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POPENCO Adrian

THEORETICAL AND PRACTICAL ASPECTS OF THE NEGLIGENCE IN PERFORMANCE OF DUTIES OFFENCE

SPECIALITY - 554.01 CRIMINAL LAW
AND CRIMINAL ENFORCEMENT

Law PhD Thesis Abstract

Author: _____ Popenco Adrian

Supervisor of
doctoral studies: _____ Esanu Adriana, PhD in law, associate professor

Guidance commission:

_____ Cusnir Valeriu, PhD Hab. in law, professor

_____ Vidaicu Mihaela, PhD in law, associate professor

_____ Hadirca Igor, PhD in law, associate professor

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The thesis was developed at the Doctoral School of *Legal Studies*, Moldova State University

Author:

_____Popenco Adrian

Supervisor of doctoral studies:

_____ Esanu Adriana, PhD in law, associate professor

Doctoral Commission:

The President of the Commission: Brînza Sergiu, PhD Hab. in law, professor

Supervisor of doctoral studies: Esanu Adriana, PhD in law, associate professor

Official reviewers: Cușnir Valeriu, PhD Hab. in law, professor

Grecu Raisa, PhD Hab. in law, associate professor

Stati Vitalie, PhD in law, associate professor

The defence will take place on "___" **November 2020**, time _____, block 2 of MSU, office 119, Mihail Kogalniceanu Street, Chisinau municipality

The summary and doctoral thesis can be consulted at the library of the State University of Moldova and on the ANACEC website (www.cnaa.md)

Author _____

Secretary of Doctoral Commission: _____ COPEȚCHI Stanislav, PhD in law, associate professor

CONCEPTUAL GUIDELINES OF RESEARCH

The actuality of the topic

From the provisions of letter f) paragraph (2) Art.45 of the Integrity Law no.82 of 25.05.2017[1], it follows that the negligent performance of duties offences are acts related to corruption. Given the fierce struggle at the current stage with the phenomenon of corruption, we conclude that the negligent performance of duties offences must be considered as harmful to society as the other acts related to corruption (abuse of power or abuse of office, forgery in public documents, etc.).). And as underlined in Annex no. 1 to Government Decision of the Republic of Moldova on the approval of the National Integrity and AntiCorruption Strategy for 2017-2020, no. 56 of 30.03.2017[2], "[a]ny act of corruption, whatever form - bribery, negligence, excess or abuse, involves human rights violations".

Statistical data show that today the negligent performance of duties offences are slightly lower than in the previous years. For example, according to the Activity Report of the National Anticorruption Center for 2016[3], the share of negligent performance of duties offences in the structure of corruption crimes and those related to corruption detected by the competent bodies is 3.1%. At the same time, compared to 2015, the number of negligent performance of duties offences decreased by 4%. Also, according to the Activity Report of the National Anticorruption Center for 2017[4], the share of negligent performance of duties offences in the structure of corruption crimes and those related to corruption detected by the competent bodies represents 2%. At the same time, compared to 2016, there is a decrease by 27% of the number of crimes committed and detected by the competent bodies. Specifically, if in 2016 there were 22 cases of professional negligence, then in 2017 their number was reduced to 16.

Likewise, according to the Activity Report of the National Anticorruption Center for 2018,[5] out of the total number of 714 criminal cases initiated by the criminal prosecution officers, 11 constituted negligent performance of duties offences. And according to the Activity Report of the National Anticorruption Center for 2019,[6] out of the total number of 640 criminal cases initiated by the criminal prosecution officers, only 7 constituted negligent performance of duties offences.

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[1] In: Official Gazette of the Republic of Moldova, 2017, no.229-243.
[2] In: Official Gazette of the Republic of Moldova, 2017, no.216-228.
[3] *Activity Report of the National Anticorruption Center for 2016.* Available: file:///C:/Users/Alina/Downloads/public_publications_1479143_md_raportul_de_ac.pdf
[4] *Activity Report of the National Anticorruption Center for 2017.* Available: file:///C:/Users/Alina/Downloads/public_publications_1823143_md_raport_cna_201.pdf
[5] *Activity Report of the National Anticorruption Center for 2018.* Available https://cna.md/public/files/Raport_de_activitate_CNA_2018_.pdf
[6] *Activity Report of the National Anticorruption Center for 2019.* Available https://cna.md/public/files/Raport_CNA_2019_ro_engl.pdf

Despite the fact that the negligent performance of duties offences occupy a relatively small share in the structure of corruption-related crimes, as well as the fact that lately the so-called crimes are registering a negative dynamic, the very existence of these acts in society is still worrying, as they are committed by public persons entitled with specific rights and obligations, and which should normally act for the good of society *as a whole*, but not to the detriment of it.

The existence of such facts in society creates the impression that some public persons lack the competence and professionalism necessary to perform their duties in the public sphere, which, implicitly, determines the formation of public opinion on the overall accomplishment by the public persons of the tasks assigned to them by the state. As representatives of the state, public persons, persons with a position of public dignity must show diligence, prudence, conscientiousness, etc. in the performance of their service duties.

The actuality of the approached subject is also based on other reasons:

1) The study of the judicial practice in the matter of negligent performance of duties offences shows that those authorized to apply the criminal law face various problems of qualification of those committed in the form of Art. 329 of the Criminal Code of the Republic of Moldova (hereinafter - CC of the RM)[7];

2) Also, there is the interest of practitioners, including lawyers and judges, manifested lately compared to the estimates used by the Moldovan legislator to describe the elements of the criminal components enshrined in the Special Part of the Criminal Code. In particular, the reaction, in most cases negative, of the above-mentioned persons towards these signs is noticeable, which, moreover, are not foreign to the incriminating framework enshrined in Art.329 of the Criminal Code of the Republic of Moldova;

3) The need to clearly establish the demarcation lines between the negligent performance of duties offences and other related criminal acts is being noticed more and more often.

Framing the topic in international concerns. At the international level, the acute trend in the fight against corruption-related crimes, including the acts of professional negligence, is implicitly deduced from the analysis of the following international and regional legal instruments: the UN Convention against Corruption, adopted in New York on 31 October 2003,[8] ratified by the Law of the Republic of Moldova for the ratification of the United Nations Convention against Corruption,

[7] *Criminal Code, adopted by the Parliament of the Republic of Moldova on April 18, 2002*. In: Official Gazette of the Republic of Moldova, 2002, no. 128-129, republished in the Official Gazette of the Republic of Moldova, 2009, no. 72-74.

[8] *United Nations Convention against Corruption.* Available: http://www.cdep.ro/proiecte/2004/400/40/5/conv445.pdf

no. 158 of 06.07.2007[9]; Criminal Law Convention on Corruption of the Council of Europe, adopted in Strasbourg on 27 January 1999,[10] ratified by the Law of the Republic of Moldova on the ratification of the Criminal Law Convention on Corruption, no. 428 of 30.10.2003.[11]

Framing the topic in an inter- and transdisciplinary context. The results of the research, the conclusions formulated in the paper can contribute to the development of other sciences, both legal and non-legal: general theory of law, criminology, penology, forensics, criminal procedure, sociology, politology etc. In particular, important concepts and guidelines can be provided regarding the delimitation of negligent performance of duties offences from other similar acts, including disciplinary violations (legal categories inherent to the norms of labour law).

All this has determined our intention to undertake a new investigation of the negligent performance of duties offences from a theoretical, empirical and comparative perspective.

Description of the research situation and identification of the research problem

Scientific papers intended exclusively for the analysis of the juridical-criminal aspects of the crimes provided for in Art. 329 of the Criminal Code of the Republic of Moldova were published in a relatively small number (except for those signed relatively recently by I. Serbinov on the occasion of elaborating a doctoral thesis).

Also, the works elaborated by the following well-known authors were investigated: S.Brinza, V.Cusnir, L.Girla, I.Macari, R.Popov, T.Popovici, Ig.Serbinov, V.Stati, Iu.Tabarcea, I.Turcan (*Republic of Moldova*); T.Basova, V.N. Borkov, Iu.S. Rubtova, S.A. Eliseev, A.V. Ivancin, S.V. Izosimov, M.N. Kaplin, V.A. Kocerga, V.V. Losev, V.A. Merzleakova, M.A. Tineanaia, E.V. Tariov, Ia.Iu. Vasilieva, B.V. Voljenkin (*Russian Federation*); A.Iu. Rijankov (*Republic of Belarus*); D.Buda, C.Duvac, Gh.Diaconescu (*Romania*).

However, in the doctrine of specialty, as well as in the practical activity of those empowered with the application of the criminal law, various aspects that deserve to be taken into account remained unexplained, including dilemmas regarding the application of the incrimination norms addressed in the present scientific approach. All these enhance the necessity and topicality of a complex research focused exclusively on the analysis of the incrimination norms recorded in Art. 329 of the Criminal Code of the Republic of Moldova in order to solve the existing theoretical and practical problems. Moreover, in this paper we try to address some aspects from new theoretical and practical positions.

[9] In: Official Gazette of the Republic of Moldova, 2003, no. 103-106.
[10] *Criminal Law Convention on Corruption of the Council of Europe.* Available: https://cna.md/public/files/legislatie/conventia_penala_privind_coruptia_.pdf
[11] In: Official Gazette of the Republic of Moldova, 2003, no.229.

The important scientific problem of research consists in the elaboration of a complex conceptual framework with reference to the negligent performance of duties offences in accordance with the current theoretical and normative framework, which allowed the identification of the imperfections of the incriminating norms under analysis and, accordingly, the submission of a series of proposals meant to improve the incriminating text examined in order to facilitate the activity of the practitioners regarding the correct application of the norms inscribed in Art.329 of the CC of the RM.

The purpose and objectives of the thesis

The purpose of the paper is to carry out a solid theoretical-normative investigation in the matter of negligent performance of duties offences, in detecting and clarifying the practical problems faced by the persons empowered with the application of the criminal law when applying *in concreto* the norms registered in Art.329 CC of the RM, as well as in identifying the deficiencies of the respective norms, with the formulation of legislative proposals able to improve the current legal framework in this matter.

In order to achieve the stated purpose, the following *objectives* have been set:

- analysis of the doctrinal meanings and theses evoked by the scientists from the Republic of Moldova, as well as by those from other states, regarding the negligent performance of duties offences;

- the theoretical and normative approach of the elements of the criminal components legally enshrined in Art. 329 of the Criminal Code of the Republic of Moldova;

- determining the defining particularities of the victim of the crimes provided for in Art. 329 of the Criminal Code of the Republic of Moldova;

- assessing the content of the prejudicial consequences recorded in Art. 329 of the Criminal Code of the Republic of Moldova;

- establishing the correlation between the norms provided for in Art.329 of the Criminal Code of the Republic of Moldova and those included in the reference normative acts;

- critical analysis of the legislative construction technique of the norms inscribed in Art. 329 of the Criminal Code of the Republic of Moldova;

- the investigation of the judicial practice in the matter of the crimes provided for in Art. 329 of the Criminal Code of the Republic of Moldova;

- dissociation of the crimes recorded in Art. 329 of the Criminal Code of the Republic of Moldova from some related facts located in Chapter XV of the Special Part of the Criminal Code, as well as from other similar criminal acts located in other chapters of the same part of the Criminal Code;

- carrying out the comparative study in the matter regarding the negligent performance of duties offences in relation to the regulations from the criminal legislations of some foreign states;

- detecting the legislative deficiencies that mark the incriminating norms provided for in Art. 329 of the Criminal Code of the Republic of Moldova;

- formulating proposals of *de lege ferenda* apt to improve the content of the norms that incriminate the acts of professional negligence.

Research hypothesis

The research hypothesis is based on the assumption that:

- in the process of qualifying the professional negligence, the non-invocation of the supplementary norms (of reference) or their invocation *in the abstract* has as a consequence the inapplicability of the incomplete incrimination norms enshrined in Art. 329 CC of the RM;

- within the meaning of Art.329 CC of the RM, it is unacceptable that the prejudicial consequences in the form of damages in large proportions to public interests or the rights and interests protected by law of natural or legal persons (caused as a result of non-fulfillment or improper fulfillment of service obligations) have, in turn, progressively determined to cause other serious consequences;

- the prolonged (continued) form of the offence is incompatible with the negligent performance of duties offences, since subjectively the prolonged offence is characterized by the presence of intention and purpose, which is foreign to the offences of negligent performance of duties;

- the violation by imprudence of purely professional obligations cannot entail criminal liability based on Art.329 CC of the RM, not being excluded, however, that such behaviors fall under the incidence of other norms of incrimination.

Scientific research methodology

As methods for achieving the proposed goal and objectives there served: logical, historical and systematic method, induction, deduction, etc. Mention should be made of the comparative method, through the application of which the criminal laws of foreign states were analyzed with norms corresponding to those of Art.329 Criminal Code of the Republic of Moldova, such as: Azerbaijan, Kyrgyzstan, Armenia, Belarus, Kazakhstan, Tajikistan, Uzbekistan, Turkmenistan, Russian Federation, Lithuania, Latvia, Romania, Denmark, Montenegro, Czech Republic, Bosnia and Herzegovina, Norway, Sweden, Bulgaria, Croatia, Finland, Serbia, Slovenia, Poland, Slovakia, Switzerland, Iceland, Mongolia, Vietnam, China, Philippines.

The comparative method was used to delimit the offences provided for in Art. 329 of the Criminal Code of the Republic of Moldova by some similar criminal acts.

Part of the study focused on the analysis of judicial practice in the field of offences of negligent performance of duties, being subject to investigation over 85 court decisions.

The scientific novelty and originality of the paper

The scientific novelty of the obtained results is expressed in the fact that various last-minute theoretical-practical problems have been identified to which appropriate solutions were tried.

The scientific novelty of the elaborated paper also consists in: 1) pointing the manner of identifying the content of the secondary legal object of the crimes provided for in Art.329 of the Criminal Code of the Republic of Moldova by reporting it to the type of prejudicial consequences occurred; 2) detailed statement on the defining particularities of the material object and of the victim of negligent performance of duties offences; 3) establishing the entities that cannot appear in the position of victims of negligent performance of duties offences; 4) highlighting the correlation between the incomplete norms provided for in Art.329 of the Criminal Code of the Republic of Moldova and those supplementing the reference normative acts; 5) the plenary argumentation of the content of the two normative ways of expressing the prejudicial deed through the prism of the judicial practice in the matter; 6) reasoning, from the perspective of the *"ultima ratio"* principle, on the position of the Moldovan legislator to include the prejudicial consequence and, respectively, the causal link between the deed and the consequence as constitutive signs of the negligent performance of duties offences; 7) the exact disclosure of the content of the prejudicial consequences recorded in Art.329 of the Criminal Code of the Republic of Moldova; 8) demonstrating, by reasoning, the impossibility of the evolution of the lost income as a form of damages in large and particularly large proportions; 9) highlighting the non-uniform judicial practice in the matter of negligent performance of duties offences in terms of establishing the content of the sign "other serious consequences", non-uniformity conditioned by the evasive, unclear and ambiguous nature of that sign, reason why by the Decision of the Constitutional Court of the Republic of Moldova on the control of the constitutionality of some provisions of Articles 189 paragraph (3) letter f), 307 paragraph (2) letter c), 327 paragraph (2) letter c), 329 paragraph (1) and paragraph (2) letter b) and from Article 335 paragraph (1^1) of the Criminal Code, no. 24 of 17.10.2019 (hereinafter - Decision of the Constitutional Court, no. 24/2019)[12] was declared unconstitutional the text "other serious consequences" inscribed in the content of letter b) paragraph (2) Art.329 CC of the RM; 10) highlighting the specifics of the causal link in the crime components registered in Art.329 of the Criminal Code of the Republic of Moldova; 11) identifying problematic issues concerning the subject of the offences provided for in Art.329 of

[12] In: Official Gazette of the Republic of Moldova, 2019, no.338-343.

the Criminal Code of the Republic of Moldova; 12) determining the form of guilt, as well as its modalities with which the perpetrator acts when committing the offences specified in Art.329 of the Criminal Code of the Republic of Moldova; 13) the theoretical-practical approach of the facts provided for in Art.329 of the Criminal Code of the Republic of Moldova from the perspective of the possibility of their evolution as prolonged, continuous or participatory offences; 14) reasoned identification of the demarcation lines between the offences of negligent performance of duties and other related criminal acts; 15) the comparative analysis of the criminal regulations from the legislations of some foreign states in the matter of offences of negligent performance of duties, etc.

Theoretical significance and applicative value of the paper

Undoubtedly, the elaborated doctoral thesis has value for: a) theorists; b) practitioners; c) legislator; d) young scholars.

From a theoretical point of view, the present doctoral thesis is a paper in which the constitutive elements of the offences of negligent performance of duties are thoroughly and multispectively investigated, including through the analysis of the judicial practice. Along with the relatively recent thesis developed by I. Serbinov, this paper is one of the first attempts in the Moldovan doctrinal field to perform a multilateral analysis of the nominated crimes. Considering from which we are firmly convinced that the respective paper can constitute a solid scientific-methodological support for the specialized literature, especially for the further development of the science of criminal law.

From a practical point of view, the investigation will certainly facilitate the activity of those entitled to the application of the criminal law, representing a real scientific-practical support. Moreover, the paper has important theoretical-practical valences, the analysis being submitted to over 85 court decisions, which also served as an empirical basis for the elaboration of this study. As a result of the research undertaken, practical recommendations are formulated, as well as various qualification solutions are proposed for certain problematic situations.

Also, the importance of the paper lies in the possibility to contribute to the improvement of the incriminating framework from Art. 329 of the Criminal Code of the Republic of Moldova, in this sense, recommendations of *de lege ferenda* are submitted, meant to eliminate the deficiencies that make difficult the applicability of the analysed incrimination norms.

Last but not least, we consider the results of our research useful for the process of training students and master students from law schools in higher education institutions, as well as audiences from the National Institute of Justice.

Main scientific results submitted for support

The main scientific results submitted for support consist in: demonstrating the impossibility of evolving in the position of victim of negligent performance of duties offences of public authorities, including the specialized central administration, as well as local public administration bodies; evoking the conclusion, according to which the commission of the prejudicial deed in the absence of the service attributions that conditioned its commission does not allow the engagement of criminal liability based on Art. 329 of the Criminal Code of the Republic of Moldova; the argumentation of the thesis in accordance with which the non-invocation of the completing norms in the process of qualifying the negligent performance of duties has as consequence the inapplicability of the incomplete incrimination norms enshrined in Art.329 CC of the RM; the reasoned statement of the fact that the prejudicial consequence provided in paragraph (1) Art. 329 of the Criminal Code of the Republic of Moldova may have, exclusively, a patrimonial character; arguing that the formula “negligent performance of duties” in the title of Art.329 CC of the RM has, in our opinion, the purpose of characterizing, in particular, the objective side of the crimes recorded in Art.329 CC of the RM, but not the subjective one, although it seems that the intention of the legislator was different.

Implementation of scientific results

The obtained scientific results are applied in the training process of the students from the law faculties from the higher education institutions, of the audiences within the National Institute of Justice, in the practical activity of the law bodies, as well as of the legislator.

Approval of results

The thesis was developed and discussed at the Doctoral School of *Legal Studies* of the Moldova State University. The results of the research were approved by the steering committee of the Doctoral School and by the Department of Criminal Law of the Faculty of Law of MSU.

Thesis publications - 12.

Volume and structure of the paper

The paper consists of introduction, four chapters, conclusions and recommendations, ending with the list of bibliographic references used. In total, the paper has 228 pages of basic text, and the bibliographic list includes 370 titles.

Key-words: offence in public position, imprudence, professional duties, public person, unconscious or negligent attitude, delimitation, comparative study, judicial practice.

CONTENT OF THE THESIS

The **Introduction** addresses: the topicality and importance of the researched topic, the purpose and objectives of the paper, the research hypothesis, the synthesis of the research methodology and the justification of the chosen research methods. The following are presented: the situation in the research field, the scientific novelty of the obtained results, the main scientific results submitted for support, the important scientific research problem, the theoretical importance and the applicative value of the paper, the approval of the results, the structure and summary of the compartments of the paper.

In **Chapter 1** - ***Analysis of the situation regarding criminal liability for the negligent performance of duties offences*** - there is performed the analysis of scientific materials focused on the topic of the thesis published in the Republic of Moldova, as well as in other states.

The analysis was performed in chronological order. Thus, the papers of the following authors were investigated: S.Brinza, V.Cusnir, L.Girla, I.Macari, R.Popov, T.Popovici, I.Serbinov, V.Stati, Iu.Tabarcea, I.Turcan (*Republic of Moldova*); T.Basova, V.N. Borkov, Iu.S. Rubtova, S.A. Eliseev, A.V. Ivancin, S.V. Izosimov, M.N. Kaplin, V.A. Kocerga, V.V. Losev, V.A. Merzleakova, M.A. Tineanaia, E.V. Tariov, Ia.Iu. Vasilieva, B.V. Voljenkin (*Russian Federation*); A.Iu. Rijankov (*Republic of Belarus*); D.Buda, C.Duvac, Gh.Diaconescu (*Romania*).

As a result of the research of several doctrinal meanings evoked in connection with the offences of negligent performance of duties, various theoretical-practical problems were reflected, as well as multiple neuralgic points that mark the norms that incriminate the acts of negligent performance of duties. Attempts were made to find appropriate solutions to all this.

Among the scientific materials published on the topic of the thesis in the Republic of Moldova, the paper signed in 2009 by *A. Barbaneagra, Gh. Alecu, V. Berliba and others* is highlighted.[13] For the present study, the commentary on Art.329 CC of the RM made by V. Cusnir is of interest. The author notes that the non-fulfilment or improper fulfilment by officials of their duties may concern a certain concrete obligation or a circle of obligations, which, in turn, determine a chain of inactions or interdependent actions that are part of the single criminal resolution of the negligent performance of duties.

The following statement is noteworthy: "[T] he perpetrator's criminal liability for committing these crimes involves the clear identification of the concrete legal norm within the normative acts, in which the service obligations are prescribed".[14]

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[13] Barbaneagra A. *et al. Criminal Code of the Republic of Moldova. Comment. (Annotated with the jurisprudence of the ECHR and national courts).* Chisinau: Sarmis, 2009.
[14] *Ibidem,* p.725.

It is also noted, rightly, that the negligent performance of duties of the person holding responsible positions is considered to be committed only within the exercise of the functional attributions. Meritorious is the thesis, according to which the negligent performance of duties, being an imprudence offence, excludes participation.

The next paper we will refer to is the one elaborated by *L.G. Girla and Iu.M. Tabarcea*, published in 2010.[15] For the present study, the part of the paper in which the authors make a juridical-criminal radiography of the crimes provided for in Art. 329 of the Criminal Code of the Republic of Moldova is of interest. The elements of the crime components are characterized. From the perspective of the content of the prejudicial consequences specified in paragraph (1) Art.329 CC of the RM, L.G. Girla and Iu.M. Tabarcea rightly observes that the ad litteram interpretation of the text of Art.329 of the Criminal Code of the Republic of Moldova, in its current wording, demonstrates that the legislator has substantially reduced the circle of criminal acts recognized by criminal law as negligent performance of duties. Such a legislative position, the authors note, is unfounded, as the prejudicial consequences in the case of negligent performance of duties can be both material and immaterial. It is rightly emphasized that the negligent performance of duties which did not cause the damage indicated in the law must be recognized as a disciplinary offence. Also, the perpetrators try to delimit the offences provided for in Art. 329 of the Criminal Code of the Republic of Moldova from those that involve the fulfillment of professional obligations. Finally, the norms with which Art. 329 of the Criminal Code of the Republic of Moldova are in competition are specified.

Worth noting are the scientific materials developed by R. Popov during the years 2012-2015.[16] The respective publications have as object the analysis of the subjects of the crimes located in Chapters XV and XVI of the Special Part of the Criminal Code. For the present study, the author's approaches regarding the subject of the crimes provided for in Art. 329 of the Criminal Code of the Republic of Moldova are of particular interest. The papers listed are of particular significance for the present research, as: a) they are among the few of such scope published in the Republic of Moldova that develop enormously the particularities of the subjects of crimes included in Chapters XV and XVI of the Special Part of the Criminal Code, including those provided for in Art.329 of the Criminal Code of the Republic of Moldova; b) the doctrinal explanations offered

[15] Гырла Л.Г. şi Табарча Ю.М. *Уголовное право Республики Молдова. Часть Особенная, том II*. Кишинэу: Cartdidact, 2010.

[16] Popov R. *The subject of the offences provided for in Chapters XV and XVI of the Special Part of the Criminal Code*. Chisinau: MSU EPC, 2012; Popov R. *Some controversies related to the status of the public person considered as a special subject of the crimes provided for in Chapter XV of the Special Part of the Criminal Code*. In: National Law Review, 2013, no.6; Popov R. *Application of Art.256 and 324 of the Criminal Code for crimes committed by those in the staff of medical institutions or those in the staff of educational institutions.* In: National Law Review, 2015, no.10.

are in unison with the amendments made in 2011 (in force since 2012) in the part concerning the subject of the crime, when the notion "person holding responsible positions" from the name of Chapter XV of the Special Part of the Criminal Code, including from the content of Art. 329 of the Criminal Code of the Republic of Moldova, has been replaced by the notion "public person". In this context, R. Popov explains that between the notions "person holding responsible positions" and "public person" there is a part-whole relationship. The author also analyzes the correlation between the notions "person with a position of public dignity" and "public person", concluding that there is also a part-whole relationship between them.

Worth noting are the author's ideas set out in connection with the delimitation of service offences from those involving the fulfilment of professional obligations.

Another paper that needs to be taken into consideration is the one printed under the coordination of *M. Poelelungi*, which dates from 2013.[17] In particular, the segment of the paper in revealing the legal-criminal aspects of the negligent performance of duties signed by R. Popov and V. States is of interest. The authors rightly point out that in Art.329 of the Criminal Code of the Republic of Moldova - under the same name of negligent performance of duties - there are gathered only type-variants crimes, but not a type-variant crime and an aggravated one. It is among the first papers in which it is shown that at letter a) paragraph (2) Art. 329 of the Criminal Code of the Republic of Moldova is provided the criminal liability for committing a distinct crime. Indeed, as we will see below, *crime*, in letter a) paragraph (2) Art.329 of the Criminal Code of the Republic of Moldova is not inserted an aggravating circumstance in relation to the crime from paragraph (1), but a type-variant crime.

The paper signed by *V. Cusnir* also dates back to 2013.[18] The scientific material includes ideas, visions exposed on all crimes committed by persons holding responsible positions. For the present research, those evoked in connection with the offences of negligent performance of duties are of interest. The author mentions, *inter alia*, the following: the negligent performance of duties offences are the result; the negligent performance of duties is liable to be committed only through guilt; professional offences or in connection with the profession are usually devoid of a material object.

In other words, the paper signed by *S. Brinza and V.Stati*, published in 2015, is of interest.[19]

[17] Popov R. and Stati V. *Crimes against the good development of the activity in the public sphere*. *Negligent performance of duties* / ed.coord. M.Poalelungi. Judge's manual for criminal cases. Chisinau: Central Printing House, 2013.
[18] Cusnir V. *The specifics of the qualification of the crimes committed by the persons holding responsible positions*. Chisinau, 2013.
[19] Brinza S. and Stati V. Criminal law treaty. Special Part, vol. II. Chisinau: Central Printing House, 2015.

There is approached the issue regarding the competition of the norms inscribed in Art.329 CC of the RM in relation to others that include criminal acts similar to the negligent performance of duties. For example, regarding the correlation between paragraph (1) Art.329 and paragraph (1) Art.183 CC of the RM, the authors suggest that the solution of the competition between the indicated crimes is justified only if, apart from violating the security technique, the industrial hygiene or other rules of labour protection, the perpetrator would have failed to properly fulfill other service obligations, as a result of a negligent or unconscious attitude towards them.

The authors' conclusion is noteworthy, according to which when establishing the amount of damages caused by the offence specified in paragraph (1) Art. 329 of the Criminal Code of the Republic of Moldova only the value parameters stated in paragraph (1) of Art.126 of the Criminal Code of the Republic of Moldova can be taken into account. In the perimeter of the subject of the crime, S. Brinza and V. Stati highlight some criteria for delimiting the criminal acts provided for in Art. 329 of the Criminal Code of the Republic of Moldova from other similar crimes, especially those involving the fulfilment of professional obligations.

Another paper on which we will rule is the scientific article published in 2016, whose author is *V. Stati*.[20] In the article the author exposes himself in a critical manner, on some explanations from the Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova "On the application of the legislation on criminal liability for abuse of power or abuse of office, excess of power or excess of duties, as well as the negligent performance of duties", no. 7 of 15.05.2017[21] (back then project). The author suggests detailing the aspect regarding the collaborator of the defence bodies in the position of subject of the crimes provided for in Art. 327-329 of the Criminal Code of the Republic of Moldova. They are noteworthy the arguments brought by V. Stati in order to substantiate the thesis, according to which letter a) paragraph (2) Art. 329 of the Criminal Code of the Republic of Moldova is provided the criminal liability for a type-variant crime, but not in aggravated-variant.

A special role belonged to the research of materials on the topic of the thesis published in the Republic of Moldova signed by *I. Serbinov*.[22] There are several papers by this author published

[20] Stati V. *Draft decision of the Plenum of the Supreme Court of Justice on the application of Art.327-329 of the Criminal Code of the Republic of Moldova: observations and suggestions.* În: «Актуальные научные исследования в современном мире», Переяслав-Хмельницкий, Декабрь 2016, Выпуск 12(20), ч.3.

[21] *Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova "On the application of legislation on criminal liability for abuse of power or abuse of office, excess of power or excess of duties, as well as the negligent performance of duties", No. 7 of 15.05.2017.* Available: http://jurisprudenta.csj.md/search_hot_expl.php?id=216

[22] Serbinov I. *Some considerations regarding the legal object of the offences of negligence in performance of duties (Art. 329 Criminal Code*). In: National Law Review, 2017, no.7; Serbinov I. *The subject of offences of negligence in performance of duties (Art. 329 of the Criminal Code), part I.* In: National Law Review, 2017, no. 9; Serbinov I. *The subject of offences of negligence in performance of duties (Art. 329 of the Criminal Code), part II.* In: National Law

in 2017-2018 and devoted to the theoretical-practical issues of application of the norms registered in Art.329 of the Criminal Code of the Republic of Moldova.

Within the perimeter of the prejudicial consequences, the author evokes that the application of Art. 329 of the Criminal Code of the Republic of Moldova does not exclude the application of the disciplinary sanction for the same act, provided that in such a case the disciplinary sanction does not have a "criminal nature". It is also emphasized that not the lost income, but the actual damage (including not obtaining the due goods) forms the content of the material damage caused by the offences provided for in Art. 329 of the Criminal Code of the Republic of Moldova. From the perspective of the legislative technique of reflecting the prejudicial consequences in the text of Art. 329 of the Criminal Code of the Republic of Moldova, I. Serbinov correctly observes that at letter a) paragraph (2) Art.329 of the Criminal Code of the Republic of Moldova is stipulated a type-variant crime.

Qualification solutions are offered for the situation in which the foreign public person or the international civil servant does not fulfill or improperly fulfills his service obligations.

The doctrinal analysis of the scientific materials on the topic of the paper published in the Republic of Moldova is concluded with the article signed by *V. Stati* in 2018.[23] *Inter alia,* the author rightly considers it necessary to establish non-patrimonial nature damages as a prejudicial consequence of the negligent performance of duties.

Regarding the scientific materials published in other states, it is worth noting the scientific article whose author is D. Buda, published in 1999.[24] It analyzes the service offences and those related to the service. It is argued (in our opinion - far too categorically) that service offences or in connection with the service are susceptible to preparatory acts as well as attempting.

Worthy of note is the monograph signed by B.V. Voljenkin, published in 2000.[25] The author analyses all service offences. For our investigation, interest provokes, in particular, the doctrinal assertions expressed on the offences of negligent performance of duties.

In terms of the objective side, B.V. Voljenkin displays the factual ways of expressing the material element. The author also observes that in the practice of criminal and judicial prosecution,

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Review, 2017, no.10; Serbinov I. *The subjective side of the offences of negligence in performance of duties (Art. 329 of the Criminal Code)*. In: National Law Review, 2017, no.11; Serbinov I. *Prejudicial consequences in case of offences of negligence in performance of duties (Art. 329 of the Criminal Code of the Republic of Moldova*). In: MSU Scientific Journal "Studia Universitatis Moldaviae", 2017, no.8 (108); Serbinov I. *Criminal liability for negligence in performance of duties.* Chisinau: Central Printing House, 2018.

[23] Stati V.A. *Decisions of the Constitutional Court of the Republic of Moldova no. 22/2017 and no. 33/2017: the expected effects on the criminal law*. In: «Актуальные научные исследования в современном мире», Переяслав-Хмельницкий, Февраль 2018, Выпуск 2 (7).

[24] Buda D. *Service offences or in connection with the service*. In: Transylvanian Journal of Administrative Sciences, 1999, no.1 (2).

[25] Волженкин Б.В. *Служебные преступления*. Москва: Юристь, 2000.

several cases of criminal prosecution of persons holding responsible positions for non-performance of certain actions have been fixed, so that it is later found that the performance of such actions does not fall within the scope of their duties. They are convincing the arguments brought by B.V. Voljenkin in terms of separating auxiliary and technical staff working in legal entities under public law from the staff fulfilling service obligations.

It is worth noting the scientific article prepared by S.V. Izosimov and E.V. Tariov, published in 2008.[26] Within the publication, the authors expose themselves, in a critical manner, regarding the form of guilt with which the perpetrator acts when committing negligence in performance of duties. Specifically, they come with disapproving arguments from the point of view found in the literature, according to which the crimes examined may be committed intentionally.

It is rightly stated that some service obligations may be intentionally unfulfilled or as a result of a mistake (forgetting, distraction, delegation of service obligations to another person, etc.). However, the authors argue that, in the case of negligent performance of duties offences, the hypothesis of manifesting a conscious attitude towards causing socially dangerous consequences is excluded.

Another material worth remembering is the PhD thesis abstract defended in 2009 by *E.V. Tariov.*[27] The author submits to the analysis the norms that include the acts of negligent performance of duties. Also, a comparative study is carried out from the perspective of the evolution of the criminal legislation, as well as by reference to the criminal legislations of some foreign states.

E.V. Tariov states that in order to be held criminally liable for the negligent performance of duties, it is necessary to establish what concrete obligations have been assigned to the perpetrator and, implicitly, which particular obligations have not been fulfilled or have been improperly fulfilled. He argues that the legislative description of the rules establishing the criminal liability for the negligent performance of duties does not allow a definite conclusion to be drawn on the content of the subjective side. The critical study performed determined the author to formulate a series of *de lege ferenda* proposals, among which the proposal to introduce the criminal liability for the negligent performance of duties admitted in the private sector.

[26] Изосимов С.В. şi Царев Е.В. *Возможна ли умышленная халатность?* În: Пробелы в российском законодательстве, 2008, №1.
[27] Царев Е.В. *Уголовное законодательство об ответственности за халатность: История, современность, перспективы развития* / Автореферат диссертации на соискание ученой степени кандидата юридических наук. Нижний Новгород, 2009.

Another material that we will focus on is the monograph signed by *V.V. Losev* in 2010.[28] The paper analyses all service offences. Regarding the offences of negligent performance of duties, we note that part of the study is dedicated to examining the correlation between the incriminating norms and those that include the perpetrator's duties. Thus, it is shown that in qualification it must be retained the exact norm from the legislative and / or normative act of reference (the extra-criminal act) which includes the concrete obligation of which the perpetrator is guilty of non-fulfilment or improper fulfilment.

We cannot overlook the manual elaborated in co-authorship by *Gh. Diaconescu and C. Duvac* in 2009.[29] The authors rightly claim that in the case of negligent performance of duties it is not possible: a) the continued (prolonged) form of the crime; b) attempt and preparation of a crime.

The next paper we will focus on is the scientific article signed by *S.A. Eliseev and M.A. Tineanaia* in 2012.[30] In the publication, the authors submit to research the prejudicial consequences of the negligent performance of duties offences. Therefore, S.A. Eliseev and M.A. Tineanaia claims that the damages in large proportions represent patrimonial damage. It is also stated that in the context of negligent performance of duties offences, material damages are expressed not only in causing real damage, but also in not receiving the due, when the owner or the subject entitled to the corresponding rights loses part of the income as a result of non-transmission by the perpetrator of the goods due under the law or the contract.

Other scientific materials signed by M.A. Tineanaia in the period 2011-2016 must also be taken into account.[31] Among the strengths of the published materials we highlight the following

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[28] Лосев В.В. *Преступления против интересов службы: юридический анализ и правила квалификации*. Минск: Амалфея, 2010.

[29] Diaconescu Gh. and Duvac C. Criminal Law Treaty. Special Part. Bucharest: C.H. Beck, 2009.

[30] Елисеев С.А. şi Тыняная М.А. *Общественно опасные последствия халатности: понятие и виды*. În: Вестник Томского государственного университета, 2012, №359.

[31] Тыняная М.А. *Объект халатности*. În: Сибирский юридический вестник, 2011, №3(54); Тыняная М.А. *Проблемы уголовно-правовой оценки субъективных признаков в составе халатности*. În: Вестник Томского государственного университета, 2011; Тыняная М.А. *Отграничение халатности от иных преступлений, связанных с неисполнением лицом своих профессиональных обязанностей*. În: Российское правоведение: трибуна молодого ученого: сб. статей / отв. ред. В.А. Уткин. Томск: Изд-во Том. ун-та, 2011, Вып.11; Тыняная М.А. *Проблемы законодательного определения признаков объективной стороны халатности*. În: Вестник Омского университета. Серия «Право», 2012, №1 (30); Тыняная М.А. *К вопросу о характере связи между бездействием к общественно опасными последствиями в составе халатности*. În: Вестник Томского государственного университета, 2013, №3 (9); Тыняная М.А. *Уголовно-правовая характеристика халатности* / Автореферат диссертации на соискание ученой степени кандидата юридических наук. Томск, 2013; Тыняная М.А. *Отграничение халатности от злоупотребления должностными полномочиями и превышения должностных полномочий*. În: Правовые проблемы укрепления российской государственности, Часть 62, 2014; Тыняная М.А. *Ненадлежащее исполнение должностным лицом своих обязанностей как признак объективной стороны халатности*. În: Правовые проблемы укрепления российской государственности. Сборник статей Томского Государственного университета, 2015; Тыняная М.А. *Отграничение халатности от других должностных преступлений*. În: Вестник Томского государственного университета. Право, 2016, №1 (19).

theses: the special legal object of the offences of negligent performance of duties is complex, being formed by several interdependent social relations; the material object constitutes an optional sign of the object of negligent performance of duties offences; the phrases "negligent attitude" and "unconscious attitude" do not imply the mental attitude of the perpetrator towards the deed and the prejudicial consequence that occurred, but signify the cause of the non-fulfillment or improper fulfillment of the service obligations; the non-fulfillment by the perpetrator of his obligations to properly complete the official documents, which led to the reckless provocation of the prejudicial consequences provided for in Art.293 CC of FR (Article similar to the one subject to examination), must be considered as negligent performance of duties.

Another article that will be taken into consideration is elaborated by V.N. Borkov, published in 2014.[32] The author highlights the basic features of negligent performance of duties. It is shown that the causal link between the act and the prejudicial consequence has a certain specificity. This, as a rule, is mediated by the behavior of other people, by the forces of nature or by technological phenomena. A segment of the paper is intended to reveal the criteria for delimiting the offences of negligent performance of duties from other similar acts, especially those of abuse of power or abuse of office.

From 2014 dates the scientific article whose author is *V.A. Merzliakova*.[33] The whole material has as object the tracing of the particularities of the subjective side of the negligent performance of duties offences. It is shown that the hypothesis of manifesting a conscious attitude towards causing socially dangerous consequences is not ruled out at all by chance, because the recognition of the intentional form of guilt towards the harmful consequences would entail a series of serious contradictions.

The scientific article signed by *S.A. Eliseev and M.A. Tineanaia* dates from 2016.[34] For the most part, the authors point out the qualification solutions in the event of competition between the norms criminalizing the negligent performance of duties and other similar norms.

In the same year 2016 was published the scientific article signed by the Belarusian author *A.Iu. Rijankov*.[35] *Inter alia,* it is emphasized that the person in charge cannot be blamed for the non-fulfillment of obligations that do not fall within the scope of his duties. It is also stated that

[32] Борков В.Н. *Основные признаки должностной халатности (ст.293 УК РФ).* În: Вестник Омского университета, 2014, №1 (38).
[33] Мерзлякова В.А. *Некоторые особенности субъективных признаков халатности.* În: Вестник МГОУ. Серия «Юриспруденция», 2014, №3.
[34] Елисеев С.А. şi Тыняная М.А. *Квалификация бездействия должностных лиц при конкуренции уголовно-правовых норм*. În: Сибирский юридический вестник, 2016, №4(75).
[35] Рыжанков А.Ю. *Незаконное привлечение к уголовной ответственности за служебную халатность как нарушение права человека на правосудие*. În: Полоцкий государственный университет, 2016.

the concrete identification of the unfulfilled or improperly fulfilled service obligations may count in the plan of delimiting the negligent performance of duties from other related criminal acts. With reference to the offences of negligent performance of duties, the author states that the person holding responsible positions can be liable for causing prejudicial consequences only in cases where his actions (inactions) on duty preceded the occurrence of the consequence, being the direct and main cause in its occurrence.

Next, our attention is directed to the analysis of scientific materials signed by *Iu.S. Rubtova in 2016 and 2017*.[36] The legal-criminal analysis of the offences of negligent performance of duties is performed from the perspective of their commission by a special subject: by the criminal prosecution officer. It is rightly stated that, being material components, in the absence of prejudicial consequences, the imprudent conduct of the public person must be considered a disciplinary violation.

The following statement of the author raises questions: "The negligent performance of duties is committed with mixed guilt, because towards the prejudicial deed the perpetrator shows intention, and towards the prejudicial consequence - imprudence. But, in general, the negligent performance of duties is a imprudent crime.[37]

Next, the scientific materials developed by V.A. Kocerga in the same years 2016, 2017 are taken into consideration.[38] In the scientific approaches of the author are examined the constitutive signs of the offences of negligent performance of duties. Also, a comparative study of the criminal laws of some foreign states in the matter of negligent performance of duties is performed. Likewise, the dividing lines between the negligent performance of duties and other similar offences are drawn, including offences with which a competition report is attested.

In **Chapter 2 -** ***The objective signs of the offences of negligent performance of duties*** - are highlighted the particularities of the object and of the objective side of the offences recorded in Art. 329 of the Criminal Code of the Republic of Moldova.

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[36] Рубцова Ю.С. *Уголовно-правовая характеристика преступной халатности при производстве предварительного расследования в форме дознания*. În: Вестник Санкт-Петербурского университета МВД России, 2016, №4(72); Рубцова Ю.С. *Должностная халатность при производстве предварительного расследования в форме дознания (уголовно-правовые и криминологические вопросы)* / Автореферат диссертации на соискание ученой степени кандидата юридических наук. Санкт-Петербург, 2017.

[37] Рубцова Ю.С. *Должностная халатность при производстве предварительного расследования в форме дознания (уголовно-правовые и криминологические вопросы),* p.17; Рубцова Ю.С. *Уголовно-правовая характеристика преступной халатности при производстве предварительного расследования в форме дознания,* p.100.

[38] Кочерга В.А. *Формы деяния в составе халатности: дискуссионные аспекты*. În: Общество: политика, экономика, право, 2016, №3; Кочерга В.А. *Последствия халатности: уголовно-правовой анализ*. În: Теория и практика общественного развития, 2016, №5; Кочерга В.А. *Халатность: содержательные, компаративистские, правоприменительные аспекты* / Диссертация на соискание ученой степени кандидата юридических наук. Краснодар, 2017.

It was shown that the social relations regarding the normal service activity, carried out by other entities than those specified in Art.123 and 123[1] CC of the RM, are not protected by the incriminating norms placed in Chapter XV of the Special Part of the Criminal Code.

The Moldovan legislator went on to widen the circle of *sui generis* social relations protected by the incrimination norms set out in Chapter XV of the Special Part of the Criminal Code, including in this category not only the social relations on the proper functioning of the activity within the central and local state power bodies, but also those that do not involve the service within these bodies, but which aim at the public sphere (activity carried out within state, municipal enterprises, public institutions, by the person authorized or invested by the state to provide public services on its behalf or to carry out activities of public interest, the activity carried out by foreign public persons and by international officials, etc.).

It is evoked that the main legal object of the crimes reunited under the name of negligent performance of duties is formed by the social relations regarding the good development by the public person of his service activity in the public sphere expressed in the adequate fulfillment of the service obligations established in his competence.[39]

It was demonstrated that the content of the secondary legal object of the offences of negligent performance of duties is in strict accordance with the content of the prejudicial consequences reflected in Art. 329 of the Criminal Code of the Republic of Moldova. It was pointed out that in case of negligent performance of duties, the material object does not constitute a mandatory secondary sign, but an optional one; or, not always the criminal deeds specified in Art. 329 of the Criminal Code of the Republic of Moldova presuppose the attack on social values by exercising a criminal influence on some material entities. It is observed that the same is not valid in the case of the victim of the crime that evolves as a mandatory secondary sign.

Public authorities, including the central specialized administration, as well as local public administration bodies cannot be considered victims of negligent performance of duties.[40]

In terms of the objective side of the crime, it is emphasized that the non-fulfillment and improper fulfillment of the service obligations, as an effect, are similar normative modalities (both in one case and in the other being about unfulfilled obligations). The difference is that in the case of non-fulfillment the perpetrator generally omits to fulfill his service obligations, while in case of

[39] Popenco A. *The special legal object of the offences provided for in Art. 329 of the Criminal Code of the Republic of Moldova*. In: the Journal of the Prosecutor's Office of the Republic of Moldova, 2019, no.3, p.56.
[40] Popenco A. *Victim of negligent performance of duties offences* (Art. 329 Criminal Code of the Republic of Moldova). In: Materials of the National Scientific Conference with international participation "Integration through research and innovation" (Chisinau, 07-08 November 2019). "Legal and Economic Sciences" series. Chisinau: MSU EPC, 2019, p.224.

improper fulfillment the perpetrator resorts to acts of execution of service obligations, but in an insufficient, poor quality, overdue volume etc., so, acts, but insufficiently, faultily, etc.

The author remarks that, although the two normative ways of expressing the prejudicial deed recorded in Art.329 CC of the RM have an alternative character, in some cases from the judicial practice it is observed how some persons empowered with the application of the criminal law automatically retain (most probably, out of inertia) the both forms of manifestation of the criminal offence. It is concluded that the non-fulfillment of the service obligations presupposes the externalized behavior of the public person in the process of exercising the service attributions materialized in his abstention (omission) from the accomplishment of his duties, in the presence of the obligation and the possibility to act.

A series of court decisions were used in the analysis of the objective side. The study of the judicial practice in the matter of the negligent performance of duties demonstrates the existence of some problems faced by those empowered with the application *in concreto* of the criminal law in order to classify the prejudicial facts in the pattern of the norms provided for in Art. 329 CC of the RM. In particular, there are difficulties in qualifying those committed in accordance with the signs of the objective side of the criminal components registered in Art. 329 of the Criminal Code of the Republic of Moldova: the deed and the prejudicial consequence.[41]

It is concluded that the commission of the prejudicial act in the absence of the service attributions that conditioned its commission does not allow the engagement of criminal liability based on Art. 329 of the Criminal Code of the Republic of Moldova.

The non-identification of the service obligations (despite the fact of their existence and which have not been fulfilled or have been fulfilled improperly) is equivalent to their lack and, consequently, cannot determine the commitment of criminal liability based on Art.329 of the Criminal Code of the Republic of Moldova.

The one empowered with the application of the criminal law, in the process of the juridical-criminal classification in the pattern of Art. 329 of the Criminal Code of the Republic of Moldova, must necessarily establish: a) the circle of service obligations imposed for execution on the public person; b) the concrete obligations that have not been fulfilled or have been fulfilled improperly and if they concerned his sphere of attributions; c) if the prejudicial consequences occurred, indicated in the disposition of the norms inscribed in Art. 329 of the Criminal Code of the Republic

[41] Popenco A. *Negligent performance of duties (Art. 329 of the Criminal Code of the Republic of Moldova):* examination of some approaches from the jurisprudence of the Republic of Moldova. In: the MSU Scientific Journal "Studia Universitatis Moldaviae". “Social Sciences” series, 2018, no.3 (113), p.134.

of Moldova, are in causal relation with the deed of the public person expressed in violation of his service obligations, established *in concreto,* by their non-fulfillment or improper fulfillment.[42]

In the author's opinion, the expression "service obligations" should not be reduced to the meaning *stricto sensu*, of obligations resulting from an employment relationship, but to the meaning *lato sensu*, implicitly derived from the text of paragraph (2) Art.123 CC of the RM which incorporates, including, but not limited to, the obligations of the lawyer, the notary, the bailiff, as well as any other person authorized or invested by the state to provide public services on his behalf or to carry out activities of public interest.

It is found that in the process of qualifying the negligent performance of duties, the non-invocation of the supplementary norms has as a consequence the inapplicability of the incomplete incrimination norms registered in Art. 329 of the Criminal Code of the Republic of Moldova. Respectively, the casual positions of negligent performance of duties in the pattern of Art.329 of the Criminal Code of the Republic of Moldova that do not contain references to the exact norms of the legislative and / or normative reference act that include the concrete obligations for which non-fulfillment or improper fulfillment the perpetrator is guilty.

Regarding the structure of the objective side of the offences of negligent performance of duties recorded in Art. 329 of the Criminal Code of the Republic of Moldova, the author observes that, although most laws of foreign states criminalizing the negligent performance of duties contain material components of crime, however, in the criminal laws of some foreign states (in the minority) are notified criminal components (similar to those registered in Art. 329 of the Criminal Code of the Republic of Moldova) according to the model of the formal ones.

From the perspective of the *"ultima ratio"* principle, the position of the Moldovan legislator seems to be well-founded to include the prejudicial consequence and, respectively, the causal link between the act and the consequence as constitutive signs of the negligent performance of duties offences. From the perspective of the correlation between criminal and disciplinary liability liable to be engaged for the commission of acts of negligent performance of duties, the author notes that not every disciplinary liability involves the incurrence of criminal liability. Conversely, engaging in criminal liability for the commission of acts of negligent performance of duties does not necessarily involve disciplinary liability. However, engaging both forms of legal liability is not excluded, without violating the principle of non-admission of double liability.

[42] Popenco A. *Theoretical-practical examination regarding the prejudicial acts of the negligent performance of duties offences (Art.329 CC of the RM).* In: Materials of the Anniversary Scientific Conference with international participation "Realities and perspectives of national legal education" (Chisinau, October 1-2, 2019). Chisinau: MSU EPC, 2020, p.322.

It is stated that the prejudicial consequence provided for in paragraph (1) Art. 329 CC of the RM may have, exclusively, patrimonial character, fact resulting from the systematic interpretation of the respective norm in relation to the one specified in paragraph (1) Art. 126 CC of the RM.[43]

When establishing the patrimonial damage in the form of damages in large proportions, only the actual damage caused will be taken into account, not the lost income. Being an abstract and probable notion (at least, for criminal law), the lost income cannot be included by the mental attitude of the perpetrator. Consequently, in such hypotheses the lack of the subjective side is attested - element of the crime component. Criminal liability for the simple fact of causing damage in the form of lost income, in the absence of the perpetrator's mental attitude towards the possibility of its existence and especially towards its extent, contradicts the principle of subjective incrimination.[44]

The author states that in the event that as a result of the negligent behavior of the public person, manifested in the process of fulfilling his duties, it is exclusively prejudiced the image of the public authority in which he operates, those committed must be assessed as disciplinary misconduct, but not negligent performance of duties, being sufficient the engagement of disciplinary liability. From the point of view of the legislative technique of construction of crimes within the Article of the criminal law, the author concludes that, within the meaning of Art.329 CC of the RM, it is unacceptable that the prejudicial consequences in the form of large-scale damages caused to the rights and interests protected by law of natural or legal persons (as a result of non-fulfillment or improper fulfillment of duties) have in turn progressively determined the cause of the person's death. The author's conclusion is based on the thesis, according to which: in letter a) paragraph (2) Art. 329 of the Criminal Code of the Republic of Moldova there is provided a type-variant crime, but not an aggravated variant.

In the same register, the author remarks that from the locution inscribed in paragraph (2) Art. 329 of the Criminal Code of the Republic of Moldova "The same actions that caused: "would be detached as if a qualifying sign (circumstantial aggravating circumstance) is provided in the respective paragraph, but not a type-variant crime.

At the risk of loading the text of Art.329 CC of the RM, but in order to eliminate the divergences of interpretation and application of Art.329 CC of the RM, the author suggests to the Moldovan legislator to replace the locution “The same actions that caused:” with the expression

[43] Popenco A. *The prejudicial consequence of the negligent performance of duties offence provided for in paragraph (1) Art.329 CC of the RM, part I*. In: Journal of the National Institute of Justice, 2018, no.3 (46), p.13.
[44] Popenco A. *The prejudicial consequence of the negligent performance of duties offence provided for in paragraph (1) Art.329 CC of the RM, part II*. In: Journal of the National Institute of Justice, 2018, no.4 (47), p.33.

“Non-fulfillment or improper fulfillment by a public person of his / her duties if he / she has caused: ”. Such a manner of drafting the text of the incriminating norm will give the practitioner clarity regarding the legal nature of the crimes recorded in Art. 329 of the Criminal Code of the Republic of Moldova, especially of those subsequent to the negligent performance of duties in the type-variant of paragraph (1) of Art. 329 of the Criminal Code of the Republic of Moldova.[45]

It was also highlighted that the judicial practice in matters of negligent performance of duties is unequal in terms of establishing the content of the sign "other serious consequences", non-uniformity conditioned by the evasive, unclear and ambiguous nature of that sign, reason for which by the decision of the Constitutional Court no. 24/2019 the text “other serious consequences” inscribed in the content of letter b) paragraph (2) Art. 329 of the Criminal Code of the Republic of Moldova was declared unconstitutional, the respective sign being rightly excluded, from the text of Art.329 CC of the RM.

At the same time, in order to fill the legislative vacuum created by eliminating the sign “other serious consequences” from the text of letter b) paragraph (2) Art.329 of the Criminal Code of the Republic of Moldova, the author proposes the inclusion of the average injury of the person's health within the norm from paragraph (1) Art. 329 of the Criminal Code of the Republic of Moldova, since the respective consequence, according to the prejudicial degree, is comparable to the damages in large proportions.[46]

It is also recommended to insert in letter b) paragraph (2) Art.329 of the Criminal Code of the Republic of Moldova the prejudicial consequence in the form of "serious injury to the person's health". Serious harm to the health and death of a person caused by imprudence are comparable prejudicial consequences as a social danger, a reason for the proposal to insert them under the aegis of the same paragraph.

Also, the author suggests the introduction of a new paragraph (1^1) within Art. 329 of the Criminal Code of the Republic of Moldova to incriminate the negligent performance of duties materialized in causing damages in particularly large proportions to the rights and interests protected by law of natural or legal persons. This time, the author is of the opinion that the negligent performance of duties that caused such a prejudicial consequence is less dangerous than the negligent performance of duties that caused the serious injury or death of the person, which determined his position to establish a new offence under a new paragraph. At the same time,

[45] Popenco A. *The negligent performance of duties that caused other serious consequences (letter b) paragraph (2) Art.329 CC of the RM): theoretical and practical aspects.* In: MSU Scientific Journal "Studia Universitatis Moldaviae". “Social Sciences” series, 2019, no.3 (123), p.228..
[46] *Ibidem*, p.220.

considers that causing particularly large damages to the rights and interests protected by law of natural or legal persons entails a greater degree of harm than the negligent performance of duties causing large damages to the rights and interests protected by law of natural or legal persons.

Also in the context of the prejudicial consequence, the author states that the cause of death of two or more persons as a result of one and the same act of negligent performance of duties cannot count on the qualification, but only on the establishment of the criminal punishment.

However, the author is of the opinion that this should be of qualifying importance, reason for which the proposal of *de lege ferenda* is submitted to be introduced in the text of Art.329 CC of the RM of the aggravating circumstance "death of two or more persons." The author evokes the following arguments: a) it is fully justified, from the point of view of the sanctioning treatment, the aggravation of the criminal responsibility for committing the negligent performance of duties resulted in the death of two or more persons; b) systematically interpreting the Article 329 and 149 of the Criminal Code of the Republic of Moldova, it is found that the latter Article (which incriminates the general case of loss of life by imprudence) contains in paragraph (2) a similar aggravating circumstance. Also, such a circumstantial sign is identified in the case of other crimes committed by imprudence (for example: paragraph (5) Art. 264 of the Criminal Code of the Republic of Moldova, etc.); 3) in the comparative plan there are sufficient legislative models to contain a similar aggravating circumstantial sign.

In **Chapter 3 - *The subjective signs of the negligent performance of duties offences* -** there is performed the analysis of the subject and of the subjective side of the offences provided for in Art. 329 of the Criminal Code of the Republic of Moldova.

In terms of the subject of the crime, it was stated that, in order to incur criminal liability based on Art. 329 of the Criminal Code of the Republic of Moldova, taking into account the special quality of the subject of the crime, as a rule, it is necessary for the perpetrator to have reached a much older age than 16 years, although this is the legal minimum threshold established for committing negligent performance of duties offences.

It has been demonstrated that the individual entrepreneur, the employee of a company, including the person who manages a commercial, public or other non-governmental organization (representing the private sector), cannot be the subjects of the offences provided for in Art.329 CC of the RM, as the enacted norms establish criminal liability for the imprudent conduct in the public sector. Persons who auxiliary and technically serve public authorities, including autonomous or regulatory ones, state or municipal enterprises, other legal persons under public law may not appear as subjects of negligent performance of duties offences, as they do not exercise their duties in the performance of a public office. These people can not be considered public figures

assimilated to civil servants. The violation by imprudence of purely professional obligations cannot entail criminal liability based on Art. 329 of the Criminal Code of the Republic of Moldova, but it is not excluded that such behaviours fall under the incidence of other norms of incrimination.

The author reveals that the fact of negligent performance of duties by a person with a position of public dignity does not count in the printing of Art.329 CC of the RM, this will be taken into account only in terms of individualization of criminal punishment.

In the case of negligent performance of duties, criminal participation is not possible. In the absence of criminal participation, each of the subjects who is guilty of negligent performance of duties and who cooperated with the other in committing the criminal act is to be prosecuted under Article 329 of the Criminal Code of the Republic of Moldova independently.[47]

With reference to the subjective side of the negligent performance of duties offences, the author mentions that when describing the offences provided for in Art.329 of the Criminal Code, the legislator did not explicitly stipulate the form of guilt with which the perpetrator acts when committing the prejudicial act, as well as his moral attitude towards the prejudicial consequences caused, reason for which, the author observes, in the specialized literature there is no unanimity of opinions regarding the form of guilt considered by the legislator when adopting the text of the incrimination norms subject to analysis. Systematically interpreting the norms inscribed in Art.329 CC of the RM in relation to those specified in Art.327 CC of the RM, it is concluded that the negligent performance of duties offences cannot be committed intentionally, but only by imprudence.

From a comparative perspective, the author observes that the Swedish, Norwegian and Latvian legislators decided to reunite within the same norm the intentional and reckless conduct manifested by the public person in the process of fulfilling his duties.

It is evoked that the legislative manner of describing the subjective side in the content of Art.329 of the Criminal Code of the Republic of Moldova creates problems in determining the concrete manner of imprudence that the perpetrator must manifest in order to impute the negligent performance of duties. The author claims that the formula “negligent performance of duties” in the title of Art.329 CC of the RM is meant to characterize, in particular, the objective side of the crimes recorded in Art.329 CC of the RM, but not the subjective one, although it seems that the intention of the legislator was different.[48]

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[47] Popenco A. *Criminal participation vs. negligent performance of duties (Art.329 CC of the RM): short compatibility exam*. In: Materials of the National Scientific Conference with international participation "Integration through research and innovation" (Chisinau, November 8-9, 2018). "Legal Studies" series. Chisinau: MSU EPC, 2018, p.292-295.
[48] Popenco A. *The subjective side of the negligent performance of duties offences (Art.329 CC of the RM), part I*. In: Journal of the National Institute of Justice, 2020, no.1 (52), p.35.

For these reasons, the author proposes the renaming of the title of Art.329 of the Criminal Code of the Republic of Moldova from “Negligent performance of duties” to “Reckless violation of service obligations”. At the same time, it suggests to the legislator to explicitly stipulate in the provision of the norms inscribed in Art. 329 of the Criminal Code of the Republic of Moldova the imprudence as a form of guilt with which the perpetrator must act in committing the criminal offence. It is shown that the expression “unconscious attitude” from the content of paragraph (1) Art. 329 of the Criminal Code of the Republic of Moldova suggests, with great difficulty, that the negligent performance of duties offences can be committed with exaggerated confidence.

As a logical consequence of the *de lege ferenda* proposals submitted, the author notes the rationality of excluding the expression "as a result of a negligent or unconscious attitude towards them" from the text of paragraph (1) Art. 329 of the Criminal Code of Moldova, being sufficient the express reflection of the form of guilt in the provision of the norm.

Systematically analyzing the content of other incriminating norms in the Special Part of the Criminal Code, the author notices the lack of such causes of one or another criminal behavior. In fact, they are not classified as signs of the crime component. Therefore, it is superfluous to specify them in the pattern of Art.329 CC of the RM. They do not facilitate in any way the process of interpretation and application of Art.329 CC of the RM. On the contrary, the use of such expressions significantly complicates this process. Moreover, it is not excluded that the cause of the reckless conduct of the public person is other than the negligent or unconscious attitude towards the fulfilled service obligations.[49]

It is found that the offences provided for in Art.329 of the Criminal Code of the Republic of Moldova cannot be considered as having been committed with two forms of guilt. Within the perimeter of the delimitation of the offences provided for in Art. 329 of the Criminal Code of the Republic of Moldova for the act committed without guilt, the author notes that the possibility to be aware of the prejudicial nature of the act of non-fulfillment or improper fulfillment of service obligations, as well as the possibility to provide for the cause of prejudicial consequences reflected in the text of Art.329 CC of the RM must be detached from the professional capacities and abilities of the public person, his experience, the degree of professional training, etc.

It is pointed out that if there are doubts about the existence or lack of possibilities to predict the cause of harmful consequences, those committed, by virtue of the principle *in dubio pro reo*, must be considered as committed in the absence of this possibility and, as a consequence, must be classified as committed without guilt.

[49] Popenco A. *The subjective side of the negligent performance of duties offences (Art. 329 of the Criminal Code of the Republic of Moldova), part I*. In: Journal of the National Institute of Justice, 2020, no. 1 (52), p.36.

The author emphasizes that if in the exercise of his service obligations the public person was not obliged *or* if, being obliged, he was not able to provide the possibility of causing prejudicial consequences reflected in Art.329 CC of the RM, he is not subject to criminal liability for committing negligent performance of duties, as guilt is lacking. The criminal liability based on Art. 329 of the Criminal Code of the Republic of Moldova is also excluded in the hypothesis in which the public person could have provided the possibility of prejudicial consequences, not being at the same time obliged to provide this.

In order to outline the concrete way of imprudence, there is a need to reflect in the issued procedural act the cause of non-fulfillment or improper fulfillment of the service obligations.

Regarding the secondary signs of the subjective side, the author qualifies that the reason of the crime does not constitute a mandatory sign of the criminal acts recorded in Art. 329 of the Criminal Code of the Republic of Moldova, but is present in the content of the respective crime components. At the same time, the purpose of the crime is not present, in any way, in the structure of the subjective side of the crimes provided for in Art. 329 of the Criminal Code of the Republic of Moldova, nor as an optional sign, as it is incompatible with the crimes committed by imprudence. It has been shown that the prolonged (continued) form of the crime is incompatible with the negligent performance of duties offences, because subjectively the prolonged crime is characterized by the presence of intention and purpose. The two particularities are foreign to the negligent performance of duties offences.

Finally, the author notes that the hypothesis of the competition of crimes provided for in Art. 329 of the Criminal Code of the Republic of Moldova is to be distinguished from the situation in which a single negligent performance of duties offence is committed, but through a system of actions / inactions that is causally related to one and the same prejudicial consequence.

In **Chapter 4 -** ***Delimitation of negligent performance of duties from some related criminal acts*** **-** there is performed the comparative investigation of the offences provided for in Art. 329 of the Criminal Code of Moldova in relation to some criminal acts located in Chapter XV of the Special Part of the Criminal Code, as well as with other similar criminal acts located in other chapters of the same part of the Criminal Code. For the correct classification of those committed in the pattern of Art.329 CC of the RM of the person empowered to apply the criminal law has the task of delimiting the negligent performance of duties from other similar criminal acts, both those with which he is in competition and those is not in such a report.

The negligent performance of duties offences need to be delimited by some similar acts listed in the same Chapter XV "Offences against the proper conduct of activities in the public sphere" of the Special Part of the Criminal Code, as well as some offences located in other chapters of the

respective part of the Criminal Code. It is shown that not only the acts of negligent performance of duties, but also those of abuse of power or abuse of office can be committed by inaction.

It is emphasized that, compared to the abuse of power or abuse of office, the offences recorded in Art. 329 of the Criminal Code of the Republic of Moldova implies the manifestation by the public person of a behavior materialized in the defective fulfillment of his service obligations, which cannot be stated in connection with the offences provided for in Art. 327 of the Criminal Code of the Republic of Moldova which, in essence, do not involve the exercise of duties in a defective manner, but through abuse.[50]

Delimiting the crimes provided for in Art. 327 from those recorded in Art. 329 of the Criminal Code of the Republic of Moldova, the author reveals that the perpetrator's mental attitude towards the prejudicial act committed and, respectively, towards the prejudicial consequences occurred, as well as the decisive internal impulse in making the criminal decision constitute decisive criteria for delimiting the negligent performance of duties from the abuse of power or the abuse of office.

The author concludes that the material interest is incompatible with the offences committed by imprudence, in general, and with the offences of negligent performance of duties, in particular. The presence of the material interest in the process of violation of the service obligations by the public person, as a rule, requires qualification according to Art. 327 of the Criminal Code of the Republic of Moldova (provided that the other signs of the crime component are also met).

Regarding the demarcation lines between the offences provided for in Art.329 and the criminal act stipulated in Art.213 of the Criminal Code of the Republic of Moldova, it is evoked that both the negligent violation of the rules and methods of providing medical assistance, as well as the negligent performance of duties that caused the person's death, threaten, in a secondary way, the social relations regarding the person's life. At the same time, it is observed that the main legal object of the respective crimes differs. It is also shown that the person empowered with the application of the criminal law has the task as to the qualification of those committed in the pattern of Art. 213 and 329 of the Criminal Code of the Republic of Moldova, to identify the reference act that includes concrete rules for granting medical assistance or for the proper fulfillment of the service obligations, the violation of which is imputed to the perpetrator.

Dissociating the above-highlighted criminal acts, the author points out that the subject of the negligent performance of duties offences are inherent in the service obligations, while the subject of the crime stipulated in Art. 213 of the Criminal Code of the Republic of Moldova - the

[50] Popenco A. *The negligent performance of duties (Art.329 CC of the RM): delimitation of some similar criminal acts, part I*. In: Journal of the National Institute of Justice, 2017, no.2 (41), p.22.

professional obligations. Also here is highlighted the conclusion, according to which the subject of negligent performance of duties may be: a) the doctor or medical worker who, within a public medical institution, performs organizational-economic actions, administrative actions of disposition or functions of the public authority, i.e. who has the quality of a person holding responsible positions or b) the doctor or medical worker within the public medical institution who, although does not have the quality of a person holding responsible positions, performs actions / inactions relevant from a legal point of view, i.e. actions / inactions that produce legal effects.[51]

Doctors and other medical workers within the public medical institutions who perform relevant actions in legal terms are part of the category of public persons, as they are employees of legal persons under public law. It is observed that between the norms inscribed in letters a) and b) paragraph (2) Art.162, in paragraph (4) Art.212, in Art.213, in paragraph (5) Art.218 CC of the RM etc. and those stipulated in Art.329 of the Criminal Code of the Republic of Moldova there is no competition report, this is because the public person appears as a subject of the negligent performance of duties, that is, the person who does not fulfill or improperly fulfills his duties, while in the position of negligent violation of the rules and methods of providing medical care or failure to provide assistance to a patient or contamination with AIDS by the medical worker etc. only the person who does not fulfill or improperly fulfills his professional obligations may appear.

The norms from Art. 329 of the Criminal Code of the Republic of Moldova may be in competition with other incriminating norms. On the one hand, the norms from Art.329 CC of the RM may appear as special norms in relation to other norms, and, on the other hand, they may constitute general norms compared to other norms. For example, it is revealed that the norms from Art.183 CC of the RM are special in relation to those inscribed in Art.329 CC of the RM, this is because they establish the criminal liability for the negligent performance of duties manifested within a special sphere.

The author states that, in the event that the labour protection rules are violated by a public person competent to ensure the observance of labour protection rights, but who is not a person holding responsible positions, at the qualification, Art.329 CC of the RM will be retained (obviously, if the other constitutive signs are met). Compared to the negligent performance of duties, the violation of the labour protection rules mainly threatens the social relations regarding the realization of the constitutional right to labour protection and only secondarily, it harms the social relations regarding the proper fulfillment of the service obligations by the person holding responsible positions.

[51] Popenco A. *The negligent performance of duties (Art.329 CC of the RM): delimitation of some similar criminal acts, part II*. In: Journal of the National Institute of Justice, 2017, no.3 (42), p.15.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The results obtained from the research carried out reside in:

1. Analysis of the doctrinal meanings and theses evoked by the scientists from the Republic of Moldova, as well as by those from other states, on the negligent performance of duties offences;

2. The theoretical-normative approach of the elements of the criminal components legally enshrined in Art. 329 of the Criminal Code of the Republic of Moldova;

3. Determining the defining particularities of the victim of the crimes provided for in Art. 329 of the Criminal Code of the Republic of Moldova;

4. Assessment of the content of the prejudicial consequences recorded in Art. 329 of the Criminal Code of the Republic of Moldova;

5. Establishing the correlation between the norms provided for in Art. 329 of the Criminal Code of the Republic of Moldova and those stipulated in the reference normative acts;

6. Critical analysis of the legislative construction technique of the norms inscribed in Art. 329 of the Criminal Code of the Republic of Moldova;

7. The investigation of the judicial practice in the matter of the crimes provided for in Art. 329 of the Criminal Code of the Republic of Moldova;

8. Dissociation of the crimes recorded in Art. 329 of the Criminal Code of the Republic of Moldova from some related facts located in Chapter XV of the Special Part of the Criminal Code, as well as from other similar criminal acts located in other chapters of the same part of the Criminal Code;

9. Carrying out the comparative study in the matter regarding the negligent performance of duties offences in relation to the regulations from the criminal legislations of some foreign states;

10. The detection of the legislative deficiencies that mark the norms of incrimination provided for in Art. 329 of the Criminal Code of the Republic of Moldova;

11. Formulation of legislative proposals capable of improving the content of the norms that incriminate the acts of negligent performance of duties.

Summarizing those presented in the paper, the author formulates the following ***general conclusions:***

1) The content of the secondary legal object of the negligent performance of duties offences is in strict dependence on the content of the prejudicial consequences reflected in the text of Art. 329 of the Criminal Code of the Republic of Moldova.

2) The public authorities, including the specialized central administration, as well as the local public administration bodies cannot be considered as victims of the negligent performance of duties offences.

3) The non-identification of the service obligations (despite the fact of their existence, but which have not been fulfilled or have been improperly fulfilled) is equivalent to their lack and, consequently, cannot determine the engagement of criminal liability based on Art. 329 of the Criminal Code of the Republic of Moldova.

4) In the process of qualifying the negligent performance of duties, the non-invocation of the supplementary norms has as a consequence the inapplicability of the incomplete incrimination norms registered in Art. 329 of the Criminal Code of the Republic of Moldova.

5) When establishing the patrimonial damage in the form of damages in large proportions and, respectively, of those in particularly large proportions, only the actual damage caused will be taken into account, not the lost income.

6) For the purposes of Art. 329 of the Criminal Code of the Republic of Moldova, it is unacceptable that the prejudicial consequences in the form of damages in large proportions caused to the rights and interests protected by law of natural or legal persons (as a result of the non-fulfillment or improper fulfillment of the service obligations) to have determined, in their turn, progressively, the cause of the person's death.

7) The individual entrepreneur, the employee of a company, including the person who manages a commercial, public or other non-governmental organization (representing the private sector), may not be subject to the offences provided for in Art. 329 of the Criminal Code of the Republic of Moldova, whereas the rules laid down establish criminal liability for the imprudent conduct in the public sector.

8) Systematically interpreting the norms inscribed in Art. 329 of the Criminal Code of the Republic of Moldova in relation to those specified in Art.327 of the Criminal Code of the Republic of Moldova, it is concluded that the negligent performance of duties offences cannot be committed intentionally, but only by imprudence.

9) The expression “unconscious attitude” from the content of paragraph (1) Art. 329 of the Criminal Code of the Republic of Moldova suggests (however, with great difficulty) that the negligent performance of duties offences can be committed with exaggerated confidence.

10) If there are doubts about the existence or lack of the possibility of foreseeing the cause of harmful consequences, those committed, by virtue of the principle *in dubio pro reo*, must be considered as committed in the absence of this possibility and, consequently, must be classified as committed without guilt.

11) The purpose of the crime is not present, in any way, in the structure of the subjective side of the crimes provided for in Art. 329 of the Criminal Code of the Republic of Moldova, nor as an optional sign, as it is incompatible with the crimes committed by imprudence.

12) The prolonged (continued) form of the offence is incompatible with the offences of negligent performance of duties, since subjectively the prolonged offence is characterized by the presence of intention and purpose, which is foreign to the offences of negligent performance of duties.

13) The hypothesis of the competition of offences provided for in Art. 329 of the Criminal Code of the Republic of Moldova is to be distinguished from the situation in which a single offence of negligent performance of duties is committed, but through a system of actions / inactions that are causally related to one and the same prejudicial consequence.

14) The imprudent violation of purely professional obligations cannot entail criminal liability based on Art.329 of the Criminal Code of the Republic of Moldova, not being excluded, however, that such behaviors fall under the incidence of other norms of incrimination.

The current scientific problem solved consists in the elaboration of a complex conceptual framework with reference to the negligent performance of duties offences in accordance with the current theoretical-normative framework, which allowed the identification of the imperfections of the incriminating norms subject to analysis and, accordingly, the submission of a series of proposals to improve the incriminating text examined in order to facilitate the activity of practitioners in the correct application of the rules under Art.329 of the Criminal Code of the Republic of Moldova.

In order to improve the text of Art.329 of the Criminal Code of the Republic of Moldova, the author formulates the following ***recommendations:***

1) Modification of the name of Art. 329 of the Criminal Code of the Republic of Moldova from the “Negligent performance of duties” to “Violation by imprudence of service obligations”;

2) The express stipulation in the disposition of the norms inscribed in Art. 329 of the Criminal Code of the Republic of Moldova of imprudence as a form of guilt with which the perpetrator must act when committing the criminal offence;

3) The exclusion of the expression “as a result of a negligent or unconscious attitude towards them” from the text of paragraph (1) Art. 329 of the Criminal Code of the Republic of Moldova;

4) Replacement of the locution “The same actions that caused” from paragraph (2) Art. 329 of the Criminal Code of the Republic of Moldova with the expression “Non-fulfillment or improper fulfillment by imprudence by a public person of the service obligations if it caused…”. The same modification is to be operated at paragraph (1^1) Art.329 of the Criminal Code of the Republic of Moldova;

5) The specification, at paragraph (1) of Art.329 of the Criminal Code of the Republic of Moldova, of the average injury to the person's health as an alternative prejudicial consequence;

6) The establishment, within letter b) paragraph (2) of Art.329 of the Criminal Code of the Republic of Moldova, of the prejudicial consequence materialized in “serious injury to the person's health”;

7) The introduction of a new paragraph (1^1) that incriminates the negligent performance of duties materialized in causing damages in particularly large proportions to the rights and interests protected by law of natural or legal persons;

8) Introduction of the aggravating circumstance "death of two or more persons" in a new paragraph (3).

The advantages of such recommendations will be expressed in:

a) The exact determination of the content of Art. 329 of the Criminal Code of the Republic of Moldova and, implicitly, the removal of doubts about the interpretation of the text of the respective Article;
b) Facilitating the activity of the practitioners regarding the application of Art.329 of the Criminal Code of the Republic of Moldova;
c) Adjusting the incriminating framework to the normal construction technique of the crime components in the text of the Article from the criminal law;
d) Ensuring the achievement of the purpose of the criminal punishment by aggravating the liability in the event of negligent performance of duties that caused the death of two or more persons;
e) Avoiding the condemnation of the Republic of Moldova by the ECtHR by ensuring a clear and predictable legal text.

The plan of perspective research on the topic of the paper is oriented towards:

1. Deepening the concept in the part aimed at introducing criminal liability for the negligent performance of duties in the private sector.
2. The investigation, much more thorough, of the correlation between the negligent performance of duties offences and some institutions enshrined in the General Part of the Criminal Code.
3. Approaching the aspects regarding the competition between the norms inscribed in Art. 329 of the Criminal Code of the Republic of Moldova and other norms from the Special Part of the Criminal Code.

ADNOTARE

Popenco Adrian, „Aspecte teoretice şi practice ale infracţiunii de neglijenţă în serviciu”. Teză de doctor în drept. Școala doctorală Ştiinţe Juridice a Universităţii de Stat din Moldova. Chişinău, 2020.

Structura lucrării: Introducere, 4 capitole, concluzii generale şi recomandări, bibliografia din 370 titluri, 228 pagini text de bază. Rezultatele obţinute sunt publicate în 12 lucrări.

Cuvinte-cheie: infracţiune de serviciu, imprudenţă, atribuţii de serviciu, persoană publică, atitudine neconştiincioasă sau neglijentă, delimitare, studiu comparat, practică judiciară etc.

Domeniul de studiu: Drept penal. Partea specială.

Scopul şi obiectivele lucrării: *scopul* lucrării constă în efectuarea unei investigaţii teoretico-normative solide în materia ce vizează infracţiunile de neglijenţă în serviciu, în depistarea şi clarificarea problemelor practice cu care se confruntă persoanele abilitate cu aplicarea legii penale, *in concreto* – a normelor înscrise la art.329 CP RM, precum și în identificarea carenţelor de care suferă respectivele norme, cu formularea unor propuneri legislative apte să îmbunătăţească cadrul legal actual în materie. Drept *obiective* au fost trasate: abordarea teoretico-normativă a elementelor componenţelor de infracţiune consacrate juridic la art.329 CP RM; identificarea coraportului dintre normele prevăzute la art.329 CP RM şi cele cuprinse în actele normative de referinţă; analiza critică a tehnicii legislative de construcţie a normelor înscrise la art.329 CP RM; cercetarea practicii judiciare în materia infracţiunilor prevăzute la art.329 CP RM; depistarea carenţelor legislative ce îngreunează aplicabilitatea normelor incriminatoare prevăzute la art.329 CP RM; formularea propunerilor *de lege ferenda* apte să îmbunătăţească conţinutul normelor ce incriminează faptele de neglijenţă în serviciu.

Noutatea şi originalitatea ştiinţifică își găseşte exprimare în faptul că sunt identificate varii probleme teoretico-practice de ultimă oră la care s-a încercat a fi aduse soluţii potrivite.

Noutatea ştiinţifică a lucrării elaborate consistă şi în: a) punctarea manierei de identificare a conţinutului obiectului juridic secundar al infracţiunilor prevăzute la art.329 CP RM prin raportarea acestuia la tipul urmărilor prejudiciabile survenite; b) stabilirea entităţilor ce nu pot apărea în postura de victime ale infracţiunilor de neglijenţă în serviciu; c) evidenţierea coraportului dintre normele incomplete prevăzute la art.329 CP RM şi cele completatoare din actele normative de referinţă; d) argumentarea plenară a conţinutului celor două modalităţi normative de exprimare a faptei prejudiciabile prin prisma practicii judiciare în materie; e) relevarea exactă a conţinutului urmărilor prejudiciabile consemnate în art.329 CP RM; f) demonstrarea, prin raţionamente, a imposibilităţii evoluării venitului ratat în calitate de formă a daunelor în proporţii mari; g) identificarea argumentată a liniilor de demarcaţie între infracţiunile de neglijenţă în serviciu şi alte fapte penale conexe etc.

Semnificaţia teoretică: lucrarea reprezintă o sursă ştiinţifico-metodologică necesară doctrinei autohtone, şi nu doar, contribuind la dezvoltarea continuă a ştiinţei dreptului penal.

Valoarea aplicativă: lucrarea poate fi utilă persoanelor abilitate cu aplicarea legii penale cazurilor practice concrete. Studiul comportă importante valenţe teoretico-practice, analizei fiind supuse peste 85 de hotărâri judecătoreşti, care au şi servit drept bază empirică la elaborarea acestui demers ştiinţific. În rezultatul cercetării întreprinse sunt formulate recomandări practice, precum şi propuse diverse soluţii de calificare pentru anumite situaţii problematice.

АННОТАЦИЯ

Попенко Адриан, «Теоретические и практические аспекты преступления в виде служебной халатности». Диссертация на соискание ученой степени доктора права. Докторальная школа юридических наук Государственного университета Молдовы. Кишинэу, 2020

Структура диссертации: введение, четыре главы, выводы и рекомендации, библиография из 370 названий; 228 страниц составляют основную часть диссертации. Достигнутые результаты опубликованы в 12 научных работах. **Ключевые слова:** служебное преступление, неосторожность, служебные обязанности, публичное лицо, недобросовестное и небрежное/халатное отношение, разграничение, сравнительный анализ, судебная практика и др. **Предмет исследования:** Уголовное право. Особенная часть.

Цель и задачи исследования. *Цель* исследования заключается в проведении углубленного нормативно-теоретического анализа преступлений в виде служебной халатности, в выявлении проблем, с которыми сталкиваются на практике профессионалы, применяющие уголовный закон, в частности – нормы, закрепленные в ст.329 УК РМ, а также в выделении недостатков, допущенных в этих нормах, и в предложении поправок, которые могут способствовать усовершенствованию действующего законодательства. Были определены следующие *задачи*: нормативно-теоретический анализ признаков состава уголовно наказуемых преступлений предусмотренных в ст.329 УК РМ; выявление соотношения между положениями ст.329 УК РМ и положениями, содержащимися в нормативных актах в данной отрасли; критический анализ законодательной техники, используемой при составлении норм, закрепленных в ст.329 УК РМ; изучение судебной практики по преступлениям, предусмотренным в ст.329 УК РМ; выделение законодательных недостатков, затрудняющих применение инкриминирующих положений ст.329 УК РМ; внесение предложений *de lege ferenda,* направленных на усовершенствование содержания норм, устанавливающих уголовную ответственность за деяния в виде служебной халатности.

Научная новизна и оригинальность исследования выражается в том, что были обозначены и раскрыты различные теоретические и практические проблемы, которым была предпринята попытка предложить адекватные решения. Научная новизна работы состоит: a) в детальном изложении методики раскрытия содержания вторичного правового предмета преступлений, предусмотренных в ст.329 УК РМ, исходя из формы проявления пагубных последствий; b) в определении лиц, которые не могут предстать перед судом в качестве потерпевших по преступлениям в виде служебной халатности; c) в выделении соотношения между неполными положениями ст.329 УК РМ и дополняющими положениями, содержащимися в нормативных актах в данной отрасли; d) в полноценной аргументации содержания двух используемых нормативных способов выражения деяния, исходя из судебной практики в данной области; e) в точном раскрытии содержания пагубных последствий, обозначенных в ст.329 УК РМ; f) в изложении рассуждений, доказывающих невозможность оценивать упущенную выгоду, как одну из форм нанесения ущерба в крупных размерах; g) в аргументированном определении демаркационных линий между преступлениями в виде служебной халатности и другими смежными уголовными деяниями. **Теоретическое значение.** Работа представляет собой научно-методологический источник, необходимый национальной доктрине (и не только), и способствующий непрерывному научному развитию отрасли уголовного права.

Прикладное значение. Данный труд может быть полезным профессионалам при применении уголовного закона и разрешении конкретных дел. Исследование имеет не только существенное теоретическое значение, но и практическое: изучено более 85 судебных решений, которые стали эмпирической основой для данной научной работы. Проведенные исследования позволили автору предложить ряд рекомендаций и решений относительно квалификации в сложных ситуациях.

ANNOTATION

Popenco Adrian "Theoretical and Practical Aspects of the Negligence in Performance of Duties Offence". PhD Thesis. Doctoral School of Legal Studies from Moldova State University. Chisinau, 2020

Thesis structure: Introduction, 4 chapters, general conclusions and recommendations, bibliography of 370 titles, 228 pages basic text. The fundamental ideas and scientific results are exposed and published in 12 scientific papers.

Key-words: offence in public position, imprudence, professional duties, public person, unconscious or negligent attitude, delimitation, comparative study, judicial practice etc.

The domain of study: This thesis belongs to the criminal law, the Special Part.

The purpose and objectives of the study: the purpose of the paper is to carry out a solid theoretical-normative investigation in the matter of the negligence in performance of duties offences, in detecting and clarifying the practical problems faced by the persons empowered with the application of the criminal law when applying *in concreto* the norms registered in the art.329 CC RM , as well as in identifying the deficiencies of the respective norms, with the formulation of legislative proposals able to improve the current legal framework in this matter. The *objectives* are: the theoretical-normative approach of the elements of the criminal components legally enshrined in art.329 CC RM; identification of the correlation between the norms stipulated in art.329 CC RM and those included in the normative acts of reference; critical analysis of the legislative technique of construction of the norms registered in art.329 CC RM; the research of the judicial practice in the matter of the offences provided in art.329 CC RM; the detection of the legislative deficiencies that mark the incriminating norms provided in art.329 CC RM; formulation of the *de lege ferenda* proposals able to improve the content of norms that incriminate the acts of negligence in performance of duties.

The scientific novelty and originality: find expression in the fact that various last-minute theoretical-practical problems have been identified where appropriate solutions were tried. The scientific novelty of this work also consists of: a) pointing out the manner of the content identification of the secondary legal object of the crimes, provided in art.329 CC RM by referring it to the type of harmful consequences that occurred; b) establishing the entities that cannot be victims of the offences of negligence in performance of duties; c) highlighting the correlation between the incomplete norms provided in art.329 CC RM and the complementary ones from reference normative acts; d) comprehensive argumentation of the content of the two normative ways of expressing the prejudicial fact through the prism of the judicial practice in the matter; e) accurate detection of the content of the harmful consequences recorded in art.329 CC RM; f) proving, by reasoning, the impossibility of developing the missed income as a form of damages in large-scale and especially large-scale; g) the argued identification of the limits between the offences of negligence in performance of duties and other related criminal acts, etc.

The theoretical importance: the paper represents a scientific-methodological source necessary for the local doctrine, and not only, a necessity for the continuous development of the science of criminal law. **Practical value:** the work can be useful for persons empowered with the application of criminal law to concrete practical cases. The paper carries important theoretical-practical significance, analyzing over 85 court decisions, which also served as the empirical basis of this study. As a result of the undertaken research, practical recommendations were formulated as well as various qualification solutions proposed for certain problematic situations.

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