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**CRIMINAL LIABILITY FOR EXERCISING DUTIES IN THE
PUBLIC SECTOR IN A SITUATION OF CONFLICT OF
INTEREST**

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CONCEPTUAL LANDMARKS OF RESEARCH

The topicality and importance of the topic

Conflict of interest in the public sphere undermines citizens' trust in institutions, diverting decision-making from serving the general interest to satisfying particular agendas, which weakens social cohesion and administrative efficiency. In the absence of effective prevention and sanctioning mechanisms, this phenomenon generates a climate of institutional opacity that inhibits democratic control and administrative transparency. Moreover, its persistence favours the accumulation of discretionary power in the hands of privileged actors, reducing the competitiveness of the decision-making process and diminishing the quality of public policies. Some parts of the provision of art. 326¹ of the CrC RM and certain extra-criminal norms, to which this article refers, already seem to have reached a threshold of normative wear and tear, in which the ambiguity of the formulations and the conceptual insufficiency affect not only the practical applicability, but also the preventive function of incrimination. In a legal context marked by the dynamics of white-collar crime and international requirements regarding the integrity of the public office, these norms prove not always effective. The proposed research assumes the role of analysing in depth the shortcomings of the normative framework in the matter, offering solutions aimed at restoring the balance between normative clarity, sanctioning efficiency and systemic coherence.

Framing the topic in international concerns

The Republic of Moldova's firm adherence to international standards for preventing and combating crime functions as a key mechanism for discovering, documenting and sanctioning manifestations of conflict of interest in the public sector. This orientation not only strengthens citizens' trust in the integrity of the administrative act but also strengthens the institutional architecture by aligning it with the principles of transparency, accountability and good governance. Thus, pursuant to para. 4 of art. 7 and para. 5 of art. 8 of the UN Convention against Corruption¹, States parties are called upon to develop and strengthen legal frameworks designed to ensure transparency and minimize the occurrence of conflicts of interest in the public sector; at the same time, they have the responsibility to establish rules by which public officials must declare personal interests that may influence the impartiality of the exercise of their functions. From art. 13 of the Recommendation Rec(2000)10 on Codes of conduct for public officials (adopted by the Committee of Ministers on 11 May 2000)² result: conflict of interest occurs when the personal interest of the public official – direct or apparent – may affect the impartiality of his act; it must be recognized, avoided, declared and removed. Para. (2) and (5) of art. 424 of the Association Agreement between the Republic of Moldova and the European Union³ provide the obligation of the Moldovan authorities to prevent, detect and sanction, among other things, conflicts of interest in the management of European funds, ensuring transparency, equal treatment and sound financial management. These norms do not contain a recommendation to penalize conflicts of interest in the public sector. On the other hand, in accordance with art. 425 of this Agreement, “the authorities of the Republic of Moldova shall ensure the investigation and prosecution of alleged and actual cases of

¹ See: *United Nations Convention against Corruption*. [accessed at 15.08.2023] Available: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

² See: *Recommendation No. R (2000)10 of the Committee of Ministers to Member states on codes of conduct for public officials*. [accessed at 17.07.2025] Available: <https://rm.coe.int/16806cc1ec>

³ See: Association Agreement Republic of Moldova – European Union. In: *Official Gazette of the Republic of Moldova*, 2014, No. 185-199.

[...] conflict of interest, detected following national or EU controls. [...]”⁴ The latter norm can be interpreted as an indirect recommendation to criminalize conflicts of interest in the public sector, without specifying whether this criminalization should be *nomen juris*. The legislator of the Republic of Moldova has opted for a distinct regulation of the forms of legal liability applicable in cases of conflict of interest in the public sector. Although there is no international recommendation to criminalize such acts, the idea of grading liability for criminal and disciplinary wrongdoing is conceptually well-founded. Effective prevention and sanctioning of conflicts of interest in the public sector is an essential condition for strengthening trust in the administrative act and for protecting institutional integrity. These mechanisms not only reduce the risk of abuse, but also contribute to the construction of a transparent, accountable and public interest-oriented administrative framework.

Framing the topic within national and regional concerns

In our country, the defense of the rule of law against the risks generated by conflicts of interest in the public sector is achieved through a complex regulatory framework, consisting of internal norms that complement and strengthen the international commitments assumed by the Republic of Moldova. In this context, in the Constitution of the Republic of Moldova (hereinafter – CRM) the provisions of para. (3) art. 1: “The Republic of Moldova is a democratic state governed by the rule of law, in which human dignity, human rights and freedoms, justice [...] represent supreme values and are guaranteed”; art. 55: “Any person exercises his constitutional rights and freedoms in good faith, without violating the rights and freedoms of others”.⁵ In accordance with letter a) para. (2) of art. 45 of Law No. 82 of 25.05.2017 on integrity (hereinafter – Law No. 82/2017), “the following acts related to acts of corruption are crimes [...] exercising official duties in the public sector in a situation of conflict of interest.”⁶ According to art. 23 of Law no. 133/2016, “violation of the provisions of this law shall entail disciplinary liability [...] or criminal liability, as the case may be”⁷ (para.(2)); “the act of the subject of the declaration in respect of which it was found that he/she resolved a request/proceedings, issued or adopted an administrative act, concluded, directly or through a third party, a legal act, made a decision or participated in making a decision in violation of the legal provisions regarding the conflict of interest constitutes grounds for holding the subject liable [...] criminally and/or, as the case may be, for the revocation, dismissal or termination of the mandate, employment or service relationships of the subject in question”⁸ (para. (4)). Starting from the existing extra-criminal framework, art. 326¹ of the CrC RM enshrines the prohibition of exercising public sector duties in a situation of conflict of interest and regulates the penalty applicable in case of violation of this prohibition.

Our research is based on both an appreciable regulatory framework and a varied scientific bibliography. This theoretical foundation includes works developed by authors from the Republic of Moldova and from other academic spaces. The works consulted offer not only conceptual support, but also a diversity of perspectives that contribute to deepening the analysis. By capitalizing on these sources, we aim to support the arguments formulated and to offer a relevant contribution to the development of scientific knowledge in the field addressed. Thus, our analysis is based on the scientific contributions of the doctrinaires: O. Bivol; S. Brînză; R. Capbătut; C. Chihai; A. Codreanu;

⁴ Association Agreement Republic of Moldova – European Union. In: *Official Gazette of the Republic of Moldova*, 2014, No. 185-199.

⁵ Ibidem.

⁶ Integrity Law: No. 82 of 25.05.2017. In: *Official Gazette of the Republic of Moldova*, 2017, No. 229-243, 360.

⁷ Law on the declaration of assets and personal interests: No. 133 of 17.06.2016. In: *Official Gazette of the Republic of Moldova*, 2016, No. 245-246, 513.

⁸ Ibidem.

A. Dupu; A. Eșanu; V. Guțuleac; A. Hemei; V. Moraru; T. Mostovei; A. Popovici; V. Stati (Republic of Moldova); N. Nikolov (Bulgaria); R.F. Cranston (Great Britain); T.M. Bărăgan; C.M. Bobașu; S. Bogdan; C. Ceasca; A. Chirilă; T. Chiuariu; G. Cirimbei; R. Jurj-Tudoran; A. Lazăr; M. Mareș; V. Mirișan; L. Pușcașu; M.V. Tudoran; N.-C. Ursulescu; G.A. Ușurelu (România); A.M. Abaihanova; E.A. Antonovskaia; A.V. Belețki; Z.A. Ciociueva; N.A. Ghilmitdinova; B.N. Golovkin; S.V. Lavrentieva (Russia); Ö.F. Gençkaya (Turkey); A.G. Alexeev; O.Iu. Andrușcenko; M.A. Anișcenko; O.I. Bezpalova; K.L. Bugaiciuk; P. Demiak; O.V. Djafarova; A.O. Diciko; R. Dutka; L.S. Gamburg; V.O. Ivanțov; M.A. Komziuk; I.D. Pastuh; V.V. Pivovarov; S.O. Șatrava; O.V. Tokar-Ostapenko; Z. Zaghinei-Zabolotenko; L.O. Zavgorodnea (Ukraine); B. Ismailov; S. Mansurova (Uzbekistan), etc.

Framing the topic within the research team's concerns

Six authors from the Department of Criminal Law of the Faculty of Law of the Moldova State University – S. Brînză, A. Eșanu, V. Moraru, V. Stati (from the scientific and didactic staff), C. Chihai and O. Bivol (from among the doctoral students) – played an important role in consolidating the doctrine on the crimes regulated by art. 326¹ CrC RM. The works of these authors represent the theoretical foundation of liability for the respective crimes, significantly contributing to the continuous deepening of knowledge of their legal essence.

Framing the topic in an inter- and transdisciplinary context. The research undertaken by us goes beyond the framework of an exclusively legal-criminal analysis of the exercise of powers in the public sector in a conflict of interest situation, proposing a multifactorial approach to the phenomenon of conflict of interest as a whole. The problems, associated with the offenses regulated by art. 326¹ of the Criminal Code of the Republic of Moldova, involve a network of normative interdependencies and not only, which transcend the boundaries of criminal law, intersecting with other legal branches and relevant non-legal disciplines. In this regard, we are talking about the works of the authors: I. Didenko, D.E. Simakova, A.C. Tarsia, I.A. Votcenko, O. Zlobina etc. (criminologie); E.N. Ivanova, V.V. Pivovarov etc. (conflict studies); N.M. Corceak, Iu.S. Danilenko, L.I. Ievleva, V.I. Mihailov etc. (deontology); A. Codreanu, M. Dogaru, I. Pastuh, L.O. Zavgorodnea etc. (administrative law); V. Hâncu, L. Săuleanu etc. (business law); I.A. Pahomova, S.N. Șeverdeaev etc. (constitutional law); K.L. Bugaiciuk, D.V. Gudkov, M.A. Komziuk etc. (contraventional law); O. Bivol, S. Bogdan, S. Brînză, C. Ceasca, C. Chihai, A. Chirilă, A. Eșanu, A. Lazăr, V. Mirișan, V. Moraru, V. Stati, M.V. Tudoran, N.-C. Ursulescu etc. (criminal law); O. Kovalenko, A. Popovici etc. (administrative sciences), etc.

Presentation of previous research results on the chosen topic

A number of authors in the field of criminal sciences have dedicated studies to the issue of liability for the acts incriminated in art. 326¹ of the CrC RM: O. Bivol, S. Brînză, C. Chihai, V. Moraru, V. Stati, etc. Although several studies have been published on the topic of the crimes provided for in art. 326¹ of the CrC RM, they either address only fragments of the stated issues without outlining a complete examination of the respective crimes, or represent only starting points for a more consistent examination of criminal liability for the acts incriminated in art. 326¹ of the CrC RM. Likewise, between the analysed authors, sometimes there are inconsistencies in perspective, materialized in conceptual disagreements regarding: a) the opportunity to incriminate the acts specified in art. 326¹ of the CrC RM; b) the possibility of reporting the offenses, provided for in art. 326¹ of the CrC RM, to the category of corruption offenses; c) the opportunity to criminally sanction the exercise of duties in the public sphere in a situation of conflict of interest, etc. Continuous scientific investigation is possible precisely because of the contribution brought by diverse perspectives. In doctrine, divergent opinions regarding the interpretation of art. 326¹ CP RM, even if they are not numerous, become sources of progress, not obstacles, thus providing the

opportunity to review arguments and formulate more precise conclusions. This plurality, which at the same time fuels a process of continuous reflection, opens new perspectives on complex issues of criminal law.

The purpose of the thesis is to investigate the grounds – real and legal – of criminal liability for the acts incriminated under art. 326¹ of the CrC RM (taking into account both the extra-criminal legal framework represented by Law no. 132/2016, Law no. 133/2016, Law no. 82/2017, etc., as well as the practice of the National Integrity Authority (hereinafter – NIA)), by clarifying the controversial aspects related to the conflict of interest in the public sector (with an emphasis on the legal and criminal implications of such a conflict) and by developing solutions capable of ensuring the overcoming of the problems identified.

Research objectives:

1) critical investigation of the positions in the specialized doctrine regarding criminal liability for offenses of exercising attributions in the public sector in a conflict of interest situation, highlighting areas of consensus and interpretative tensions; 2) examination of norms outside the criminal law, which have a reference function, being useful for interpreting the terms and phrases in the provision of art. 326¹ of the CrC RM; 3) analysis of the criminal legislation of other states and of regulations that are no longer in force, applied on the territory of the Republic of Moldova or in other states, capitalizing on efficient models in order to streamline the criminalization of the acts specified in art. 326¹ of the CrC RM; 4) determining the degree of compatibility between domestic regulations and assumed international commitments, in particular regarding the protection of the legal order against conflict of interest in the public sector; 5) clarifying the positions regarding the content of the generic legal object, the subgroup legal object, the special legal object, the material (immaterial) object and the proceeds of the analysed crimes; 6) characterizing all types of victims of the crimes provided for in art. 326¹ of the CrC RM; 7) establishing the signs of the objective side of these crimes; 8) identifying the structure of the prejudicial act provided for in art. 326¹ of the CrC RM; 9) examining the normative modalities of the main action and the adjacent inaction as part of the prejudicial act provided for in art. 326¹ of the CrC RM, the environment and time of the commission of the respective act; 10) clarifying the positions regarding the form of guilt that the perpetrator expresses in relation to the crimes provided for in art. 326¹ of the CrC RM, etc.

The research hypothesis finds its foundation in the following ideas: the basis for the application of art. 326¹ of the CrC RM is the act of the subject of the declaration in respect of which it was found that he was in a consummated conflict of interest; in the presence of a consummated conflict of interest, if the perpetrator pursues the purpose provided for by art. 326¹ of the CrC RM, we are talking about the consummation of one of the crimes provided for by this article. In the presence of a real conflict of interest, if the perpetrator pursues the same purpose, we are talking, as the case may be, either about the internal period of carrying out the criminal activity provided for by this article, or about the external period of carrying out such an activity (more precisely – about the attempted crime). In the presence of a potential conflict of interest, if the perpetrator pursues the purpose provided for in art. 326¹ of the CrC RM, we are talking only about the internal period of carrying out the criminal activity provided for in this article; in all cases of committing the crimes provided for in art. 326¹ of the CrC RM, the main action is accompanied by the adjacent inaction. However, the obligation to declare the actual conflict of interest (by informing the appropriate decision-makers) falls specifically on the subject of these crimes, not on anyone else; in all cases of committing the crimes provided for in art. 326¹ of the CrC RM: a) the main action is accompanied by adjacent inaction, namely – the failure to declare the actual conflict of interest; b) the environment for committing the crime is present, namely - the failure to resolve the actual conflict of interest by the

head of the public organization, NIA or the Integrity Council, as the case may be; in the case of the crimes provided for in art. 326¹ of the CrC RM, the special reason consists in personal interest which only partially corresponds to the meaning of this notion in art. 2 of Law no. 133/2016.

Synthesis of research methodology and justification of chosen research methods

The doctoral thesis has a complex conceptual foundation, including doctrine, national criminal and extra-criminal legislation, international and European norms, jurisprudence from the Republic of Moldova and Romania. In the absence of an evolved judicial practice of applying art. 326¹ of the CrC RM, I resorted to examining relevant cases from the practice of the NIA. The analysis of these cases is admissible and conclusive, since the basis for the application of art. 326¹ of the CrC RM is the act of the subject of the declaration in respect of which it was found (by the NIA) that he was in a consummated conflict of interest. The logical, historical, systemic and comparative legal research methods were applied in order to achieve the purpose of the present investigation.

THESIS CONTENT

The structure of the thesis comprises three chapters, each concluded by a section summarizing the issues addressed and the results that were obtained.

Chapter 1 – *Analysis of scientific materials on criminal liability for exercising public sector duties in a conflict of interest situation* – examines: scientific materials on liability for exercising public sector duties in a conflict of interest situation, published in the Republic of Moldova; scientific materials on liability for exercising public sector duties in a conflict of interest situation, which were published abroad.

S. Brînză and V. Stati published a scientific paper in 2017 analysing a legislative initiative to criminalize, among other things, conflict of interest.⁹

More specifically, this study focuses on the analysis of the amendments and additions to the special part of the Criminal Code of the Republic of Moldova, proposed within the framework of Draft Law no. 268/2016. In this context, the positive and negative effects of a possible adoption of this project are examined. Likewise, opinions, observations and suggestions are formulated regarding the improvement of the quality of Draft Law no. 268/2016. In that project, it was proposed to supplement the Criminal Code with art. 326² “Exercise of duties in the public sector in a situation of conflict of interest”¹⁰ și art. 335² “Exercise of duties in the private sphere in a situation of conflict of interest”¹¹. The authors criticize the Information Note to the Draft Law no. 268/2016, which seems not to accurately reflect reality. S. Brînză and V. Stati argue that the obligation to criminalize the acts in question does not result from the UN Convention against Corruption¹² or from the Association Agreement Republic of Moldova – European Union.¹³ Consequently, the two doctrinaires consider the disciplinary liability provided for in para. (4) of art. 23 of Law no. 133/2016 sufficient.

⁹ See: BRÎNZA, Serghei, STATI, Vitalie. Critical observations on Draft Law No. 268/2016. In: *Actual scientific research in the modern world*, 2017, Issue 1, part 4, pp. 82-96. ISSN 2524-0986.

¹⁰ *Draft Law on amending and supplementing certain legislative acts (Criminal Code – art. 55, 60, 64, etc.; Criminal Procedure Code – art. 132⁸, etc.)*. [accessed at 15.08.2023] Available: <https://old.parlament.md/LegislationDocument.aspx?Id=e6165fec-2671-4e7e-ae11-bdf0083499bc>

¹¹ *Ibidem*.

¹² See: *United Nations Convention against Corruption*. [accessed at 15.08.2023] Available: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

¹³ See: Association Agreement Republic of Moldova – European Union. In: *Official Gazette of the Republic of Moldova*, 2014, no. 185-199.

In 2018, V. Moraru and V. Stati published a scientific article addressing the issue of the appropriateness of criminalizing conflict of interest.¹⁴

In this context, it should be noted that, in Project no. 34/2018, it was proposed to supplement the Criminal Code of the Republic of Moldova with art. 326¹ “Exercise of duties in the public sector in a situation of conflict of interest”.¹⁵ In the authors' view, the analysis of the legislation shows that the application of disciplinary sanctions (for example, salary reduction or demotion from position) does not always have a deterrent effect on those who exercise their duties in the public sector in a conflict of interest situation. According to V. Moraru and V. Stati, it is important that in the provision of para. (1) of art. 326¹ of the CrC RM the phrase “in order to obtain, directly or indirectly, a patrimonial advantage whose value exceeds 10,000 conventional units” is used.¹⁶ From this phrase it follows that the exercise of duties in the public sector in a situation of conflict of interest, which seeks to obtain, directly or indirectly, a non-pecuniary advantage or a patrimonial advantage whose value does not exceed 10,000 conventional units, will constitute a disciplinary offense and will not be qualified under art. 326¹ of the CrC RM. In this way, the criminal wrongdoing is clearly dissociated from the non-criminal wrongdoing. Comparing the sanction in art. 326¹ of the CrC RM with that in para. (2) of art. 327 of the CrC RM, V. Moraru and V. Stati conclude that the rules, set out in par. (3) of art. 5 of Law no. 100 of 22.12.2017 on normative acts¹⁷, were implemented in the most effective way. Consequently, the establishment of criminal liability for such acts is supported. At the same time, the terminological compatibility of art. 326¹ of the CrC RM with Law no. 133/2016 is recommended. The two scholars propose that the fragment of the provision of paragraph (1) of art. 326¹ of the CrC RM – “[...] for the husband, the cohabitant, a relative or a close relative (of the husband/wife or the cohabitant/concubine) up to the second degree inclusive [...]”¹⁸ – to be substituted by the fragment “[...] for a close person or a legal person [...]”.¹⁹ Moreover, V. Moraru and V. Stati recommended supplementing Chapter XIII of the general part of the Criminal Code with article 134¹⁴ “Close person”.²⁰ In this way, from the point of view of the two doctrinaires, the constancy, uniformity and correspondence of the terminology used in the criminal law with that used in other normative acts could be ensured. It is considered that the notion of “close person” is defined in art. 2 of Law no. 133/2016, and the definition in art. 134¹⁴ of the CrC RM should only faithfully reproduce the text of the corresponding definition in art. 2 of Law no. 133/2016.

¹⁴ See: MORARU, Victor, STATI, Vitalie. Is it appropriate to amend the Criminal Code of the Republic of Moldova to criminalize the exercise of public sector duties in a conflict of interest situation? In: *Modern scientific challenges and trends: a collection scientific works of the International scientific conference (20th may, 2018)*. Warsaw: Sp. z o. o. “iScience”, 2018, Part 2, pp. 90-95. ISBN 978-83-949403-3-1.

¹⁵ *Draft Law for amending and supplementing certain legislative acts (Criminal Code – art. 326¹; Contraventional Code – art. 313⁴, 313⁵, 313⁶, etc.)*. [accessed at 15.08.2023] Available:

<https://old.parlament.md/LegislationDocument.aspx?Id=65d5abec-373b-4a49-8c37-7079370303e7>

¹⁶ Ibidem.

¹⁷ See: Law on normative acts: No. 100 of 22.12.2017. In: *Official Gazette of the Republic of Moldova*, 2018, No. 7-17, 34.

¹⁸ *Draft Law for amending and supplementing certain legislative acts (Criminal Code – art. 326¹; Contraventional Code – art. 313⁴, 313⁵, 313⁶, etc.)*. [accessed at 15.08.2023] Available:

<https://old.parlament.md/LegislationDocument.aspx?Id=65d5abec-373b-4a49-8c37-7079370303e7>

¹⁹ MORARU, Victor, STATI, Vitalie. Is it appropriate to amend the Criminal Code of the Republic of Moldova to criminalize the exercise of public sector duties in a conflict of interest situation? In: *Modern scientific challenges and trends: a collection scientific works of the International scientific conference (20th may, 2018)*. Warsaw: Sp. z o. o. “iScience”, 2018, Part 2, pp. 90-95. ISBN 978-83-949403-3-1.

²⁰ Ibidem.

The scientific paper in which S. Brînză and V. Stati conduct a thorough investigation of the crimes of exercising public sector duties in a conflict of interest situation, which are provided for in art. 326¹ of the CrC RM, dates back to 2018.²¹

To this end, the authors argue, first of all, why they consider that art. 326¹ of the CrC RM provides for liability for two offenses, not for one. Then, the support for the criminalization in art. 326¹ of the CrC RM of offenses grouped under the marginal name of exercising attributions in the public sector in a situation of conflict of interest is identified in international documents and in Romanian criminal legislation. In an attempt to establish the content of the special legal object of the analysed offenses, S. Brînză and V. Stati emphasize that “such doctrinal views can only be approached through the prism of art. 326¹ of the CrC RM.”²² After this clarification, the content of the special legal object of the offenses provided for in art. 326¹ of the Criminal Code of the Republic of Moldova is identified, referring to Law no. 133/2016 for this purpose. Arguing with some Romanian authors, S. Brînză and V. Stati explain why, in the context of the offenses provided for in art. 326¹ of the CrC RM, the material (immaterial) object of the offense must be distinguished from the proceeds of the offense, and the proceeds of the offense must, in turn, be dissociated from the object of the purpose of the offense. After determining the victim of the analysed crimes, the authors proceed to the analysis of the three constitutive signs of the objective side: the prejudicial act; the time of the crime; the environment of the crime. S. Brînză and V. Stati identify and examine in turn the five normative modalities of the prejudicial act specified in art. 326¹ of the CrC RM. The authors emphasize that the list of these modalities is limiting, and the time of the crime and the environment of the crime are indispensable. In the process of examining the time of committing the crimes provided for in art. 326¹ of the CrC RM, S. Brînză and V. Stati present arguments why the notion of time of exercising official duties should not be confused with the notion of time of fulfilling official obligations.

In 2019, shortly after the entry into force of Law no. 66/2018, A. Eșanu's scientific paper was published.²³

In this publication, the author identifies the social and legal premises that underpinned the criminalization in art. 326¹ of the CrC RM of the acts that are grouped under the marginal name of exercising public sector duties in a conflict of interest situation. Another objective of A. Eșanu was to determine whether or not it was appropriate to disjoin these acts from the matrix of abuse of power or abuse of office criminalized in art. 327 of the CrC RM. In order to achieve these objectives, the author analyses the models of legal elevation in the legislation of other states, as well as international standards and instruments in the field. A. Eșanu's conclusion is that “the reasons that underpinned the express criminalization of the exercise of public sector duties in a conflict of interest situation are directly proportional to the essential principles of the normal functioning of public entities”.²⁴

²¹ See: BRÎNZĂ, Serghei, STATI, Vitalie. Exercise of duties in the public sector in a situation of conflict of interest: regulation of liability in the Criminal Code of the Republic of Moldova. In: *Modern scientific challenges and trends: a collection scientific works of the International scientific conference (20th July, 2018)*. Warsaw: Sp. z o. o. “iScience”, 2018, pp. 19-30. ISBN 978-83-949403-3-1.

²² BRÎNZĂ, Serghei, STATI, Vitalie. Exercise of duties in the public sector in a situation of conflict of interest: regulation of liability in the Criminal Code of the Republic of Moldova. In: *Modern scientific challenges and trends: a collection scientific works of the International scientific conference (20th July, 2018)*. Warsaw: Sp. z o. o. “iScience”, 2018, pp. 19-30. ISBN 978-83-949403-3-1.

²³ See: EȘANU, Adriana. Criminalization of the exercise of public sector duties in a conflict of interest situation. Ratio Essendi. In: *Journal of the Prosecutor's Office of the Republic of Moldova*, 2019, no. 2, pp. 17-20. ISSN 2587-3601.

²⁴ EȘANU, Adriana. Criminalization of the exercise of public sector duties in a conflict of interest situation. Ratio Essendi. In: *Journal of the Prosecutor's Office of the Republic of Moldova*, 2019, no. 2, pp. 17-20. ISSN 2587-3601.

In the same year 2019, another scientific paper by *A. Eșanu* appeared.²⁵ This paper develops the ideas from the previous study.

The author demonstrates that the exercise of public sector duties in a conflict of interest situation attracted criminal liability before the entry into force of Law no. 66/2018. However, until this moment, liability applied not for the distinct offenses of exercising public sector duties in a conflict of interest situation, but for abuse of power or abuse of office. More precisely, until the entry into force of Law no. 66/2018, the exercise of public sector duties in a conflict of interest situation was seen as a factual modality of abuse of power or abuse of office. *A. Eșanu* analyses the decision of the Moldovan legislator not to criminalize the act of exercising attributions in the private sector in a situation of conflict of interest. The author believes that, in this way, the “coherence of legal norms” was disregarded²⁶ and neglected certain commitments that our country assumed in the EU accession process. However, *A. Eșanu* considers it inopportune to criminalize the act of exercising attributions in the private sector in a situation of conflict of interest, thus preventing “potential dysfunctions in the private sector”.²⁷ The author welcomes the addition of art. 326¹ to the CrC RM, noting that, in this way, the commission of acts of corruption is indirectly prevented, while ensuring the functioning of public entities in strict accordance with the principles outlined in art. 4 of Law no. 82/2017.²⁸

In 2019, a scientific paper written by *C. Chihai* was published.²⁹

This author demonstrates that the criminalization in art. 326¹ of the Criminal Code of the Republic of Moldova of the acts, which are grouped under the marginal name of exercising powers in the public sector in a situation of conflict of interest, was anticipated by the adoption of certain normative acts through which the Moldovan legislator fulfilled certain obligations towards the international community regarding the prevention and combating of conflicts of interest in the public sphere. *C. Chihai* argues that the provisions of these normative acts, as well as art. 327 of the CrC RM, are not sufficient to ensure the effective prevention and combating of conflicts of interest in the public sphere. The Romanian, French, German and Mexican models of criminalizing the exercise of powers in the public sector in a situation of conflict of interest are examined below. The advantages and disadvantages of these models are highlighted, and certain solutions are suggested for the improvement of art. 326¹ of the CrC RM. In another vein, *C. Chihai* makes an X-ray of the constitutive elements of the offenses provided for by this article. Taking as reference the relevant national and international regulations, but also the opinions of other scholars, *C. Chihai* reveals the content of the generic legal object and the special legal object of the offenses of exercising attributions in the public sector in a situation of conflict of interest.

Our analysis is continued by the publication prepared in 2019 by *A. Eșanu*.³⁰ In this publication, the author shifts the emphasis to aspects that were not the subject of analysis in her first two scientific articles, to which we referred previously.

²⁵ See: EȘANU, Adriana. Criminalizing the exercise of official duties in a conflict of interest situation: arguments for and against. In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2019, no. 11, pp. 62-67. ISSN 1814-3199.

²⁶ EȘANU, Adriana. Criminalizing the exercise of official duties in a conflict of interest situation: arguments for and against. In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2019, no. 11, pp. 62-67. ISSN 1814-3199.

²⁷ Ibidem.

²⁸ See: Integrity Law: No. 82 of 25.05.2017. In: *Official Gazette of the Republic of Moldova*, 2018, no. 229-243, 360.

²⁹ See: CHIHAI, Cristina. Legal-criminal analysis of crimes of exercising public sector duties in a conflict of interest situation (art. 326¹ of the CrC RM). In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2019, no. 3, pp. 160-178. ISSN 1814-3199.

This time, A. Eșanu addresses the opportunity of adopting Law no. 66/2018 and, implicitly, art. 326¹ of the CrC RM. The issues of application and interpretation of this article are investigated, considering the doctrinal sources in the field, as well as the norms corresponding to art. 326¹ of the CrC RM from the legislation of other states. The harmful degree of the acts incriminated in this article is analysed, identifying the connections between this article and the reference norms in extra-criminal legislation. The emphasis is placed on establishing the content and specific normative modalities of the harmful action specified in art. 326¹ of the CrC RM, on noting the moment of consummation of the offenses provided for by this article, but also on the particular features of the psychological attitude of the subject of the offenses of exercising attributions in the public sector in a situation of conflict of interest. Among other things, A. Eșanu demonstrates that “only the individual administrative act, not the normative administrative act, constitutes the product of the crime of exercising powers in the public sector in a situation of conflict of interest.”³¹ The notions of “conclusion of a legal act” and “decision” are defined, necessary to perceive the content of the prejudicial action provided for in art. 326¹ of the Criminal Code of the Republic of Moldova. For the same purpose, the hypotheses of individual and collective decision-making, as well as participation in decision-making, are analysed. Establishing the moment of consummation of the offenses specified in art. 326¹ of the CrC RM, A. Eșanu draws a parallel between corruption offenses and offenses of exercising attributions in the public sector in a situation of conflict of interest. The differences in principle between them are outlined. These differences imply the presence or, respectively, the absence of a) illicit remuneration; b) the duo “corrupt – corruptor”.

O. Bivol is the author of a study, published in 2021, which analyses the opportunity to supplement Chapter XVI of the special part of the Criminal Code of the Republic of Moldova with an article that would correspond to art. 326¹ CrC RM.³²

Referring to the opinions of some local scholars, who recommended supplementing the aforementioned chapter of the criminal law with articles that would correspond to art. 326 and 329 of the CrC RM, O. Bivol wonders whether it would be appropriate to criminalize the exercise of powers in the private sector in a situation of conflict of interest. Although there was an initiative in the Republic of Moldova to criminalize such an act, the author notes that it was abandoned, most likely due to a solution in the constitutional jurisprudence of Romania. In this way, the Moldovan legislator did not fulfil its commitment, assumed before the international community, to criminalize the exercise of powers in the private sector in a situation of conflict of interest. Such an act still remains one of the factual modalities of the offense provided for in art. 335 of the CrC RM.

In Chapter 2 – *Criminal-legal analysis of the crimes provided for in art. 326¹ of the CrC RM* – the research focuses on: the object of the crimes (namely – the general legal object, the generic legal object, the subgroup legal object, the special legal object, the material and immaterial object, the product, as well as the categories of victims targeted); the objective side (the conditions that the prejudicial act must meet, the environment and the time of the commission of the crime); the

³⁰ See: EȘANU, Adriana. The exercise of public sector duties in a conflict of interest situation: legal and criminal connotations. In: *Realities and perspectives of national legal education: Collection of communications. Vol. 2, October 1-2, 2019, Chișinău*. Chișinău: CEP USM, 2019, pp. 51-59. ISBN 978-9975-149-88-4.

³¹ EȘANU, Adriana. The exercise of public sector duties in a conflict of interest situation: legal and criminal connotations. In: *Realities and perspectives of national legal education: Collection of communications. Vol. 2, October 1-2, 2019, Chișinău*. Chișinău: CEP USM, 2019, pp. 51-59. ISBN 978-9975-149-88-4.

³² See: BIVOL, Octavian. The limits of criminalizing the acts of exercising official duties in the private sector in situations of conflict of interest. In: *Integration through research and innovation: Legal and economic sciences, November 10-11, 2021, Chișinău*. Chișinău: Editorial-Printing Centre of MSU, 2021, pp. 114-117. ISBN 978-9975-158-56-5.

subjective side (the form of guilt and the related secondary elements); the subject of the crime (the general conditions that the subject of the crime satisfies, the special qualities of the subject of the crime, the individualizing features of the participants in the crime).

A number of scholars are of the opinion – explicitly or implicitly – that the crimes, which are provided for by art. 326¹ of the Criminal Code of the Republic of Moldova or by the corresponding norms in the legislation of other states, are not part of the corruption crimes. For example, S. Brînză and V. Stati mention: “it is of the essence of corruption that it is expressed either in the request, receipt or acceptance, directly or indirectly, for oneself or for another person, of material benefits or an undue advantage, or in the illegal promise, offer or granting of such benefits or undue advantages.”³³ Gh. Reniță has a similar opinion.³⁴ In turn, A. Eșanu argues: “Corruption crimes cannot exist outside of illicit remuneration, which necessarily requires the existence of a corrupt person, on the one hand, and a corruptor, on the other. *Per a contrario*, in the case of exercising duties in the public sector in a situation of conflict of interest, there is no longer a need for the two persons typical of corruption crimes.”³⁵ The opinions of A. Hemei and Iu.A. Vancik are consonant with that of A. Eșanu.³⁶ On the same wavelength, C. Brînză reveals: “There is no basis to state that the act of abuse of power or abuse of office can be equated with corruption. [...] The criminal acts and contraventions, listed in para. (2) and (3) art. 44 of Law no. 82/2017, form the content of the notion of corruption within the meaning of this law.”³⁷ As mentioned above, “the exercise of public sector duties in a situation of conflict of interest”³⁸ is specified in paragraph (2) of article 45 of Law no. 82/2017. In addition, art. 326¹ of the CrC RM constitutes a special norm compared to art. 327 of the CrC RM. In light of these arguments, C. Brînză's opinion leaves no doubt that this author considers that the offenses provided for in art. 326¹ of the CrC RM are not corruption offenses.

A particularity of corruption crimes, which cannot be ignored, allows us to distinguish them from the crimes provided for in art. 326¹ of the CrC RM.

Thus, analysing the offenses of passive corruption (art. 324 of the Criminal Code of the Republic of Moldova), S. Brînză, V. Stati and C. Gurschi mention: “It is necessary that the illicit remuneration constitute a counterpart of the conduct that the public person or foreign public person undertakes to have [...]”³⁹. The same authors continue: “If the public figure or foreign public figure demands,

³³ BRÎNZĂ, Serghei, STATI, Vitalie. Critical observations on Draft Law No. 268/2016. In: *Actual scientific research in the modern world*, 2017, Issue 1, part 4, pp. 82-96. ISSN 2524-0986.

³⁴ See: RENEȚĂ, Gheorghe. Event manipulation and fixed bets (art. 242¹ and 242² of the CrC RM): corruption crimes? In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2017, no. 3, pp. 180-191. ISSN 1814-3199.

³⁵ EȘANU, Adriana. *Criminalizing the exercise of official duties in a conflict of interest situation: arguments for and against*. In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2019, nr. 11, pp. 62-67. ISSN 1814-3199; EȘANU, Adriana. The exercise of public sector duties in a conflict of interest situation: legal and criminal connotations. In: *Realities and perspectives of national legal education: Collection of communications, Vol. 2, October 1-2, 2019, Chișinău*. Chișinău: CEP USM, 2019, pp. 51-59. ISBN 978-9975-149-88-4.

³⁶ See: HEMEI, Alexandru. Criminal liability for exercising public sector duties in a conflict of interest situation. In: *Scientific Annals of the State University of Moldova: Legal Sciences. Social Sciences, September 16, 2022, Chișinău*. Chișinău: Editorial-Printing Centre of MSU, 2022, pp. 223-226. ISBN 978-9975-142-54-0; VANCIK, Iu.A. General theoretical approaches to definition of corruption, corruption actions and corruption relations. In: *Philosophical and methodological problems*, 2014, no. 1, p. 175-181. ISSN 2519-4674.

³⁷ BRÎNZĂ, Cristian. Reflections on the content of the notion of corruption. In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2019, nr. 3, pp. 146-159. ISSN 1814-3199; BRÎNZĂ, Cristian. *Criminal liability for bribery and bribery*. Chișinău: Central Printing House, 2021, p. 51, 61. 428 p. ISBN 978-9975-157-88-9.

³⁸ Integrity Law: No. 82 of 25.05.2017. In: *Official Gazette of the Republic of Moldova*, 2017, no. 229-243, 360.

³⁹ BRÎNZĂ, Serghei, STATI, Vitalie. *Treatise on Criminal Law. Special Part. Vol. II*. Chișinău: Central Printing House, 2015, p. 860. 1300 p. ISBN 978-9975-53-470-3; BRÎNZĂ, Serghei, STATI, Vitalie. *Criminal law. Special part. Vol. II*. Chișinău: Central Printing House, 2011, p. 825. 1324 p. ISBN 978-9975-53-034-7; POALELUNGI,

accepts or receives the illicit remuneration not as a counter-equivalent of the conduct that he undertakes to have, then the acts committed will not constitute the crime provided for in paragraph (1) of art. 324 of the CrC RM, but, possibly, another act (for example, one of the acts specified in art. 327 of the CrC RM or art. 312 of the Contravention Code).⁴⁰ In addition, in another work, S. Brînză and V. Stati point out: “The material or immaterial object of the offenses provided for in art. 327 of the CrC RM, in general, and of the offense provided for in letter b¹) para. (2) of art. 327 of the CrC RM, in particular, cannot have the quality of illicit remuneration. This means that [the benefits] that represent the material or immaterial object of the offenses provided for in art. 327 of the CrC RM, in general, and of the offense provided for in letter b¹) para. (2) of art. 327 of the CrC RM, in particular, cannot constitute a counterpart of the conduct that the perpetrator undertakes to have [...].”⁴¹ Other local doctrinaires have a similar position.⁴²

In the local doctrine, only S. Brînză and V. Stati established the special legal object of the offenses provided for in art. 326¹ of the CrC RM: “social relations regarding the proper performance of service activity in the public sphere, which is incompatible with the act of the public person or person with a public dignity position, who, in the exercise of his/her official duties, resolves requests, requests or complaints, adopts an administrative act, concludes a legal act, makes a decision or participates in making a decision in order to obtain a patrimonial advantage whose value exceeds 10,000 conventional units, for himself/herself or for a close person within the meaning of Law no. 133/2016, if the conflict of interest has not been declared and resolved in accordance with the legislation on the declaration and control of assets and personal interests.”⁴³ C. Chihai joins this point of view.⁴⁴ Art. 326¹ of the CrC RM provides for liability for two offenses. C. Timofei mentions, not without reason: “If a special legal object were common to two or more offenses, then – lacking its specificity, individuality, particularizing features – it could not even be called a ‘special legal

Mihai et al. *Judge's Manual for Criminal Cases*. Chişinău: Central Printing House, 2013, p. 933. 1192 p. ISBN 978-9975-53-231-0.

⁴⁰ BRÎNZĂ, Serghei, STATI, Vitalie. *Treatise on Criminal Law. Special Part. Vol. II*. Chişinău: Central Printing House, 2015, p. 860. 1300 p. ISBN 978-9975-53-470-3; BRÎNZĂ, Serghei, STATI, Vitalie. *Criminal law. Special part. Vol. II*. Chişinău: Central Printing House, 2011, p. 825. 1324 p. ISBN 978-9975-53-034-7; POALELUNGI, Mihai et al. *Judge's Manual for Criminal Cases*. Chişinău: Central Printing House, 2013, p. 933. 1192 p. ISBN 978-9975-53-231-0.

⁴¹ BRÎNZĂ, Serghei, STATI, Vitalie. Abuse of power or abuse of office committed for material gain, for the purpose of achieving other personal interests or in the interest of a third party: controversies and solutions. In: *SSRN Electronic Journal*. ISSN 1556-5068. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4169537

⁴² See: BRÎNZĂ, Cristian. The meaning of the phrase “what is not due” from the provisions of art. 333 and 334 of the Criminal Code. In: *Integration through research and innovation: Legal and economic sciences, November 7-8, 2019, Chişinău*. Chişinău: CEP USM, 2019, pp. 147-151. ISBN 978-9975-149-46-4; PRISACARI, V.V. Unity and plurality of crimes in relation to the act of passive corruption (Article 324 of the Criminal Code of the Republic of Moldova). In: *Current scientific research in the modern world*, 2021, no. 9-2, p. 94-104. ISSN 2524-0986; TIMOFEI, Corina. The material or immaterial object and the victim in the case of crimes provided for in art. 326 of the CrC RM. In: *National Law Review*, 2013, no. 8, pp. 82-88. ISSN 1811-0770; ȚURCAN, Ion. Regarding the content of objects destined for corruption. In: *National Law Review*, 2010, no. 11, pp. 34-37. ISSN 1811-0770.

⁴³ BRÎNZĂ, Serghei, STATI, Vitalie. Exercise of duties in the public sector in a situation of conflict of interest: regulation of liability in the Criminal Code of the Republic of Moldova. In: *Modern scientific challenges and trends: a collection scientific works of the International scientific conference (20th July, 2018)*. Warsaw: Sp. z o. o. “iScience”, 2018, pp. 19-30. ISBN 978-83-949403-3-1.

⁴⁴ See: CHIHAI, Cristina. Legal-criminal analysis of crimes of exercising public sector duties in a conflict of interest situation (art. 326¹ of the CrC RM). In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2019, no. 3, pp. 160-178. ISSN 1814-3199.

object’.”⁴⁵ In the opinion of S. Brînză, “the special legal object, sometimes suggestively called ‘individual legal object’, is specific for each crime and cannot be common for several crimes”⁴⁶

According to S. Brînză and V. Stati, “the material (immaterial) object of the crimes, provided for in art. 326¹ of the CrC RM, is represented by the raw material, materials or other pre-existing entities from which the product of the crime is made”.⁴⁷ C. Chihai adheres to this point of view.⁴⁸ According to V. Stati, “by ‘immaterial object of the crime’ we must understand the incorporeal entity against which the criminal action is directly directed, through which the legal object of the crime is affected”.⁴⁹ A. Eșanu, in relation to the crimes provided for in art. 326¹ of the CrC RM, speaks of “the existence of a criminal product such as an administrative act, decision, etc.”.⁵⁰ The opinion of S. Brînză and V. Stati is more developed. In relation to the same crimes, these two authors state: “The following must be considered as products of crimes [...], as the case may be: 1) the requests, requests or complaints resolved by the perpetrator; 2) the administrative act adopted by the perpetrator; 3) the legal act concluded, directly or through a third party, by the perpetrator; 4) the decision taken by the perpetrator; 5) the decision in which the perpetrator participated”.⁵¹

We support the position expressed by S. Brînză and V. Stati. In the provision of art. 326¹ of the Criminal Code of the Republic of Moldova, the following phrase indirectly refers to the victim of the crime: “if the conflict of interest has not been declared and resolved in accordance with the legislation on the declaration and control of assets and personal interests”.⁵² This provision, corroborated with those referred to in art. 326¹ of the CrC RM, denotes that, as a result of committing one of the offenses provided for in art. 326¹ of the CrC RM, the public organization is limited in its ability to participate in social relations protected against these offenses.

In art. 326¹ of the CrC RM, liability is provided for crimes in which the prejudicial act includes two components: the main action and the adjacent inaction; this act cannot include a main inaction but always includes an adjacent inaction. From para. (1) art. 326¹ of the CrC RM we can find out that the prejudicial act, which is provided for by this norm, includes, *inter alia*, the main action. This action assumes the presence of the following five normative modalities: 1) resolving requests,

⁴⁵ TIMOFEI, Corina. The legal object of the crimes provided for in art. 326 of the CrC RM. In: *National Law Review*, 2013, no. 4, pp. 48-53. ISSN 1811-0770.

⁴⁶ BRÎNZĂ, Sergiu. *The object of crimes against patrimony*. Chișinău: Central Printing House, 2005, p. 564. 675 p. ISBN 9975-70-414-X.

⁴⁷ BRÎNZĂ, Serghei, STATI, Vitalie. Exercise of duties in the public sector in a situation of conflict of interest: regulation of liability in the Criminal Code of the Republic of Moldova. In: *Modern Scientific Challenges and Trends: a collection scientific works of the International scientific conference (20th July, 2018)*. Warsaw: Sp. z o. o. “iScience”, 2018, pp. 19-30. ISBN 978-83-949403-3-1.

⁴⁸ See: CHIHAI, Cristina. Legal-criminal analysis of crimes of exercising public sector duties in a conflict of interest situation (art. 326¹ of the CrC RM). In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2019, no. 3, pp. 160-178. ISSN 1814-3199.

⁴⁹ STATI, Vitalie. The problem of the material object in the case of the crime of infringement of copyright and related rights (art. 185¹ CrC RM). In: *Theoretical and practical problems of the economy of intellectual property. Papers presented at the 5th edition of the International Scientific-Practical Conference (November 16-17, 2006)*. Chișinău: AGEPI, 2007, pp. 228-230. ISBN 978-9975-911-02-03.

⁵⁰ EȘANU, Adriana. The exercise of public sector duties in a conflict of interest situation: legal and criminal connotations. In: *Realities and perspectives of national legal education: Collection of communications, October 1-2, 2019, Chișinău*. Chișinău: CEP USM, 2019, Vol. 2, pp. 51-59. ISBN 978-9975-149- 88-4.

⁵¹ BRÎNZĂ, Serghei, STATI, Vitalie. Exercise of duties in the public sector in a situation of conflict of interest: regulation of liability in the Criminal Code of the Republic of Moldova. In: *Modern Scientific Challenges and Trends: a collection scientific works of the International scientific conference (20th July, 2018)*. Warsaw: Sp. z o. o. “iScience”, 2018, p. 19-30. ISBN 978-83-949403-3-1.

⁵² Criminal Code of the Republic of Moldova: No. 985 of 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 128-129, 1012.

requests or complaints; 2) adopting an administrative act; 3) concluding, directly or through a third party, a legal act; 4) making a decision; 5) participating in making a decision.

Regarding the motive for the crimes provided for in art. 326¹ of the CrC RM, according to C. Chihai's opinion, this is expressed in "material interest, [...] in a distinguished and predominant manner as the inner impulse that determines the majority of criminals to commit the criminal act".⁵³ It is not clear whether the author considers material interest to be the sole or dominant motive of the analysed crimes. In turn, S. Brînză and V. Stati present an open, exemplary list of motives for the crimes provided for in art. 326¹ of the CrC RM: "material interest; the desire to help a close person within the meaning of Law no. 133/2016, etc."⁵⁴ These two opinions are not identical, leaving certain questions regarding the content of the motive in the case of crimes provided for in art. 326¹ of the CrC RM.

A. Eșanu mentions: "In the criminal sphere, not every conflict of interest that occurs generates criminal liability, but only that which is characterized by intent qualified by purpose. However, the expression 'in order to obtain, directly or indirectly, a patrimonial advantage whose value exceeds 10,000 conventional units' fulfils the role of a mandatory sign of the subjective side of the composition of the offense, the absence of which makes criminal liability inapplicable."⁵⁵ Similar points of view are held by S. Brînză, V. Stati⁵⁶ and C. Chihai.⁵⁷

In para. (1) and letter a) para. (2) of art. 326¹ of the CrC RM, liability is provided for two offenses in each of which the subject has a special distinct quality: "public person"⁵⁸ (para. (1)); "person with public dignity"⁵⁹ (letter a) para. (2)). Not every public person and not every person with a public dignity can be the subject of the crimes provided for in art. 326¹ of the CrC RM. According to S. Brînză and V. Stati, the presence of another special quality of the subject of these crimes is necessary: "person in a conflict of interest within the meaning of para. (10) art. 12 of Law no. 133/2016".⁶⁰ The presence of the first special quality of the subject of the crimes, provided for in art. 326¹ of the CrC RM, is fixed in the very provision of this article. The presence of the second special quality results from the interpretation of art. 326¹ of the CrC RM, namely from the text "for oneself or for a close person within the meaning of Law no. 133/2016 on the declaration of assets and

⁵³ CHIHAI, Cristina. Legal-criminal analysis of crimes of exercising public sector duties in a conflict of interest situation (art. 326¹ of the CrC RM). In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2019, no. 3, pp. 160-178. ISSN 1814-3199.

⁵⁴ BRÎNZĂ, Serghei, STATI, Vitalie. Exercise of duties in the public sector in a situation of conflict of interest: regulation of liability in the Criminal Code of the Republic of Moldova. In: *Modern Scientific Challenges and Trends: a collection scientific works of the International scientific conference (20th July, 2018)*. Warsaw: Sp. z o. o. "iScience", 2018, pp. 19-30. ISBN 978-83-949403-3-1.

⁵⁵ EȘANU, Adriana. Criminalizing the exercise of official duties in a conflict of interest situation: arguments for and against. In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2019, no. 11, pp. 62-67. ISSN 1814-3199.

⁵⁶ See: BRÎNZĂ, Serghei, STATI, Vitalie. Exercise of duties in the public sector in a situation of conflict of interest: regulation of liability in the Criminal Code of the Republic of Moldova. In: *Modern Scientific Challenges and Trends: a collection scientific works of the International scientific conference (20th July, 2018)*. Warsaw: Sp. z o. o. "iScience", 2018, pp. 19-30. ISBN 978-83-949403-3-1.

⁵⁷ See: CHIHAI, Cristina. Legal-criminal analysis of crimes of exercising public sector duties in a conflict of interest situation (art. 326¹ of the CrC RM). In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2019, no. 3, pp. 160-178. ISSN 1814-3199.

⁵⁸ Criminal Code of the Republic of Moldova: No. 985 of 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 128-129, 195.

⁵⁹ Ibidem.

⁶⁰ BRÎNZĂ, Serghei, STATI, Vitalie. Exercise of duties in the public sector in a situation of conflict of interest: regulation of liability in the Criminal Code of the Republic of Moldova. In: *Modern Scientific Challenges and Trends: a collection scientific works of the International scientific conference (20th July, 2018)*. Warsaw: Sp. z o. o. "iScience", 2018, pp. 19-30. ISBN 978-83-949403-3-1.

personal interests, if the conflict of interest has not been declared and resolved in accordance with the legislation on the declaration and control of assets and personal interests”.⁶¹

Chapter 3 – *The results that were obtained following the legal-criminal analysis of the offenses provided for in art. 326¹ of the CrC RM* – is built around the author’s personal imprint, capitalizing on the meticulous analysis and argumentation with scientific precision. The chapter highlights how these results not only contribute to the interpretation of art. 326¹ of the CrC RM, but also redefine its legal content, ensuring a clearer and more nuanced understanding of the criminal law implications of conflict of interest in the public sector.

The proper conduct of activity in the public sphere (in the sense of the name Chapter XV of the Special Part of the Criminal Code of the Republic of Moldova) assumes that persons with a responsible position, public figures, persons with a public dignity position, etc. exercise their rights and fulfil their obligations, respecting the principles established in the laws regulating their activity. The offenses, specified in art. 326¹, 327-329, 330¹, 330², 332, 332¹ and 332² of the CrC RM, have the same legal subgroup object. The special legal object of the crime, provided for in paragraph (1) of art. 326¹ of the CrC RM, is formed by social relations regarding the avoidance of a conflict of interest (if the subject of the declaration has the status of a public person), which aims to obtain, directly or indirectly, a patrimonial advantage whose value exceeds 10,000 conventional units, for oneself or for a close person within the meaning of Law no. 133/2016. The special legal object of the offense, provided for in letter a) para. (2) of art. 326¹ of the CrC RM, is the social relations regarding the avoidance of the consummated conflict of interest (if the subject of the declaration has the status of a person with a public dignity position), which aims to obtain, directly or indirectly, a patrimonial advantage whose value exceeds 10,000 conventional units, for oneself or for a close person within the meaning of Law no. 133/2016. The patrimonial advantage, whose value exceeds 10,000 conventional units, cannot represent the material object of the offenses provided for in art. 326¹ of the CrC RM.

In the case of a real conflict of interest, in some cases we can talk about the internal period of criminal activity, and in other cases we can talk about the external period of criminal activity (more precisely – about the attempted crime). The potential conflict of interest can only attest to the internal period of criminal activity provided for in art. 326¹ of the CrC RM. Art. 326¹ of the CrC RM provides for liability for crimes in which the harmful act includes two components: the main action and the adjacent inaction. Despite this fact, the crimes provided for in art. 326¹ of the CrC RM are not complex. In the case of a consummated conflict of interest, the cumulation of disciplinary liability with criminal liability is possible only if the manner of consummated conflict of interest is specified both in the law regulating the legal status of the perpetrator (or, in the absence of such a law, in Law no. 133/2016), and in art. 326¹ of the CrC RM. The declaration of assets and personal interests (within the meaning of art. 5 of Law no. 133/2016) is not considered in art. 326¹ of the CrC RM. Pantouflage is not a conflict of interest within the meaning of art. 326¹ of the CrC RM.

In the case of the crimes provided for in art. 326¹ of the CrC RM, indirect intent is not possible. In the case of these crimes, the presence of the special motive results from the interpretation of this article and the reference norms of Law no. 133/2016. Personal interest (within the meaning of Law no. 133/2016) meets the following conditions: a) it is at the basis of both a real conflict of interest and a consummated conflict of interest; b) it manifests itself in two forms: material and immaterial; c) it derives from the activities that the subject of the declaration carries out as a private person; d) it

⁶¹ Criminal Code of the Republic of Moldova: No. 985 of 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 128-129, 195.

arises from the relationships that the subject of the declaration has with other natural persons (including close persons) or legal entities (with or without a profit-making purpose). The purpose of the crimes, provided for in art. 326¹ of the CrC RM, satisfies the following conditions: a) the existence of a patrimonial advantage as the purpose pursued by the perpetrator; b) the manner of acquiring this advantage may be direct or indirect; c) the size of the patrimonial advantage pursued exceeds the threshold of 10,000 conventional units. The beneficiary of this advantage is either the perpetrator himself or a close person within the meaning of Law no. 133/2016.

It is not justified to use the phrase "subject of the declaration of assets and personal interests" in relation to the subject of the offenses provided for in art. 326¹ of the CrC RM. The person through whom a legal act is concluded cannot be considered an accomplice to these offenses. The person (other than the perpetrator of the offense) in favour of whom the main action provided for in art. 326¹ of the CrC RM was committed, if he has previously expressed his consent to the commission of this action, has the quality of an accomplice to one of the offenses provided for in art. 326¹ of the CrC RM. The act of the person (other than the perpetrator of the offense), in favour of whom, without a prior promise to him, the main action provided for in art. 326¹ of the CrC RM was committed, can be qualified only on the basis of art. 199 of the CrC RM.

CONCLUSIONS AND RECOMMENDATIONS

The scientific approach carried out in this thesis is embodied in the *results* presented below: 1) the legal object, the material (immaterial) object, the product and the victim of the crimes provided for in art. 326¹ of the CrC RM were analyzed; 2) the structure of the objective side of these crimes was determined; 3) certain hypotheses regarding the adjacent inaction and the environment within the crimes provided for in art. 326¹ of the CrC RM were clarified; 4) the notions that refer to the main action within the respective crimes were precisely defined; 5) the particularities that characterize the secondary signs of the subjective side of the crimes provided for in art. 326¹ of the CrC RM were determined; 6) the interchangeable analysis of the two special qualities of the subject of the respective crimes was carried out; 7) the historical and comparative framework of art. 326¹ of the CrC RM was explored, by reporting on the internal evolution of the relevant legislation, on the solutions established in other legal systems and on international standards; 8) the pertinent jurisprudence was examined, in order to capture the concrete way of applying art. 326¹ of the CrC RM; 9) the limits of applicability of the respective article were identified, by establishing in parallel the limits of application of the adjacent criminal and non-criminal norms; 10) the dysfunctions and practical difficulties encountered in the interpretation and application of art. 326¹ of the CrC RM, the relevant norms of Law no. 133/2016 and other norms were highlighted; 11) legislative proposals were formulated aimed at optimizing the mechanisms for preventing and combating the exercise of powers in the public sector in situations of conflict of interest.

The important scientific problem, solved after obtaining the described results, is expressed in the conceptualization of a theoretical-practical framework for interpreting art. 326¹ of the CrC RM, which has generated clarification of the criteria for qualifying facts based on this article and which could allow for the dynamization of the practice of applying art. 326¹ of the CrC RM, in order to improve and consolidate the regulations – criminal and non-criminal – in the field of preventing and combating conflict of interest in the public sector.

I. Conclusions:

The value and relevance of the important scientific problem were confirmed by the conclusions formulated based on the research hypothesis, presented in detail below:

1. The basis for the application of art. 326¹ of the CrC RM is the act of the subject of the declaration regarding which it was found that he was in a consummated conflict of interest.

From paragraph (4) of art. 23 of Law no. 133/2016, it follows that art. 326¹ of the CrC RM can be applied only if it has been established that the perpetrator committed the action of resolving a request/proceedings, issuing or adopting an administrative act, concluding, directly or through a third party, a legal act, making a decision or participating in making a decision in violation of the legal provisions on conflict of interest. Without this premise, art. 326¹ of the CrC RM cannot be applied. The issuance of a finding act under the above-mentioned conditions falls within the competence of either an integrity inspector within the NIA (which results from letter g) of art. 19 of Law no. 132/2016), or of the Integrity Council (which results from letter j) of paragraph (7) of art. 12 of Law no. 132/2016) (*see in this regard: Chapter 2: Subchapter 2.2; Chapter 3: Subchapter 3.2*);

2. in the presence of a consummated conflict of interest, if the perpetrator pursues the purpose provided for by art. 326¹ of the CrC RM, we are talking about the consummation of one of the crimes provided for by this article. In the presence of a real conflict of interest, if the perpetrator pursues the same purpose, we are talking, as the case may be, either about the internal period of carrying out the criminal activity provided for by this article, or about the external period of carrying out such an activity (more precisely – about the attempted crime). In the presence of a potential conflict of interest, if the perpetrator pursues the purpose provided for by art. 326¹ of the CrC RM, we are talking only about the internal period of carrying out the criminal activity provided for by this article.

In the presence of a potential conflict of interest, if the perpetrator pursues the purpose provided for in art. 326¹ of the CrC RM, the perpetrator can only conceive the criminal plan, crystallizing his intention to commit the act. A potential conflict of interest is not sufficient to attract liability under art. 326¹ of the CrC RM. In the case of a real conflict of interest, the subject of the declaration either begins the execution of the prejudicial act provided for in art. 326¹ of the CrC RM or not. This depends on the option that the subject of the declaration will choose when faced with the situation of performing a certain service action. Being aware that performing that service action would favour him and, at the same time, affect the public interest - the subject of the declaration must make a choice, weigh the pros and cons. This choice assumes that the subject of the declaration would either perform the respective service action or not perform it. The consummation of the conflict of interest (within the meaning of paragraph (10) of art. 12 of Law no. 133/2016) may constitute the basis for considering the crimes provided for in art. 326¹ of the CrC RM as consummated. This is of course if the consummated conflict of interest was established under the conditions of Law no. 132/2016 and Law no. 133/2016. Of the three categories of conflicts of interest provided for in Law no. 133/2016, only the consummated conflict of interest refers in all cases to the execution of the objective side of the crimes provided for in art. 326¹ of the CrC RM, to the external period of carrying out the criminal activity (*see in this regard: Chapter 2: Subchapter 2.2; Chapter 3: Subchapter 3.2*);

3. in all cases of committing the crimes provided for in art. 326¹ of the CrC RM, the main action is accompanied by the adjacent inaction. However, the obligation to declare the real conflict of interest (by informing the appropriate decision-makers) lies specifically with the subject of these crimes, not with anyone else.

In some cases, the analysed adjacent inaction includes two successive acts (namely: failure to declare the actual conflict of interest, as well as failure to resolve the actual conflict of interest). In such cases, the subject of the offenses, provided for in art. 326¹ of the CrC RM, is not only obliged to declare the actual conflict of interest (by informing the appropriate decision-makers), but also obliged to resolve such a conflict of interest. In other cases, the analysed adjacent inaction includes a

single act (namely: failure to declare the actual conflict of interest and, respectively, failure to resolve the actual conflict of interest). In cases of this kind, the subject of the offenses, provided for in art. 326¹ of the CrC RM, is only obliged to declare the real conflict of interest (by informing the appropriate decision-makers). As for the obligation to resolve such a conflict of interest, it is to be executed by certain decision-makers (the head of the public organization, NIA or the Integrity Council, as the case may be). The atmosphere of non-resolution of the real conflict of interest is present only in cases of this kind (*see in this regard: Chapter 2: Subchapter 2.2; Chapter 3: Subchapter 3.2*);

4. in all cases of committing the crimes provided for in art. 326¹ of the CrC RM: a) the main action is accompanied by the adjacent inaction, namely – the failure to declare the real conflict of interest; b) the environment for committing the crime is present, namely – the failure to resolve the real conflict of interest by the head of the public organization, NIA or the Integrity Council, as the case may be.

The adjacent inaction within the crimes, provided for in art. 326¹ of the CrC RM, assumes that, before committing the main action provided for in this article, the subject of these crimes does not declare the real conflict of interest (by failing to inform the hierarchical head, the superior hierarchical body, NIA or the Integrity Council). However, the obligation to declare the real conflict of interest (by informing these decision-makers) falls specifically on the subject of these crimes, not on anyone else. As for the environment of committing the crimes provided for in art. 326¹ of the CrC RM, as a secondary sign of the objective side of these crimes, this consists in the failure to resolve the real conflict of interest by the head of the public organization, NIA or the Integrity Council, as the case may be. However, the obligation to resolve the real conflict of interest falls specifically on these decision-makers (*see in this regard: Chapter 2: Subchapter 2.2; Chapter 3: Subchapter 3.2*);

5. in the case of the crimes provided for in art. 326¹ of the CrC RM, the special reason consists in personal interest which only partially corresponds to the meaning of this notion in art. 2 of Law no. 133/2016.

Personal interest is the core of the conflict of interest: for such a conflict to exist, the simultaneous presence of personal interest and public interest is necessary, between which a true cleavage must be outlined. In the absence of personal interest, the hypothesis of a conflict of interest cannot be conceived. The hypothesis is only partially confirmed, according to which, in the case of the crimes provided for in art. 326¹ of the CrC RM, the motive has the same content as the motive described in art. 327 of the CrC RM. Personal interest, as a special motive of the crimes provided for in art. 326¹ of the CrC RM, has a content that is conditioned by the purpose of these crimes. As a result, the motive in question can only consist in the perpetrator's desire to obtain – for himself or for a third person⁶² – a “patrimonial advantage whose value exceeds 10,000 conventional units”.⁶³ (*see in this regard: Chapter 2: Subchapter 2.3; Chapter 3: Subchapter 3.3*).

Description of personal contributions, emphasizing their theoretical significance and practical value. The personal contribution is embodied in the development of an interpretative model of art. 326¹ of the CrC RM and the norms from which it completes its content, correlating the theoretical foundations with the requirements of judicial practice. Among the most telling examples of personal contribution we mention: a) the argumentative support of the idea that the crimes, specified in art.

⁶² We emphasize that, in this context, a third party can only be “a close person within the meaning of Law no. 133/2016 on the declaration of assets and personal interests”*, as mentioned in art. 326¹ of the CrC RM.

* Criminal Code of the Republic of Moldova: No. 985 of 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, No. 128-129, 195.

⁶³ *Ibidem*.

326¹, 327-329, 330¹, 330², 332, 332¹ and 332² of the CrC RM, have the same legal subgroup object. This object is formed by social relations regarding the proper conduct of activity in the public sphere, incompatible with that violation of service obligations that is not directly related to corruption; b) substantiating the claim that it is the special quality of the subject that represents the criterion that reveals the difference between the special legal object of the offense, provided for in paragraph (1) of art. 326¹ of the CrC RM, and the special legal object of the offense specified in letter a) paragraph (2) of art. 326¹ of the CrC RM; c) demonstrating the validity of the statement according to which the patrimonial advantage, the value of which exceeds 10,000 conventional units, cannot represent the material object of the offenses provided for in art. 326¹ of the CrC RM; d) establishing the significance that the potential conflict of interest, the real conflict of interest and the consummated conflict of interest have in the context of the offenses provided for in art. 326¹ of the CrC RM, etc.

The personal contribution to the analysis of liability for the analysed crimes is based on scientific, legal and empirical foundations, utilizing a diverse range of sources and perspectives. *The scientific foundation* of this research is built on doctrinal contributions and scientific studies carried out both in the legal space of the Republic of Moldova and in the international one, which provide solid premises for a multilateral approach to the issue of exercising attributions in the public sector in a situation of conflict of interest. *The legal and empirical foundation* of this doctoral thesis is articulated around the provisions of art. 326¹ of the CrC RM, which represents the core of the analysis, being complemented by the set of criminal norms regarding related acts, relevant extra-criminal provisions, as well as the jurisprudence of the courts of the Republic of Moldova and Romania, as well as the constitutional courts of the two countries. This framework is enriched by the integration of legislative solutions from other legal systems, which allow a comparative view and support the formulation of proposals for improving domestic legislation.

This research claims its *theoretical significance* from a critical examination of the criminal and extra-criminal norms regarding the exercise of powers in the public sector in a conflict of interest situation, harmoniously intertwined with the analysis of judicial practice, constitutional jurisprudence and NIA practice. Through this approach, the paper not only highlights regulatory deficiencies and application ambiguities, but also proposes innovative directions for scientific development, an authentic opening of the debate in the academic and social space, as well as more efficient mechanisms for the protection of social relations with regard to the avoidance of the consummated conflict of interest, which aims to obtain, directly or indirectly, a patrimonial advantage whose value exceeds 10,000 conventional units, for oneself or for a close person within the meaning of Law no. 133/2016.

The practical value of our research lies in its direct utility for criminal law practitioners, providing a solid analytical tool for the interpretation and application of the provisions of art. 326¹ of the CrC RM. Based also on the examination of the practice of applying liability for the conflict of interest committed⁶⁴ and on the comparative and historical analysis of the relevant regulations, the paper identifies deficiencies in legislative drafting, ambiguities in interpretation and difficulties in application, proposing solutions *de lege ferenda*. Through the integrated approach of criminal and extra-criminal norms, complemented by doctrinal perspectives and international legislative models, the study contributes both to the standardization of judicial practice and to increasing the predictability of norms, as well as to strengthening the protection of victims and making potential

⁶⁴ We note in this context that the basis for the application of art. 326¹ of the CrC RM is the act of the subject of the declaration in respect of which it was found that he was in a consummated conflict of interest. That is why we consider the examples from the practice of the NAI relevant.

subjects accountable. At the same time, the research carried out has as its primary purpose to dynamize the application of liability for the offenses provided for in art. 326¹ of the CrC RM, a process that, for now, is marked by inconsistency and inefficiency.

Data on the approval of the results. The most consistent conclusions formulated in this research were included in 11 scientific publications and discussed at scientific conferences held at national and international levels, during the period 2023 – 2025. This involvement supported both the dissemination of information and the development of specialized dialogue.

Indication of the limits of the results obtained, with the identification of the problems that remained unresolved. The limits of the results obtained can be attributed to the following factors: 1) a single case in the national judicial practice in which art. 326¹ of the CrC RM was applied; 2) the shortage of doctrinal publications devoted to the analysis of the offenses provided for by this article; 3) the regulatory framework – criminal and extra-criminal – which contains certain deficiencies and inconsistencies that negatively affect the interpretation of art. 326¹ of the CrC RM. The full achievement of the objectives proposed in this paper and the absence of unresolved problems do not exclude the existence of opportunities for additional investigation, which will be highlighted further.

II. Recommendations:

1. amending the provision of paragraph (1) of art. 326¹ of the CrC RM as follows:

“The act of a public person who, in the exercise of his/her official duties, directly or through a third party, has resolved or, as the case may be, rejected requests, requests or complaints, issued or, as the case may be, cancelled an administrative act, concluded or, as the case may be, terminated a legal act, made a decision or participated in making a decision or, as the case may be, refused/evaded to make a decision or refused/evaded to participate in making a decision in order to obtain, directly or indirectly, a patrimonial advantage whose value exceeds 10,000 conventional units, for himself/herself or for a close person within the meaning of Law no. 133/2016 on the declaration of assets and personal interests, if the conflict of interest has not been declared and resolved in accordance with the legislation on the declaration and control of assets and personal interests”;

2. supplementing art. 326¹ of the CrC RM with paragraph (4) with the following content: “For the purposes of this article, the phrase public funds shall have the meaning of funds of a public organization within the meaning of art. 2 of Law no. 133 of 17 June 2016.”;

3. supplementing art. 327 of the CrC RM with paragraph (4) with the following content: “The provisions of this article shall not apply in the case when the performance, in the exercise of the function, of an action consists of issuing, approving or adopting normative acts.”;

4. amending art. 313² of the Contravention Code of the Republic of Moldova as follows:

“Article 313². Exercising public sector duties in a conflict of interest situation

The act of a public person who, in the exercise of his/her official duties, directly or through a third party, resolved or, as the case may be, rejected requests, requests or complaints, issued or, as the case may be, cancelled an administrative act, concluded or, as the case may be, terminated a legal act, made a decision or participated in making a decision or, as the case may be, refused/evaded to make a decision or refused/evaded to participate in making a decision, if the conflict of interest was not declared and resolved in accordance with the legislation on the declaration and control of assets and personal interests, if the act does not meet the constitutive elements of the crime,

shall be punished with a fine of 60 to 90 conventional units applied to the individual, with a fine of 72 to 150 conventional units applied to the person with a responsible position with or without deprivation, in both cases, of the right to carry out a certain activity or to hold certain positions for a term of 6 months to one year.”;

5. the substitution, in the definition of the notion of “public organization” in art. 2 of Law no. 133/2016, of the phrase “financial institution” by the phrase “commercial bank”;

6. the substitution, in the provision of letter d) paragraph (1) of article 4 of Law no. 133/2016, at the end of the first sentence, after the words “deposits in”, of the words “financial institutions” by the words “commercial banks”;

7. amending in art. 12 of Law no. 133/2016 some paragraphs as follows:

– “(3) A real conflict of interest occurs when the subject of the declaration is called upon, directly or through a third party, to rule on a request or an action, an administrative act, a legal act or a decision in which he has a personal interest.”;

– “(4) In the event of a real conflict of interest, the subject of the declaration is obliged: [...] b) not to engage, directly or through a third party, in resolving or, as the case may be, rejecting the request/appeal, in issuing or, as the case may be, cancelling the administrative act, in concluding or, as the case may be, terminating the legal act, in making or participating in making the decision or, as the case may be, in refusing/evading from making or refusing/evading from participating in making the decision in the exercise of the mandate, public office or public dignity until the conflict of interest is resolved.”;

– “(5) Information about the occurrence of a real conflict of interest will be provided until the engagement, directly or through a third party, in the resolution or, as the case may be, rejection of the request/proceeding, in the issuance or, as the case may be, cancellation of the administrative act, in the conclusion or, as the case may be, termination of the legal act, in the participation in the decision-making or the decision-making or, as the case may be, the refusal/evasion from participation in the decision-making or the refusal/evasion from the decision-making and will take the form of a written statement that must contain data about the nature of the conflict of interest and about the way in which it influences or may influence the impartial and objective fulfilment of the mandate, public office or public dignity.”;

– “(10) The actual conflict of interest represents the act of the subject of the declaration, committed directly or through a third party, of resolving or, as the case may be, rejecting a request/approach, of issuing or, as the case may be, cancelling an administrative act, of concluding or, as the case may be, terminating a legal act, of making or participating in making a decision or, as the case may be, of refusing/evading making a decision or of refusing/evading participating in making a decision in the exercise of the mandate, public office or public dignity in violation of the provisions of paragraphs (4) and (7).”;

7. the substitution in art. 3, 7, 24 and 25 of Law no. 133/2016 of the phrase “subjects of the declaration of assets and personal interests” or its derivatives with the phrase “subjects of the declaration” or its derivatives;

8. supplementing art. 2 of Law no. 199/2010 with paragraph (2¹) with the following content: “The position of public dignity may also be held following the delegation of powers by a person holding such a position.”.

Suggestions regarding potential future research directions related to the topic addressed: 1) in-depth analysis of the possibility of cumulating various forms of legal liability in the case of conflict of interest in the public sector; 2) nuanced examination of all the effects produced by the competition between art. 326¹ and 327 of the CrC RM; 3) analysis of the possibility of including the legal entity in the scope of subjects of the offenses provided for in art. 326¹ of the CrC RM.

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

The results of this research can become a catalyst for strengthening the legal culture and integrity in the public sector, by deepening the scientific interest in the crimes of exercising public sector

duties in a conflict of interest situation, which are provided for in art. 326¹ of the CrC RM. They can be integrated into the continuous training of prosecutors, judges, lawyers, integrity inspectors, civil servants and other decision-makers involved in the process of applying relevant legislation, but also in university programs for doctoral, master's and undergraduate students, raising professional and ethical standards. These results can also feed the process of legislative modernization, supporting the clarification and streamlining of criminal law to ensure its coherent interpretation and uniform application. On the social level, they can contribute to civic education projects and awareness-raising campaigns, aimed at preventing situations of conflict of interest, thus cultivating a real awareness of the risks and costs that this phenomenon generates for the community and for good governance.

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A. Monograph

1. ZAPOROJAN, Iancu. *Răspunderea penală pentru exercitarea atribuțiilor în sectorul public în situație de conflict de interese: Monografie*. Chișinău: Tipografia Centrală, 2025. 447 p. ISBN 978-5-88554-524-2.

B. Papers in journals

2. ZAPOROJAN, Iancu. Scientific materials on liability for exercising public sector duties in situations of conflict of interest. In: *Studia Universitatis Moldaviae (Social Sciences Series)*, 2023, no. 8, pp. 199-204. ISSN 1814-3199.

3. ZAPOROJAN, Iancu. The generic legal object of the exercise of powers in the public sector in a situation of conflict of interest. In: *Journal of the National Institute of Justice*, 2024, no. 1, pp. 22-27. ISSN 1857-2405.

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C. Papers in conference proceedings

5. ZAPOROJAN, Iancu. The exercise of public sector duties in a conflict of interest situation: doctrinal approaches regarding the opportunity for incrimination. In: *Realities and perspectives in the field of contemporary legal sciences, 15 September 2023, Chișinău*. Chișinău: Editorial-Printing Centre of the Moldova State University, 2023, pp. 133-136. ISBN 978-9975-62-695-8.

6. ZAPOROJAN, Iancu. The legal object of a subgroup of crimes of exercising attributions in the public sector in a situation of conflict of interest. In: *Crime – Criminal Liability – Punishment. Law and Criminology, 3rd Edition, 7-8 December 2023, Chișinău*. Chișinău, Republic of Moldova: Editorial-Printing Centre of the Moldova State University, 2023, pp. 345-350. ISBN 978-9975-62-754-2.

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11. ZAPOROJAN, Iancu. Victima în cazul exercitării atribuțiilor în sectorul public în situație de conflict de interese. În: *Acta Universitatis Cahulensis, Volumul XI, 6 iunie 2025, Cahul*. Cahul: Tipografia „CentroGrafic” SRL, Cahul, 2025, Vol.12, Partea I, pp. 74-80. ISSN 2587-3571.

ADNOTARE

Zaporojan Iancu, „Răspunderea penală pentru exercitarea atribuțiilor în sectorul public în situație de conflict de interese”. Teză de doctorat în drept. Școala Doctorală de Științe Juridice și Economice a Universității de Stat din Moldova. Chișinău, 2026

Structura tezei: introducere, trei capitole, concluzii și recomandări, bibliografie din 582 de titluri. Rezultatele obținute sunt publicate în 11 lucrări științifice.

Cuvintele-cheie: conflict de interese; avantaj patrimonial; exercitarea atribuțiilor de serviciu; persoană publică; persoană cu funcție de demnitate publică; persoană apropiată.

Scopul lucrării este de a investiga temeiurile răspunderii penale pentru faptele incriminate la art. 326¹ CP RM (având în vedere atât cadrul juridic extrapenal reprezentat de Legea nr. 132/2016, Legea nr. 133/2016, Legea nr. 82/2017 etc., cât și practica ANI), prin clarificarea aspectelor controversate legate de conflictul de interese în sectorul public și prin elaborarea de soluții apte să asigure depășirea problemelor sesizate.

Obiectivele cercetării: determinarea gradului de compatibilitate dintre reglementările interne și angajamentele internaționale asumate, în special privind protecția ordinii de drept contra conflictului de interese în sectorul public; clarificarea pozițiilor privind conținutul obiectului juridic generic, al obiectului juridic de subgrup, al obiectului juridic special, al obiectului material (imaterial) și a produsului infracțiunilor analizate; caracterizarea tuturor speciilor de victime ale infracțiunilor prevăzute la art. 326¹ CP RM, etc.

Noutatea și originalitatea științifică a tezei se reflectă în faptul că aceasta reprezintă prima cercetare științifică amplă dedicată analizei infracțiunilor prevăzute la art. 326¹ CP RM. Contribuția autorului constă în conturarea unei perspective interpretative asupra dispoziției articolului respectiv, care integrează atât direcțiile de interes științific, cât și dificultățile întâlnite în practica aplicării, oferind clarificări privind temeiurile răspunderii penale.

Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante: conceptualizarea unui cadru teoretico-practic de interpretare a art. 326¹ CP RM, fapt care a generat clarificarea criteriilor de calificare a faptelor în baza acestui articol și care ar putea permite dinamizarea practicii de aplicare a art. 326¹ CP RM, în vederea perfecționării și consolidării reglementărilor – penale și nepenale – în materie de prevenire și combatere a conflictului de interese în sectorul public.

Semnificația teoretică a tezei: examinarea critică a normelor privind exercitarea atribuțiilor în sectorul public în situație de conflict de interese, îmbinată armonios cu analiza practicii de aplicare a art. 326¹ CP RM; propunerea de direcții inovatoare de dezvoltare științifică; deschiderea autentică a dezbaterii în spațiul academic și social; propunerea de mecanisme mai eficiente de protecție a valorilor și relațiilor sociale contra infracțiunilor prevăzute la art. 326¹ CP RM.

Valoarea aplicativă a tezei: lucrarea identifică deficiențe de redactare legislativă, neclarități de interpretare și dificultăți de aplicare, propunând soluții *de lege ferenda*. Prin abordarea integrată a normelor penale și extrapenale, completată de perspective doctrinare și modele legislative internaționale, studiul contribuie atât la uniformizarea practicii și la creșterea previzibilității normelor, cât și la consolidarea protecției victimelor și la responsabilizarea subiecților potențiali.

Implementarea rezultatelor științifice. Rezultatele obținute au potențialul de a fi valorificate atât în mediul academic, cât și în practică, prin stimularea interesului pentru analiza infracțiunilor prevăzute la art. 326¹ CP RM și dezvoltarea de cercetări suplimentare în acest domeniu. Ele pot sprijini formarea profesională a specialiștilor din domeniul dreptului și a studenților de la facultățile de drept, contribuind la îmbunătățirea competențelor acestora, dar și procesul legislativ orientat spre

clarificarea și eficientizarea normelor penale. Totodată, aceste rezultate pot fi utilizate în campanii de informare publică, în vederea prevenirii și combaterii exercitării atribuțiilor în sectorul public în situație de conflict de interese, susținând o mai bună înțelegere a riscurilor sociale implicate.

АННОТАЦИЯ

Запорожан Янку, «Уголовная ответственность за исполнение обязанностей в публичном секторе в ситуации конфликта интересов». Диссертация на соискание научной степени доктора права. Докторальная школа юридических и экономических наук Государственного университета Молдовы. Кишинэу, 2026

Структура диссертации: введение, три главы, выводы и рекомендации, библиография из 582 названий. Достигнутые результаты опубликованы в 11 научных работах.

Ключевые слова: конфликт интересов; имущественная выгода; исполнение служебных обязанностей; публичное лицо; лицо, исполняющее ответственную государственную должность; близкое лицо.

Цель работы – исследование оснований уголовной ответственности за деяния, предусмотренные ст. 326¹ УК РМ (с учётом внеуголовно-правового регулирования – Законов № 132/2016, № 133/2016, № 82/2017 и др. – и практики НОН), уточнение спорных аспектов, связанных с конфликтом интересов в публичном секторе, и выработка решений для преодоления выявленных проблем.

Задачи исследования: определить степень совместимости внутренних нормативных актов с принятыми международными обязательствами, особенно в части защиты правопорядка от конфликта интересов в публичном секторе; уточнить позиции касательно содержания общего, родового, непосредственного объекта, предмета и продукта данных деяний; охарактеризовать весь спектр категорий потерпевших от преступлений, предусмотренных ст. 326¹ УК РМ и т.д.

Научная новизна и оригинальность результатов исследования заключаются в том, что она является первым крупным исследованием, посвящённым анализу преступлений, предусмотренных ст. 326¹ УК РМ. Вклад автора состоит в формировании интерпретационного подхода к соответствующей норме, который объединяет как научные приоритеты, так и сложности, возникающие в правоприменительной практике, обеспечивая разъяснение оснований уголовной ответственности.

Полученные результаты, способствующие решению особо значимой научной проблемы, разрешенной в рамках проведенного диссертационного исследования: концептуализация теоретико-практической основы толкования ст. 326¹ УК РМ, что привело к уточнению критериев квалификации деяний по данной статье и может способствовать активизации практики её применения, с целью совершенствования и укрепления как уголовно-правовых, так и внеуголовно-правовых норм в сфере предотвращения и пресечения конфликта интересов в публичном секторе.

Теоретическая значимость: критическое рассмотрение норм, регулирующих исполнение обязанностей в публичном секторе в ситуации конфликта интересов, гармонично сочетаемое с анализом практики применения ст. 326¹ УК РМ; выдвижение инновационных направлений научного развития, подлинное развёртывание дискуссии в академической и общественной среде, а также предложение более эффективных механизмов защиты общественных ценностей и отношений от преступлений, предусмотренных ст. 326¹ УК РМ.

Практическая применимость исследования: в работе выявляются недостатки законодательной техники, неясности толкования и сложности применения, при этом предлагаются решения *de lege ferenda*. Посредством комплексного подхода к уголовно-правовым и внеуголовно-правовым нормам, дополненного доктринальными взглядами и образцами международного законодательства, исследование способствует как унификации практики и повышению предсказуемости норм, так и укреплению защиты потерпевших и повышению ответственности потенциальных субъектов.

Апробация результатов диссертационного исследования. Полученные результаты имеют потенциал быть востребованными как в академической среде, так и на практике, стимулируя интерес к анализу преступлений, предусмотренных ст. 326¹ УК РМ, и развитию дополнительных исследований в этой области. Они могут способствовать профессиональной подготовке специалистов в сфере права и студентов юридических факультетов, повышая их компетенцию, а также совершенствованию законодательного процесса, направленного на уточнение и повышение эффективности уголовно-правовых норм. Кроме того, эти результаты могут быть использованы в кампаниях по информированию общественности с целью предотвращения и пресечения исполнения обязанностей в публичном секторе при наличии конфликта интересов, обеспечивая более глубокое понимание связанных с этим социальных рисков.

ANNOTATION

Zaporojan Iancu, “Criminal Liability for Exercising Duties in the Public Sector in a Situation of Conflict of Interest”. PhD in Law thesis. Doctoral School of Legal and Economic Sciences of the State University of Moldova. Chişinău, 2026

The structure of the thesis: introduction, three chapters, conclusions and recommendations, bibliography of 582 titles. The results achieved are published in 11 scientific papers.

Keywords: conflict of interest; material benefit; performance of official duties; public official; person holding a responsible state position; related person.

The purpose of the Ph.D. thesis is to examine the grounds for criminal liability for acts provided by the art. 326¹ CrC RM (taking into account extra-penal legal regulation – Laws No. 132/2016, No. 133/2016, No. 82/2017, etc. – and the practice of NIA), to clarify contentious aspects related to conflict of interest in the public sector, and to develop solutions to overcome the identified problems.

The objectives of investigation: to determine the degree of compatibility between domestic normative acts and the international obligations undertaken, especially regarding the protection of juridical order from conflicts of interest in the public sector; to clarify positions concerning the content of the general, generic, and special juridical object, as well as the material (immaterial) object and product of these acts; to characterize the full range of categories of victims of crimes provided by the art. 326¹ CrC RM, etc.

The scientific novelty and originality of the obtained results lie in the fact that this is the first large-scale study devoted to the analysis of crimes provided by the art. 326¹ CrC RM. The author’s contribution consists in developing an interpretative approach to the relevant provision that integrates both academic priorities and the challenges arising in law enforcement practice, providing clarification of the grounds for criminal liability.

The obtained results which contribute solving of the foremost scientific problem: the conceptualization of a theoretical-practical basis for interpreting art. 326¹ CrC RM, which has led to the refinement of criteria for classifying acts under this article and may encourage more active application of its provisions, with the aim of improving and strengthening both criminal-law and extra-penal norms in the sphere of preventing and suppressing conflicts of interest in the public sector.

Theoretical importance: a critical examination of the norms regulating the performance of duties in the public sector in situation of conflict of interest, harmoniously combined with an analysis of the practice of applying art. 326¹ CrC RM; the proposal of innovative directions for academic development; the genuine unfolding of discussion in academic and public spheres; and the suggestion of more effective mechanisms for protecting public values and relations from crimes provided by the art. 326¹ CrC RM.

Practical value of the research paper: the study identifies shortcomings in legislative technique, ambiguities in interpretation, and difficulties in application, while proposing *de lege ferenda* solutions. Through a comprehensive approach to criminal-law and extra-penal norms, supplemented by doctrinal perspectives and examples from international legislation, the research contributes both to

unifying practice and increasing the predictability of norms, as well as to strengthening victim protection and increasing the accountability of potential subjects.

Implementation of the scientific results. The results obtained have the potential to be in demand both in the academic environment and in practice, stimulating interest in analyzing crimes provided by the art. 326¹ CrC RM and encouraging further research in this field. They may contribute to the professional training of legal specialists and law students, enhancing their competence, as well as to improving the legislative process aimed at clarifying and increasing the effectiveness of criminal-law norms. Moreover, these results can be used in public awareness campaigns to prevent and suppress the performance of duties in the public sector in the presence of a conflict of interest, ensuring a deeper understanding of the related social risks.

ZAPOROJAN IANCU

**CRIMINAL LIABILITY FOR EXERCISING DUTIES IN THE
PUBLIC SECTOR IN A SITUATION OF CONFLICT OF
INTEREST**

SPECIALTY 554.01 – CRIMINAL AND CRIMINAL EXECUTION LAW

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