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CRIMINAL LIABILITY FOR FORCING TO MAKE STATEMENTS

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1. CONCEPTUAL GUIDELINES OF RESEARCH

The actuality of the topic

The concept of criminal liability for coercion to make statements in the legal order of the Republic of Moldova is implemented and represented by the Law on amending and supplementing some legislative acts, no. 252 of 08.11.2012.¹ The current version of the provision provided in art.309 CP RM is constructed from a set of terms that are known to criminal law, but the application of the rule requires their correct interpretation, including in order to delimit the crime analyzed by other related criminal acts. This fact generates some difficulties in the correct application of the normative framework provided in art. 309 of the Criminal Code of the Republic of Moldova “Constraint to make statements”.

According to the most current report for the activity of the prosecutor's office, the one for 2019, the number of notifications about the constraint to make statements in the last 6 years, oscillates at the same figures.² In 2014 there are 7 notifications, in 2015 - 18 notifications, in 2016 - 4 and in 2017 - 12 notifications, in 2018 - 6 notifications, and in 2019 - 12 notifications, the last figure doubled compared to the one registered in the previous year. On the sidelines of these notifications in the years 2014-2017, no criminal case was initiated based on art. Subsequently, criminal proceedings were initiated only in one case in 2018 and in 3 cases in 2019.³ In the Statistical Yearbook of the Republic of Moldova for 2019, information on criminal cases based on art. 309 of the Criminal Code of the Republic of Moldova is not included.⁴

Following the analysis of the given situation, it was concluded the need to conduct an opinion poll in the current investigation in order to certify parameters closer to the real ones of the spread of the criminal phenomenon of coercion to make statements highlighting the causes of non-incrimination and identification, as a result. , of some deficiencies of the current incriminating normative framework, which, in the admitted hypothesis of the research, exerts a negative impact on the practical efficiency of the analyzed norm. Respectively, between 06.2019-12.2019, an opinion poll was conducted, including the answers of 200 persons participating in a criminal trial, the results of which are analyzed during the investigation with the formulation of conclusions and relevant recommendations.

¹ Law No. 252 of 08-11-2012 for amending and supplementing some legislative acts, published in M.O. nr.263-269 art.855, 21.12.2012

² Report on the activity of the prosecutor's office for 2019, [cited 02.02.2020], available: <http://www.procuratura.md/file/Raport%20public%20Procuratura%202019%20.pdf>

³ Report on the activity of the prosecutor's office for 2019, [cited 02.02.2020], available: <http://www.procuratura.md/file/Raport%20public%20Procuratura%202019%20.pdf>

⁴ Statistical Yearbook of the Republic of Moldova for 2019, [cited 02.02.2020], available: https://statistica.gov.md/public/files/publicatii_electronice/Anuar_Statistic/2019/Anuarul_statistic_2019.pdf

Framing the topic in international concerns. At the international level, the tendency to express the fight against coercion in criminal proceedings is implicit in the analysis of the following international and regional legal instruments: the European Convention on Human Rights, signed on 4 November 1950 in Rome⁵ and the Convention against Torture and Other Punishment and Treatment cruelly, inhuman or degrading, adopted in New York on December 10, 1984.⁶

Framing the topic in an inter- and transdisciplinary context. The results obtained in the research, the proposals and the conclusions formulated are of scientific importance for other fields as well:: criminal procedure, criminology, criminology, general theory of law, sociology, etc. The results of the investigation can be useful in the process of qualifying offenses, delimiting the offense of coercing to make statements of related offenses.

Description of the research situation and identification of the research problem. Scientific papers intended exclusively for the analysis of the juridical-criminal aspects of the crime provided in art. 309 of the Criminal Code of the Republic of Moldova were published in a relatively small number. Thus, among the most relevant are the works elaborated by the following established authors: Ulianovschi Gh., Curmei I., S. Brînză, V. Cușnir, I. Macari, V. Stati, Barbăneagră A., Borodac Al., (Republic Moldova); Авдеева Е. А., Байсалыева Э. ., Бунева, И. Ю., Галахова А.В., Горелик А.С., Лобанова Л. В., Калашникова А. А., Кулешов Ю.И., Малков В. П., Попов Н.А. (The Russian Federation); Мельниченко М.И. (Ukraine); Durandin G., Yves Mayaud (France); Oprea M., Bîrzu B., Bandol I., Boroî Al., Bulai C., Răducanu R., Gh.Diaconescu (Romania), which were also taken into account by the author.

The important scientific problem of research consists in the conceptual deepening and improvement of the existing theoretical-normative framework regarding the crime of coercion to make statements following a complex analysis of the constituent elements of the crime component analyzed with the identification of imperfections. drawing up a series of conclusions and proposals, including by law ferenda aimed at improving the existing incriminating text in order to increase the efficiency of criminal prosecution for coercing statements.

The purpose and objectives of the thesis: The purpose of the doctoral thesis is to conduct an in-depth investigation into the crime of coercion to make statements provided in art. lege ferenda aimed at improving the legal framework for criminalizing the given crime.

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

⁵ European Convention on Human Rights, signed on 4 November 1950 in Rome, in force on 3 September 1953, [cited 10.10.2019], available at: https://www.echr.coe.int/documents/convention_ron.pdf

⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on December 10, 1984, [cited 12.06.2019], available: http://www.cdep.ro/pls/legis/legis_pck.htp_act_text?id=32204

- complex theoretical-normative analysis of the elements of the crime component provided in art.309 CP RM;
- identifying the deficiencies of normative regulation that negatively influence the efficiency of the application of the studied norm;
- establishing the criteria for delimiting the crime analyzed by some related criminal acts; conducting a comparative study of the criminal law on the regulation of the crime of coercion to make statements;
- formulating proposals for improving the incriminating normative framework of art. 309 CP RM.

The research hypothesis is based on the assumption that:

- the crime of coercion to make statements provided in art. 309 of the Criminal Code of the Republic of Moldova has a substantial potential to streamline the existing regulatory framework for its regulation;
- the restricted application of the norm analyzed in the judicial practice is conditioned also by some deficiencies admitted in the formulation of the legal provisions stipulating the responsibility for the crime of coercion to make statements;
- the current form of the criminal law does not fully cover the possible ways of committing the crime of coercion to make statements;
- the circle of subjects of the compulsion to make statements is wider and the criminal norm needs to be modified in this chapter with the provision of the case when the crime of coercion is committed through intermediaries;
- victims of the crime of coercion to make statements, in addition to the participants in the trial expressly provided in the incriminating criminal rule, may also be their relatives, in this regard the rule requires a supplement, we opt for the introduction in the content of the rule of art.309 CP RM, the final version of which will be presented as a law ferenda later, in the appropriate context of the paper, the phrase "... of relatives or persons close to them ...".

Scientific research methodology. As methods applied to achieve the proposed purpose and objectives served: historical method, logical method, systemic method, induction and deduction, sociological method, etc. The comparative method was widely used, through the application of which the criminal laws of foreign states with norms similar to those of art. 309 of the Criminal Code of the Republic of Moldova were analyzed.

The scientific novelty and the originality of the obtained results find expression in the fact that it presents a first juridical-criminal investigation of this kind of the crime regulated at art.309 CP RM “Constraint to make statements”. The elements of the respective crime component were complexly studied with the formulation of conclusions on some problematic aspects in their

theoretical-normative approach; the similarities were analyzed and the criteria for delimiting the crime analyzed by other related criminal acts were determined exactly; a comparative study of the regulation of the crime in question in the legislation of other states was carried out; proposals have been made by law ferenda aimed at streamlining the legal framework that criminalizes the act of coercion to make statements.

Theoretical importance and applicative value of the paper. The current study is of theoretical importance as a scientific support in the researched issue for representatives of scientific circles in the country and abroad, for law students of all levels, as well as for practitioners. It can serve as a theoretical foundation for the legislature of the Republic of Moldova in the process of drafting laws to amend and supplement the existing regulatory framework in the field.

The main scientific results submitted for support: In order to improve the legislation on crime provided for in art. 309 of the Criminal Code of the Republic of Moldova, two proposals were amended and formulated to amend the incriminating framework of the crime of coercion to make statements:

1) Completing the norm from art.309 CP RM according to the words “of the interpreter to make an incorrect translation or interpretation” with the phrase „ ... of the relatives or of the persons close to them;

2) Completion of the legal text of art.309 CP RM, widening the circle of persons recognized as active subjects of the constraint to make statements, including after the phrase „ .. by the judge ”the continuation „ .. or any natural person, acting with their express or tacit consent ”

3) It is proposed to modify the norm from art.309 CP RM with the change of the title of the article, by merging it with the norm formulated at art.314 CP RM „, Determining to submit false statements, to formulate false conclusions or to make incorrect translations ”In a single norm that criminalizes the illegal actions of influencing the statements, whether the last ones are true or not. The amended norm will include the elements of both components of the crime, and as an aggravating circumstance will be provided an aggravating circumstance provided today in art.314 CP RM: the commission of actions by an organized criminal group or a criminal organization. Thus, for art. 309 CP RM proposes the following title “Influence of statements, conclusions, translations or interpretations in criminal proceedings”, the operative content of which will be formulated as follows: “(1) Influence of statements, conclusions, translations or interpretations in a trial criminal, by coercion, promise or offering of goods as well as other patrimonial or non-patrimonial advantages or by another illegal act with obvious intimidating effect, committed on the participants in the trial, on a relative or close person, to submit statements, to formulate conclusions, interpretations, translations, whether true or false, the conclusion of the plea

agreement, as well as the avoidance of filing statements, formulating conclusions, making interpretations or translations, in civil proceedings, criminal proceedings, misdemeanors or in the national court or international.

2. The actions provided for in paragraph 1:

a) committed by an organized criminal group or a criminal organization. "

Art.314 of the Criminal Code of the Republic of Moldova, the determination to submit false statements, to formulate false conclusions or to make incorrect translations will be excluded.

Theoretical significance

The paper is a significant scientific-methodological support for the legal-criminal doctrine, especially for the further improvement in the national science of criminal law of the theoretical-normative concept of the analyzed crime.

Approval of results

The results obtained from the study can be received in the scientific activity; are useful in the process of legal professional training at all levels of education, as well as in the practical activity of law enforcement institutions; can be taken into account in the legislative process.

Thesis publications - 9

Structure of the paper: Introduction, 4 chapters, general conclusions and recommendations, bibliography of 169 titles, 158 basic text pages, 1 appendix and 6 figures. The obtained results are published in 9 papers.

Keywords: coercion, threat, illegal acts, special subject, statements, plea agreement, intent, delimitation, comparative study.

2. CONTENT OF THE THESIS

In the Introduction of the paper are addressed general issues such as: topicality and importance of the topic, framing the topic in international concerns, framing the topic in an inter- and transdisciplinary context, purpose and objectives of the paper, synthesis of research methodology and of course justification of chosen research methods. It is indicated the description of the situation in the research field, the scientific novelty of the obtained results, the main scientific results submitted for support, the important scientific research problem, the theoretical importance and the applicative value of the paper, the approval of the results and the summary of the thesis compartments.

In Chapter 1- *Analysis of the situation in the science of criminal law on liability for coercion to make statements* - the analysis of scientific materials focused on the topic of the thesis published in the Republic of Moldova, as well as in other states. The analysis was performed depending on the stage of their publication and the issues addressed in the content.

The works of the national authors were investigated: S. Brînză, V. Stati, Gh. Ulianovschi, I. Macari, A. Barbăneagră, Al. Borodac, M. Poalelungi, Ig. Dolea, T. Vîzdoagă, Gh. Pavliuc; international- Л.В Лобанова, А.С Горелик, Ю.И Бунева, А.А. Жижиленко, М.Н. Голоднюк, Ю.А. Мерзлова, А.И. Чучаев, Н.С. Таганцев, И.Я. Фойницкий, И.С. Власов, В.К. Глистин, В.И. Динека, В.Д. Иванов, Т.В. Кондрашова, Л.И. Кулешова, В.П. Малков, Ш.С. Рашковская, С.И. Тихенко, И.М. Тяжкова (Russian Federation); Мельниченко М.И (Украина),. Loghin, T. Toader, Gh. Nistoreanu, Al. Boroî, V.Dobrinoiu, N. Conea, V. Dongoroz, M. Oprea, S.Kahane, I. Oancea, R. Stănoiu, I. Fodor, N. Iliescu, C. Bulai, V. Roșca, I. Pascu, V. Lazăr, B. Bîrzu (Romania), Yves Mayaud, Guy Durandin (France). As a result of the investigation of several doctrinal meanings evoked in connection with the crime of coercion to make statements, the theoretical-practical problems existing at the current stage were invoked in connection with the application of the provisions of art. 309 of the Criminal Code, solutions to remove them.

One of the first juridical-criminal characteristics of the elements of the crime composition, accompanied by the ample exemplification of the objective and subjective constitutive elements and signs, established by the criminal law, which stipulates the act of coercion to make statements, is performed by local doctrinaires Brînză S. and Stati V., who developed the manual of Criminal Law, Special Part, in two volumes, published in 2011. In this paper we find a general feature of the elements of the composition of crimes, a broad example of the elements and objective and subjective signs, established by the criminal law, which qualifies the act of coercion to make statements until the amendment of the Criminal Code by Law No. 252 of 08.11.2012,⁷ when the

⁷ Law No. 252 of 08-11-2012 for amending and supplementing some legislative acts, published in M.O. nr.263-269 art.855, 21.12.2012

crime of coercion to make statements was incriminated in a standard version and in an aggravating variant.

Subsequently, in 2015, the doctrinaires S. Brînza and V. Stati in the paper - Criminal Law Treaty. The Special Part. Vol.II., Chisinau 2015 presents a detailed feature of the elements of the composition of crimes provided in art.309 of the Criminal Code of the Republic of Moldova in the wording subsequent to the amendments to the criminal law of 2002. its complex character, considering it made up of the main legal object - social relations regarding the contribution to the administration of justice, in terms of not admitting the coercion of some persons participating in the criminal process to commit actions that do not correspond to their will, and the secondary legal object - relations mental health, bodily integrity or personal health. As for the objective side of the analyzed crime, the perpetrators mention the cases when the illegal deeds do not attract liability according to art. 309 of the Criminal Code of the Republic of Moldova. These are: 1) forcing the person to evade filing statements; 2) forcing the expert to evade the formulation of conclusions or statements; 3) forcing the translator or interpreter to avoid performing interpretations or translations.

Another local author who elucidates in his scientific materials problems regarding the qualification of the crime of constraint to make statements is I. Macari, who published in 2003 the criminal law manual of R.M. The Special Part. The scientist considers that, in the case of the crime of coercion to make statements, the coercion is manifested by "provoking interrogations, falsifying evidence, concluding the plea agreement, false promises to file a criminal case, to change the sentence, to allow the meeting with family members and relatives, to allow the receipt of parcels, etc. " As illegal acts, in the case of the crime of coercion to make statements, the author also considers "the submission of the interrogated person to hypnosis, his coercion to use narcotics, alcohol, etc."

Alexandru Borodac also refers to the legal-criminal analysis of the crime of coercion to make statements in the Criminal Law Manual, Special Part (Chisinau 2004). In that paper, the author begins with the characteristics of the objective side and the victim, listing the people who may be victims of the crime under analysis. Subsequently, defining the notions of coercion, threat, other illegal acts, noting their particularities. For example, with regard to other illegal acts of coercion, the author emphasizes that the hearing of the suspect, accused, defendant in a state of fatigue or at night, insulting or humiliating the witness, obtaining a dismissal, obtaining arrest, lack of meetings, presenting false statements by other people, etc. These acts include hypnosis, narcotic administration, extrasensory influence, etc.⁸

⁸ Borodac, Al., Handbook of Criminal Law, Special Part, Chisinau 2004, p.456, ISBN: 9975-9788-7-8

A remarkable contribution to the national doctrine is made by the scientist Gheorghe Ulianovschi, PhD in law, associate professor, by publishing a series of scientific papers on crimes that prevent the administration of justice in general and the constraint to make statements, in particular. The paper published in 1999 "Crimes that prevent the administration of justice" is of particular interest. Besides the fact that the scientist, in the respective work, offers a classification of the crimes that prevent the administration of justice, it is also worth mentioning the general and common aspects of such crimes, invoked by the doctrinaire. The general legal object is approached as unique for all crimes that prevent the administration of justice and consists of the set of values and social relations defended by the rules of the Special Part of the Criminal Code. The generic object of the given crimes is made up, according to the author's opinion, of the values and social relations regarding the good administration of justice. We subscribe to this definition, because, as the author points out in the paper, regarding the generic object of crimes that prevent the administration of justice, several points of view have emerged, given that the notion of justice has been analyzed by doctrinaires. narrowly as well as broadly. In this hypothesis we are part of the point of view of the scholars V. Cuşnir and A. Doga, who claim: "for the exclusion of a broad interpretation of the notion of justice, which, as it appears from the previous presentations, contradicts the constitutional provisions stipulated in art. 114 of the Constitution of the Republic of Moldova, de lege ferenda we propose the reformulation of chapter XIV of the special part of the Criminal Code from "Crimes against justice" into "Crimes that impede the administration of justice". From this title it would result that the crimes in question do not exclusively attack the social relations conditioned by the jurisdictional activity carried out by the courts, but also the social relations related to the activity of the other institutions involved in the case of justice".⁹

We note that the study of the generic and specific object of the group of crimes to which it belongs and the compulsion to make statements, allows not only the understanding of the provisions of this rule, but also the elaboration of proposals for further improvement of the special part of the Criminal Code.¹⁰

We consider that when in the activity of the criminal investigation body, the prosecutor's office or the court, crimes are committed that directly affect the process of administration of justice then their membership in the group of crimes that prevent the administration of justice is justified. For yes, as the scientist Ulianovschi Gh. Mentions, in that work, other types of crimes are committed

⁹ Cuşnir, V., Doga, A., Reflections on the notion of justice as a social value protected by legal and criminal norms, in the National Law Review No.12 / 2013, p.18

¹⁰ Jenunchi, E., The legal object of the crime of coercion to make statements, in the International Scientific Journal "Supremacy of Law", No. 4, 2019

among these judicial bodies, such as bribery, but the legislator included in this chapter the crimes that harm directly to the process of administering justice.¹¹

The scientist Gheorghe Ulianoschi co-authored with Ion Curmei a series of scientific articles regarding the most diverse aspects of the juridical-criminal characteristic of the crime of coercion to make statements. In the edition no. 1 (183) / 2016 of the National Law Review, in which the authors publish the article entitled “The objective side of the crime of coercion to make statements”, the investigators refer to the objective side of the crime provided in art.309 CP RM, which, in their view, consists in the prejudicial act, expressed in the action either of coercion of the person, by threat or by other illegal acts, of making statements, of concluding an agreement of guilt, or of coercion, in the same way, of to the expert to draw the conclusion or to the translator, or to the interpreter to make an incorrect translation or interpretation, since the objective side constitutes the external manifestation of the criminal act.¹²

The same authors in the publication entitled “The subject and the subjective side of the crime of coercion to make statements” from Nr. 2 (186) of the National Law Review of 2016, refers to the subject and the subjective side of the crime of coercion to make statements. The researchers are of the opinion that the legislature of the Republic of Moldova has significantly reduced this wording, not providing for the recognition as a subject of coercion to make statements of a person acting in an official capacity, as well as a private person acting on the initiative of an official.¹³

We consider the approach in question to be reasoned and support the proposal to adhere to this concept and to include in the disposition of the crime of coercion to make statements, as an active subject, any natural person, liable to criminal liability, acting with the consent, at the urging of the instigator or the person conducting the criminal investigation.

The authors Mihai Poalelungi, Igor Dolea, Tatiana Vîzdoagă and other authors, in the work "Judge's Manual for Criminal Cases", specified that "if the coercion exercised on the victim does not take the form of torture, the act can not be qualified based on paragraph (3) art.1661 CP RM. Thus, in the event that the person who ascertains the crime, the criminal investigation officer, the prosecutor or the judge: 1) coerces by threat or other illegal acts the suspect, the accused, the defendant, the victim (in the procedural sense), the injured party, the witness, the civil party or the civilly responsible party to make statements; 2) compels the suspect, the accused or the defendant to conclude the plea agreement by threatening or by other illegal acts; 3) compels the expert to make the conclusion by threat or other illegal acts; 4) compels by threat or other illegal acts the

¹¹ Ulianoschi, Gh., Crimes that impede the administration of justice, Chisinau 1999, p.11, ISBN: 9975-9564-4-4

¹² Ulianoschi, Gh., Curmei, I., The objective side of the crime of coercion to make statements, Revista Națională de Drept, Nr.1 (183) / 2016, p.2, ISSN 1811-0770.

¹³ Ulianoschi, Gh., Curmei, I., The subject and the subjective side of the crime of coercion to make statements, Revista Națională de Drept, Nr.2 (184) / 2016, p.29, ISSN 1811-0770.

translator or interpreter to make an incorrect translation or interpretation, - the liability will be applied not based on paragraph (3) art.1661 CP RM, but according to art.309 CP RM ”.¹⁴

In the context of the analysis, the article "Other illegal acts in case of coercion to make statements: criminal and criminal procedural aspects" by the author Ghenadie Pavliuc, judge at the Chisinau Court as an example of effective corroboration of doctrinal approaches and practical aspects of application is of interest. rule stipulating criminal liability for the offense committed under review. He states that psychological techniques and tactics in conducting the hearing should not exclude freedom of will and should be used in strict accordance with procedural rules. Hypnosis, deception and corruption are types of illegal psychological influence on the person heard. In art. 309 of the Criminal Code of the Republic of Moldova ("Forcing to make statements") such acts are not mentioned. The author suggests that the legislator in this article the term "person coercion by threat or other illegal acts" be replaced by the term "illegal influence on anyone by threats or other acts".¹⁵

The Commentary of the Criminal Code of the Republic of Moldova, elaborated by a group of investigators, which includes Gheorghe Alecu, Viorel Berliba, Vitalie Budeci and others, and edited by the scientist Alexei Barbăneagră. This paper is of particular interest in defining "other illegal acts of coercion", in the sense that they could be considered hearing the suspect or accused in a state of fatigue or during the night, insulting and humiliating the witness, in order to determine them. when submitting statements.¹⁶

Also, in the analyzed paper, the authors refer to the form of participation in case of constraint to make statements and claim that the crime provided in art. 309 of the Criminal Code of the Republic of Moldova can be committed with participation in simple or complex form. For the existence of simple participation - co-authorship - it is necessary that the perpetrators have the special quality required of the author and in the case of complex participation the organizer, instigator or accomplice can be any person.¹⁷

International doctrine encompasses a wider range of scientific papers on the crime of coercion to make statements as regulated in the criminal law of other states. Leaders in this regard are the CIS states and first of all - the Russian Federation. "

¹⁴ Poalelungi, M., Dolea, Ig., Vîzdoagă, T., etc., Judge's Manual for Criminal Cases, Ed.I-Ch.: Sn, 2013, p.593, ISBN: 978-9975-53-231-0

¹⁵ Pavliuc, Gh., Other illegal acts in case of coercion to make statements: criminal and criminal procedural aspects, Актуальные научные исследования в современном мире »SCIENCE.IN.UA Выпу Выпу. 1 ISSN 2524-0986 116, 34ДК 343.14: 343.985.2: 343 (478), pag.116

¹⁶ Barbăneagră, A., etc. of the Criminal Code of the Republic of Moldova, Commentary, No. 985-XV of 18.04.2002, in the Official Gazette of the Republic of Moldova no. 72-74 / 195 of 14.04.2009, p. 676 ISBN: 978- 9975-105-20-0

¹⁷ *Ibidem*, p.676

Referring to general aspects of crimes against justice, it is remarkable the work of А. Чучаев „Преступления против правосудия”, 1997, in which the author beginning with a general feature of this criminal group claims that not all law the types of activities of the bodies that contribute to the administration of justice, but only the activities that directly aim at fulfilling the tasks and objectives of justice. The scientist defines threat as a method of psychological coercion, in order to influence the interrogated person or the expert and blackmail as one of the forms of threat, expressed in intimidation with something to create a situation under the influence of which the persons specified in the law are obliged to testify or give an opinion (for example, threatening to tell the husband unwanted information about the victim's behavior, etc.).¹⁸

Russian authors А.С. Горелик and Л.В. Лобанова are those who show a special scientific interest in crimes against justice. In the work “Преступления против правосудия” they refer to many specific characteristics of the analyzed crime, determine the elements and signs of the crime composition as well as pay more attention to the gravity of the criminal act, claiming that in real life it is often than is reflected in official statistics.¹⁹ Relevant is the approach of the authors regarding the circle of persons against whom the coercive actions are directed, they can be applied not only directly to the participants in the trial, but also to other persons, in order to influence them (relatives of the accused, etc.) and in art. 302 of the CP FR there is no direct indication of who the threats should be targeted (such as blackmail and other illegal actions).

A number of definitions of other illegal actions have been proposed in the Russian literature. The broadest concept was formulated by В. П. Малков, who classifies any immoral and illegal actions of the person conducting the interrogation in connection with the interrogation as other illegal in order to obtain relevant information from him.²⁰ Л.В. Лобанова refers to them, firstly, as forms of behavior that are directly prohibited by law (torture, violence, other forms of inhuman or degrading treatment) and secondly, any restriction of the rights and freedoms of the interrogated.²¹ Ю.И. Kuleshov agrees with these provisions only in part. Undoubtedly, the permitted methods of influence are expressly provided by law (criminal procedural law in this case). Any violation of these provisions leads to illegal obtaining of evidence. However, this does not mean that coercion has taken place. Such a violation of criminal procedural law will occur when the methods of influence used limit or completely exclude the freedom of expression of the will of the person heard.

¹⁸ Chuchaev, A. I., Crimes against justice, Ulyanovsk, "House of the press" 1997, p. 34, ISBN 5-900153-24-x

¹⁹ Curmei, I., Guțan, V. *Abordarea infracțiunii de constrângere de a face declarații peste hotarele Republicii Moldova*, Revista Națională de Drept, [Nr. 5\(187\) / 2016 / ISSN 1811-0770](#), p.54

²⁰ Commentary on the Criminal Code of the Russian Federation. A special part, Ed. Yu. I. Skuratov and V. M. Lebedev. M., 1996. p. 475, ISBN: 5-86-225-645-88

²¹ Lobanova, L.V., Crimes against justice: theoretical problems of classification and legislative regulation, Volgograd 1999, p. 110.

From the doctrinal approaches of the scholars from Ukraine we mention those of М.И. Мельниченко. Art. 343 of the Criminal Code of Ukraine ”. The author starts in the respective work with the constitutional and criminal provisions on this subject, after which he defines the notions found in the criminal norm as the word "coercion" - comes from the verb "to force - to force" and means "to force something, the force of inducing something "after which it reflects the opinions of other authors regarding the term constraint.²²

In the Romanian criminal legislation, as well as the national one, the crime of coercion to make statements is a new crime, being still in the absence of scientific materials to address exclusively this subject. Currently, in the Romanian Criminal Code (Law no. 286 of July 17, 2009), coercive actions in order to obtain statements are incriminated in art. to determine the false testimony stipulated in the Criminal Code of Romania of 1969. Regarding the Romanian doctrine, we will refer to scientists who have addressed issues related to the crime of attempting to determine the false testimony and the influence of statements.

We will start with the work of the doctrinaires Octavian Loghin and Tudorel Toader, “Romanian Criminal Law”, Special Part, 2001. We will note the special wording of the respective norm, which provides for corruption as a way of committing the analyzed crime. The perpetrators refer to the action of trying to persuade a person to make false statements or to make an incorrect expertise or interpretation, in order to realize the material element of the crime, it must be carried out by coercion or corruption, the coercion can be manifested physically morality, ie through the application of violence or threats. Corruption can be achieved by offering or promising money, gifts or other benefits, whether or not they have been accepted.

As for the subject, the authors claim that the crime can be committed by any person, there is no legal limitation in this regard and criminal participation is possible in any of its forms.²³

The same authors, in the paper Romanian Criminal Law, Special Part, the 1999 editorial office speak of the moment of consumption as the moment when the perpetrator tries, by coercion or corruption, to cause a person to give false statements or make an incorrect expertise or interpretation. a criminal, civil, disciplinary case or any other case in which witnesses or experts or interpreters are heard. If the perpetrator repeats his attempt, at different intervals, by coercion

²² Мельниченко, М.И., аспирант Национальной академии прокуратуры Украины, первый зам. прокурора Подольского р-на г. Киева, *Принуждение давать показания как общественно опасное действие состава преступления, предусмотренного ст. 343 Уголовного кодекса Украины*, с. 88, [citat la 04.09.2019], disponibil <http://mopi.bakuvirtual.net/wp-content/uploads/2014/03/pdf>

²³ Loghin, O., Toader, T., *Romanian Criminal Law, Special Part*, 4th edition, revised and added, publishing house and press „ Şansa ”S.R.L., Bucharest 2001, p.434

or corruption, on the same person, but in the execution of the same resolution, the crime is presented in a continuous form of commission, being exhausted at the time of the last attempt.²⁴

In the matter related to the subject of the analyzed crime, the authors Gheorghe Nistoreanu and Alexandru Boroï also refer in the work *Criminal Law, Special Part 2002*, in which it is revealed that the active subject of the given crime can be any person but, as a rule, this crime is committed by a person who is a party to the proceedings. The main passive subject is mentioned the state, as the holder of the social value “administration of justice” and as secondary passive subject, the person summoned in the process as a witness, expert or interpreter and who supports the action of coercion or corruption carried out by the active subject.²⁵

The authors V. Dobrinoiu and N. Conea are of the same opinion in the work *Criminal Law, Special Part, 2000*,²⁶ but in the work of the Romanian authors V. Dongoroz, S. Kahane, I. Oancea, R. Stănoiu, I. Fodor, N. Iliescu, C. Bulai, V. Roșca, *Theoretical explanations of the Romanian Criminal Code*, argue that the crime of attempting to determine false testimony can not have a secondary passive subject, because the main condition of the existence of the given crime is that the attempt failed.²⁷ This is how the Romanian authors I. Pascu and V. Lazăr express themselves in the textbook *Criminal Law, Special Part, 2003*, where he mentions that in order for the crime to subsist, it is necessary for the perpetrator's action to be limited to an attempt to determine the false testimony.²⁸

Of particular interest is the study of the author Bogdan Bîrzu published in *Acta Universitatis George Bacovia. Juridica, Vol.7*, because this publication analyzes the crime of influencing statements. The investigator starts the investigation with the novelty element of this crime in the Romanian criminal law, making a comparative study of the legislative version of the old norm and of the current one that incriminates the analyzed crime. Thus, with regard to the novelty of the new incrimination, the author considered that from the point of view of the objective side, the content of the incrimination rule can be achieved by two alternatively provided actions, namely the attempt to determine or determine, while in the Criminal Code of 1969 was sanctioned, in accordance with art. 261, only the attempt to determine the false testimony; was brought in the content of the crime provided by art. 272 CP Rom. and incitement to false testimony, which will no longer be sanctioned as a form of participation and in addition to the two ways of achieving the material

²⁴ Loghin, O., Toader, T., *Romanian Criminal Law, Special Part*, 4th edition, revised and added, publishing house and press „Șansa” S.R.L., Bucharest 2001, p.434

²⁵ Nistoreanu, Gh., Boroï, A., *Criminal Law. Special Part, Ed.II.*, ALL Beck 2002, p.311, ISBN 973-655-182-2

²⁶ Dobrinoiu, V., Conea, N., *Criminal Law, Special Part, Vol.II, Judicial Theory and Practice*, Lumina Lex 2000, p.169, ISBN 973-588-281-7

²⁷ Dongoroz, V., Kahane, S., Oancea, I., Stănoiu, R., Fodor, I., Iliescu, N., Bulai, C., Roșca, V., *Theoretical explanations of the Romanian Criminal Code, vol.I*, ed. 2nd, ALL Beck Publishing House, Bucharest, 2003, p.192

²⁸ Pascu, I., Lazăr, V., *Criminal Law, Special Part*, Lumina Lex, Bucharest 2003, p.390

element, coercion and corruption, was also regulated another way with a relatively determined scope, being an “act with manifestly intimidating effect”, compared to the expression “any other means of coercion”, which is used by the Criminal Code of 1969 in the content of art. 261. The scope of the persons on whom the actions that are part of the material element of the crime can be exercised has also been extended, aspects that we will develop during the analysis of the passive subject of the crime and the conduct that the active subject seeks to obtain from the person. subject to coercion, corruption or other act with obvious intimidating effect has been greatly extended, encompassing several aspects that want to cover a wider field of activity of the judiciary.²⁹

If we refer to the material element of the objective side of the crime of influencing the statements, in the opinion of the author, it is done through two alternative actions consisting in trying to determine or determine a person not to notify the prosecuting authorities, not to give statements, to withdraw his statements, to give false statements or not to present evidence, in a criminal, civil case or in any other judicial procedure. With reference to this opinion, several Romanian doctrinaires, in the Explanations of the New Criminal Code, mention that in this case the attempt to determine “exists when the person against whom the acts of corruption, coercion or any other act with obvious intimidating effect are exercised, rejecting the perpetrator's request, does not take the decision not to refer the criminal investigation bodies, not to give statements, to withdraw the given statements, to give false statements or not to present evidence, in a criminal, civil or any other case. another judicial procedure.”³⁰

Maria Oprea in the work *Crimes against the administration of justice*, Bucharest 2015, emphasizes that in order to complete the objective side it is necessary that the attempt to determine or determine, seen as alternative actions by which the material element of the objective side is achieved, be carried out under certain conditions. this date expressly provided in the incriminating text. These conditions are in their essence also concrete ways of carrying out the incriminated action and acquire the role of essential requirements. We note that without finding the existence of at least one of the essential requirements expressly mentioned by the legislator, the deed does not meet the conditions of objective typicality of the examined crime.³¹

Doctrine holders in European countries have addressed the issue of crimes against justice since the last century. Historically, the work of the remarkable Austrian and German professor Franz von Liszt, *Handbook of Criminal Law, General Part* in which the author pointed out, in his time,

²⁹ Bîrzu, B., The influence of statements in Romanian criminal law-the constitutive content, *Acta Universitatis George Bacovia. Juridica* - Volume 7. Issue 1/2018 - <http://juridica.ugb.ro/>, accessed on 01.02.2019

³⁰ Antoniu, G., Toader, T., Brutaru, V., Danes, Ș., Etc., *Explanations of the New Penal Code*, vol. IV, art. 257-366, Ed. Universul Juridic, Bucharest, 2016, p. 105, ISBN: 978-606-673-341-0

³¹ Maria Oprea, *Crimes against the administration of justice*, Universul Juridic Publishing House, Bucharest, 2015, p. 126-127

that "the political movement of the middle of our century called to life new criminal provisions for the protection of citizens' rights Explaining the reasons for the emergence of criminal rules on the liability of officials, the author shows that the discipline of sanctions against civil servants is clearly insufficient, because they, in violation of its obligations, at the same time violate the legal right of a person. case, the whole community is in danger.³²

In the following we will refer to the work of Professor Yves Mayaud from the University of Panthéon-Assas Paris II, who in 2008 published an exclusive article on art. 434-15 of the French Penal Code, the use of promises, offers, gifts , pressure, threats, acts of violence, maneuvers or tricks in a proceeding or in a lawsuit or defense in order to induce another person to either make or give a false testimony, statement or attestation, or refrains from making or giving a deposition, a statement or an attestation, shall be punished with 3 years imprisonment and a fine of 45,000 euros,³³ even if the bribery is not followed by effect "In this paper it is specified that the offense provided in art. 15 The French Penal Code is an offense against the administration of justice, meaning any judicial activity. It is noteworthy that the author also refers to the right of defense in the light of this article, indicating that it does not prohibit the search for evidence and favorable evidence, provided, however, not to use the means prohibited by Article 434-15: recourse to such actions means no doubt beyond a normal and fair defense.

In fact, there is a huge difference in subjective immorality between "lying" and "defending yourself" - which is not reprehensible on the part of an accused or defendant - and exerts violent or unfair pressure to obtain from third parties. inaccurate evidence, these third parties would themselves be prosecuted or convicted.³⁴

If we refer to the French doctrinaires we cannot overlook Guy Durandin who in his work "Les fondements du mensonge" refers to the "false" nature of the statements produced or to be produced, noting that coercion always involves will and conscience. to deceive justice through the intervention of the witness. The doctrinaire also mentions that the enumeration procedures in French criminal law and the means of bribery that appear in it are in principle of strict interpretation "an enumeration, however extensive, is limiting and may result in restrictions in the law." It is still necessary for the terms provided in the criminal law to be understood in a narrow way because

³² Франц фон Лист. *Учебник уголовного права:(Особенная часть)*. Разрешенный автором. Перевод с 12 и 13 переработанного издания Ф.Еляшевича. Москва. 1905, с.30.

³³ [Code pénal](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719/2002-01-01/), Section 2 : Des entraves à l'exercice de la justice (Articles 434-7-1 à 434-23), Version en vigueur au 01 janvier 2002, [citat : 10.10.2019], disponible :

³⁴ Yves Mayaud, *JurisClasseur Pénal Code* , Art. 434-15, Date du fascicule : 10 Janvier 2008, [citat : 10.09.2019], disponible : https://www.icc-cpi.int/RelatedRecords/CR2016_03634.PDF

due to the very broad, even imprecise meaning, for some of the expressions used, the meaning of the criminal norm is misunderstood.³⁵

In Chapter 2- *The objective constitutive elements of the crime provided in art.309 CP RM-* the characteristics of the object and of the objective side of the crime of coercion to make statements were highlighted.

Crimes against justice have been criminalized since ancient times. V. Lupu's rule provided for a judicial fine, mutilation and corporal punishment for crooked tongue, crooked urchins, calpuzania, forgery of seals. According to the testimony of missionary Basetti, who was in Moldavia in 1642, a woman who testified falsely was punished with 115 blows with a stick. A document from 1699 mentions that for a false testimony a fine was paid, the fine was paid by the person in whose favor the testimonies were submitted. For abuse of power, which was considered a civil crime, the culprit was required to reimburse the damage.³⁶

At the current stage, crimes against justice are systematized in a separate chapter of the Criminal Code, based on this systematization were certain criteria, such as the generic legal object.

In addition to the fact that the rule of law as a state that guarantees the realization of fundamental human rights and freedoms, expresses the very essence of the rule of law, its undeniable priority is accessibility for the legal conscience of every citizen.³⁷

Initially, in the national doctrine the object of the crime of coercion to make statements was characterized as consisting of social relations regarding the activity of criminal prosecution bodies under the law - the special legal object and the secondary legal object - the totality of social relations regarding individual freedom and personal safety.³⁸

Subsequently, the doctrinaires S. Brînză and V. Stati in the Criminal Law Treaty, Special Part, Vol.II refer to the fact that the special legal object of the crime provided in art.309 CP RM has a multiple character: the main legal object is regarding the contribution to the administration of justice, under the aspect of not admitting the coercion of some persons participating in the criminal process to commit actions that do not correspond to their will; the secondary legal object is the social relations regarding the mental / moral freedom, the corporal integrity or the health of the person.³⁹

³⁵ Durandin, G., Les fondements du mensonge : Flammarion, Nouvelle bibliothèque scientifique, Paris 1972 De la difficulté à mentir, étude phénoménologique et expérimentale, 1977 : éd. Nauwelaerts, Publication de la Sorbonne, p.293

³⁶ Coptileț, V., Aramă, E., History of Romanian law, Legal Book, Chisinau 2015, p.87, ISBN 978-9975-71-259-0

³⁷ Grecu, R., Avornic, Gh., Constantin Stere about the rule of law, In: National Law Review. 2009, no. 4 (103), pp. 19, ISSN 1811-0770

³⁸ Brînză, S., Ulianovschi, X., Stati, V., Țurcanu, I., Grosu, V., Drept Penal, Vol.II, Chișinău 2005, p.606, ISBN 9975-79-324-X

³⁹ Brînză, S., Ulianovschi, X., Stati, V., Țurcanu, I., Grosu, V., Drept Penal, Vol.II, Chișinău 2005, p.606, ISBN 9975-79-324-X

It has been shown that occasionally, by committing the constraint to make statements, the person's body may be harmed, in which case the offense will have a material object. Its existence presupposes contact with a person's body, but it is necessary that the actions directed towards the body of the passive subject must not take the forms of torture, inhuman or degrading treatment;

It evokes the need to expand the circle of people who may be victims of the crime of coercion.⁴⁰ Besides the fact that the victim of the crime provided in art.309 of the Criminal Code of the Republic of Moldova is one of the following persons: injured party, witness, civil party, civilly liable party, expert, translator, interpreter, relatives or close persons may still be victims of the crime of coercion to make statements. We consider it opportune to complete the norm of art. 309 of the Criminal Code of the Republic of Moldova according to the words "incorrect interpretation" with the phrase "... of relatives or persons close to them ...". In this case, it will be taken into account that the illegal actions directed towards this group of persons have as purpose the obtaining of the statements from the heard person, otherwise the deed will not be able to be incriminated according to art. 309 CP RM.

With reference to the objective side of the crime of coercion to make statements, the offense provided in art. 309 of the Criminal Code of the Republic of Moldova to enter into an agreement to plead guilty or to compel, in the same way, the expert to draw a conclusion or the translator, or the interpreter to make an incorrect translation or interpretation; the prejudicial consequences are missing, as the analyzed crime is a formal one.

The author remarks as normative ways of committing the crime of coercion to make statements: coercing the person, by threat or other illegal acts, to make statements or to conclude a plea agreement; forcing the expert, by threat or other illegal acts, to make the conclusion; forcing the translator or interpreter, by threat or other illegal acts, to make an incorrect translation or interpretation. In all ways, the perpetrator resorts to coercion by threat or other illegal acts. It should be mentioned that, in the presence of its first normative modality, the prejudicial action specified in art. 309 of the Criminal Code of the Republic of Moldova can materialize not only in the constraint to make statements, but also in the constraint of the person to conclude the guilt agreement. The national criminal procedural legislation, in Chapter III, provides for the special procedure regarding the plea agreement, defining it as a transaction concluded between the prosecutor and the accused or, as the case may be, the defendant, who has given his consent to plead guilty in the exchange of a reduced punishment.⁴¹

⁴⁰ Popovici, T., Echimciuc, Gh., The relative nullity of the statements of the suspect, the accused and the defendant, Journal of Interdisciplinary Studies "C. Stere", No. 1 (9) / 2016, p.48

⁴¹ Code of Criminal Procedure of the Republic of Moldova, Published: 05-11-2013 in the Official Gazette no. 248-251 art. 699

It is found that most national doctrinaires claim that the ways of coercion according to art.309 CP RM can be of 2 types: threats and other illegal acts. ⁴²The category of threats may include blackmail, provocation of fear, threat of harm to bodily integrity or health or murder, etc., and other illegal acts include hearing the suspect or accused in a state of fatigue, insulting the witness, attempting to honor and the dignity of the expert, etc. Threats and blackmail as a way of committing to make statements, expressly provided by criminal law, are often found in the criminal law of CIS states. ⁴³

The threat means several forms of it, such as: threat of violence, threat of disclosure of compromising information, threat of abduction of a person, threat of destruction or damage to property, threat of abduction of means of transport, etc. ⁴⁴By using such threats is meant the use of psychic means of coercion, likely to cause a state of fear, under the control of which the mental freedom of the threatened person is achieved.

Also in the context of committing the crime of coercion to make statements with the application of violence, it is necessary to establish the "minimum threshold of gravity" which presupposes a relative appreciation by its essence, the official subjects of the concrete application of the criminal law. several circumstances, which, taken as a whole, can be considered as meeting the features of the severity level. In particular, these circumstances refer to: the intensity of the action or inaction causing a pain or suffering, physical or mental, to a person; the duration of their application; the effects of the deed on the person's physique and psyche; the applicable means; method of operation;

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⁴² Brînză, S., Ulianovschi, X., Stati, V., Țurcanu, I., Grosu, V., Op.cit., P.606

⁴³ Jenunchi, E., Comparative study of the legislation on criminal liability for coercion to make statements, in the International Scientific Journal "Supremacy of Law", No. 4, 2019

⁴⁴ Brînză, S., Ulianovschi, X., Stati, V., Țurcanu, I., Grosu, V., Op.cit., P.606

effects of the deed on the person's physique and psyche; the applicable means; method of operation;

Regarding the optional signs of the objective side of the crime of coercion to make statements, only time is of interest. It is necessary that coercive actions to make statements take place in criminal proceedings.

It was highlighted that corruption is not part of the group "other illegal actions", this being an illegal act but in art. 309 of the Criminal Code of the Republic of Moldova is not simply about illegal actions, but about their use as a means of coercing to make statements. In case corruption will be proceeded in order to force the person to make a statement, we will be in the relationship between a party and a party, and the given actions are to be qualified, I confirm art.325 of the Criminal Code of the Republic of Moldova;

The author states that hypnosis cannot be seen as a method of coercion to obtain statements. Undoubtedly, in such a situation there can be no question of using the results of hypnosis as evidence, but at the same time, its use during a criminal prosecution with the consent of the person heard should not be considered a crime, as it does not have a sign of imperative. The consequence of such actions, in our view, should be the recognition of information obtained in this way as having no probative value. The absence of the person's consent to hypnosis indicates the imperative nature of the actions and allows hypnosis to be considered a constraint. Relevant in this regard is the opinion of national doctrinaires S. Botnaru and E. Şaporda who explain the phenomenon of hypnosis in the criminal law of the Republic of Moldova attributing hypnosis in the notion of "another factor" that generates the victim's helplessness, concluding that in the case of crime on a hypnotized person, his qualification with the aggravation of the responsibility for finding the victim in a state of helplessness depends on the extent to which the victim's psyche was influenced by hypnosis, depriving him of the possibility to resist. Only the state in which the person has been completely deprived of the possibility of resisting can aggravate the criminal liability.⁴⁵

The correct establishment of the social relations threatened by the perpetrator of the analyzed crime emphasizes not the creation of obstacles in the fight against crime, but the necessary defense of the fundamental rights and interests of man and the citizen against such serious violations by the authorities, which are inadmissible. conditions and cannot be justified by any socially useful purposes.

⁴⁵ Botnaru, S., Şaporda, E., The state of hypnosis in the substantial criminal law of the Republic of Moldova, available: [https://juridicemoldova.md/9652/starea-de-hipnoza-in-dreptul-penal-substantial-al-republicii - moldova.html](https://juridicemoldova.md/9652/starea-de-hipnoza-in-dreptul-penal-substantial-al-republicii-moldova.html)

In Chapter 3- *The subjective constitutive elements of the crime provided in art. 309 of the Criminal Code of the Republic of Moldova* - the analysis of the subject and of the subjective side of the crime of coercion to make statements is performed.

With reference to the subject of the crime of coercion to make statements, we mention that it has certain special characteristics, these being provided directly in the criminal law, thus limiting the circle of persons who can be prosecuted according to the criminal rule analyzed. According to the disposition of the legal norm stipulated at art.309 CP RM, the subject of the crime of coercion to make statements may be the person who ascertains the crime, the criminal investigation officer, the prosecutor or the judge. The practical procedural-criminal activity of each active subject of the judicial procedure (criminal investigation officer, prosecutor, defense counsel, specialist, expert, etc.) is strictly regulated by law, obliging them to act within the limits of their competence and to resolve a certain circle of tasks.

It was demonstrated that in addition to reaching the age threshold provided by law (16 years), in order to be held criminally liable according to art.309 of the Criminal Code of Moldova and liability, intellectual and volitional maturity, but also occupational maturity (professional, functional). The act of conduct of the subject is characteristic and at the same time determinant of two factors inherent to the psychic life of the person: the consciousness or the intellectual factor and the will or the volitional factor. The presence of these two factors and the specifics of their interaction in the genesis and realization of the socially dangerous act of conduct being determinant for the existence of guilt.

Also in the context of the subject we concretize that for the existence of the simple participation provided in art. In the case of complex participation - art.45 CP RM, organizer, instigator or accomplice can be any person, the main rule being that the author meets the qualities of the special subject.

We argue that any person may be subject to the crime of coercion to make statements, if he acts with the consent of the person ascertaining the crime, the prosecuting officer, the prosecutor or the judge. As a proposal of law ferenda is the completion of the legal text of art. criminal or the person conducting the criminal investigation.

The subjective side in the science of criminal law means the mental attitude of a person towards the socially dangerous act committed by it and the consequences, the mental activity of a person directly related to the commission of a crime.⁴⁶

The subjective side of the crime of coercion to make statements is characterized by direct intention, the conclusion expressly resulting from the provisions of art. 309 CP RM. The content

⁴⁶ Jenunchi, E., The subjective side of the crime of coercion to make statements, in the International Scientific Journal "Supremacy of Law", No.1-2, 2020, p.172

of the subjective side is not limited to guilt, but also includes a purpose - the objective pursued by the offender by committing the action or inaction that constitutes the material element of the crime, and the motive of the crime - the internal impulse from which the criminal decision arises and, consequently, enforcement of the decision.⁴⁷

Among the forms of the special purpose of the crime of coercion to make statements are: - the purpose of making the victim submit statements (in the presence of the normative method of coercing the person, by threat or other illegal acts, to make statements); - the purpose of making the victim formulate the conclusion (in the presence of the normative way of coercing the expert, by threat or other illegal acts, to make the conclusion); - the purpose of making the victim make an incorrect translation or interpretation (in the case of coercion of the translator or interpreter, by threat or other illegal acts, to make an incorrect translation or interpretation).

The author states that for the incrimination according to art.309 CP RM it does not matter what kind of statements he wants the subject of the crime to obtain by coercion: true or false, it is important that this is done by violating the law, therefore, both the interests of justice and of the person are violated.

The legislator does not expressly stipulate reasons for committing the crime of coercion to make statements. However, after the analysis we can deduce that in the case of the crime of coercion to make statements, the reason most common is: career, selfish or personal interest, the desire to hide their inability to investigate crimes, to find the real culprit. , to comply with the legal terms in the criminal investigation, the desire to punish the "offender" out of a sense of revenge, hatred, etc.

As a logical consequence of the perpetrator's decision to engage in criminal behavior manifested by threats or other illegal acts, it may be conditioned by other internal motives, such as ambition, vanity, etc., but they can only influence the individualization. criminal punishment;

In Chapter 4- *Delimitation of the crime of coercion to make statements of some related criminal acts. Comparative study of the crime of coercion to make statements in the criminal law of other states.* A comparative analysis is performed as the constraint to make statements is similar to a number of related offenses and certain competing criminal law rules. It is similar, first of all, to torture, inhuman or degrading treatment (art. 166¹ CP RM), with that of determination to submit false statements, to formulate false conclusions or to make incorrect translations (art. 314 CP RM). and with the false statement, false conclusion or incorrect translation (art. 312 CP RM).⁴⁸

⁴⁷ Iustin, V., Subjective constitutive elements of the crimes regarding the objects of industrial property, in *Intellectus*, Nr.4 / 2014, p.9

⁴⁸ Jenunchi, E., *Delimitation of the crime of coercion to make statements of the crime of torture, inhuman or degrading treatment*, Theory and practice of public administration, international scientific-practical conference, AAP, Chisinau 2018, p.568, ISBN 978-9975-3019 -7-8

The secondary legal object in the case of the crime of coercion to make statements and the crime of torture, inhuman or degrading treatment is similar, being formed by social relations regarding mental (moral) freedom, bodily integrity or health of the person. The difference between these crimes being the legal object the main legal object which is formed by the social relations regarding the contribution to the administration of justice, in terms of not admitting the coercion of some persons participating in the criminal process to commit actions that do not correspond to their will - in the case of to make statements and social relations regarding the dignity of the person - in the case of the crime of torture, inhuman or degrading treatment. A sign of equality between these two crimes can be planned in terms of the consequences of their commission in the context of the activity of law enforcement bodies - their legitimacy is questioned, substantially diminishes the authority of power and the credibility of citizens in the proper functioning and its fair.

The main line between the crime of coercion to make statements and that of torture, inhuman or degrading treatment lies in the fact that in the case of coercion to make statements it is necessary that illegal actions against the mental integrity of the person must belong to the special subject and these actions must not take the form of torture, inhuman or degrading treatment.

Delimiting the crime provided in art.309 CP RM from the one recorded in art.1661 CP RM, the author reveals that the victim of the compared crimes may coincide. The suspect, the accused, the defendant, the victim (in the procedural sense), the injured party, the witness as potential victims with special qualities of the crime provided in art. 309 of the Criminal Code of the Republic of Moldova are persons subject to coercive measures based on the exercise of public authority, a fact characteristic of the crimes of torture, inhuman or degrading treatment. The victim of the crime provided in art. 1661 CP of the Republic of Moldova may be not only the person under arrest or serving a custodial sentence, but also the person detained, searched, brought by force, subject to security measures, subject to psychiatric treatment, and so on

Comparing the mentioned criminal facts, the author points out that unlike the crime of torture, inhuman or degrading treatment, the methods of coercion in the case of the crime of coercion to make statements are the threat and other illegal acts.

It is emphasized that violence, as a qualifying feature of coercion to file statements, includes any impact on the victim: direct physical impact on the victim; bringing the victim into a helpless state against his will; specific ways of restricting freedom; psychotropic impact on the victim, which does not exceed the "minimum threshold of gravity" that delimits her from the violence applied in the crime of torture, inhuman or degrading treatment.

The subject of torture, inhuman or degrading treatment, as opposed to the crime of coercion to make statements, in addition to a state official or other person acting in an official capacity, may also be a private person acting on his own initiative or with its express or tacit consent.

Regarding the demarcation lines between the offenses provided in art.309 CP RM and the one provided in art.312 CP RM we mention that the main difference between them is the term “constraint” stipulated in the criminal norm provided in art.309 CP RM. It has the meaning of influencing the victim, as the latter is deprived of the possibility to direct his actions, and in the presence of the possibility of directing the actions by the witness or by the injured party, specialist or expert, translator or interpreter, the act meets the elements of the crime provided in art.312 CC RM. The determination to submit false statements, in equal measure, threatens both the interests of the criminal investigation bodies and the activity of the courts. We will put a sign of equality between the secondary legal object of these crimes being made up of the social relations regarding the psychic (moral) freedom, the corporal integrity or the health of the person;

In the comparative investigation of the offenses provided in art.309 CC RM and in art.314 CC of the RM, the main difference between the given offenses is highlighted: in the qualification of the deed based on art. 309 of the Criminal Code of the Republic of Moldova, unlike art. 314 of the Criminal Code of the Republic of Moldova, it does not matter whether the person is forced to make false or true statements, it does not matter if the expert is forced to make a false or true conclusion. In the latter case, the liability applies to the compulsion of the witness or injured party to make only false statements, or of the expert to make only false conclusions. However, in connection with the translator's or interpreter's translations and interpretations, in both cases they are forced to make an incorrect translation or interpretation.

With regard to the subject of the offense, a difference between these offenses is that in the case of the offense of determining the submission of false statements, the making of false conclusions or the making of incorrect translations, it is not necessary for the subject to have a special quality. that if these illegal coercive actions will be committed by the person ascertaining the crime, the criminal investigation officer, prosecutor or judge, will intervene criminal liability according to art.309 CC RM and not according to art.314 CC RM.

The Republic of Moldova, along with other European states, but also the CIS, regulates criminal liability for the crime of coercion to make statements exclusively in the Criminal Code, in Chapter XIV "Crimes against justice". The comparative analysis undertaken highlights very clearly the similarity of our national regulations to the provisions of the Criminal Codes of the countries of the Commonwealth of Independent States, which is explained by the common-Russian chain of origin of the rule in the criminal laws of these states.

In the logical sequence of the proposals *de lege ferenda*, the author submits the proposal to amend the norm of art.309 CC RM, having as example the Romanian norm, so that the norms provided in art.314 CC RM and art.309 CC RM to be merged into one rule criminalizing illegal actions to influence statements, whether true or not. Thus, following the merger, for art. 309 CC

RM proposes the following title “Influence of statements, conclusions, translations or interpretations in criminal proceedings”, the operative content of which will be formulated as follows: “(1) Influence of statements, conclusions, translations or interpretations in a trial criminal, by coercion, promise or offering of goods as well as other patrimonial or non-patrimonial advantages or by another illegal act with obvious intimidating effect, committed on the participants in the trial, on a relative or close person, to submit statements, to formulate conclusions, interpretations, translations, whether true or false, the conclusion of the plea agreement, as well as the avoidance of filing statements, formulating conclusions, making interpretations or translations, in civil proceedings, criminal proceedings, misdemeanors or in the national court or international

2. The actions provided for in paragraph 1:

a) committed by an organized criminal group or a criminal organization. "

Art.314 of the Criminal Code of the Republic of Moldova, the determination to submit false statements, to formulate false conclusions or to make incorrect translations will be excluded.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Following the investigation, the following results were obtained:

1. The study of the exegeses of the local doctrinaires highlights a series of scientific problems related to the objective and subjective signs of the composition of the crime of coercion to make statements;

2. Following the research of the foreign doctrine regarding the research topic, some specific approaches of some theoretical problems have been identified, such as the invocation of blackmail as a form of threat used in the process of committing the analyzed crime, of corruption as a way of committing the crime given, etc .;

3. Theoretical-normative analysis of the elements of the crime component constraint to make statements;

4. The delimitation of the crime provided in art. 309 of the Criminal Code of the Republic of Moldova of some related facts located

in Chapter XIV of the Special Part of the Criminal Code, as well as other criminal acts incorporated in other chapters of the Special Part of the Criminal Code;

5. Carrying out the comparative study of the criminal legislation of some foreign states in the matter regarding the crime of coercion to make statements;

6. Identifying the legislative deficiencies that have a negative impact on the practical efficiency of the norm of criminalization of the crime provided in art. 309 CP RM;

7. Motivation and formulation of the ferenda law proposals aimed at improving the incriminating framework provided in art. 309 CP RM.

8. Analysis in the context of approaching the various objectives of the research of the results of the sociological survey undertaken in the investigation process.

Generalizing on the research we formulate the following general conclusions:

1) The national and international scientific concept regarding criminal liability for coercion to make statements can be recognized as sufficiently elaborated. Relevant are the works of the doctrinaires: S. Brînză, V. Stati, Gh. Ulianoschi, I. Macari, A. Barbăneagră, A. Borodac, M. Poalelungi, Ig. Dolea, T. Visdoaga, Gh. Pavliuc (Republic of Moldova), В.В Лобанова, А.С Горелик, Ю.И Бунева, А.А. Жижиленко, М.Н. Голоднюк, Ю.А. Мерзлова, А.И. Чучаев (Russian Federation), Мельниченко М.И. (Украина), O. Loghin, T. Toader, Gh. Nistoreanu, Al. Boroî, V.Dobrinoiu, N. Conea, M. Oprea, B. Bîrzu (Romania), Y.Mayaud, G. Durandin (France), Franz von Liszt (Germany);

2) Occasionally, by committing the constraint to make statements, the person's body may be harmed, in this case the crime will also have a material object;

3) The victim of the crime provided in art. 309 of the Criminal Code of the Republic of Moldova is one of the persons: suspect, accused, victim (in the pre-trial sense) and the injured party, witness, civil party, civilly responsible party, expert, translator, interpreter;

4) Relatives or close persons may still be victims of the crime of coercion to make statements. We opt for the introduction in the content of the norm from art.309 CP RM, the final version of which will be presented as a law *ferenda* later, in the appropriate context of the paper, the phrase „ ... of relatives or persons close to them .. . ”;

5) The objective side of the crime of coercion to make statements, a crime provided in art. 309 of the Criminal Code of the Republic of Moldova consists in the prejudicial act, expressed in the action of enter into an agreement to plead guilty, or to compel, in the same way, the expert to draw a conclusion or the translator, or the interpreter to make an incorrect translation or interpretation; the harmful consequences are absent as the offense under investigation is a formal one;

6) Regarding the optional signs of the objective side of the crime of coercion to make statements, only time is of interest. It is necessary that coercive actions to make statements take place in criminal proceedings.

7) In connection with the commission of the crime of coercion to make statements with the application of violence, it is necessary to establish the presence of the "minimum severity threshold";

8) In addition to reaching the age threshold provided by law to be held criminally liable according to art. (professional, functional). The act of conduct of the subject is characteristic and at the same time determinant of two factors inherent to the psychic life of the person: the consciousness or the intellectual factor and the will or the volitional factor. The presence of these two factors and the specifics of their interaction in the genesis and realization of the socially dangerous act of conduct being determinant for the existence of guilt.

9) For the existence of simple participation, ie co-authorship, in the case of the crime of coercion to make statements it is necessary that the perpetrators have the special quality required of the author, ie in case of co-authorship is necessary the presence of special subjects. In the case of complex participation, the organizer, instigator or accomplice can be any person, the main rule being that the author meets the qualities of the special subject.

10) The subjective side of the composition of the crime of coercion to make statements is characterized by direct intention, the conclusion expressly resulting from the provisions of art. 309 CC RM;

11) Among the forms of the special purpose of the crime of coercion to make statements are: - the purpose of making the victim submit statements (in the presence of the normative method of coercing the person, by threat or other illegal acts, to make statements) ; - the purpose of making

the victim formulate the conclusion (in the presence of the normative way of coercing the expert, by threat or other illegal acts, to make the conclusion); - the purpose of causing the victim to make an incorrect translation or interpretation (in the case of coercion of the translator or interpreter, by threat or other illegal acts, to make an incorrect translation or interpretation);

12) The crime of coercion to make statements has some similarities and is to be delimited, first of all, with torture, inhuman or degrading treatment (art.166¹ CC RM), with that of determination to submit false statements, to the formulation of false conclusions or incorrect translations (art. 314 CC RM) and with a false statement, false conclusion or incorrect translation (art. 312 CC RM);

13) The main line between the crime of coercion to make statements and that of torture, inhuman or degrading treatment is drawn by the fact that, when committing the first of the crimes in question, illegal actions aimed at the mental integrity of the person to be committed by the subject especially and these actions must not take the form of torture, inhuman or degrading treatment;

14) When qualifying the deed based on art. 309 of the Criminal Code of the Republic of Moldova, it does not matter if the person is forced to make false or true statements, likewise, it does not matter if the expert is forced to make a false or true conclusion. This is the main difference between the offense specified in art. 309 CC RM and the one provided in art. 314 CC RM

15) In relation to the subject-matter of the offense, a difference between those offenses is that in the case of the offense of determination to submit false statements, to make false conclusions or to make incorrect translations, the subject-matter is not required to have a special quality.

The current scientific problem solved consists in the conceptual deepening and improvement of the existing theoretical-normative framework regarding the crime of coercion to make statements following a complex analysis of the constituent elements of the crime component analyzed with the identification of imperfections of the current criminalization and elaboration. a series of conclusions and proposals, including by law ferenda aimed at improving the existing incriminating text in order to increase the efficiency of criminal prosecution for coercing statements.

1) In order to streamline the application of the norm provided in art.309 CC RM, as law ferenda the following proposal was motivated and formulated: complete modification of the norm art.309 CP RM, having as example the Romanian norm, art.314 CC RM and art.309 CC RM to be merged into a single norm that criminalizes the illegal actions of influencing the statements, whether they are true or not. Thus, following the merger, for art. 309 CP RM proposes the following title “Influence of statements, conclusions, translations or interpretations in criminal proceedings”, the operative content of which will be formulated as follows: “(1) Influence of statements,

conclusions, translations or interpretations in a trial criminal, by coercion, promise or offering of goods as well as other patrimonial or non-patrimonial advantages or by another illegal act with obvious intimidating effect, committed on the participants in the trial, on a relative or close person, to submit statements, to formulate conclusions, interpretations, translations, whether true or false, the conclusion of the plea agreement, as well as the avoidance of filing statements, formulating conclusions, making interpretations or translations, in civil proceedings, criminal proceedings, misdemeanors or in the national court or international

2. The actions provided for in paragraph 1:

a) committed by an organized criminal group or a criminal organization. "

Art.314 CP RM The determination to submit false statements, to formulate false conclusions or to make incorrect translations will be excluded.

The advantages of the formulated recommendations will consist in:

a) Exact determination of the content of the provision formulated in art.309 CC RM Constraint to make statements and removal of difficulties in interpreting the rule stipulated in the article in question;

b) The efficiency of the practical application of the provisions of art. 309 CC RM following the implementation of the proposal formulated as a law ferenda;

c) Significant reduction of qualification problems that arise in practice in connection with the problems of delimitation of crimes provided in art.309 CC RM Constraint to make statements and art.314 CC RM Determination to submit false statements, to formulate false conclusions or to making incorrect translations, as the new rule would act as a whole which would exhaustively regulate the criminal act in question.

d) Adjusting the legal provisions of art.309 CC RM "Forcing to make statements" to the spirit of ECtHR decisions in the given matter and bringing them in accordance with similar provisions of criminal law of some EU states following the example of crime similar in the CC of Romania.

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

1. Further research on the issues of qualification of the facts of coercion to make statements with the elaboration of recommendations for their correct solution;

2. Deepening the research in terms of streamlining the application of the rule provided in art. 309 of the Criminal Code of the Republic of Moldova "Constraint to make statements";

3. Analysis of the practice of applying the norms that provide for criminal liability for being forced to make statements in the activity of courts in other states.

ABSTRACT

Jenunchi Elena „Criminal Liability for Coercion to Making Declarations”.

Ph.D. Thesis in Law, Specialty „554.01 Criminal Law and Criminal Executive Law”.

Chisinau, 2020

Thesis structure: Introduction, 4 chapters, general conclusions and recommendations, references comprising 173 titles, 158 pages of basic text, 1 annex and 6 figures. The obtained results have been published in 9 works.

Key words: coercion, threat, unlawful deeds, special subject, declarations, guilt acknowledgement agreement, intention, delimitation, comparative study.

Field of study: Criminal Law. Special Part

Goal and objectives of the thesis: The goal hereof lies in conduct of a deeper examination of such a crime as coercion to making declarations, as specified by article 309 of the Criminal Code, as well as in making certain proposals *de lege ferenda* aimed to increase the efficiency of the legal framework incriminating the coercion to making declarations. The following objectives have been pointed out in order to achieve this goal: identifying the place of coercion to making declarations within the range of crimes against justice; carrying on legal analysis of the essential elements of the crime stipulated by article 309 of the Criminal Code; identifying all special subjects of the crime of coercion to making declarations, to the fullest and most precise extent; establishing the reasons for non-reflection of the crime of coercion to making declarations in the judicial practice, and making proposals for improving the bases of incrimination; delimiting the coercion to making declarations from certain associated criminal deeds; developing a model of incrimination under article 309 of the Criminal Code, aimed to improve the criminal and legal framework.

Scientific novelty of the obtained results lies in conduct, for the first time, of a complex criminal and legal research of the crime regulated by article 309 of the Criminal Code ‘Coercion to Making Declarations’. There have been outlined the lines delimiting the crime under analysis and other associated criminal deeds. As a result of studying the foreign criminal rules, there have been formulated the proposals *de lege ferenda* aimed to increase the efficiency of the legal framework incriminating the coercion to making declarations.

Theoretical significance: This thesis may be as a significant scientific and methodological support for the specialised doctrine, particularly, for further development of the theoretical and regulatory concept of the crime under analysis.

Applied value: The results obtained as a result of this study may be used in scientific, training and educational activities, as well as in practical activities of law-enforcement authorities or in the law-making process.

ADNOTARE

Jenunchi Elena, „Răspunderea penală pentru constrângerea de a face declarații”.

Teză de doctor în drept la specialitatea 554.01 – Drept penal și execuțional penal.

Chișinău, 2020

Structura lucrării: Introducere, 4 capitole, concluzii generale și recomandări, bibliografia din 173 de titluri, 158 de pagini text de bază, 1 anexă și 6 figuri. Per total, lucrarea numără 182 de pagini. Rezultatele obținute sunt publicate în 9 lucrări.

Cuvinte-cheie: constrângere, amenințare, acte ilegale, subiect special, declarații, acord de recunoaștere a vinovăției, intenție, delimitare, studiu comparat.

Domeniul de studiu: Drept penal. Partea specială.

Scopul și obiectivele lucrării: Scopul tezei de doctor consistă în realizarea unei investigații aprofundate în materia infracțiunii de constrângere de a face declarații prevăzute la art.309 CP RM sub aspect teoretico-normativ cu evoluarea eficienței practice a reglementării legislative a acesteia și formularea unor propuneri *de lege ferenda* orientate spre perfecționarea cadrului legal de incriminare a infracțiunii date. Pentru realizarea acestui scop, au fost trasate următoarele obiective: analiza complexă teoretico-normativă a elementelor componente de infracțiune prevăzute la art.309 CP RM; identificarea curenților de reglementare normativă ce influențează negativ eficiența aplicării normei studiate; stabilirea criteriilor de delimitare a infracțiunii analizate de unele fapte infracționale conexe; realizarea unui studiu comparativ al legislației penale în materie de reglementare a infracțiunii de constrângere de a face declarații; formularea unor propuneri de perfecționare a cadrului normativ incriminator al art.309 CP RM.

Noutatea științifică și originalitatea rezultatelor obținute își găsesc exprimare în faptul că aceasta prezintă o primă cercetare juridico-penală de genul dat a infracțiunii reglementate la art.309 CP RM „Constrângerea de a face declarații”. Au fost studiate complex elementele componente respective de infracțiune cu formularea concluziilor asupra unor aspecte problematice în abordarea teoretico-normativă a acestora; au fost analizate similitudinile și determinate cu exactitate criteriile delimitării infracțiunii analizate de alte fapte penale conexe; a fost realizat un studiu comparativ al reglementării infracțiunii în cauză în legislația altor state; au fost formulate propuneri *de lege ferenda* menite să eficientizeze cadrul legal care incriminează fapta de constrângere de a face declarații.

Semnificația teoretică: lucrarea constituie un suport științifico-metodologic semnificativ pentru doctrina juridico-penală, în special pentru perfecționarea în continuare în știința națională a dreptului penal a conceptului teoretico-normativ al infracțiunii analizate.

Valoarea aplicativă: rezultatele obținute în urma studiului pot fi aplicate în activitatea științifică; sunt utile procesului de instruire profesională juridică la toate nivelurile de studii, precum și în activitatea practică a instituțiilor de ocrotire a ordinii de drept; pot fi luate în considerare în procesul de legiferare.

АННОТАЦИЯ

Женунки Елена, «Уголовная ответственность за принуждение к даче показаний».
Диссертация на соискание учёной степени доктора юридических наук по
специальности «554.01 Уголовное право и уголовно-исполнительное право».

Кишинёв, 2020 год

Структура работы: введение, 4 главы, общие выводы и рекомендации, библиография из 173 наименований, 158 страниц основного текста, 1 приложение и 6 рисунка. Полученные результаты были опубликованы в 9 работах.

Ключевые слова: принуждение, угроза, незаконные действия, специальный субъект, показания, соглашение о признании вины, намерение, разграничение, сравнительное исследование.

Область исследования: Уголовное право. Особенная часть.

Цель и задачи работы: Цель докторской декларации заключается в проведении углублённого исследования такого преступления, как принуждение к даче показаний, предусмотренного статьёй 309 Уголовного кодекса Республики Молдова, а также формулирование предложений, с точки зрения действующего закона, направленных на повышение эффективности правовой базы, служащей для инкриминирования преступления по принуждению к даче показаний. Для осуществления данной цели были намечены следующие задачи: - установление места преступления по принуждению к даче показаний среди преступлений против правосудия; юридический анализ признаков состава преступления, предусмотренного статьёй 309 Уголовного кодекса Республики Молдова; полное и точное обозначение всех специальных субъектов преступления по принуждению к даче показаний; определение причин неотражения в судебной практике преступления по принуждению к даче показаний и представление предложений по улучшению обвинительной базы; разграничение принуждения к даче показаний от некоторых сопутствующих уголовных деяний; разработка модели предъявления обвинения согласно статье 309 Уголовного кодекса Республики Молдова, направленной на улучшение уголовно-юридической базы.

Научная новизна полученных результатов выражается в том, что впервые было проведено комплексно, с уголовно-юридической точки зрения, исследование преступления, регламентированного статьёй 309 Уголовного кодекса Республики Молдова «Принуждение к даче показаний». Были выделены разграничительные черты между анализируемым преступлением и другими сопутствующими уголовными деяниями. По результатам изучения уголовных норм иностранного происхождения были сформулированы предложения, с точки зрения действующего закона, направленные на повышение эффективности правовой базы, служащей для инкриминирования преступления по принуждению к даче показаний.

Теоретическая значимость: данная работа может служить существенной научно-методологической опорой для специализированных доктрин, в частности, для дальнейшего развития теоретико-нормативной концепции анализируемого преступления.

Прикладная значимость: результаты, полученные в ходе проведённого исследования, могут использоваться в научной, образовательной и учебной деятельности, в практической работе правоохранительных органов и в законотворческой деятельности.

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