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GUIDEA PETRU

CRIMINAL LIABILITY FOR FORCED LABOUR

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Composition of the Doctoral Comision:

The chairman of the Comision: STATI Vitalie, Doctor of Law, University Professor, MSU

Doctoral supervisor: BRÎNZA Serghei, Doctor Habilitation in Law, University Professor, MSU

Official reviewers:
1. BERLIBA Viorel, Doctor Habilitation in Law, Associate Professor, Faculty of Law, Comrat State University;
2. COJOCARU Radion, Doctor of Law, University Professor, Faculty of Law, Administration, Public Order and Security, "Ştefan cel Mare" Academy of the Ministry of Internal Affairs;
3. CERNOMOREŢ Sergiu, Doctor of Law, Associate Professor, Institute of Physical Education and Sports, Moldova State University.

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The chairman of the Doctoral Comision:
Stati Vitalie, Doctor of Law,
University Professor,
Moldova State University

Doctoral supervisor:
Brînza Serghei, Doctor Habilitation in Law,
University Professor,
Moldova State University

Author:
Guidea Petru

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CONCEPTUAL LANDMARKS OF RESEARCH

The topicality and importance of the topic

In the Decision of the Government of the Republic of Moldova (hereinafter – DGRM) No. 89 of 28.02.2023 for the approval of the National Development Plan for the years 2023-2025, "the eradication of forced labour"[1] is mentioned in the list of "Sustainable Development Goals" [...] set for 2030."[2] This underlines the strong commitment of the Moldovan authorities to combat this serious problem and to ensure effective protection of the freedom to work. The intervention of the criminal law, as a measure of last resort, falls within this concern. Not coincidentally, in the case of *Kawogo v. the United Kingdom*, the European Court of Human Rights held that "the provisions of domestic criminal law [must provide] practical and effective protection [...] for potential victims of [...] forced labour."[3] Although forced labour continues to be a serious problem in both developing and industrialized countries, this alarming situation highlights the need for in-depth research into the phenomenon of forced labour in general and the crime provided for in art. 168 of the CrC RM in particular. Studying these aspects is essential to understand the mechanisms that perpetuate forced labour and to develop effective measures to prevent and combat it. The implications are significant not only for the scientific field, providing valuable data and insights, but also for law enforcement, contributing to the improvement of legislation.

Framing the topic in international concerns

Alignment with international standards is crucial to identify and sanction individuals and organizations involved in forced labour and to protect the fundamental rights and freedoms of victims. In this context, para. 1, art. 23 of the Universal Declaration of Human Rights provides, among other things: "Everyone has the right to [...] free choice of work [...]."[4] Lit. a) para. 3 art. 8 of the International Covenant on Civil and Political Rights establishes: "No one shall be required to perform forced or compulsory labour".[5] Article 2 of the Declaration of the International Labour Organization (hereinafter referred to as the ILO) on the Fundamental Principles and Rights at Work establishes, *inter alia*, that "Member States [...] have the obligation [...] to respect, promote and implement in good faith [...] the principles relating to the fundamental rights which are the subject of these Conventions, namely: [...] (b) the abolition of all forms of forced or compulsory labour."[6] Para. 2 art. 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – ECHR) provides: "No one shall be required to perform forced or compulsory labour."[7] Art. 15 of the Charter of Fundamental Rights of The European Union establishes, among others: "(1) Everyone has the right to [...] to pursue a freely chosen or accepted occupation. (2) Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State. (3) Nationals of third countries who are authorised to work in

[1] DGRM for the approval of the National Development Plan for the years 2023-2025: No. 89 of the 28.02.2023. In: *Official Gazette of the Republic of Moldova*, 2023, No. 101-104, 220.
[2] Ibidem.
[3] See: *Case of Kawogo v. the United Kingdom*. [accessed at 30.12.2024] Available: https://hudoc.echr.coe.int/?i=001-118825
[4] *Universal Declaration of Human Rights*. [accessed at 26.12.2024] Available: https://www.un.org/en/about-us/universal-declaration-of-human-rights
[5] *International Covenant on Civil and Political Rights*. [accessed at 26.12.2024] Available: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights
[6] *ILO Declaration on Fundamental Principles and Rights at Work*. [accessed at 26.12.2024] Available: https://www.ilo.org/resource/conference-paper/ilo-1998-declaration-fundamental-principles-and-rights-work-and-its-follow
[7] *European Convention for the Protection of Human Rights and Fundamental Freedoms.* [accessed at 08.02.2024] Available: https://www.echr.coe.int/documents/d/echr/Convention_RON

the territories of the Member States are entitled to working conditions equivalent to those of citizens of the European Union."[8] All these regulations require an efficient use of the resources needed to reduce the phenomenon of forced labour. Preventing and combating forced labour is essential for respecting the freedom to work, as it is conceived in various international instruments. These measures not only provide protection for individuals against forced labour but also contribute to the creation of a fair and dignified work environment.

Framing the topic within national and regional concerns

In the Republic of Moldova, freedom of work is guaranteed not only by international acts, but also by national acts. Thus, the Constitution of the Republic of Moldova (hereinafter – CRM) provides, among other things: "Every person has the right to [...] free choice of work [...]"[9] (para. (1) art. 43); "Forced labour is prohibited"[10] (para. (1) art. 44). The Labour Code of the Republic of Moldova (hereinafter – CM RM) establishes, inter alia: "The basic principles of regulating labour relations and other relations directly related to them [...] are the following: a) freedom of labour, including the right to freely chosen or accepted work, the right to dispose of one's labour capabilities, the right to choose one's profession and occupation; b) prohibition of forced (compulsory) labour [...]; [...]"[11] (art. 5); "Forced (compulsory) labour is prohibited."[12] (para. (1) art. 7). Based on these extra-criminal provisions, art. 168 of the CrC RM prohibits forced labour and establishes the punishment for such a crime.

Our scientific study is based not only on a solid normative foundation, but also on a variety of scientific sources. This theoretical basis includes monographs, treatises, doctoral theses, scientific articles and other reference publications, produced by researchers both from the Republic of Moldova and from other corners of the world. These works not only provide a robust theoretical basis, but also a diversity of perspectives that enrich our analysis. By integrating these resources, we aim to make a valuable contribution to scientific knowledge and to support the arguments formulated in the research. We specifically refer to the works developed by: I. Arhiliuc, A. Barbăneagră, A. Borodac, S. Brînza, R. Cojocaru, L. Gîrla, V. Stati, A. Tănase, Gh. Ulianovschi etc. (Republic of Moldova); L.P. Bortnikova, A.S. Iliușcenko, M.D. Jdan, T.O. Mihailicenko etc. (Ukraine); A.V. Andreev, S.B. Avdeeva, E.V. Evstifeeva, I.T. Idrisov etc. (Russian Federation); C.-E. Cristea, T. Manea, C. Olaru, I. Ristea, G. Șologon (Romania); A.V. Boretskiy, A.S. Khamzin, D.B. Raziyeva (Kazakhstan); M. Beels, N. Clark (Great Britain); C. Buckley, S. Sherman (USA); A.M. Djorobekova, C.K. Karynov (Kyrgyzstan); T.D. Nguyen, H. Nguyen (Vietnam); R. Henriett (Hungary); S.F. Fayziev (Uzbekistan).

Framing the topic within the research team's concerns

Within the Department of Criminal Law of the Faculty of Law at the Moldova State University, three members are highlighted who have significantly contributed to the development and consolidation of the specialized doctrine by publishing works dedicated to the analysis of liability for the crime provided for in art. 168 of the CrC RM: S. Brînza, L. Gîrla și V. Stati. These works address theoretical and practical aspects of the crime in question, making a valuable contribution to the field of criminal law.

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[8] *Charter of Fundamental Rights of The European Union*. [accessed at 26.12.2024] Available: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:12012P/TXT

[9] Constitution of the Republic of Moldova: No. 1 of the 29.07.1994. In: *Official Gazette of the Republic of Moldova*, 1994, No. 1, 5.

[10] Ibidem.

[11] Labour Code of the Republic of Moldova: No. 154 of the 28.03.2003. În: *Official Gazette of the Republic of Moldova*, 2003, No. 159-162, 648.

[12] Ibidem.

Framing the topic in an inter- and transdisciplinary context

Our scientific study had a significantly larger scope than a simple examination of the criminal aspects of forced labour. The phenomenon of forced labour, in its entirety, as well as the issue of the crime provided for in art. 168 of the Criminal Code of the Republic of Moldova, is linked to multiple areas that go beyond the scope of criminal law. In this context, we considered it essential to explore and include works from various branches and legal disciplines. This approach allowed us to build a more complex and better-founded understanding of the topic studied, considering the interconnections between the respective branches and disciplines. The authors of the works, which we consulted in this context, are: M. Beels, C. Buckley, N. Clark, M.D. Jdan (criminology); C.-E. Cristea, V.I. Kovalenko, O.A. Kunițina, T. Parpan, V. Vasilița, D.S. Velieva (constitutional law); S.B. Avdeeva, C.-E. Cristea, A.S. Iliușcenko, C.K. Karynov, V.I. Kovalenko, O.A. Kunițina, T. Macovei, D.B. Raziyeva, N. Romandaș, D.S. Velieva, O.O. Voitenco (labour law); A.V. Andreev, O.A. Kunițina, N.Iu. Tetereatnikov, D.S. Velieva, O.O. Voitenco (misdemeanor law); I. Ristea (European Union law); L.P. Bortnikova, A.P. Samiilenko (political economy).

Presentation of previous research results on the chosen topic

In the Republic of Moldova, a group of researchers in the field of legal sciences focused on the liability for the crime provided for in art. 168 of the CrC RM. Among them are I. Arhiliuc, A. Borodac, S. Brînza, L. Gîrla, V. Holban, M. Mutu, V. Stati, A. Tănase and Gh. Ulianovschi. However, none of the works of these authors comprehensively explore the mentioned crime. There are only studies that focus on certain dimensions of the qualification of the crime of forced labour or that address certain issues related to art. 168 of the CrC RM. Moreover, there is not always a harmony of views between the authors of these works. Conceptual disagreements refer to: a) the generic legal object, the special legal object and the material object of the crime provided for in art. 168 of the CrC RM; b) the moment of consummation of this crime; c) the legal quality of the component parts of the prejudicial act provided for in art. 168 of the CrC RM; d) the concurrence of the crimes provided for in art. 165 and 168 of the CrC RM; e) the concurrence of the crimes provided for in art. 168 and 206 of the Criminal Code of the Republic of Moldova; f) the relevance of the reasons underlying the crime of forced labour, etc.

The *purpose* of the thesis is to analyse the crime provided for in art. 168 of the CrC RM, highlighting the difficulties of its qualification, the ambiguities associated with the interpretation of art.168 of the CrC RM and the challenges faced by practitioners in its application, while offering concrete solutions to overcome these obstacles.

Research objectives:

1) analysis of doctrinal opinions regarding the characteristics of the crime provided for in art. 168 of the CrC RM, in order to overcome controversies and resolve issues related to its qualification; 2) comparative examination of the historical precedents of art. 168 of the CrC RM and the norms regarding forced labour in the criminal legislation of other countries; 3) identification of the meaning of the notions of labour, forced labour, exploitation, exploitation through forced labour, freedom of labour, etc.; 4) establishment of the shortcomings that characterize the normative framework in the field of prohibition of forced labour; 5) elucidation of the values and social relations that form, de jure and de facto, the generic legal object of the crimes provided for in Chapter III of the special part of the CrC RM; 6) identification of the legal object of the subgroup, the main legal object, the secondary legal object, the material object and the immaterial object of the crime provided for in art. 168 of the CrC RM; 7) determining the particularities that characterize the victim of the crime provided for in art. 168 of the CrC RM; 8) establishing the differences between the notion of forced labour (used in extra-criminal regulations) and the notion of labour obtained from a person against their will

through coercion or deception (used to characterize the immaterial object of the crime provided for in art. 168 of the CrC RM); 9) examining exceptional cases, when forced labour cannot represent the immaterial object of the crime provided for in art. 168 of the CrC RM, etc.

The research hypothesis is based on the following ideas: it would be only partially correct to state that forced labour represents the immaterial object of the offense provided for in art. 168 of the CrC RM; it is not mandatory for the victim of the offense, provided for in art. 168 of the CrC RM, to have a legal status; it is superfluous to establish in the criminal law the requirement that the contractual obligation be part of the obligations of the person who commits an offense by inaction; in the case of the offense provided for in art. 168 of the CrC RM, "coercion" must be understood not only as physical coercion and psychological coercion; the impairment of the rights and interests of the person who is required to perform work is not sufficient to demonstrate the existence of coercion within the meaning of art. 168 of the CrC RM; the two components of the harmful act, provided for in art. 168 of the CrC RM, are linked by a single intention. However, this intention is not always complex.

Synthesis of research methodology and justification of chosen research methods

To achieve the purpose and objectives of the research, the following methods were applied: 1) the formal legal method (dogmatic), which was used to analyse the text of art. 168 of the CrC RM, with an emphasis on clarifying legal terms and concepts such as "labour", "forced labour", "exploitation", "exploitation through forced labour", "freedom of labour" etc., as well as to correctly interpret the relationships between art. 168 of the CrC RM and other related normative provisions; 2) the historical-legal method. This was applied to understand the evolution of the regulation of forced labour in the criminal legislation of the Republic of Moldova; 3) the comparative legal method. The use of this method was crucial for evaluating national regulations in relation to those of other states; 4) the systemic analysis method was applied to examine art. 168 of the CrC RM in the context of the national and international legal systems.

THESIS CONTENT

The thesis is structured in three chapters. At the end of each chapter, there is a subchapter that summarizes the topic addressed and the results obtained.

In Chapter 1 – *Analysis of scientific materials on criminal liability for forced labour* – the following are subject to examination: scientific materials on criminal liability for forced labour, which were published in the Republic of Moldova; scientific materials on criminal liability for forced labour, which were published in other countries. The central objective of the analysis in Chapter 1 is to examine the various perspectives in the specialized literature on liability for the offense stipulated in art. 168 of the CrC RM.

In 2003, a commentary on the Criminal Code appeared, prepared by A. Barbăneagră, V. Berliba, M. Bîrgău etc.

In this book, art. 168 of the CrC RM is commented by *A. Borodac*.[13] This author begins the analysis by examining the degree of prejudiciality of the offenses provided for in Chapter III of the Special Part of the Criminal Code of the Republic of Moldova, in general, not of the offense provided for in art. 168 of the CrC RM, in particular. Further, establishing the content of the "direct legal object"[14], A. Borodac speaks about the freedom of the person, without specifying which freedom he is talking about physical freedom, psychological freedom, freedom to work etc. Characterizing the ob-

[13] BARBĂNEAGRĂ, Alexei et al. *Criminal Code of the Republic of Moldova. Commentary* / Under his editorship Alexei Barbăneagră. Chișinău: Arc, 2003. 836 p. ISBN 9975-61-291-1.
[14] Ibidem p. 349.

jective side of the crime provided for in art. 168 of the CrC RM, the author identifies four alternative actions, not four alternative normative modalities of the prejudicial action. A. Borodac does not specify whether the four actions can form a competition of crimes among themselves or not. After defining the notions that designate the four actions, the author establishes the moment of consumption and the moment of exhaustion of the crime provided for in art. 168 of the CrC RM.[15] The analysis concludes with the determination of the characteristics of the subjective side and the subject of the crime. There is no information regarding the motive for the crime provided for in art. 168 of the CrC RM.

In 2005, the manual was published, whose authors are: S. Brînza, X. Ulianovschi, V. Stati etc.[16] *S. Brînza* performs the analysis of the offense provided for in art. 168 of the CrC RM.

In his view, "the generic legal object of the crimes in this group (i.e. the group of crimes provided for in Chapter III of the special part of the Criminal Code of the Republic of Moldova – n.a.) is the social relations regarding the freedom of the person."[17] S. Brînza explains why he does not include social relations regarding the honour and dignity of the person in the respective object: "With the repeal of art. 170 of the CrC RM and, implicitly, with the decriminalization of the act of slander, we can no longer claim that there would be any crime, provided for by the norms of Chapter III of the special part of the Criminal Code, which would harm, exclusively or mainly, social relations regarding the honour and dignity of the person."[18] As for the special legal object of the crime provided for in art. 168 of the Criminal Code of the Republic of Moldova, the author is of the opinion that it consists of "social relations regarding the freedom of the person to choose his work and to perform it according to his will."[19] At the same time, S. Brînza admits the possibility that the crime of forced labour may have a secondary legal object: "social relations regarding the bodily integrity, health or psychological freedom of the person".[20]

In 2010, a manual was developed, authored by: *L. Gîrla* and *Iu. Tabarcea*.[21]

Like S. Brînza, these two authors argue that social relations regarding the freedom of the person form the generic legal object of the offenses provided for in Chapter III of the special part of the Criminal Code of the Republic of Moldova. Moreover, L. Gîrla and Iu. Tabarcea argue in a manner very similar to that of S. Brînza, when explaining why social relations regarding the honor and dignity of the person cannot constitute such an object. In relation to the special legal object of the offense provided for in art. 168 CrC RM, L. Gîrla and Iu. Tabarcea are of the opinion that it is formed by "social relations that ensure the right to work and the right to choose the type of work".[22] At the same time, the authors do not report anything about the material object and the victim. Continuing with the objective side, L. Gîrla and Iu. Tabarcea identify three alternative actions. This approach differs from that of A. Borodac and S. Brînza, who establish the presence of four alternative actions. Such a discrepancy is explained not by doctrinal contradictions, but by the amendments made to art. 168 of the Criminal Code of the Republic of Moldova. Thus, by Law no. 277 of 18.12.2008 on amending and supplementing the Criminal Code of the Republic of Moldova, the words "or forcing to compulsory

[15] GUIDEA, Petru. Analysis of scientific materials on criminal liability for forced labour. In: *International Scientific Conference "Crime - Criminal Liability - Punishment. Law and Criminology", 3rd Edition, December 7-8, 2023, Chişinău: Collection of Communications.* Chişinău: CEP USM, 2024, pp. 247-252. 569 p. ISBN 978-9975-62-754-2.
[16] BRÎNZA, Serghei et al. *Criminal law. Special part*. Chişinău: Cartier, 2005. 804 p. ISBN 9975-79-324-X.
[17] Ibidem, p. 133.
[18] Ibidem, p. 133.
[19] Ibidem. p. 152.
[20] Ibidem. p. 152.
[21] ГЫРЛА, Л.Г., ТАБАРЧА, Ю.М. *Уголовное право Республики Молдова. Часть Особенная. Том 1*. Кишинэу: Cartdidact, 2010. 712 с. ISBN 978-9975-4158-0-4.
[22] Ibidem, p. 208.

labour" were excluded from art. 168 of the CrC RM.[23] As a result, the harmful act, provided for by this article, began to include three alternative normative modalities, not four.

A book written by S. Brînza and V. Stati dates to 2011.[24] In this work, S. Brînza investigates the crime provided for in art. 168 of the CrC RM.

This author states that "the generic legal object of [the crime provided for in art. 168 of the CrC RM] is social relations regarding the freedom, honour and dignity of the person".[25] We note that this point of view differs from the one stated in the 2005 work, in which S. Brînza argued that "the generic legal object of the crimes in this group (i.e. the group of crimes provided for in Chapter III of the special part of the Criminal Code of the Republic of Moldova – n.a.) is the social relations regarding the freedom of the person."[26] The author argues this change of position as follows: "*De jure*, social relations regarding the freedom, honour and dignity of the person are those that constitute the generic legal object of [the crimes provided for in Chapter III of the special part of the Criminal Code of the Republic of Moldova]. *De facto*, the generic legal object of these crimes is formed by social relations regarding the freedom of the person."[27] Regarding the actual analysis of the crime provided for in art. 168 of the Criminal Code of the Republic of Moldova, S. Brînza examines, first of all, the opportunity to criminalize the act of forced labour. Speaking about the social danger of this act and the international commitments of the Republic of Moldova, the author concludes that it is appropriate to criminalize the act of forced labour. Making a connection with the reference norms of the Labor Code of the Republic of Moldova, S. Brînza establishes the content of the special legal object of the crime provided for in art. 168 of the CrC RM. As in the 2005 manual, the author identifies the secondary legal object and the material object of this crime. Regarding the objective side of the crime of forced labour, we note a change in position. Thus, S. Brînza mentions not alternative actions as components of the harmful act, but alternative normative modalities of this act. In the context of researching these modalities, the notions of deception, coercion, violence, threat of violence, servitude, etc. are defined. The exceptional cases in which liability cannot be applied under art. 168 of the CrC RM are carefully analysed.

S. Brînza and V. Stati published a book in 2015 that analyses, among other things, the crime provided for in art. 168 of the CrC RM.[28]

The novelty element compared to the 2011 work of the two authors, previously analysed, is: the complex nature of the special legal object of the offense provided for in art. 168 of the CrC RM; the special qualities with aggravating effect of the victim of the analysed offense; the two alternative normative modalities of the prejudicial act; the content of the notions of coercion and deception, which designate the adjacent action or inaction within the prejudicial act; the distinction between the offenses provided for in art. 165^1 and 168 of the CrC RM; cases in which forced labour takes the form of a material offense and, respectively, is committed out of imprudence; cases in which forced

[23] Law on amending and supplementing the Criminal Code of the Republic of Moldova: No. 277 of the 18.12.2008. In: *Official Gazette of the Republic of Moldova*, 2009, No. 41-44, 120.
[24] BRÎNZA, Serghei, STATI, Vitalie. *Criminal Law. Special Part. Vol. I*. Chișinău: Central Printing House, 2011. 1062 p. ISBN 978-9975-53-029-3.
[25] Ibidem, p. 317.
[26] BRÎNZA, Serghei et al. *Criminal Law. Special Part*. Chișinău: Cartier, 2005, p. 133. 804 p. ISBN 9975-79-324-X.
[27] BRÎNZA, Serghei, STATI, Vitalie. *Criminal Law. Special Part. Vol. I*. Chișinău: Central Printing House, 2011, p. 318. 1062 p. ISBN 978-9975-53-029-3.
[28] BRÎNZA, Serghei, STATI, Vitalie. *Criminal Law Treaty. Special Part. Vol. I*. Chișinău: Central Printing House, 2015. 1328 p. ISBN 978-9975-53-469-7.

labour can be committed by a legal person; the aggravating circumstances of the offense provided for in art. 168 of the CrC RM; the delimitation of this offense from some related contraventions.

In Chapter 2 – *Criminal law analysis of the offense provided for in art. 168 of the CrC RM* – the investigation focuses on the four constituent elements of the offense provided for in art. 168 of the CrC RM. The objectives of the analysis carried out in Chapter 2 are: analysis of doctrinal opinions regarding the characteristics of the offense provided for in art. 168 of the CrC RM, in order to overcome controversies and resolve issues related to its qualification; comparative examination of the historical precedents of art. 168 of the CrC RM and the norms regarding forced labour in the criminal legislation of other countries; identification of the meaning of the notions of labour, forced labour, exploitation, exploitation through forced labour, freedom of labour, etc.

In the opinion of D. Ursu, the suprageneric legal object of the crimes, provided for in Chapters II, III, IV and VII of the special part of the Criminal Code of the Republic of Moldova, is formed by "social relations regarding the protection of the person".[29] D. Ursu's formulation is tautological. The person (and the social relations surrounding him) constitute the suprageneric legal object of these crimes.

It is beneficial to protect in a single chapter of the criminal law – Chapter III of the special part of the Criminal Code of the Republic of Moldova – both the freedom of the person and the honor and freedom of the person. At the same time, the placement of art. 168 in Chapter III of the special part of the Criminal Code is justified. It would not be justified to transfer the article, which incriminates forced labour, from Chapter III of the special part of the Criminal Code of the Republic of Moldova to Chapter V of the special part of the Criminal Code of the Republic of Moldova.

Speaking about the derivation of the special legal object from the generic legal object, M. Ștefănoaia remarks: "The specific difference between the notions of "personal freedom" and "physical freedom of the person" is constituted by the elements that designate the freedom of the person to work, the psychological freedom of the person and other such segments of the freedom of the person, except the physical freedom of the person".[30] Therefore, the freedom of a person to work is viewed as a part of a whole represented by the freedom of a person. From this perspective, it would not be correct to equate the part (the special legal object of the crime) with the whole (the legal object of a subgroup of the crime). We cannot agree with A. Zosim who states: "The immediate object of the kidnapping of a person is identical to the immediate object of the illegal deprivation of liberty. [...] As a rule, the object of the kidnapping of a person is understood as the social relations that ensure the freedom of a person".[31]

Freedom of work and the right to work are not identical categories. They are related to each other, but they do not have the same content. This results from para. (1) art. 43 CRM: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".[32] Given that this paragraph enshrines the constitutional right to work, we agree with C.I. Nikonova who states: "Freedom of labour is an integral element of the right to

[29] URSU, Daniela. *The content of the legal object of the crimes of torture, inhuman or degrading treatment.* In: *National Law Review*, 2016, No. 8, pp. 26-30. ISSN 1811-0770; URSU, Daniela. *Torture, inhuman or degrading treatment: criminal law aspects.* Chișinău: Central Printing House, 2017, p. 68. 290 p. ISBN 978-9975-53-797-1.

[30] ȘTEFĂNOAIA, Mihai. *The legal object and the material object of crimes regarding human trafficking in comparative law. Part II.* In: *National Law Review*, 2012, No. 8, pp. 65-70. ISSN 1811-0770.

[31] ZOSIM, Alexandru. *Considerations regarding the object and material subject matter of the crime of kidnapping.* In: *Scientific Annals of the "Stefan cel Mare" Academy of the Ministry of Interior of the Republic of Moldova: legal sciences*, 2012, No. XII, pp. 84-89. ISSN 1857-0976.

[32] Constitution of the Republic of Moldova: No. 1 of the 29.07.1994. In: *Official Gazette of the Republic of Moldova*, 1994, No. 1, 5.

work. If we start from the fact that "freedom of labour" is understood as the freedom to dispose of the ability to work, that is, a person's desire to conclude an employment contract or not, then it is quite obvious that this concept is an integral part of the right to work, which includes not only the will to conclude an employment contract, but also other rights that arise directly from the official relationship".[33] L.A. Cikanova has a similar opinion.[34]

In the case of the crime provided for in art. 168 of the CrC RM, a material object exists not only when a harmful consequence occurs (as is observed in the hypothesis specified in letter b) para. (3) of art. 168 of the CrC RM). The analysed crime will also have a material object if the perpetrator influenced the victim's body, without causing physical harm. In this regard, we support the opinion of S. Brînza, according to which the crime, provided for in art. 168 of the CrC RM, has a material object in the hypothesis of "the application of violence against the victim"[35], that is, if a direct influence is exerted on the victim's body. From the point of view of this author, the crime analysed has a material object in the hypothesis of "the application of violence towards the victim"[36], that is, in the case where a direct influence is exerted on the victim's body. In relation to the same crime, S. Brînza and V. Stati express a similar position: "The analysed crime has a material object in those cases when it involves a direct criminal influence on the victim's body (when, in the alternative, violence is applied to the victim)."[37]

Art. 168 of the CrC RM does not apply to obtaining services from a person against his or her will, through coercion or deception. The following do not constitute work (and, for this reason, do not fall under the scope of art. 168 of the CrC RM): sexual activities (prostitution, pornography, etc.); donation of organs, tissues or other parts of the human body; surrogacy; participation in armed conflicts or in illegal military formations; begging; other exploitable activities provided for in art. 165 and 206 of the CrC RM, as well as in point 3 of art. 2 of the Law of the Republic of Moldova No. 241 of 20.10.2005 on preventing and combating trafficking in human beings.

The notion of forced labour (used in extra-criminal regulations) is not identical but only presents certain affinities with the notion of labour obtained from a person against his or her will through coercion or deception (used to characterize the immaterial object of the offense provided for in art. 168 of the Criminal Code of the Republic of Moldova). Not every forced labour is prohibited by the extra-criminal regulations on the matter. Respecting the rule *a majori ad minus*, it can be stated that these exceptional cases do not fall under the incidence of art. 168 of the Criminal Code of the Republic of Moldova either. In the absence of the person's agreement to perform unpaid labour for the benefit of the community, this represents forced labour within the meaning of letter a) para. 3 art. 4 ECHR, letter b) para. (2) art. 44 CRM, as well as letter b) para. (5) art. 7 CM RM.

We criticize the contradictory opinion expressed by I.T. Idrisov and N.T. Idrisov: "The subjects of relations that arise in connection with the use of forced labour are the employer and the employee, endowed with corresponding rights and responsibilities. An employee is considered either a person who has the legal possibility to exercise his rights, or a person who has the factual possibility to ex-

[33] НИКОНОВА, К.И. Соотношение понятий «право на труд» и «свобода труда»: дискурсионные подходы. În: *Глобус: экономика и юриспруденция*, 2020, № 2, с. 12-14. ISSN 2713-3052.
[34] ЧИКАНОВА, Л.А. Право на труд: конституционный и международный аспекты. În: *Журнал российского права*, 2018, № 5, с. 5-15. ISSN 1605-6590.
[35] BRÎNZA, Serghei et al. *Criminal Law. Special Part.* Chișinău: Cartier, 2005, p. 152. 804 p. ISBN 9975-79-324-X.
[36] Ibidem. p. 152.
[37] BRÎNZA, Serghei, STATI, Vitalie. *Criminal Law Treaty. Special Part. Vol. I*. Chișinău: Central Printing House, 2015, p. 507. 1328 p. ISBN 978-9975-53-469-7.

ercise his rights".[38] As a result, it is necessary to agree with the opinion of M.I. Hailova: "Forced labour can hardly be called a legal relationship from the perspective of labour legislation. The explanation lies in the fact that we are talking about illegal influence on a person to perform work against his will or despite his will. Forced labour does not necessarily imply that, in advance, the victim has become a party to a legal labour relationship".[39] Therefore, it is not mandatory for the victim of the crime, provided for in art. 168 of the CrC RM, to have the legal status of an employee within the meaning of art. 1 of the Civil Code of the Republic of Moldova: "employee – a natural person (man or woman) who performs work according to a certain specialty, qualification or in a certain position, in exchange for a salary, based on an individual employment contract".[40]

In the case of the crime provided for in art. 168 of the CrC RM, the harmful act includes two components: a) the main action, namely – obtaining work from the victim; b) the adjacent action or inaction, namely coercion or deception. The interpretation of the notion of coercion used in art. 168 of the Criminal Code of the Republic of Moldova (which is not limited to physical and psychological coercion), corresponds to the meaning attributed to this notion in the Law of the Republic of Moldova no. 241 of 20.10.2005 on preventing and combating trafficking in human beings. In the case of the crime provided for in art. 168 of the CrC RM, the object of deception (which should not be confused with the secondary legal object protected against deception) consists of the circumstances that the perpetrator takes advantage of to deceive the victim, using information about objects, persons or events related to the work obtained by the perpetrator from the victim. Only the law should represent the source of the obligation that the perpetrator fails to perform when committing an inaction provided for by criminal law, in general, and passive deception within the meaning of art. 168 of the CrC RM, in particular.

M. Mutu asks: how should human trafficking committed for the purpose of exploitation through forced labour be qualified, if this purpose is achieved? The author offers the answer to this question: "Regarding the differentiation between forced labour and human trafficking, especially when the former can constitute the purpose of the exploitation of the latter, in the event that a person is forced to perform a task, a work that, normally, he would not have performed or is put in a situation to perform a work that he was not obliged to do, as if he had the duty to do it, and the execution of that work is done forcibly, through the methods and means incriminated in art. 165 of the CrC RM, the perpetrator will be held liable for the crime of human trafficking."[41] As far as we are concerned, we consider that art. 165 and 168 of the CrC RM should be applied in the case where human trafficking is committed for the purpose of exploitation through forced labour, and this purpose is achieved. The achievement of this purpose goes beyond the scope of the crime provided for in art. 165 of the CrC RM, therefore it requires a separate qualification.

For the qualification of the act under art. 168 of the CrC RM, it is not important when the criminal intent appeared: at the time of hiring a person to perform a job or later. For example, in one case it does not clearly result that, initially, at the time of hiring the victim, the perpetrator had the intention to commit the crime provided for in art. 168 of the CrC RM. Only later does the perpetrator's

[38] ИДРИСОВ, И.Т., ИДРИСОВ, Н.Т. О соотношении понятий принудительного и рабского труда и некоторых проблемах квалификации использования рабского труда. In: *Актуальные проблемы российского права*, 2013, № 5, с. 585-589. ISSN 1994-1471.

[39] ХАЙЛОВА, М.И. К вопросу о принудительном труде. In: *Современные научные исследования и разработки*, 2018, № 7, с. 242-244. ISSN 2415-8402.

[40] Labour Code of the Republic of Moldova: No. 154 of the 28.03.2003. In: *Official Gazette of the Republic of Moldova*, 2003, No. 159-162, 648.

[41] MUTU, Maria. *The Tangencies of Human Trafficking with Some Adjacent Crimes*. In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2008, No. 1, pp. 111-113. ISSN 1814-3199.

intention to commit this crime become certain: in December 2007, S.P. was hired by M. I. at the sheepfold that belonged to him as a shepherd and, according to the verbal agreement, for the work performed, S. P. was to receive the amount of 1000 lei per month. However, given the fact that during the period December 2007 – April 2008 S. P. was not remunerated, he left the sheepfold. Intending to continue to force him to work, without remunerating him for the work performed, C. V. repeatedly, threatening him with violence and using physical force, brought S. P. back to the sheepfold in question and forced him to perform the work assigned to him.[42]

In another case where art. 168 of the CrC RM was applied, it is mentioned about "the purpose of obtaining the work of a group of people for profit".[43] We believe that this formulation refers rather not to the purpose of the crime, but to the motive of the crime (namely – to the material interest). In another case from judicial practice, "the purpose of obtaining work [...] by deception" is mentioned".[44] If the purpose of the ancillary action or inaction is not to ensure the commission of the main action, then art. 168 of the CrC RM cannot be applied. It is important that the examined purpose be present in the perpetrator's consciousness at the time of the commission of the main action, namely obtaining the victim's work. If we make an analogy, we can recall a fragment from point 15 of the Decision of the Plenum of the SCJ no. 23 of 28.06.2004 regarding the judicial practice in criminal trials on the theft of goods: "Receiving goods on condition of fulfilling a commitment can be qualified as fraud only if the perpetrator, at the time of taking possession of these goods, pursued the purpose of stealing them and did not intend to execute the commitment assumed.".[45]

The subject of the offense, provided for in art. 168 of the CrC RM, may be not only a natural person, but also a legal person. The subject of the offense, provided for in art. 168 of the CrC RM, may be any legal person within the meaning of art. 171 of the Civil Code[46] (except for a public authority), including an entity within the meaning of art. 1 of the Labour Code. The activity of legal persons, which may appear as subjects of the offense provided for in art. 168 of the CrC RM, may be regulated by: Law no. 1134 of 02.04.1997 on joint-stock companies[47]; Law no. 73 of 12.04.2001 on Entrepreneurial Cooperatives[48]; Law no. 1007 of 25.04.2002 on production cooperatives[49]; Law no. 135 of

[42] *Decision of the Enlarged Criminal Panel of the SCJ of 30.10.2012. File No. 1ra-749/2012.* [accessed at 12.12.2018] Available: csj.md
[43] *Judgment of the Ungheni District Court of 08.09.2014. File No. 1-303/2014*. [accessed at 23.12.2018] Available: http://jun.justice.md
[44] *Decision of the Enlarged Criminal Panel of the SCJ of 17.06.2008. File No. 1ra-778/2012.* [accessed at 12.12.2018] Available: csj.md
[45] *Decision of the Plenum of the Supreme Court of Justice on judicial practice in criminal trials on the theft of property: No. 23 of 28.06.2004*. [accessed at 13.08.2024] Available: https://jurisprudenta.csj.md/search_hot_expl.php?id=310
[46] Civil Code of the Republic of Moldova: No. 1107 of 06.06.2002. In: *Official Gazette of the Republic of Moldova*, 2002, nr. 82-86, 661.
[47] Law on Joint Stock Companies: No. 1134 of 02.04.1997. In: *Official Gazette of the Republic of Moldova*, 1997, No. 38-39, 341.
[48] Law on Entrepreneurial Cooperatives: No. 73 of 12.04.2001. In: *Official Gazette of the Republic of Moldova*, 2001, No. 49-50, 237.
[49] Law on Production Cooperatives: No. 1007 of 25.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 71-73, 575.

14.06.2007 on limited liability companies[50]; Law no. 294 of 21.12.2007 on political parties[51]; Law No. 86 of 11.06.2020 on non-commercial organizations[52], etc.

It is not justified to reduce the applicability of the phrase "by two or more persons" (which is used in letter c) para. (2) of art. 168 of the CrC RM) to the hypothesis of co-authorship. Not every participation falls under letter c) paragraph (2) of art. 168 of the CrC RM. Only simple participation and complex participation, which presupposes the presence of at least two authors, fall under this norm. Complex participation, which presupposes the presence of a single author, does not fall under letter c) para. (2) of art. 168 of the CrC RM.

The use of the position of office (within the meaning of letter d) para. (2) of art. 168 of the CrC RM) essentially implies the abuse of the powers that the perpetrator holds by virtue of his or her occupational status, for improper purposes. In the hypothesis of letter d) paragraph (2) of art. 168 CP RM, the use of the service situation fulfils the role of tertiary action or inaction.

Chapter 3 – entitled *Results obtained from the criminal law analysis of the crime provided for in art. 168 of the Criminal Code of the Republic of Moldova* – focuses on the author's personal contribution. The analysis in Chapter 3 mainly aims to identify the deficiencies that influence the clarity and predictability of art. 168 of the CrC RM, as well as to formulate suggestions for correcting such deficiencies. Other objectives targeted by the analysis carried out in Chapter 3 include: identifying the meaning of the notions of labour, forced labour, exploitation, exploitation through forced labour, freedom of labour, etc.; establishing the shortcomings that characterize the normative framework in the matter of prohibiting forced labour; determining the particularities that characterize the victim of the crime provided for in art. 168 of the CrC RM, etc.

In the case of the offense provided for in art. 168 of the CrC RM, social relations regarding the freedom of work constitute the main legal object. Freedom of work represents the social value that expresses the person's option to freely negotiate the terms of employment, without incurring sanctions, to actively or passively realize oneself in the sphere of work, to voluntarily and consciously choose the specific forms of work performance, taking into account personal qualities, to decide whether and where to get employed, pre-how and to choose the profession, whether to work or not, for whom and under what conditions, in a context that allows the conclusion, modification, suspension or termination of employment relationships.

The secondary legal object of the crime, provided for in art. 168 of the CrC RM, is formed by social relations regarding any of the following social values: a) the life of the person; b) the health of the person; c) the bodily integrity of the person; d) the psychological freedom of the person; e) the freedom to manifest the will of the person; f) honesty in terms of the inadmissibility of taking advantage of the victim's dependence; g) fairness in terms of the inadmissibility of taking advantage of the victim's helplessness; h) good faith in terms of the inadmissibility of abusing the victim's vulnerable position; i) the proper performance of service activity in the public sector, which involves the fulfilment – by a public person, a person with a position of responsibility, a person with a position of public dignity, a foreign public person or an international official – of service obligations correctly, without abuse.

[50] Law on Limited Liability Companies: No. 135 of 14.06.2007. In: *Official Gazette of the Republic of Moldova*, 2007, No. 127-130, 548.
[51] Law on Political Parties: No. 294 of 21.12.2007. In: *Official Gazette of the Republic of Moldova*, 2008, No. 42-44, 119.
[52] Law on Non-Commercial Organizations: No. 86 of 11.06.2020. In: *Official Gazette of the Republic of Moldova*, No. 193, 370.

Labour, obtained from a person against his will by coercion or deception, represents the immaterial object of the offense provided for in art. 168 of the CrC RM. Such work does not constitute the object of the purpose of the offense provided for in art. 168 of the CrC RM. It is not mandatory that work, which constitutes the immaterial object of the offense provided for in art. 168 of the CrC RM, be regulated by legal norms, in general, and by labour law norms, in particular. It is possible that the respective work may remain outside such regulation. The exceptional cases, when forced labour cannot represent the immaterial object of the offense provided for in art. 168 of the CrC RM, are three in number: a) military service or substitute service; b) work of a detained person or freedom conditional on punishment / work or service of a convicted person; c) work or service that is either provided under exceptional circumstances or is related to normal civil obligations, which are provided for by law.

Coercion or deception are those two exogenous factors, implemented by the subject of the crime provided for in art. 168 of the CrC RM, which determine the victim of this crime to perform work against his or her will. The coercion, exercised on the victim of the crime provided for in art. 168 of the CrC RM, can only have an illegal character. The illegality of the coercion, exercised on the victim, is established by reference to the reference regulations of an extra-criminal nature. In the case of the crime provided for in art. 168 of the CrC RM, deception attracts criminal liability only because it accompanies the main action and, as a result, social relations regarding the freedom of the person to work are harmed. If these relations were not affected, then art. 168 of the CrC RM would not protect social relations regarding the freedom of the person to express his or her will.

Exploitation through forced labour is not a stage in the process of committing the crimes provided for in art. 165 and 206 of the CrC RM. Exploitation through forced labour is the abusive use of the physical, intellectual or other abilities of a person, for the purpose of obtaining material or personal benefits for the perpetrator, without the free consent of the victim, by coercion or deception, regardless of whether: the perpetrator seeks to obtain a material gain or not; the remuneration of the victim's work is below the minimum wage or not; the victim's work is remunerated or not. If the purpose of the crimes provided for in art. 165 or 206 of the CrC RM lies in the exploitation of the victim through work, obtained from a person against their will by coercion or deception, and if this purpose is achieved, then both art. 165 or 206 of the CrC RM and art. 168 of the CrC RM. In this case, there is a real concurrence between one of the offenses, provided for in art. 165 or 206 of the CrC RM, and the offense provided for in art. 168 of the CrC RM.

Art. 168 of the CrC RM may be applied independently provided that one of the crimes provided for in art. 165 or 206 of the CrC RM has not been committed previously. If the purpose of the crimes provided for in art. 165 or 206 of the Criminal Code of the Republic of Moldova lies in the exploitation of the victim through forced labour (but other than through labour obtained from a person against his or her will by coercion or deception) and if this purpose is achieved, then only art. 165 or 206 of the CrC RM shall apply. If the purpose of the crimes provided for in art. 165 or 206 of the CrC RM consists in the exploitation of the victim through forced services and if this purpose is achieved, then only art. 165 or 206 of the CrC RM shall apply.

The offence, provided for in art. 168 of the CrC RM, is committed from the moment of obtaining work from the victim against her will, through coercion or deception. In the situation when coercion or deception is carried out on the victim, to obtain work from the victim against her will, but, for reasons that do not depend on the will of the perpetrator, he does not obtain work from the victim against her will, art. 27 and 168 of the CrC RM must be applied.

Material interest is the predominant motive of the crime stipulated in art. 168 of the CrC RM. Motives such as revenge, vanity, jealousy, envy or pity are less relevant in this context. In the case established in letter e) paragraph (2) of art. 168 of the CrC RM, the motive of the crime becomes a

mandatory sign of the subjective side of the crime. In other cases, the motive is considered when individualizing the punishment applied for the crime stipulated in art. 168 of the CrC RM.

It is not mandatory that the subject of the offense, provided for in art. 168 of the CrC RM, has the status of employer within the meaning of art. 1 of the Labour Code. The presence of such a status is optional. It is not wrong to use the term exploiter to characterize the subject of the offense provided for in art. 168 of the CrC RM. This term is appropriate to perceive the correlation between the offense provided for in art. 168 of the CrC RM, on the one hand, and the offenses provided for in art. 165, 165^1, 206 and 206^1 of the CrC RM, on the other hand.

In the case of letter d) paragraph (2) of art. 168 of the CrC RM, the tertiary action or inaction (namely – the use of the official position) is committed in order to ensure the commission of the adjacent action or inaction (namely – coercion or deception), so that the adjacent action or inaction can ensure the commission of the main action (namely – obtaining work from the victim). In the case of letter d) paragraph (2) of art. 168 of the CrC RM, the official duties of the perpetrator must be expressly established in the text of the law. Otherwise, the provision of letter d) para. (2) of art. 168 of the CrC RM cannot be applied.

CONCLUSIONS AND RECOMMENDATIONS

The *results* that we obtained in this thesis consist of the following: 1) the doctrinal opinions regarding the characteristics of the crime provided for in art. 168 of the CrC RM were analysed, in order to overcome controversies and resolve issues related to its qualification; 2) the historical precedents of art. 168 of the CrC RM were comparatively examined, as well as the norms regarding forced labour in the criminal legislation of other countries; 3) the meaning of the notions of labour, forced labour, exploitation, exploitation through forced labour, freedom of labour, etc. was identified; 4) the shortcomings that characterize the normative framework in the matter of prohibiting forced labour were established; 5) the values and social relations that form, de jure and de facto, the generic legal object of the crimes provided for in Chapter III of the Special Part of the Criminal Code of the Republic of Moldova were clarified; 6) the subgroup legal object, the main legal object, the secondary legal object, the material object and the immaterial object of the crime provided for in art. 168 of the CrC RM were identified; 7) the particularities characterizing the victim of the crime provided for in art. 168 of the CrC RM were determined; 8) the differences between the notion of forced labour (used in extra-criminal regulations) and the notion of labour obtained from a person against their will by coercion or deception (used to characterize the immaterial object of the crime provided for in art. 168 of the CrC RM) were established; 9) exceptional cases were examined, when forced labour cannot represent the immaterial object of the crime provided for in art. 168 of the CrC RM; 10) the conditions that the prejudicial act provided for in this article must meet were clarified; 11) the two exogenous factors implemented by the subject of the crime provided for in art. 168 of the CrC RM, which determine the victim of this crime to perform work against his or her will, were analysed; 12) forced labour was delimited from similar acts (slavery, human trafficking committed for the purpose of exploitation through forced labour, etc.); 13) the guilt, motive, purpose and emotions manifested by the perpetrator when committing the crime provided for in art. 168 of the CrC RM were established; 14) the subject – natural person and legal person – of the crime provided for in this article was identified; 15) the conditions characterizing participation, attempt and preparation in the case of the crime provided for in art. 168 of the CrC RM were determined; 16) the cases from jurisprudence in which art. 168 CrC RM; 17) deficiencies were identified that influence the clarity and predictability of this article; 18) suggestions were made for correcting such deficiencies.

The important scientific problem, solved after obtaining the described results, consists in developing a conceptual framework for qualifying the facts based on art. 168 of the CrC RM, which can contribute to clarifying the conditions under which this article is applied and to substantiating effective measures for preventing and combating the phenomenon of forced labour, in general, and the crime of forced labour, in particular, thus ensuring a more uniform application of art. 168 of the CrC RM and increasing the protection of the freedom to work against criminal manifestations.

I. Conclusions:

The important scientific problem was highlighted by the conclusions formulated based on the research hypothesis, as follows:

1. it would be only partially correct to state that forced labour represents the immaterial object of the crime provided for in art. 168 of the CrC RM. It is reasonable to argue that, in the case of the crime provided for in art. 168 of the CrC RM, labour obtained from a person against his will by coercion or deception constitutes the immaterial object of the crime. Or it is precisely such labour that the perpetrator obtains from the victim when he coerces or deceives her. The notion of forced labour intersects with the notion of labour obtained from a person against his will by coercion or deception. However, the two notions are not equivalent *(see: Chapter 2, Subchapter 2.1; Chapter 3, Subchapter 3.1)*;

2. it is not mandatory for the victim of the crime, provided for in art. 168 of CrC RM, to have a legal status. The victim of this crime can be both a person who has the legal status of an employee (within the meaning of art. 1 of the CrC RM), and a person with whom an individual employment contract has not been concluded. The relations between the subject of the crime, provided for in art. 168 of the CrC RM, and the victim of this crime are not necessarily regulated by legal norms. Such an interpretation is well-founded. The subject of the crime provided for in art. 168 of the CrC RM (who may not have the status of an employer) is indifferent to whether the victim has the legal status of an employee or not. The purpose of this subject is to subject the victim to work against her will, not to ensure compliance with formalities established by law. Forced labour is an eminently illegal act and should in no case be conditioned on the perpetrator's compliance with these formalities *(see: Chapter 2, Subchapter 2.1; Chapter 3, Subchapter 3.1)*;

3. it is unnecessary to establish in criminal law the requirement that the contractual obligation be part of the obligations of the person who commits a crime by inaction. The contractual obligation of the perpetrator to act in order to respect the fundamental rights and freedoms of the person, if such an obligation is not also provided for by law, would imply a violation of paragraph (2) of art. 3 of the CrC RM and, implicitly, of art. 7 of the ECHR. Proceeding from the fact that the law is the indisputable indicator of the intensity of the infringement of a social value protected by criminal law, we conclude that only the law must represent the source of the obligation that the perpetrator fails to perform when he commits an inaction provided for by criminal law, in general, and passive deception within the meaning of art. 168 of the CrC RM, in particular *(see: Chapter 2, Subchapter 2.2; Chapter 3, Subchapter 3.2)*;

4. in the case of the crime provided for in art. 168 of the CrC RM, "coercion" should be understood not only as physical coercion and psychological coercion. In the case of this crime, the list of forms of coercion includes physical coercion; psychological coercion; coercion by taking advantage of the victim's dependence; coercion by taking advantage of the victim's helplessness; coercion by abusing the victim's vulnerable position. Such an interpretation of the notion of coercion used in art. 168 of the CrC RM (which is not limited to physical and psychological coercion), corresponds to the meaning attributed to this notion in the Law of the Republic of Moldova No. 241 of 20.10.2005 on preventing and combating trafficking in human beings, as well as in the ILO Recommendation No.

35 of 10.06.1930 on indirect coercion to labour *(see: Chapter 2, Subchapter 2.2; Chapter 3, Subchapter 3.2)*;

5. the impact on the rights and interests of the person who is required to perform a task is not sufficient to demonstrate the existence of coercion within the meaning of art. 168 of the CrC RM. The effects for such a person may be among the most harmful, but if he has the freedom to behave differently than the perpetrator asks him to, it is not justified to speak of coercion. In the absence of coercion (if, of course, there is also no deception), art. 168 of the CrC RM cannot be applied. In the case of the crime provided for in art. 168 of the CrC RM, when he is coerced, the victim is deprived of the autonomy of will. He cannot direct his actions in accordance with his own will. The victim of the crime of forced labour, having no alternative, is forced to perform the actions imposed by the perpetrator *(see: Chapter 2, Subchapter 2.2; Chapter 3, Subchapter 3.2)*;

6. the two components of the prejudicial act, provided for in art. 168 of the Criminal Code of the Republic of Moldova, are linked by a single intention. However, this intention is not always complex. We distinguish two situations when the crime is complex: a) physical coercion within the prejudicial act, provided for in art. 168 of the CrC RM, has materialized in the intentional average injury to bodily integrity or health. In the analysed situation, the crime, provided for in art. 168 of the CrC RM, absorbs the crime provided for in art. 152 of the CrC RM; b) psychological coercion within the prejudicial act, provided for in art. 168 of the CrC RM, consists of the threat of murder or serious injury to bodily integrity or health. In the examined situation, the crime, provided for in art. 168 of the CrC RM, absorbs the crime provided for in art. 155 of the CrC RM. Namely in these situations, the main action within the prejudicial act, provided for in art. 168 of the CrC RM, constitutes, by itself, an act stipulated by the Criminal Code. In other cases, the intention to commit the analysed offense is complex only in appearance. In these cases, the adjacent action or inaction either constitutes per se an act of a contraventional nature (namely – the act provided for in art. 78 of the Contraventional Code of the Republic of Moldova), or in general does not constitute per se a punishable act *(see: Chapter 2, Subchapter 2.3; Chapter 3, Subchapter 3.3).*

Description of personal contributions, emphasizing their theoretical significance and practical value. If we talk about the previous doctrinal heritage, it is worth noting that most studies, which are dedicated to the crime provided for in art. 168 of the CrC RM, are limited to shallow discussions or a fragmented analysis of specific topics, leaving aspects of greater relevance unexplored. Only a detailed analysis of the constituent elements of the crime provided for in art. 168 of the CrC RM, as well as the social and economic context in which it manifests itself, can contribute to a better understanding of the complexity of the phenomenon of forced labour. This approach allows not only to clearly identify the grounds for criminal liability for forced labour, but also to formulate recommendations for improving the legislation in this area.

The personal contribution to the analysis of liability for the crime of forced labour, provided for in art. 168 of the CrC RM, focuses on the development of a paradigm for interpreting the provision of this article, which addresses the scientific priorities and practical challenges in its application, clarifying the legal basis of criminal liability. A detailed analysis of the constituent elements and aggravating circumstances of the crime, provided for in art. 168 of the CrC RM, provides a clear framework for substantiating criminal liability, essential for a uniform application of this article. The development of a conceptual framework for the qualification of acts under art. 168 of the CrC RM contributes to clarifying the conditions of application and strengthening the protection of the freedom to work. Notable personal contributions include: a) arguing that, in the case of the crime provided for in art. 168 of the CrC RM, only when it is related to the person's freedom to work, the victim's will is implicitly affected, without however acquiring the connotation of social value protected by criminal

law; b) demonstrating the fact that it is not mandatory for work, which constitutes the immaterial object of the crime provided for in art. 168 of the CrC RM, to be regulated by legal norms, in general, and by labour law norms, in particular. It is possible that the respective work remains outside such regulation; c) establishing the fact that forced services, in general, and services obtained from a person against their will through coercion or deception, in particular, do not constitute the immaterial object of the crime provided for in art. 168 of the CrC RM; d) determining the fact that, in the absence of the person's agreement to perform unpaid work for the benefit of the community, this constitutes forced labour within the meaning of letter a) para. 3 of art. 4 of the ECHR, in letter b) paragraph (2) of art. 44 of the Constitution, as well as in letter b) paragraph (5) of art. 7 of the Labour Code; e) arguing that, in the case of the crime provided for in art. 168 of the CrC RM, the quality of the victim is not necessarily legal. This quality may have a factual connotation; f) demonstrating that, in the case of the crime provided for in art. 168 of the CrC RM, the list of forms of coercion is open, etc.

Personal contributions to the analysis of liability for the crime provided for in art. 168 of the CrC RM have a legal, empirical and scientific basis, which integrates various sources and perspectives.

Regarding to the *legal basis*, the analysis is based on a) the provisions of art. 168 of the CrC RM. This constitutes the core of the study, considering the constitutive elements of the crime of forced labour; b) the norms that regulate similar crimes or that are interconnected with art. 168 of the CrC RM (for example, art. 165, 165^1, 167, 206, 206^1 of the CrC RM), determining a delimitation of the acts incriminated in these norms; c) the norms of labour legislation that may influence the interpretation and application of art. 168 of the CrC RM, contributing to a broader understanding of the context in which a person is subjected to forced labour; d) the norms of the legislation of other states, which provide for liability for forced labour and which help formulate recommendations for improving national legislation, etc. Regarding the *empirical basis*, it is necessary to consider a) the analysis of concrete cases in which art. 168 of the CrC RM was applied, highlighting any discrepancies or errors; b) the examination of constitutional jurisprudence that – directly or indirectly – concerns freedom of labour and the prohibition of forced labour. The *scientific basis* of this thesis is the works of scholars from the Republic of Moldova and other countries, who address the subject of forced labour and provide a solid theoretical framework for the analysis of liability for the crime provided for in art. 168 of the CrC RM.

The analysis of liability for this crime has an *important theoretical significance*, contributing to the clarification of the criminal law connotations of forced labour. This involves a detailed examination of the criminal and extra-criminal norms in the matter, as well as judicial practice, identifying gaps and shortcomings in their application. The study opens new research directions, offering solutions for the qualitative improvement of legislation and the protection of victims. It also contributes to a deeper awareness of the problems related to forced labour in society.

The practical value of the thesis consists in providing a solid support for the application by practitioners of art. 168 of the CrC RM. The analysis carried out allows the identification of deficiencies in judicial practice, contributing to a better application of this article. Likewise, the evaluation of concrete cases helps to highlight ambiguities and legislative gaps, thus providing a basis for recommendations *de lege ferenda*. Through these steps, the analysis carried out within the framework of this thesis supports both the protection of victims and the accountability of those who intend to commit the crime provided for in art. 168 of the CrC RM.

Data on approval of results

The most relevant conclusions of this study were presented in 8 scientific publications. The results obtained in this thesis were discussed at various international and national scientific confer-

ences, held between 2021 and 2024. This active participation in academic forums contributed to the dissemination of knowledge and the enrichment of debates in the field.

Indicating the limits of the results obtained, with the establishment of unresolved issues

The limitations of the results obtained can be attributed to the following factors: 1) the insufficient number of cases in which art. 168 of the CrC RM was applied; 2) the predominant emphasis on legal and criminal aspects in the analysis carried out in this thesis; 3) the absence of comprehensive scientific studies, including research of a scale similar to a doctoral thesis, that would examine in depth the crime provided for by this article, which restricts the opportunities for academic debate. Although we do not find any unresolved issues, given that the objectives of the thesis have been fully achieved, it is essential to emphasize that there is potential for the development of new research directions on the topic addressed. These perspectives will be detailed below.

II. Recommendations:

1. supplementing art. 14 of the CrC RM with paragraph (1^1) with the following content: *"Only the law represents the source of the obligation that the perpetrator fails to execute when he commits a prejudicial inaction provided for by the criminal law";*

2. supplementing paragraph (7) of art. 64 of the CrC RM at the end with the following sentence: *"Unpaid community service shall be applied only with the consent of the convicted person";*

3. supplementing art. 67 of the CrC RM with paragraph (1^2) with the following content: "*Unpaid community service may be applied only to persons who agree to serve such a sentence";*

4. amending the name and content of art. 168 of the CrC RM, as follows:

"Article 168. Imposition of forced labour

(1) The imposition of labour on a person through coercion, deception or abuse of trust, if this act does not meet the elements of human trafficking or child trafficking,

shall be punishable by imprisonment from 2 to 6 years.

(2) The same act committed:

a) against two or more persons;

b) knowingly against a child or a pregnant woman;

c) by two or more persons;

d) by a public figure, a person with a responsible position, a person with a public position, a foreign public figure or an international official using his/her official position;

e) for reasons of prejudice,

shall be punishable by imprisonment for a term of 6 to 10 years with deprivation of the right to hold certain positions or to exercise a certain activity for a term of 2 to 5 years, with a fine, applied to a legal entity, in the amount of 2000 to 3500 conventional units with deprivation of the right to exercise a certain activity or with the liquidation of the legal entity.

(3) The acts provided for in paragraph (1) or (2):

a) committed by an organized criminal group or a criminal organization;

b) resulting in serious bodily harm or health damage or death of the victim,

shall be punishable by imprisonment from 7 to 15 years, with a fine, applied to the legal entity, in the amount of 2500 to 4000 conventional units with the liquidation of the legal entity.";

5. supplementing letter c) paragraph (4) of art. 34 of the Contraventional Code of the Republic of Moldova at the end with the following sentence: *"Unpaid community service shall be applied only with the consent of the offender";*

6. exclusion from paragraph (3) of art. 37 of the Contraventional Code of the Republic of Moldova of the text *" , except for the contravention provided for in art. 78^1 and 318^1, for which the person's consent is not required".*

Suggestions regarding potential future research directions related to the topic addressed: 1) detailed examination of international norms aimed at preventing and combating forced labour; 2) in-depth study of regulations related to forced labour from the perspective of the intersection of criminal law and labour law; 3) assessment of the impact and adequacy of the punishments provided by art. 168 of the CrC RM.

Proposals for the use of the results obtained in the socio-cultural and economic fields

The results obtained can be used in various socio-cultural and economic fields by increasing scientific interest in the crime provided for in art. 168 of the CrC RM, which will contribute to the advancement of research in this sector. Such results can be used in training programs for professionals involved in the application of criminal law, as well as in curricula for doctoral, master's and undergraduate students, thus improving their qualification level. They can also support the legislative process, with the objective of clarifying and streamlining the provisions of art. 168 of the CrC RM, thus facilitating their better understanding. In addition, these results can help educate the public in terms of preventing and combating the phenomenon of forced labour, in general, and the crime provided for in art. 168 of the CrC RM contributing to a deeper awareness of the associated social risks.

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ADNOTARE

Guidea Petru, „Răspunderea penală pentru munca forțată”. Teză de doctorat în drept. Școala Doctorală de Științe Juridice și Economice a Universității de Stat din Moldova. Chișinău, 2025

Structura tezei: introducere, trei capitole, concluzii și recomandări, bibliografie din 559 de titluri. Rezultatele obținute sunt publicate în 8 lucrări științifice.

Cuvintele-cheie: muncă; muncă forțată; libertatea muncii; constrângere; înșelăciune; exploatare prin muncă.

Scopul lucrării este de a analiza infracțiunea prevăzută la art. 168 CP RM, punând în evidență dificultățile de calificare a acesteia, ambiguitățile asociate cu interpretarea art. 168 CP RM și provocările cu care se confruntă practicienii în aplicarea sa, oferind în același timp soluții concrete pentru a depăși aceste obstacole.

Obiectivele cercetării: stabilirea neajunsurilor ce caracterizează cadrul normativ în materie de interzicere a muncii forțate; delimitarea muncii forțate de faptele asemănătoare (sclavie, traficul de ființe umane săvârșit în scopul exploatării prin muncă forțată etc.); examinarea – sub aspectul respectării principiului legalității – a cazurilor din jurisprudență în care s-a aplicat art. 168 CP RM; identificarea deficiențelor care influențează claritatea și previzibilitatea acestui articol; formularea de sugestii pentru corectarea unor asemenea deficiențe, etc.

Noutatea şi originalitatea științifică a tezei. Teza de față se distinge prin noutatea și originalitatea sa, fiind prima lucrare științifică de amploare care analizează infracțiunea prevăzută de art. 168 CP RM. Aportul personal în analiza răspunderii pentru această infracțiune se concentrează pe dezvoltarea unei paradigme de interpretare a dispoziției art. 168 CP RM, care abordează prioritățile științifice și provocările practice în aplicarea sa, clarificând temeiul juridic al răspunderii penale.

Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante: elaborarea unui cadru conceptual pentru calificarea faptelor în baza art. 168 CP RM, ceea ce poate contribui la clarificarea condițiilor în care se aplică acest articol și la fundamentarea unor măsuri eficiente pentru prevenirea și combaterea fenomenului de muncă forțată, în general, și a infracțiunii de muncă forțată, în particular, asigurând astfel o aplicare mai uniformă a art. 168 CP RM și sporind protecția libertății de a munci împotriva manifestărilor infracționale.

Semnificația teoretică a tezei: contribuirea la clarificarea conotațiilor de drept penal ale muncii forțate; identificarea lacunelor și neajunsurilor în interpretarea art. 168 CP RM; deschiderea de noi direcții de cercetare a infracțiunii prevăzute de acest articol; oferirea de soluții atât pentru îmbunătățirea calitativă a cadrului normativ de prevenire și combatere a muncii forțate, cât și pentru protecția victimelor acestei infracțiuni.

Valoarea aplicativă a tezei: oferirea unui suport temeinic pentru aplicarea de către practicieni a art. 168 CP RM; identificarea deficiențelor în practica judiciară, contribuind la o mai bună aplicare a acestui articol; formularea de recomandări *de lege ferenda* în vederea perfecționării art. 168 CP RM.

Implementarea rezultatelor științifice. Rezultatele obținute pot fi valorificate în diverse domenii socio-culturale și economice prin creșterea interesului științific pentru componența de infracțiune prevăzută la art. 168 CP RM, ceea ce va contribui la avansarea cercetărilor în acest sector. Astfel de rezultate pot fi utilizate în programele de formare destinate profesioniștilor implicați în aplicarea legii penale, precum și în curricula pentru doctoranzi, masteranzi și studenți, îmbunătățind astfel nivelul de calificare al acestora. De asemenea, ele pot susține procesul de legiferare, având ca obiectiv clarificarea și eficientizarea prevederilor din art. 168 CP RM, facilitând astfel o mai bună înțelegere a acestora. În plus, aceste rezultate pot ajuta la educarea publicului în planul prevenirii și combaterii fenomenului de muncă forțată, în general, și a infracțiunii prevăzute la art. 168 CP RM, în particular, contribuind la o conștientizare mai profundă a riscurilor sociale asociate.

АННОТАЦИЯ

Гуйдя Петру, «Уголовная ответственность за принудительный труд». Диссертация на соискание научной степени доктора права. Докторальная школа юридических и экономических наук Государственного университета Молдовы. Кишинэу, 2025

Структура диссертации: введение, три главы, выводы и рекомендации, библиография из 559 названий. Достигнутые результаты опубликованы в 8 научных работах.

Ключевые слова: труд; принудительный труд; свобода труда; принуждение; обман; эксплуатация труда.

Цель работы заключается в анализе преступления, предусмотренного ст. 168 УК РМ, подчеркивая трудности его квалификации, неопределенности, связанные с толкованием ст. 168 УК РМ, и вызовы, с которыми сталкиваются практические работники при его применении, одновременно предлагая конкретные решения для преодоления этих препятствий.

Задачи исследования: выявление недостатков, характеризующих нормативную базу по запрету принудительного труда; отграничение принудительного труда от схожих деяний (рабство, торговля людьми с целью эксплуатации принудительного труда и т.д.); анализ – с точки зрения соблюдения принципа законности – случаев из судебной практики, в которых применялась ст. 168 УК РМ; выявление недостатков, влияющих на ясность и предсказуемость этой статьи; формулирование предложений по исправлению таких недостатков и т.д.

Научная новизна и оригинальность результатов исследования. Данная работа отличается своей новизной и оригинальностью, будучи первой научной работой такого масштаба, анализирующей преступление, предусмотренное ст. 168 УК РМ. Личный вклад в анализ ответственности за это преступление сосредоточен на разработке парадигмы толкования положения ст. 168 УК РМ, которая учитывает научные приоритеты и практические вызовы в ее применении, проясняя юридическую основу уголовной ответственности.

Полученные результаты, способствующие решению особо значимой научной проблемы, разрешенной в рамках проведенного диссертационного исследования: разработка концептуальной основы для квалификации деяний по ст. 168 УК РМ, что может способствовать прояснению условий применения этой статьи и обоснованию эффективных мер по предотвращению и борьбе с явлением принудительного труда в целом и преступлением принудительного труда в частности, обеспечивая тем самым более равномерное применение ст. 168 УК РМ и усиливая защиту свободы труда от преступных проявлений.

Теоретическая значимость: содействие прояснению уголовно-правовых аспектов принудительного труда; выявление пробелов и недостатков в толковании ст. 168 УК РМ; открытие новых направлений исследования состава преступления, предусмотренного этой статьей; предложение решений как для качественного улучшения нормативной базы по предотвращению и борьбе с принудительным трудом, так и для защиты жертв этого преступления.

Практическая применяемость исследования: предоставление прочной основы для практических работников в применении ст. 168 УК РМ; выявление недостатков в судебной практике, что способствовало бы лучшему применению этой статьи; формулирование рекомендаций по совершенствованию ст. 168 УК РМ.

Апробация результатов диссертационного исследования. Полученные результаты могут быть использованы в различных социокультурных и экономических сферах, повышая научный интерес к составу преступления, предусмотренного ст. 168 УК РМ, что будет способствовать продвижению исследований в этом секторе. Такие результаты могут быть использованы в программах обучения для специалистов, применяющих уголовный закон, а также в учебных планах для докторантов, магистрантов и студентов, тем самым повышая уровень их квалификации. Кроме того, они могут поддержать законотворческий процесс, направленный на разъяснение и оптимизацию положений ст. 168 УК РМ, облегчая тем самым их лучшее понимание. Кроме того, эти результаты могут помочь в обучении общественности в плане предотвращения и борьбы с принудительным трудом.

ANNOTATION

Guidea Petru, "Criminal Liability for Forced Labour". PhD in Law thesis. Doctoral School of Legal and Economic Sciences of the Moldova State University. Chișinău, 2025

The structure of the thesis: introduction, three chapters, conclusions and recommendations, bibliography of 559 titles. The results achieved are published in 8 scientific papers.

Keywords: labour; forced labour; freedom of labour; coercion; fraud; labour exploitation.

The purpose of the Ph.D. thesis is to analyse the crime provided for in the art. 168 CrC RM, highlighting the difficulties in its qualification, the ambiguities associated with the interpretation of the art. 168 CrC RM, and the challenges faced by practitioners in its application, while providing concrete solutions to overcome these obstacles.

The objectives of investigation: identifying the shortcomings characterizing the normative framework regarding the prohibition of forced labour; delineating forced labour from similar acts (slavery, human trafficking committed for the purpose of exploitation through forced labour, etc.); examining – in terms of compliance with the principle of legality – the cases from jurisprudence where the art. 168 CrC RM has been applied; identifying deficiencies that affect the clarity and predictability of this article; formulating suggestions for correcting such deficiencies, etc.

The scientific novelty and originality of the obtained results. This thesis is distinguished by its novelty and originality, being the first extensive scientific work that analyses the crime provided for in the art. 168 CrC RM. The personal contribution to the analysis of liability for this crime focuses on the development of an interpretative paradigm for the provision of the art. 168 CrC RM, addressing scientific priorities and practical challenges in its application, clarifying the legal basis for criminal liability.

The obtained results which contribute solving of the foremost scientific problem: the development of a conceptual framework for the qualification of acts based on the art. 168 CrC RM, which can help clarify the conditions under which this article is applied and substantiate effective measures for the prevention and combating of the phenomenon of forced labour in general and the crime of forced labour in particular, thus ensuring a more uniform application of the art. 168 CrC RM and enhancing the protection of the freedom of labour against criminal manifestations.

Theoretical importance: contributing to the clarification of the criminal law connotations of forced labour; identifying gaps and shortcomings in the interpretation of the art. 168 CrC RM; opening new research directions for the crime provided for in this article; providing solutions for both the qualitative improvement of the normative framework for preventing and combating forced labour and for the protection of victims of this crime.

Practical value of the research paper: providing substantial support for practitioners in applying the art. 168 CrC RM; identifying deficiencies in judicial practice, contributing to a better application of this article; formulating recommendations for future legislation aimed at perfecting the art. 168 CrC RM.

Implementation of the scientific results. The obtained results can be utilized in various socio-cultural and economic fields by increasing scientific interest on the crime provided for in the art. 168 CrC RM, which will contribute to advancing research in this sector. Such results can be used in training programs for professionals involved in the application of criminal law, as well as in curricula for doctoral students, master's students, and undergraduates, thereby improving their qualification level. Additionally, they can support the legislative process, aiming to clarify and streamline the provisions of the art. 168 CrC RM, thus facilitating a better understanding of them. Furthermore, these results can help educate the public on the prevention and combating of the phenomenon of forced labour in general and the crime provided for in the art. 168 CrC RM in particular, contributing to a deeper awareness of the associated social risks.

GUIDEA PETRU

CRIMINAL LIABILITY FOR FORCED LABOUR

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Summary of PhD in Law thesis

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