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CRIMINAL LIABILITY FOR MANIPULATION OF AN EVENT AND FOR BET-FIXING

SUMMARY

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CONCEPTUAL GUIDELINES OF RESEARCH

Topicality of theme. Unpredictability is a characteristic for sport events, as for other events that can be bet on. But these events are susceptible to manipulation, and on a manipulated event it can bet.

The acts of manipulating some events, especially sports ones, and respectively betting on them are not new. They had emerged once with sport, but they have grown up lately. They have entered the sight of several European and international forums, which have discerned their social danger.

For instance, in the Resolution of February 2, 2012, on the European dimension in sport, the European Parliament urged Member States to take all necessary action to prevent and punish illegal activities affecting the integrity of sport and making such activities a criminal offence, in particular where such they are betting-related, meaning that they involve the intentional and fraudulent manipulation of the results of a sport competition or of a phase of it in order to gain an advantage not based solely on normal sporting practice or the associated uncertainty.

In this background, it was acknowledged that sports federations do not have the structural and legal means to take effective action against match-fixing[1] [from a terminological point of view, the terms "match-fixing" and "manipulation of sports competitions" are used interchangeably in European and international acts[2]].

At the same time, in the Resolution of March 14, 2013 on match-fixing and corruption in sports, The European Parliament asked, *inter alia*, the European Commission to encourage all the Member States explicitly to include match-fixing in their national criminal law, to provide for appropriate common minimum sanctions and to ensure that existing loopholes are addressed in a manner that fully respects fundamental rights[3].

Finally, in its resolution of February 2, 2017, on an integrated approach to Sport Policy: good governance, accessibility and integrity[4], European Parliament had requested the Member States of the European Union to establish match-fixing as a specific criminal offence.

The European Parliament thus has sent a clear and outrightly message to the Member States of the European Union: to effectively prevent and combat the act of manipulating a sport event

[1] European Parliament resolution of 2 February 2012 on the European dimension in sport (2011/2087(INI)). Available on: https://bit.ly/3l4Xffo

[2] UNODC IOC Booklet for legislators. Model Criminal Law provisions for the prosecution of competition manipulation, p. 6. Available on: https://bit.ly/2z2Ze0C

[3] European Parliament resolution of 14 March 2013 on match-fixing and corruption in sport (2013/2567(RSP)). Available on: https://bit.ly/3hg27MH

[4] European Parliament resolution of 2 February 2017 on an integrated approach to Sport Policy: good governance, accessibility and integrity (2016/2143(INI)). Available on: https://bit.ly/2CI1goQ

(whether it is committed to bet on a "certain" result or whether it is committed to achieve sportive or other goals, etc.) the most "sharp sword" must intervene, *i.e*. criminal law as *ultima ratio*.

For this goal to become a reality and given that "criminal organisations are operating on an international scale and have connections across the globe, such that no single institution, country or organization would be able to tackle match-fixing on its own"[5], it was argued for the adoption of an international act on this matter. This task fell to the Council of Europe, which drafted the Convention on the Manipulation of Sports Competitions[6].

Therefore, on 18 September 2014, on the occasion of the Magglingen / Macolin Council of Europe conference, attended by the Minister of Sport, the Convention in question was opened for signature by all countries of the world. It entered into force on September 1, 2019.

The Preamble to this Convention emphasizes that "every country and every type of sport in the world may potentially be affected by the manipulation of sports competitions and [...] that this phenomenon, as a global threat to the integrity of sport, needs a global response which must also be supported by States which are not members of the Council of Europe[7]. [...] [S]port based on fair [...] competition is unpredictable [...]; [...] [and] that the manipulation of sports competitions may be related or unrelated to sports betting, and related or unrelated to criminal offences, and that it should be dealt with in all cases"[8].

Based on these premises, one of the objectives of the Convention on the Manipulation of Sports Competitions is to prevent, detect and sanction national or transnational manipulation of national and international sports competitions [art. 1 para. (2) let. a) of Convention].

In particular, according to art. 15 of the Convention in question, "[e]ach Party shall ensure that its domestic laws enable to criminally sanction manipulation of sports competitions when it involves either coercive, corrupt or fraudulent practices, as defined by its domestic law"[9]. Although this article does not mention anything about bet-fixing, the United Nation Office on Drugs and Crime, as the International Olympic Committee pointed out that in order to ensure the highest efficiency possible in the fight against match-fixing, and for consistency of the domestic law with the objectives of the Council of Europe Convention on the Manipulation of Sports Competitions, it is recommended that the match-fixing offence be independent from betting on a

[5] European Parliament resolution of 14 March 2013 on match-fixing and corruption in sport (2013/2567(RSP)). Available on: https://bit.ly/3hg27MH
[6] Council of Europe Convention on the Manipulation of Sports Competitions, Magglingen/Macolin, 18.IX.2014 (CETS No. 215). Available on: https://bit.ly/3l1r40C
[7] *Ibidem.*
[8] *Ibidem.*
[9] *Ibidem.*

sports event or competition which is fixed[10]. Indeed, bet-fixing offence should not be seen as an *appendix*.

The above can be extrapolated to other events that are susceptible to manipulation and that can be bet on.

Therefore, the offence of sport or other event manipulation, as bet-fixing offence constitute a "scourge" that affects the values of sport and betting and must be treated (punished) with appropriate repressive means (punishable by law)[11]. These offences can be committed even where the field of betting is a state monopoly[12], as is the case of the Republic of Moldova. The incrimination of these offences does not represent an excessive use or an unjustified expansion of the criminal law, but an adequate response against this scourge. Moreover, the courts of some states have issued acquittal decisions[13] of the accused persons, and rejected requests for intentional legal assistance in criminal matters[14], due to the absence of rules establishing criminal liability for manipulation of an event and for bet-fixing in the domestic law.

Aware of this situation, the offences in question were included on the legislators' agenda. The legislator from the Republic of Moldova is no exception. Thus, on March 21, 2013, the Parliament of the Republic of Moldova adopted Law no. 38 on the amending and supplementing of some legislative acts (hereinafter – Law no. 38/2013)[15]. By this Law, the Criminal Code of the Republic of Moldova[16] (hereinafter – CC RM) was completed with two new articles: art. 242^1 "Manipulation of an event" and art. 242^2 "Bet-fixing". Subsequently, the provisions of par. (1) art. 333 "Bribery-taking" and from para. (1) art. 334 "Bribery-giving" of the same Code, so that it becomes possible to apply criminal liability for bribery-taking by a participant in a sport or betting event and, consequently, for bribing-giving to a participant in a sport or betting event.

This paper touches upon the particularities of criminal liability for the offenses provided in art. 242^1 and 242^2 CC RM.

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[10] UNODC IOC Booklet for legislators. Model Criminal Law provisions for the prosecution of competition manipulation, p. 18. Available on: https://bit.ly/2z2Ze0C

[11] Reniță Gh. *Oportunitatea incriminării faptei de manipulare a unui eveniment (art. 242^1 CP RM)*. În: Integrare prin cercetare și inovare. Conferință științifică națională cu participare internațională (Chișinău, 28-29 septembrie 2016). Rezumate ale comunicărilor. Științe juridice. Vol. I. Chișinău: CEP USM, 2016, p. 98-101; Reniță Gh. *Justificarea stabilirii răspunderii penale pentru pariurile aranjate (art. 242^2 CP RM)*. În: *Op. cit.*, p. 94-98.

[12] Reniță Gh. *The impact of monopolization of the gambling sector in the Republic of Moldova on criminal liability for manipulation of an event and arranged bets*. În: Juridical Tribune, 2018, vol. 8, special issue, p. 74-96.

[13] Bundesgericht. Tribunal penal federal. Strafrechtliche Abteilung. Urteil vom 11 Dezember 2017. 6B_544/2017. Available on: https://bit.ly/3glRtUs

[14] Bundesgericht. Tribunal penal federal. Corte dei reclami penali. Sentenza del 7 giugno 2013. RR.2013.46-47. Available on: https://bit.ly/3dvRum6

[15] *Monitorul Oficial al Republicii Moldova*, 2013, nr. 75-81.

[16] *Monitorul Oficial al Republicii Moldova*, 2009, nr. 72-74.

The offence of manipulation of an event is incriminated in art. 242^1 CC RM in a standard version and in an aggravated version. The standard version of the offence from art. 242^1 para. (1) CC RM, consists in encouraging, influencing or instructing a participant in a sporting event or a betting event to take actions that would have a vitiated effect on that event, in order to obtain goods, services, privileges or benefits in any form other than they deserve it, for themselves or for another person. This conduct is punishable by a fine of 2,350 to 4,350 conventional units or imprisonment from 1 to 3 years, in both cases with deprivation of the right to hold certain positions or to exercise a certain activity for a period up to 3 years, and a legal person is punished with a fine from 6,000 to 9,000 conventional units with deprivation of the right to exercise a certain activity.

In its aggravated version, provided in art. 242^1 para. (2) CC RM, the manipulation of an event may be committed by a coach, an athlete's agent, a member of the jury, a sports club owner or a person who is part of the management of a sports organization. In this situation, the natural person is only punished with a fine from 3,350 to 5,350 conventional units or with imprisonment from 2 to 6 years, in both cases with deprivation of the right to hold certain positions or to exercise a certain activity on a term from 4 to 7 years.

In turn, bets-fixing offence is incriminated in art. 242^2 CC RM in a standard version and in an aggravated version.

The standard version of the offence provided in art. 242^2 para. (1) CC RM, consists either in betting on a sporting or other betting event, or in informing others of the existence of an agreement in respect of fixing that event with the intention to get them to participate in that bet, committed by a person who knowns with certainty about the existence of an agreement on that event fixing. Such actions are punished with a fine from 2,350 to 4,350 conventional units or with imprisonment from 1 to 3 years, and a legal person is punished with a fine from 6,000 to 8,000 conventional units with deprivation of the right to exercise a certain activity.

The aggravated version of the offence, provided in art. 242^2 para. (2) CC RM, assumes that the offense specified in para. (1): it is committed by an organized criminal group or a criminal organization [let. a)]; causes damage in particularly large proportions [let. b)]. In such cases, the offense of bet-fixing is punishable by a fine of 3,350 to 5,350 conventional units or imprisonment from 2 to 6 years, and a legal person is punished by a fine of 9,000 to 11,000 conventional units with deprivation of the right to exercise a certain activity.

However, the legislator of the Republic of Moldova admitted normative inconsistencies. There are also conceptual discrepancies between art. 242^1 and 242^2 CC RM and the provisions of the Council of Europe Convention on the Manipulation of Sports Competitions. Admitly, this is

explained by the fact that the Convention in question preceded the adoption of art. 242^1 and 242^2 CC RM. The Parliament of the Republic of Moldova has ratified[17] this Convention in 2018. But instead of adjusting the national normative provisions to the conventional ones, the legislator only modified (*i.e.* reduced) the limits of the applicable punishments according to art. 242^1 and 242^2 CC RM[18]. The essential issues remained unresolved. We also note the lack of monographs or doctoral theses that would analyze the particularities of criminal liability for manipulation of an event and for bets-fixing. In the legal doctrine of the Republic of Moldova, these offenses represent another "exotic" topic.

All these require the appearance of difficulties in the correct application and interpretation of art. 242^1 and 242^2 CC RM. This leads to diametrically opposed judgments and, as a result, generates legal uncertainty and uncertainty for the law addressees. Moreover, even persons endowed with the competence to apply criminal law are in difficulty, being put in a position to choose between several possible options, in the absence of a consolidated judicial practice.

In these circumstances, the topically and the importance of this topic cannot be questioned. Therefore, it must be carried out a reasoned scientific study aiming at criminal liability for the offenses provided for in art. 242^1 and 242^2 CC RM.

Description of the situation in the field of research and identification of the research problem. In the Republic of Moldova, only S. Brînza and V. Stati had analyzed, from a legal-criminal point of view, the offenses of manipulation of an event and of bet-fixing. In the papers of the mentioned authors there are no conceptual discrepancies from one work to another. On the contrary, there is a logical succession of ideas, which allows those endowed with the competence to apply criminal law to inspired themself. Despite this, there are several jurisprudential contradictions that need to be solved.

At the same time, among the scientists from other states who have investigated the offenses in question are: R. Hess, H. Opie, G. Lim, S. Steele (*Australia*); D. Hill (*Canada*); S.V. Kuzmin, N.A. Ovcinnikova, V.V. Saraev, M.A. Procopeț, D.M. Jubrin (*Russia*); W. Andreff, L. Vidal (*France*); J. Peurala (*Finland*); Ph.V. Boss (*Switzerland*); M. Breurer, J. Bösing, T. Felts, J. Hofmann, J. Maier, H. Satzger (*Germany*); A.E. Manoli (*Greece*); A.D. Ronco, A. Lavorgna, E. Musco (*Italy*); N. Gokhale (*India*); S. Zaksaitė (*Lithuania*); J. Anderson, K. Carpenter, D. Forrest, T. Serby (*United Kingdom*); A. Duval, K.L. Jones, M. Olfers, B.V. Rompuy, T. Spapens

[17] Legea nr. 285 din 29 noiembrie 2018 pentru ratificarea Convenției Consiliului Europei privind manipularea în competiţiile sportive. În: *Monitorul Oficial al Republicii Moldova*, 2018, nr. 513-525.
[18] Legea nr. 207 din 29 iulie 2016 pentru modificarea şi completarea unor acte legislative. În: *Monitorul Oficial al Republicii Moldova*, 2016, nr. 369-378; Legea nr. 179 din 26 iulie 2018 pentru modificarea şi completarea unor acte legislative. În: *Monitorul Oficial al Republicii Moldova*, 2018, nr. 309-320.

(*Netherlands*); C. Arslan (*Turkey*); M. Huggins, G.A. Pascual (*Spain*); S.P. Griffin, J.T. Holden, M.R. Rodenberg (*USA*); O.I. Bezpalova, K.P. Zadoia (*Ukraine*); S. Cornelius (*South Africa*); K.S. Azberghen (*Kazakhstan Republic*) etc.

The scientific materials on the topic of the thesis published abroad are characterized by a wide content, with exegetical, dogmatic and critical approaches, but their conceptual axis is divergent. In particular, there are controversies regarding: 1) the opportunity to criminalize the manipulation of an event and bet-fixing; 2) the legal nature of these offenses; 3) legal object; 4) the structure of the objective side; 5) events susceptible to manipulation and, respectively, on which one can bet on; 6) if the manipulation of an event and, accordingly, of the bets concern the final result or component parts of the event in question etc.

However, these differences are due to the different content of the rules establishing liability for manipulation of an event and for bet-fixing. The papers of these authors start from different legislative premises.

As a result of the comparative analysis of the existing situation in the field, we formulate the following research problem: the elaboration of the instrument for identifying the constitutive elements of the offenses of manipulation of an event and bet-fixing, which will lead to the clarification for theorists and practitioners in the field of criminal law of the particularities of liability for the offenses provided in art. 242^1 and 242^2 CC RM, in order to prevent and combat the offenses in question as effectively as possible in this area.

The purpose and objectives of the thesis. The purpose of the thesis is to conduct an in-depth investigation of criminal liability for manipulation of an event and for bet-fixing, in identifying and solving theoretical and practical problems related to these offenses, as in the formulation of recommendations for the efficiency of the incriminating framework in the matter and the correct and uniform application by the courts of the art. 242^1 and 242^2 CC RM.

In order to achieve the proposed goal, we set the following objectives:

– the juridical characterization of the objective and subjective elements of the offenses provided in art. 242^1 and 242^2 CC RM, as well as aggravating circumstantial elements;

– outlining the particularities of the cumulation of criminal liability with disciplinary liability, including from the perspective of the *ne bis in idem* principle;

– determination of cases of etiological connection of offenses of manipulation of an event and of bet-fixing;

– highlighting the problems of legal qualification of offenses of handling an event and bet-fixing and, consequently, formulating solutions;

– estimating the degree of predictability of the terms and notions with which the legislator operates in art. 242^1 and 242^2 CC RM;

– establishing the hypotheses in which the participant in a sporting or betting event can be held accountable for manipulating the event in which he evolves;

– the study of judicial practice and the identification of problems faced by those endowed with the competence to apply criminal law and, respectively, the submission of solutions;

– highlighting the deficiencies admitted by the legislator in the norms provided in art. 242^1 and 242^2 CC RM;

– formulation of proposals for *lege ferenda* aimed at improving the existing legal framework on criminal liability for the manipulation of an event and bet-fixing;

– arguing the appropriateness of criminalizing the act of participating in a sporting / betting event to partially or completely eliminate the unpredictability of the event in which it takes place.

Scientific research methodology. In order to achieve the proposed goal and the objectives set, the logical method, the comparative method, the historical method, etc. were used. The research is based on the study of the doctrine, legislation and practice of the courts of the Republic of Moldova and Romania, the European Court of Human Rights, the Court of Justice of the European Union, and the Court of Arbitration for Sport of Lausanne. I also considered the practice of the Constitutional Court of the Republic of Moldova and the Constitutional Court of Romania.

Scientific novelty and originality. The element of novelty and originality of the thesis in the legal landscape of the Republic of Moldova is obvious. With an age of approximately seven years in our legal system, the offenses provided in art. 242^1 and 242^2 CC RM they are almost untapped both on a theoretical level and, especially, on a practical level. It is the first work of its kind in which the judicial practice regarding the application of criminal liability for the handling of an event and for bet-fixing was analyzed. In this regard, we have formulated conclusions and recommendations for the correct interpretation and application of the rules in question, as well as for the improvement of the relevant legislation.

The theoretical significance of the paper materializes in: (i) defining the conceptual bases of the criminal law study on liability for handling an event and for arranged bets; (ii) establishing the legal nature of the offenses provided in art. 242^1 and 242^2 CC RM; (iii) systematization of theoretical and practical approaches regarding the establishment of the constitutive elements – objective and subjective – of the offenses provided in art. 242^1 and 242^2 CC RM; (iv) drawing new perspectives on criminal liability for manipulation of an event and for bet-fixing; (v) the interdisciplinary analysis of the incrimination norms provided in art. 242^1 and 242^2 CC RM.

The applicative value of the paper consists in the following: a) interpretation of the notions that appear in art. 242^1 and 242^2 CC RM is important for the correct and uniform application of these articles in judicial practice, as for the further development of scientific concepts; b) outlining the particularities of the cumulation of criminal liability with disciplinary liability for handling an event and for bet-fixing has a cognitive significance in order not to admit the violation of some fundamental rights of the person; c) the conclusions and recommendations formulated in the thesis are likely to be applied in the practical activity of the criminal investigation bodies, the prosecutor's office and the courts, as well as in the training process within the educational institutions with legal profile; d) critical analysis of the deficiencies and gaps detected in art. 242^1 and 242^2 CC RM may be taken into account by the legislator in order to improve the quality of the texts of these articles.

The main scientific results submitted for support can be summarized as follows: 1) it is appropriate to incriminate *nomen juris* the facts of handling an event and arranged bets[19]; 2) it is justified to include the offenses provided in art. 242^1 and 242^2 CC RM in the group of economic crimes[20]; 3) the notions of "sporting event" and "sporting competition" are equivalent[21]; 4) the conception of the legislator of the Republic of Moldova to allow betting only on sporting events, not on other events, is unfounded[22]; 5) the money that the perpetrator would have "won" as a result of betting on a manipulated event is the material object of the offense of bet-fixing[23]; 6) the text "goods, services, privileges or advantages in any form, which are not due to him" from art. 242^1 CC RM aims at the mediated purpose of the perpetrator[24] etc.

Implementation of scientific results. The scientific results obtained can be implemented in: a) scientific field – the paper is a necessary scientific source for local doctrine, highlighting new trends and issues, specific to the current stage of society's development; b) educational field

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[19] Reniță Gh. *Oportunitatea incriminării faptei de manipulare a unui eveniment (art. 242^1 CP RM)*, p. 98-101.

[20] Reniță Gh. *Manipularea unui eveniment și pariurile aranjate: locul art.242^1 și 242^2 în cadrul Părții speciale a Codului penal al Republicii Moldova*. În: Integrare prin cercetare și inovare. Conferință științifică națională cu participare internațională (10-11 noiembrie 2015, Chișinău). Rezumate ale comunicărilor. Științe juridice, științe economice. Chișinău: CEP USM, 2015, p. 18-21; Reniță Gh. *Manipularea unui eveniment și pariurile aranjate: locul art. 242^1 și 242^2 din Codul penal în tipologia infracțiunilor economice*. În: Integrare prin cercetare și inovare. Conferință științifică națională cu participare internațională (Chișinău, 9-10 noiembrie 2017). Rezumate ale comunicărilor. Chișinău: CEP USM, 2017, p. 46-50.

[21] Reniță Gh. *Noțiunea de „eveniment sportiv" în contextul infracțiunilor de manipulare a unui eveniment și de pariuri aranjate.* În: Актуальные научные исследования в современном мире. Журнал. Переяслав-Хмельницкий, 2018, Вып. 5(37), ч. 10, p. 12-21.

[22] Reniță Gh. *Conceptul de „pariu" în contextul infracțiunilor de manipulare a unui eveniment și de pariuri aranjate.* În: Studii și cercetări juridice europene: Conferința internațională a doctoranzilor în drept, Ediția a X-a, Timișoara, 8 iunie 2018. București: Universul Juridic, 2018, p. 649-664.

[23] Reniță Gh. *Rolul și conținutul mizei în contextul infracțiunii de pariuri aranjate*. În: Sharing the Results of Research towards Closer Global Cooperation among Scientists: Results of the 13 International Conference: Collection of Research Papers (April 24, 2018) / Montreal, Canada: Accent Graphics Communications, 2018, p. 44.

[24] Reniță Gh. *Obiectul material/imaterial al infracțiunii de manipulare a unui eveniment*. În: Integrare prin cercetare și inovare. Conferință științifică națională cu participare internațională. Rezumate ale comunicărilor. Chișinău: CEP USM, 2018, p. 273-277.

– the scientific results obtained can be useful in the training process in higher education institutions, as well as for the continuous improvement of law practitioners; c) legislative area – the *de lege ferenda* proposals put forward in the paper are capable of improving the incriminating framework; d) the jurisprudential field – the qualification solutions formulated can ensure the correct and uniform application by the courts of the incrimination norms provided in art. 242^1 and 242^2 CC RM and, respectively, legal uncertainty for the addressees of the law would be avoided.

Results approval. The results obtained from the study were presented and approved at several scientific forums, as follows:

✓ The national scientific conference with international participation "Integration through research and innovation", editions 2016, 2017, 2018 and 2019 (Chisinau, Republic of Moldova);

✓ The international scientific conference "Perspectives and issues of integration in the European space of research and education" from June 7, 2016 (Cahul, Republic of Moldova);

✓ The international conference "Current scientific research in the contemporary world", the XXV edition of 2017, as well as the XXXVII edition of 2018 (Pereiaslav-Khmelnitsky, Ukraine);

✓ The international Scientific Conference "Dissemination of research results for closer global cooperation between scientists", 13th edition, April 24, 2018 (Montreal, Canada);

✓ The international Scientific Conference of PhD Students in Law "European Legal Studies and Research", 10th edition, from June 8, 2018 (Timișoara, Romania);

✓ The international scientific-practical conference "Social and economic aspects of education in modern society", 4th edition, from July 19, 2018 (Warsaw, Poland);

✓ The international Conference "Sustainable economic and social development of Euroregions and cross-border areas", 14th edition, from November 9, 2018 (Iași, Romania);

Also, the results obtained in the thesis have been published in several scientific journals with impact factor, of which – one indexed in Scopus (*i.e.* Eastern Journal of European Studies), and three in Web of Scenice (*i.e.* Eastern Journal of European Studies, Gaming Law Review, Juridical Tribune).

Thesis publications: 20 scientific publications.

Volume and structure of the thesis: introduction, five chapters, general conclusions and recommendations, bibliography of 664 titles, 312 pages of basic text.

Keywords: sports, fair play, bet-fixing, manipulation, participant in a sports event, participant in a betting event, match-fixing, gambling organizer.

CONTENT OF THE THESIS

The thesis consists of five chapters. Each chapter ends with a summary section (conclusions) of the issues addressed and the results obtained.

In **Chapter 1** – **Analysis of the situation regarding criminal liability for manipulation of an event and for bets-fixing in the criminal law science** – we analyzed the scientific materials on the topic of the thesis published in the Republic of Moldova, as well as in other states. I made a doctrinal foray, because any in-depth study requires a research of the opinions of scientists. At the same time, we took into account the fact that "judicial practice and legal doctrine can be an objective benchmark according to which the content of a criminal law can be assessed and which can contribute to its foreseeable application"[25]. So sometimes the legal doctrine could serve the addressees of the law, as well as those who apply the law, as a "lighthouse" to elucidate some controversial issues.

In the Republic of Moldova, the first paper that highlights the legislative amendments operated in the Criminal Code of the Republic of Moldova by Law no. 38/2013 is the 2013 scientific article by *V. Stati*[26]. The author points out the characteristic features of the offenses provided in art. 242^1 and art. 242^2 CC RM.

Referring to the implications of the amendments from art. 333 para. (1) and art. 334 para. (1) CC RM, the author considers that the most difficult question is: what relationship is between art. 242^1 and art. 334 CC RM: 1) art. 242^1 and art. 334 CC RM it refers to completely different, incompatible hypotheses; 2) art. 242^1 CC RM is a special norm in relation to art. 334 CC RM; 3) art. 334 CC RM is a special norm in relation to art. 242^1 CC RM; 4) the offenses provided in art. 242^1 and art. 334 CC RM can form an ideal cumulation, not being attested a competitive relationship between the respective norms?

In the explanation, it is stated that the occurrence of the question in question is conditioned by the probability of similarities between: a) influencing a participant in a sporting event or betting event to take actions that would have a vitiated effect on that event, in order to obtain goods, services, privileges or benefits in any form that is not appropriate or for another person (hypothesis provided in art. 242^1 CC RM)[27] and b) promising, offering or giving, personally or through an

[25] Decizia Curții Constituționale nr. 30 din 19 martie 2020 de inadmisibilitate a sesizării nr. 193g/2019 privind excepția de neconstituționalitate a articolului 145 alin. (2) lit. a) din Codul penal (claritatea noțiunii de „omor premeditat"). În: *Monitorul Oficial al Republicii Moldova*, 2020, nr. 115-117.
[26] Stati V. *Unele implicații ale adoptării Legii nr. 38 din 21.03.2013 pentru modificarea și completarea unor acte legislative*. În: Integrare prin cercetare și inovare. Conferință științifică (Chișinău, 26-28 septembrie 2013). Rezumate ale comunicărilor. Științe juridice, științe economice. Chișinău: CEP USM, 2013, p. 115-117.
[27] *Ibidem.*

intermediary, of a participant in a sporting event or in a betting event of goods, services, privileges or advantages in any form, which are not due, for himself or another person, to perform or not to delay or expedite the performance of an action in a sporting event or betting event (hypothesis provided in art. 334 CC RM).

The relationship between art. 242^1 "Manipulation of an event" of the Criminal Code and art. 334 of the Criminal Code of the Republic of Moldova was elucidated, *inter alia*, in the article entitled "Taking a bribe by a participant in a sporting event or a betting event. Bribing a participant in a sporting event or betting event. Criminal law analysis", published in 2013, whose author is *V. Stati*[28].

From the comparative analysis of art. 242^1 and of art. 334 CC RM the following conclusions were reached: 1) art. 242^1 it is not a special norm in relation to art. 334 CC RM, and art. 334 CC RM is not a special norm in relation to art. 242^1 CC RM; 2) the offenses provided in art. 242^1 and art. 334 CC RM cannot form an ideal competition; 3) both art. 242^1 CC RM and art. 334 of the CC RM have distinct spheres of application; 4) within the meaning of art. 242^1 CC RM, the influence of a participant in a sporting event or in a betting event cannot be materialized in the promise, offering or giving of goods, services, privileges or advantages in any form that does not belong to such a participant.

In order to draw these conclusions, the demarcation line was established in the light of the subjective elements of these offenses (art. 242^1 and art. 334 CC RM), in particular, in terms of the criminal purpose. Thus, it was shown that, according to art. 242^1 CC RM, the immediate purpose of the perpetrator is for the participant in a sporting event or a betting event to take actions that would produce a vitiated effect on that event. In contrast, according to art. 334 of the Criminal Code of the Republic of Moldova, the sole purpose of the perpetrator is for the participant in a sporting event or a betting event to fulfill or not, to delay or hasten the performance of an action in a sporting event or a betting event. We agree with this denotation. However, in this respect, judicial practice fluctuates. The offenses provided in art. 242^2 and art. 334 CC RM do not overlap. They are different in scope.

[28] Stati V. *Luarea de mită de către un participant la un eveniment sportiv sau la un eveniment de pariat. Darea de mită unui participant la un eveniment sportiv sau la un eveniment de pariat. Analiză de drept penal*. În: Revista ştiinţifică a USM „Studia Universitatis Moldaviae". Seria „Ştiinţe sociale", 2013, nr. 8(68), p. 96-106.

In 2013 and 2014, respectively, V. Stati published two scientific articles (divided into two parts) in which it analyzed the offenses of manipulation of an event[29] and bet-fixing[30].

V. Stati's ideas in the above articles are developed in his paper "Economic Crimes: Course Notes"[31], the editions of 2014, 2016 and 2019, as well as in the paper "Treaty of criminal law. The special part"[32], elaborated in co-authorship with *S. Brînza*. In these works, the analysis is made through the prism of the following algorithm: technical-legislative aspects, the object of the crime, the objective side, the subjective side and the aggravating circumstances. This analysis algorithm served as a research model for the present doctoral thesis.

In the 2019 edition of the paper "Economic Crimes: Course Notes" are analyzed the offenses provided in art. 242^1 and art. 242^2 CC RM through the prism of Law no. 291 of December 16, 2016 on the organization and conduct of gambling (Law no. 291/2016)[33], whereby the betting field was monopolized by the state. Analyzing this Law, V. Stati found that betting is allowed only for competitions / sporting events. This means that the scope of application of art. 242^1 and art. 242^2 CC RM is limited only to sporting events. But is this conception of the legislator justified? We will answer this question in Chapter Three.

Finally, V. Stati concretizes that "the one who informs other persons about the existence of an agreement, regarding the cheating of the betting event, fulfills the role of perpetrator of the offense provided in art. 242^2 CC RM, and not complicit in this offense. At the same time, if the person – informed by the offender about the existence of an agreement regarding the cheating of the betting event – will bet on that event using the information in question, he or she will, in turn, become the perpetrator of the bet-fixing offense"[34]. This statement finds its normative support in art. 242^2 CC RM.

Thus, the scientific materials published in the Republic of Moldova on the topic of the thesis can be counted on the fingers of one hand.

In contrast, in other states, there are several scientific publications on criminal liability for handling an event and for arranged bets. Several valuable studies have been conducted on this

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[29] Stati V. *Infracţiunea de manipulare a unui eveniment (art. 242^1 CP RM): studiu de drept penal. Partea I.* În: Revista Naţională de Drept, 2013, nr. 11, p. 9-15; Stati V. *Infracţiunea de manipulare a unui eveniment (art. 242^1 CP RM): studiu de drept penal. Partea II.* În: Revista Naţională de Drept, 2013, nr. 12, p. 7-12.

[30] Stati V. *Răspunderea penală pentru pariurile aranjate (art. 242^2 CP RM). Partea I*. În: Revista Naţională de Drept, 2014, nr. 1, p. 8-12; Stati V. *Răspunderea penală pentru pariurile aranjate (art. 242^2 CP RM). Partea II*. În: Revista Naţională de Drept, 2014, nr. 2, p. 2-6.

[31] Stati V. *Infracțiuni economice: Note de curs*. Chișinău: CEP USM, 2014. – 530 p.; Stati V. *Infracțiuni economice: Note de curs*, ediția a II-a, revăzută și actualizată. Chișinău: CEP USM, 2016. – 622 p.; Stati V. *Infracțiuni economice: Note de curs*, ediția a III-a, revăzută și actualizată. Chișinău: CEP USM, 2019. – 600 p.

[32] Brînza S. și Stati V. *Tratat de drept penal. Partea specială*, vol. II. Chișinău: Tipografia Centrală, 2015, p. 105.

[33] *Monitorul Oficial al Republicii Moldova*, 2017, nr. 2-8.

[34] Stati V. *Infracțiuni economice: Note de curs*, ediția a III-a, p. 211.

topic under the auspices of the European Commission [35], UN Office on Drugs and Crime[36] and the International Olympic Committee[37]. Also, in chapter 1 we analyzed the works of several authors, *e.g.*: *D. Forrest, S. Zaksaitė*[38], *R. Rodenberg, B. Tuohy, R. Borghesi, K. Pijetlovic, S.P. Griffin*[39], *G.A. Pascual*[40], *K.L. Jones*[41], *T. Felts*[42], *J. Bösing*[43], *I. Blackshaw*[44], *W. Andreff*[45], *M. Huggins, R. Hess*[46] etc.

I showed interest not only for the opinions unanimously expressed in the literature, but also for the contradictory conceptions. The divergent treatment by scientists of legal and criminal issues in the field helped us to assess the compatibility of different opinions with the legal essence of the rules provided in art. 242^1 and 242^2 CC RM. We examined the scientific materials in chronological order, focusing on the publications of recent years, without overshadowing the "older" value studies.

As a result of the analysis of scientific materials published on the thesis both in the country and abroad, we found that the doctrinal meanings studied facilitate the interpretation of the rules

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[35] Husting A., Kern P., Buinickaite Z. et al. *Match-fixing in Sport: A Mapping of Criminal Law Provisions EU 27*. Brussels: KEA European Affairs, 2012. Disponibil: https://bit.ly/2RqGZZo; Anderson J., Duval A., Rompuy B.V. et al. *Study on Risk Assessment and Management and Prevention of Conflicts of Interest in The Prevention and Fight Against Betting Related Match Fixing in the EU 28*: Final Report. Luxembourg: Publications Office of the European Union, 2014. Available on: https://bit.ly/3aHTF6h; Manoli A.E. *Mapping of Corruption in Sport in the EU: A report to the European Commission*. Luxembourg: Publications Office of the European Union, 2018. Available on: https://bit.ly/34gi1Tr

[36] Vaillant A., Adekunle A., Park J.Y., et al. *Criminalization Approaches to Combat match-fixing and Illegal/Irregular Betting: A Global Perspective*. Lausanne / Vienna: International Olympic Committee and The United Nations Office on Drugs and Crime, 2013. Available on: https://bit.ly/3j2p0n1

[37] UNODC IOC Study on Criminal Law Provisions for the Prosecution of Competition Manipulation. Available on: https://bit.ly/34i1Gha; Vidal L., Cornu P., Donzel J., et al. *Fighting Against the Manipulation of Sports Competitions: Report: Part 1. Context and Forms of the Manipulation of sports Competitions*. Paris: University Paris 1 Panthéon-Sorbonne and the International Centre for Sport Security, 2014. – 221 p.

[38] Zaksaitė S. *Cheating in Sports: Prevalence and Prevention Problems*, Summary of Doctoral Dissertation, Social Sciences, Law. Vilnius, 2012. – 34 p.; Zaksaitė S. *Match-fixing: the shifting interplay between tactics, disciplinary offence and crime*. In: The International Sports Law Journal, 2013, vol. 13, p. 287-293.

[39] Rodenberg R., Tuohy B., Borghesi R., et al. *Corruption and Manipulation in Sports: Interdisciplinary Perspectives*. In: Gaming Law Review, 2013, vol. 17, no. 3, p. 175-187.

[40] Pascual G.A. *La tipificación penal del fraude en competiciones deportivas. Problemas tecnicos y aplicativos*. În: Revista de Derecho Penal y Criminología, 2012, no. 8, p. 13-70.

[41] Jones K.L. *The Applicability of the „United Nations Convention against Corruption" to The Area of Sports Corruption (Match-Fixing)*. In: The International Sports Law Journal, 2012, iss. 3-4, p. 57-59.

[42] Feltes T. Match Fixing in Western Europe. In: Haberfeld M.R. & Sheehan D. (eds.). *Match-Fixing in International Sports. Existing Processes, Law Enforcement, and Prevention Strategies*. Cham: Springer, 2013, p. 15-30.

[43] Bösing J. *Manipulationen im Sport und staatliche Sanktionsmöglichkeiten. Zur Notwendigkeit eines neuen Straftatbestandes gegen Bestechlichkeit und Bestechung im Sport*. Inaugural-Dissertation zur Erlangung der juristischen Doktorwürde, Marburg, 2014. Available on: https://bit.ly/3aNa21g

[44] Blackshaw I. The Role of the Court of Arbitration for Sport (CAS) in Countering the Manipulation of Sport. In: Breur M. & Forrest D. (eds.). *The Palgrave Handbook on the Economics of Manipulation in Sport*. Cham: Palgrave Macmillan, 2018, p. 223-246.

[45] Andreff W. *An Economic Roadmap to the Dark Side of Sport*, vol. I: Sport Manipulations. Cham: Palgrave Macmillan, 2019. – 145 p.; Andreff W. *An Economic Roadmap to the Dark Side of Sport*, vol. II: Corruption in Sport. Cham: Palgrave Macmillan, 2019. – 97 p.; Andreff W. *An Economic Roadmap to the Dark Side of Sport*, vol. III: Economic Crime in Sport. Cham: Palgrave Macmillan, 2019. – 123 p.

[46] Huggins M. & Hess R. *Match Fixing and Sport. Historical Perspectives*. London: Routledge, 2019. – 176 p.

that establish criminal liability for manipulation of an event and for bet-fixing. In particular, the opinions of the scientists analyzed allowed us to determine the objective and subjective elements of the offenses of manipulation of an event and bet-fixing and to identify the shortcomings of the incriminating framework in this regard etc.

In **Chapter 2 – The object of the offenses of manipulation of an event and bet-fixing** – we noted that, in order to discuss criminal liability, we must first identify a social value (and, respectively, the social relations generated by it), susceptible to injury by committing the crime.

Depending on the hierarchy of social values that are the legal object of the crime, we have distinguished between: 1) the general legal object; 2) the generic legal object; 3) the special legal object.

Because the general legal object is common to all crimes and is represented by the totality of social values protected by criminal law, we paid more attention to establishing the generic legal object of the offense of manipulation of an event and bet-fixing offense. This allowed us to determine the legal nature of the offenses in question.

Some states have included the offenses corresponding to those incriminated by art. 242^1 and 242^2 CC RM: either among those against the patrimony (*e.g.*, Germany[47], Lithuania, New Zealand), either in the group of economic ones (*e.g.*, Azerbaijan, Russian, Latvia); either among those related to work and / or related to corruption (*e.g.*, Ukraine) or in separate chapters, dedicated to the field of sports (*e.g.*, Argentina, Bulgaria) or the field of gambling (*e.g.*, Albania). Other states have included the offenses in question in sports laws (*e.g.*, Argentina, Switzerland, Greece, Polonia, Turkey) or on gambling (*e.g.*, Italy, United Kingdom)[48].

In this regard, the legislator of the Republic of Moldova was inconsistent. While the offenses provided in art. 242^1 and 242^2 CC RM are placed in Chapter X "Economic Crimes" of the Special Part of the Criminal Code considering them, therefore, economic crimes, on the contrary, according to the Integrity Law no. 82 of May 25, 2017[49], the offenses of manipulation of an event and bet-fixing are attributed to acts of corruption. The latter conception is unfounded, because the offenses provided in art. 242^1 and 242^2 of the Criminal Code of the Republic of Moldova do not circumscribe to the defining features of corruption[50].

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[47] Hofmann J., Axtmann J. & Maier J. *Try to fix you – a critical analysis of Germany's attempt at ensuring a better protection of sports integrity by introducing new criminal laws*. In: Gaming Law Review, 2017, vol. 27, iss. 7, p. 493-499.

[48] UNODC IOC Study on Criminal Law Provisions for the Prosecution of Competition Manipulation. Available on: https://bit.ly/34i1Gha

[49] *Monitorul Oficial al Republicii Moldova*, 2017, nr. 229-243.

[50] Reniță Gh. *Manipularea unui eveniment și pariurile aranjate (art. 242^1 și 242^2 CP RM): infracțiuni de corupție?* În: Revista ştiinţifică a USM „Studia Universitatis Moldaviae". Seria „Ştiinţe sociale", 2017, nr. 3, p. 180-191.

Any unlawful conduct that alters the course or outcome of a sporting event produces a "domino effect"[51] on the economic activities carried out in connection with this event. This opinion is valid both in the context of the offense of manipulation of an event and in the context of the bet-fixing offense. The commission of these offenses generates repercussions on the national economy (seen as a fundamental value, defended against the crimes provided in Chapter X "Economic Crimes" of the Special Part of the Criminal Code).

Most likely, the economic dimension of the sport field, as well as of the betting field determined the Parliament to include the offenses provided in art. 242^1 and 242^2 of the Criminal Code of the Republic of Moldova in Chapter X "Economic Crimes" of the Special Part of the Criminal Code of the Republic of Moldova: where they belong[52].

Consequently, the generic legal object of the offenses provided in art. 242^1 and 242^2 of the Criminal Code of the Republic of Moldova are the social relations regarding the national economy (*alias* the social economic relations)[53].

On the special legal object[54], we have established that the offense of bet-fixing protects social relations regarding the organization and conduct of bets in the right conditions, without the use or dissemination of information about the existence of an agreement regarding the cheating of the event on which you can bet. At the same time, the offense of manipulation of an event deprives spectators / fans of a fair and unpredictable competition that they legitimately expect[55].

Also, in this chapter, we have established the circle of people who may be victims of the crimes of manipulation of an event and bet-fixing. We decided to analyze the victim of the offense provided in art. 242^1 and 242^2 of the CC RM in the context of the object of the offense, not in the subject of the offense, based on the majority view of the criminal law doctrine of the Republic of Moldova according to which the victim of the crime participates in social relations protected by criminal law. This justifies the reporting of the victim of the crime to the reference system of the object of the crime, not to the reference system of the subject of the crime.

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[51] Arslan Ç. *Match-fixing in Sport Terms of Criminal Law*. In: Law & Justice Review, 2013, vol. IV, iss. 2, p. 61.
[52] Reniță Gh. *Manipularea unui eveniment și pariurile aranjate: locul art.242^1 și 242^2 în cadrul Părții speciale a Codului penal al Republicii Moldova*. În: Integrare prin cercetare și inovare. Conferință științifică națională cu participare internațională (10-11 noiembrie 2015, Chișinău). Rezumate ale comunicărilor. Științe juridice, științe economice. Chișinău: CEP USM, 2015, p. 18-21.
[53] Reniță Gh. *Manipularea unui eveniment și pariurile aranjate: locul art. 242^1 și 242^2 din Codul penal în tipologia infracțiunilor economice*, p. 46-50.
[54] Reniță Gh. *Obiectul juridic special al infracțiunii de pariuri aranjate*. În: Integrare prin cercetare și inovare. Conferință științifică națională cu participare internațională: Științe juridice și economice: Rezumate ale comunicărilor. Chișinău: CEP USM, 2019, p. 233-237.
[55] Reniță Gh. *Social values impaired by the manipulation of sports and betting events: the case of the Republic of Moldova*. In: Eastern Journal of European Studies, 2019, vol. 10, iss. 1, p. 181-197.

The victim of the offense of manipulation of an event may be: (i) a participant in a sporting event or (ii) a participant in a betting event.

By "participant in a sporting event" we mean the individual or group of individuals who manifest their physical / intellectual abilities in a competition. He could play "on the field" ("on the ring", "on stage", etc.) with one or more opponents, in competitive conditions (in the words of George Orwell – in a "war minus the shootings"[56]).

In judicial practice (*i.e.* case of *Mungiu*[57] *and Beședin*[58]; in this case, the perpetrators, a coach and a journalist, appealed to the coach of the Moldovan women's soccer team "U17" in order to organize the defeat of the football team of the Republic of Moldova against the national team of Latvia, with a difference of two goals, promising them in $ 8,000) erroneously decided that the coach is a "participant in a sporting event". From the systemic and *per a contrario* interpretation of the relevant normative provisions, we came to the conclusion that the coach cannot be a participant in a sporting event and, respectively, a victim of the offense of manipulation of an event. He is one of the special subjects of the offense provided in art. 242^1 CC RM.

The European Court of Human Rights also raised the issue of establishing the circle of people who can be considered "participants in a sporting event". This is the case *Milewski v. Polonia*[59], in which the applicant, the chairman of the Arka Gdynia sports club, was convicted of creating and leading an organized criminal group in order to influence the results of about 40 football matches. In this case, the plaintiff invoked that the criminal rule on the basis of which he was convicted did not contain the notions of "referee" and "observer" and, therefore, art. 7 of the European Convention on Human Rights, which guarantees the principle of legality of incrimination and legality of criminal punishment. The Strasbourg court did not find the applicant's conviction for bribing a referee and an observer of the Football Association arbitrary or unreasonable. The Court therefore decided unanimously to reject the applicant's claim as manifestly unfounded. It follows that the public interest in preventing corruption in sport and arranged matches had a greater share than the alleged uncertainty in domestic law.

"Participant in a betting event" means an individual or a group of individuals who play with an opponent (or several) in a competition (competition, etc.) sports or other that offers opportunities for to bet.

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[56] Orwell G. *The Sporting Spirit*. Available on: https://bit.ly/2znr08w

[57] Sentința Judecătoriei Ciocana, municipiul Chișinău, din 17 februarie 2015. Dosarul nr. 1-636/2014. Disponibil: https://bit.ly/2sg447C

[58] Sentința Judecătoriei Ciocana, municipiul Chișinău, din 2 iulie 2015. Dosarul nr. 1-131/14. Disponibil: https://bit.ly/304D7jJ; Decizia Curții de Apel Chișinău din 15 decembrie 2015. Dosarul nr. 1a-1537/15. Disponibil: https://bit.ly/2xbfhbN

[59] *Milewski v. Poland* (dec.), no. 22552/12, 2 July 2019, ECHR. Available on: https://bit.ly/35p1WrD

We argued that the aggravation of criminal liability is justified if the victim of the offence of manipulating an event is a participant in a sporting event or a minor bet, as well as if the perpetrator exercises criminal influence over several participants in a sporting event. or betting.

We established that when qualifying the deed based on art. 242^1 of the Criminal Code of the Republic of Moldova does not matter if the participant in a sports / betting event is a minor or if the offense was committed in relation to twice as many participants in such events, as well as their distinctions (titles) or status. Such circumstances may be taken into account in the individualization of the punishment.

At the same time, a person cannot have the quality of victim of the offense provided in art. 242^1 CC RM entity (*e.g.*, a sports federation, a sports club, a television company etc.) under the auspices of which a sporting or other event likely to be manipulated takes place. Instead, the entity that organizes and / or conducts a sporting event or other event that has been manipulated could claim (in a civil lawsuit) compensation from the perpetrator for the damage caused (indirectly).

The victim of the offense of bet-fixing may be: (i) the participant in the bet (in the case of mutual bets) or (ii) the organizer of the bet (in the case of fixed odds bets, bookmaker)[60].

The participant in the bet (bettor) is the person who placed a bet on a sporting event or another event. In the Republic of Moldova, people under the age of 18 cannot bet. It follows that a minor cannot be a participant in the bet and therefore cannot be a victim of the offense of bet-fixing.

Regarding the bet organizer, in the Republic of Moldova the organization and conduct of bets is a state monopoly. Only the National Lottery of Moldova (a joint stock company in which the state share is 100%) together with its private partner (*i.e.* the Limited Liability Company "NGM Company") can organize and conduct bets on the territory of the Republic of Moldova[61].

In order to benefit from the protection conferred by art. 242^2 CC RM, the betting organizer must carry out the activity of accepting bets under legal conditions. The activity of accepting bets takes place under the conditions of legality in the event that the betting organizer is authorized with the right to carry out this activity in the state where the bettor is located. This is the standard of the Council of Europe [*i.e.* art. 3 para. (5) lit. a) of the Council of Europe Convention on the

[60] Reniță Gh. & Brînza S. *Victim of bet-fixing offense: Under Criminal Code of Republic of Moldova*. In: Gaming Law Review, 2020, Volume 24, Issue 8. Available on: https://www.liebertpub.com/doi/10.1089/glr2.2020.0016
[61] Reniță Gh. *Annulment of licenses for gambling activities: experience of the Republic of Moldova*. In: Gaming Law Review, 2018, Volume 22, Issue 10, p. 641. Available on: https://www.liebertpub.com/doi/10.1089/glr2.2018.221010

Manipulation of Sports Competitions] and which has been transposed into the legislation of the Republic of Moldova[62].

We also found that the organization and conduct, without the right conferred by law, of the activity of accepting bets on sporting or other events escapes the incidence of criminal law, which is inadmissible[63]. There is a legislative gap that perpetrators benefit from[64]. The Parliament of the Republic of Moldova should intervene and adopt a criminal rule in this regard.

In **Chapter 3** – **The objective side of the offenses of manipulation of an event and of bet-fixing** – we first established the structure of the objective side of the offenses provided in art. 242^1 and 242^2 CC RM.

The actions that fall under art. 242^1 CC RM are the following: 1) training a participant in a sporting event or a betting event; 2) encouraging a participant in a sporting event or betting event; 3) influencing a participant in a sporting event or a betting event. For the application of liability according with art. 242^1 CC RM is sufficient to commit one of the actions stated above.

Training a participant in a sporting event or betting event involves providing instructions to that participant[65], so that it manipulates the event in which it evolves. Giving instructions to a participant in a sporting event or betting event can be part of a certain tactic. But not every tactic is allowed and, respectively, this can be considered a manipulation. Often, the boundary between a "correct" and a "forbidden" tactic cannot be easily drawn.

In order to assess whether certain instructions are part of a correct tactic or not, several aspects must be taken into account, *e.g.*: sports branch; the specifics of the event; the rules for conducting the event in question; whether the instructions are widely accepted or contested by the participants; how a "model copy" participating in the event would behave; whether the instructions may affect the principle of fair play.

Therefore, choosing a certain tactic for a sporting or betting event can be the "key" to success. Therefore, giving instructions to a participant in a sporting event or a betting event for him to have a conduct that would affect (manipulate) the course or result of the event in which he evolves falls under the incidence of art. 242^1 CC RM.

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[62] Reniță Gh. *Organizarea și desfășurarea pariurilor în condiții de legalitate – premisă* sine qua non *pentru aplicarea răspunderii conform art. 242^1 și 242^2 din Codul penal al Republicii Moldova*. In: Proceedings of the IV International Scientific and Practical Conference „Social and Economic Aspects of Education in Modern Society", Vol. 4, July 19, 2018, Warsaw, Poland. Warsaw: RS Global, 2018, p. 3-12.

[63] *Ibidem.*

[64] Reniță Gh. *Răspunderea penală pentru organizarea și desfășurarea fără drept a jocurilor de noroc ce constituie monopol de stat: propunere de lege ferenda*. În: Dezvoltarea economico-socială durabilă a euroregiunilor și a zonelor transfrontaliere, Vol. XXXII: Conferință internațională, ediția a XIV-a. Iași: Performantica, 2018, p. 226-238.

[65] Stati V. *Infracțiunea de manipulare a unui eveniment (art. 242^1 CP RM): studiu de drept penal. Partea II*, p. 7-12; Stati V. *Infracțiuni economice: Note de curs*, ediția a III-a, 2019, p. 215.

Regarding the encouragement of a participant in a sporting event or a betting event to manipulate that event, we focused, among other things, on whether granting incentives to the participant in a sporting event or a betting event would could be qualified or not based on art. 242[1] CC RM. In this respect, opinions are divided. After analyzing the relevant regulatory framework, we concluded that providing incentives to participants in a sporting event or a betting event is not an illegal act, when they are expected and distributed according to the performance obtained. Stimulating a participant in a sporting or betting event so that he or she can take action that would have a detrimental effect on that event, in order to obtain goods, services, privileges or benefits in any form that the person does not deserve for himself or herself or for another person, falls under the scope of art. 242[1] CC RM.

Influencing a participant in a sporting event or betting event (the third act of committing the offense of manipulation of an event) may involve, *inter alia*, the application of violence or the threat of[66].

In the sense of the offense provided in art. 242[1] CC RM, both the encouragement and the influence of a participant in a sporting event or in a betting event cannot be materialized in the promise, offering or giving of goods, services, privileges or advantages in any form that does not belong to such participant. The promise, offering or giving of goods, services, privileges or advantages in any form that does not belong to a participant in a sporting event or a betting event falls under the incidence of art. 334 CC RM, article criminalizing bribery. The offenses provided in art. 242[1] and, respectively, to art. 334 CC RM do not overlap. This has been correctly understood in some cases in judicial practice (*e.g.*, *Mungiu*[67], *Beşedin*[68], *Periasamy şi Keong*[69] cases). Instead, in other cases, art. 242[1] CC RM (*e.g.*, *Kmit*[70], *Gluhoi and others*[71] cases).

When the athlete unilaterally manipulates the event in which he participates or a stage in it without another person exercising a criminal influence over him, it represents, according to John

[66] Reniță Gh. *Fapta prejudiciabilă a infracțiunii de manipulare a unui eveniment. Partea I.* În: Revista Institutului Național al Justiției, 2020, nr. 3, p. 37-42.
[67] Sentința Judecătoriei Ciocana, municipiul Chișinău, din 17 februarie 2015. Dosarul nr. 1-636/2014. Disponibil: https://bit.ly/2sg447C
[68] Sentința Judecătoriei Ciocana, municipiul Chișinău, din 2 iulie 2015. Dosarul nr. 1-131/14. Disponibil: https://bit.ly/304D7jJ; Decizia Curții de Apel Chișinău din 11 februarie 2016. Dosarul nr. 1a-1311/2015. Disponibil: https://bit.ly/2R3yIt1
[69] Sentința Judecătoriei Buiucani, municipiul Chișinău, din 13 iulie 2015. Dosarul nr. 1-1223/15. Disponibil: https://bit.ly/2XiByiS; Decizia Curții de Apel Chișinău din 15 decembrie 2015. Dosarul nr. 1a-1537/15. Disponibil: https://bit.ly/2xbfhbN
[70] Încheierea Judecătoriei sectorului Buiucani, municipiul Chișinău, din 26 ianuarie 2016. Dosarul nr. 10-731/2015. Disponibil: https://bit.ly/2J22b4Z
[71] Sentința Judecătoriei Chișinău (sediul Buiucani) din 10 decembrie 2018. Dosarul nr. 1-163/18. Disponibil: https://bit.ly/3aYeRnQ

T. Holden and Rayan M. Rodenberg, a "lone-wolf match-fixing"[72]. In such cases, only disciplinary / contractual liability may be applied in the Republic of Moldova.

A person who encourages, instructs or influences a participant in a sporting event or betting event to engage in conduct that would vitiate that event, in order to obtain goods, services, privileges or benefits in any form that are not due for himself or for another person, will be criminally liable in accordance with art. 242^1 CC RM.

In turn, the participant in a sporting or betting event must not be "obedient" and follow the instructions to vitiate the sporting or betting event in which he is performing. He has the obligation to report any undue influence to the relevant federations or other structures under the auspices of which the event takes place. This is what the athletes approached by the perpetrator in the case of *Gluhoi and others* did, who, shortly after receiving messages on Facebook from the perpetrator with the proposal to manipulate the sporting event in which they participated, announced the International Tennis Federation.

In the Republic of Moldova, if the participant in a sporting or betting event will not fulfill the obligation in question and will adopt the conduct required by the subject of the offense provided in art. 242^1 CC RM, then he may be held liable to disciplinary / contractual liability both for non-reporting and for his conduct contrary to the principle of fair play in the event, but not to criminal liability. Using the terminology of the Swiss legislator, we could say that the subject of the offense provided in art. 242^1 CC RM commits an "indirect manipulation", and the participant in a sporting or betting event – a "direct manipulation"[73]. We argued the opportunity to criminalize the act of participating in a sports / betting event to partially or completely eliminate the unpredictability of the event in which it evolves.

Without interrupting the logical thread, we established the particularities of the cumulation of criminal liability with disciplinary liability. Contrary to the findings of the European Court of Human Rights in the case of *Ali Rıza and others v. Turkey*[74], applying the *Engel* test[75] (according to which, in order to determine whether or not an accusation / sanction has a "criminal" character, the following alternative criteria must be taken into account: the qualification of the deed according to the national law; the legal nature of the infringement; the degree of severity of the sanction to

[72] Holden J.T. & Rodenberg R.M. *Lone-wolf match-fixing: global policy considerations*. In: International Journal of Sport Policy and Politics, 2016, vol. 9, iss. 1, p. 4.
[73] Boss Ph.V. *Manipulation de compétitions sportives (match fixing): aspects pénaux de la nouvelle Loi fédérale sur les jeux d'argent*. În: Forumpoenale, 2019, no. 1, p. 52-57.
[74] *Ali Rıza and Others v. Turkey*, nos. 30226/10 and 4 others, 28 January 2020, § 154, ECHR. Available on: https://bit.ly/3dsjUOb
[75] *Engel and others v. The Netherlands*, no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, 8 June 1976, ECHR. Available on: https://bit.ly/3hpVAyX; Andrijauskaite A. *Exploring the penumbra of punishment under the ECHR*. In: New Journal of European Criminal Law, 2019, vol. 10(4), p. 363-375.

which the person is liable) we have established that the sanction of a fine (which may be higher than the fine applied under the Criminal Code) and that of prohibiting the pursuit of an activity (which, unlike the Criminal Code, may be applied even for life) applicable under the disciplinary provisions may have, in essence, a "criminal" nature.

That being the case, in the light of the judgment of the Strasbourg Court *A and B v. Norway*[76] we have established that there will be no violation of the *ne bis in idem* principle in the situation where, according to art. 242^1 CC RM (or according to art. 334 CC RM), it will be applied a of imprisonment penalty, and based on disciplinary regulations – the fine and the prohibition of carrying out a sports / betting activity. Or when, according to art. 242^1 CC RM (or according to art. 334 CC RM), will apply only penalty of fine and according to disciplinary regulations – prohibition of an activity sports / bet. This principle will not be violated even if both according to the criminal law and based on disciplinary regulations will be applied for the handling of a sporting event / betting or for bet-fixing sanctions of the same nature, if the authority that will apply the second sanction will respect, *inter alia*, the principle of proportionality.

In other words, the prejudicial act of the offense of bet-fixing (art. 242^2 CC RM) consists of two alternative actions: 1) betting on a sporting event or other betting event; 2) informing other people about the existence of an agreement regarding the cheating of the betting event.

After this parenthesis, we note that in the case of the first action, the perpetrator must bet on a sporting event or on another event "rigged" (*i.e.* manipulated). Therefore, the offense of arranged betting may be in etiological connection with the offense of manipulation of an event or with one of the offenses grouped under the marginal name of "bribery". In order to apply for the liability of the fixing bets offence it is not required, first pronouncing a sentence of conviction under art. 242^1 CC RM or, as the case may be, based on art. 334 CC RM. Just some evidence to show that the event on which the bet was manipulated and that the bettor knew with certainty about this.

In the sense of the offenses provided in art. 242^1 and 242^2 CC RM, the sporting event may have an official character (scheduled in a championship or other competition held under the auspices of a sports organization) or friendly (organized by a club, sports association or authorized persons, between athletes or teams chosen by the organizer), domestic or international (it is done between two teams belonging to two national federations, two clubs, a club and a national team or two national teams). You can bet both on a sporting event in which both amateur athletes participate and on a sporting event in which professional athletes participate. Bets can be placed on both the final result of an event and its separate elements.

[76] *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, 15 November 2016, ECHR. Available on: https://bit.ly/30IjxtD

Any sporting event could be, at the same time, a betting event, but not every betting event can have a sporting character. In the literature[77] were also identified events that did not have a sporting character, but on which one could bet, *i.e.*: the Oscars or other film awards; Miss World; Eurovision; music TV contests and shows; reality TV shows; political events; financial events etc.

However, Law no. 291/2016 allows the organization and conduct of bets only in connection with sporting events[78]. We consider this conception unjustified. Not only sporting events can be manipulated, but also other events. Therefore, there is no objective and reasonable argument to prohibit betting on other events likely to be manipulated. Considering the fact that betting implies the conclusion of a betting contract, in order for art. 242^2 CC RM, the cancellation of this contract is inevitable. The nullity of the betting contract can be declared by the betting organizer. A fortiori, this can be done by the court, not necessarily in a separate civil trial, but also in a criminal trial.

The second way of committing the bet-fixing offense – informing others about the existence of an agreement regarding the cheating of the betting event – involves providing information on the handling of an event, in order to determine other people to bet on the event in question[79]. he perpetrator of this action is considered the perpetrator of the bet-fixing offense, not complicit. This was not understood in the case of *Ciumac*[80], as well in the case of *Gluhoi and others*[81].

Usually, the information about the existence of an agreement regarding the cheating of the betting event is "sold"[82], fact found in judicial practice (*e.g.*, 50% of winning bet). But this aspect does not matter in the qualification, but can be taken into account in the individualization of the punishment.

The information about the existence of an agreement regarding the cheating of a sporting or other event fulfills the role of means of committing the offense. Information other than that mentioned may not fulfill the role of means of committing the offense of arranged bets. For example, confidential information about the health status of participants in a sporting / other event, team composition, tactical plan, etc. cannot have this quality, even if this information could help

[77] Brînza S. și Stati V. *Tratat de drept penal. Partea specială*, vol. II, p. 107.
[78] Stati V. și Reniță Gh. *Efectele adoptării Legii Republicii Moldova nr. 291/2016 asupra aplicării răspunderii penale pentru manipularea unui eveniment și pariurile aranjate*. În: Актуальные научные исследования в современном мире: XXV Международная научная конференция (26-27 мая 2017 г., Переяслав-Хмельницкий). Сборник научных трудов. Переяслав-Хмельницкий, 2017, Вып. 5, ч. 10, p. 95-103. Disponibil: https://bit.ly/2DYNAWT
[79] Stati V. *Răspunderea penală pentru pariurile aranjate (art. 242^2 CP RM). Partea II*, p. 2-6.
[80] Sentința Judecătoriei Chișinău (sediul Buiucani) din 1 martie 2019. Dosarul nr. 1-163/18. Disponibil: https://bit.ly/3eaWFJG
[81] Sentința Judecătoriei Chișinău din 10 decembrie 2018. Dosarul nr. 1-163/18. Disponibil: https://bit.ly/3aYeRnQ
[82] Reniță Gh. *Controverse legate de răspunderea penală pentru manipularea unui eveniment și pariurile aranjate săvârșite în cyberspațiu*. În: Revista științifică a USM „Studia Universitatis Moldaviae", Seria „Științe sociale", 2017, nr. 8(108), p. 223-245.

the bettor to make a "successful" bet. Disciplinary / contractual liability may be applied for providing such information.

We also found that for the application of liability based on art. 242^1 and 242^2 of the CC of Moldova, it is not required to produce prejudicial consequences.

In **Chapter 4** – **The subjective elements of the offenses of manipulation of an event and of bet-fixing** – we analyzed the subjective side and the subject of the offenses provided in art. 242^1 and 242^2 CC RM.

According to the case law of the European Court of Human Rights, the principle *nulla poena sine lege* does not preclude the application of subjective criminal liability (*i.e.* involving conviction) or, as the case may be, of objective criminal liability (*i.e.* not involving conviction, but only of the deed)[83]. However, according to the conception of the criminal law of the Republic of Moldova, the person may be subject to criminal liability and criminal punishment only for deeds committed with guilt. In this regard, for the application of liability according to art. 242^1 and 242^2 of CC RM, it must be ascertained that the perpetrator acted with guilt in the form of direct intention.

The reasons that impel the perpetrator to manipulate a sporting or other event and, respectively, to bet on him or to inform others about the existence of an agreement on the cheating of an event could be the following: material interest, "sporting" interest, professional interest, curiosity, nihilistic motives, the desire to participate in arranged matches, the desire to impose oneself in front of opponents, the desire to get rich "overnight", the desire to "stain" the image of participants in a sporting event or betting, the person's desire to test betting fraud detection systems and the vigilance of those who administer these systems, the desire to "ruin" certain betting operators etc.

Regarding the purpose of the offense, in the case of the offense of manipulation of an event we identify the mediated purpose and the immediate purpose.

From the analysis of art. 242^1 CC RM results that the mediated purpose of the perpetrator presupposes that the participant in a sports or betting event undertakes actions that would produce a vitiated effect on the event in which he evolves. However, the event can be vitiated by the participants involved in it not only by committing actions, but also by inaction. Also, only part of an event can be manipulated, but not necessarily the result. In order to convince ourselves of this, we note that in accordance with art. 3 para. (4) of the Council of Europe Convention on Manipulation in Sports Competitions, "manipulation of sports competitions" means an intentional understanding, action or omission aimed at improperly modifying the outcome or course of sports

[83] *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, 28 June 2018, § 243, ECHR. Available on: https://bit.ly/2uomrrD

competition to remove in whole or in part the unpredictability of sports competition. to gain an undue advantage for oneself or for others. Thus, art. 242^1 CC RM must be assisted in the provisions of the mentioned Convention.

The perpetrator encourages, influences or instructs a participant in a sporting event or a betting event to manipulate the event in which he evolves in order to obtain goods, services, privileges or advantages in any form, which are not due to him, for himself or for another person. This is the mediated purpose of the perpetrator. Next, we analyzed the content of the notions of "goods", "services", "privileges" and "advantages". *Bref*, it is an undue remuneration. The perpetrator may obtain undue remuneration, possibly, as a result of betting on a manipulated event.

In the case of the offense of arranged bets, the perpetrator pursues the purpose of greed when betting on a sporting event or another manipulated event. Here we are talking about a specific form of scam. At the same time, when the perpetrator informs other people about the existence of an agreement regarding the cheating of a sporting or other event, we have established that it seeks to determine the informed persons to bet on the event in question.

We continued the analysis by emphasizing the particularities of the subject of the offense provided in art. 242^1 and 242^2 of the CC RM – natural person and legal entity.

In the standard version of the offense of manipulation of an event, provided in art. 242^1 para. (1) CC RM, the legislator did not confer on the perpetrator a certain special quality. For this reason, the text "in both cases with the deprivation of the right to hold certain positions or to exercise a certain activity" in art. 242^1 para. (1) CC RM[84].

We have also established that the perpetrator of the offense of bet-fixing must know with certainty about the existence of an agreement regarding the cheating of an event. Otherwise, the person cannot be held criminally liable based on art. 242^2 CC RM.

Finally, in **Chapter 5** – **Aggravating circumstances of the offenses of manipulation of an event and bet-fixing** – we have noted that criminal liability is aggravated when the offense provided in art. 242^1 CC RM it is committed by a coach, an athlete's agent, a member of the jury, a sports club owner or a person who is part of the management of a sports organization.

In this regard, we have clarified the meaning of the terms "coach", "athlete's agent", "jury member", "sports club owner" and "person who is part of the management of a sports organization". This list should be supplemented with a new special subject – the referee.

[84] Reniță Gh. *Tratamentul sancționator al infracțiunilor de manipulare a unui eveniment și de pariuri aranjate (art.242^1 și 242^2 CP RM).* În: Perspectivele și problemele integrării în Spațiul European al Cercetării și Educației: Conferință științifică internațională (7 iunie 2016, Cahul). Vol. I. Cahul: Tipografia Centrografic, 2017, p. 87-93.

Among others, according to the legislation of the Republic of Moldova, sports clubs have a dual legal nature: (i) sports organization and (ii) extracurricular educational institution. Sports clubs can also be legal entities under private and public law. The owner of a sports club – a legal person under public law cannot be held criminally liable for handling an event, because the Criminal Code of the Republic of Moldova allows the prosecution of only legal persons under private law.

Most sports clubs in the Republic of Moldova are formed in the form of public associations. But the legal form of organization of the sports club and the fact that it is a professional or amateur sports club does not have an impact on the qualification of the deed according to art. 242^1 para. (2) CC RM. It is important to note that its owner is a natural person.

We found that the offense of manipulation of an event can be committed by an organized criminal group[85] or by an organized criminal organization and, therefore, we have proposed to aggravate the liability in this case.

In relation to the offense of arranged bets, we analyzed the two aggravating circumstances provided in art. 242^2 para. (2) CC RM: a) committing the crime by an organized criminal group or by a criminal organization; b) causing damages in particularly large proportions.

From the perspective of the Criminal Code of the Republic of Moldova, in numerical terms, the organized criminal group must bring together at least two people. This conclusion derives from the grammatical interpretation of the term "persons", as well as from the systemic interpretation of the provisions of art. 41 (according to which "intentional cooperation of two or more persons in the commission of an intentional crime is considered participation") and art. 43 lit. c) CC RM (according to which "depending on the degree of coordination of the participants' actions, the following forms of participation are distinguished: [...] organized criminal group"). At international level, art. 2 of the UN Convention against Transnational Organized Crime[86] stipulates that the organized criminal group must bring together at least three people. This conception was transposed by the European Union in art. 1 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, which contains the phrase "more than two persons"[87].

The Republic of Moldova has ratified (in 2005) the mentioned Convention, but did not synchronize its provisions with the relevant provisions of domestic law. Considering the

[85] Spapens T. Match-Fixing. In: Nelen H. & Siegel D. *Contemporary Organized Crime: Developments, Challenges and Responses*. Cham: Springer, 2017, p. 139-156.
[86] United Nations Convention against transnational organized crime. Available on: https://bit.ly/3dkE2lT
[87] Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime. Available on: https://bit.ly/2BsXb6U

provisions of art. 8 of the Constitution of the Republic of Moldova, which requires the need to comply with international law and international treaties, we consider that in the context of the offense of bet-fixing the organized criminal group must bring together at least three people.

We have concluded this chapter by specifying the particularities of establishing damages in particularly large proportions in the context of the offense provided in art. 242^2 CC RM.

In accordance with art. 126 para. (1^1) CC RM, the value of the damage caused by a person or a group of persons shall be considered as particularly large proportions the value of the goods stolen, acquired, received, manufactured, destroyed, used, transported, kept, traded, crossed the customs border, which exceeds 40 projected average monthly salaries per economy, established by the Government decision in force at the time of the act.

Paragraph 1 of the same article provide that the large proportions exceed 20 average monthly salaries per projected economy, established by the Government decision in force at the time of the commission of the act.

This legislative concept – to establish large and particularly large proportions according to the projected average monthly salary in the economy – was challenged before the Constitutional Court of the Republic of Moldova, claiming that it establishes discriminatory treatment. It was also argued that the size of the projected average monthly salary in the economy is approved each year by the Government, being different, generates the unpredictability of the legal norm and, consequently, affects the principle of retroactivity of criminal law.

The Constitutional Court emphasized that "the moment in relation to which the amount of large and particularly large proportions is established has an *expressis verbis* regulation and does not create uncertainties". It also found that "the legislative option to take into account the projected average monthly salary per economy, established by Government decision in force at the time of the act, in determining the large and particularly large proportions does not establish a differential treatment for the recipients of criminal law. [...] [In] identical or comparable situations, the same mechanism for calculating large and particularly large proportions is applicable"[88]. The Court therefore dismissed the complaint as inadmissible.

Hence, the particularly large proportions will be related to the amount of the average monthly salary per economy, established by the Government, in force at the time of the offense, regardless of whether at the date of sending the case to court, sentencing, retrial, etc. there will be another amount of the average monthly salary per economy approved by the Government.

[88] Decizia Curții Constituționale nr. 2 din 19 ianuarie 2017 de inadmisibilitate a sesizării nr. 159g/2016 privind excepţia de neconstituţionalitate a unor prevederi din articolul 126 alin. (1) şi alin. (1^1) din Codul penal (stabilirea proporţiilor mari şi deosebit de mari). În: Monitorul Oficial al Republicii Moldova, 2017, nr. 119-126.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

As a result of the study, making a synthesis, we reach the following ***general conclusions:***

1) offenses of manipulation of an event and bet-fixing are not limited to the defining features of corruption and therefore cannot be considered as offenses of corruption. Instead, committing the offenses provided in art. 242^1 and 242^2 of the CC RM generate repercussions on the economic activities carried out in connection with a sporting event or an event of another nature that offers opportunities to bet;

2) the organization and development of bets in legal conditions, as well as the events that offer opportunities to bet, represents a *sine qua non* premise for the application of liability according to art. 242^1 and 242^2 CC RM;

3) *de lege lata*, there is no repressive means for the unlawful organization and conduct of gambling (including betting) on which the state monopoly has been established. There is a legislative gap from which the perpetrators benefit from and which needs to be remedied;

4) sporting event means any sporting competition. This is the concept of the Council of Europe Convention on Manipulaiton of Sports Competitions. Therefore, in the extra-penal normative acts only one phrase should be used (e.g., that of "sporting event", contained in the criminal law) instead of the expression "competitions / sporting events";

5) there is no objective and reasonable argument to prohibit bets on events of another nature (other than sports) likely to be manipulated within the meaning of art. 242^1 CC RM. Limiting certain categories of bets cannot inhibit the desire to commit the offense in question;

6) bets can be made both on the final result of an event and on its separate elements. Correlatively, only part of a sporting or betting event could be manipulated, but not necessarily the end result. But the provision of the art. 242^1 of the CC RM, it does not mention the manipulation of a sporting or betting event, which could generate problems of interpretation and application of the rule in question, respectively;

7) the participant in a sports / betting event could vitiate the event in question not only by a commissive conduct (as mentioned in art. 242^1 CC RM), but also by an omissive conduct (as provided by the Convention on the Manipulation of Sports Competitions);

8) it is welcomed to establish the criminal liability of the participant in a sporting or betting event that will adopt the conduct required by the subject of the offense provided in art. 242^1 CC RM;

9) the text "goods, services, privileges or advantages in any form, which are not due to him" from art. 242^1 CC RM can be amounted to the generic concept of "undue remuneration";

10) it is necessary to aggravate the criminal liability in case the perpetrator encourages, influences or instructs a minor participant in a sporting and / or betting event to take actions that would produce a vitiated effect on that event. It is also appropriate to aggravate the criminal liability in the event that the offense of manipulation of an event is committed in relation to two or more persons, as well as in the case of the commission of the crime by an organized criminal group or a criminal organization;

11) from a terminological point of view, the legislator was inconsistent. Specifically, while in the title of art. 242^1 CC RM mentions about "manipulation", on the contrary, in the content of art. 242^1 para. (1) CC RM, as well as the description of the offense of bet-fixing shall be operated, interchangeably, with the terms "vitiated" and, respectively, "rigged". Synonymy in criminal law (and not only) is not recommended, because it generates confusion and legal uncertainty both for subjects endowed with the competence of law enforcement and for its addressees;

12) the text "in both cases with the deprivation of the right to hold certain positions or to exercise a certain activity" from art. 242^1 para. (1) CC RM unjustifiably restricts the scope of application of the crime of manipulation of an event only for the situations when the subject-individual of the offense in question holds a certain function or exercises a certain activity that is used to commit the offense of manipulation of an event;

13) by virtue of the statute and powers conferred on the referee, he could "successfully" commit the act of manipulating an event. However, the provision of art. 242^1 para. (2) CC RM does not provide the referee among special subjects of the offense of manipulation of an event;

14) it is inappropriate to use in art. 242^2 of the CC RM of the expression "with the intention" to designate the purpose of the perpetrator to determine other persons to place bets on a sporting or other manipulated event.

Based on the above, we advocate for the implementation of the following ***recommendations:***

1) the replacement of the word "vitiated" in the provision of art. 242^1 para. (1) CC RM and, respectively, of the words "cheating" and "cheating" from the disposition of art. 242^2 para. (1) CC RM with the term "manipulated" (in the corresponding grammatical form);

2) the supplementing of art. 242^1 CC RM, after the word "actions", with the phrase "or inactions";

3) the substitution of the text "goods, services, privileges or advantages in any form, which are not due to him" from art. 242^1 CC RM with the phrase "undue remuneration";

4) the replacement of the expression "in both cases with the deprivation of the right to hold certain positions or to exercise a certain activity" from art. 242^1 para. (1) CC RM with the text "in

both cases with (or without) deprivation of the right to hold certain positions or to exercise a certain activity";

5) the supplementing of art. 242^1 CC RM with the following aggravating circumstances, in the sense that the same action committed: (i) on a minor; (ii) on two or more persons; (iii) by an organized criminal group or a criminal organization;

6) the supplementing of art. 242^1 para. (2) CC RM with a new special subject of the offense, *i.e.* "referee";

7) the supplementing of art. 242^1 CC RM with a new paragraph, with the following content: "The performance by the participant in a sporting event or in a betting event of actions or inactions which would produce a manipulated effect on the course or outcome of that event, in order to obtain undue remuneration for himself or for another person, shall be punished by a fine of from 2,350 to 4,350 conventional units or by imprisonment from 1 to 3 years, in both cases with deprivation of the right to hold certain positions or to exercise a certain activity";

8) the replacement of the expression "in the intention" from art. 242^2 para. (1) CC RM with the text "with purpose";

9) the supplementing of Chapter XIII (which establishes the meaning of some terms or expressions) of the General Part of the Criminal Code with art. 134^{14} "Undue remuneration" with the following provision: "Undue remuneration means goods, services, privileges or advantages in any form, which are not due to the addressee under normative provisions";

10) the supplementing the Criminal Code with art. 241^2 "Illegal organization and conduct of gambling", with the following content:

"(1) The unlawful organization and conduct of gambling that constitutes a state monopoly, of gambling prohibited, unlicensed or in a prohibited place, resulting in a large income, is punishable by a fine ranging from 500 to 3,000 of conventional units, with (or without) deprivation of the right to hold certain positions or to exercise a certain activity for a term of up to 5 years, and the legal person is punished with a fine in the amount of 1,000 to 3,000 conventional units with deprivation of the right to exercise a certain activity or with its liquidation.

(2) Same action:

a) resulting in a particularly large income;

b) committed by an organized criminal group or a criminal organization,

is punishable by a fine of 2,000 to 4,000 conventional units or imprisonment for up to 2 years, in both cases with deprivation of the right to hold certain positions or to exercise a certain activity for a term of up to 5 years, and the legal person is punished with a fine in the

amount of 3,000 to 6,000 conventional units with deprivation of the right to exercise a certain activity or with its liquidation";

11) the exposition of art. 277^1 alin. (2) of the Contravention Code in the following wording: "The organization and conduct without right of gambling which constitutes a state monopoly, of prohibited gambling, without a license or in a prohibited place, shall be sanctioned with a fine from 60 to 120 of conventional units with (or without) deprivation of the right to hold certain positions for a period of up to one year, and the legal person is punished with a fine of 120 to 180 conventional units certain activity of up to one year";

12) the exclusion of let. h) and let. i) from para (2) in art. 44 of the Integrity Law, provisions that assign the offenses of manipulation of an event and bet-fixing to the group of corruption offenses;

13) the use in the text of Law no. 291/2016 of the phrase "sporting event" instead of the dichotomy "competitions / sporting events";

14) a new wording of the definition of "bet" from art. 2 of Law no. 291/2016, *i.e.*: "bet - gambling that involves placing a stake on a future and uncertain event, which will occur without the involvement of the bet organizer";

15) the exclusion of the expression "for competitions / sports events" from art. 6 para. (1) let. d), art. 43 para. (1), as well as from the title of Chapter VIII of Law no. 291/2016;

16) the abrogation of let. c) of para. (4) in art. 6 of Law no. 291/2016, a rule that prohibits betting games, regardless of the form of organization and means of play used, which use as a support (object) the lottery results, regardless of how these games are organized and in which participants have the opportunity to indicate (predict) the results of these events.

Recommendations on the Law no. 291/2016 are valid, mutatis mutandis, also for the Standard Regulation on the organization and conduct of betting for competitions / sporting events (Annex no. 3 to Government Decision no. 777 of 1 August 2018).

Considering the proposals *de lege ferenda* formulated above, we recommend the following incriminating model of art. 242^1 and 242^2 CC RM:

Article 242^1. Manipulation of an event

(1) Encouraging, influencing or instructing a participant in a sporting event or betting event to take actions or inactions that would have a manipulated effect on the course or outcome of that event, in order to obtain undue remuneration for himself or another person,

is punishable by a fine of 2,350 to 4,350 conventional units or imprisonment from 1 to 3 years, in both cases with (or without) deprivation of the right to hold certain positions or to carry out a certain activity, and the legal person is punished with a fine from 6,000 to 9,000 conventional units with deprivation of the right to exercise a certain activity.

(2) The same actions committed:

a) on a minor;

b) on two or more people;

c) by a coach, an agent of the athlete, a referee, a member of the jury, a sports club owner or a person who is part of the management of a sports organization;

d) by an organized criminal group or a criminal organization,

are punished with a fine from 3,350 to 5,350 conventional units or with imprisonment from 2 to 6 years, in both cases with deprivation of the right to hold certain positions or to exercise a certain activity for a term of 4 to 7 years.

(3) The performance by the participant in a sporting event or in a betting event of actions or inactions which would produce a manipulated effect on the course or outcome of that event, in order to obtain undue remuneration for himself or for another person,

shall be punished by a fine of from 2,350 to 4,350 conventional units or by imprisonment from 1 to 3 years, in both cases with deprivation of the right to hold certain positions or to exercise a certain activity.

Article 242[2]. Bet-fixing

(1) Betting on a sporting event or other betting event is informing others of the existence of an agreement regarding the manipulation of that event in order to cause them to participate in that bet, committed by a person who knows with certainty about the existence of an agreement regarding the handling of that event,

is punished with a fine from 2,350 to 4,350 conventional units, and the legal person is punished with a fine from 6,000 to 8,000 conventional units with deprivation of the right to exercise a certain activity.

(2) The actions provided at para (1):

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

b) which caused damage to a particularly large extent,

are punished with a fine from 3,350 to 5,350 conventional units or with imprisonment of up to 3 years, and the legal person is punished with a fine from 9,000 to 11,000 conventional units with deprivation of the right to exercise a certain activity.

The advantages of these recommendations are highlighted in the following areas:

a) the legislative field. In this regard, it would ensure: a differentiation of criminal liability for handling an event; standardization of the terminology from art. 242^1 and 242^2 of CC RM and of the reference extra-criminal normative acts; the consistency of the juridical-penal norms in relation to the provisions of the extra-criminal normative acts of reference. Thus, these recommendations would help to draw up a legislative framework that is not only coherent but also balanced in relation to the offenses of handling an event and arranged bets;

b) the jurisprudential field. Under this aspect, the correct and uniform application by the courts of the incrimination norms provided in art. 242^1 and art. 242^2 CC RM and, respectively, legal uncertainty would be avoided;

c) the economic field. The impact on the national economy would materialize in the reduction of costs related to the retrial of cases as an effect of the reclassification from art. 242^1 in art. 334 CC RM; of art. 190 of art. 242^2 or others from the Criminal Code, or vice versa; will relieve the state budget of the burden of paying compensation as a result of the convictions of the European Court of Human Rights for violating certain fundamental rights, when errors are committed in the application of art. 242^1 and 242^2 CC RM.

The prospective research plan includes the following benchmarks:

1) legal-historical analysis of the offenses of manipulation of an event and of bet-fixing;

2) the in-depth study of the regulations of the comparative law regarding the offenses provided in art. 242^1 and 242^2 CC RM;

3) estimating the opportunity to incriminate the betting fact with the use of confidential inside information (insider) about the organization and conduct of an event;

4) the justification of establishing the criminal liability of legal entities in the case of the aggravated variant of the offense of manipulation of an event;

5) the evaluation of the effectiveness of the punishments applied for committing the offenses provided in art. 242^1 and 242^2 CC RM;

6) the explication of the criminological connotations of the offense of manipulation of an event and bet-fixing offense.

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ADNOTARE

Reniță Gheorghe, „Răspunderea penală pentru manipularea unui eveniment și pariurile aranjate”. Teză de doctorat în drept. Școala Doctorală de Științe Juridice a Universității de Stat din Moldova. Chișinău, 2020

Structura tezei: introducere, cinci capitole, concluzii generale şi recomandări, bibliografie din 664 titluri, 312 pagini de text de bază. Rezultatele obținute sunt publicate în 20 lucrări științifice.

Cuvinte-cheie: sport, *fair-play*, pariuri aranjate, manipulare, participant la un eveniment sportiv, participant la un eveniment de pariat, meciuri trucate, organizator de jocuri de noroc.

Domeniul de studiu. Lucrarea face parte din domeniul dreptului penal, partea specială.

Scopul şi obiectivele tezei. *Scopul* lucrării constă în efectuarea unei cercetări temeinice a răspunderii penale pentru manipularea unui eveniment și pentru pariurile aranjate, în identificarea şi soluţionarea problemelor teoretico-practice legate de aceste infracțiuni, precum și în formularea unor recomandări pentru eficientizarea cadrului incriminator în materie şi aplicarea corectă şi uniformă de către instanțele de judecată a articolelor 242^1 și 242^2 din Codul penal al Republicii Moldova. În acest sens, pentru atingerea scopului urmărit, au fost trasate mai multe *obiective*: 1) caracterizarea juridico-penală a elementelor obiective şi subiective ale infracţiunilor de manipulare a unui eveniment și de pariuri aranjate, precum şi a circumstanțelor agravante ale infracțiunilor în discuție; 2) stabilirea cazurilor de conexitate etiologică dintre infracțiunile prevăzute la articolele 242^1 și 242^2 din Codul penal al Republicii Moldova; 3) studierea practicii judiciare și identificarea problemelor cu care se confruntă cei dotați cu competența aplicării răspunderii penale pentru manipularea unui eveniment și pentru pariurile aranjate și, prin urmare, propunerea unor soluții; 4) estimarea previzibilității termenilor și noțiunilor cu care legislatorul operează în textul articolelor 242^1 și 242^2 din Codul penal al Republicii Moldova etc.

Noutatea şi originalitatea științifică a tezei constă în cercetarea aprofundată a răspunderii penale pentru manipularea unui eveniment și pentru pariurile aranjate, studiul având un caracter de pionierat în spectrul lucrărilor realizate în Republica Moldova pe această temă. Este prima lucrare în care este analizată practica judiciară în materie, în paralel fiind evidențiate deficiențele tehnico-legislative ale normelor prevăzute la articolele 242^1 și 242^2 din Codul penal al Republicii Moldova. Mai mult, au fost formulate propuneri concrete de îmbunătățire a cadrului incriminator.

Semnificația teoretică a tezei constă în: (i) stabilirea naturii juridice a infracțiunilor prevăzute la articolele 242^1 și 242^2 din Codul penal al Republicii Moldova; (ii) identificarea carențelor și lacunelor legislative; (iii) trasarea unor noi perspective privind răspunderea penală pentru manipularea unui eveniment și pentru pariurile aranjate; (iv) analiza interdisciplinară a normelor prevăzute la articolele 242^1 și 242^2 din Codul penal al Republicii Moldova.

Valoarea aplicativă a tezei poate fi rezumată la următoarele: a) interpretarea noțiunilor din articolele 242^1 și 242^2 din Codul penal al Republicii Moldova prezintă relevanță pentru aplicarea corectă și uniformă a acestor articole în practică judiciară, precum și pentru dezvoltarea ulterioară a concepțiilor științifice în materie; b) conturarea particularităților cumulului răspunderii penale cu răspunderea disciplinară pentru manipularea unui eveniment și pentru pariurile aranjate are o semnificație cognitivă în vederea evitării încălcării unor drepturi fundamentale ale persoanei; c) concluziile și recomandările formulate în lucrare pot fi luate în considerare de către legislator în vederea îmbunătățirii calitative a conținutului articolelor 242^1 și 242^2 din Codul penal al Republicii Moldova. De asemenea, acestea își pot demonstra utilitatea în activitatea practică a organelor de urmărire penală, a procuraturii și a instanțelor judecătorești, precum și în procesul de instruire în cadrul instituțiilor de învățământ cu profil juridic.

АННОТАЦИЯ

Реницэ Георге, «Уголовная ответственность за манипулирование мероприятием и устроенные пари». Диссертация на соискание научной степени доктора права. Докторальная школа юридических наук Государственного университета Молдовы. Кишинэу, 2020

Структура диссертации: введение, пять глав, выводы и рекомендации, библиография из 664 названий, 312 страниц составляют основную часть диссертации. Достигнутые результаты опубликованы в 20 научных работ.

Ключевые слова: спорт, *fair-play*, устроенные пари, манипулирование, участник спортивного мероприятия, участник пари, договорные матчи, организатор азартных игр.

Предмет исследования. Работа относится к сфере особенной части уголовного права.

Цель и задачи диссертации. *Цель* исследования заключается в проведении углубленного и тщательного анализа уголовной ответственности в случае манипулирования мероприятием и устроенных пари, в выявлении и разрешении теоретических и практических проблем, связанных с указанными преступлениями, а также в предложении некоторых рекомендаций, направленных на повышение эффективности законодательства в данной отрасли и верное и единообразное применение судебными инстанциями положений ст. 242^1 и ст. 242^2 УК РМ. В этой связи, для достижения данной цели были обозначены ряд *задач*: 1) уголовно-правовая оценка объективных и субъективных признаков преступлений в виде манипулирования мероприятием и устроенного пари, а также отягчающих обстоятельств данных преступлений; 2) определение случаев этиологической связи между преступлениями, предусмотренными в ст. 242^1 и ст. 242^2 УК РМ; 3) изучение судебной практики и выявление проблем, с которыми сталкиваются профессионалы при применении уголовной ответственности в случае манипулирования мероприятием и устроенных пари, и предложение некоторых решений; 4) оценка предсказуемости терминов и понятий, используемых законодателем в положениях ст. 242^1 и ст. 242^2 УК РМ, и др.

Научная новизна и оригинальность диссертации состоит во всестороннем и углубленном изучении уголовной ответственности в случае манипулирования мероприятием и устроенных пари. Исследование носит первооткрывательский характер и выделяется среди работ, написанных в Республике Молдова на данную тему, являясь первым научным трудом, в котором проводится анализ судебной практики в этой области и, в то же время, указаны недостатки ст. 242^1 и ст. 242^2 УК РМ с точки зрения законодательной техники. Более того, сформулированы конкретные предложения по усовершенствованию положений закона.

Теоретическое значение диссертации состоит: (i) в определении правовой природы преступлений, предусмотренных ст. 242^1 и ст. 242^2 УК РМ; (ii) в выявлении законодательных недостатков и пробелов; (iii) в определении новых перспектив в отношении применения уголовной ответственности в случае манипулирования мероприятием и устроенных пари; (iv) в междисциплинарном анализе положений ст. 242^1 и ст. 242^2 УК РМ.

Прикладное значение диссертации заключается в следующем: a) толкование используемых в ст. 242^1 и ст. 242^2 УК РМ терминов имеет значение для верного и единообразного применения положений данных статей в судебной практике, а также для дальнейшего развития научных концепций в этой области; b) изложение особенностей совокупного применения уголовной и дисциплинарной ответственности в случае манипулирования мероприятием и устроенных пари имеет познавательное значение, позволяя исключить нарушение основных прав лица; c) выводы и рекомендации, сформулированные в данной научной работе, могут быть использованы законодателем для усовершенствования содержания ст. 242^1 и ст. 242^2 УК РМ. Они также могут быть полезными для органов уголовного преследования, прокуратуры и судебных инстанций в практической деятельности и для высших учебных заведений юридического профиля в учебном процессе.

ANNOTATION

Reniță Gheorghe, „Criminal liability for manipulation of an event and for bet-fixing". PhD in Law thesis. Doctoral School of Legal Sciences of the State University of Moldova. Chișinău, 2020

The structure of the thesis: introduction, five chapters, general conclusions and recommendations, bibliography of 664 titles, 312 pages of basic text. The results achieved are published in 20 scientific papers.

Key-words: sports, fair play, bet-fixing, manipulation, participant in a sports event, participant in a betting event, match-fixing, gambling organizer.

Field of the thesis. This research refers to the field of criminal law, special part.

The purpose and the objectives of the thesis. The purpose of the thesis is to perform a comprehensive research of criminal liability for manipulation of an event and for fixed bets, in identifying and solving theoretical and practical issues related to these offences, as well as in formulating recommendations for streamlining the incriminating framework in this area and for the correct and uniform application by the courts of the articles 242^1 and 242^2 of the Criminal Code of the Republic of Moldova. In this respect, to achieve the purpose, several objectives were set: 1) the characterization from the viewpoint of criminal law of the objective and subjective elements of the offenses – manipulation of an event and fixed bets, as well as of the aggravating circumstances of the offenses in question; 2) establishing the cases of etiological connection between the offenses provided by the articles 242^1 and 242^2 of the Criminal Code of the Republic of Moldova; 3) the study of the case-law and identification of the problems faced by those endowed with the competence to apply criminal liability for the manipulation of an event and for the fixed bets and, therefore, the proposal of solutions; 4) estimating the foreseeability of the terms and notions used by the legislator in the articles 242^1 and 242^2 of the Criminal Code of the Republic of Moldova etc.

The novelty and the scientific originality of the thesis lies in the thoroughgoing research of the criminal liability for manipulation of an event and for fixed bets, the investigation having a pioneering character in the field of works done in the Republic of Moldova in terms of this topic. In this respect, it is the first thesis in which the case-law in the matter is analyzed, simultaneously being highlighted the technical-legislative deficiencies of the norms provided by the articles 242^1 and 242^2 of the Criminal Code of the Republic of Moldova. Moreover, there are formulated concrete proposals for improving the incriminating framework.

The theoretical significance of the thesis consists in: (i) establishing the legal nature of the offenses provided by the articles 242^1 and 242^2 of the Criminal Code of the Republic of Moldova; (ii) identification of the legislative gaps and shortcomings; (iii) drawing new perspectives on criminal liability for the manipulation of an event and for the fixed bets; (iv) the interdisciplinary analysis of the norms provided by the articles 242^1 and 242^2 of the Criminal Code of the Republic of Moldova.

The applicative value of the thesis can be summarized as follows: a) the interpretation of the notions from the articles 242^1 and 242^2 of the Criminal Code of the Republic of Moldova is relevant for the correct and uniform application of these articles in case-law, as well as for the further development of scientific concepts in the field; b) outlining the particularities of the cumulation of criminal liability with disciplinary liability for manipulation of an event and for fixed bets has a cognitive significance in order to avoid the violation of some fundamental rights; c) the conclusions and recommendations formulated in the thesis can be taken into account by the legislator in order to improve the quality of the content of the articles 242^1 and 242^2 of the Criminal Code of the Republic of Moldova. The thesis can demonstrate its usefulness in the practical activity of the criminal investigation authorities, of the prosecutor's office and of the courts, as well as in the training process in legal education institutions.

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CRIMINAL LIABILITY FOR MANIPULATION OF AN EVENT AND FOR BET-FIXING

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