minor's consent does not produce legal effects where the minor does not meet the conditions necessary for expressing valid will.

The research findings enabled the formulation of criteria for distinguishing between the offences provided for in Chapter IV of the Criminal Code, thereby contributing to a consistent interpretation of the legal provisions and to resolving classification issues arising from recent legislative amendments.

In conclusion, the national regulation concerning the absence of sexual consent represents significant progress in criminal law but remains capable of improvement. A reform aimed at clarifying the concept of consent and aligning it with international human-rights standards, particularly Article 36 of the Istanbul Convention, according to which consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances, would contribute decisively to more effective legal protection of victims and a more equitable application of criminal law.

Chapter III, entitled "Victim Consent within the Constituent Elements of the Offences Provided for in Articles 171–175[1] of the Criminal Code of the Republic of Moldova",

represents the central applied component of the research and seeks to integrate the criminal-law concept of consent into the structure of the constituent elements of offences against sexual life.

The analysis of doctrine and criminal legislation established that the specific legal object of offences against sexual life differs depending on the nature of the criminalized conduct and the category of victim. In the case of the offences provided for in Articles 171 and 172 of the Criminal Code of the Republic of Moldova, the person's sexual freedom and sexual inviolability are protected, whereas in the case of the offences provided for in Articles 174, 175 and 175[1], emphasis is placed on protecting minors' sexual inviolability and their normal physical and psychological development.

The research demonstrates that the material object cannot be analysed uniformly for all offences provided for in Chapter IV of the Criminal Code. Thus, offences involving physical contact with the victim (Articles 171–175 of the Criminal Code) have the person's body as their material object, whereas the offence provided for in Article 175[1] and certain forms of sexual harassment do not involve a material object because the criminalized conduct does not entail direct interference with the victim's body.

The analysis of the objective elements of the offences provided for in Articles 171–175[1] of the Criminal Code of the Republic of Moldova demonstrates that the principal criterion for distinguishing between them is the material element of the act and the specific manner in which the criminalized conduct is carried out. The research emphasizes that the amendments introduced by Law No. 316/2022 redefined the structure of offences against sexual life by establishing the concept of a "sexual act" and extending criminal-law protection in accordance with international standards. At the same time, a *de lege ferenda* proposal is formulated to replace the phrase "sexual intercourse" with "sexual act" in Article 201 of the Criminal Code of the

Republic of Moldova in order to ensure terminological consistency within the Criminal Code.

The research distinguished the constituent elements of the objective aspect of each offence provided for in Chapter IV of the Criminal Code.

The analysis of the subjective aspect of the offences provided for in Chapter IV of the Criminal Code of the Republic of Moldova demonstrates that the assessment of guilt is closely related to the perpetrator's perception of the existence or absence of the victim's consent. The research reveals that all offences against sexual life are committed with direct intent, since the perpetrator consciously seeks to carry out the criminalized conduct and is aware of the circumstances rendering the act unlawful.

The analysis of the perpetrator of the offences provided for in Chapter IV of the Criminal Code of the Republic of Moldova demonstrates that these offences may be committed exclusively by criminally responsible natural persons who have reached the age of criminal responsibility prescribed by law. The research emphasizes that legal persons cannot be perpetrators of these offences and that criminal liability is conditional upon the existence of discernment and the capacity to understand the harmful nature of the act.

The analysis of the statutory provisions established that, for the offences provided for in Articles 171 and 172 of the Criminal Code of the Republic of Moldova, the perpetrator is a criminally responsible natural person who has reached the age of 14, whereas for the offences provided for in Articles 172^1–175^1, the perpetrator must have reached the age of 16. At the same time, the research demonstrates that the legal relevance of the perpetrator's age concerns not only the existence of criminal liability but also influences the assessment of the perpetrator's understanding of the victim's capacity to consent.

The research highlights that, as a rule, the perpetrator of these offences is a general subject; however, in certain aggravated

forms, the perpetrator acquires the status of a special subject where the law requires additional characteristics, such as being a family member or a person having duties of care, protection, education or treatment towards the victim. It was also established that the application of aggravating circumstances requires the perpetrator to be aware of the circumstances granting the victim such special legal protection.

The research findings enabled the formulation of criteria for distinguishing between the offences provided for in Chapter IV of the Criminal Code, clarification of the role of consent in assessing their constituent elements, and substantiation of interpretative solutions concerning the application of provisions relating to non-consensual sexual acts, non-consensual acts of a sexual nature and offences committed against minors.

At the same time, the research substantiates two *de lege ferenda* proposals: replacing the phrase „sexual intercourse" with „sexual act" in Article 201 of the Criminal Code of the Republic of Moldova in order to ensure terminological consistency within the Criminal Code, and transferring the offence provided for in Article 175[1] of the Criminal Code to the chapter concerning offences against the family and minors in order to more accurately reflect the principal legal object of this offence and ensure coherence within the system of criminalization.

Chapter IV, entitled "Practical Opportunities and Legislative Proposals concerning Sexual Consent", represents the applied component of the research and builds upon the results obtained in the preceding chapters by relating them to contemporary challenges arising from the evolution of criminal phenomena and legislative transformations in the field of protection of sexual freedom and sexual inviolability. The chapter seeks to identify existing practical difficulties in assessing victim consent, analyse the impact of new technologies on the manifestation and assessment of an individual's will, examine the standards developed in the case law of the European Court of

Human Rights, and formulate concrete proposals for improving the national normative framework.

The comparative analysis reveals that numerous European states have expressly criminalized the non-consensual distribution of intimate images, online sexual harassment and other forms of sexual exploitation through information technologies. At the same time, the research demonstrates that certain phenomena, such as *sexting*, *cyber grooming*, non-consensual pornography and *revenge porn*, may fall wholly or partly within the provisions of national criminal legislation; however, gaps remain regarding the punishment of certain modern forms of sexual violence in the digital environment.

The research resulted in the formulation of *de lege ferenda* proposals concerning the amendment of Article 173 of the Criminal Code of the Republic of Moldova by extending the criminalization of sexual harassment committed through information technologies and electronic communications, including cases of sexual blackmail, as well as supplementing the Criminal Code of the Republic of Moldova with a new Article 177^2 – "Violation of the Right to One's Image", aimed at criminalizing the unauthorized alteration and distribution of images or video recordings of a person without their consent. The proposals seek to strengthen the protection of sexual freedom and sexual inviolability in the digital environment and to harmonize national legislation with relevant European and international standards.

The research analysed the cases of M.C. v. Bulgaria, M.G.C. v. Romania, C.A.S. and C.S. v. Romania, I.G. v. the Republic of Moldova, A.P. v. the Republic of Moldova and N.A. v. the Republic of Moldova, which demonstrate that the existence of sexual consent cannot be assessed exclusively by reference to the victim's physical resistance or the existence of apparent agreement, but requires an assessment of all the circumstances of the case, the victim's vulnerability and their actual capacity for sexual self-determination. The case law of the European Court of

Human Rights also confirms the obligation of the authorities to conduct effective investigations adapted to the psychological characteristics of victims, particularly minors, and to obtain all evidence necessary to establish the existence or absence of consent.

Chapter IV highlights the new forms of interference with sexual freedom and sexual inviolability in the digital environment and the inadequacy of their regulation under national criminal legislation. Comparative analysis, international standards and the case law of the European Court of Human Rights substantiate the need to improve criminal legislation and harmonize it with European and international standards in order to ensure the effective protection of victims, particularly minors.

CONCLUSIONS AND RECOMMENDATIONS

The doctrinal, historical-legal and comparative analysis made it possible to highlight the evolution of concepts concerning sexual consent, its functions in criminal law and the transition towards regulations centred on sexual freedom and autonomy. The research revealed the absence of a general regulation of consent in national criminal legislation and the interpretative difficulties generated by this deficiency. At the same time, the essence and characteristics of sexual consent were clarified, and the forms and criteria for distinguishing legally valid consent from vitiated manifestations or manifestations lacking legal relevance were established.

The **important scientific problem** consists in substantiating a coherent conceptual framework of victim consent in the field of offences against sexual life, which made it possible to clarify its content and criminal-law role, identify legislative gaps and formulate *de lege ferenda* proposals for improving the normative framework and ensuring consistency in judicial practice in this field.

I. Conclusions: The important scientific problem was demonstrated through the conclusions formulated, taking into account the research hypotheses, as follows:

1. Sexual consent represents the free, conscious, informed and voluntary expression of a person's will to participate in a sexual act, constituting an essential element for the protection of individual autonomy, freedom and integrity.
2. The absence of consent is determined by circumstances that make voluntary participation in the sexual act impossible.
3. Victim consent represents the central element in the legal classification of offences against sexual life. Under the current

legislation of the Republic of Moldova, the Criminal Code does not provide a clear and detailed definition of consent, focusing only on situations involving its absence.

4. The Criminal Code of the Republic of Moldova classifies offences against sexual life into two main categories: offences committed without the victim's consent, including those provided for in Articles 171, 172, 173 and 175^1, and offences involving the victim's consent, such as those provided for in Articles 174 and 175 of the Criminal Code of the Republic of Moldova.

5. The amendments introduced by Law No. 316/2022 generated significant challenges concerning the legal classification of acts. Thus, Article 171 of the Criminal Code of the Republic of Moldova, which previously regulated rape as "sexual intercourse committed through physical or psychological coercion of the person or by taking advantage of the person's inability to defend themselves or express their will", was reformulated to define rape as a "non-consensual sexual act". Consequently, rape may be committed through several alternative forms of the objective aspect, and the simultaneous commission of several sexual acts with the same intent does not result in a concurrence of offences, but constitutes a single offence.

6. With regard to Article 172 of the Criminal Code of the Republic of Moldova, the amendments resulted in the redefinition of the offence as "non-consensual acts of a sexual nature", which represent forms of sexual gratification different from the sexual act provided for in Article 132^2 of the Criminal Code of the Republic of Moldova and which do not fall within the scope of other provisions, such as Article 173, Article 287 or Article 354 of the Contravention Code. Examples include contact between the genital organs and other parts of the body, masturbation without penetration, or friction against the victim's intimate areas.

7. Unlike the offence provided for in Article 172 of the Criminal Code of the Republic of Moldova, which criminalizes non-consensual acts of a sexual nature involving concrete physical contact, Article 173 of the Criminal Code regulates sexual

harassment, an offence that also includes related conduct, such as taking advantage of the victim's state of dependency or using threats, provided that the act does not contain the constituent elements of rape or non-consensual acts of a sexual nature.

8. Unlike the offence provided for in Article 175[1] of the Criminal Code of the Republic of Moldova, which criminalizes the grooming of a minor for the purpose of arranging a meeting with a view to committing a sexual offence, Article 172[1] of the Criminal Code criminalizes coercing a child to participate in a sexual act or in non-consensual acts of a sexual nature involving a third party, which presupposes direct interference with the victim's freedom of will.

9. If the victim is of a very young age, up to 14 years old, and a psychological expert report establishes that the victim was unable to express legally valid consent, the act cannot be classified under Article 175 or Article 174 of the Criminal Code of the Republic of Moldova because, in such a case, the victim's consent has no legal value.

10. Similar to Article 174 para. (2) of the Criminal Code of the Republic of Moldova, Article 175 para. (3) provides for an exemption from criminal liability where the perpetrator and the victim are close in age and in terms of physical and psychological development. This provision is intended to exclude from the scope of criminal law close-in-age relationships that do not present significant social danger. The clause seeks to prevent the criminalization of normal affective relationships between adolescents.

11. Articles 174 and 175 of the Criminal Code of the Republic of Moldova differ from Articles 171 and 172 in one essential respect: the existence of the minor victim's consent. While Article 171 ("Rape") and Article 172 ("Non-consensual acts of a sexual nature") criminalize acts committed in the absence of consent, namely under conditions of physical or psychological coercion or the victim's inability to express their will or wishes, Articles 174 and 175 concern situations in which the sexual acts were consented

to by the victim. In such cases, the victim's agreement does not exclude the perpetrator's criminal liability because the law considers that persons under the age of 16 do not possess the maturity required to make conscious and responsible decisions concerning their sexual life. Therefore, even in the absence of coercion as such, the act is criminalized as a form of special protection afforded to minors.

12. Sexual harassment in the online environment is not currently covered by national legislation, the term "behaviour" being insufficient to encompass virtual forms of conduct. Supplementing Article 173 of the Criminal Code of the Republic of Moldova is necessary in order to prevent legal gaps and protect victims in the digital environment.

The author's personal contributions are reflected in the broad and in-depth theoretical, practical and normative research into the issue of victim consent in the context of offences against sexual life, particularly in relation to Articles 171–175[1] of the Criminal Code of the Republic of Moldova.

II. Recommendations

1. It is proposed that Article 201 of the Criminal Code of the Republic of Moldova also be amended by replacing the phrase "sexual intercourse" with the phrase "sexual act".

2. It is proposed that the offence provided for in Article 175[1] of the Criminal Code of the Republic of Moldova, "Grooming of a Minor for Sexual Purposes", should no longer be included in Chapter IV, "Offences against Sexual Life", but should be transferred to Chapter VII, "Offences against the Family and Minors", under a new article, namely Article 110 of the Criminal Code of the Republic of Moldova, while preserving the current structure of the provision.

3. It is proposed that Article 173 para. (1) of the Criminal Code of the Republic of Moldova be amended as follows:

„(1) Sexual harassment, meaning the solicitation of a sexual act or another act of a sexual nature for oneself or for a third party, through acts, words, gestures or other forms of communication,

including by means of information technology and electronic communications, where such conduct creates a hostile and/or humiliating environment for the victim and is committed by taking advantage of the victim's state of dependency, through threats or blackmail, provided that the act does not contain the constituent elements of rape, non-consensual acts of a sexual nature or coercion of a child for sexual purposes, shall be punishable by a fine ranging from 500 to 650 conventional units, or by unpaid community service for a period of 120 to 180 hours, or by imprisonment for up to 2 years."

4. It is proposed that Chapter V, "Offences against the Political, Labour and Other Constitutional Rights of Citizens", of the Criminal Code of the Republic of Moldova be supplemented with Article 177², as follows:

"Article 177². Violation of the Right to One's Image

Violation of the right to one's image, meaning the unauthorized alteration of a person's images or videos, including through editing software, as well as their distribution without the consent of the person concerned, for the purpose of damaging that person's reputation or dignity, shall be punishable by a fine ranging from 550 to 850 conventional units, or by unpaid community service for a period of 180 to 240 hours, or by imprisonment for up to 2 years."

Proposals regarding Potential Directions for Future Research

Future research may focus on further examining the criminological and victimological dimensions of sexual offences, conducting a comparative analysis of European models of sexual consent and their harmonization with European standards, as well as assessing the impact of digitalization on the expression and validity of sexual consent in the online environment.

Proposals for the Use of the Research Results in the Socio-Cultural and Legal Fields

a) in scientific research, for the continuous development of criminal-law science;

b) in the practice of judicial authorities, including criminal investigation officers, prosecutors, lawyers and judges;

c) in legislative activity, where the research findings may serve as a basis for formulating *de lege ferenda* proposals aimed at improving the normative framework;

d) in the field of education, in the training of bachelor's, master's and doctoral students specializing in criminal law.

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ADNOTARE

Galan Doina-Cezara, „Consimțământul victimei în contextul infracțiunilor privind viața sexuală”.

Teză de doctorat în drept, specialitatea 554.01. Drept penal și execuțional penal, Chișinău, 2026.

Structura lucrării: Teza cuprinde introducere, 4 capitole, concluzii generale și recomandări, 168 titluri bibliografice și 197 pagini de text de bază. Rezultatele cercetării sunt publicate în 10 lucrări științifice.

Cuvinte-cheie: consimțământ, victimă, infracțiuni privind viața sexuală, consimțământ faptic, consimțământ juridic, consimțământ viciat, libertate sexuală, integritate sexuală.

Scopul lucrării: fundamentarea concepției juridico-penale privind consimțământul sexual, prin determinarea esenței, condițiilor de validitate, formelor și limitelor acestuia.

Obiectivele lucrării: analiza doctrinară, normativă și comparată a consimțământului sexual; determinarea condițiilor de validitate și a formelor acestuia; examinarea practicii judiciare și a problemelor de interpretare și probare; formularea propunerilor de *lege ferenda*.

Noutatea și originalitatea științifică: fundamentarea consimțământului victimei ca instituție juridico-penală autonomă, elaborarea unei clasificări proprii, stabilirea criteriilor de validitate și determinarea rolului său în calificarea infracțiunilor privind viața sexuală.

Rezultatul care contribuie la soluționarea problemei științifice importante constă în fundamentarea conceptului juridico-penal al consimțământului sexual și elaborarea criteriilor de delimitare a consimțământului juridic valabil de manifestările factice ale acordului, fiind formulate propuneri de *lege ferenda* pentru perfecționarea Capitolului IV CP al RM.

Importanța teoretică: constă în aprofundarea concepției privind consimțământul sexual, formele, condițiile și rolul acestuia în calificarea infracțiunilor privind viața sexuală.

Valoarea aplicativă: rezidă în posibilitatea utilizării rezultatelor de către practicienii dreptului pentru aprecierea existenței sau lipsei consimțământului și aplicarea normelor Capitolului IV CP al RM.

Implementarea rezultatelor științifice: Rezultatele pot fi utilizate în procesul de instruire juridică universitară și postuniversitară.

ANNOTATION

Galan Doina-Cezara, „Victim Consent in the Context of Offences against Sexual Life".

Doctoral Thesis in Law, Specialty 554.01 – Criminal Law and Penal Enforcement Law, Chișinău, 2026.

Structure of the thesis: The thesis comprises an introduction, 4 chapters, general conclusions and recommendations, 168 bibliographic references, and 197 pages of main text. The research results have been published in 10 scientific papers.

Keywords: consent, victim, offences against sexual life, factual consent, legal consent, vitiated consent, sexual freedom, sexual integrity.

Purpose of the research: to substantiate the criminal-law concept of sexual consent by determining its essence, conditions of validity, forms, and limits.

Objectives of the research: doctrinal, normative, and comparative analysis of sexual consent; determination of its conditions of validity and forms; examination of judicial practice and issues of interpretation and proof; formulation of *de lege ferenda* proposals.

Scientific novelty and originality: onsist in substantiating victim consent as an autonomous criminal-law institution, developing an original classification, establishing the criteria for its validity, and determining its role in the legal classification of offences against sexual life.

The result contributing to the solution of an important scientific problem consists in substantiating the criminal-law concept of sexual consent and developing criteria for distinguishing legally valid consent from factual manifestations of agreement, as well as formulating *de lege ferenda* proposals aimed at improving Chapter IV of the Criminal Code of the Republic of Moldova.

Theoretical significance: is reflected in further developing the concept of sexual consent, its forms, conditions, and role in the legal classification of offences against sexual life.

Practical value: is reflected in the possibility of using the research findings by legal practitioners when assessing the existence or absence of consent and applying the provisions of Chapter IV of the Criminal Code of the Republic of Moldova.

Implementation of the scientific results. The research findings may be used in undergraduate and postgraduate legal education.

АННОТАЦИЯ

Галан Дойна-Чезара, «Согласие потерпевшего в контексте преступлений против половой жизни».

Докторская диссертация по праву, специальность 554.01 – Уголовное право и уголовно-исполнительное право, Кишинэу, 2026.

Структура диссертации: Диссертация включает введение, 4 главы, общие выводы и рекомендации, 168 библиографических источника и 197 страниц основного текста. Результаты исследования опубликованы в 10 научных работах.

Ключевые слова: согласие, потерпевший, преступления против половой жизни, фактическое согласие, юридическое согласие, порочное согласие, половая свобода, половая неприкосновенность.

Цель исследования: обоснование уголовно-правовой концепции сексуального согласия посредством определения его сущности, условий действительности, форм и пределов.

Задачи исследования: доктринальный, нормативный и сравнительный анализ сексуального согласия; определение условий его действительности и форм; исследование судебной практики и вопросов толкования и доказывания; формулирование предложений *de lege ferenda*.

Научная новизна и оригинальность: заключаются в обосновании согласия потерпевшего как самостоятельного уголовно-правового института, разработке авторской классификации, установлении критериев его действительности и определении его роли в квалификации преступлений против половой жизни.

Результат, способствующий решению важной научной проблемы заключается в обосновании уголовно-правовой концепции сексуального согласия и разработке критериев разграничения юридически действительного согласия и фактических проявлений согласия, а также в формулировании предложений *de lege ferenda*, направленных на совершенствование главы IV Уголовного кодекса Республики Молдова.

Теоретическая значимость: выражается в дальнейшем развитии концепции сексуального согласия, его форм, условий и роли в квалификации преступлений против половой жизни.

Практическая значимость: выражается в возможности использования результатов исследования практикующими юристами при установлении наличия или отсутствия согласия и применении положений главы IV Уголовного кодекса Республики Молдова.

Внедрение научных результатов. Результаты исследования могут быть использованы в процессе юридического образования на университетском и постуниверситетском уровнях.

GALAN Doina-Cezara

THE VICTIM'S CONSENT IN THE CONTEXT OF SEXUAL OFFENCES

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