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CRIMINAL LIABILITY FOR TAKING BRIBES AND GIVING BRIBES

SUMMARY

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RESEARCH CONCEPTUAL MILESTONES

Topicality. In the Criminal Code in force[1] (hereinafter – CC RM), taking bribes and giving bribes are incriminated in art. 333 and, respectively, in art. 334. In the hypothesis of these facts, as bribed person appears, as the case may be: the arbitrator chosen or appointed to resolve by arbitration a dispute; the person who manages a commercial, public or other non-state organization; the person working for such an organization; participant in a sporting event or betting sporting event. Official statistics show that the number of offenses provided in art. 333 and 334 CC RM knows the following dynamics: in 2014 – 5[2]; in 2015 – 5[3]; in 2016 – 5[4]; in 2017 – 11[5]; in 2018 – 2[6]; in 2019 – 3[7]; in the year 2020 – 8[8]; in the first five months of 2021 – 1.[9] These indicators seem to be insignificant compared to the number of crimes provided in art. 324 and 325 CC RM, officially registered. However, the pronounced variability of the indicators of committing in different years of bribery and bribery testifies that the above-mentioned statistical data characterize rather not the real state of affairs, but the quality of activity of those who apply art. 333 and 334 CC RM. In addition, the specificity of dispositional administrative or organizational-economic actions, undertaken within non-state entities, conditions an increased latency. First, it is not always easy to set a clear line between bribery and boosting performance in the private sector. Second, bribery and bribery may not be reported, as those who are harmed in their interests would prefer to maintain their business reputation, follow quasi-unanimously accepted customs and possibly avoid interfering with law enforcement in their work. the non-state entity it represents. In other words, those harmed in their interests are prone to lose less so as not to be put in the position of losing more.

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[1] Criminal Code of the Republic of Moldova of 18.04.2002. In: *Official Gazette of the Republic of Moldova*, 2002, no. 128-129.

[2] *Operative information on crime status (without classification) on the Moldovan territory for December 2014.* Available at: https://mai.gov.md/ro/date-statistice

[3] *Operative information on crime status (without classification) on the Moldovan territory for December 2015*. Available at: https://mai.gov.md/ro/date-statistice

[4] *Operative information on crime status (without classification) on the Moldovan territory for December 2016*. Available at: https://mai.gov.md/ro/date-statistice

[5] *Operative information on crime status (without classification) on the Moldovan territory for December 2017*. Available at: https://mai.gov.md/ro/date-statistice

[6] *Operative information on crime status (without classification) on the Moldovan territory for December 2018.* Available at: https://mai.gov.md/ro/date-statistice

[7] *Operative information on crime status (without classification) on the Moldovan territory for December 2019.* Available at: https://mai.gov.md/ro/date-statistice

[8] *Operative information on crime status (without classification) on the Moldovan territory for December 2020*. Available at: https://mai.gov.md/ro/date-statistice

[9] *Operative information on crime status (without classification) on the Moldovan territory for March 2021*. Available at: https://mai.gov.md/ro/date-statistice

According to G. Coca, "corruption as a social phenomenon has existed since the world, in all more or less democratic societies. Sometimes in some situations it is even necessary".[10] We do not consider that resignation to or tolerance of corruption in the private sector is a way forward. Preventing and combating corruption in the private sector is by no means negligible, even if this social phenomenon affects a sector that is not managed by the state. The role of commercial, public and other non-governmental organizations continues to grow exponentially. In these circumstances, it cannot be overlooked that the manifestations of corruption in the private sector generate and reproduce uneconomic methods of competition. In this way, the inefficient and corrupt are favored in the interests and, respectively, the efficient and honest ones are disadvantaged in the interests. The repercussions felt by the whole society of corruption in the private sector can consist in: the reduction of production volumes; non-fulfillment of the conditions of the concluded contracts; interruption or difficulty in the supply of goods and services; declining quality of goods and services; undermining investments in the economy; creating fertile ground for fraud and abuse; strengthening the shadow economy; increase in prices and tariffs; redistribution of wealth, capital and economic benefits in favor of a minority whose interests differ from the social interest, etc. All this increases economic and social inequality, intensifying tensions in a society so continually crushed by social, political and economic dissensions.

In the Decision of the Parliament of the Republic of Moldova no. 56 of 30.03.2017 on the approval of the National Integrity and Anti-Corruption Strategy for 2017-2020 states: "The report assessing the compliance of the anti-corruption system of the Republic of Moldova with the main international standards in the field of combating corruption and ensuring integrity, launched in October 2016, highlighted the destructive effects of corruption on the private sector. According to the World Bank's 2015 research on Ease of Doing Business in the Republic of Moldova, despite reported progress in some sectors, efforts to combat corruption and increase transparency in the business process. decisions, to reduce bureaucracy and to ensure the rule of law have not yet produced significant improvements in the investment climate. Risks of corruption are attested in the fields of regulation of import-export operations, protection of competition, construction of residential space, public-private partnerships, corporate governance [...] etc.".[11] The Assessment Report on the compliance of the National Anti-Corruption System

[10] Coca G. *Some reflections on corruption*. In: Deviance and crime: evolution, trends and perspectives, Vol. II. Bucharest: Universul Juridic, 2017, p. 245-250.

[11] Decision of the Parliament of the Republic of Moldova no. 56 of 30.03.2017 on the approval of the National Integrity and Anti-Corruption Strategy for the years 2017-2020. In: *Official Gazette of the Republic of Moldova*, 2017, no. 216-228.

of the Republic of Moldova with the main international standards in the field of combating corruption and integrity in the private sector states: "The costs of corruption in the private sector are enormous, affecting the quality of goods and services. market economy, the investment process and the national public budget. The bribe paid by the economic agents, in order to obtain the public procurement contracts, determines a fraudulent increase of the costs of such contracts and a decrease of the quality of the services provided. Economic and public agents, as well as political actors, establish illicit relationships in order to obtain public procurement contracts and finance political parties. According to the survey on the perception and personal experience of households and businessmen regarding corruption, the total value of bribes paid by businessmen in 2015 was estimated at 381 million lei [...]."[12] Likewise, in a research conducted by Transparency International-Moldova, it is indicated that "part of the private sector operates in the shadow economy, resorting to tax evasion, which makes it vulnerable to the control bodies. The private sector is poorly protected by the state. The level of ethical standards of small businesses is low. Large companies do not usually apply corporate management rules. The private sector is not sufficiently involved in the work of working groups / councils within state bodies, in monitoring economic policies and those to prevent corruption."[13] All this demonstrates the major social danger of corruption in the private sector for society as a whole and, consequently, the opportunity to criminalize bribery and bribery.

The path of European integration, which the Republic of Moldova is following, is incompatible with the manifestations of corruption in the private sector. The Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and their Member States, on the other hand[14], ratified by Law no. 112 of 02.07.2014[15], provides: "The Parties shall cooperate in the following areas: [...] ensuring the effectiveness of the fight against corruption, in particular with a view to enhancing international cooperation in the fight against corruption and ensuring the effective implementation of relevant international legal instruments, such as the UN Convention against

[12] *Report on the conformity assessment of the national anti-corruption system of the Republic of Moldova to the main international standards in the field of combating corruption and integrity in the private sector.* Available at: https://www.md.undp.org/content/moldova/ro/home/library/effective_governance/raport-de-evaluare-coruptie-privat.html

[13] *Moldova National Integrity System Assessment 2014*. Disponibil: https://images.transparencycdn.org/images/2014_NationalIntegritySystem_Moldova_EN.pdf

[14] *Association Agreement between the Republic of Moldova, of the one part, and the European Union and the European Atomic Energy Community, and their Member States, of the other part.* Available at: https://mfa.gov.md/img/docs/Acordul-de-Asociere-RM-UE.pdf

[15] Law no. 112 of 02.07.2014 for the ratification of the Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and their member states, on the other hand. In: *Official Gazette of the Republic of Moldova*, 2014, no. 185-199.

Corruption. corruption in 2003" (letter e) art. 4); "The Parties shall cooperate in preventing and combating all forms of criminal and unlawful activities, whether organized or not, including those of a transnational nature, such as: [...] active and passive corruption, both in the private sector and in the public one [...]" (letter e) par. (1) art. 16). Likewise, the defense of the rule of law against bribery and bribery is in line with the commitments of the Republic of Moldova to the international community. Thus, the Criminal Law Convention on Corruption, signed in Strasbourg on January 27, 1999[16], was ratified by Law no. 428 of 30.10.2003 for the ratification of the Criminal Law Convention on Corruption[17]. The UN Convention against Corruption, adopted in New York on 31.10.2003[18], was ratified by Law no. 158 of 06.07.2007 for the ratification of the United Nations Convention against Corruption.[19] The Moldovan legislator even assumed additional obligations, because he incriminated in art. 333 and 334 MCC bribery targeting not only commercial organizations (as recommended in the last two international acts specified above), but also other non-state non-commercial organizations.

These efforts of the national authorities are appreciable, although their expected effect is still to be expected. However, as V. Cușnir notes, "no one has yet found a solution with guaranteed effectiveness for reducing and, ultimately, eliminating corruption from the life of society. Regarding the phenomenon of corruption, there is an unanimously accepted truth, according to which the prosecution and criminal punishment, the contravention or disciplinary sanction against corrupt individuals can eliminate the delinquent, but they cannot eradicate corruption. Consequently, the fight against corruption can be achieved effectively in the situation when at the same time, in complex with the improvement of the legislative framework, the economic, political and spiritual recovery of the society will proceed."[20] In the same vein, M.C. Bogea and O. Neicuțescu state: "Corruption is immortal, but it can be reduced. If you don't fight, it will grow. Political will is also needed to prevent and combat the phenomenon. This will must include the recognition that the development of corruption, the danger of the phenomenon, its prevention and combating has no alternative but a perseverance beyond the resilience of this

[16] *Criminal Law Convention on Corruption.* Available at: http://conventions.coe.int/Treaty/EN/Treaties/Html/173.htm
[17] Law no. 428 of 30.10.2003 for the ratification of the Criminal Law Convention on Corruption. In: *Official Gazette of the Republic of Moldova*, 2003, no. 229.
[18] *United Nations Convention against Corruption*. Available at: http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf
[19] Law no. 158 of 06.07.2007 for the ratification of the United Nations Convention against Corruption. In: *Official Gazette of the Republic of Moldova*, 2007, no. 103-106.
[20] Cușnir V. The phenomenon of corruption: between perception and social reaction. In: *Akademos*, 2015, no. 4, p. 97-105.

phenomenon."[21] It is clear that criminal law in the private sector alone is not possible to prevent and combat corruption. In this sense, still in the Decision of the Parliament of the Republic of Moldova no. 421 of 16.12.2004 for the approval of the National Strategy for preventing and combating corruption and the Action Plan for the implementation of the National Strategy for preventing and combating corruption, it was mentioned: "Creating a competitive private sector is a priority of the economic policy of the Republic of Moldova. this sense being imposed the modification of the fiscal and customs legislation in order to reduce the fiscal burden and to increase the responsibility in case of tax evasion. A mechanism will be developed to combat the phenomenon of the underground economy and to reintegrate its means into the legal economy. Measures will be taken in order to facilitate the activity of economic agents (in registration, licensing, in the calculation and payment of taxes, in the preparation of financial, statistical, fiscal reports, etc.)".[22] Likewise, in the Decision of the Parliament of the Republic of Moldova no. 56 of 30.03.2017 on the approval of the National Integrity and Anti-Corruption Strategy for 2017-2020 reads: "Regulating the requirements for the legal development of entrepreneurship and criminalizing corruption offenses in the private sector, including by establishing the criminal liability of legal entities for corruption offenses committed, are not enough to solve the problem of corruption in the private sector. It is essential that business organizations take a proactive role in establishing a culture of corporate integrity and transparency. A source of inspiration for the growth of corporate ethics and culture in this regard is the new international standard ISO 37001:2016 "Anti-corruption management systems. Implementation requirements and recommendations", intended to support state and commercial organizations in avoiding and managing the risks / costs / damages that may be caused by corruption, as well as to promote business confidence and strengthen the reputation of these organizations".[23]

Art. 333 and 334 of the Criminal Code of the Republic of Moldova are intended to provide last resort solutions in cases where non-criminal means are not effective. From this perspective, it can be mentioned that the crimes, provided by these two articles, remain insufficiently investigated. Disproportionately high attention has been and is being paid to the offenses provided in art. 324 and 325 CC RM, considering that the offenses, provided in art. 333 and 334 CC RM, are just "replicas" of the former, their only peculiarity being that they are committed in

[21] Bogea M.C., Neicuțescu O. Corruption - criminological considerations. In: *Deviance and crime: evolution, trends and perspectives*. Bucharest: Universul Juridic, 2016, p. 245-250.
[22] Decision of the Parliament of the Republic of Moldova no. 421 of 16.12.2004 for the approval of the National Strategy for preventing and combating corruption and the Action Plan for the implementation of the National Strategy for preventing and combating corruption. In: *Official Gazette of the Republic of Moldova*, 2005, no. 13-16.
[23] Decision of the Parliament of the Republic of Moldova no. 56 of 30.03.2017 on the approval of the National Integrity and Anti-Corruption Strategy for the years 2017-2020. In: *Official Gazette of the Republic of Moldova*, 2017, no. 216-228.

the private sector. The reduced clarity of the provisions of art. 333 and 334 CC RM, as well as the significant impact of the provisions of other branches of law on the concepts used in these two articles, make it difficult to interpret and apply art. 333 and 334 CC RM. Because of this, people guilty of bribery or bribery are not always criminally liable. It is not excluded that in certain cases art. 333 or 334 CC RM apply to persons who are not guilty of committing bribery or bribery. In these circumstances, it is imperative to investigate at the level of a doctoral thesis the issues related to liability for the offenses provided in art. 333 and 334 CC RM.

The aspects mentioned above demonstrate the topicality and importance of the problem proposed for research, determining the choice of the topic of this thesis.

Describing the Situation in the Research Area and Identifying the Research Issue. In the Republic of Moldova, the liability for the offenses provided in art. 333 and 334 CC RM is a concern of the following scientists: O. Bejan, M. Bîrgău, A. Borodac, S. Brînza, S. Copețchi, V. Cușnir, S. Gavajuc, L. Gîrla, S. Ilie, M. Lupu, N. Morei, I. Nastas, R. Popov, T. Popovici, Gh. Reniță, V. Stati, C. Timofei, I. Țurcan etc. In other states, his works are dedicated to criminal liability for bribery and bribery: Gh. Alecu, A. Boroi, V. Dabu, C. Danileț, Gh. Diaconescu, D. Dinuică, S.D. Dobre, V. Dobrinoiu, R. Doseanu, C. Duvac, M.K. Guiu, A.-M. Gușanu, M.A. Hotca, G.M. Husti, Gh. Ivan, O. Loghin, E. Mădulărescu, Gh. Nistoreanu, V. Păvăleanu, L. Radu, M. Safta, A. Sitaru, Gh. Stoian, G.M. Tite, T. Toader, C.-F. Ușvat etc. (Romania); That. Asnis, G. Boguș, S.M. Budatarov, S.V. Elekina, G.S. Goncearenko, D.A. Grișin, P.S. Iani, D.A. Kononov, S.D. Krasnousov, M.A. Liubavina, N.A. Lopașenko, A.V. Onufrienko, B.V. Voljenkin etc. (The Russian Federation); V.V. Komar, A.V. Marcarean, O.I. Petrenko, R.V. Cousin etc. (Ukraine). The works of these doctrinaires constitute the theoretical foundation of the thesis. This thesis complements the studies previously developed in the field, highlighting some new trends and aspects, specific to the current stage of society development.

The research problem consists in the scientific substantiation of the interpretation of the provisions of art. 333 and 334 CC RM, which would contribute to streamlining the application of liability for crimes under these articles, thus ensuring compliance with the rules of qualification and the principles of criminal law.

Work Goal and Objectives. The *goal* of the thesis lies in the in-depth investigation of liability for the offenses provided in art. 333 and 334 CC RM, in resolving controversies related to the interpretation of these articles, as well as in formulating recommendations necessary to improve the quality of criminal law, complementary extra-criminal rules and acts of interpretation of criminal law.

In order to achieve this goal, we set ourselves the following *objectives*:

– revealing the legal-criminal implications of the notion of corruption, as well as the significance of this notion from the perspective of art. 333 and 334 CC RM;

– the examination of the theoretical visions regarding the responsibility for the offenses provided in art. 333 and 334 CC RM;

– establishing the content of the constitutive signs of these offenses, as well as the aggravating circumstances of the offenses provided in art. 333 and 334 CC RM;

– analysis of the aspects of comparative criminal law of liability for bribery and bribery;

– interpretation of art. 333 and 334 CC RM in the light of international regulations on preventing and combating corruption in the private sector;

– recourse to the norms of extrapenal nature in order to interpret art. 333 and 334 CC RM, as well as the demarcation of the scope of application of these articles;

– dissociation of the offences, incriminated at art. 333 and 334 CC RM, related crimes;

– the analysis of the judicial practice in the matter and the highlighting of the difficulties that characterize the application by the practitioners of art. 333 and 334 CC RM;

– identification of quality defects of the provisions of art. 333 and 334 CC RM;

– proposing solutions for the improvement of the criminal law, of some complementary extra-criminal norms, as well as of the acts of interpretation of the criminal law.

Research Methodology. The logical method, the comparative method, the historical method was applied in order to achieve the above-mentioned purpose and objectives. Our investigations are based on the study of the theory of criminal law, the practice of the courts of the Republic of Moldova, the jurisprudence of the Constitutional Court of the Republic of Moldova and the Constitutional Court of Romania, as well as the practice of the European Court of Human Rights.

The novelty and scientific originality are confirmed in the fact that, for the first time in the Republic of Moldova, an investigation is carried out at the level of a doctoral thesis of the responsibility for the crimes provided in art. 333 and 334 CC RM. This thesis proposes original visions and solutions regarding: the secondary legal object of taking bribes (it is established that, in the case of exerting pressure on the victim (which does not involve any threat or application of violence), social relations are affected to the person's freedom of will); the material or immaterial object of the offenses provided in art. 333 and 334 CC RM (it is demonstrated that: a) virtual currencies represent goods within the meaning of art. 333 and 334 CP RM; b) the material object of the offenses, provided in art. 333 and 334 CC RM, may represent it, among others: i) organs, tissues or cells of human origin; ii) the so-called "money signs" of self-proclaimed state formations; c) in the presence of certain conditions, false entities (false products, false

documents, false information, etc.) may constitute the material object of the offenses provided in art. 333 and 334 CP RM); the subject of these offenses (it is argued that: a) the trainee notary is part of the staff carrying out auxiliary activities. For these reasons, he cannot answer based on art. 333 CC RM; b) the persons within the private medical-sanitary institutions, which exercise administrative disposition or organizational-economic actions, have the quality of subject required by art. 124 CP RM; c) in the case of the individual office of the family doctor, the titular family doctor is the person who manages the non-state organization, *i.e.* has the quality of subject required by art. 124 CC RM; d) in the case of the plurality of intermediaries, the mediation will be considered consumed from the moment of taking the entire illicit remuneration by the bribed person etc.); the aggravating factors of the offenses provided in art. 333 and 334 of the Criminal Code of the Republic of Moldova (it is established that: if the co-perpetrator started the objective side of bribery or bribery, he will be released from criminal liability under art. 56 CC RM only if he took all measures dependent on him to prevent the commission of the crime by another co-perpetrator or co-perpetrators, not always the crime, committed in the interest of an organized criminal group or a criminal organization, is a crime committed by an organized criminal group or a criminal organization, etc.) etc.

The theoretical significance of the work is expressed in: redefining the conceptual bases of the criminal law study on liability for the facts incriminated in art. 333 and 334 CC RM; determining the legal essence of the offenses provided for in these articles; establishing the defects that characterize art. 333 and 334 CC RM; the accumulation of a vast theoretical and practical material for the development of current and complex directions of investigation of the crimes provided by these articles.

The applicative value of the work consists in: the interpretation, in accordance with the principle of legality, of art. 333 and 334 CC RM are important in establishing a uniform practice for the application of these articles, as well as for the further development of scientific concepts in the field; the results of the critical evaluation of the defects, which characterize art. 333 and 334 CC RM, may be taken into account by the legislator in the process of continuous improvement of the criminal law; the results, obtained in the thesis, can demonstrate their usefulness in the practical activity of the criminal investigation bodies, of the prosecutor's office and of the courts, as well as in the training process within the educational institutions with legal profile.

Core Research Results submitted for Defence can be summarized as follows: 1) it was established that the incrimination of passive corruption and active corruption, on the one hand, and bribery and bribery, on the other hand, in separate chapters of the special part of the

Criminal Code of the Republic of Moldova corresponds to the principle of individualization of sanctions; 2) the content of the secondary legal object of taking a bribe was determined in the event of exerting pressure on the victim (which does not involve either a threat or the application of violence); 3) it has been demonstrated that the claim, acceptance, receipt, extortion, promise, offer or gift of goods, the circulation of which is limited or prohibited by law, for the purpose specified in art. 333 and 334 CC RM, does not require additional qualification; 4) the cases in which it is possible to attempt and prepare for the offenses provided in art. 333 and 334 CC RM; 5) the effects of the lack of special quality of the subject of the offenses provided in art. 333 CC RM, etc.

Implementation of Scientific Results. The obtained scientific results can be implemented in: a) the scientific field – the paper represents a scientific source necessary for the local doctrine, highlighting new trends and aspects, specific to the current stage of society development; b) the educational field – the scientific results obtained can be useful in the training process within the educational institutions with higher legal profile, as well as for the continuous improvement of the legal practitioners; c) the legislative field – the proposals of *lege ferenda* submitted in the paper are able to improve the incriminating framework in the matter; d) the jurisprudential field – the qualification solutions formulated can ensure the correct and uniform application by the courts of art. 333 and 334 CC RM and, respectively, the legal uncertainty for the recipients of the law would be avoided.

Approving the Results. The results accomplished following the performed study were presented and approved at many scientific fora, as follows:

✓ International Scientific Conference "Contemporary scientific challenges and trends" held on 20 August 2018 (Warsaw, Poland);

✓ International Scientific Conference "Current scientific studies in the contemporary world", the XL-th Edition, held on 26-27 August 2018 (Pereiaslav-Hmelnitki, Ukraine);

✓ National Scientific Conference with international participation "Integration through research and innovation" held on 8-9 November 2018 (Chisinau, Republic of Moldova);

✓ International Scientific Conference "Contemporary scientific challenges and trends", the 17-th edition, held on 20 July 2019 (Warsaw, Poland);

✓ National Scientific Conference with international participation "Integration through research and innovation" held on 7-8 November 2019 (Chisinau, Republic of Moldova);

✓ International Scientific Conference "Contemporary scientific challenges and trends", the 17-th edition, held on 20 July 2019 (Warsaw, Poland);

✓ International Scientific Conference "Contemporary scientific challenges and trends", the XXVII edition, held on 30 August 2020 (Warsaw, Poland);

✓ National Scientific Conference with international participation "Integration through research and innovation" held on 10-11 November 2020 (Chisinau, Republic of Moldova);

✓ International Scientific Conference "Contribution of young researchers to the development of public administration" held on 26 February 2021 (Chisinau, Republic of Moldova);

✓ National Scientific Conference with international participation "Offence – Criminal Liability – Punishment. Law and Criminology" held on 25-26 March 2021 (Chisinau, Republic of Moldova);

✓ International Scientific Conference "Contemporary scientific challenges and trends", the XXXVI edition, held on 7-9 June 2021 (Warsaw, Poland).

Likewise, the results obtained in the thesis were published in a scientific journal with impact factor (*Studia Universitatis Moldaviae*).

Thesis coverage: 22 scientific publications.

Thesis volume and structure: Introduction, five chapters, General conclusions and recommendations, Bibliography comprising 582 titles, 318 pages of body text.

Key words: corruption; bribe; taking bribes; bribery; illicit remuneration; the private sector; commercial, public or other non-state organization.

THESIS CONTENT

The Thesis comprises five chapters. Each chapter ends up with a summary section (conclusions) on the issue discussed and the results achieved.

In *Chapter 1* – "Analysis of the situation regarding criminal liability for bribery and bribery" – we examined in chronological order the scientific materials on the topic of the thesis published both in the Republic of Moldova and in other states. We established that, due to these scientific materials, it was facilitated the solution of some problems of maximum importance regarding the responsibility for the crimes provided in art. 333 and 334 CC RM. We have identified those aspects of responsibility for taking bribes and giving bribes, in connection with which we find discordant points of view in the analysed works. I formulated the research problem and pointed out the directions for solving it. I also outlined the purpose of the thesis and its objectives.

In particular, *A. Borodac*[24] is the author of a manual that analyses, among others, the offenses provided in art. 333 and 334 CC RM.

This author describes the content of the generic legal object of the crimes, provided in Chapter XVI of the special part of the Criminal Code of the Republic of Moldova, as follows: "social relations governing the normal activity of the governing body of commercial, public or other non-state organizations".[25] First of all, social relations cannot regulate anything. Social relations can be the object of regulation, not the regulatory factor. Second, the notion of the "governing apparatus" is appropriate for characterizing the governing bodies of state organizations rather than non-state organizations. Finally, more importantly, we do not consider that A. Borodac's opinion succeeds in describing in a concise formula the social value and related social relations which in all cases are harmed by the offenses provided for in Chapter XVI of the special part of the Criminal Code of the Republic of Moldova, regardless of their specifics.

It is too broad the characterization that A. Borodac makes regarding the special legal object of all offenses provided in Chapter XVI of the special part of the Criminal Code of the Republic of Moldova, including the offenses provided in art. 333 and 334 CP RM. The wording used is: "social relations that condition the protection of the normal activity of the management apparatus of a concrete non-state organization".[26] Each offense, described in the norms of this chapter, has its special legal object. This object cannot be common to several offenses. The characterization, reproduced above, would be more suitable for the generic legal object of the offenses provided in Chapter XVI of the special part of the Criminal Code of the Republic of Moldova.

I. Țurcan[27] is the co-author of a manual from 2005, in which are examined, among others, the offenses provided in art. 333 and 334 CC RM.

In the vision of this author, "social relations regarding the normal activity of commercial, public or other non-state organizations"[28] constitute the content of the generic legal object of the crimes provided by art. 333-335 and 3351 CC RM. We consider that this opinion manages to a considerable extent to reproduce the essence of social value and related social relations inevitably harmed by any of the offenses provided in Chapter XVI of the special part of the Criminal Code of the Republic of Moldova.

[24] Borodac A. *Handbook of criminal law. The special part.* Chisinau: Central Printing House, 2004. 622 p.
[25] *Ibidem*, p. 506.
[26] *Ibidem*, p. 506.
[27] Brînza S., Ulianovschi X., Stati V. et al. *Criminal law. Special part*. Vol. II. Chisinau: Cartier, 2005. 804 p.
[28] *Ibidem*, p. 651.

At the same time, like A. Borodac, I. Țurcan characterizes too broadly the special legal object of the offenses provided in art. 333 CC RM ("social relations regarding the normal functioning, regulated by the legislation in force, of the managed organization"[29]) and art. 334 CC RM ("social relations regarding the normal functioning, regulated by the legislation in force, of the commercial, public organization or of other managed non-state organizations").[30] In addition, it is not possible for the special legal object of bribery offenses to coincide with the special legal object of bribery offenses.

V. Cușnir[31] is the co-author of a paper from 2009, in which he comments, among others, art. 333 and 334 CC RM.

This author describes the normative ways of taking a bribe: "Taking a bribe is the act of receiving possession of an object, of securities that are handed to him, or of collecting a sum of money, which does not belong to the manager. It should be noted that the taking involves a correlative giving and that the initiative belongs to the bribe-taker. It is certain that any taking (receiving) implies an acceptance, which can occur either at the moment of receiving the object, the money, or before, but which constitutes a distinct normative way of committing the crime of bribery, commented below."[32]; "The phrase acceptance of services, privileges or advantages that do not belong to him means the consent, approval, agreement of the manager. Of course, accepting a good, a sum of money, other values involve proposing or promising them, so there is always an offer. Acceptance by the active subject can be express or tacit, it is important for the existence of the crime of bribery that the bribe does not show disagreement, does not refuse, does not reject the proposal, the promise, so does not reject the offer".[33]

It is interesting the interpretation by V. Cușnir of a phrase used both in art. 333 CP RM, as well as in art. 334 of the Criminal Code of the Republic of Moldova: "By "it is not due to him", the legislator considers that they do not derive from the nature and character of legal, functional actions, performed by persons managing a commercial, public or other non-state organization; not be legally due to this person; to accept over (*supra*) the legal value due to the person who manages a commercial, public or other non-state organization".[34]

[29] *Ibidem*, p. 655.
[30] *Ibidem*, p. 657.
[31] Barbăneagră A., Alecu Gh., Berliba V. et al. *Criminal Code of the Republic of Moldova. Comment (Annotated with ECHR and national courts case-laws).* Chisinau: Sarmis, 2009. 860 p.
[32] *Ibidem*, p. 736.
[33] *Ibidem*, p. 736.
[34] *Ibidem*, p. 737.

Gh. Stoian[35] published in 2010 a scientific article that has as object of examination the objective side of bribery.

Among other things, this author defines the notion of a claim: "The claim for money or other undue benefits presupposes that the perpetrator makes a material claim directly or indirectly, to address to the bribe an unequivocal request by which he expressly requests a bribe".[36] The given opinion facilitates the establishment by us, in Subchapter 3.3 of the present thesis, of the fact that the claim, as a normative modality of the offenses provided in art. 333 CC RM, involves strongly addressing to the bribe-taker by the bribed person, personally or through the intermediary, the claim for obtaining goods, services, privileges, advantages in any form that do not belong to the bribed person, for this or another the person.

The perception of the claim by the person to whom it is addressed is important in order to establish the ground for application of art. 333 CP RM. In this context, Gh. Stoian mentions: "In order for there to be a claim – regardless of whether the request was made in writing or to a person present, it is necessary that the person who was asked understood the content of the request. Therefore, it is acknowledged that it is not necessary for the request to be comprehensible to anyone, and it is sufficient that in relation to the actual circumstances it is intelligible to the addressee (for example, the official in office performs certain needs on who endures them, about the wife's desire to have jewellery, etc.)".[37]

In 2012, the monograph authored by R. Popov was published.[38]

This work represents a complex analysis of the subject of the crimes provided in Chapters XV and XVI of the special part of the Criminal Code. The following are analysed: the general and special conditions for the existence of the individual subject in the case of the crimes provided in these chapters; the legal person as a subject of the offenses provided for in Chapters XV and XVI of the special part of the Criminal Code; the special subject in the case of the offenses provided for in these chapters (including special subjects of the offenses provided for in Chapter XVI of the special part of the Criminal Code (the person managing a commercial, public or other non-state organization; the person working for such an organization; or appointed to settle a dispute by arbitration).

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[35] Stoian Gh. Theoretical and practical considerations regarding the objective side of the crime of bribery. In: *Pro Lege*, 2010, no. 2, p. 57-68.
[36] *Ibidem*.
[37] Stoian Gh. Theoretical and practical considerations regarding the objective side of the crime of bribery. In: *Pro Lege*, 2010, no. 2, p. 57-68.
[38] Popov R. *Perpetrator of the offenses provided for in Chapters XV and XVI of the Special Part of the Criminal Code.* Chisinau: CEP USM, 2012. 315 p.

For the present thesis, the following general conclusions formulated by R. Popov are relevant: "1) the classification of the subjects of the crime, according to their position within the crime, in active subject of the crime and passive subject of the crime is not in accordance with the normative framework of the Republic of Moldova. The victim of the crime refers to the reference system of the object of the crime, not to the reference system of the subject of the crime; 2) the special qualities, required by the special part of the Criminal Code, are relevant [...] in the case of the offenses specified in art. [...] 333 [...] CC RM. Regarding the offenses provided in art. [...] 334 CC RM, they have a general subject [...]; 3) the special subject of the crime is the natural or legal person, who, in addition to the general qualities required by the general part of the Criminal Code, must possess the special qualities required - explicitly or implicitly – by the norm in the special part of the Criminal Code. establishes liability for that offense; [...] 7) cannot have the quality of person who manages the commercial, public or other non-state organization: the notary; the auditor; the lawyer; the bailiff; the forensic expert; the interpreter and translator trained by the Superior Council of Magistracy, by the Ministry of Justice, by the prosecution bodies, by the criminal investigation bodies, by the courts, by notaries, lawyers or by bailiffs; the mediator; the doctor, seen as a freelancer; the authorized representative; the state representative in the companies with state participation quota, etc. [...]".[39]

With some exceptions, the scientific article signed by *V. Dabu* and *L. Radu*[40], has the same content, as well as the scientific article prepared by *V. Dabu* and *A.-M. Guşanu.*[41] In both cases, the objective side of bribery is analysed.

V. Dabu, L. Radu and A.-M. report on the effect of the lack of perception of the claim or its inadequate perception: "If the "claim" expressed by the active subject was not understood by the passive subject, it means that it does not present the social danger necessary for the existence of this crime, being impossible to satisfy (the claim)".[42] The potential bribe-taker does not always have the quality of a passive subject (victim). In other respects, we agree with V. Dabu, L. Radu and A.-M. Guşanu. Therefore, if the claim is not perceived by the recipient with the connotation that the addressee has in mind, the basis for the application of art. 333 CC RM.

[39] Popov R. *Perpetrator of the offenses provided for in Chapters XV and XVI of the Special Part of the Criminal Code.* Chisinau: CEP USM, 2012, p. 282-284. 315 p.
[40] Dabu V., Radu L. Some considerations regarding the objective side of the crime of bribery in the new Criminal Code. In: *Pro Lege*, 2012, no. 3, p. 38-90.
[41] Dabu V., Guşanu A.-M. The objective side of the crime of bribery in the new Criminal Code. In: *Journal of Criminal Law*, 2014, no. 1, p. 26-52.
[42] Dabu V., Radu L. Some considerations regarding the objective side of the crime of bribery in the new Criminal Code. In: *Pro Lege*, 2012, nr. 3, p. 38-90; Dabu V., Guşanu A.-M. The objective side of the crime of bribery in the new Criminal Code. In: *Journal of Criminal Law*, 2014, no. 1, p. 26-52.

In the case of the offence of influence peddling, provided in par. (1) art. 326 CP RM, extortion is a factual way of the normative way of claiming. In the case of the offenses provided in art. 333 CP RM, the approach is different, namely - extortion is a distinct normative way, not an expression of the normative way of claiming. For these reasons, the opinion of V. Dabu and L. Radu cannot be accepted: "Sometimes the claim even includes some coercion regardless of whether the reason and the method of coercion are legal or not".[43]

A fundamental work for the special part of the criminal law of the Republic of Moldova, elaborated by *S. Brînza* and *V. Stati*[44], published in 2015, cannot be passed with attention.

In this work, the notion of "corruption crimes in the private sector" is defined, the general characterization of these crimes is made and the types of corruption offences in the private sector are distinguished.

It is argued that "in art. 333 CC RM – under the same marginal name of bribery – there are five variants-type of crimes and two aggravated variants of offences"[45], and "in art. 334 CC RM – under the same marginal name of bribery – there are three variants-type of crimes and two aggravated variants of crimes."[46] It is established the content of the constitutive signs of the offenses provided in art. 333 and 334 CP RM: the special legal object; material or immaterial object; victim; the prejudicial act; guilt; the reason; the goal; the special quality of the subject. It explains the meaning of the phrase "it does not belong" from art. 333 and 334 CC RM: "the remuneration claimed, accepted or received is not legally due to the person concerned. In other words, it is indispensable that, based on the normative regulations in force, the bribed person should not be entitled to claim, accept or receive such remuneration. Remuneration is also undue when claimed, accepted or received over what is due".[47] It analyses the four normative modalities with alternative character of the offence provided in par. (1) art. 333 CC RM. It is revealed that this crime "is a formal offence. It is considered consumed from the moment of claiming, accepting or receiving in full the illicit remuneration".[48] It stands out the four forms of the purpose of the offenses provided in art. 333 and 334 CP RM. Increased attention is paid to the analysis of the notions that characterize the four special qualities of the subject of bribery offenses (the arbitrator chosen or appointed to settle a dispute by arbitration; the person who manages a commercial, public or other non-state organization; the person who works for such an

[43] Dabu V., Radu L. Some considerations regarding the objective side of the crime of bribery in the new Criminal Code. In: *Pro Lege*, 2012, no. 3, p. 38-90.
[44] Brînza S., Stati V. *Criminal Law Treaty. Special Part. Vol. II*. Chisinau: Central Printing House, 2015. 1300 p.
[45] *Ibidem*, p. 942.
[46] *Ibidem*, p. 958.
[47] *Ibidem*, p. 945.
[48] *Ibidem*, p. 946.

organization; participant in a sporting event or betting event): "referee"; "Arbitration agreement"; "Commercial organization"; "Non-profit organization"; "Sporting event"; "Bet" etc. In the context of the crime provided in letter c) para. (2) art. 333 CC RM, the three factual ways of extortion are established. It analyses the three normative modalities with alternative character of the crime provided in par. (1) art. 334 CC RM. It is shown that the given offence "is a formal offence. It is considered consumed from the moment of the promise, offering or giving in full of the illicit reward".[49] Finally, they are examined the grounds for release from criminal liability provided in par. (4) art. 334 CC RM: 1) the bribe was extorted from the bribe-taker; 2) the bribe-taker denounced himself not knowing that the criminal investigation bodies are aware of the crime committed by her.

In 2018, *S.D. Dobre* defended his doctoral thesis, which has as object of analysis bribery and bribery.[50]

Receiving, as a normative modality, the offenses provided in art. 333 CC RM, is not far from the manual takeover. In this context, S.D. Dobre states: "Receipt may take various forms, by the delivery of goods to a third party to whom the official had an obligation which is extinguished in this way, or by leaving the goods in places indicated by the official, so that he may later take possession of them, by indicating family members who are beneficiaries of the respective goods. Through such activities, the bribe-taker and the bribe-taker consider that they are protecting themselves, sheltering themselves from any direct links for which they would be held accountable before the research bodies. It is more and more common to take and bribe through intermediaries. [...] The receipt is not conditioned by the actual remittance of the money, goods, but can also take the form of check documents, offering a will, etc."[51] In other words, the receipt, as a normative modality of the offenses provided in art. 333 CC RM, does not necessarily imply that the bribed person has direct contact with the bribe-taker at the time of obtaining possession, acquiring or benefiting from the illicit remuneration.

S.D. Dobre defines the notion of promise as follows: "The promise presupposes the commitment that a person assumes towards an official to remit to him in the future a sum of money, goods or other benefits under the condition of acting in the direction desired by the bribe-taker. The commitment assumed by the bribe-taker has the character of a unilateral act, which presupposes that it is not obligatory that the promise be accepted and by the one to whom

[49] *Ibidem*, p. 961.
[50] Dobre S.D. *Offenses of taking and giving bribes in the current normative sphere* / PhD Thesis. Bucharest, 2018. 234 p.
[51] *Ibidem*, p. 134, 136.

it is addressed."[52] This opinion helps us to state, in Subchapter 3.3 of the present thesis, that the promise, as a normative modality of the offenses provided in art. 334 CC RM, implies the employment of the bribe-taker, personally or through an intermediary, that the bribed person will be sent goods, services, privileges, advantages in any form, which do not belong to the bribed person, for this or another person.

In *Chapter 2* – "Conceptual and normative framework of criminal liability for bribery and bribery" – we analysed: the notion of corruption in general; the concept of corruption in the private sector; regulations in the legislation of other states on the offenses of bribery and bribery.

I deduced what are the provisions of the Criminal Code of the Republic of Moldova, dedicated to preventing and combating manifestations of corruption. We examined the positions on corruption as a state of society, as a social phenomenon: a) positions *in abstracto*, which boils down to the characterization of corruption as a phenomenon that affects the good development of social relations; b) concrete positions, which reveal the content of the corruption phenomenon. I argued that the act of abuse of power or abuse of office cannot be equated with corruption. We have established that the narrow interpretation of the notion of corruption reduces this notion to the meaning of "corruption (bribery)". We have shown that the term "corruption" cannot refer to a single component of a crime. This term may designate a group of criminal or non-criminal acts. We have identified the content of the notion of "acts of corruption in the private sector". We defined the notion of "corporate corruption". We found that the possible merging in a single chapter of the special part of the Criminal Code of the Republic of Moldova of corruption in the public sector with corruption in the private sector would have the effect of violating the principle of individualization of sanctions. Last but not least, we revealed the similarities and differences between the concepts of criminalization of bribery and bribery in the criminal laws of other states and the corresponding concept in domestic criminal law.

In *Chapter 3* – "The objective constituent elements of the crimes of bribery and bribery" – we analysed: the legal object of the crimes provided in art. 333 and 334 CC RM (the general legal object of these offenses; the special legal object of the offenses provided for in art. 333 and 334 CC RM); the material (immaterial) object and the victim of these crimes; the objective side of the offenses provided in art. 333 and 334 CC RM.

We determined the content of the generic legal object of the offenses provided in Chapter XVI of the special part of the Criminal Code of the Republic of Moldova, as well as of the special legal object of the offenses provided in art. 333 and 334 CC RM. I argued that, in the

[52] Dobre S.D. *Offenses of taking and giving bribes in the current normative sphere /* PhD Thesis. Bucharest, 2018, p. 158. 234 p.

case of these crimes, the immaterial object is the illicit remuneration in incorporeal form. An illegal entity is, in fact, a legal entity to which the perpetrator gives illegal connotations. By omitting to carry out in strict accordance with the law the remunerated activities in the private sector, the bribed person takes the remuneration against the law, and the bribe-giver gives the remuneration against the law. In other words, defying the provisions of art. 333 CC RM, the bribed person ignores the obligation imposed on him to claim, accept and receive a remuneration in legal conditions. Disregarding the provisions of art. 334 CC RM, the bribe-taker ignores the obligation imposed on him to promise, offer and give a remuneration in legal conditions. Remuneration taken or given under such conditions becomes illegal. In any of the forms established in art. 459, 467, 469-471 of the Civil Code of the Republic of Moldova, as in other forms allowed by the legal doctrine, the goods may represent the material or immaterial object of the offenses provided in art. 333 and 334 CP RM. Virtual currencies represent goods within the meaning of art. 333 and 334 CP RM. The material object of the offenses, provided in art. 333 and 334 CP RM, may represent it, among others: a) organs, tissues or cells of human origin; b) the so-called "money signs" of self-proclaimed state formations. In the presence of certain conditions, false entities (false products, false documents, false information etc.) may constitute the material object of the offenses provided in art. 333 and 334 CC RM. Claiming, accepting, receiving, extorting, promising, offering or giving the goods, the circulation of which is limited or prohibited by law, for the purpose specified in art. 333 and 334 CC RM, must be qualified only as bribery and / or bribery, without additional reference to the rules on liability for their illegal trafficking. For the qualification of the deed based on art. 333 and 334 CC RM, it does not matter whether the service has a patrimonial or non-patrimonial character. It is important that the service is the equivalent of the conduct that the bribed person undertakes to manifest in the interest of the bribe-taker.

In the case of the offenses provided in art. 333 and 334 CC RM which were committed before the entry into force of Law no. 207/2016, art. 126 CC RM (in the version up to the entry into force of Law no. 207/2016) provided that art. 126 CC RM (in the version after the entry into force of Law no. 207/2016) worsens the situation of the subject of the offenses provided in art. 333 or 334 CC RM. In the case of the same crimes that were committed before the entry into force of Law no. 207/2016, art. 126 CC RM (in the version up to the entry into force of Law no. 207/2016) provided that art. 126 CC RM (in the version after the entry into force of Law no. 207/2016) improves the situation of the subject of the offenses provided in art. 333 or 334 CC RM. Exclusive para. (4) art. 333 CC RM must be applied for the action of the perpetrator which also contains the constitutive signs of the offenses provided in par. (1), (2) or (3) art. 333 CC

RM. The body of the victim represents the secondary material object of the crime provided in letter c) para. (2) art. 333 CC RM, if this offence involves the application of violence against the victim. Goods, services, privileges or advantages in any form are not due to the bribe-taker when: a) there is no legal provision (in the broad sense of the word) that would allow him to claim, accept or receive the respective remuneration; b) the improvement of the bribe's situation is due to the claim, acceptance or receipt by him of the goods, services, privileges or advantages in any form. If the remuneration is legally due to the person who claims it, accepts it or receives it, the person in question violating the way of claiming, accepting or receiving the remuneration, art. 333 and 334 CC RM. In such cases, the application of art. 335 CC RM or art. 312 CC RM. The victim of the offence, provided in letter c) para. (2) art. 333 CP RM, is the person whose illicit remuneration is extorted, whose freedom of will, mental freedom, bodily integrity or health is affected.

We have defined the notions that designate the normative modalities of the offenses provided in art. 333 and 334 CC RM. Thus, the claim, as a normative modality of the offenses provided in art. 333 CC RM, implies strongly addressing to the bribe-taker by the bribed person, personally or through an intermediary, the claim for obtaining goods, services, privileges, advantages in any form that do not belong to the bribed person, for this or another the person. The notion of accepted (used in art. 333 CC RM) implies, as the case may be: a) the approval by the bribed person, personally or through an intermediary, they belong to the bribed person, for this or for another person; b) giving the consent by the bribed person, personally or through an intermediary, for the bribe offer or promise of goods, services, privileges or advantages in any form, which do not belong to the bribed person, for this or for another person. Receiving, as a normative modality, the offenses provided in art. 333 CC RM, involves obtaining possession, acquisition, benefit by the bribed person, personally or through an intermediary, of goods, services, privileges, advantages in any form, which do not belong to the bribed person, for this or another person. Extortion within the meaning of letter c) para. (2) art. 333 CC RM, involves strongly addressing the bribe-taker by the bribed person, personally or through a mediator, the claim - accompanied by threat, violence or pressure that does not involve threat or violence - to obtain goods, services, privileges, advantages in any form, which do not belong to the bribed person, for this or for another person. Application of letter c) para. (2) art. 333 CC RM is self-sufficient and does not require additional qualification according to art. 152 or 155 CP RM or of art. 78 CC RM. If the violence applied in the context of extortion is expressed in the serious intentional injury to bodily integrity or health, art. 333 (except for letter c) par. (2)) and art. 151 CC RM. The promise, as a normative modality of the offenses provided in art. 334 of the

Criminal Code of the Republic of Moldova, implies the employment of the bribe-taker, personally or through an intermediary, that the bribed person will be sent goods, services, privileges, advantages in any form, which do not belong to the bribed person, for this or another person. Offering, as a normative modality, the offenses provided in art. 334 CC RM, implies the proposal, personally or through an intermediary, of goods, services, privileges, advantages in any form, which do not belong to the bribed person, for this or for another person. Giving, as a normative modality of the offenses provided in art. 334 CC RM, involves the surrender, assignment, provision, personally or through an intermediary, of goods, services, privileges, advantages in any form, which do not belong to the bribed person, for this or for another person. We have established that the stage of attempted crime is possible in the presence of any of the normative modalities provided in art. 333 and 334 CC RM. Finally, I pointed out that, in the case of the offenses provided in art. 333 and 334 CC RM, the preparation is possible provided that the normative modalities, provided by this article, do not imply spontaneity.

In *Chapter 4* – "The subjective constitutive elements of the crimes of bribery and bribery" – we analysed: the subjective side of the crimes provided in art. 333 and 334 CC RM (guilt in the case of these offenses; the reason and purpose of the offenses provided for in art. 333 and 334 CC RM); the subject of the offenses provided in art. 333 and 334 of the Criminal Code of the Republic of Moldova (legal person as a subject of these offenses; special status of the subject of the offenses provided for in art. 333 CC RM; provocation of the offenses provided for in art. 333 and 334 CC RM; mediation of these offences; release of the criminal liability bribe in accordance with par. (4) art. 334 CC RM).

We determined the form and type of guilt manifested in the case of the offenses provided in art. 333 and 334 CC RM. We have established the particularities that characterize the motive and purpose of these crimes. Thus, not only the material interest can be the basis of the offenses provided in art. 333 CC RM. The fact that these offences may have an intangible object that has a non-patrimonial origin, influences the content of the reasons for these crimes. By bribing, the perpetrator can be guided by various reasons, not necessarily by material interest or the desire to obtain non-patrimonial benefits. Likewise, the reason for the offenses, provided in art. 334 CC RM, may consist of: revenge; jealousy; envy; hate etc. The purpose of taking bribes and giving bribes is the same, because the offenses, provided in art. 333 and 334 CC RM, can be considered sides of an agreement, convention, agreement, in which the bribed person and the bribe-taker pursue, as is natural, a common goal. If the content of the function exercised by the bribed person is established by secondary regulatory acts, they must be drawn up on the basis of a higher-level normative act. If the acts of primary regulation and / or the acts of secondary

regulation are not sufficiently clear, the limits of the service competence of the bribed person must be established in such a way that the interpretation of art. 333 CC RM should not be extensive and unfavourable to the bribed person. Regarding the hypothesis "contrary to the function" in art. 333 and 334 CC RM, it is necessary to specify that the action performed, unfulfilled, delayed or hastened implies that the bribed person seeks to commit a crime or other illegal act. We have no reason to reduce the scope of an action to a crime. The action taken, not performed, delayed or hastened presupposes that the bribed person seeks to commit an act contrary to either a primary regulation or a secondary regulation which is drawn up on the basis of a primary regulation. If the purpose pursued by the bribed person finds its accomplishment, apart from art. 333 CC RM could be applied art. 239, 240, 244, 245, 245^{1}-245^{12}, 335, 335^{1}, 361 etc. of the Criminal Code of Moldova or an extra-criminal norm that provides for liability for the action performed, unfulfilled, delayed or hastened by the bribed person. If the illicit remuneration was claimed, accepted, received, extorted, promised, offered or given after the fulfilment, non-fulfilment, delay or haste of performing an action in the exercise of the bribed person's function or contrary to it, the only conclusion is that art. 333 and 334 CC RM cannot be applied. In this case, it cannot be applied either art. 315 CC RM.

I argued that the subject of the offenses, provided in art. 334 CC RM, cannot be the organizational structure or the body that: a) performs, based on the law, mandatory actions for natural or legal persons, and b) was created by a normative act. I have demonstrated that public authorities within the meaning of par. (3) and (4) art. 21 CC RM must be considered any legal persons of public law, which correspond to the criteria established in art. 7 and 8 of the Administrative Code. I identified the constitutive signs of the notion "provoking bribery or bribery". We have deduced the conditions under which the challenge of taking bribes or giving bribes is absent. We defined the notion of "mediation of the commission of the offence". We have established why theft (not embezzlement of foreign property) should be qualified as the theft of goods to which the fictitious intermediary obtained access after receiving them from the bribe-taker in order to transmit them to the bribed person. We determined that the physical or mental coercion (art. 39 CC RM) is a cause that excludes the criminal nature of the deed. The situation differs in the case of extortion of bribes within the meaning of para. (4) art. 334 CC RM. In this case, we cannot say that the crime component is missing. I deduced that the bribe-taker can address his self-denunciation only to the criminal investigation body. It is considered not any criminal investigation body, but only the one that has jurisdiction over the offenses provided in art. 334 CC RM.

Finally, in *Chapter 5* – "Aggravating circumstances of bribery and bribery offenses" – we analysed: bribery and bribery committed by two or more persons; bribery and bribery committed in the interest of an organized criminal group or a criminal organization.

I argued that the offenses, provided in art. 333 CC RM, do not simply have a special subject. They have a special composition. We established that the persons who do not have the special quality required by art. 333 CC RM, will not be liable for a separate crime - organizing bribery, instigating bribery or complicity in bribery. They will be responsible for participating in bribery. I have demonstrated that if the co-perpetrator has started the objective side of bribery or bribery, he will be released from criminal liability based on art. 56 CC RM only if it took all the measures that depended on it in order to prevent the commission of the crime by another co-perpetrator or other co-perpetrators. I pointed out that the provisions of para. (2) and (5) art. 42 CC RM are vulnerable in terms of their compliance with the rule provided by para. (2) art. 3 CC RM. We have found that the offence, committed in the interest of an organized criminal group or a criminal organization, is not always a crime committed by an organized criminal group or a criminal organization. Last but not least, I have pointed out that whether bribery or bribery is in the interest of the organized criminal group or criminal organization is committed by a member of that group / organization or by a person outside that group / organization, the application of letter b) para. (3) art. 333 or letter b) para. (3) art. 334 CC RM excludes the reference to par. (2) art. 42 CC RM.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

As a result of carrying out the Study and devising a summary, we have drawn the following ***general conclusions:***

1) there can be no universal content of the notion of corruption that satisfies the requirements of all normative acts that concern it. Corruption is a phenomenon whose content must be established according to the time, place and context in which it manifests itself;

2) the criminal ofences and the contravention offences, listed in para. (2) and (3) art. 44 of Law no. 82/2017, forms the content of the notion of corruption within the meaning of this law. All other facts exceed the scope of the notion in question. This is the interpretation offered by the legislation in force of the Republic of Moldova;

3) corruption in the private sector is expressed in the use of office within private entities, contrary to law, in the private interest. In this case, private interest does not mean the interest of the private entity in which the corrupt operates. The private interest, which is the basis for the use of the function within private entities, contrary to the law, is an eminently illegal interest;

4) entrepreneurial freedom in particular and economic freedom in general are not absolute. If, under the guise of exercising this freedom, abuses are committed which possess a sufficient degree of social danger, the basis for the intervention of criminal law arises. Not only the public sector, but also the private sector can be subjected to this intervention which has the connotation of last resort;

5) the material or immaterial object is a mandatory secondary sign of the offenses provided in art. 333 and 334 CC RM. If this sign is missing, then the deed cannot be qualified based on art. 333 or 334 CC RM;

6) for the action to be illegal within the meaning of art. 333 and 334 CC RM, the interest of the perpetrator must be in disagreement with the interest of the commercial, public or other non-state organization, which the remunerated perpetrator represents or whose representative is remunerated by the perpetrator;

7) the person who exercises in fact, not in law, the duties of arbitrator chosen or appointed to settle by arbitration a dispute, of a person who manages a commercial, public or other non-state organization, of a person who works for such an organization or of participating in a sports betting event, cannot be the subject of the offenses provided in art. 333 CC RM;

8) “provocation of an act provided for by criminal law” shall mean the act of the provocateur initiating the offense to be charged to the provoked person who, prior to contact with the provocateur, had not been predisposed to commit that offense, provided that the provoked person is unaware that the commission of the offense was initiated by the provocateur

in order to create an appearance, a false representation of the perpetrator's commission of the offense and to thereby prejudice his interests;

9) the transmission by the mediator of the material (immaterial) object of taking the bribe or of giving the bribe cannot be qualified according to para. (5) art. 42 and art. 333 CC RM or according to para. (5) art. 42 and art. 334 CC RM.

We come with the following ***recommendations*** for improving the legislation and the acts of interpretation of the criminal law:

1) completing the definition of the notion "integrity in the private sector", formulated in art. 3 of Law no. 82/2017: after the words "commercial organizations" to introduce the text "*of public organizations or other non-state organizations*";

2) completion of art. 21 with two paragraphs:

„(3^2) If the perpetrator of the crime is the person empowered with management positions within the meaning of para. (3^1) of this article, it is assimilated with the de facto administrator of the legal person.

(3^3) De facto administrator of the legal person is the natural person who does not hold a position in the management body of the legal person concerned and who is not invested in the manner established by law with the right to exercise administrative or organizational functions or actions within this legal person, but which in fact determines the decisions taken by the legal person concerned, due to the prevalent participation in its authorized capital or other circumstances";

3) completion of art. 35 CC RM with letter f^1) *"provocation"*;

4) completion of Chapter III of the general part of the Criminal Code with art. 402 "Provocation" with the following content:

„(1) The deed, provided by the criminal law, does not constitute an offense, if another person provoked its commission.

(2) The act is considered committed as a result of the provocation if the provocateur initiated its commission to impute it to the provoked person who, before contacting the provocateur, had not been predisposed to commit that act, provided that the provoked person is not aware that the perpetrator was initiated by the provocateur. to create an appearance, a false representation of the perpetrator of the crime, and thereby harm his interests";

5) completion of para. (2) art. 42 CP RM so that, according to the text "[...] this code." to introduce a new sentence: *"The perpetrator is also the person who has the special quality of the*

subject of the crime, required by the rule of the special part of the criminal law, and who commits the crime through a person who does not possess such a quality";

6) completion of para. (5) art. 42 CP RM so that, between the words "[...] or instruments ..." and "[...] or removal of obstacles [...]" to include the text *"[...], the transmission of the object material (immaterial) of the crime (if this action does not involve the full or partial execution of the objective side of the crime) [...]"*;

7) supplementing the Criminal Code with article 310^1 "Provocation of a deed provided by the criminal law", with the following provision and sanction:

„Provoking a deed under criminal law, i.e. initiation of the offense to be charged to the offender who, prior to contact with the offender, had not been predisposed to commit that offense, provided that the offender is unaware that the offense was initiated by the offender to create a false appearance. representation regarding the commission of the crime by the provoked person, and in order to prejudice his interests, if the action to provoke a deed provided by the criminal law does not meet the elements of the offenses provided in art. 310-312 or art. 328 CC RM,

is punishable by a fine of up to 650 conventional units or unpaid community service from 180 to 240 hours, or imprisonment for up to 2 years";

8) the modification in the following way of par. (4) art. 334: *"The person who gave the bribe is released from criminal liability if the bribe was extorted. The person who took or gave a bribe is released from criminal liability if the person self-denounced himself under the conditions established by art. 264 of the Code of Criminal Procedure"*;

9) completing the sanctions from art. 333 CC RM with the following texts:

– „ , and the legal person is punished with a fine in the amount of 9000 to 11000 conventional units with deprivation of the right to exercise a certain activity" (para. (1));

– „ , and the legal person is punished with a fine in the amount of 12000 to 15000 conventional units with deprivation of the right to exercise a certain activity" (para. (2));

– „ , and the legal person is punished with a fine in the amount of 14000 to 17000 conventional units with deprivation of the right to exercise a certain activity or with the liquidation of the legal person" (para. (3));

– „ , and the legal person is punished with a fine in the amount of 4000 to 7000 conventional units with deprivation of the right to exercise a certain activity" (para. (4));

10) completing the explanation from point 17 of the Decision of the Plenum of the Supreme Court of Justice no. 23/2004, so that according to the text "... as theft by theft." to introduce the sentence: "*Theft must also qualify the theft of goods to which the fictitious mediator*

obtained access after receiving them from the bribe-taker (corruptor; buyer of influence) to pass them on to the bribed person (corrupt person; trafficker of influence). In this case, the mandatory condition is that the intention to steal the goods appears to the fictitious intermediary after they have been transmitted to him, not before it."

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

a) the legislative field: i) the notion "integrity in the private sector", formulated in art. 3 of Law no. 82/2017, would be harmonized with the provisions of art. 124, 333 and 334 CP RM; ii) the liability of the de facto administrator of the legal person would be regulated; iii) would have normatively enshrined the social danger of provoking the commission of an offence, as well as of mediating the commission of an offence; iv) in the sanctions of art. 333 of the Criminal Code of the Republic of Moldova, the possibility of evolving a legal entity as administrator of another legal entity, etc. would be considered;

b) the jurisprudential field: it would have facilitated the dissociation of the theft by the courts from the fictitious mediation of bribery;

c) the economic field: would have avoided the expenses related to the admission of judicial errors in the process of qualifying the facts based on art. 333 and 334 CC RM.

Future Research Plan includes the following milestones:

1) deepening the analysis of the legal person as a subject of the offenses provided in art. 333 and 334 CC RM, of the provocation of these crimes, as well as the mediation of the crimes provided in art. 333 and 334 CC RM;

2) examination of the possibility of committing bribery or bribery in the interests of the State, of an international organization or of society;

3) elaboration of a methodical guide, intended for prosecutors / judges / lawyers, dedicated to solving the problems of qualification of the facts based on art. 333 and 334 CC RM.

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ADNOTARE

Brînza Cristian, „Răspunderea penală pentru luarea de mită și darea de mită". Teză de doctorat în drept. Școala Doctorală de Științe Juridice a Universității de Stat din Moldova. Chișinău, 2021

Structura tezei: introducere, cinci capitole, concluzii generale şi recomandări, bibliografie din 582 titluri, 318 pagini de text de bază. Rezultatele obținute sunt publicate în 22 lucrări științifice.

Cuvintele-cheie: corupție; mituire; luarea de mită; darea de mită; remunerație ilicită; sectorul privat; organizație comercială, obștească sau altă organizație nestatală.

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

Scopul şi obiectivele tezei. *Scopul* tezei rezidă în investigarea aprofundată a răspunderii pentru infracțiunile prevăzute la art. 333 și 334 CP RM, în soluționarea controverselor legate de interpretarea acestor articole, precum și în formularea de recomandări necesare îmbunătățirii calității legii penale, a unor norme extrapenale complementare, precum și a actelor de interpretare a legii penale. Pentru a realiza scopul dat, ne propunem următoarele *obiective*: relevarea implicațiilor juridico-penale ale noțiunii de corupție, precum și a semnificației acestei noțiuni din perspectiva art. 333 și 334 CP RM; examinarea viziunilor teoretice cu privire la răspunderea pentru infracțiunile prevăzute la art. 333 și 334 CP RM; stabilirea conținutului semnelor constitutive ale acestor infracțiuni, precum şi a circumstanţelor agravante ale infracțiunilor prevăzute la art. 333 și 334 CP RM; analiza aspectelor de drept penal comparat ale răspunderii pentru luarea de mită și darea de mită; interpretarea art. 333 și 334 CP RM prin prisma reglementărilor internaționale referitoare la prevenirea și combaterea corupției în sectorul privat; recurgerea la normele de natură extrapenală în vederea interpretării art. 333 și 334 CP RM, precum și a demarcării sferei de aplicare a acestor articole; disocierea faptelor, incriminate la art. 333 și 334 CP RM, de infracțiunile conexe; analiza practicii judiciare în materie și evidențierea dificultăților ce caracterizează aplicarea de către practicieni a art. 333 și 334 CP RM; identificarea defectelor de calitate a dispozițiilor art. 333 și 334 CP RM.

Noutatea şi originalitatea științifică a tezei își găsește confirmarea în faptul că, pentru prima dată în Republica Moldova, este efectuată o investigare la nivel de teză de doctorat a răspunderii pentru infracțiunile prevăzute la art. 333 și 334 CP RM. În prezenta teză sunt propuse viziuni și soluții originale referitoare la: obiectul juridic secundar al luării de mită; obiectul material sau imaterial al infracțiunilor prevăzute la art. 333 și 334 CP RM; subiectul acestor infracțiuni; agravantele infracțiunilor prevăzute la art. 333 și 334 CP RM etc.

Semnificația teoretică a tezei constă în: redefinirea bazelor conceptuale ale studiului de drept penal privind răspunderea pentru faptele incriminate la art. 333 și 334 CP RM; determinarea esenței juridice a infracțiunilor prevăzute de aceste articole; stabilirea defectelor ce caracterizează art. 333 și 334 CP RM; acumularea unui vast material teoretic şi practic pentru dezvoltarea unor direcţii actuale şi complexe de cercetare a infracţiunilor prevăzute de aceste articole.

Valoarea aplicativă a tezei consistă în: interpretarea, în corespundere cu principiul legalității, a art. 333 și 334 CP RM contează în planul constituirii unei practici uniforme de aplicare a acestor articole, precum și pentru dezvoltarea ulterioară a concepțiilor științifice în materie; rezultatele evaluării critice a defectelor, ce caracterizează art. 333 și 334 CP RM, pot fi luate în considerare de către legiuitor în procesul de perfecţionare continuă a legii penale; rezultatele, obținute în teză, își pot demonstra utilitatea în activitatea practică a organelor de urmărire penală, a procuraturii și a instanțelor judecătorești, precum și în procesul de instruire în cadrul instituțiilor de învățământ cu profil juridic.

АННОТАЦИЯ

Брынза Кристиан, «Уголовная ответственность за получение взятки и дачу взятки». Диссертация на соискание научной степени доктора права. Докторальная школа юридических наук Государственного университета Молдовы. Кишинэу, 2021

Структура диссертации: введение, пять глав, выводы и рекомендации, библиография из 582 названий, 318 страниц составляют основную часть диссертации. Достигнутые результаты опубликованы в 22 научных работах.

Ключевые слова: коррупция; взяточничество; получение взятки; дача взятки; незаконное вознаграждение; частный сектор; коммерческая, общественная или иная негосударственная организация.

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

Цель и задачи диссертации. *Целью* диссертации является углубленное исследование ответственности за преступления, предусмотренные ст. 333 и 334 УК РМ, разрешение разногласий, связанных с толкованием этих статей, а также формулирование рекомендаций, необходимых для повышения качества уголовного права, некотрых околоуголовно-правовых норм и актов толкования уголовного закона. Для достижения этой цели мы поставили перед собой следующие задачи: выявить уголовно-правовое значение понятия коррупции, а также содержание этого понятия с точки зрения ст. 333 и 334 УК РМ; изучение теоретических воззрений об ответственности за преступления, предусмотренные ст. 333 и 334 УК РМ; установление содержания признаков указанных преступлений, а также отягчающих обстоятельств преступлений, предусмотренных ст. 333 и 334 УК РМ; анализ сравнительно-правовых аспектов ответственности за получение взятки и дачу взятки; толкование ст. 333 и 334 УК РМ в свете международных норм по предупреждению и борьбе с коррупцией в частном секторе; обращение к околоуголовно-правовым нормам для толкования ст. 333 и 334 УК РМ; разграничение деяний, предусмотренных ст. 333 и 334 УК РМ, и смежных преступлений; анализ судебной практики по данному вопросу и определение трудностей, характерных для применения ст. 333 и 334 УК РМ; выявление недостатков качественного порядка, характеризующих положения ст. 333 и 334 УК РМ.

Научная новизна и оригинальность диссертации подтверждается тем, что впервые в Республике Молдова проводится исследование на уровне диссертации об ответственности за преступления, предусмотренные ст. 333 и 334 УК РМ. В данной диссертационной работе предлагаются оригинальные видения и решения относительно: дополнительного объекта получения взятки; предмета преступлений, предусмотренных в ст. 333 и 334 УК РМ; субъекта этих преступлений; отягчающих обстоятельств преступлений, предусмотренных ст. 333 и 334 УК РМ и т.д.

Теоретическое значение диссертации состоит в: переосмыслении концептуальных основ уголовно-правового исследования ответственности за деяния, предусмотренные ст. 333 и 334 УК РМ; определение юридической сущности деяний, предусмотренных настоящими статьями; установление недостатков, характеризующих ст. 333 и 334 УК РМ; накопление обширного теоретического и практического материала для разработки современных и комплексных направлений исследования преступлений, предусмотренных этими статьями.

Прикладное значение диссертации заключается в следующем: толкование в соответствии с принципом законности ст. 333 и 334 УК РМ представляет важность для установления единообразной практики применения этих статей, а также для дальнейшего развития научных концепций в этой области; результаты критической оценки недостатков, характеризующих ст. 333 и 334 УК РМ, могут быть приняты во внимание законодателем в процессе совершенствования уголовного законодательства; результаты, полученные в диссертации, могут быть полезными в практической деятельности органов уголовного преследования, прокуратуры и судов, а также в учебном процессе в образовательных учреждениях юридического профиля.

ANNOTATION

Brinza Cristian, „Criminal liability for taking bribes and giving bribes". PhD in Law thesis. Doctoral School of Legal Sciences of the State University of Moldova. Chișinău, 2021

The structure of the thesis: introduction, five chapters, general conclusions and recommendations, bibliography of 577 titles, 316 pages of basic text. The results achieved are published in 21 scientific papers.

Key-words: corruption; bribery; taking bribes; giving bribes; illicit remuneration; private sector; commercial, social, or other non-state organization.

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

The purpose and the objectives of the thesis. The *purpose* of the dissertation lies in the in-depth investigation of liability for the offenses provided by the art. 333 and 334 CC RM, in resolving controversies related to the interpretation of these articles, as well as in formulating recommendations necessary to improve the quality of criminal law, complementary extra-criminal rules and acts of interpretation of criminal law. In order to achieve this purpose, we propose the following *objectives*: revealing the legal-criminal implications of the notion of corruption, as well as the meaning of this notion from the perspective of art. 333 and 334 CC RM; examination of theoretical views on liability for the offenses provided by the art. 333 and 334 CC RM; establishing the content of the constitutive signs of these offenses, as well as the aggravating circumstances of the offenses provided by the art. 333 and 334 CC RM; analysis of the aspects of comparative criminal law of liability for taking bribes and giving bribes; interpretation of art. 333 and 334 CC RM in the light of international regulations on preventing and combating corruption in the private sector; recourse to extra-criminal norms in order to interpret art. 333 and 334 CC RM, as well as the demarcation of the spheres of application of these articles; the dissociation of the acts, incriminated in art. 333 and 334 CC RM, from related offenses; analysis of the judicial practice in the matter and highlighting the difficulties that characterize the application by practitioners of art. 333 and 334 CC RM; identification of quality defects of the provisions of art. 333 and 334 CC RM.

The novelty and the scientific originality of the thesis is confirmed by the fact that, for the first time in the Republic of Moldova, an investigation at doctoral thesis level of liability for the offenses provided by the art. 333 and 334 CC RM is carried out. In this thesis, original visions and solutions are proposed regarding: the secondary juridical object of taking bribes; the material or immaterial object of the offenses provided by the art. 333 and 334 CC RM; the subject of these offenses; aggravating circumstances of the offenses provided by the art. 333 and 334 CC RM etc.

The theoretical significance of the thesis consists in: redefining the conceptual bases of the criminal law study regarding the liability for the offenses provided by the art. 333 and 334 CC RM; determining the legal essence of the offenses provided by these articles; establishing the defects that characterize art. 333 and 334 CC RM; the accumulation of a vast theoretical and practical material for the development of current and complex directions of investigation of the offenses provided by these articles.

The applicative value of the thesis consists in: the interpretation, in accordance with the principle of legality, of art. 333 and 334 CC RM are important in establishing a uniform practice for the application of these articles, as well as for the further development of scientific concepts in the field; the results of the critical evaluation of the defects, which characterize art. 333 and 334 CC RM, may be taken into account by the legislator in the process of continuous improvement of the criminal law; the results, obtained in the thesis, can demonstrate their usefulness in the activities of the criminal prosecution authorities, prosecutors and courts, as well as in the training process within the educational institutions with legal profile.

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CRIMINAL LIABILITY FOR TAKING BRIBES AND GIVING BRIBES

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