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LEGAL-CRIMINAL ANALYSIS OF THE CRIME OF FALSIFYING EVIDENCE

SUMMARY OF THE PHD THESIS
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CONTENTS OF THE THESIS SUMMARY

CONCEPTUAL RESEARCH REFERENCES

Topicality of the topic. A basic element in the conduct of the act of justice is the procedure of proof by the participants in the process of certain facts and circumstances invoked to support their own legal interests. Any abusive manifestations along this line generate a social danger of a particular nature, as they not only affect the vital interests of the statute of ensuring the functionality of the judicial power segment, but also damage the interests of individuals and legal entities in part [16, p. 21].

The Criminal Law of the Republic of Moldova provides: „...criminal liability for a number of offences aimed at destabilizing social relations in the field of justice (art. 303-323 Criminal Code), but one of the most dangerous criminal acts in this regard, taking into account its possible consequences, is to be recognized namely the offence of evidence falsification provided for in art. 310 Criminal Code of the Republic of Moldova. Thus, in order to protect the most important social values, the legislator considered it necessary to define and incriminate, through a separate criminal offence, those acts which distort the truth in the process of justice" [16, p. 21].

From the totality of the criminal norms incriminating offences against justice, referring in part to the act provided for in art. 310 of the Criminal Code of the Republic of Moldova, the indisputability of its *harmful nature* is attested, which consists in the obvious discrediting of public confidence in the judicial system, as well as the general undermining of the efficiency of that entity. From the outset, we can mention that the provisions of art. 310 establish liability for two distinct offences: falsification of evidence in civil proceedings, provided for in - para. (1), and falsification of evidence in criminal proceedings - para. (2).

In the context of the values and objectives indicated, it will be noted that the state of legality in the field of evidence management in criminal and civil proceedings is currently unfavourable, being exposed to the risk conditioned by several gaps and difficulties of a conceptual, interpretative and applicative nature of the notion of *falsification of evidence*, which we have submitted to analysis and assessment in the sections of this paper. However, such facts give rise to concern and cannot be ignored, because each case of distortion of the factual situation, which is of importance and probative value in a judicial process, has an absolutely negative and irreversible impact on the quality of the act of justice in particular, but also on the image of the state as the sole exponent of the activity of achieving justice in general.

Due to the minimal period of existence of the national system of law within the independent Moldovan state, a separate rule providing for liability for evidence falsification was missing in the national criminal legislation for a long time, and it was implemented with the implementation of the current Criminal Code (art. 310).

Despite this, actions in this category were recognised as illegal and punishable even in the absence of a direct rule to this effect, under the provisions establishing criminal liability for false statements (art. 314 of the Criminal Code), false denunciation (art. 311 of the Criminal Code), forgery of public documents (art. 332 of the Criminal Code), knowingly holding an innocent person criminally liable (art. 306 of the Criminal Code), etc. [6].

From the above considerations, the situation observed in the part concerning the evolution of the offences of falsification of evidence in the national legal system, limits our examination of the subject to the period since 2002, when the current Criminal Code was adopted and implemented, which directly provides for criminal liability for falsification of evidence, by introducing a separate legal-criminal rule in this regard (art. 310 of the Criminal Code) in the Special Part by Law no. 985-XV of April 18, 2002.

Official statistics show that in the first year of application of the current Criminal Code, not a single offence of falsification of evidence was detected, the first cases in this category being recorded only since 2003, after which a significant increase is observed towards 2013, followed by a decrease in their share of the total number of offences in the years 2020-2021, when a minimum number of offences under art. 310 of the Criminal Code was set for the period of the last six years. In this connection, it is noted that the percentage ratio of offence of evidence falsification to the total number of offences committed is not significant [10].

Such a dynamic increase in the total number of offences relating to the falsification of evidence can be explained by a combination of causes and conditions giving rise to this situation. In our view, the main ones are: Significant increase in the workload of prosecution bodies, the Public Prosecutor's Office and services performing special investigative work; increased complexity of probation procedures and at the same time decrease in the level of professionalism of subjects applying procedural rules of evidence management; the inefficiency of existing legal means and mechanisms to counteract the causal/stimulating factors of offence of evidence falsification, including the application by decision-makers, mainly at the initial stages of the criminal process, of a competitive model of conducting criminal prosecutions, with an increase in the quantity of completed criminal cases at the expense of their quality.

In this regard, we note that a detailed analysis of the causes and conditions that serve as a factor generating the increase in the number of cases of offence of evidence falsification is not one of the study objectives of this paper. However, if at least one of the cases indicated exists, the risk of issuing a procedural decision based on falsified evidence is significant.

It should be borne in mind when analysing the statistical data on the dynamics of the crime of falsification of evidence that the information given does

not fully reflect the real criminogenic situation in this area and the objective dimensions of this phenomenon, since an advanced degree of latency is characteristic of this crime. Most of the researchers who have carried out studies in the field of crimes against justice note that the official data on recorded cases of falsification of evidence differ significantly from the existing situation.

In the context of the above, it is imperative to answer the question: „[w]hat is the falsification of evidence per se? In this regard, it is worth noting the lack of any definition/notion of the concept in question that has been defined in law. The Criminal Code, including its provision on liability for evidence falsification, is completely lacking in concepts of this kind or any general references to other legislative and regulatory provisions on the concept of evidence falsification, which complicates and creates significant obstacles to the work of practitioners in the field of applying the stipulated rule in particular and achieving justice in general. The same situation is found at the level of the departmental regulatory framework, which also does not provide a well-defined and developed definition or concept of the notion. The local and international scientific environment, as well as the literature on the subject, does not provide any concept of the concept, and most of the research in the field is limited to general interpretations of the falsification of evidence as a criminal offence. Thus, in order to unify judicial practice and criminal theory, we believe that the official interpretation of the notion of evidence falsification should not be made arbitrarily, but by the legislator by formulating an appropriate definition in the text of the criminal law" [16, p. 22-23].

Considering the above, it is necessary to conclude that, despite the many ideas and theoretical-practical approaches of the interested parties, the offence of evidence falsification continues to remain an unexplored field of study, which requires obvious interventions to bring the legal-criminal rule governing the offence into line with the existing legal realities.

The analysis of the offence of evidence falsification shows with certainty that: „...in the judicial practice of the Republic of Moldova, at the moment there are problems related to the interpretation and legal classification of the respective actions, which are largely conditioned by the lack of conformity of the criminal provisions on this line with the criminal procedural regulations in the area of evidence management and the subjects involved in this process" [16, p. 24].

Therefore, one of the general aims of the thesis can be formulated as a complex study of the offence of evidence falsification, as a distinct crime from the category of those that undermine the act of justice and the ability of state institutions to ensure its proper implementation, in order to ensure full respect for fundamental human rights.

Another, no less important purpose of the present work can be designated as the complex study of the means/methods/mechanisms of evidence fal-

sification as a way of achieving the objective side in the case of the reference crime, which are not currently reflected in the content of the criminal norm in art. 310 of the Criminal Code, which regulates this action, followed by the assessment and evaluation of the legal and doctrinal capabilities of the national legal system, oriented to the interpretation, regulation and proper application of criminal norms on the subject concerned.

Description of the situation in the field of research and identification of the research issue. A significant contribution to the study of the evolution of the criminalization of this offence in the criminal legislation of the Republic of Moldova and other countries was made thanks to the contribution and studies carried out by authors from Moldova and abroad, such as: A. Borodac, S. Brînză, X. Ulianovschi, M. Gherman, T. Osoianu, V. Stati, V. Grosu, I. Țurcanu, R. Popov, S. Copețchi, Ig. Hadîrca, I. Dolea, A. Doga, A. Gîrlea, I. Macari, A. Reșetnicov,G. Ulianovschi, M. Basarab, Al. Boroi, N. Cochinescu, V. Dongoroz, Gh. Dărîngă, I. Deleanu, Gh. Diaconescu, C. Duvac, Kahane Siegfried, I. Oancea, N. Giurgiu, D. Lămășanu, M. Mureșan, Al. Tănase, R. Secrieru, S. Astașov, I. Arendarenko, A. Briliantov, R. Belkin, M. Bikmurzin, I. Blagodari, M. Bajanov, Iu. Budaeva, V. Borkov, A. Belozerskih, T. Bogoliubova, Ă. Babaeva, Iu. Kuleșov, E. Kupreașina, R. Kostenco, V. Kurleandskii, V. Vișneakov, B. Volkov, N. Gromov, E. Elaghina, V. Maiborodova, I. Ivanov, A. Ignatov, K. Idrisov, G. Novoselov, L. Neceaeva, A. Rarog, M. Strogovici, M. Treușnikov, A. Trainin, Iu. Șcigolev, F. Faktullin, A. Halikov.

The necessity of the subject of the scientific research is conditioned by the urgency of the current tasks proposed to be achieved by promoting the internal policy of the Republic of Moldova, aimed at building a state based on the rule of law, without which it is impossible to ensure the fundamental rights and freedoms of citizens, the establishment of a reliable mechanism of functioning of state institutions. In turn, the functioning of the state mechanism and the guarantee of the fundamental rights and freedoms of citizens are impossible without the implementation of justice. In particular, in relation to the same subject, the necessity and topicality of this study will also be conditioned by the inconsistency between the existing normative regulations and the realities of enforcement practice encountered in the daily work of law enforcement subjects.

The purpose and objectives of the work. The purpose of this study is to elucidate the falsification of evidence as a criminal offence in the criminal legislation of the Republic of Moldova. In particular, the study is focused on the direction of analyzing and finding the impediments encountered by law enforcement subjects, namely on the implementation of the provisions of art. 310 of the Criminal Code, and as a result of which recommendations for amending and supplementing the criminal legislation are submitted to this subject.

In order to achieve the mentioned purpose, this research has set the fol-

lowing **objectives**: 1) to analyze the evolution of criminalization of the offence of falsification of evidence in the criminal legislation of the Republic of Moldova; 2) to elucidate the essence of evidence falsification as a socio-legal phenomenon; 3) to analyse the causes and conditions of the offence of evidence falsification and its constitutive elements; 4) to outline/designate the doctrinal and normative concept of evidence falsification in criminal and civil proceedings: concept, particular characteristics, importance and prejudicial degree of the act; 5) to ascertain the link between the offence of evidence falsification and the possible consequences that may arise as a result of its commission, including on the legal system and the social impact arising from the reference offence; 6) to highlight the problems and uncertainties of an interpretative and applicative nature that exist at the moment, conditioned by the imperfect nature of the reference rule; 7) to analyse and assess the legal guarantees of respect for human rights and fundamental freedoms in the case of the administration and use of false evidence; 8) to study judicial practice in the field of falsification of evidence, to formulate recommendations with a view to eliminating the shortcomings revealed and to ensure uniform application of the rules in question by the prosecuting authority and the courts; 9) to determine the criteria for distinguishing the falsification of evidence from other criminal acts which are homogeneous in terms of their essence, content and characteristics; 10) to assess the penalty system; 11) to assess the regulatory framework abroad in relation to the offence of evidence falsification and to assess the appropriateness of using the results of this assessment to formulate and justify proposals for *a lex ferenda*; 12) to highlight proposals for a *a lex ferenda* aimed at improving the regulatory-criminal framework on the criminalisation of acts of evidence falsification.

Scientific research methodology. In order to achieve the objectives indicated above, normative and doctrinal material directly or, where appropriate, indirectly addressing the offence of evidence falsification has been used.

Thus, in the category of normative materials, we can state that consultations and references to local legislation, including local literary sources that form the national doctrine in the field under investigation, have been made. At the same time, focusing on the objectives and purpose of the research, multiple sources of criminal legislation applicable on the European and Asian continents were used, here we refer to the normative acts in this field of the European states and those of the former Soviet area, which were subjected to analysis in relation to similar national legislation, being applied for this purpose the *comparative method*.

Another important aspect, which has been used extensively in this paper, is the literature. Here we would like to mention that the works of local scholars and authors, including those from abroad, who have analysed and researched the components of the offence in general and the offence of evidence falsification in

particular, have been extensively consulted. At the same time, the monographs and guides published on the subject of this paper have been thoroughly examined.

At the same time, the materials of national and international conferences of particular importance for the research of the offence of evidence falsification were studied. At the same time, the scientific articles of legal journals, in which the authors of the scientific approaches deal both directly and tangentially with the anti-social phenomenon of evidence falsification, have not been overlooked.

In the same vein, a number of general and special methods have been applied in the present research, such as: *legal-historical, statist, systemic, comparative, survey*.

The final result of the study in question would not have been possible without the application of the logical method, in the creative process on the subject addressed, which was applied extensively in order to argue and demonstrate the soundness of the proposals made as *lex ferenda*.

Scientific novelty and originality. This study represents an early stage in the field of complex research into the legal-criminal aspects of the offence of evidence falsification. The paper also formulated for the first time some conclusions and recommendations in the form of *a lex ferenda* which can constitute a scientific basis for legislative amendments.

The innovative approaches of the study result from the character of the elements investigated in this paper, qualified by us as a legal omission, specific to the segment proposed for examination, as follows: 1) it was established that the application in everyday practice of the criminal law, intended to counteract and prevent cases of evidence falsification, generates a number of difficulties conditioned largely by significant gaps characteristic of its content and structure; 2) the existence of legislative omissions and the mismatch of the provisions in force, on this segment, of the procedural-criminal regulations to the compartment aimed at the administration of evidence and the subjects involved in this process was identified; 3) the unevenness of the application of the existing regulations in daily practice was found; however, they are characterized by uncertainty and ambiguous interpretations; 4) following a comparative analysis of the existing rules, it is concluded that it is appropriate and necessary to structure them in a more extensive form, which will allow to apply them to a wider range of elements and mechanisms used to achieve the objective side, but also to a wider group of subjects.

The theoretical significance of the work is revealed by the importance of this study which, in view of the gaps, discrepancies and imperfections (limited number of subjects and lack of specification of possible ways of achieving the objective side in the current wording of art. 310 of the Criminal Code) found in the process of analyzing the reference problem, serves as a source of inspiration and support for other theorists who contribute to the development and evolu-

tion of the national school of criminal law.

The conclusions and findings identified as a result of the present research serve as a suggestion in the field of regulating criminal liability for evidence falsification and preventing uneven application of criminal law.

The applicative value of the work results from the findings and conclusions obtained in the research, which will provide law enforcement subjects with the possibility to solve some of the problems encountered in the process of qualifying the crime of evidence falsification. It should be noted that having identified the legal deficiencies, proposals for their solution were also put forward.

The results of the present research can serve as a reference for the completion of the criminal legislation of the Republic of Moldova, the effective achievement of the objectives of this normative act and the protection of justice, including the role of suggestion in the field of regulation of criminal liability for falsification of evidence and the development of new theories of prevention of the given crime.

The main scientific results submitted for defence consisted in: theoretical-practical analysis of the normative framework of criminalization of the offence provided for by art. 310 of the Criminal Code. The legal-criminal mechanism necessary to assess the effectiveness of the functioning of the legal provisions in this field was also drawn up, with the formulation of theoretical-practical and normative conclusions and recommendations, including by way of *a lex ferenda*, aimed at improving and uniformly interpreting the objective and subjective signs of the offence analysed.

Implementation of scientific results. The scientific results obtained in the present research are to be used in the process of legal undergraduate training, master's and doctoral students. At the same time, the present findings and recommendations will be useful for law enforcement subjects in their daily practice.

In this context, the proposals and recommendations *a lex ferenda*, formulated in the result of the research, can be taken into consideration in the improvement of the normative framework concerning the rules of art. 310 of the Criminal Code.

Approval of the results. The results of the research have been discussed in a number of national and international scientific forums. The basic ideas put forward by the author and presented in this study have been published in various scientific journals, such as: Scientific Annals, „Stefan cel Mare" Academy of MIA; Journal of the National Institute of Justice; Journal „Law and Life"; bi-monthly newspaper at the journal „Public Administration"; National Legal Journal: Theory and Practice; „Lingvo-Science" magazine, published at the Varna printing house in the Republic of Bulgaria; „Vector European" magazine;

„Intellectus" magazine; Collections of communications at the State University of Moldova; „Public Administration" magazine; National Law Magazine; „Law" magazine in Romania (Romanian Jurists Union); „Fiat Iustitia" magazine at the Cluj-Napoca Law Faculty of the Christian University „Dimitrie Cantemir" in Bucharest (Romania); Materials of the international scientific-practical conference „Peculiarities of the adaptation of the legislation of the Republic of Moldova and Ukraine to the legislation of the European Union"; Journal „Actual Scientific Research in the Modern World", city of Pereiaslav (Ukraine); Materials of the international scientific-practical conference „Modern scientific challenges and trends", held in the city of Warsaw (Republic of Poland).

Publications on the thesis topic. 30 scientific works have been published on the topic of the doctoral thesis.

Keywords: crime, justice, evidence, evidence, criminal process, civil process, elements, forgery, facts, quality of evidence, document, falsification of evidence, comparative, authentic, consequences.

THESIS CONTENT

The introduction of the thesis contains the argumentation of the research and includes the following sections: topicality and importance of the topic, purpose and objectives, research hypothesis, scientific research methodology, scientific novelty, research methodology, theoretical importance and applicative value of the work, approval of the results and summary of the thesis chapters.

Chapter I, entitled „*Analysis of the situation in the field of investigating the office of evidence falsification*", structurally composed of 3 subchapters, is devoted primarily to the study and research of the concept of evidence falsification. In this chapter, special attention has been paid to the mechanism of definition and incrimination of the offence concerned in the criminal legislation of the Republic of Moldova and in the theoretical-practical research of authors from abroad.

Thus, Chapter I is a summation of the doctrinal ideas related to the subject, presented as a synthesis of the concepts promoted both by the national school of law and by similar schools abroad, mainly in the former Soviet space. We believe that such a treatment generates a significant added value to the local criminal law school, especially in the area covered by this study.

In the sense of the above: „[t]he introduction of the offence of evidence falsification as a separate offence in the Criminal Code is considered by specialists in the field as a correct decision, aimed at strengthening the judicial system of the Republic of Moldova, in the context in which the object of the criminal attempt in this situation is the social relations that ensure the normal functioning of the institutions empowered by the state to carry out the act of justice. Thus, by committing actions aimed at evidence falsification, the offender is going against the established way of administering evidence in criminal and civil proceedings, where the concept of evidence, its administration, relevance and admissibility are determined by the legislation in force. The existing problems of procedural regulation, qualification and prevention of offences against justice, in particular the offences of falsification of evidence presented to law enforcement bodies, require a scientific-practical approach and analysis in order to remove the existing gaps" [16, p. 22].

As the offence of eidence falsification is criminalized within the normative limits of the Criminal Law of the Republic of Moldova, it has served as a basis for discussion, analysis and debate among the scholars concerned with the legal-criminal study of the typical criminal variants of the offences established in the Criminal Code of the Republic of Moldova.

Thus, there are no scientific works or monographic studies in the academic environment and in the specialised literature of the Republic of Moldova whose object of research would constitute in part the crime of falsification of evidence, in all its aspects. The subject has been dealt with only tangentially in a few publications and specialist works in the field of criminal law, but without a

fundamental study of the essence of the situation relating to the legal-criminal rule governing the criminal offence of evidence falsification.

Under the circumstances described, the first work published in Moldova that we submit for analysis is „*Criminal Law of the Republic of Moldova. Special Part*" by Professor Ivan Macari, in which the author has carried out a legal-criminal analysis of the offence of falsification of evidence and, consistent with it, supports the idea that: „...the social danger of actions aimed at evidence falsification lies in the fact that they prevent the establishment of the truth, thus influencing the delivery of a sentence, judgment or other decision..." [13, p. 366] Therefore, we note that in the indicated work, in addition to the legal-criminal analysis, the author's position on the social danger of actions aimed at falsifying evidence is also presented. Thus, we reiterate that the outcome of this crime can decide one way or another the fate of the person, determining, as the case may be, release from criminal liability or, on the contrary, conviction for actions which in fact they did not commit, etc.

In 2004, Alexandru Borodac, professor of the „*Stefan cel Mare*" *Academy of MIA, published the work* „*Manual of Criminal Law. Special Part*", in which the author argues that „falsification of evidence involves distorting, deforming, altering or counterfeiting it" [2, p. 458]. At the same time, the author provides an explanation by defining the concepts of participant in the process, representative, and person in charge and lawyer who may be subject to the offences of falsification of evidence, in the version of the Criminal Code of the Republic of Moldova with subsequent amendments until 2004. Consistent with this, the work also mentions the methods that can be applied by the perpetrators in committing the given crime, including a brief legal-criminal analysis of the illegal act under investigation.

In 2005, a work by a group of authors from the State University and the Free International University of Moldova entitled „*Criminal Law/Special Part*" was published, which is a more innovative work in the field of criminal law. Thus, in this work, Sergiu Brînză, Xenofon Ulianovschi, Vitalie Stati, Vladimir Grosu and Ion Țurcanu, as authors, argue that: „[t]he socially dangerous nature of the offence of evidence falsification leads to distortion of the truth, influencing the pronouncement of a sentence, judgment or other judicial decision, …and the persons against whom the judgment was rendered in the judicial process or the relatives of the convicted person form the opinion of injustice concerning the system of law" [3, p. 588]. Thus, we can conclude that, in the view of the authors indicated, evidence falsification is a crime with an eminently prejudicial degree that directly affects in a negative sense the process of dispensing justice by the judicial bodies.

Another group of authors, Artur Airapetean, Diana Ionita, Svetlana Prodan and Ruslan Popov, in the collective work „*Criminal Law Course Notes, Special Part*" (Cycle I), point to the fact that the institute of falsification of evidence was includ-

ed for the first time in domestic criminal law and that, until its implementation, only disciplinary sanctions or, where appropriate, fines were applied in the past for committing such acts. At the same time, the same group of authors describes the objective side of the offence of evidence falsification as a complex of activities that may include using obviously false documents as evidence, destroying evidence (by burning, tearing, dissolving, erasing, etc.) or influencing the injured party, witnesses, defendants to make false statements to the prosecution or the court [1].

This time we cannot agree with the authors of the indicated work because, as we have previously reported, even in the absence of a separate rule in the criminal legislation on the offence of evidence falsification, prior to its implementation, the commission of such acts was framed and punished according to other legal-criminal rules, the elements of which were similar in meaning and could be interpreted/applied appropriately to the particular case. In line with the same theory, the idea of how the objective aspect of the falsification of evidence is manifested cannot be accepted. In this regard, it is stated that the actions of influencing the injured party, witnesses or defendants in order to induce them to give false statements to the prosecution body or the court are inadmissible as falsification of evidence; however, such actions are to be qualified according to the criminal offence provided for in art. 309 of the Criminal Code (*Coercion to make statements*). In this connection, mention will be made of the criminal liability that may arise in the case of participants in criminal proceedings with the status of witness, injured party or expert, so that the theoretical demarcation line between these components is a minimum one, which involves obvious difficulties in its designation and will be addressed later in the content of this paper.

In the same context, we fully support the idea of attributing to the objective side of the offence of evidence falsification, including the actions of destroying evidence (by burning, tearing, dissolving, erasing, etc.) which, even if they do not fully fit the etymological meaning of the notion of *falsification*, in any case imply activities of destructive influence aimed at distorting the overall evidentiary picture in a criminal or civil case. Thus, in our view, the falsification of data/objects/documents which have the quality of evidence in a criminal or civil proceeding is an action of modification/denaturing of their original content or structure, with partial preservation of the elements of structure and specific features. At the same time, the act of destruction, committed in the same circumstances in relation to evidence produced in civil or criminal proceedings, involves the complete destruction of the evidence which, in fact, does not come under the act of falsification in the sense referred to, but the aim pursued in its finality is identical. For these reasons, we consider it absolutely necessary to place the act of destroying/damaging evidence within the scope of the general concept of evidence falsification, which is to be the subject of *a lex ferenda* initia-

tive in the context of the situation in question.

The authors Sergiu Brînză and Vitalie Stati from the Moldova State University, who published a monograph entitled „*Criminal Law. Special part*".

Thus, in the second volume of the mentioned publication, there is also an analysis of the criminal act of evidence falsification. The analysis in question is a detailed description of the elements of the offence under investigation and, consistent with this, the authors argue that: „[t]he need to ensure real guarantees to discourage and avoid any abusive methods and practices in obtaining evidence means that, in the system of offences against justice, one of the most serious offences is that of evidence falsification. Any act of justice must be based on a body of relevant and conclusive evidence. Otherwise, if the evidence is falsified, this can be a prerequisite for the issuing of unlawful and unfounded judgments. Likewise, evidence falsification undermines the authority of the judiciary and may contribute to the commission of other crimes against justice" [4, p. 691-692].

A more general publication is by the author Vasile Cibotaru, entitled „*Falsification of evidence: theoretical and practical examination*". In its content, a brief generic presentation of the concept of falsification of evidence is presented, and at the same time it is essentially mentioned that: „[f]alsification of evidence causes a wide range of negative social consequences, both direct and indirect: it causes damage to the participants in the proceeding, in particular, it harms their honour and dignity, reputation, material interests, physical freedom, life and health; it damages the image of justice, ...it harms fundamental human rights - the right to defence and the right to a fair proceeding" [5, p. 38].

In the sense of the subject addressed by the present study and in the context of the criminal norm itself, which provides for liability for evidence falsification, the opinion of the majority of the subjects who apply it within the national system of law, according to which it has shortcomings in the compartment of the completeness of regulation, is mentioned.

Thus, according to the survey conducted on a sample of 70 employees in the positions of prosecutors, prosecution officers and judges in the Republic of Moldova, 74.2% of the respondents consider the rule of art. 310 of the Criminal Code, which regulates the offence of evidence falsification, as incomplete and in need of amendment.

Thus, analyzing the sources of the local authors as a whole, we conclude with certainty that the subject of evidence falsification is dealt with only very superficially, without elaborating in detail its character and essence, which is a serious impediment for the development of national doctrine on this dimension, including for law enforcement subjects in their daily work. This situation serves as a clear signal of the need for ongoing development and evolution of the subject under investigation.

There are no monographs or publications dedicated to the research of the subject addressed in part as a separate criminal offence, as all the published investigations related to the subject of study are deductive in nature; this situation requires the subjects applying the law to use other similar criminal rules which, to a certain extent, incriminate acts similar in essence to the offence of evidence falsification.

In the context of the above, it should be noted that the Russian literature encompasses a wide variety of studies and research specific to the field of falsification of evidence, offering a multitude of approaches to the subject through a very broad spectrum of separate criteria and objectives. Such publications belong to such authors as Ivan Sheranov, Artur Avanesean, Mikhail Shvart, Anton Krasnikov, Mikhail Kordukov, Ivan Ermolaev and other scholars of interest to the subject. At the same time, it should be noted that some state institutions (legal entities) in the Russian Federation have also publicly stated their position on the offence of evidence falsification, including the Antonov & Partners law firm, the administration of the city of Mojaisk in the Moscow region, the Orenburg regional prosecutor's office, etc.

Thus, on this point we can exemplify the author Ivan Șermanov who, in the work „*Falsification of evidence and the results of operational and investigative activities*" [33] has expressed his opinion on the inconsistency of the legislator in determining the signs of the offence of evidence falsification and the results of special investigative activities.

The author from the Russian Federation Artur Avanesean also expressed his own opinion on the subject in his article „*Falsification of evidence*", which is devoted to the types of evidence that can be recognised as falsified from the following points of view: procedural provisions; procedural actions that can be used to establish the fact of evidence falsification; the possibility of recognition by the court through final decisions of the fact of evidence falsification [18], including other relevant aspects of the studied crimes that can be encountered in objective reality.

The theorist Mihail Șvarț is another Russian doctrinal scholar, who also approached the subject of falsification of evidence through the concept of *falsification* in multiple forms and in different fields. In his track record, the author points to the topic of falsification of evidence through the publication entitled „*On the issue of falsification of evidence in arbitration proceedings*" [34].

Falsification of evidence, as an illegal act of manifestation in the field of judicial arbitration processes, is of increased interest including for Anton Krasnicov, author of the publication „*Why evidence is often falsified and how to stop it*". In the author's opinion, these consequences are due to the situation when: „courts do not verify the authenticity of evidence and do not identify falsified evidence, respectively; they deal formally and passively with revealed cases of falsification of evidence; falsification of evidence is carried out at a high level and

thus it becomes complicated to prove the objective truth, etc." [25].

In the process of conducting this study, the opinions of law enforcement subjects representing the state prosecution in the courts were also considered. Thus, the administration of the Mojaisk city in the Moscow region (Russian Federation) in 2021 published an explanatory opinion of local prosecutors with reference to the offence of evidence falsification. In this regard, the authors noted that: „the moment of consummation of the offence of evidence falsification is identified according to the subject who committed it. That is, the falsification of evidence by the person conducting the criminal prosecution and/or the prosecutor - shall be deemed to have been committed from the moment when the specified actions are carried out; the falsification of evidence by the defender - from the moment when the evidence is presented to the body conducting the criminal prosecution or to the court" [19].

Author Rafail Belkin in his work „*Collection, investigation and evaluation of evidence. The essence and methods*" approaches the process of probation mainly from the forensic aspect, but also examines the procedural dimension of this activity. Thus, the author assigns to the category of evidence in criminal and civil proceedings only factual data about which it is known and which, respectively, can be falsified [21, p.10].

The same opinion is characteristic of the researcher Fidai Factullin who in the work „*General problems of procedural evidence*" appreciates in the same context the evidence as factual data known to the subjects of law enforcement, obtained, assessed and accepted in the established procedural order [32, p. 102].

At the same time, the author Mihail Strogovici in his work „*Course of Soviet Criminal Procedure*" appreciates evidence as an object of falsification, designating it as a phenomenon of double nature: on the one hand - as factual data, on the other hand - as sources of evidence [29, p. 288-289].

Likewise, the group of authors V. Musin, I. Cecina and D. Ceciota in the work „*Civil Procedure: Textbook*", interpreting the evidence as procedural elements serving to establish the objective truth, acquired in the order prescribed by the procedural-criminal law [22, p. 187].

At the same time, the author Mihail Treușnikov in his work „*Judicial evidence*" describes the theoretical and practical issues of evidence and the process of evidence, appreciating their importance as a means of acquiring knowledge about the circumstances of the case and of arguing the decisions issued by the competent bodies. In this regard, the latter considers that evidence is to be appreciated as a single notion, in which the factual data and the means of proof are correlated by content and procedural form [31, p. 79].

In turn, the author Vitalii Kurleandski in the work „*Criminal policy, differentiation and individualization of criminal liability*" considers that the criminal

law establishing liability for a certain category of acts is functional and effective only if the elements of the crime component, provided for by the corresponding rule, can be proved to a sufficient extent for ascertaining the circumstances of the case and establishing the objective truth of the case [26, p. 82].

The subject of the present study, i.e. the offence of evidence falsification, knows a platform of significant analysis, including on the scientific level of the Republic of Ukraine.

A notorious work in the Ukrainian literature, which highlights the subject of falsification of evidence, is the PhD thesis of the author Darina Meniuc entitled „*Dissertation review of court decisions due to newly discovered or exceptional circumstances in the civil procedure of Ukraine*" [27, p. 91-92]. The author supports the idea that the subject of falsification of evidence should be considered at each stage of the judicial process, as the facts in question can be committed anytime and anywhere.

In the same vein, another Ukrainian specialist, Victor Zaborovskii, also states, in his scientific publication „*Some problematic aspects of bringing an attorney to criminal liability for his offenses in accordance with Ukrainian legislation*", states that the lawyer is a very interested participant in the judicial process, who, in certain cases, in order to achieve the aim and objective pursued, may resort to certain illegal acts, including the falsification of evidence [23, p. 86-87].

The issue of evidence falsification has also concerned another Ukrainian researcher, Sergei Stepanov, who in his paper entitled „*Establishing falsification (forgery) of evidence and its consequences*" states that: „evidence falsification implies active behaviour of the subject. If the judge knew about the falsification of certain evidence in a court case, but took no action and did not pass a judgment on the basis of such evidence, then it is wrong to say that the court falsified the evidence" [30, p. 178].

Falsification of evidence as a research topic in the PhD thesis was also addressed by another author from the Republic of Ukraine in the person of Dmitro Pinciuk who, in his paper on the subject with the topic „*Criminal procedure consequences of evidence falsification*", states as follows: „evidence falsification is one of the ways of carrying out the act of holding an innocent person accountable, unlawfully releasing a suspected or accused person from liability, and making an illegal decision/judgment" [28, p. 8].

Moreover, as a result of the analysis of scientific materials on the offence of evidence falsification published in the Republic of Poland, it is attested that the position of defenders regarding the offence has become increasingly controversial online. In this regard, we mention the opinion of the Polish attorney Mateusz Ziębaczewski, who addresses the issue of evidence falsification in his publication entitled „*Creating and preparing false evidence - art. 235 kk*" [14].

The subject of falsification of evidence is also an object of study for researchers in the field in Romania, where the authors Ilie-Adrian Ghirdoveanu and Florian Hărăboiu in the publication „*Evidence, means of proof and evidentiary procedures in criminal proceedings*", state that: „the production, falsification or typing of false evidence by a criminal prosecution body, a prosecutor or a judge, constitutes the offence of improper investigation" [12].

Thus, we note that Romanian specialists, similarly to researchers in the Russian Federation, Ukraine and Poland, support the idea that falsifying evidence is an illegal act, and the subject of that offence obviously requires being subject to legal liability for such actions of falsification with objective reality in a judicial process.

The issue of falsification of evidence generates the corresponding attention even among specialists in the field in the Kingdom of Spain where, similar to the countries listed above, the publication „*Falsification detection, Authenticity testing | Electronic components*" is worth mentioning, promoting the idea that: „data are deliberately altered in such a way as to distort the real quality of the object, with the intention of defrauding or misleading" [11].

Italian literature also contains some research on this matter, including the publication of the author Silvia Schiavo, who, in her study entitled „*Around the sentence announced on the basis of false evidence*" [17], states that, regardless of the judicial process as a whole, the falsification of evidence can occur at any stage and can be found in the most minute procedural elements, which makes it absolutely necessary that the pronouncement of a final decision within it be necessarily preceded by multilateral examination and under all possible legitimate aspects.

The results of the analysis of the topic approached through the prism of scientific works from abroad, as well as those published on the national scientific level, clearly show the insufficient level and degree of exploration and study of the subject of reference, and in this context including the need for further theoretical research on this dimension, in order to strengthen and substantiate an advanced scientific-practical basis, capable of ensuring the upward development of national legislation in countries that have implemented criminal rules criminalizing the offence of evidence falsification.

Chapter II, entitled „*Comparative criminal law elements of the crime of evidence falsification*", structurally composed of 3 sub-chapters, is devoted to the study of comparative criminal law elements of the crime of evidence falsification and general reflections on the criminal liability for the crime investigated in this paper.

This chapter illustrates various modalities of the typical variants of criminalisation of the offence of evidence falsification in other states, such as: *Swiss Confederation, Kingdom of Sweden, Kingdom of Denmark, Grand Duchy of Luxembourg, Japan, China, Israel, Netherlands, Albania, Iceland, Hungary,*

Slovakia, Russian Federation, Hellenic Republic, Federal Republic of Germany, Republics of Bulgaria, Austria, Cyprus, Finland, Czech Republic, Latvia, Malta, Poland, France, Kazakhstan, Kyrgyzstan, Tajikistan, Georgia, Belarus, Armenia, Azerbaijan, Ukraine.

Following the analysis carried out, it should be pointed out that there is a lack of homogeneity in the regulatory provisions relating to the subject under consideration, as provided for in the legislation of the various countries, irrespective of geographical area. The result obtained in this respect clearly shows the lack of regulatory regulation of the subject in question in a large group of countries, which is a substantial shortcoming for their national legal systems.

At the same time, the legal situation in this segment, as established by the comparative study, the results of which are set out in this chapter, dictates the need for certain regulatory interventions on the dimension of the *evidence falsification* in the criminal legislation of the Republic of Moldova, the nature and nature of these initiatives being the subject of examination in the subsequent sections of this investigation.

Thus, analysing in their entirety the criminal legislation of the 32 states listed in this chapter, the obvious conclusion is that the offence of evidence falsification is designated as a separate criminal offence by a separate criminal law, regardless of its content and form of drafting, only in the legislation of 16 of the states indicated. At the same time, the criminal legislation of 16 of the countries mentioned does not expressly provide for a separate rule in this regard, and the regulations in the corresponding criminal laws of these countries only tangentially address the subject in the light of other values in the field of justice which are protected by rules systematised in compartments or separate rules. In this connection, it should be noted that such a situation in no way ensures the full implementation of the primary objective of any judicial process, or the impossibility of effective normative security of social values concerning the correctness and legality of the administration of evidence in the framework of the process directly affects and has an absolutely negative effect on the ability of the statute to carry out the act of justice.

The main purpose of the study was to identify, elucidate and put forward essential proposals for the completion and harmonisation of national legislation in the area of extending the scope of the offence of evidence falsification and the means of achieving the objective side of the offence, including ensuring that all potential perpetrators are held criminally liable and punished accordingly.

In order to identify the criminal norms in the legislation of the countries under investigation, which could serve as an object of inspiration for the improvement of the rule governing the composition of the offence provided for in art. 310 of the Criminal Code of the Republic of Moldova, we come to the conclusion that: „[a] relevant model in this regard is the similar regulations in

the criminal legislation of the Russian Federation, where art. 303 of the Criminal Code establish criminal liability for the offence of evidence falsification, including a broader spectrum of the areas of application expressly provided for in the rule (para. (1) - civil and misdemeanour proceedings, para. (2) - criminal proceedings and para. (4) - special investigative activity), the respective subjects with the powers of evidence management on the stipulated segments, with the delimitation as a separate qualifying element of cases of falsification of evidence in criminal cases concerning serious and particularly serious crimes, as well as those resulting in serious consequences" [16, p. 24; 7].

Based on the analysis of the research, we conclude with certainty that, unlike in the former Soviet states, only in the European Community, only in some of its subjects, the national legislator has developed and expressly stipulated in the criminal legislation separate rules on the crime of evidence falsification. At the same time, as we have already mentioned, the majority of the EU Member States in the case of the European Union have in their criminal legislation rules that only tangentially address the subject, a situation which in our view constitutes a significant gap and deficiency for the legal systems of those countries.

At the same time, in the case of the former Soviet states, where their legislators have laid down separate rules in their national legislation on the offence of evidence falsification, we note that some legislative approaches in this regard have been more laconic in some cases and more detailed in others, but what is important is that, in the end, they all apply a well-established system of penalties for the antisocial act that directly undermines the authenticity of evidence in a judicial process.

Thus, a common feature of all the countries whose criminal legislation on the subject in question (evidence falsification) has been studied is the nature of the penalties imposed, with imprisonment being provided for in all cases, together with other additional penalties. There is no exception in this respect, nor is the corresponding rule in the criminal legislation of the Republic of Moldova, to which we have already referred by way of comparison in this chapter.

Irrespective of the way in which the respective regulations are reflected in the national legislation of the countries indicated, in all cases the common aim is to ensure the efficiency of the probation process and the proper conduct of evidence.

As a finding in the case of the regulations under study, we note that: „[i] n order to exclude the stipulated gaps, characteristic of the legislative regulations in the case of the Republic of Moldova on the respective dimension, it is necessary: the need to amend the existing legislative framework on the subject in question, taking into account international best practices, by systematizing and analyzing the criminal policy for the prevention of falsification of evidence, including judicial practice in this area; elucidating the causes and conditions generating the crime in question, regardless of its forms of manifestation; evalu-

ating the work of national law institutions in preventing and combating the falsification of evidence" [16, p. 24].

In the context of the issues under investigation, we conclude that: „...the harmonisation and adjustment of national legislation to the new forms and modalities of committing illegal acts is an obligatory phase that must always be kept in line with current needs, in order to avoid absolving offenders from legal liability. One of the most important aims of this scientific approach is to inform and present to scientific researchers the existing legal provisions in other countries concerning the indirect criminalisation of the offence of evidence falsification, including the typical variants of the application of the penalties provided for in the legislation of the aforementioned states" [15, p. 43].

Chapter III, entitled „*Elements and constituent signs of the crime of evidence falsification*", structurally made up of 3 subchapters, is exclusively devoted to the generic topic of this PhD thesis.

Thus, within the limits of Chapter III, the main elements of the constituent elements of the crime (objective and subjective) in general, and of the offence of evidence falsification in particular, are highlighted.

The first part of Chapter III sets out in detail aspects of the objective constituent elements of the crime of evidence falsification. Therefore, the scientific analyses of the object of the offence can be found, together with the complex of the objective side. The second part is devoted to the investigation of the subjective constituent elements of the offence of evidence falsification. The subjective side and the subject of the criminal acts, as indispensable elements of the subjective constituent signs, are rendered in their full significance.

In modern criminal theory, it has become a tradition to analyse the constituent elements of the offence starting with the objective signs; researchers' attention is primarily directed towards the object of the offence, by which is usually meant the element attacked, which the perpetrator of the criminal act attacks and to which damage is caused or may be caused. The object, as an element of the offence, is of particular importance because it has a systemic function, largely determining the manner and mechanism of the attack itself, its consequences, the nature and degree of the culpability of the perpetrator, and the integrity of some objects can be damaged only by a particular category of perpetrators (*special subjects*).

At the same time, in the part concerning the object of the offence under investigation, it is obvious that the generic object of the offence is the social relations in the field of justice, regulated by law, which ensure in the established way the procedure of evidence administration in criminal and civil proceedings. At the same time, the direct object of the same offence is the factual elements established in the civil or criminal proceedings, administered in the manner laid down by law, recognised

and accepted as direct or indirect, conclusive and relevant evidence in individual cases, which contribute to establishing the objective truth. According to the results of the study carried out, in the case of the offence in question, it is possible that both a material and an immaterial object may exist. In relation to the current normative format of the reference offence, its incompleteness will be noted, if other procedural areas are not covered by art. 310 of the Criminal Code, in which evidence is used as factual elements to establish the objective truth. In this regard, reference is made to the administrative and administrative proceedings and the results of the special investigative activity, which serve as a basis for the initiation of criminal proceedings. Thus, according to the results of the research, there is a clear need to extend the scope of the reference offence by amending/complementing the criminal rules stipulated in art. 310 of the Criminal Code, in accordance with the *lex ferenda* of the Ferenda Law set out in the content of this work.

The successive solution of the tasks, in the part concerning the study and the legal-criminal analysis of the offence of evidence falsification, also requires addressing the elements of the objective side of that offence. As a rule, these signs serve as an external indicator of the offence already committed and are often included by the legislator in the text of the criminal rules.

One of the important components of the form of manifestation of the criminal act (as a basic element of the objective side) is the manner/method of its commission. The method is a significant characteristic of the action, which identifies the act by attributing certain features to it. Among the optional elements of the offence, the method of committing the act is of particular legal and criminal importance, but the legislator does not specify in art. 310 of the Criminal Code the manner/procedure/method of evidence falsification, which means that the method can be very diverse (physical or intellectual falsification of procedural documents, damage, alteration of the structure of the corpus delicti, etc.) and does not influence the qualification of the offence.

Although falsification, in the direct sense of the concept of the offence under consideration, involves the creation of false evidence or the distortion of existing evidence, we consider that the concept should be interpreted more broadly to include the substitution, destruction, damage, concealment or removal of evidence, since these situations are not fully covered by the concept of 'falsification' and consequently give rise to significant uncertainties in the legal classification and regulatory framework of the offence.

The diversity and the differences so marked in the legal and criminal assessment of the methods of influencing the evidential base make it necessary to extend the objective side of the offence provided for in art. 310. (1) and (2) of art. 310 should be supplemented with additional provisions on possible socially dangerous actions related to evidence, as an alternative to its falsification, such as, for

example, destroying, damaging, replacing, withholding or concealing evidence.

Thus, in the context of the scientific novelty specified above, it is in fact proposed to implement the normative notion of *evidence falsification*, unifying this act by bringing under its scope several possible ways of illicitly evidence falsification in a criminal, civil, misdemeanour or administrative process. We consider such an approach appropriate and welcome, provided that, as we have already mentioned, the rules of art. 310 of the Criminal Code in their current wording do not include a description of the ways of influencing evidence, which makes it impossible to place these actions under their scope, and the legal designation and identification of the actual notion of evidence falsification in the criminal law is missing. In this respect, we consider the proposed by *lex ferenda* construction to be able to cope with and correspond to any situation of illegal attack on the integrity of the evidence administered in the proceedings in question.

At the same time, in the interpretative sense of the proposed ways of achieving the objective side, it will be understood as follows: *distortion of meaning (intellectual falsification), alteration of the original content or structure, withholding evidence, concealment, replacement, damage or destruction, artificial creation of evidence.*

Identifying the method/mechanism of committing the act of evidence falsification in each individual case is of particular legal and criminal importance, since in the case of the offences in question the method determines the essence of the criminal act and is in an unbroken link with it, representing a unique complex of actions applied by the perpetrator to achieve the desired end.

Another significant shortcoming of the rules contained in the provisions of art. 310 of the Criminal Code, in our view, is the lack of incidence on cases of artificial creation of evidence serving as a basis for the initiation of criminal proceedings. The actions in question are presumed to have been committed at the stage of establishing the offence according to the order established by art. 273 of the Criminal Procedure Code or until the registration of the referral of the offence, with the purpose of acquiring the basis for initiating criminal proceedings, or, as the case may be, with the same purpose within the framework of special investigative measures, the carrying out of which is allowed outside the criminal proceedings. In such a situation, it is impossible to qualify and classify the actions of the persons involved according to art. 310 of the Criminal Code, the rules of which presuppose the examination of actions of falsification of evidence only in the framework of criminal proceedings.

Thus, in this situation, it is found that the action of artificially creating evidence serving as a basis for the initiation of criminal proceedings, including in the framework of special investigative measures, which can be carried out outside the criminal proceedings, in the absence of a separate corresponding

rule, cannot be qualified and recognized as one of the methods of falsification of evidence within the meaning of art. 310 of the Criminal Code.

The listed methods of committing the offence of evidence falsification are mainly characterised by a common feature - active behaviour of the perpetrator, but according to the results of the study, it is possible to commit such offences also through inaction.

In connection with the above-mentioned approach to the possibility of achieving the objective side of the offence of evidence falsification through inaction, we insist on its soundness, considering it to be an absolutely reliable hypothesis in the context of the above-described ways of falsification by *distortion of meaning* (intellectual falsification) or *concealment* of evidence, including in the context of other unpredictable mechanisms and methods of achieving the objective side, the list of which is not exhaustive. Thus, it is mentioned the absolute possibility of realization of such methods by inaction, for example in the case of intentional omission by the subject of certain important circumstances of the case as evidentiary elements, which he does not record maliciously in the content of the minutes of the procedural action, in order to achieve distortion of the overall evidentiary picture and as a result, the final intended effect.

A similar situation is also found in the case of concealment of evidence as a way of achieving the objective side, where the subject of the offence, being aware of the procedural status held and the legal obligation/assignment to investigate the case under examination multilaterally and objectively by administering all relevant and conclusive evidence, regardless of its character and incidence on the case, in such circumstances, deliberately ignores, refuses to record or fails to attach to the case material evidence which already exists or in respect of which he is certain of its existence and does not take steps to secure, collect or record it for subsequent use in the case under consideration.

The analysis of the objective side of the offence of evidence falsification will be incomplete if we do not examine the moment of the legal consummation of this offence, which in fact is an intensely discussed and uncertain issue for law enforcement subjects.

In our opinion, the determination of the moment of consummation of the offence under examination is to be approached differently from one case to another, taking into account the method of evidence falsification, the procedural stage at which the action in question was carried out, the subject who committed the act, as well as other circumstances of the particular situation.

The analysis of the subjective aspect of the offence under investigation is to be carried out taking into account the formal nature of the offence under art. 310 of the Criminal Code, from which it is unequivocally concluded that the criminal acts under investigation can only be committed with direct intent. The

purpose as a constituent element of the offence has the role of concretisation which is determined by the nature of the danger generated. If the purpose is expressly laid down in the legal rule, it presupposes direct intent.

At the same time, the analysis of the subjective side of the offence of evidence falsification will be incomplete without examining the motive, which is traditionally attributed to the category of optional signs of the offence. It is obvious that the rules of art. 310 of the Criminal Code do not provide any indication of the motive of the offence in question, and the elements given are taken into account only when determining the penalty. However, in some cases, the law enforcers ignore this generally recognised rule, attributing to motive and purpose the importance of obligatory elements of the offence component in the case of falsification of evidence, a situation which significantly restricts the scope of application and interpretation of these criminal law rules. In this regard, we consider such an arbitrary interpretation of the rules of art. 310 of the Criminal Code, in the provisions of which express requirements relating to the motive or purpose of the offence in question are missing, to be inadmissible.

Thus, from the point of view of the criminal legislation in force, the motive and purpose of evidence falsification do not constitute mandatory elements of the offence component, provided for in art. 310 of the Criminal Code, but are only of optional importance. However, that does not mean that the purpose and motive for evidence falsification are ignored when classifying the offence in question. Despite the optional nature of the purpose and motive for evidence falsification, those elements are of particular legal and criminal importance. The motive has an impact on the entire volitional process and conditions the intention to commit the offence, playing an important role not only in identifying the subjective side, but also in characterising other signs of the criminal element, including the assessment of its degree of harmfulness.

Thus, generalising the reported ideas, we consider it possible and necessary to designate, as motives of the offence of evidence falsification, such attitudes on the part of the subject as *greed, revenge, misinterpretation of service interest, including personal interests*, which can be very varied and diverse.

In the context of what has been reported, we note that the motive and the purpose of the offence are strongly interrelated entities, since the criminal purpose is generated by the motive, but they do not coincide either in terms of content or purpose. Thus, as the purpose of committing the offence of evidence falsification can be alternatively designated as follows: *evidence falsification in a criminal proceeding with the purpose of knowingly holding an innocent person criminally liable; evidence falsification in a criminal proceeding with the purpose of causing damage to a person's honour, dignity or reputation; evidence falsification with the purpose of satisfying departmental or corporate interests; with the*

purpose of satisfying personal interests.

In this context, the analysis of the modalities of manifestation of the purpose and motives as generating elements of the volitional factor, in the case of the offence of evidence falsification, allows us to conclude with certainty that these, although not imperative for the realisation of the respective component of the offence, are nevertheless a determining factor in the legal classification of the offence in question, the multilateral and objective ascertainment of all the circumstances of the offence, the assessment of the degree of social danger and guilt, including for the individualisation and determination of the type of punishment applied to the subject.

The specific nature of the offence of evidence falsification, the nature of the actions carried out and, in some cases, the possession of special powers (e.g. conducting criminal prosecutions, special investigative measures, etc.) means that only a limited circle of persons exercising the relevant functions in this field may be held criminally liable for evidence falsification. In addition to the general characteristics, these persons must also possess certain additional qualities, specific to them alone, which cannot be arbitrary, but which are such as to enable them to commit the harmful act indicated in the criminal law. The accumulation of these additional qualities makes the perpetrator of the offence in question a special person.

With regard to the axiom concerning the lack of doubt as to the qualities of the subject of the offence of evidence falsification, it should be noted that the basic controversy in the scientific field in question concerns the possibility of extending or restricting the list of special subjects. On the one hand, the situation in question is conditioned by the requirements of the legislative technique and the template of the identification signs of the subject of the crime provided for in art. 310 of the Criminal Code, and on the other hand by the conceptual contradictions concerning the special subject.

In this regard, the significant shortcoming in the case of the rule on the offence of evidence falsification in civil proceedings, generated by the uncertainty regarding its subjects, is mentioned, a circumstance which allows for an extensive interpretation of the circle of persons liable to criminal liability or, as the case may be, for a narrow interpretation of the concept. Further complications in the same sense are caused by the superficial nature of the concepts used in the provision of the criminal rule in question.

Taking into account the circumstances indicated, we will characterise in turn the signs of the subjects of the offence of evidence falsification, starting from the classical conception according to which the signs of the particular subject are indicated in the provision of the rule or result from the general content of the corresponding component.

Thus, the legal rule laid down in para. (1) of art. 310 of the Criminal Code

points to a certain character and content of the act of evidence falsification, according to which such actions may be committed only upon judicial examination in civil proceedings by the persons participating in the proceedings or their representatives. However, the criminal law does not elaborate on these concepts and does not provide an exhaustive list of the persons concerned, whose procedural status and their role in the proceedings can be known only by analysing the provisions of art. 7 para. (2), art. 55 - 59, art. 62, 63, 65, 67, 73, 74 and 75 of the Civil Procedure Code, according to which, in the category of participants in civil proceedings, are assigned: "...parties, interveners, prosecutor, petitioners, persons who, according to art. 7 para. (2), art. 73 and 74 of the same code, are entitled to file applications in court to defend the rights of freedoms and legitimate interests of other persons or who intervene in the proceedings to file conclusions in defence of the rights of other persons, as well as interested persons in cases concerning the application of protective measures in cases of domestic violence and in cases of special procedure" [9].

Representatives in civil proceedings are recognized responsible persons with legal capacity, who have the appropriate powers of attorney drawn up and perfected in the established manner, the manner of their appointment and legal powers of attorney being specified in Articles 75 - 81 of the Civil Procedure Code. Thus, the analysis of art. 55 of the Civil Procedure Code clearly shows that the category of participants in the civil proceedings is to be assigned only to persons interested in the finality and legal consequences of the civil proceedings. The intentional false statements of the witness, the false conclusion of the expert or the incorrect translation by the translator attract criminal liability under art. 312 of the Criminal Code only if the acts mentioned were committed in the civil, criminal or misdemeanour proceedings, but the witness, the expert and the translator are not persons interested in the finality and legal consequences of the proceedings and, therefore, cannot fall under the procedural status of participant.

Another uncertainty in the attribution of the status of participant in civil proceedings is generated by the situation of the civil party and the civilly liable party, recognised according to the order established in the criminal proceedings. Thus, in our view, this category of persons cannot be subjects of the offence of evidence falsification in civil proceedings; however, they are interested in the finality and consequences of the civil proceedings, but at the same time they also have the status of participants in the criminal proceedings. In this sense, any action taken with a view to falsifying evidence in order to favour the civil action initiated in the criminal proceedings is to be qualified and assessed as the offence of falsification of evidence in criminal proceedings.

However, according to researchers in the field, the circle of subjects of the offence of evidence falsification is somewhat narrower than the list of par-

ticipants in the proceeding established by civil procedural law. Subjects of this offence must possess not only powers of attorney, but also procedural rights, including the capacity to carry out actions with legal effect in the process of administering evidence and participating in the corresponding procedural relations [20, p. 24-25].

This clarification allows settling the controversy regarding the attribution to the category of subjects of evidence falsification of those persons who, in fact, have real access to the evidence administered in the process (judges' assistants, court clerks, witnesses, technical staff of courts, experts, specialists, etc.). In this connection, it must be accepted that at present these persons cannot be recognised and qualified as subjects of the offence under consideration, and their actions, aimed at falsifying evidence, are to be classified under general conditions according to the appropriate rules applicable to each individual case, depending on the quality of the subject.

The generalization of the ideas promoted in the literature related to the issue of the list of subjects of the offence of evidence falsification in criminal proceedings reveals a significant division of opinions between the proponents who consider it necessary to expand the circle of subjects of the reference offence, by including other officials or persons with direct or indirect tangency to the process of evidence administration or subsequent management and the supporters of the idea of its inappropriateness [24, p. 12].

Having assessed and analysed these doctrinal approaches, we consider it appropriate and opt for the normative extension of the list of subjects of the offence of evidence falsification in criminal proceedings, by including, in addition to those already existing, the judge, the assistant judge, the clerk of the court, the prosecutor's consultant, who, due to their procedural competences and the duties they perform, directly or indirectly, have access to the evidence administered and, respectively, have the real possibility of influencing it.

At the same time, the rule in para. (2) of art. 310 does not affect other subjects of the criminal proceedings who directly or indirectly have procedural competences and legal powers to administer evidence. To their category shall be indicated the head of the criminal prosecution body which is an independent procedural subject (art. 56 of the Criminal Procedure Code), the head of the body carrying out the special investigative activity, the investigative officer in case of special investigative measures carried out for the purpose of administering evidence in the criminal proceedings, including the representative of the establishing body in the process of establishing the crime according to the order established by art. 273 of the Criminal Procedure Code where, in the norm of para. (2), the right of the investigating authorities to detain the perpetrator, to collect the crime scene and to draw up the corresponding documents constitut-

ing evidence is established [8].

Thus, we note that: „[i]n the provisions of art. 273 of the Criminal Procedure Code, the bodies of the investigating authorities are listed, the rights granted to them when carrying out the investigation actions and the way they proceed after drawing up the investigation acts, which in the context of the above-mentioned rule and the regulations stipulated in art. 93 and art. 163 of the Criminal Procedure Code also constitute evidence. However, the rule in para. (2) of art. 310 of the Criminal Code does not provide for representatives of the institutions/ authorities referred to in the prenotic rule as potential subjects of the offence. At the same time, art. 163 of the Criminal Procedure Code qualifies as evidence the minutes of the procedural actions, drawn up in accordance with the legal provisions in force, if they confirm the circumstances ascertained during the special investigative measures, the recording of which, according to the provisions of Art. 132^5 para. (1) of the Criminal Procedure Code, shall be carried out by the investigating officer by drawing up the corresponding minutes" [16, p. 23-24; 8].

In the sense of the mentioned situation, taking into account the fact that all the indicated persons not only have free access to the materials of the criminal proceedings, but also have procedural competences to carry out criminal prosecution actions and to fix evidentiary information, they are indisputably to be recognized as subjects of the crime of falsification of evidence in criminal proceedings.

In the context of the above: „...it should be noted that the list of stipulated subjects does not include other participants in the criminal process (*e.g.: victim/injured party, civil party and their representatives, witness)*, who in some cases, even in the context of the procedural status of some of them, being prevented from criminal liability under the provisions of Art. 312 of the Criminal Code, they can however carry out actions of falsification of evidence (Example: presenting to the prosecution body or to the court the material evidence falsified in advance), which cannot fall within the scope of the offence of knowingly *presenting false statements* and at the same time makes it impossible to classify them according to the provisions of art. 310 of the Criminal Code" [16, p. 23].

Taking into account the rather dynamic development of criminal procedural legislation, we consider it inappropriate to determine exhaustively the subjects of the offence of falsification of evidence in criminal proceedings, as it may change even by extension as a result of changes in the law. In this connection, in order not to introduce changes to the rule in para. (2) of art. 310 of the Criminal Code each time there is such an extension of the list of subjects of the offence of evidence falsification in criminal proceedings, we propose to leave it open and replace it with a general formulation, designating as subjects the participants in the criminal proceedings, both on the prosecution and defence side, holders of the right to administer and present evidence. We consider that such a construction

of the criminal law allows to take into account and to reflect the legal incidence in case of any changes in the criminal procedural law, in the part concerning the participants in the criminal process entitled to the right to take evidence, without introducing each time the necessary changes in the provision of the law.

At the same time, a special attention is also deserved when addressing the issue of the qualities of the subject of the offence of evidence falsification which, according to the majority opinion of researchers and practitioners in the field, is to be qualified exclusively as a *special* one. Such a situation is currently also apparent from the provisions of paragraphs (1) and (2) of art. 310 of the Criminal Code where, in the current format, the exhaustive nature of the list of listed subjects also generates the respective qualities for them as being only special.

In this regard, we consider such a position unacceptable and we opt for the idea of classifying the subjects of the reference offence according to the method/mode of carrying out the objective side, being sure that such a criterion allows us to affirm and establish the possibility of committing the criminal offence of evidence falsification even by a subject with general qualities.

Thus, starting from the methods/methods of achieving the objective side listed in the new format of the provision of para. (1) of art. 310 of the Criminal Code, proposed as a scientific novelty in the present study, we mention as an example the way of evidence falsification by altering the original content or structure, removing, damaging or destroying evidence, including its artificial creation, which in fact are possible and accessible actions to be carried out by any other responsible natural person who has reached the age of 16. Thus, in order to commit the offence of theft, damage or destruction of evidence, it is absolutely not necessary that the subject be in the category of those involved in the activity of administration, preservation or assessment of evidence, i.e. that he or she has a possible procedural capacity in this respect or, where appropriate, performs actions tangential to it. The commission of an offence of evidence falsification in these ways, in addition to the special subjects, is also open to any other person who meets the general conditions of the subject, is properly motivated and seeks to achieve the purpose, regardless of their character.

A diametrically opposite situation is found in the case of falsification of evidence by distortion of meaning (intellectual falsification), concealment or substitution of evidence as a means of achieving the objective side, when the admission of the actions/actions in question are possible exclusively through the participation of subjects with special qualities in the category of those who have legally regulated rights and powers concerning the process of administration, preservation and assessment of evidence. Moreover, as mentioned above, in the case of intellectual falsification, the achievement of the objective side through this modality is possible exclusively during the performance of the procedural action and only

by the special subject vested with legal powers to perform it. At the same time, in the case of intellectual falsification as a means of achieving the objective aspect of the offence in question, the capacity of special subject may also be held by the participant vested with rights and obligations to participate in the carrying out of the procedural action, whose activities are recorded in the minutes of the action. An example in this respect would be the psychological pedagogue who participates in the hearing of the minor under the conditions of the special procedure and thus, acting intentionally with the aim of distorting the general evidentiary picture in the criminal case or, as the case may be, distorting the statements recorded as evidence in part, formulates or reformulates the verbal information perceived from the minor heard, so that it loses its veracity entirely or alters its original meaning, ultimately generating the alteration of the authenticity of the results of the hearing of the minor as evidence in the proceeding.

Chapter IV, entitled „*Delimiting aspects and sanctioning regime of the offence of falsification of evidence*", structurally composed of 3 subchapters, is devoted to the delimiting study of the offence stipulated in art. 310 of the Criminal Code from other offences with similar characteristics, namely *false statement, false conclusion or incorrect translation; false public documents; interference in the course of justice and criminal prosecution and false denunciation or false complaint,* art. 303, 311, 312 and 332 of the Criminal Code of the Republic of Moldova.

At the same time, in this chapter, the degree of damage and the consequences of the falsification of evidence, the qualification of this crime, the determination of liability and criminal punishment for committing these acts were investigated.

In the light of the factual and legal references set out in the first part of this chapter, it is noteworthy to conclude that the criminal offences subject to the delimiting research, namely *the falsification of evidence (false statement, false conclusion or incorrect translation; false public documents; interference with the course of justice and criminal prosecution and false denunciation or false complaint)* are some of the offences that are common and prone to be committed in objective reality.

The delimitative analysis of the offences concerned is made possible by the essential criterion addressed, which is the complex of elements making up the offences under investigation, such as: the group of objective elements (the object and the objective aspect) and the set of subjective elements (the subjective aspect and the subject). Moreover, in order to carry out and obtain an essential, up-to-date, constructive and innovative research, analytical and scientific references were made to other comprehensive elements that fully achieved the delimiting research of the respective antisocial acts.

These elements include: the motive for the offence, the definition of the relevant concepts and the social value that is being offended against, including the proceeds of the offence and other components that are set out generically

and explanatorily in the content of this study.

Any antisocial act produced as a result of the application of elements of falsehood represents a scale that damages various social relations, once it has been committed in objective reality. The delimitative study of the offence of falsification of evidence in relation to: false statement, false conclusion or incorrect translation, false public documents, interference with the course of justice and criminal prosecution and false denunciation or false complaint - is a research that brings to the fore, the main component elements of differentiation of a criminal act. The result of this work can serve as a methodological-practical pillar for the entire community of researchers, who will be able to initiate scientific studies related to the subject addressed as an anti-social act committed in the conditions of objective reality.

Thus, the present delimitative study has allowed the identification and formulation of new ways of normative regulation and the possibility of submitting essential proposals aimed at closing the existing gaps in the national criminal legislation.

With regard to the assessment of the degree of damage caused by the consequences of the offence of evidence falsification and its influence on the qualification, determination of liability and criminal punishment, we found that this aspect of the subject of study can be examined at three mutually interrelated levels: at the individual level, where it manifests itself in the capacity to damage the interests of individual participants in the process (property, personal honour and dignity, professional or business reputation, physical freedom, physical integrity, life, health, etc.); at the level of society, where the harmfulness of the offence of evidence falsification is manifested by the damage to the interests of justice in the broad sense (discrediting state institutions, undermining authority and confidence in law enforcement bodies, etc.). In this respect, the destructive effect of this offence contrasts sharply with the legislative assessment of its harmfulness, according to which the falsification of evidence in civil proceedings (para. (1) of art. 310 of the Criminal Code) is classified as a minor offence, while the falsification of evidence in criminal proceedings (para. (2) of art. 310 of the Criminal Code) as a less serious offence. That fact raises significant doubts as to the adequacy of the assessment of the degree of the harmfulness of the offence of evidence falsification and the normative situation reflected in the legal rules affecting it, a circumstance which allows us to assume that the legislature has clearly underestimated the danger generated.

In the context of the reasoning concerning the under-assessment of the degree of harmfulness of the offence provided for in art. 310 of the Criminal Code, it should be noted that this situation has a number of negative consequences, violating the principle of fairness, which is not limited to the propor-

tionality of the established punishment, but affects all stages of enforcement activity, including the penalization of harmful actions, discourages law enforcement subjects from carrying out actions aimed at detecting and proving this type of crime, serves as an insurmountable impediment to the legal-criminal counteraction of the preparatory activity for the falsification of evidence in civil proceedings, because, according to para. (2) of art. 26 of the Criminal Code, criminal liability arises only for the preparation of offences classified as less serious, serious, particularly serious and exceptionally serious.

Following the synthesis of this scientific product, it was identified the need to amend the rules providing for criminal liability for the falsification of evidence in the part concerning the application of sanctions, namely by increasing the maximum limit of the penalty with imprisonment, established both in the case of the basic rule (paragraph 1 art. 310 of the Criminal Code of the Republic of Moldova, by *lex ferenda*), as well as to the rules stipulating the aggravating circumstances of the reference offence, which will allow not only to respond adequately in order to annihilate the real degree of damage generated by the falsification of evidence, but will also provide the necessary legal-criminal premises for the appropriate reaction to the preparatory activities of the offence in question and in the civil process, including creating conditions and premises for the activation of law enforcement subjects within the legal institutions in order to reveal and prove the reference facts. At the same time, it was concluded that it is necessary to keep the minimum limit of sanctions unchanged, which will provide significant space for the court to rationally assess all the ways of committing the offence of evidence falsification, taking into account also subjective elements such as purpose, motive, consequences occurred, etc.

Thus, subsidiary to the above, it is noted that the normative reflection of the actual degree of damage in the case of the offence of evidence falsification requires not only the amendment of the penalties provided for in art. 310 of the Criminal Code, but also the perfection of a system of additional qualifying elements of the given offence.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The scientific results obtained from this study are materialized by elucidating in the foreground the detailed analysis of the constitutive elements of the normative component established in art. 310 Criminal Code of the Republic of Moldova and by studying in depth the offence of tampering with evidence in the criminal legislation of other states. At the same time, as a result of this outcome, it became possible to put forward significant proposals of lege ferenda, the purpose of which is to make a major contribution to the delimitation, compliance and efficiency of the criminal prosecution of the offence under investigation.

As a result, we can highlight the following conclusions arising from the issues addressed in the context of the examination of the offence of tampering with evidence:

1. The national literature contains minimal studies on the crime of tampering with evidence, and the few works and publications on this segment deal only superficially and very incompletely with the subject in question, without penetrating into the essence of the problem generated by the shortcomings specified in this paper.

2. Falsification of evidence was not previously found in the criminal legislation of the Republic of Moldova as a separate criminal offence, i.e. the action in question was not punishable by criminal law. In such circumstances, the commission of this offence in criminal or civil proceedings made it impossible to punish the subject for the act containing certain elements of evidence falsification, even if, due to the evolution of social-economic realities and processes, the consequences could be quite significant. At the same time, the Criminal Code in its 1961 wording delimited certain actions as a way of committing similar offences. For the first time in the criminal law of the Republic of Moldova, the *falsification of evidence* as a separate offence was included in the Special Part by Law No. 985-XV of April 18, 2002.

3. In the case of half (50%) of the States whose criminal laws have been the subject of research in relation to the subject of the given study, the illicit act of tampering with evidence is designated as a separate criminal offence by a separate criminal rule. The criminal legislation of those states which do not expressly provide for a separate rule in this respect, only tangentially addresses the subject in the light of other values in the field of justice which are protected by rules systematised in compartments or separate rules.

4. There is a clear similarity, in terms of structure and content, between the national criminal law on the falsification of evidence and the analogous regulations in the legislation of the countries of the former Soviet Union, a situation which is largely due to the common historical context and the similar doctrinal approach to the subject in national law schools, including common

literary sources of predominantly Russian origin, dating from the Soviet period or from the present day.

5. Both national legislation and corresponding regulations in the legislation of other states do not normatively designate and provide an unequivocal interpretation of the notion of evidence falsification in all its possible variations, which allows and generates the arbitrary interpretation of the respective actions by law enforcement subjects or theorists. In this regard, it is absolutely necessary to radically amend/complete the normative provisions contained in art. 310 of the Criminal Code, by introducing a comprehensive interpretation of the notion of evidence falsification, reflecting a wider range of ways and mechanisms that can be applied in the process of achieving the objective side. The imperative nature of the need for this is clear from the importance of the social relationships protected by the rule in question and the harmful nature of the criminal act it covers.

6. The criminal act of evidence falsification is not only a separate excess of the subjects, but, given the high degree of latency of these offences, they take on much broader criminal dimensions which directly threaten and affect the quality of the act of justice, including the foundations of the national system of law. Moreover, the falsification of evidence is dangerous not only because of its scale and spread, but also because of its essence, since even a single case of distortion of evidentiary information raises doubts about the legality of a particular judicial decision, damaging the interests of justice in general.

7. The theoretical study and the survey carried out during the research certainly show that: „[t]he implementation in everyday practice of the criminal law designed to counteract and prevent cases of falsification of evidence generates a series of difficulties, largely due to significant shortcomings in its content and structure, in the context of the existence of legislative gaps and the lack of compliance with the provisions in force in this segment, the procedural-criminal regulations in the area of evidence management and the subjects involved in this process. However, the practice of applying the regulations in question is uneven, characterized by uncertainty and ambiguous interpretations" [16, p. 21-22].

8. The subjective side of the offence of evidence falsification committed in both areas (civil/criminal) is characterised by guilt, i.e. direct intent. The mental attitude of the perpetrator in the case of the offence in question is manifested primarily by the direct intention to falsify evidence (in whole or in part) and simultaneously to mislead law enforcement authorities. Along with the guilt of the subject of the offence, motive and purpose, which are closely linked to the guilt of the offence, appear in this whole process as a basic sign of the subjective side. In this regard, we conclude that, in order to analyze and truthfully apply the criminal rule provided for in art. 310 of the Criminal Code, it is meritorious and welcome to know in detail the entire process of the perpetrator's volitional

attitude towards the circumstances that lead him to commit the reference crime, even in the condition that its motive and purpose are not important for the finding and legal framing of the respective crime.

9. The volitional factor in the offence of evidence falsification is expressed by the will of the subject to carry out the act, regardless of the occurrence of the prejudicial consequences. This derives from the fact that the offence in question is of a formal nature and it is not necessary to establish the person's mental attitude towards the harmful consequences, as these are not a mandatory sign of the objective side.

10. In both the normative forms of the offence under consideration, the evidence subject to falsification constitutes material objects of the offence and not products of the offence, and it acquires that quality after the exercise of the criminal influence on its authentic character and form, followed by the occurrence of the corresponding changes as a result of the activity in question. Only after such a process of distortion, the object of the offence acquires the quality of falsified evidence and becomes an object of the offence under art. 310 of the Criminal Code.

11. In the context of the rules stipulated in the Contraventions Code and the Administrative Code, it is clear that in both cases, similar to both civil and criminal proceedings, the significance, importance and purpose of the evidence, in essence, is the same, but the rule of art. 310 Criminal Code in its current wording does not allow qualifying the falsification of evidence in these fields.

12. According to the rules of art. 310 of the Criminal Code, the subjects of the offence are expressly indicated. In fact, the completeness of the abovementioned stipulations leaves no room and excludes the possibility of qualifying and classifying under the indicated rule the actions of falsification of evidence committed by the representatives of the investigating body, the investigating officers when carrying out special investigative measures in the framework of criminal prosecution, the investigating officers in the framework of contravention proceedings, the representative of the authority examining and resolving the administrative process, including experts, prosecutor's consultants, judges, judges' assistants, court clerks and other subjects involved in the activity of administering, preserving and assessing evidence, who may have a real possibility of influencing criminal, civil, administrative or contravention proceedings by falsifying the evidence administered in them. However, the legal classification of these actions committed by the latter according to other criminal rules could possibly influence their legal-criminal consequences and diminish the importance and purpose of the sanction applied [16, p. 23].

13. The normative underestimation of the degree of damage in the case of falsification of evidence and the attribution of these offences to the category of less

serious and less serious offences does not allow the application of the full spectrum of special investigative measures for their detection and proof, since the legal condition established by art. 132[1] para. (2) p. 2) of the Criminal Procedure Code.

14. The provisions of art. 310 of the Criminal Code do not provide for criminal liability for damaging, destroying, replacing, withholding or concealing evidence, which are in fact alternative actions to achieve the objective side of the offence in question, in addition to distorting the substance of the evidence, provided that the ultimate aim is a common one of distorting the overall evidential picture in a legal case of the type mentioned. This loophole needs to be removed not by an extensive interpretation of the methods and concept of falsification, but by legislative intervention and the addition of appropriate rules. These additions will ensure an unambiguous interpretation of the criminal rules and will create a single legal basis necessary for the full protection of the interests of justice in the evidentiary process.

15. The types of criminal penalties currently established by the rules of paragraph (1) and paragraph (2) of art. 310 of the Criminal Code do not fully reflect the harmfulness of the crime in question and the importance of effective protection of social relations in the field of evidence. In this connection, it is necessary to amend the sanctions applied in the sense of tightening them, in order to exclude the formal attitude of the subjects to the need for exact compliance with the legal requirements established on the dimension of the administration of evidence.

16. In the case of offences against justice, under national criminal law, deprivation of the right to hold a certain office or to carry out a certain activity for a certain period is imposed as an additional penalty. This punishment is intended to be a type of legal barrier of a preventive nature, aimed at preventing the subject from committing other offences in the same category, but in fact it is limited by the term set and is also theoretically ineffective, if we refer to the provisions of art. 111 of the Criminal Code: „[s]tingling criminal records cancels all disabilities and disqualifications related to criminal records" [6]. Thus, such a penalty offers the subject the possibility of repeatedly obtaining special functions and qualities that imply activities within the institutions that carry out the act of justice. In this sense, we advocate the modification of the term of application of the complementary penalty, increasing its limit established in the provisions of this Criminal Code.

The current scientific problem, which is claimed to be solved according to the results of the present study, consists in the elaboration of a complex conceptual approach with reference to the offence of evidence falsification in accordance with the existing theoretical-normative framework, which allowed the identification of the imperfections of the rules under analysis and, correspondingly, the submission of a series of proposals aimed at improving the provision of the incriminating rule examined, in order to facilitate the work of practitio-

ners in the correct application of the rules provided for in art. 310 of the Criminal Code of the Republic of Moldova, but also to ensure a constant development of the theoretical framework related to the subject approached.

As a **result** of the study carried out, we consider it necessary to submit some recommendations by way of *lex ferenda* for the amendment and supplementation of the Criminal Code of the Republic of Moldova, in the following order:

Chapter XIV of the Special Part, the provisions of art. 310 shall be amended and supplemented as follows:

„Article 310. Falsification of evidence

(1) Falsification, i.e. distortion of meaning, alteration of original content or structure, evasion, concealment, substitution, damage or destruction, and artificial creation of evidence in civil or administrative proceedings by a participant, his representative or, where applicable, another person involved in the administration, preservation and assessment of evidence,

shall be punishable by a fine in the amount of 850 to 1150 conventional units or by unpaid community service of 180 to 240 hours, or by imprisonment for up to 2 years, in all cases with (or without) deprivation of the right to hold certain offices or to practice a certain activity for a term of 2 to 5 years.

(2) The actions referred to in para. (1), committed by the representative of the public authority with the status of a determining officer, who settles within the limits of his competence the contravention case,

shall be punishable by a fine in the amount of 850 to 1500 conventional units or by unpaid community service of 180 to 240 hours, or by imprisonment for up to 2 years, in all cases with deprivation of the right to hold certain offices or to practice a certain activity for a term of 2 to 5 years.

(3) The actions referred to in para. (1), committed by the representative of the determining bodies referred to in art. 273 para. (1) of the Criminal Procedure Code within the framework of the activity of establishing criminal offences, the results of which served as a basis for the initiation or, as the case may be, the refusal to initiate criminal proceedings,

shall be punishable by a fine of between 1000 and 1500 conventional units or by unpaid community service of between 200 and 240 hours, or by imprisonment for up to 2 years, in all cases with deprivation of the right to hold certain offices or to practice a certain activity for a term of 2 to 5 years.

(4) The actions referred to in para. (1), committed in the criminal proceedings by the person conducting the criminal prosecution or special investigative measures, the representative of the investigating body, the prosecutor, the prosecutor's consultant, the defence counsel admitted to the criminal proceedings or, where appropriate, by another person involved in the activity of

administering, preserving and assessing evidence,

shall be punishable by imprisonment for a term of up to 5 years, with deprivation of the right to hold certain offices or to practice a certain activity for a term of 2 to 5 years.

(5) The actions referred to in para. (1), (2), (3) or (4):

(a) committed by two or more persons;

(b) resulting in causing considerable or particularly serious material damage to natural or legal persons;

(c) resulting in the release of a person guilty of a serious, especially serious or exceptionally serious offence from criminal liability or punishment,

shall be punishable by imprisonment for a term of up to 8 years or by deprivation of the right to hold certain offices or to practice certain activities for a term of 5 years.

(6) The actions referred to in para. (1), (2), (3), (4) or (5):

(a) committed for the benefit of an organised criminal group or criminal organisation;

(b) resulting in the accusation of an innocent person of having committed a particularly serious, serious or exceptionally serious offence,

shall be punishable by imprisonment for a term of 12 to 15 years and by deprivation of the right to hold a particular office or to practice certain activities for a term of 5 years."

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Articles in national and international scientific journals (15):

1) *Elemente privind sancțiunile în normele care incriminează fapte de falsificare a probelor (Elements concerning sanctions in the rules criminalizing the falsification of evidence)*. În: Revista „Institutul Național al Justiției", nr. 2/2019, **tipul „B"**, Chișinău;

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3) *Retragerea licenței pentru exercitarea profesiei de avocat ca urmare a falsificării probelor*. În: Revista Anale științifice ale Academiei „Ștefan cel Mare" a MAI al RM: științe juridice. Nr. 13/2021, **tipul „B"**, Chișinău;

4) *Dislocarea răspunderii penale a infracțiunii de falsificare a probelor în legile penale ale altor state*. În: Revista „Universul Juridic", nr. 9/2021, București, România;

5) *Obiectul material și/sau imaterial în cazul infracțiunii instituite la art. 310 Cod Penal al Republicii Moldova.* În: Revista „Administrarea Publică", nr. 3/2020, **tipul „B"**, Chișinău;

6) *Analiza generală a subiectului ca element al componenței de infracțiune și analiza individuală a subiectului faptei prejudiciabile incriminate la art. 310 Cod penal al R. Moldova.* În: Revista „Jurnalul Juridic Național", nr. 4/2019, **tipul „C"**, Chișinău;

7) *Legislația statelor care incriminează indirect răspunderea penală pentru infracțiunea de falsificare a probelor.* În: Revista „Administrarea Publică", nr. 4/2020, **tipul „B"**, Chișinău;

8) *Modele normative de incriminare a infracțiunii de falsificarea probelor în legislația diferitor state*. În: Revista „Vector European", nr. 1/2021, **tipul „C"**, Chișinău;

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12) *Examinarea laturii subiective a infracțiunii de falsificare a probelor.* În: „Revista Națională de Drept", nr. 1-3/2020, **tipul „B"**, Chișinău;

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Articles in conferences proceedings (14):

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3) *The scientific analysis of the crimes against justice in the legislation of the republic of Moldova*. În: materialele Conferinței științifico-practice internaționale „Eficiența normelor legale. Globalizarea și dreptul" din 23-25 mai 2019. București: Facultatea de Drept din Cluj-Napoca a Universității Creștine „Dmitrie Cantemir";

4) *Incriminarea infracțiunii de falsificare a probelor în legislația altor state*. În: materialele Conferinței științifice internaționale „Perspectivele și problemele integrării în spațiul european al cercetării și educației" din 6 iunie 2019. Cahul: Universitatea de Stat „Bogdan Petriceicu Hasdeu";

5) *Elemente de drept comparat privind infracțiunea de falsificare a probelor*. În: materialele Conferinței „Realități și perspective ale învățământului juridic național", Chișinău, 1-2 octombrie 2019, Volumul – II.Chișinău: Universitatea de Stat din Moldova;

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исследования в *современном мире*", nr. 1/2020, ediția a LVII-a, partea a II-a, din 26-27 ianuarie 2020, orașul Pereaslav, Ucraina;

8) *Calificarea infracțiuni de fals prin prisma art. 310 și art. 361 cod penal al Republicii Moldova-studiu cazuistic.* În: materialele Conferinței științifico-practice internaționale „Particularitățile adaptării legislației Republicii Moldova și Ucrainei la legislația Uniunii Europene" din 27-28 martie 2020, Chișinău;

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12) *Reguli tactice generice privind ambalarea, sigilarea, etichetarea și păstrarea mijloacelor materiale de probă în vederea evitării falsificării acestora în cadrul proceselor judiciare*. În: materialele Conferinței științifico-practice internaționale „Contribuția tinerilor cercetători la dezvoltarea administrației publice", ediția a VII-a, din 26 februarie 2021. Chișinău: Academia de Administrare Publică de pe lângă Guvernul Republicii Moldova;

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14) *Dislocarea răspunderii penale a infracțiunii de falsificare a probelor în diverse legi penale ale altor state*. În: materialele Conferinței științifico-practice internaționale „Teoria și practica administrării publice", din 21 mai 2021. Chișinău: Academia de Administrare Publică de pe lângă Guvernul Republicii Moldova.

Other works and achievements specific to different scientific fields (1):

Delimitarea infracțiunii falsificarea rezultatelor votării de falsificarea probelor. În: ziarul bilunar editat de către Academia de Administrare Publică de pe lângă Guvernul Republicii Moldova „Funcționarul public", nr. 2/2021, Chișinău.

ADNOTARE

Piterschi Eugeniu. Analiza juridico-penală a infracțiunii de falsificare a probelor. Teză de doctor în drept. Chișinău, 2023.

Structura tezei: introducere, 4 capitole, concluzii generale și recomandări, bibliografie din 203 titluri, 185 pagini de text de bază, și 4 anexe. Rezultatele obținute sunt publicate în 30 lucrări științifice.

Cuvinte-cheie: infracțiune, justiție, probe, dovezi, proces penal, proces civil, elemente, fals, fapte, calitate de probe, document, falsificarea probelor, comparat, autentic, consecințe.

Scopul lucrării: constă în elucidarea faptei de falsificare a probelor ca infracțiune incriminată în legislația penală a Republicii Moldova. În special, studiul este concentrat în direcția analizei și constatării impedimentelor întâmpinate de către subiecții de aplicare a legii în aplicarea practică a prevederilor articolului 310 Cod penal, iar ca rezultat înaintarea la acest subiect a recomandărilor de modificare și completare a normei prenotate.

Obiectivele cercetării: analiza evoluției incriminării infracțiunii de falsificare a probelor în legislația penală a Republicii Moldova și a altor state; elucidarea esenței falsificării probelor ca fenomen socio-juridic; analiza cauzelor și condițiilor generatoare ale infracțiunii de falsificare a probelor și a elementelor constitutive ale acesteia; realizarea unui studiu de drept penal comparat; studierea practicii judiciare în materie de falsificare a probelor, formularea recomandărilor în vederea excluderii deficienței constatate și aplicării uniforme a normelor respective de către organul de urmărire penală și instanțele de judecată; evidențierea unor propuneri *de lege ferenda* ce ar viza perfecționarea cadrului normativ-penal referitor la incriminarea infracțiunii de falsificare a probelor, etc.

Noutatea și originalitatea științifică: studiul respectiv, reprezintă o etapă incipientă în domeniul de cercetare complexă a aspectelor juridico-penale ale infracțiunii de falsificare a probelor. În rezultatul unei cercetării evolutive, aplicând metoda comparativă, în lucrare au fost formulate concluzii și recomandări care pot constitui un fundament științific pentru modificarea și completarea prevederilor art. 310 Cod penal (Falsificarea probelor).

Problema științifică soluționată: constă în analiza teoretico-practică a cadrului normativ de incriminare a infracțiunii prevăzute de art. 310 Cod penal. La fel, a fost elaborat mecanismul juridico-penal necesar estimării eficienței funcționării prevederilor legale în domeniu, cu formularea unor concluzii și recomandări de ordin teoretico-practic și normativ, inclusiv cu titlu *de lege ferenda*, orientate spre perfecționarea și interpretarea uniformă a semnelor obiective și subiective ale infracțiunii analizate.

Semnificația teoretică: este caracterizată prin faptul că în rezultatul studiului au fost identificate lacune legislative care creează impedimente la aplicarea în practică a prevederilor articolului supus cercetării. În același context, au fost puse la dispoziție soluții de ajustare a cadrului normativ, prin modificarea și completarea prevederilor art. 310 Cod penal.

Valoarea aplicativă: constatările și concluziile identificate în rezultatul prezentei cercetări pot servi drept reper pentru completarea legislației penale a Republicii Moldova, realizarea eficientă a obiectivelor prezentului act normativ și protecția justiției. Rezultatele cercetării subiectul abordat servesc drept o sugestie în domeniul reglementării răspunderii penale pentru falsificarea probelor și evoluția unor noi teorii de prevenire a infracțiunii date.

Implementarea rezultatelor științifice: rezultatele științifice obținute în cadrul prezentei cercetări urmează a fi folosite în procesul instruirilor universitare cu profil juridic, a masteranzilor, precum și a doctoranzilor. Totodată, prezentele constatări și recomandări vor fi utile subiecților de aplicare a legii, în practica cotidiană.

АННОТАЦИЯ

Питерский Евгений. Уголовно-правовой анализ преступления - фальсификация доказательств. Докторская диссертация. Кишинэу, 2023.

Структура диссертации: введение, 4 главы, общие выводы и рекомендации, библиография из 203 источников, 185 страниц основного текста и 4 приложения. Результаты исследования были опубликованы в 30 научных работах.

Ключевые слова: преступление, правосудие, доказательства, подтверждение, уголовный процесс, гражданский процесс, элементы, фальсификация, факты, качество доказательств, документ, фальсификация доказательств, сравнение, подлинность, последствия.

Цель работы: состоит в выявлении акта фальсификации доказательств как уголовно наказуемого деяния в уголовном законодательстве Республики Молдова. В частности, исследование ориентировано в направление анализа и определения препятствий, с которыми сталкиваются правоприменительные субъекты при практическом применении положений ст. 310 УК, и, как следствие, представление данному объекту рекомендаций по изменению и дополнению указанной нормы.

Задачи исследования: анализ эволюции инкриминирования преступления о фальсификации доказательств в уголовном законодательстве Республики Молдова и других государств; выявление сути фальсификации доказательств как социально-правового явления; анализ условий возникновения фальсификаций доказательств как преступление, а также признаков составляющие содержание данного преступного деяния; проведение сравнительного уголовно-правового исследования; изучение судебной практики по делам о фальсификации доказательств; выработка рекомендаций в целях устранения выявленного пробела и единого применения соответствующих норм органами уголовного преследования и судами; выделение ряда законодательных предложений, направленных на совершенствование нормативно-правовой базы в части инкриминирования преступления фальсификации доказательств и др.

Научная новизна и оригинальность: настоящая диссертация представляет собой ранний этап комплексного исследования уголовно-правовых аспектов преступления фальсификации доказательств. В результате эволюционного исследования с применением сравнительного метода в диссертации сформулированы выводы и рекомендации, которые могут составить научную основу для изменения и дополнения положений ст. 310 УК РМ.

Решённая научная задача: заключается в теоретико-практическом анализе нормативной базы инкриминирования преступления, предусмотренного ст. 310 УК РМ. Так же, разработан уголовно-правовой механизм, необходимый для оценки эффективности функционирования правовых норм в данной сфере, с формулировкой выводов и рекомендаций теоретико-практического и нормативного порядка, в том числе с точки зрения *Lex ferenda*, направленных на совершенствование и единое толкование объективных признаков и субъективных сторон анализируемого преступления.

Теоретическая значимость работы: характеризуется тем, что в результате исследования были выявлены законодательные пробелы, создающие препятствия для практического применения положений исследуемой статьи. В этом же контексте были предложены решения по изменению нормативной базы путём внесения изменений и дополнений положений ст. 310 Уголовного кодекса.

Прикладное значение: факты и выводы, выявленные в результате данного исследования, могут послужить ориентиром для доработки уголовного законодательства Республики Молдова, эффективного достижения целей настоящего нормативного акта и защиты правосудия. Выводы и исследования, вытекающие из затронутой темы, могут рассматриваться в качестве предложений в области регулирования уголовной ответственности за фальсификацию доказательств и разработки новых теорий предупреждения данного преступления.

Внедрение научных результатов: полученные в настоящем исследовании научные результаты могут быть использованы в процессе обучения в вузах юридического профиля, на магистратуре, а также докторантуре. В то же время, данные выводы и рекомендации могут быть полезны субъектам правоприменения в их повседневной практике.

ANNOTATION

Piterschi Eugeniu. Legal-criminal analysis of the crime of falsifying evidence. PhD thesis in law. Chisinau, 2023.

Thesis structure: introduction, 4 chapters, general conclusions and recommendations, bibliography of 203 titles, 185 pages of basic text, and 4 annexes. The results obtained are published in 30 scientific papers.

Keywords: crime, Justice, proof, evidence, criminal trial, civil trial, elements, forgery, facts, quality of evidence, document, falsification of evidence, compared, authentic, consequences.

The purpose of the work: is to elucidate the act of falsification of evidence as criminal offence in the criminal legislation of the Republic of Moldova. In particular, the study is focused on the analysis and finding of the impediments encountered by law enforcement subjects in the practical application of the provisions of Article 310 of the Criminal Code, and as a result the submission to this subject of the recommendations for amending and supplementing the prenoted norm.

Research objectives: analysis of the evolution of the criminalisation of the offence of evidence falsification in the criminal legislation of the Republic of Moldova and other states; elucidation of the essence of falsification of evidence as a socio-legal phenomenon; analysis of the causes and conditions giving rise to the offence of tampering wint evidence and its constituent elements; conducting a comparative criminal law study; studying the judicial practice in the field of evidence falsification, formulation of recommendations in order to exclude the deficiency found and uniform application of those rules by criminal prosecution bodies and courts; highlighting some proposals of *lex ferenda* which would aim at improving the normative-criminal framework concerning the criminalisation of the offence of tampering with evidence, etc.

Scientific novelty and originality: this study represents an early stage in the field of complex research into the legal-criminal aspects of the offence of falsification of evidence. As a result of an evolutionary research, applying the comparative method, conclusions and recommendations have been formulated in the work which can constitute a scientific basis for amending and supplementing the provisions of Article 310 of the Criminal Code (Falsification of evidence).

The scientific problem solved: consists in the theoretical-practical analysis of the normative framework for criminalisation of the offence provided by art. 310 Criminal Code. The legal-criminal mechanism necessary to assess the effectiveness of the functioning of the legal provisions in this field was also developed, with the formulation of theoretical-practical and normative conclusions and recommendations, including by way of lex ferenda, aimed at the improvement and uniform interpretation of the objective and subjective signs of the offence analysed.

Theoretical significance: it is characterised by the fact that the outcome of the study identified legislative gaps that create impediments to the application in practice of the provisions of the article under investigation. In the same context, solutions for adjusting the regulatory framework were provided, by amending and supplementing the provisions of Article 310 of the Criminal Code.

Applicative value: the findings and conclusions identified in the result of this research can serve as a benchmark for completing the criminal legislation of the Republic of Moldova, the effective realization of the objectives of this normative act and the protection of justice. The results of the research on the subject serve as a suggestion in the field of regulation of criminal liability for evidence falsification and the development of new theories of prevention of the given crime.

Implementation of scientific results: the scientific results obtained in this research can be used in the process of university studies with legal profile, master's, as well as doctoral students. At the same time, current findings and recommendations can be useful to law enforcement subjects in their daily practice.

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LEGAL-CRIMINAL ANALYSIS OF THE CRIME OF FALSIFYING EVIDENCE

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