

SUMMARY OF THE HABILITATION THESIS

This habilitation thesis, named” **Criminal business law - subdivision of Criminal law**”, is structured in four parts (3 chapters and the bibliography).

Chapter I presents the elements of the personal scientific and professional *history* (CV) of the undersigned, Prof. Mihai Adrian Hotca, Ph.D., starting with the studies completed, and continuing with the scientific research conducted, the professional activity carried out and the teaching career developed.

As regards the scientific research conducted, this can be summarized as follows¹:

- ❖ two criminal codes commented (one as sole author and one in collaboration);
- ❖ comparative study of 3 criminal codes (one as sole author² and 2 in collaboration³);
- ❖ 6 university coursebooks (2 as sole author⁴ and 4 in collaboration⁵);

¹ The list of works is not exhaustive. Other works can be added to this list (course materials, materials published on the blog htcp.eu or on other websites (juridice.ro, profit.ro etc.) etc.

² M.A. Hotca, *The New Criminal Code and the Previous Criminal Code. Differential and transitory matters*, Hamangiu Publishing House, Bucharest, 2009.

³ M.A. Hotca, in collaboration (co-author, R. Slăvoiu): *The New Criminal Code and the Previous Criminal Code*, Universul Juridic Publishing House, Bucharest, 2014; M.A. Hotca, in collaboration (co-authors: M. Gorunescu, N. Neagu, M. Dobrinioiu, M. Sinescu, R. Slăvoiu, R. Geamănu, L. Al Kawadri, C. Nedelcu, A. Hărățău), *The New Criminal Code. Notes. Correlations. Explanations*, C.H. Beck Publishing House, Bucharest, 2014.

⁴ *Administrative law. General part*, Editas Publishing House, Bucharest, 2003; *Criminal Law Handbook. General part*, Universul Juridic Publishing House, Bucharest, 2017.

⁵ M.A. Hotca, in collaboration (co-author M. Dobrinioiu) *Criminal Business Law Issues*, C.H. Beck Publishing House, Bucharest, 2009; *Criminal Offences laid down in Special Laws*, in collaboration (co-authors: N. Neagu, M. Gorunescu, Al. Sitaru, M. Dobrinioiu, R. Geamănu, D.G. Pop), 6 editions, 2008, 2010, 2013, 2017, 2019, 2023, C.H. Beck Publishing House, Bucharest; *Criminal Law Institutions*, in collaboration (co-authors: P. Buneci, N. Neagu, M. Gorunescu, R. Geamănu, R. Slăvoiu, D.G. Pop) Universul Juridic Publishing House, 2014; *The Businessman's Criminal Law Guide. The Criminal Consequences of the Unlawful Activity*, in collaboration (co-authors: M. Gorunescu, N. Neagu, A. Sitaru, A. Galetschi), republished in 2019 and 2020, in supplemented editions, under the title *The Businessman's Guide. Knowing and preventing the criminal risks*, Universul Juridic Publishing House.

- ❖ 7 monographs (2 as sole author, 4 in collaboration⁶, one as coordinator⁷);
- ❖ 2 works intended for the preparation of the admission to the legal profession (one as sole author⁸ and the other as coordinator⁹);
- ❖ The Criminal Code for Everybody, in collaboration¹⁰;
- ❖ a criminal law dictionary, as sole author¹¹;
- ❖ Over 42 articles (10 in collaboration) in leading reviews¹².

Further, I emphasize the original contribution to the development of Criminal Business Law, starting with the Ph.D. thesis, named "The fraudulent bankruptcy", materialised in the monograph published under the same title¹³, at the C.H. Beck Publishing House, in 2008, and continuing with the works "Issues of Criminal Business Law", "Criminal Offences laid down in Special Laws" and with the articles published in leading reviews.

After the preparation and the publication of the work "The Fraudulent Bankruptcy", falling within the sub-division of Criminal Business Law, I have detailed the scientific research concerning the group of rules subsumed to this domain and I have prepared the work "Issues of Criminal Business Law", published in 2009.

Over the years, some of the themes examined in these two works have been covered in several articles published in periodicals, such as: *Dreptul (Law Review)*, *Journal of Eastern European Criminal Law*, *Revista de Drept Penal (The Criminal Law Review)*, *Revista Română de Drept penal al Afacerilor (The Romanian Review of Criminal*

⁶ Law No 78/2000 on the prevention, the finding and the sanctioning of acts of corruption, in collaboration (co-authors: V. Dobrinioiu, N. Neagu, M. Murea, C. Cășuneanu), Wolters Kluwer Publishing House, Bucharest, 2008; Legal issues from the criminal case-law, in collaboration (co-authors: V. Dobrinioiu, W. Brânză), Wolters Kluwer Publishing House, Bucharest, 2008; Preventing and Fighting Drug Trafficking and Use in Romania, in collaboration (co-authors: I. Neagu, T. Dima, V. Dobrinioiu, A. Fuerea, N. Neagu), Vol. I-Vol. II, Hamangiu Publishing House, Bucharest; The New Insolvency Law, in collaboration (co-authors: S. Cărpenaru and V. Nemeș), 2 editions, 2006, 2008, Hamangiu Publishing House, Bucharest.

⁷ The Uniformization of Case-Law and the Harmonisation with the ECHR Jurisprudence, imperative of the administration of justice, vol. I-III, project director, in collaboration (co-author: D. Lupașcu, B. Onica-Jarka, M. Damaschin), Hamangiu Publishing House, Bucharest, 2010 (vol. I-II) and 2011 (vol. III).

⁸ M.A. Hotca, Criminal law. Multiple-choice tests for the admission to the magistracy and the legal professions, C.H. Beck Publishing House, Bucharest, 2013.

⁹ M.A. Hotca, coordinator for the disciplines Criminal law, Criminal procedure law (in collaboration), in Admission to the magistracy and the bar. Handbook of topics, 6 editions (2018-2024), Universul Juridic Publishing House, Bucharest.

¹⁰ M.A. Hotca, in collaboration (co-authors: M. Gorunescu, A. Lăncrăjan, C. Nedelcu, R. Slăvoiu, The New Criminal Code for Everybody, Universul Juridic Publishing House, Bucharest, 2015.

¹¹ M.A. Hotca, Criminal Law Dictionary, Editas Publishing House, Bucharest, 2004.

¹² Reviews indexed in international databases, such as Ebsco Host, Heinonline, ProQuest etc. Exempli gratia: *Dreptul (Law Review)*; *Revista de Drept Penal (The Criminal Law Review)*; *Pandectele Române (The Romanian Pandecta)*; *Revista Română de Drept Penal al Afacerilor (The Romanian Review of Criminal Business Law)*; *Journal of Eastern European Criminal Law*; *Lex et Scientia International Journal*, etc.

¹³ M.A. Hotca, *The Fraudulent Bankruptcy*, C.H. Beck Publishing House, Bucharest, 2008.

Business Law) etc. *Exempli gratia*: in *Dreptul* I have published the article „Discussions concerning the type of the offence of fraudulent bankruptcy”¹⁴; in *Journal of Eastern European Criminal Law*, I have published the article „Shall the offender or the participant in the predicate offense be held criminally liable if it performs the laundering of the proceeds from the committed offense?”¹⁵; in *Revista de Drept Penal*, I have published the article „Several considerations concerning the extended confiscation”¹⁶; in *Revista Română de Drept Penal al Afacerilor*, I have published the articles „What is the criminal business law?”¹⁷, „The causes and the effects of crime in the business field”¹⁸, „General matters concerning the criminal offences laid down in the Law no 31/1990”¹⁹ etc.

The habilitation thesis also presents certain scientific research projects, and I was the director of some of them.

The habilitation thesis also included references to my participation at national and international conferences, thanks to which I can say that I have acquired both professional experience and reputation.

Also, a part of the habilitation thesis is dedicated to the presentation of my capacity to lead research teams, and of my scientific expertise in guiding and coordinating academic works, prepared by students, master students, and Ph.D. students.

The second chapter of the habilitation thesis is dedicated to the actual contribution to the development of **Criminal Business Law**.

In this analysis, I start from the „source” – Criminal Law – which I use as a benchmark for the scientific investigation of the concept of *Criminal Business Law*. The main question is: **Which is the nature of the group of rules integrated in the concept of Criminal Business Law?**

In order to answer this question, it is necessary to define the premises which I shall present below.

Primo, the group of rules incriminating acts that that can be committed in the business field does not create a branch of law as such. Business relationships cover a very large sphere of social relationships, because this multi-disciplinary field includes both commercial law and other branches of law. In fact, not even *Business Law* is clearly sketched in the academic literature. Indeed, according to the academic literature, besides the social relationships regulated by the commercial law rules, business law must also

¹⁴ Law Review no 3/2008.

¹⁵ Journal of Eastern European Criminal Law nr. 1/2015.

¹⁶ Criminal Law Review no 3-4/2016.

¹⁷ The Romanian Review of Criminal Business Law no 1/2018.

¹⁸ The Romanian Review of Criminal Business Law no 2/2018.

¹⁹ The Romanian Review of Criminal Business Law no 1/2019.

include other rules regulated by other branches of law (for example, administrative law, tax law, etc.)²⁰.

Secundo, the group of rules incriminating acts that can be committed in the business field does not form a sub-branch of criminal law, because there is not even one criminal law institution (group of rules) exclusively applicable to the business relationships, nor derogatory rules concerning the applicability of criminal law. The most frequent criminal offences in the business field can be committed both in connection with an economic activity, and in the absence of any connection to such activity. Thus, tax evasion, act committed in the business field in most of the cases, can also be committed, but less often, outside this field (for example, a natural person does not declare an income obtained from lettings of property). Also, the counterfeit offence can be committed by professionals or by mere individuals, who do not operate an undertaking. Money laundering, smuggling, property crime, cybercrime or e-commerce offences can be committed both in the framework of business relationships and outside such relationships. There are also categories of offences, like those laid down in Law No 31/1990, which cannot be committed, in principle, outside the business field. Also, the rules on the criminal liability of legal entities apply, in most of the cases, to the companies regulated by the Law No 31/1990. But, the sphere of rules incriminating such acts and of those establishing the criminal liability of legal entities is, on the one hand, too narrow to be able to put into question the recognition of a sub-branch of criminal law, and, on the other hand, these rules do not apply exclusively to businessmen. On a different note, we can speak at most about **criminal law institutions** (compact groups of criminal law provisions) **frequently applied in the business field**.

Tertio, as seen above, an examination of the application of criminal law rules reveals that the majority thereof, more or less, are found in the business field. However, the same rules are also applied in the framework of other fields (civil, administrative, etc.), either on a larger scale, or on a narrower one.

After examining the matter in question, it can be logically concluded that Criminal Business Law is not a true branch or sub-branch of criminal law, but **a sub-division of the group of rules forming Criminal Law**, containing the criminal law provisions incriminating the acts committed in relation to the business field.

Later, the candidate examines the peculiarities of business offences, in respect of the causes of business crime, the consequences of the offences committed in this field, the specifics of the people involved and the reaction of society to economic crime.

Then, the author replies to the question: What criminal rules are relevant for the business field? There are categories of offences, such as the offences laid down in Law No 31/1990, which are committed, in most of the cases, in connection with the business field. Moreover, after examining the case-law, I have found that the rules on the criminal

²⁰ See: St.D. Cărpenaru, Romanian Commercial Law, 8th edition, Universul Juridic Publishing House, Bucharest, 2008, p. 28; S. Angheni, Commercial law. Treatise. C.H. Beck Publishing House, Bucharest, 2019, p.13.

liability of legal entities are applied, in most of the cases, to the companies regulated by the Law No 31/1990 and less to other entities with legal personality.

In the sections dedicated to the presentation of results, I have examined the matters of interest concerning the peculiarities of offences regulated by the Law No 31/1990, certain controversial matters concerning the fraudulent bankruptcy and the money laundering offence. For example, we mention the examination of the debate whether the fraudulent bankruptcy is a *criminal damage offence* or not and the relevance of insolvency for the content of the fraudulent bankruptcy offence.

A large section is reserved to the analysis of integrity of companies, of prevention of criminal law risks and of combating them. Among the topics examined are the correlation of economic laws to integrity, the integrity and compliance officer and the whistle-blower. In the range of legal risks concerning the private companies, after the criterion of severity of consequences, the first place is taken by the criminal law risk. Such risk is by far the most dangerous one, because in the unfortunate situation in which it materialises, it can cause very severe effects, sometimes disastrous. In some economic fields there are regulations aimed at ordering the organisations to adopt internal policies concerning the integrity of the employees and of the members of management or supervision bodies. This is the case, for example, of banking or insurance fields, where the regulation imposes the implementation of such policies. The integrity and compliance officer is the person designated in the framework of the organisation - own employee or professional third party - for the purpose of investigating, finding and preparing the proposals for measures concerning the cases of violation of rules of conduct. In many cases, the integrity or compliance officer is a person with legal training (lawyer or in-house lawyer), employed by the organisation or external to it. In order to ensure the independence of the integrity officer, it is recommended that he/she is the member of a compartment governed by a regulation that offers him/her autonomy from the members of the management or supervision bodies or that persons outside the company's staff are designated. Those paying the compliance officer or negotiating the payment of the services provided by him/her can exert a direct or indirect influence over him/her, and this can transform the latter in a mere decorative element, in respect of which people will say that he/she formally exists and that this is a good thing.

In the integrity systems found in the private sector, the whistle-blower is the person who signals a breach of law or of the internal regulations on integrity (*whistle-blowers*) and who is granted protection.

The third part of the habilitation thesis presents the evolution of the professional career. Here, I have explicitly sketched the general and specific objectives of scientific research and teaching, the relevant steps of career development and the topics investigated from a scientific standpoint.

The fourth part is dedicated to the bibliography, where I have indicated the treatises, the coursebooks, the monographs, the articles and the legislation and the case-law used in order to prepare the habilitation thesis.