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PROFESSIONAL SECRECY IN THE CRIMINAL LAW OF ROMANIA AND IN THE REPUBLIC OF MOLDOVA: CRIMINAL LAW STUDY

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THE CONTENT

THE CONCEPTUAL FRAMEWORK OF THE RESEARCH

Relevance of the researched topic. Having regard to the desire that the special obligation to maintain professional secrecy must be contained in the national law of the Member States or the competent national professional bodies with the power to adopt binding rules of the profession, and national rules on professional secrecy must also include the corresponding sanctions in case of their violation, it is proposed to revise the incriminating framework in the criminal law of Romania as well as in the Republic of Moldova.

The current interest of the chosen topic can be argued by the fact that, despite the Criminal law of the Republic of Moldova, the Criminal Code of Romania contains a single criminal legal norm in the Special Part that sanctions the disclosure of any professional secrecy, regardless of its type (either medical or banking, or of the lawyer, etc.) - art.227 ("Disclosure of professional secrecy"). At the same time, in the content of the Special Part of the Criminal Code of Romania we will not find special criminal norms dedicated to the protection of specific professional secrets. Thus, all forms of professional secrecy (which may be diverse by the nature of the profession exercised) are protected by Romanian criminal law to an equal extent. However, the same conclusion cannot be deduced from the content of the criminal law of the Republic of Moldova, it provides only criminal liability for disclosure of certain types of professional secrets (art.204 CP RM; paragraph (1) art.245^{10} CP RM etc.) , which *ad litteram* leads to a logical conclusion – other types of professional secrets that are not provided by the criminal law do not enjoy adequate criminal legal protection, and the disclosure of these derived secrets does not obtain a prompt sanction. (There are currently about sixty types of confidential information).

We find that in the Republic of Moldova, based on the characteristics of professional activity, the branch legislation establishes guarantees for the observance of professional secrets, but criminal liability is ensured only for the types of primary / initial secrets. At the same time, it is inadmissible to substitute the meaning of professional secrecy for that of privacy; therefore, the application of the criminal legal norm provided in art.177 CP RM by analogy cannot be operated either, because, in strict accordance with the provisions of paragraph (2) art.3 CP RM, "the unfavourable extensive interpretation and the application by analogy of criminal law are prohibited".

The need for criminal protection of professional secrecy in the legal norms of the Republic of Moldova is affirmed by the existence of an impressive number of professions in which the secrecy to be protected by legal norms may appear, but in reality such regulations are not infrequently missing; the use of various technical means and information systems in the process of processing, storing and transmitting data that constitute professional secrecy, as well as the absence of normative regulations that would ensure the protection of such data; the emergence of modern professions that contribute to the emergence of new forms of professional secrecy; the lack of a special authority to ensure professional secrecy legislation, etc.

In terms of content, personal or family information may coincide with professional secrecy, but the legal regimes in which such data are kept are completely different and independent. In case of violation of the inviolability of personal life, the criminal protection of the secret of private law is ensured as an object secret (personal or family secret), and in case the private secret is entrusted to another person in connection with the particularities of her profession, the information becomes protected in a secret-obligation regime (professional secret). When such information is passed on to other subjects for safekeeping and use, it acquires a different legal status (banking, tax, medical, notarial or correspondence status, etc.) without losing its primary secret content of private life.

In our opinion, all the above-mentioned circumstances will create certain preconditions for the necessity to regulate relations in the field of professional secrecy and the criminal legal

protection of this type of secrecy, including by regulating the list of protected confidential data that would be attributed to the concrete type of professional secrecy and conditions of access to such secrets.

Framing the topic in international concerns. In international regulations, professional secrecy is based on the general provisions of the norms dedicated to aspects of privacy and personal data, as well as on the special provisions dedicated to the regulation of professional secrets. The fundamental right to the protection of personal data is essentially based on Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 8 of the Charter of Fundamental Rights of the European Union (2010 / C 83/02).

In strict accordance with the provisions of point (164) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC *(General Data Protection Regulation), „Member States may adopt by law, within the limits of this Regulation, specific rules in order to safeguard the professional or other equivalent secrecy obligations, in so far as necessary to reconcile the right to the protection of personal data with an obligation of professional secrecy. This is without prejudice to existing Member State obligations to adopt rules on professional secrecy where required by Union law"* [19]. In the sense Recommendation 582 (1970) "Mass communication media and Human Rights", the right to privacy includes *„*is effectively protected against interference not only by public authorities but also by private persons or the mass media*"* [18].

According to the provisions of paragraph (1) art.22 (Professional secrecy and cooperation between authorities) of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 *on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, „the obligation of professional secrecy shall apply to all persons who work or have worked for the competent authority and for entities to which competent authorities may have delegated certain tasks. Information covered by professional secrecy may not be disclosed to any other person or authority except in accordance with provisions laid down by law"* [1].

The Rules of Procedure and Evidence are reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002 (ICC-ASP/1/3 and Corr.1) (Privileged communications and information), *„communications made in the context of the professional relationship between a person and his or her legal counsel shall be regarded as privileged, and consequently not subject to disclosure, unless: (a) The person consents in writing to such disclosure; or (b) the person voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure"* [20]. In this context, *„the Court shall give particular regard to recognizing as privileged those communications made in the context of the professional relationship between a person and his or her medical doctor, psychiatrist, psychologist or counselor, in particular those related to or involving victims, or between a person and a member of a religious clergy; and in the latter case, the Court shall recognize as privileged those communications made in the context of a sacred confession where it is an integral part of the practice of that religion"* [20]. We conclude that the institution of professional secrecy is regulated at international level both in its general form and in its special forms (professional secrecy of the defender, professional medical secrecy, religious professional secrecy).

Framing the theme in national and regional concerns. Our scientific approach in the criminal field is initiated based on doctrinal sources of indisputable reputation in penal doctrine

and other scientific fields (Constitutional Law, Contraventional law, Information law, Civil law, Criminal Procedure Law; Philosophy, Sociology, Informatics, etc.), prepared by: D.S. Chertes, M.Dunea, C.Jugastru, Cr.Nicorici, L.-L. Lăzăroiu, O. Predescu *(Romania)*; Gh.Aricov, S.Brînza, St.Copețchi, S.Crijanovschi, V.Cușnir, Ig.Dolea, L.Gîrla, N.Grădinaru, V.Iustin, C.Moțoc, V.Stati, R.Ștefănuț *(Republic of Moldova)*; M.Iu. Avdeev, V.V. Artemov, S.N. Burdov, D.V. Bushkov, A.V. Dvoreţkii, I.Faingold, S.I. Gutnik, M.A. Efremova, D.A. Kalmakov, E.V. Klimova, S.N. Merkulova, Iu.S. Pilipenko, A.N. Prokopenko, G.B. Romanovskii, G.V. Șagara, S.A. Toporkova, E.K. Volcinskaia, L.Zakirova, I.A. Yakovleva (Russian Federation); V.Mislivii, N.Basaraba, I.N. Zubaci *(Ukraine)*, Leite Tatiana Henriques from Holland Henriques, Rodrigo Arruda, Vasconcelos Camila, Lustosa Cátia, Meirelles Ana Thereza, Aranha Anderson Vieira, Garrafa Volnei *(Brazil)* etc. We find the rare use of the concept of professional secrecy in contemporary legal science, as well as in normative acts. Some scholars (A.N. Prokopenko, S.V. Golubcikov, V.K. Novikov, A.V. Baranova, etc.) limit themselves to the most general observations, considering that „this type of secrecy is based on the specifics of activities in several professions" [34, p.24].

The purpose of the research is to build up the scientific and the empiric concept of criminal legal protection of professional secrecy in the Criminal Law of Romania and of the Republic of Moldova, within the meaning of the *lege lata* and *lege ferenda*.

Based on the proposed goal, the research objectives were elaborated, as follows: the research of the contemporary doctrine dedicated to the conceptualization of the professional secrecy; analysis of the criminal legal norms that ensure the security of professional secrecy in the Criminal law of Romania and in that of the Republic of Moldova; research of the regulations from the extra-criminal legislation of Romania and in that of the Republic of Moldova; explaining the content of professional secrecy; investigation of objective items of criminal offences that violate the security of confidential information protected in the regime of professional secrecy in the Criminal Code of Romania and in the Criminal Code of the Republic of Moldova; demonstrating the differences between primary secrets and derived secrets protected by Criminal law; comparative analysis of criminal legal norms from the Criminal Codes of other states that ensure the inviolability of professional secrecy, as well as the inviolability of other types of related secrets; elaboration of the original empirical research to verify the formulated hypothesis; formulating conclusions and proposing recommendations aimed at improving the Criminal Code of Romania and the Criminal Code of the Republic of Moldova, etc.

The research hypothesis is based on the assumption that the criminal legal protection of professional secrecy in the criminal law of Romania and the Republic of Moldova is ensured by establishing a derived (secondary) secrecy regime, and the application of the norm that ensures the primary secrecy of information confidentiality is inadmissible. The author argues that the existence of only one criminal legal norm in the criminal law of the Republic of Moldova, which ensures the inviolability of privacy in the form of ensuring the criminal legal protection of personal or family secrecy in primary secrecy, is not sufficient and therefore , does not meet the expectations of a democratic society. Professional secrecy ensuring the protection of confidential data concerning the privacy of the victim by other persons empowered by virtue of the profession to protect it, is to be protected in another personal data protection regime, becoming secondary, ancillary, of overstructured and dependent on the primary.

Synthesis of the research methodology and justification of the chosen research methods. The following methods of scientific research were used to achieve the proposed goal and objectives: logical method, comparative method, historical method, statistical analysis,

interview method, sociological research method, etc. The research undertaken is based on the study of both criminal and interdisciplinary doctrine, criminal and extra-criminal legislation in the field concerned, as well as the practice of the ECHR, the courts of Romania and the Republic of Moldova. The legislation of Romania and of the Republic of Moldova, as well as of some foreign states (Ukraine, Republic of Belarus, Republic of Kazakhstan, Republic of Kyrgyzstan, Sweden, Switzerland, France, Germany, Italy, etc.) includes offenses that violate the inviolability of professional secrecy. The research itself started from the idea that secret information also has a certain genetic property: information, documents and products created on the basis of secret information usually become secret. We specify, in this sense, that the correct definition of secrecy cannot be deduced only from the category of information, because any legal secret constitutes not only information as such, but is maintained in a state of prohibition / (withdrawal from the accessible information circuit), access to such information.

An empirical research in the form of a questionnaire was undertaken to prove the hypothesis. The purpose of this questionnaire was to identify the problem of ensuring the legal and criminal protection of professional secrecy in the criminal law of Romania and the Republic of Moldova by collecting data for empirical testing of the hypothesis formulated in the doctoral thesis, as well as quantitative and qualitative analysis of data for the acceptance, rejection or reformulation of that scientific hypothesis. In this sense, the quantitative study method was used - the sociological survey based on the questionnaire (filter questionnaire) and the opinion poll. Strictly in accordance with the research limits, the place (territory) of the study was chosen: Republic of Moldova and Romania, the interview period being in May-August 2019. The questionnaire was completely anonymous and strictly confidential. Participation in it was also entirely voluntary. The respondents answered each question individually, being preventively suggested as much attention and sincerity as possible. Also, from the beginning, it was provided the possibility to leave the questions blank if they, in the respondent's opinion, were required to be unacceptable for any reason. The corresponding answers could be ticked on the answer sheet, at the discretion of the respondent several options could be chosen if they were relevant. 505 paper questionnaires were distributed in strict accordance with the attached sample. In order to obtain a clear sociological portrait of the anonymous participants, we elaborated and provided a filter questionnaire that included: 1) the age of the respondent (from 18 to 75 years and over); 2) sex of the respondent (male, female); 3) the citizenship of the respondent (Republic of Moldova, Romania, other); 4) graduated studies (from gymnasium to postdoctoral studies); 5) the (current) field of professional activity of the respondent (wide range of local or central authorities, law enforcement bodies, educational institutions, medical institutions, NGOs, religious organizations, economic agents).

In this empirical study: the professions that, in the opinion of the respondents, imply the need to ensure the secret regime of confidential information were identified; the content of professional secrecy was specified; the need for legal and criminal protection of professional secrecy was argued; the relationship between the inviolability of privacy and the inviolability of professional secrecy has been established; the measures / techniques / methods of organizational and technical origin were specified which, in the opinion of the interview participants, are relevant for the protection of professional secrecy; the approximate list of confidential private data forming the content of professional secrecy has been drawn up; specific methods have been identified that may violate the inviolability of personal life in the process of disclosing professional secrecy; the victimological index of the persons who suffered as a result of the prejudicial acts committed by the subjects empowered to ensure the integrity of professional

secrecy was identified; the extent to which respondents are tempted to entrust certain personal information to a religious servant, a medical worker and a journalist has been verified; intentional and reckless breaches of professional secrecy have been identified; relevant legislative measures to ensure professional secrecy have been proposed for implementation, as well as relevant organizational and technical measures for the protection of professional secrecy.

THESIS CONTENT

In Chapter 1 "SCIENTIFIC MATERIALS REGARDING THE CRIMINAL LEGAL PROTECTION OF PROFESSIONAL SECRET" we analyzed the scientific situation in the field. Our scientific approach in the criminal legal field is initiated based on doctrinal sources of indisputable reputation in criminal doctrine abroad, elaborated by V.V. Artemov; D.V. Bushkov; A.V. Ermolaev; ME. Efremova; ME. Ersov; AND. Gutnik; S.N. Merkulova; YEAR. Prokopenko; D.Tatianin; L. Zakirova; and so on. The Romanian criminal doctrine directly dedicated to the criminal legal protection of professional secrecy consists of the works of the following scientists: D.-S. Cherteș; M.Dunea; Cr.Nicorici; Gr.-M. Preduca (Predișor); R.Slăvoiu etc. The penal science of the Republic of Moldova in the field of criminal legal protection of professional secrecy is supported in some papers belonging to reputable authors in the field: Gh. Aricov; M.Botnarenco; S.Brînza, Ig.Botezatu; St.Copețchi; S.Crijanovschi, Al.Bogdan; V.Cușnir; S.Gavajuc; L.Gîrla; V.Iustin; C. Moțoc; V. States; S.Timofei; R. Ștefănuț etc.

Some conceptions of an interdisciplinary nature in foreign doctrine have led us to draw certain conclusions. The interdisciplinary nature of these concepts is determined by the fact that they are formulated by specialists in: Administrative law - S.N. Burdov; Constitutional law - G.B. Romanovskii; Information Law - A.A. Cebotariova; Financial Law - I.A. Bova; Civil Law - V.A. Sandalova; Labor Law - S.A. Toporkova; Civil procedural law - E.G. Fomenko; Criminal procedural law - V.E. Evseenko; Forensics - D.S. Svașenko; Philology - M.M. Naumova; Sociology - L.M. Mktrcean; Philosophy - O.M. Manjueva; Information systems - V.D. Fomiciov; Political Science - I.A. Voroshilin etc. The Romanian interdisciplinary doctrine included scientific research of the following scientists: Al.-L.Csanád; L.Săuleanu, L.Smarandache, A.Dodocioiu; C.Jugastru; L.-L. Lăzăroiu; L.Pleș, S.Păun; L.A. Tutunaru; V.R.-E.Voinea etc. (Constitutional law, Contraventional law, Information law, Civil law); M.Corlean; N. Matsaukas; Al. Mălureanu; G.Roman; S.Guțan etc. (theology, culturology, biomedicine and bioethics). In the Republic of Moldova, at an interdisciplinary level, an indisputable reputation is acquired by the scientific work of Professor Ig. Dolea (Criminal procedure law). Other works belong to the authors R.-G. Ichim (Law); M.Bulgaru (Sociology); D. Cazacu (Educational sciences); N. Grădinaru (Culturology); V.Moșin and A.Eșanu (Bioethics); Gh.Paladi (Bioethics). Proceeding from this vast set of foreign sources accumulated and analyzed, we found that the sources of extra-criminal origin in the matter of legal protection of professional secrecy are numerous, while the criminal legal ones are unique. Some scholars limit themselves to the most general observations, considering that this type of secrecy is based on the specifics of activities in several professions (A.N. Prokopenko, S.V. Golubcikov, V.K. Novikov, A.V. Baranova, etc.). Within the limits of this scientific approach, I accepted the classification of secrets proposed by E.K. Volcinskaia, D.I. Krutikova and S.A. Toporkova, according to which, confidential information is to be divided into two classes of different sizes: 1) initial (primary) secrets and 2) derived secrets.

The analysis of contemporary national and foreign doctrine has contributed substantially to the formulation of the research hypothesis: the assumption that the criminal legal protection of professional secrecy in the criminal law of Romania and the Republic of Moldova is ensured by

establishing a regime of secondary secrecy, and the application of the rule that ensures the regime of primary secrecy of confidential information is inadmissible. This doctoral thesis is positioned as a scientific continuity of the research that has taken place so far in the field of protection of primary secrecy, its extrapolation into derived secrets, including professional secrecy. Scientific materials categorized by fields will be subject to a detailed examination, and in the analysis we will focus on the method of presenting them by fields depending on the research issue: the immaterial object of crimes that threaten the security of confidential information; the concept of protected information; the concept of confidential information as an intangible object of the crime; the right to the inviolability of privacy from the perspective of the content of professional secrecy; determining the legal regime of trade secret; the multilateral treatment of banking secrecy being a mixed secret (professional and service); legal and criminal protection of medical secrecy; criminal legal protection of religious professional secrecy. The successful definition of secrecy belongs to the author S.N. Merkulova, who defines secrecy as *'information about persons, objects, facts, events, phenomena and processes, reflected in materialized or immaterial forms, entrusted to a restricted circle of persons, and its disclosure involves legal liability'* [32, p.11-12]. Referring to the content of professional secrecy, we will find that it consists of information on the privacy of the individual. Author G.B. Romanovskii distinguishes the following components of privacy: *"the circle of informal communication; forced communication (professional secrecy of the doctor, lawyer, notary, etc.); the inner world of a person (personal experiences, opinions, beliefs, personal life, leisure, hobbies, habits, character, sympathy, etc.); family ties"* [36, p.64].

In other words, we found that trade secrecy is the standard version of primary secrecy; therefore, this category of confidential information cannot be equated with professional secrecy or professional secrecy, although its content often materializes in commercial secrecy. The trade secret is researched in detail by the Moldovan author C.Timofei [22, p.41]. By comparison and contrast, banking secrecy is exclusively a professional secret only that refers to the confidential data provided by the client (personal data provided at the discretion and choice of the client). At the same time, other types of information that are included in bank secrecy are kept confidential. The criminal legal protection of banking secrecy is thoroughly analyzed in the works of the Moldovan scientist V.Stati. The author comes with concrete solutions for the legal classification of the facts provided in art.245^{10} CP RM [21, p.6].

Referring to the criminal legal protection of medical professional secrecy, we note that medical secrecy is a professionally interpreted extensively, as subjects being recognized not only doctors but also other medical workers: midwives, ferns, nurses and other employees. of the medical institutions to which the patient was referred [33, p.153-154]. The author K.Kiricenko proposes the introduction of a legal measure similar to the protection of the secrecy of adoption – the criminal protection of reproductive secrecy [31, p.97-98]. The right to the *"secret of the donor's privacy"* and to the "*genetic identity of the child"* and the right to know the *"biological origin"* are thoroughly discussed in Brazilian doctrine [23, p.508].

In another perimeter of the doctrine, a debatable situation from the point of view of legislative technique is caused by the diversity of religious cultures, on the one hand, and by the recognition of the confession procedure only in Christianity and in some analogous religions, on the other. In the specialized legal literature, the author Ig.Dolea in his scientific work uses the terms *"priest-repentance immunity"* and *"secrecy of confession"* [2, p.342]. We argue that the notion of religious secrecy does not coincide with the secrecy of confession and cannot be interpreted in a reduced sense to this secrecy. We consider that the circle of information entrusted to the priest's confession cannot be disclosed. The priest cannot violate the secrecy of confession

in any case. In our opinion, the criminal legal protection is to be ensured not only in case of violation of the secrecy of confession / confession within the *"priest-repentance"* relationship, but also in other situations that may form the religious professional secret.

Continuing our research, we observe that the professional secrecy of the lawyer presupposes, on the one hand, trust between a jurist (lawyer) and his beneficiary, as well as a system of guarantees and professional ethical norms. The literature states that *„since the creation of law, the practice of betraying the client has been and remains prohibited"* [25, p.53]. The most amoral is the violation committed in order to help the party of the accusation, because such violations are committed due to the corrupt connection between the participants in the criminal trial. The Russian doctrine highlights two opinions regarding the possibility of disclosure of professional secrecy by the lawyer: according to the first opinion, *„the lawyer's professional secrecy cannot be disclosed in any case"* [35, p.15], and according to the second opinion, *„secrecy may be disclosed only in exceptional circumstances, for example, if the beneficiary informs the lawyer of the offense the offense of which can be prevented or countered"* [29, p.177]. However, the possibility of disclosing the secrecy of the lawyer arises from Principle I point 6 of Recommendation No. (2000) 21 of the Committee of Ministers to EU Member States on the freedom to practice law [17], according to which *„exceptions from the principle of confidentiality can be admitted, if they are compatible with the rule of law"* [17]. The Romanian authors admit *„the possibility of disclosing the lawyer's secret"* [16, p.324] finding that *„this is not an absolute one"* [16, p.324]. In our opinion, the disclosure of the lawyer's professional secrecy cannot be operated under any condition, as in the case of the confession secret, about what expressly guarantees the juridical-criminal prohibition inserted in art.227 CP of Romania. I concluded that in the Romanian doctrine the lawyer's secrecy is analyzed in detail through the criminal legal protection of professional secrecy, while in the criminal legal doctrine of the Republic of Moldova such an approach is completely missing, except for the analysis of „defense-client" secrecy. with criminal procedural legislation.

The professional secrecy of the journalist is treated with special attention from the perspective of Criminal procedural law. The author Igor Dolea observes that in point 5) paragraph (3) art.90 of the Code of Criminal Procedure of the Republic of Moldova the privilege of the source of information – the journalist is established. According to the aforementioned author, however, this privilege is revocable, the law establishing that the journalist can still be summoned and heard as a witness, if it is about the prevention or discovery of particularly serious or exceptionally serious crimes. I found that some theoretical expositions on the criminal legal protection of the professional secret of the journalist in the Romanian doctrine are missing. Often, under the pretext of the public interest, journalists publish identification data or even make pictures of victims, which is an unjustified intrusion into their private lives. The criminal legal protection of the professional secrecy of journalism is approached by the Moldavian author L. Gîrla [3]. The author does not distinguish between the expressions „professional secrecy of the journalist" [3] and „professional secrecy of the newsroom", using them in parallel [3], which, in our opinion, becomes relevant.

The analysis of the specialized literature regarding the concept *"professional secret"* allows us to formulate the following particularities regarding the information that becomes professional secret: 1) the information is confidential (it refers to aspects of the beneficiary's privacy, but also to other confidential data, the disclosure of which becomes undesirable to the holder of this information [24, p.63]; keep secret [32, p.19-20]), as well as the data developed for the purpose of informational assurance of the activity performed („own" secret). The primary owner of the information protected in this regime is always another subject (another entity), ie

not the person who is obliged to keep the secret [32, p.8-12]; 3) the information does not refer to public data or state secrets [32, p.19-20]; 4) the transmission of information to another foreign person is present; 5) the transmission of confidential data is necessary for the predicted and expected success of the cooperation between the professional and his client; 6) confidential data are transmitted voluntarily and at the discretion of the beneficiary - discretion and trust are the basis of a solid and long-lasting relationship between the beneficiary and the consultant; 7) the information became known to him or was entrusted to a person only by virtue of the performance of his professional duties (in this case it is not about his official position, but about a profession as a type of activity); 8) the person to whom the holder entrusts confidential information is chosen voluntarily - help is often sought from a professional, taking into account his image and reputation, his knowledge, work experience, successes and outlook plans; the choice is made independently, without coercion from the state [27, p.163], and the person is not part of a state or municipal service (otherwise the information is considered a service secret); 9) the person providing professional assistance may refuse to provide it due to lack of necessary equipment, specific technical capabilities, required qualification, excessive workload and other significant reasons; 10) the contractual nature of the relationship - the provision of professional assistance, during which the professional secrecy regime operates, is often against payment (payment for services, fees, etc.), the amount of payment for professional services provided being established on a contractual and mutually acceptable basis; 11) the protection of the private interest of the person who uses professional assistance becomes a priority for the subjects of the legal protection relations of professional secrecy; 12) professional secrecy is totally excluded from the civil circuit [37, p.14-15]. There is a prohibition on the dissemination of entrusted or known information that could harm the rights and legitimate interests of the beneficiary (holder) [27, p.163], and the person to whom confidential information has been entrusted due to his professional activity takes measures to protect secrecy [24, p.68]; 13) the illegal disclosure of confidential information has a negative impact on the owner of the information or his successors. Such specific features aimed at obtaining information do not refer to information protected in a special regime of professional secrecy.

We have noticed that most authors study with great attention the concept, structure and types of professional secrecy as the immaterial object of crimes that threaten the security of confidential information protected in the context of professional secrecy. In our scientific endeavor we decided to substantiate the concept of professional secrecy in the criminal law of Romania and the Republic of Moldova, to demonstrate the correlation between professional secrecy and professional secrecy, to propose solutions for the criminal classification of professional secrecy, as well as delimitation of some related criminal acts in the matter of the criminal protection of the professional secret, finally being formulated proposals of *lege ferenda*.

In Chapter 2 “CRIMINAL LEGAL PROTECTION OF PROFESSIONAL SECRET IN THE CRIMINAL LAW OF ROMANIA AND IN THE REPUBLIC OF MOLDOVA” we analyzed the concept of confidentiality of information and showed that the main defining criterion for classifying information as confidential and for protection against privacy; obtain benefits from the use of the information due to their ignorance of third parties. We have established that the focus on the protection of private interest becomes an indispensable feature of professional secrecy – the legal regime of professional secrecy protects the private interest of the person seeking professional assistance and therefore becomes a priority for the subjects of legal protection relations. professional secrecy. We argued that, according to the criterion of continuity, this category of secrets belongs to derived secrets, and their subject is the professional bearer of the *„foreign secret”* and that is why the information is entrusted to him. We have come

to the conclusion that the substitution of professional secrecy with that of privacy is inadmissible. We highlighted the objective side of the act of disclosure of professional secrecy (art.227 CP Rom.). We demonstrated that the subject possesses confidential information about another person he or she obtained by virtue of the profession, being a trusted person, to whom the victim voluntarily provided data about his or her private life. We argued that in the Criminal Code of the Republic of Moldova there is no criminal liability for disclosure of professional secrecy, except for one special rule that expressly provides criminal liability for disclosure of information kept in professional secrecy, such as disclosure of secrecy of adoption contrary to the will of the adopter, *„Committed by a person obliged to keep the fact of adoption as a professional or service secret"* (art.204 CP RM).

In our opinion, the confidentiality of information implies the keeping of secrecy, which means the requirement not to transmit such information to third parties without the consent of its owner. The main defining criterion for classifying information as confidential and protecting it against leakage is the possibility of benefiting from the use of the information due to its ignorance of third parties.

Focusing on the protection of private interests becomes an indispensable feature of professional secrecy – the legal regime of professional secrecy protects the private interest of the person seeking professional assistance and therefore becomes a priority for subjects of legal protection of professional secrecy. This category of secrets, according to the criterion of continuity, belongs to the derived secrets. Their subject is the professional bearer of the *„foreign secret"*, which is why the information is entrusted to him. Replacing professional secrecy with privacy is inadmissible.

According to the Romanian criminal law, the objective side of the act of disclosure of professional secrecy (art.227 CP Rom.) *„consists in the action of disclosure of professional secrecy, i.e. by the perpetrator to whom they were entrusted or by whom he became acquainted by the nature of the profession or function"* [12, p.150]. The disclosure action must take place without right, i.e. without the consent of the person concerned. The subject of the crimes that threaten the security of confidential information involves a natural person, responsible, who has reached the age of 16, or a legal entity, who has a special status: heor she became aware of them by virtue of his profession or position; has an obligation to maintain the confidentiality of this data. We consider that the subject possesses confidential information about another person that he obtained by virtue of the profession, being a trusted person, to whom the victim voluntarily provided data about his private life.

In the Criminal Code of the Republic of Moldova the criminal responsibility for *"disclosure of professional secrecy is missing"* [6, p.165], and the disclosure by the holder of confidential information that constitutes personal or family secret of the person who addressed a professional (doctor, lawyer, servant cult, notary, etc.) for professional assistance does not find prompt sanction. The criminal act by which the constitutional right of the person to respect for personal life is violated falls under paragraph (1) art. 177 of the Criminal Code of the Republic of Moldova, but the protection of confidential private information kept in professional secrecy is not provided. In the criminal law of the Republic of Moldova there is only one rule that expressly provides criminal liability for disclosure of information kept in professional secrecy, such as in the case of disclosure of adoption secrecy against the will of the adopter, *„committed by a person obliged to keep the adoption as a secret professional or service"* (art.204 CP RM). We have previously found in our publications that *„from the content of the provision we can notice that one and the same secret, secret information is protected by the legislator in one of two confidentiality regimes, either in professional secrecy or in secrecy"* [10 , pp.157-158].

In the process of qualifying criminal acts that threaten the security of confidential information provided by professional secrecy, courts must take into account the following circumstances: whether the information disclosed by a subject is a secret protected by law; whether there has indeed been a disclosure of professional secrecy, in other words, whether it has become known to third parties without the consent of the person concerned (without authorization) or contrary to the prohibitions established as a result of the prejudicial action (omission) committed by the subject; if the perpetrator has assumed the obligation not to disclose a professional secret protected by law; if the perpetrator had access to a professional secret protected by law in accordance with the provisions of a normative act.

Within Chapter 3 "RESULTS OBTAINED REGARDING THE CRIMINAL LEGAL PROTECTION OF PROFESSIONAL SECRET IN ROMANIA AND THE REPUBLIC OF MOLDOVA", following the empirical study, we found the features of the information that are provided by the professional secrecy regime; we established the conditions for the occurrence of criminal liability for disclosure and other forms of violation of the inviolability of professional secrecy; we have identified the characteristic features of professional secrecy and we have demonstrated the correlation between professional secrecy and professional secrecy we have identified the components of privacy that are covered by professional secrecy; we researched the relevant legislative measures for the protection of professional secrecy; we have made certain findings regarding the objective and subjective signs of the disclosure of professional secrecy, as well as other prejudicial acts committed against professional secrets.

In the opinion poll (see: Compartment no.1 of Annex 1 to the doctoral thesis) respondents were asked to identify areas of professional activity that involve the protection of information obtained under professional secrecy. Respondents could choose one or more options. In particular (see Figure no.1.7) of the total number of respondents 87.72% - the profession of the medical worker; 86.34% chose the profession of lawyer; 79.01% - notary profession; 54.46% - the profession of the worship servant; 26.73% - the profession of the insurance agent; 34.26% - the profession of journalist, as well as 18.61% - other professions. We found that the survey participants highlighted three categories of positions whose holders are directly contacted by confidential data concerning the privacy of persons, which is professional secrecy (professional secrecy - 75.84%; bank clerk's secrecy - 65.74%; the secret of the fiscal official - 46.53% of the total number of respondents [11, p.230]). However, in addition to information concerning the privacy of persons, the categories listed by officials possess and participate in various actions of processing data kept and obtained in the course of professional secrecy. The choice of these categories of officials by the respondents indicates that they show certain difficulties and uncertainties in identifying the legal regime for the protection of professional secrecy.

Following our investigations on the criminal law of the Republic of Moldova, we find that the Moldovan legislator omits the criminal protection of the secrecy (obligation of professional secrecy) of the person who is obliged to ensure the confidentiality of the data entrusted to him in the exercise of purely professional activity [15, p.156]. With the help of the survey we established the indispensable components of professional secrecy (see Figure no.1.11): 1) 73.47% of the total number of respondents consider that professional secrecy is based on and derives from the secrets of privacy [14, p.231]; 2) 65.15% of the total number of respondents consider that this type of secrecy is closely related to the profession practiced, it is obtained during the exercise and / or by the nature of the profession (at work, during professional meetings / consultations / therapeutic sessions etc.) [14, p.231]; 3) 61.58% of the total number of interviewees consider that professional secrecy includes certain confidential information obtained in the exercise of the profession

(dialogue, confession, other format of personal openness to report information in order to benefit from a service); 4) 49.11% of the total number of interviewees consider that professional secrecy involves specific skills/abilities of the service provider related to the processing of personal data; 5) 15.05% of the total number of interviewees find that professional secrecy is to be ensured by establishing specific contractual obligations (confidentiality clauses, etc.); 6) 8.12% of the total number of interviewees consider that professional secrecy is based on and derives from trade secrets and *"know-how"* secrets; 7) 5.35% of the total number of persons consider that professional secrecy implies ethics and morals; 8) 4.75% of the total number of interviewees consider that the breach of professional secrecy becomes prejudicial not only in particular (endangering the information security of the individual), but also for society in general; 9) 3.56% of the total number of interviewees consider that professional secrecy is intended to prevent discriminatory attitudes on the part of other persons and exists for the benefit of the client.

The professional secret being a secondary one contains confidential information regarding the private life of one or more persons. Thus, in our opinion, professional secrecy is confidential information that constitutes personal secret, family secret, trade secret, as well as other confidential data of another person, transmitted "voluntarily" [15, p.156] by this person in the purpose of providing the necessary information to the profession exercised, "by virtue of the performance of professional duties" [15, p.156], provided that such data are not public data, service data or state secrets, and their unauthorized disclosure without the consent of the owner is without prejudice to the rights and interests of the natural or legal person.

In Compartment no.2, the representatives were proposed the task of identifying the content of professional secrecy; they had to choose one of the three proposed answers: 1) 46.53% of the total number of respondents chose the option according to which professional secrecy is composed both of objects, processes or phenomena themselves, as well as of information about certain objects, processes or phenomena; 2) 44.95% claimed that professional secrecy is composed of information on certain objects, processes or phenomena; 3) 6.73% of the total number of respondents abstained and did not offer any answer to the formulated task; 4) 1.78% of the total number of respondents chose the option according to which professional secrecy is composed of objects, processes or phenomena themselves [14, p.231]. Through this question we intended to clarify which aspects of a person's private life are covered by professional secrecy: 1) exclusively the information side; 2) both the informational and the factual side of privacy or 3) the informational side and the factual side as a whole. Gradually, we came to the conclusion that most respondents advocate a broad interpretation of the content of professional secrecy. Following the logic of this objective, having the support of the respondents, we consider that the position of the Romanian legislator that we notify from the provision from paragraph (1) art.227 CP Rom. to treat the content of professional secrecy only from the perspective of the information side is not sufficient to ensure the criminal protection of professional secrecy, the criminal provisions will be extended in such a way as to ensure the criminal protection of both the information side, as well as the factual side of the privacy of another person.

During our empirical research, in Compartment no.3, respondents were asked to choose by the multi-option method (the respondent had the right to choose several options) from the established list one or more legislative measures which, in their opinion, would be the more appropriate in ensuring the legal protection of professional secrecy. The results obtained were distributed as follows (see Figure no.1.10): 69.70% of the total number of respondents opted for criminal legislation; 41.98% of the total number of respondents opted for the constitutional legislation; 9.90% of the total number of respondents opted for civil legislation; 14.46% of the total

number of respondents opted for labor legislation; 10.89% of the total number of respondents pleaded for the contravention legislation [14, p.231].

In another register, we proposed to the respondents to specify the relevant organizational and technical measures or methods for the protection of professional secrecy [14, p.238] (see Figure no.1.21): 55.64% of the total number of interviewees have chosen measures to classify information; 42.38% of the total number of interviewees pleaded for surveillance and monitoring measures; 34.46% of the total number of interviewees pleaded for measures to create special databases, systems and software; 32.08% of the total number of interviewees chose measures applicable in the working procedure; 29.31% of the total number of interviewees chose special archiving measures; 19.01% of the total number of interviewees chose general education and training measures; 18.02% of the total number of interviewees chose civil legal and administrative measures [14, p.238-239].

Offering each participant the opportunity to give a multiple answer to the survey, we showed that the majority of respondents (74.85%) believe that the legal and criminal protection of professional secrecy should be ensured only by special legal and criminal rules that provide for criminal liability. for the disclosure of other forms of breach of professional secrecy, regardless of the type of professional secrecy. At the same time, 61.78% of the respondents claim that the legal protection of professional secrecy is to be ensured both by special contravention norms and by special criminal legal norms, depending on the degree of harmfulness of professional secrecy violation. We found that 93.07% of the total number of respondents consider that the category and content of information entering into professional secrecy influence the type of legal liability (in some cases criminal liability must occur, in other cases - misdemeanor liability, etc.) (Section 6) [14, p.248].

As it results from the provisions of art.227 CP Rom., The content of the professional secret is constituted by the confidential data or information regarding the private life of a person. Through our empirical research we set ourselves the goal of elucidating the categories of private data that form the core of professional secrecy. Thus, summarizing the tasks proposed for implementation in Compartment no.4 and in Compartment no.7, the respondents were asked to highlight aspects of privacy that constitute professional secrecy. They highlighted several aspects of it. We noticed that an impressive number of respondents consider that professional secrecy coincides with a person's private life, attributing to them their way of life and their vices, the person's image in the eyes of others, feelings, life outside working hours, etc. Although the respondents' responses were extremely diverse, we tried to group them and synthesize the following components of privacy that can be protected in professional secrecy (see Figure no. 12): 1) 81.39% of those interviewees pleaded for identification data (criminal record, codes, passwords, pins, etc.); 2) 75.84% - stressed - the importance of medical data (health of the person, therapies, causes of referral to the doctor, the results of medical investigations, the number of abortions and pregnancies); 3) 58.61% - pleaded for intimate data (sexual orientation and preferences, intimate life, etc.); 4) 55.25% - chose family data (secrets and family conflicts, information about relatives, hereditary diseases, number of marriages and divorces, issues related to infidelity, medical information about family members, etc.); 5) 36.04% pleaded for data describing the financial situation (monthly and annual income, expenses incurred, assets held, salary, debts of the person, etc.); 6) 14.65% - chose biographical data (relationships in personal life, reputation of the person, his biographical path); 7) 10.69% - were exposed in favor of religious data (religious opinion, membership in a religious cult, etc.); 8) 6.34% of respondents chose political data (opinions and political preferences) [14, p.233-234]. Following the empirical research, we come to the conclusion that *"the list of aspects of a person's privacy is extremely diverse, and their exhaustive legal regulation would become absurd and unnecessary"* [14, p.248]. Consequently, we were able to prove the hypothesis that *"the secret of privacy does not*

coincide with professional secrecy. Therefore, the criminal protection of the inviolability of privacy is not able to ensure the criminal protection of professional secrecy" [14, p.231].

In another register, we proposed to the respondents to specify the relevant organizational and technical measures or methods for the protection of professional secrecy [14, p.238] (see Figure no.1.21): 55.64% of the total number of interviewees have chosen measures to classify information; 42.38% of the total number of interviewees pleaded for surveillance and monitoring measures; 34.46% of the total number of interviewees pleaded for measures to create special databases, systems and software; 32.08% of the total number of interviewees chose measures applicable in the working procedure; 29.31% of the total number of interviewees chose special archiving measures; 19.01% of the total number of interviewees chose general education and training measures; 18.02% of the total number of interviewees chose civil and administrative measures [14, p.238-239].

Offering each participant the opportunity to give a multiple answer to the survey, we showed that the majority of respondents (74.85%) believe that the legal and criminal protection of professional secrecy should be ensured only by special legal and criminal rules that provide for criminal liability. for the disclosure of other forms of breach of professional secrecy, regardless of the type of professional secrecy. At the same time, 61.78% of the respondents claim that the legal protection of professional secrecy is to be ensured both by special contravention norms and by special juridical-criminal norms, depending on the degree of prejudice of the violation of professional secrecy. We found that 93.07% of the total number of respondents consider that the category and content of information entering into professional secrecy influence the type of legal liability (in some cases criminal liability must occur, in other cases - misdemeanor liability, etc.) (Compartment no.6) [14, p.248].

As it results from the provisions of art.227 CP Rom., The content of the professional secret is constituted by the confidential data or information regarding the private life of a person. Through our empirical research we set ourselves the goal of elucidating the categories of private data that form the core of professional secrecy. Thus, summarizing the tasks proposed for implementation in Compartment no.4 and in Compartment no.7, the respondents were asked to highlight aspects of privacy that constitute professional secrecy. They highlighted several aspects of it. We noticed that an impressive number of respondents consider that professional secrecy coincides with a person's private life, attributing to them their way of life and their vices, the person's image in the eyes of others, feelings, life outside working hours, etc. Although the respondents' responses were extremely diverse, we tried to group them and synthesize the following components of privacy that can be protected in professional secrecy (see Figure no. 12): 1) 81.39% of those interviewees pleaded for identification data (criminal record, codes, passwords, pins, etc.); 2) 75.84% - stressed - the importance of medical data (health of the person, therapies, causes of referral to the doctor, the results of medical investigations, the number of abortions and pregnancies); 3) 58.61% - pleaded for intimate data (sexual orientation and preferences, intimate life, etc.); 4) 55.25% - chose family data (secrets and family conflicts, information about relatives, hereditary diseases, number of marriages and divorces, issues related to infidelity, medical information about family members, etc.); 5) 36.04% pleaded for data describing the financial situation (monthly and annual income, expenses incurred, assets held, salary, debts of the person, etc.); 6) 14.65% - chose biographical data (relationships in personal life, reputation of the person, his biographical path); 7) 10.69% - were exposed in favor of religious data (religious opinion, membership in a religious cult, etc.); 8) 6.34% of respondents chose political data (opinions and political preferences) [14, p.233-234]. Following the empirical research, we come to the conclusion that *"the list of aspects of a person's privacy is extremely diverse, and their exhaustive legal regulation would become absurd and unnecessary"*

[14, p.248]. Consequently, we were able to prove the hypothesis that *"the secret of privacy does not coincide with professional secrecy. Therefore, the criminal protection of the inviolability of privacy is not able to ensure the criminal protection of professional secrecy"* [14, p.231].

In the opinion of the respondents, among the methods by which the inviolability of personal life in the process of disclosure of professional secrecy may be violated, we grouped them as follows (see Figure no.1.20) opted 52.08% of the total number of interviewees) [14, p.238]. In the opinion of the respondents, the unauthorized intentional disclosure includes facts of dissemination, publication, transmission, disclosure, discussion, data exposure, transmission, sale, supply, confirmation of confidential data, etc. Among the forms of illegal obtaining of confidential information, the respondents called surveillance, coercion, hacking, document removal, audio interception, unauthorized access, audio / photo / video recording, processing, copying / multiplication, observation, conversation, etc. However, 10.49% of the total number of respondents opted for the reckless violation of the integrity and inviolability of professional secrecy (negligence, improper handling of documents, insecurity of information and documents, lack of professionalism, carelessness and frivolity in discussions with close people, inattention, lack of professional preparation, loss of documents, non-compliance with storage and processing conditions, etc.) [14, p.237]. Survey participants expressed a lack of personal trust in journalistic specialties and showed that they would not entrust their own secret to a journalist, the results being 66.73% of the total number of respondents (see Figure no.1.18) [14, p. 236].

Following the empirical study, we came to the conclusion that most respondents advocate for the extensive interpretation of the content of professional secrecy [14, p.231]. Following the logic of this objective, having the support of the respondents, we consider that the position of the Romanian legislator that we notify from the provision from paragraph (1) art.227 CP Rom. to treat the content of professional secrecy only from the perspective of the information side is not sufficient to ensure the criminal protection of professional secrecy, the criminal provisions will be extended in such a way as to ensure the criminal protection of both the information side, as well as the factual side of the privacy of another person.

The main methods of committing crimes in the field of confidential information provided in foreign criminal codes are the acquisition, receipt, collection, use, disclosure, dissemination and publication of information, violation of various types of secrets, disclosure of information. Some rules indicate the illegality of the actions committed (illegal collection, storage, violation) - their unauthorized commission. In some countries, in order to be criminally punishable, the collection and dissemination of confidential information must be carried out without the consent of the person holding the information. At the same time, in case of criminalization of the violation of confidential information, the legislators use in the criminal law of these states similar terms: information, data, secrecy, confidential information, secret information, secret information. Therefore, we obtained the following summarized results: the very act of illegal disclosure of confidential information that constitutes professional secrecy includes the acts of dissemination, publication, storytelling, transmission, disclosure, making available, exposure, informing others, selling, providing such information. In this sense, Article 2 of Regulation (EC) No 45/2001 uses the concepts of disclosure by transmission, dissemination, disclosure in any other way. Certainly, as a result of the dissemination action, the information is no longer secret, unknown. Following the empirical study, we found the existence of various forms of illegal obtaining of confidential information, including surveillance (including through social networks), filming, obtaining by coercion, extraction from databases, photography, interception, access, recording, processing, conversation, observation, collection [14, p.237].

Loss of information and leakage of information are independent forms of manifestation of information vulnerability. Theft of storage media, as well as their unauthorized destruction or only of the stock information in them, the disclosure and blocking of information leads to the loss of documented information. The loss is the taking out of the possession of the person who has secret access to the documents containing secret information. Unlike the act of loss, the destruction of secret documents excludes the possibility of others becoming familiar with their contents. The concept of "leakage" is only associated with restricted (confidential) access information and is generally interpreted as exiting the circuit. The term *"leakage of confidential information"* is probably not the most harmonious, but it is more succinct than other terms, it reflects the essence of the phenomenon and has long been rooted in the scientific literature and regulatory acts. The leakage of confidential information takes place in the case of illegal access of authorized persons to this information, outside the protected area, the exit of which led to obtaining confidential information (familiarization with it) by unauthorized persons [26, p.16-17]. The leakage of confidential documented information leads to its disclosure. In regulatory acts, the term *"leakage of confidential information"* is often replaced or identified by the terms *"disclosure of confidential information"*, *"dissemination of confidential information".* However, in our opinion, this approach is not correct. Disclosure or dissemination of confidential information involves unauthorized communication with consumers who do not have access to such data. It is accepted that such a communication should be made by someone (a person), come from someone. Undoubtedly, the leak occurs when the disclosure (unauthorized distribution) of confidential information takes place, but, in our opinion, is not limited to this. Leaks can also occur as a result of the loss of the bearer of documented confidential information, as well as the theft of information protected by law. Theft of documented confidential information is not always related to the obtaining of such information by unauthorized persons. Sometimes it happens that the theft of confidential information *"is committed by colleagues at work (authorized persons) for other personal reasons: envy, hatred, revenge"* [13, p.142-143].

'The term 'destruction' means any kind of impact on confidential information, as a result of which the possibility of the subsequent use of such data by anyone without the possibility of retrieval is lost. The transfer of information to another computer medium is not considered, in the context of criminal law, an act of destruction of confidential information, except in cases where, as a result of these acts, the access of legitimate users to information has been significantly prevented or completely excluded [13, p .141]. The destruction of the information cannot be manifested in the renaming of the file in which it is contained, as well as in the "automatic deletion" of the old versions of the files. From a criminal point of view, some forms of vulnerability of documented information can be realized as a result of intentional or accidental destabilizing effects. Thus, sources of vulnerability can be people, technical means of processing information transmission, means of communication, natural disasters. The actions of joining, combining and deleting were not reflected in the Law of the Republic of Moldova no.17-XVI/2007. At the same time, in our opinion, the actions of joining and combining will be perfectly included in the action of use, where joining and combining would be independent forms of use.

Illegal use means the use of confidential information which constitutes professional secrecy in the personal interests or interests of other persons not authorized, although interested in obtaining such information. At the same time, it does not matter whether the subject obtained the secret information directly or through intermediaries, free of charge or for a fee. In the case of a sale of information that constitutes a professional secret, there is a "compensated transfer" that involves the gain of material goods. The provision of confidential information that constitutes a professional

secret represents the provision or transmission of confidential information that constitutes a professional secret to a certain circle of persons. Dissemination of confidential information that constitutes professional secrecy means actions that involve the purpose of obtaining information by an indefinite (indefinite) circle of persons or the transmission of information to an indeterminate circle of persons.

The reflection in the text of the international norm and in the one of the Romanian one of the action of granting the access that is expressly provided by the Law of the Republic of Moldova no. 17-XVI / 2007 remains unresolved. In our opinion, the clarification action would be carried out only through access to such protected data and should also be perceived internationally. We conclude that the activity of processing personal data is much wider than the actions incriminated by the criminal law of the Republic of Moldova and Romania. Consequently, we opt for the extension of the incriminating provisions of art.227 CP Rom. in such a way that the provision of paragraph (1) art.227 CP Rom. provide not only for the act of disclosure (by act or omission), but also for other forms of breach of confidential information about the privacy of a person kept in professional secrecy, in particular theft by theft or embezzlement, intentional destruction, distortion, blocking , use, alienation, granting access to another person, intentional destruction, and loss of such data. We consider necessary a legislative definition of the notion of disclosure which would consist in the acts of publication, denunciation, demonstration, dissemination, granting of access, alienation by any means.

Through the question formulated in Compartment no.12, we tried to identify the real situation regarding the spread of the phenomenon of disclosure or otherwise violating professional secrecy, how latent this phenomenon is. Considering the fact that the survey was attended by an impressive number of respondents from both Romania and the Republic of Moldova, we noticed that this harmful phenomenon is equally widespread in Romania, where the legal and criminal protection of confidential information is ensured. in the regime of professional secrecy, as well as in the Republic of Moldova, where there is no protection of these categories of information. In this way, respondents had the opportunity to refrain from any answer. The following results were obtained (see: Figure no.16): 1) 58.81% of the total number of respondents reported that they did not know cases of violation of the inviolability of personal life by disclosing professional secrecy; 2) 36.44% of the total number of respondents admitted that they had suffered as a result of the violation of the inviolability of their personal life by disclosing professional secrecy, which means that every third being a customer / beneficiary / consumer of services suffered damages following disclosure data that constitute professional secrecy; 3) 4.75% of the total number of respondents abstained and did not offer any answer [14, p.238].

In the Compartment no. 18 of the survey of opinions, the respondents were proposed to specify by the same multi-option method the relevant legislative measures for ensuring professional secrecy. At the same time, the survey participants were offered the option to refrain from any answer. The task was formulated in such a way that the respondent is free in findings and proposals. We grouped the results of this survey into several categories so that the suggestions and conclusions of the survey participants were correctly reflected (see Figure no.1.2): the majority of respondents (74.85%) consider that the protection of professional secrecy it must be ensured only by special criminal norms, regardless of the type of professional secrecy; however, 61.78% of the total number of respondents simultaneously admit the legal protection of professional secrecy by both special contravention norms and special criminal norms; only 1.19% of the total number of respondents plead for the introduction of security measures introduced in the General Part of the Criminal Code which would consist in removing from office convicted persons for improper disclosure and

processing of confidential data and restricting access to such information. 12.67% of the total number of respondents pleaded for the tightening of criminal penalties for the disclosure of data that constitute professional or personal secrecy [14, p.236]; 18.22% of the total number of respondents opted for special extra-criminal norms provided in acts subordinated to the law [14, p.236]. We noticed that "the absolute majority of respondents without legal education consider that the classification of the act of violation of professional secrecy is correct based on the criminal rule provided in art.177 CP RM (Violation of the inviolability of personal life)" [14, p.236]; "At the same time, the representatives of the legal professions plead for the establishment of special criminal norms that would ensure the distinct protection of professional secrecy (Compartment no. 9)" [14, p.236].

In another field of empirical research we found that information that has become known on the basis of legal grounds and the disclosure of which to others impairs the inviolability of privacy, is to be protected in the following regimes: professional secrecy, if it is obtained by these persons exclusively by virtue of the exercise of professional obligations, which are not related to the activity in the local or central public authorities; in the course of professional secrecy, if it is obtained by the representatives of the local or central public authorities, by virtue of their duties, in the cases and in the manner established by law. If we emerge only from the quality of the "profession", therefore of the activity exercised, it is accepted that the service and professional secrets can be correlated as part and whole [9, p.192]. The regime of professional secrecy can be defined as a set of rules governing information relations between public servants and other persons. The information may be recognized as a secret of service if it meets the following requirements: according to legal provisions refers to information on the activity of public or local authorities, access to which is restricted by law or based on the need for service (secrecy service itself); this information does not constitute a state secret and does not fall under the list of public data (access to which cannot be restricted); this information is received by the representative of the public or local authority only in connection with the execution of the service obligations in the cases and in the order provided by law; the information concerned contains potential value due to its ignorance by third parties. Information that does not meet these requirements may not be recognized as a trade secret and may not enjoy special legal protection. It is reasonable for service secrecy to be regarded as one of the categories of information with limited access [30, p.12-15].

In the criminal law of Romania, the criminal legal protection is ensured by art.304 of the Criminal Code of Romania (Disclosure of secret service or non-public information). Due to the similarities between the crime of disclosure of professional secrecy and the disclosure of secret service or non-public information (art.304 CP Rom.), The issue of legal classification of the act arises when the subject became aware of the secrets of a natural person in the exercise specific attributions of the public position he holds. For example, during the hearing of a witness, the police officer finds out about the extramarital relationship the person has with the defendant's wife, information which this person then provides to his colleagues. Such an act constitutes the disclosure of professional secrecy, but not the disclosure of official or non-public secret information. Even if the aspects of a person's privacy are in essence not intended for publicity, the difference between the two offenses is given by the special legal object. Unlike the criminal law of Romania, in the Criminal Code of the Republic of Moldova the general criminal norm that would incriminate the disclosure of service secrecy is missing. The regulation of the service secret in the extra-criminal law of the Republic of Moldova takes place in the Law of the Republic of Moldova on state secret, no. Intelligence and Security ensures the diplomatic courier

and exercises control over the circuit of information attributed to state secret and service information between the Ministry of Foreign Affairs and European Integration and the diplomatic missions and consular offices of the Republic of Moldova abroad". Special norms identified in the Special Part of the Criminal Code of the Republic of Moldova (art.204 CP RM *"Disclosure of adoption secrecy"*); it does not ensure the full and complete protection of secret service information that can be kept in various special forms.

In another area of research, the violation of the inviolability of personal life committed by the intentional use of the service situation is to be qualified based on the provisions of letter b) paragraph (2) art.177 CP RM. In relation to the provisions of letter b) paragraph (2) art.177 CP RM, general norms are art.327 and 328 CP RM. Therefore, only letter b) paragraph (2) art. Violation of the inviolability of personal life committed by a public person through actions that clearly exceed the limits of the rights and powers granted by law, if it has caused considerable damage to public interests or the rights and interests protected by law of natural or legal persons, shall within the competition of offenses provided for in paragraph (1) art.177 CP RM and in paragraph (1) art.328 CP RM.

In our empirical research, we examined the relationship between professional secrecy and professional secrecy. Through the opinion poll we aimed to highlight the differences between professional secrecy and professional secrecy (Compartment 7). We mention that the respondents in most cases only formulated the definition of professional secrecy (See Figure no.***1.14)*** using the method of classification (classified documents of the institution, entire lists of internal documents, action plans, indications of service, statistics, state secret information as a special form of service secrecy); 2) 64.75% of the total number of interviewees find that confidential information regarding the activities carried out at work, the structure and security of the institution (data on working procedures, information on the specifics of work performed, data on assets, resources of the institution, the object of the work, as well as its security); 3) 48.32% of the total number of interviewees found that service secrecy is an obligation of the employee (the employee's obligation not to disclose data about the institution whose disclosure may endanger the safety of the service); 4) 32.08% of the total number of interviewees found that professional secrecy represents confidential internal information at work (data inaccessible to the general public; internal information the disclosure of which is prohibited by internal rules); 5) 25.35% of the total number of interviewees found that professional secrecy is confidential information the disclosure of which may harm the safety, integrity, security, trust, legal image and reputation of the institution or the damage of society in general, depending on the category secrecy of service (for example, in the case of disclosure of confidential military data, national security is affected; information that may damage the image or integrity of the issuing institution); 6) only 0.79% of the total number of interviewees consider that service secrecy is based on ethics and morals cultivated at work; 7) 0.59% of the total number of interviewees consider that professional secrecy exists to prevent discriminatory treatment of employees.

However, some respondents (in particular, police officers, notaries and doctors) reported the following: *„the secrecy of the service can cause damage to the whole society"; „Service secrecy is temporarily limited and professional secrecy is perpetually limited"*; *„In the case of professional secrecy, the information is obtained during the professional activity, and in the case of professional secrecy the data obtained may damage the image of the institution"*; *„Professional secrecy is related to the specific training of the professional, and professional secrecy is related to the nature of the service"*. We can conclude that service secrecy is a legal regime for the protection of specific confidential data obtained in connection with the service, at work, and to ensure the smooth running

of this service. In our opinion, the information obtained by the person in the process of exercising his managerial activity, as well as the organizational actions, should be highlighted.

We consider that professional and professional secrets represent different institutions and legal regimes of information with restricted access, taking into account the differences between regimes and the specifics of legal regulation. The data referring to the professional secret and to the professional secret possess the following properties: the specificity of the data that constitute professional secret is related to the sphere of professional activity of the one who obtains the information (lawyer, notary, doctor, etc.); Compared to the notion of *„professional secrecy"*, the notion of *„professional secrecy"* is broader in content, because, in addition to internal service information with restricted access, related to the actual activity of the public authority, and may include certain data that can be attributed to professional secrecy; from the point of view of the professional character of the service activity of the public persons, the characteristic of the subjects who are empowered to hold the targeted information coincides [28, p.42]; in the regime of professional secrecy, not only the rights of natural persons are protected – the beneficiaries of the data, but also the interests of the subjects of the professional activity, as well as of the state in supporting the activities of social interest; if in the case of professional secrecy the holder of these confidential data voluntarily transmits them to the subjects of the professional activity, then in the case of professional secrecy the person is obliged, on the basis and in the cases provided by law, to present information regarding his private life. the non-presentation of the respective data is provided for criminal or contravention liability; professional secrecy is ensured by – private secrecy regime, and service secrecy by public secrecy regime. Therefore, professional secrecy and professional secrecy are differentiated according to the elements of the legal regime. At the same time, users of professional secrecy from public or local authorities are to ensure the non-disclosure of professional secrecy and to establish its protection within their own institution in the context of professional secrecy.

In another vector of empirical research we found that depending on the object of the lawyer's professional secrecy, the information obtained during the provision of legal aid can be systematized as follows: all information on the case, based on which the citizen or legal person addressed the lawyer; information devoid of legal content, relating to personal and family life. Depending on the content of the lawyer's professional secrecy, there are two categories of information: the beneficiary's secrets communicated to the lawyer; data obtained by the lawyer in the interests of the beneficiary. In our opinion, the lawyer is obliged to keep secret not only the information obtained from the beneficiary, but also other data obtained from other sources, if obtaining them is related to the provision of legal assistance.

In our opinion, religious professional secrecy is to be investigated in its special form of confession secrecy. Thus, in our research (Compartment no. 13) we aimed to verify, anonymously, how tempted respondents are to entrust certain information of personal origin to worshipers. The research results were curious (see Figure no. 1.17.); 58.81% of the total number of respondents chose the statement "they cannot entrust information that constitutes a personal secret to a religious servant" [14, p.236-237]. It was in this study section that I noticed the attentive and reserved attitude towards the religious servants from some respondents regarding the level of trust of personal information. A representative of the Romanian law enforcement bodies cut the proposed option *"I cannot entrust"* replacing it with *"I do not want to entrust"* [14, p.236-237]. Paradoxically, but in another case the very representative of the religious organization (Romania) ticked the option *"I cannot entrust to a religious servant information that constitutes a personal secret"* [14, p.237]. The selected answers are unique in the case, but their presence shows a tendency of resentment and disgust formed in contemporary society in terms of the experience of

sharing the privacy of data belonging to those who participated in the survey. In the Republic of Moldova, the disclosure of the secret of confession by a servant of the religious cult constitutes a contravention in accordance with paragraph (7) art. 54 of the Contravention Code of the Republic of Moldova [4, p.60]. Based on the legislative uncertainty in the criminal law of the Republic of Moldova: notified from the report of art.177 CP RM paragraph (7) art.54 of the Contravention Code of the Republic of Moldova, it is necessary to review the legislative approach to religious professional secrecy.

From the perspective of medical professional secrecy, we can even claim that the medical worker is offered the patient's double privacy: his body and family and personal information. The right to confidentiality is violated in the case of active disclosure and in the case of so-called passive disclosure, when the medical worker negligently and carelessly allowed confidential information about the patient to leak [7, p.195]. In the process of our empirical research (Compartment no.15), we found that only 26.53% of the total number of respondents will not entrust their own personal data to a medical worker *(see Figure no.1.19).*

According to the state's criminal policy, as well as internationally, confidential medical data is to be specially protected. However, we notice the violation of the priority of professional secrets of some sensitive data in the case of the correlation between paragraph (1) art.177 CP RM and art.75 of the Contravention Code. In Article 75 of the Contravention Code, the legislator specifies the nature of the obligation – on duty, which is wrong, because the regime in which confidential information obtained by medical workers in the exercise of their professional skills, in other words, by virtue of the profession. The information about the HIV/AIDS status, provided in art.75 of the Contravention Code, cannot be considered privileged [7, p.195]). On the contrary, confidential data of a particularly sensitive nature are especially protected by international norms and must be recognized as an aggravated variant of a criminal act provided by criminal law, being a special case of intrusion of the personal life of the individual, and the contravention protection is an unacceptable one and contradicts international standards.

Based on the previous explanations devoted to the need for criminal legal protection of medical secrecy, we consider that a special variety of professional medical secrecy is reproductive professional secrecy that must be treated with special attention, being subject to a distinct approach in this doctoral thesis. Based on the stipulations of the Swiss Criminal Code and the Italian criminal law, but also taking into account the speed of revolutionary development of reproductive medicine, as well as its major impact on both the criminal law of Romania and the Republic of Moldova, we propose to complete both criminal codes with a special independent criminal norm that would specifically incriminate the disclosure or other prejudicial acts committed against the reproductive professional secrecy.

Through empirical research we have concretized that one and the same information can be kept in different regimes, but the content remains the same; Depending on the confidentiality regime imposed by the legislator, there are special obligations to ensure the confidentiality of this information. Accepting and using the positive experience of some foreign states in the field of criminal legal protection of professional secrecy (Georgia, France, Germany, Eveitia), we also formulated some recommendations aimed at revising both the Romanian and Moldovan criminal law.

We maintain that confidential information may be considered a professional secret only subject to the following conditions: 1) „the relevant information has been entrusted or has become known to the representative of a particular profession in connection with the performance of his professional duties" [5, p.165]; 2) the person who, by virtue of his professional status, has obtained

access to confidential information is not a member of the state or municipal service; 3) the prohibition of the dissemination of confidential information is established by law or by another normative act subordinated to the law; 4) the unlawful disclosure of confidential information the unauthorized distribution of which may infringe the rights and interests of the owner of the information or his successors has a negative impact on the owner of the information or his successors.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Due to the complex and exhaustive treatment of the research object, the current scientific issue of major importance has been solved, which consists in: the scientific substantiation of the legal regime of professional secrecy (derivative) in which confidential data concerning the private life of the person are kept as a special legal object of attack in the light of the criminal law of Romania and the Republic of Moldova, as well as in the submission of a set of recommendations in terms of *lege ferenda* likely to contribute to increasing the set of preventive measures and combating crimes to the security and integrity of confidential data kept in professional secrecy. The lack of in-depth criminal scientific research, which we have noted in the literature of Romania and the Republic of Moldova, but also in the doctrine of other states, its scientific and practical significance indisputable at the contemporary stage of development of criminal law argues the need investigation of the criminal protection of professional secrecy.

Conclusions:

1. In the Criminal Code of Romania and in the Criminal Code of the Republic of Moldova, professional secrecy is the generic, synthetic and consolidated name of the secrets protected by law, the observance of which is determined by the *„trustworthiness of specific professions and specific activities"* [15, p.157-158], and their unauthorized disclosure without the consent of the owner of confidential information infringes the rights and interests of the natural or legal person. At the foundation of professional secrets are placed foreign personal secrets that are protected from their disclosure by legal prohibitions that are addressed to the person to whom such secrets are entrusted. *„The legal regime of professional secrecy protects the private interest of the person seeking professional assistance and therefore becomes a priority for subjects of legal protection of professional secrecy"* [15, p.157-158]. Professional secrecy is to be protected in another personal data protection regime, becoming secondary and dependent on the primary one.

2. *„Where secret information is the responsibility of the person who holds it, it shall be recognized as a primary secret; when the person has a foreign secret, this information obtains a secondary character"* [6, p.261-262]. If in the Romanian criminal law the incrimination of the disclosure of professional secrecy is operated in art.227 CP Rom., Then in the criminal law of the Republic of Moldova there is no general norm that would sanction the disclosure or another violation of professional secrecy.

3. Confidential information may be considered professional secrecy only subject to the following conditions: *„the relevant information has been entrusted or has become known to the representative of a particular profession in connection with the performance of his professional duties; a person who, by virtue of his professional status, has obtained access to confidential information, is not a member of the state or municipal service; the law or other normative act subordinated to the law establishes the prohibition of the dissemination of confidential information; the illegal disclosure of confidential information, the unauthorized distribution of which may infringe the rights and interests of the owner of the information or his successors, has a negative*

impact on the owner of the information or his successors" [15, p.157-158]. The secret of privacy does not coincide with professional secrecy.

4. Following the empirical study, we concluded that most respondents advocate for the extensive interpretation of the content of professional secrecy. Following the logic of this objective, having the support of the respondents, we consider that the position of the Romanian legislator that we notify from the disposition of paragraph (1) art.227 CP Rom. to treat the content of professional secrecy only from the perspective of the information side is not sufficient to ensure the criminal protection of professional secrecy, the criminal provisions will be extended in such a way as to ensure the criminal protection of both the information side, as well as the factual side of the privacy of another person.

5. The main methods of committing crimes in the field of confidential information provided for in foreign criminal codes are the acquisition, receipt, collection, use, disclosure, dissemination and publication of information, violation of various types of secrets, disclosure of information. Some rules indicate the illegality of the actions committed (illegal collection, storage, violation) – their unauthorized commission. In some countries, the collection and dissemination of confidential information should take place without the consent of the holder of the information. At the same time, in case of criminalization of the violation of confidential information, the legislators use in the criminal law of these states, similar terms: information, data, secrecy, confidential information, secret information, secret information [5, p.164].

6. According to the empirical research carried out, information classification measures (55.64%) and prompt supervision and monitoring measures (42.38%) are required to be the most relevant for ensuring professional secrecy. We find that, using the multi-option method, most respondents argue for the relevance of legislative measures of a criminal legal nature in ensuring the legal protection of professional secrecy (69.70%), most emphasizing the reasonableness of constitutional measures (41.98% of the total of respondents). A significant number of respondents (74.85%) argued that the criminal legal protection of professional secrecy should be ensured only by special criminal legal rules which provide for criminal liability for disclosure and other forms of breach of professional secrecy, regardless of the type professional secrecy. In the opinion of other respondents (61.78%), the legal protection of professional secrecy is to be ensured in parallel by both special contravention norms and special criminal legal norms, depending on the degree of prejudiciality of the deed conditioned by the type of confidential information protected by professional secrecy [14, p.231-232].

From ***an interdisciplinary point of view*** (Criminal law, Constitutional law, Administrative law, Information law, Civil law; Culturology, Theology, Philosophy, Bioethics), the criminal protection of professional secrecy is based, first of all, on the „obligation of confidentiality" [7, p.197] provided by the civil codes of both states (of Romania and of the Republic of Moldova). In accordance with the civil legal principles of protection of confidential data, if during the negotiations a person provides confidential information, the person who received it has the obligation not to disclose that information or to use it for his own purposes, regardless of whether the contract has been completed or not. Therefore, professional secrecy is the object of intangible civil rights, it is a method of securing confidential data relating to the client's privacy, a civil obligation of discretion. Secondly, the right to the protection of confidential information is capitalized by ensuring the possibility of the person to exercise his non-patrimonial information right. The right to personal information includes the following positive attributions: the right to have access to information; the right to possess information; the right to use the information; the right to disseminate information.

Description of personal contributions emphasizing their theoretical significance and practical value. Personal contributions are expressed in the multiaspectual, interdisciplinary and complex research of the criminal legal protection of professional secrecy in the criminal law of Romania and in that of the Republic of Moldova at the level of doctoral thesis. Regarding the previous scientific situation in the field, we identified that in the researched literature special attention is paid to information security seen as a special legal object of the information facts analyzed. Most authors study with great attention the concept, structure and types of professional secrecy as an intangible object of crimes that threaten the security of confidential information protected by professional secrecy. In several doctrinal sources are analyzed the distinct types of professional secrets, such as for example: religious professional secrets, medical professional secrets, banking professional secrets, etc. Many contemporary authors demonstrate the indispensable link between the secret of privacy and professional secrecy.

The legal and empirical basis of the study is: the norms of the criminal and extra-criminal legislation in force of Romania and the Republic of Moldova regarding the criminal protection of professional secrecy; the empirical survey conducted by the author during May-August 2019; international rules in the field of legal protection of confidential personal data protected by professional secrecy; the legislative experience of some foreign states in the field of criminal protection of professional secrecy. The scientific basis of the research is the criminal doctrine on the legal protection of professional secrecy, including the works of reputable contemporary authors in Romania, the Republic of Moldova, and other countries. Thanks to the multidisciplinary treatment of the research object (criminal law, constitutional law, administrative law, information law, theology, philosophy, bioethics, etc.), conclusions and theoretical recommendations were formulated to be implemented in the criminal law in force and in criminal science.

The theoretical significance of the thesis is expressed in: defining the conceptual bases of the scientific study of criminal law on the criminal protection of professional secrecy in the criminal law of Romania and the Republic of Moldova; the accumulation of a vast theoretical and practical material for the development of current and complex directions of the investigation of the crimes whose object of attack is the security of the information that constitutes professional secret; carrying out theoretical approaches regarding the establishment of objective and subjective constituent elements, as well as aggravating circumstances of crimes whose immaterial object is professional secrecy; identifying perspectives on the scientific framework regarding the limits and conditions of criminal liability for criminal acts committed in the field of legal and criminal protection of professional secrecy.

The practical value of the doctoral thesis: the correct identification and multi-aspect interpretation of the criminal facts provided in the Criminal Code of Romania and in that of the Republic of Moldova, whose object of attack is the security and inviolability of professional secrecy; as well as the determination of the criteria for delimiting related facts, is relevant both for the correct application of the criminal norms of the criminal law of Romania and the Republic of Moldova in the practice of criminal and judicial prosecution, and for the further development of criminal science; the criticism of the shortcomings of the incriminating framework of the Romanian criminal law and of the criminal law can be taken into account by the legislator; the conclusions and recommendations formulated in the thesis are applicable in the practical activity of the law enforcement bodies.

Data on approval of results. The basic concepts and conclusions of the thesis were presented in 16 scientific publications, including a monographic study. At the same time, some ideas that are the result of the research were presented at 7 national and international scientific conferences in 2018-2020.

Indication of the limits of the obtained results, with the establishment of the remaining unresolved problems. The obtained results are limited in many ways: 1) by the topic of the doctoral thesis researched in accordance with the chosen scientific specialty, scientific attention being paid exclusively to the criminal protection of professional secrecy; 2) by the juridical-criminal nature of the prejudicial facts whose object of attack is the security and the inviolability of the professional secret; 3) by the specifics of the opinion poll through which the empirical basis of the research was formed. Based on the imposed limits, theoretical-practical aspects of constitutional, informational, procedural-criminal and civil origin came out of the research area. At the same time, following the research undertaken, we managed to obtain some interdisciplinary data of a constitutional and civil nature that significantly contributed to the substantiation of the criminal concept of professional secrecy in the criminal law of Romania and the Republic of Moldova.

Recommendations:

1. Reformulation of the name and content of art. 227 of the Criminal Code of Romania in such a way as to sanction not only the disclosure, but also other illicit operations with the confidential data of the person who constitutes a professional secret. In particular, we propose the following wording:

„Article 227. Violation of professional secrecy

(1) Unlawful disclosure, ie publication, denunciation, demonstration, dissemination, granting of access, alienation by any means of confidential information which constitutes professional secrecy, as well as theft, unlawful use or unlawful destruction,
is punished ...

(2) The unlawful use and / or disclosure of confidential information which constitutes professional secrecy via the Internet, including social media, by mass dissemination or in a public speech, which has caused considerable harm to the victim,
is punished ...

(3) Unlawful disclosure, ie publication, denunciation, demonstration, dissemination, granting of access, alienation by any means of confidential information which constitutes professional secrecy, of special categories of medical data entrusted or obtained by virtue of the exercise of professional competence,
is punished ...

(4) Confidential information of special protection includes: data on HIV / AIDS infection; data on venereal disease; data on mental illness; data on alcoholism, drug addiction, drug addiction; data on urogenital diseases; data on surgeries related to the person's reproductive function.

(5) The criminal liability for the deeds provided in paragraphs (1), (2), (3) shall not apply:

(a) to any person who informs the medical institution, local or central law enforcement or public administration authorities of inhuman or degrading treatment, sexual abuse, of which the person has learned and which has been committed against a minor or other person who is unable to protect himself due to his age or vulnerable physical or mental condition;

(b) to the medical worker, who informs the law enforcement authorities of inhuman or degrading treatment, physical or mental suffering, which he has observed in the process of practicing the profession, and of which the doctor is convinced that the victim has been subjected to physical violence , sexual or psychological or otherwise.

(c) to any person who alerts local or central law enforcement or public administration authorities to the person who poses a danger to himself or others.

2. Introduction in the Special Part of the Romanian Criminal Code of the independent article with the following content:

„Article 227[2]. Violation of professional reproductive secrecy

1. Collection, storage, or other operations relating to confidential data concerning the number of embryos produced by the application of assisted procreation techniques and the names of persons who have performed such techniques, including after the formation of medically assisted embryos, without obtaining the written consent of both subjects of the couple,
is punished ...

(2) Unlawful disclosure of confidential data concerning the number of embryos produced by the application of assisted reproductive techniques and the names of persons who have carried out such techniques, including after the formation of medically assisted embryos,
is punished ...

(3) A student who discloses confidential information that has become known to him during his studies, of the training practice, even within the residency, is criminally liable for the violation of professional secrecy.

(4) The employee of the institution or the student who has come into possession of confidential personal data regarding the patient will have the obligation to maintain professional secrecy even in case of termination of his quality of employee or student".

3. The introduction in the Special Part of the Criminal Code of the Republic of Moldova of Chapter V / 1 *"Offenses against the security of the regime of protection of professional secrecy"*, including two independent norms:

„Article 185[4]. Violation of professional secrecy

(1) Illegal disclosure, ie publication, denunciation, demonstration, dissemination, granting of access, alienation by any means of confidential information which constitutes professional secrecy, as well as theft, unlawful use or unlawful destruction of such data,
is punished ....

(2) Illegal use and / or unauthorized disclosure of confidential information which constitutes professional secrecy via the Internet, including social networks, by mass dissemination or in a public speech, which has caused considerable harm to the victim,
is punished ....

(3) Unlawful disclosure, ie publication, denunciation, demonstration, dissemination, granting of access, alienation by any means of confidential information which constitutes professional secrecy of special categories of medical data entrusted or obtained by virtue of the exercise of professional competence,
is punished ....

(4) The criminal liability for the deeds provided in paragraph (1), paragraph (2), paragraph (3) shall not apply

(a) to any person who informs the medical institution, local or central law enforcement or public administration authorities of inhuman or degrading treatment, sexual abuse, of which the person has learned and which has been committed against a minor or other person who is unable to protect himself due to his age or vulnerable physical or mental condition;

(b) to the medical worker, who informs the law enforcement authorities of the inhuman or degrading treatment that causes physical or mental suffering, that he has observed in the process of practicing the profession and that the doctor is convinced that the victim has been subjected to physical and sexual violence or psychological or otherwise;

(c) to any person who alerts local or central law enforcement or public administration authorities to the person who poses a danger to himself or to other persons."

„Article 185[5]. Violation of professional reproductive secrecy

(1) Unlawful collection, storage or other illegal operations concerning confidential data concerning the number of embryos produced by the application of assisted reproductive techniques

and the names of persons who have engaged in such techniques, including after the formation of medically assisted embryos, without obtaining the written consent of both subjects of the couple,
is punished ....

(2) Unlawful disclosure of confidential data concerning the number of embryos produced by the application of assisted reproductive techniques and the names of persons who have undergone such techniques, including after the formation of medically assisted embryos,
is punished ....

(3) A student who discloses confidential information that has become known to him during his studies, of the training practice, even within the residency, is criminally liable for the violation of professional secrecy.

(4) The employee of the institution or the student who has come into possession of confidential personal data regarding the patient will have the obligation to maintain professional secrecy even in case of termination of his quality of employee or student".

4. The introduction in Chapter XIII of the General Part of the Criminal Code of the Republic of Moldova "Meaning of some terms or expressions in this Code" of art.121^1 with the following content:

„Article 121^1. Professional secrecy

(1) Professional secrecy is confidential information which constitutes personal secret, family secret, trade secret, as well as other confidential data of another person, voluntarily transmitted by him for the purpose of informing the profession, provided that such data are not public data or state secret, and their unauthorized disclosure without the consent of the owner of confidential information will affect the rights and interests of the natural or legal person.

(2) For the purposes of this Code, confidential special protection information shall include data on: HIV / AIDS infection; venereal disease; mental illness; alcoholism, drug addiction, drug addiction; diseases of the urogenital sphere; surgical interventions related to the reproductive function of the person ".

5. The introduction in the Special Part of the Criminal Code of the Republic of Moldova of a juridical-criminal norm that would ensure the integrity of the information that constitutes a service secret:

„Article 330^2. Violation of the regime of protection of professional secrecy

(1) Any operation or set of operations performed on data which is a secret of service or on data sets which constitute a secret of service, with or without the use of automated means, performed by collecting, recording, organizing, structuring, storing, adapting or modifying, extracting, consulting, using, disclosing by transmitting, disseminating or otherwise making available, aligning or combining, restricting, deleting or destroying confidential data which constitutes a trade secret, with the exception of State secrets,
it is punished ... ".

6. Exclusion of paragraph (1) of Article 54 of the Contravention Code of the Republic of Moldova. The revision of criminal and extra-criminal legislation must be carried out in such a way that all forms of breach of professional secrecy obtain equal legal protection, without exception. The general norm regarding personal (primary) secrecy is provided in the criminal law, while the special norm in the form of personal (primary) secrecy protected in professional (secondary) secrecy regime is provided in the contravention law. Being in full-party co-operation, it would not be reasonable to have special norms that provide for the contravention liability for some forms of disclosure of personal secrecy in professional secrecy, such as art.54 of the Contravention Code, and the general norm to be provided. in the Special Part of the Criminal Code. In the case of

disclosure of personal secrecy protected in the professional secrecy of the priest, it is accepted that the disclosure of the mystery of confession is allowed compared to the disclosure of other personal secrets protected in professional secrecy that enjoy adequate legal and criminal protection. At present, in extra-criminal legislation, religious secrecy is unjustifiably reduced to the mystery of confession. Considering that religious secrecy is much more extensive in content than the mystery of confession, we propose by *lege ferenda* the extension of the circle of religious information obtained from the communication and cooperation of believers of different denominations, not just Christianity or similar religions that have the mystery of confession. The protection of the personal secret of the follower is to be ensured not only regarding the secret of confession as such, but also of another secret that derives from other forms of communication with the religious organization or directly with the priest or another representative of the religious cult, entrusted personal data. In order to eliminate the divergences between the church and the secular legislation, the term *"worship servant"* encountered in the Criminal Procedure Code of the Republic of Moldova (art.90) is to be replaced by a shorter term, such as *"priest",* because confession can be received only by the priest and only the priest ensures the secret of confession.

7. Exclusion from the Contravention Code of the Republic of Moldova of article 75. According to the state's criminal policy, as well as that promoted internationally, confidential medical data concerning a specific identified or identifiable person is to be specially protected. However, from the legislative solution that emerges from the report of paragraph (1) art.177 of the Criminal Code of the Republic of Moldova and art.75 of the Contravention Code of the Republic of Moldova, we reach another conclusion - the deed does not reach the degree of prejudiciality established by the criminal law, while the disclosure of other medical secrets concerning personal or family life constitutes a criminal act. Therefore, I noticed another discrepancy - Article 75 of the Contravention Code imposes an additional condition for the application of the contravention liability - the act to be committed *„by medical staff or by other persons who, by virtue of their duties"* (emphasis added) belongs - na), the legislator concretizing the character of the obligation - of service. Unclearly, medical professional secrecy is replaced by service medical secrecy. Medical secrecy is always professional, and if this information is processed or otherwise processed by other persons (without professional medical skills), such as auxiliary workers (nurses, accountants, secretaries, etc.) it becomes *„service information".* Therefore, the wording of the provision of art. 75 of the Contravention Code must be partially incorrect, being confused by the Moldovan legislator the regime in which confidential information to be obtained by medical workers in fulfilling their professional obligations is to be kept, in other words, by virtue of the profession. Moreover, based on international provisions in the field of protection of confidential personal data, information on the person's HIV / AIDS status cannot be considered *„privileged"*; in other words, it does not mitigate the criminal liability of the subject of the disclosure, nor the quality of the special subject *(„medical staff or other persons who, by virtue of their duties"*) is not a mitigating circumstance for the act to be recognized as a misdemeanor. On the contrary, the disclosure of confidential data with a special character must constitute an aggravated variant of the crime provided in paragraph (1) art. 177 of the Criminal Code of the Republic of Moldova. This solution is due to (a) the quality of the information collected or disseminated, as well as (b) the special quality of the subject of the crime.

BIBLIOGRAPHY:

1. Directiva 2003/71/CE a Parlamentului European și a Consiliului din 4 noiembrie 2003 *privind prospectul care trebuie publicat în cazul unei oferte publice de valori mobiliare sau*

pentru admiterea valorilor mobiliare la tranzacționare și de modificare a Directivei 2001/34/CE. (Disponibil:https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32003L0071&from=RO) [Accesat: 30.06.2019]

2. DOLEA Ig. *Drepturile persoanei în probatoriul penal: conceptul promovării elementului privat*. Chișinău: Cartea Juridică, 2009, p.334-335.

3. GÎRLA L. *Date personale ocrotite în regim de secret profesional de jurnalist prin prisma legii penale, extrapenale și a reglementărilor internaționale.* [Accesat: 07.03.2020] *(Disponibil: https://juridicemoldova.md/6903/date-personale-ocrotite-in-regim-de-secret-profesional-de-jurnalist-prin-prisma-legii-penale-extrapenale-si-a-reglementarilor-internationale.html)*

4. GÎRLA L., MOȚOC C. *Necesitatea ocrotirii juridico-penale a secretului profesional: cazul tainei spovedaniei și al altor secrete religioase*. În: Revista științifică „Studia Universitatis Moldaviae", 2019, nr.8 (128), Seria „Științe sociale" (ISSN 1814-3199, ISSN online 2345-1017), p.60-68, p.60.

5. MOȚOC C. *Datele confidențiale cu caracter personal protejate în regimul secretului profesional: aspecte de drept penal comparat.* În: Studia Universitatis Moldaviae, Seria „Științe sociale", 2019, nr.11, p.160-170 (ISSN 1814-3199), P.165.

6. MOȚOC C. *Natura juridică a secretului profesional în legislația extrapenală a Republicii Moldova.* În: Rezumate ale comunicărilor la Conferința științifică națională cu participare internațională „Integrare prin cercetare și inovare", Științe juridice, 8-9 noiembrie 2018. Chișinău: CEP USM, 2018, p.260-262 (ISBN 978-9975-142-50-2).

7. MOȚOC C., GÎRLA L. *Protecția juridico-penală a secretului profesional medical în legea penală a României și a Republicii Moldova.* În: „Studia Universitatis Moldaviae", 2019, nr.3(123), Seria „Științe sociale" (ISSN 1814-3199, ISSN online 2345-1017), p.195-205, p. 195.

8. MOȚOC C. *Conceptul de secret profesional în legea penală a României și a Republicii Moldova (constatări și propuneri).* În: Rezumate ale comunicărilor la Conferința științifică națională cu participare internațională „Integrare prin cercetare și inovare", 07-08 noiembrie 2019, Chișinău: Universitatea de Stat din Moldova, p.155-159, p.157-158.

9. MOȚOC C. *Secretul de serviciu și secretul profesional în perspectiva extrapenală comparativă (România și Republica Moldova).* În: Studia Universitatis Moldaviae, Seria „Științe sociale", 2019, nr.3(123), p.185-194. (ISSN 1814-3199), p.192.

10. MOȚOC C., GÎRLA L. *Protecția datelor confidențiale: cazul lacunelor legislative în asigurarea ocrotirii juridico-penale a secretului profesional*, p.157-158.

11. MOȚOC Costică. *Secretul profesional în legea penală a României și în cea a Republicii Moldova: Studiul empiric*, p.230.

12. MOȚOC C., GÎRLA L. *Secretul profesional reproductiv ca obiect material al încălcării inviolabilității vieții personale: constatări de lege lata, viziuni doctrinare și jurisprudența CtEDO.* În: Studia Universitatis Moldaviae, 2019, nr.11, Seria „Științe Sociale", p.146-159., p.150.

13. MOȚOC C., GÎRLA L. *Protecția juridico-penală a secretului profesional prin prisma incriminărilor prevăzute la art.178, 259, 260[1], 260[2] CP RM.* În: Revista științifică USM „Studia Universitatis Moldaviae", Seria „Științe sociale", 2020, nr.3 (133), p.139-151 (ISSN 1814-3199, ISSN online 2345-1017), p.142-143.

14. MOȚOC C. *Secretul profesional în legea penală a României și în cea a Republicii Moldova: Studiul empiric.* În: Revista științifică a Universității de Stat din Moldova „Studia Universitatis Moldaviae", 2020, nr.8(138), p.228-249, p.248.

15. MOȚOC C. *Conceptul de secret profesional în legea penală a României și a Republicii Moldova (constatări și propuneri).* În: Rezumate ale comunicărilor la Conferința științifică națională cu participare internațională „Integrare prin cercetare și inovare”, 07-08 noiembrie 2019, Chișinău: Universitatea de Stat din Moldova, p.155-159, p.157-158.

16. PĂUNESCU A. *Păstrarea secretului profesional în contextul integrării României în structurile europene.* În: Aspecte teoretice şi practice ale procesului de armonizare a dreptului românesc cu dreptul european (Râmnicu Vâlcea, 2009): a XVII-a sesiune de comunicări ştiinţifice a cadrelor didactice şi studenţilor, 3-4 aprilie 2009 / organizată de Universitatea Spiru Haret, Facultatea de Drept şi administraţia publică Râmnicu Vâlcea. Craiova: Sitech, 2009, p.324.

17. Recommendation no. R(2000)21 of the Committee of Ministers to member States *on the freedom of exercise of the profession of lawyer* (adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies) https://www.asianajajaliitto.fi/files/19/R2000-21_Freedom_of_exercise_of_the_profession_of_lawyer.pdf (accesat: 14.03.2019)

18. Recommendation 1555 (2002)1 *The image of women in the media*. In: Recommendations and Resolutions adopted by the Parliamentary Assembly of the Council of Europe in the field of media and information society Directorate General of Human Rights and the Rule of Law Strasbourg, 2015. 190 p. (Disponibil: https://rm.coe.int/16806461f9) [Accesat: 14.03.2019]

19. Regulamentul (UE) 2016/679 al Parlamentului European și al Consiliului din 27 aprilie 2016 *privind protecția persoanelor fizice în ceea ce privește prelucrarea datelor cu caracter personal și privind libera circulație a acestor date și de abrogare a Directivei 95/46/CE (Regulamentul general privind protecția datelor).* În: Jurnalul Oficial al Uniunii Europene L 119/1, 04.05.2016. (Disponibil: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32016R0679&from=EL) [Accesat: 30.06.2019]

20. *Rules of Procedure and Evidence*. Published by the International Criminal Court (ISBN No. 92-9227-354-x ICC-PIOS-LT-03-004/19) Eng Copyright © International Criminal Court 2019, All rights reserved International Criminal Court (The Hague. The Netherlands) (Disponibil: https://www.icc-cpi.int/Publications/Rules-of-Procedure-and-Evidence.pdf) [Accesat: 10.09.2020]

21. STATI V., *Observaţii critice referitoare la modificările şi completările operate la 22.12.2014 în Hotărârea Plenului Curţii Supreme de Justiţie „Cu privire la practica judiciară în procesele penale despre sustragerea bunurilor”, nr.23 din 28.06.2004.* În: Revista Națională de Drept, 2015, nr.2, p.6.

22. TIMOFEI S. *Răspunderea pentru infracţiunile în domeniul concurenţei în conformitate cu legislaţia altor state*. Revista Națională de Drept, 2011, nr.1, p.36-42.

23. Vasconcelos C., Lustosa C., Meirelles A.T., Aranha A.V., Garrafa V. *Right to knowledge of biological origin in Human Assisted Reproduction: bioethical and legal reflections*. În: Revista bioética, 2014, no.22 (3), p.508.

24. АРИКОВ Г. *Уголовно-правовой анализ тайны частной жизни, обеспечиваемой профессиональными тайнами*. În: Revista Națională de Drept, 2013, nr.11, p.63.

25. ГЕРАСИМОВ Ю.Е., ЧЕРВЯКОВ М.Э. *Этические основы взаимодействия адвоката-защитника со своим доверителем на стадии предварительного расследования*. В: Международный научно-практический журнал «Эпоха науки», 2018, № 14 (июнь), Юридические науки, с.53.

26. ГУТНИК С.И. *Уголовно-правовая характеристика преступных посягательств в отношении персональных данных:* Автореферат диссертации на соискание ученой степени кандидата юридических наук. Специальность 12.00.08 – Уголовное право и криминология; уголовно-исполнительное право. Владивосток: Дальневосточный федеральный университет, 2017, 24 с..

27. ЕФРЕМОВА М.А. *Уголовно-правовая охрана информационной безопасности:* Диссертация на соискание ученой степени доктора юридических наук. Специальность: 12.00.08 – уголовное право и криминология; уголовно-исполнительное право. Москва: Академия Генеральной прокуратуры Российской Федерации, 2017, 415 с., р.163.

28. ЖИГУЛИН Г.П. *Организационное и правовое обеспечение информационной безопасности*. Санкт-Петербург: СПбНИУИТМО, 2014.

29. ЗАБОРОВСКИЙ В.В. *Правовая природа и границы адвокатской тайны по законодательству Украины*. TEISĖ (Lithuania, Vilnius: Vilniaus universitetas; Vilniaus universiteto leidykla), 2017, 105, с.177.

30. КАРМАНОВСКИЙ Н.С., САВЧЕНКО-НОВОПАВЛОВСКАЯ С. Л. *Организационно-правовые основы охраны служебной тайны на предприятии* / Учебное пособие. – СПб: Университет ИТМО, 2018, с.12-15.

31. КИРИЧЕНКО К.А. *Правовой режим репродуктивной тайны*. В: Вестник НГУ. Серия: Право. 2007. Том 3, Выпуск 1, с.97-98.

32. МЕРКУЛОВА С.Н. *Уголовно-правовая охрана профессиональной тайны:* Диссертация на соискание ученой степени кандидата юридических наук. Специальность – 12.00.08 – уголовное право и криминология; уголовно-исполнительное право.Нижний Новгород: Нижегородский филиал Государственного университета – Высшей школы экономики, 2007, 205 с., с.19-20.

33. ПАВЛОВ А.В. *Гражданско-правовая защита медицинской тайны*. Исторические, философские, политические и юридические науки, культурология и искусствоведение. В: Вопросы теории и практики. Тамбов: Грамота, 2015. № 11(61): в 3-х ч., ч.II, с.153-154.

34. ПРОКОПЕНКО А.Н. *Профессиональная тайна в российской правовой науке.* В: Проблемы правоохранительной деятельности, 2015, №1, с.23-27. (ISSN 1819-7426), с.24;

35. РАГУЛИН А.В. *Профессиональные права адвоката-защитника в Российской Федерации: вопросы теории и практики*. Автореферат диссертации на соискание ученой степени доктора юридических наук. Специальность: 12.00.11 – Судебная деятельность, прокурорская деятельность, правозащитная и правоохранительная деятельность. Москва: Российский университет дружбы народов, 2015, с.15.

36. РОМАНОВСКИЙ Г.Б. *Конституционное регулирование права на неприкосновенность частной жизни:* Автореферат диссертации на соискание ученой степени кандидата юридических наук. Специальность 12.00.02 – конституционное право; государственное управление; административное право; муниципальное право. Санкт-Петербург: Санкт-Петербургский государственный университет, 1997,, р.64.

37. САЛИХОВ И.И. *Информация с ограниченным доступом как объект гражданских правоотношений*: Диссертация на соискание ученой степени кандидата юридических наук. Специальность 12.00.03 - гражданское право; предпринимательское право; семейное право; международное частное право. Казань, Казанский государственный университет им.В.И. Ульянова-Ленина, 2004, 274 с.

ADNOTARE

Moţoc Costică „Secretul profesional în legea penală a României şi în cea a Republicii Moldova: studiu de drept penal", Teză de doctor în drept la Specialitatea 554.01 – Drept penal şi execuţional penal, Chişinău, 2021

Structura tezei: Introducere, 3 Compartimente, concluzii generale şi recomandări, bibliografia din 292 titluri, 2 anexe, 167 de pagini text de bază. Rezultatele obţinute sunt publicate în 16 lucrări ştiinţifice printre care şi o monografie.

Cuvinte-cheie: secret profesional; secret al vieţii private; secret primar; secret derivat; securitatea informaţiei; inviolabilitatea informaţiei; protecţia informaţiei confidenţiale.

Scopul lucrării: constă în elaborarea conceptului ştiinţifico-practic al protecţiei juridico-penale a secretului profesional în legea penală a României şi în cea a Republicii Moldova, în accepţiunea aspectelor *de lege lata* şi *de lege ferenda*.

Obiectivele cercetării: *argumentarea* necesităţii sancţionării juridico-penale distincte a infracţiunilor care încalcă securitatea secretului profesional ce constituie parte a infracţiunilor împotriva securităţii informaţiei confidenţiale; *analiza* normelor juridico-penale care asigură securitatea secretului profesional în legea penală a României şi în cea a Republicii Moldova; *identificarea* împrejurărilor de care instanţele de judecată trebuie să ţină cont la calificarea faptelor infracţionale care încalcă securitatea informaţiei confidenţiale; formularea propunerilor *de lege ferenda* pentru îmbunătăţirea cadrului incriminator etc.

Noutatea şi originalitatea ştiinţifică: derivă din abordarea multiaspectuală, interdisciplinară şi de pionierat a protecţiei juridico-penale a secretului profesional în legea penală a României şi în cea a Republicii Moldova, prin consolidarea prevederilor incriminatoare cu aspectele doctrinare, precum şi cu instrumentele internaţionale şi regionale şi cu mecanismele care le pun în acţiune pentru combaterea dezvăluirii şi a altor încălcări ale secretului profesional. Aceasta constă în cercetarea complexă a răspunderii penale pentru faptele prejudiciabile incriminate de legea penal a ambelor state (a României şi a Republicii Moldova) la nivel de teză de doctorat.

Rezultatele obţinute care contribuie la soluţionarea unei probleme ştiinţifice importante soluţionate: fundamentarea ştiinţifică a elementelor şi semnelor constitutive ale infracţiunilor ce atentează la securitatea şi inviolabilitatea informaţiilor confidenţiale protejate în regim juridic de secret profesional, precum şi înaintarea unui set de recomandări sub aspect *de lege ferenda*, de natură să contribuie la sporirea ansamblului de măsuri preventive şi de combatere a divulgării sau a altor tipuri de încălcare a secretului profesional prin eficientizarea activităţii organelor de drept competente, precum şi la perfecţionarea practicii de aplicare a normelor juridico-penale existente în Codul penal al României şi în cel al Republicii Moldova.

Semnificaţia teoretică: definirea bazelor conceptuale ale studiului ştiinţific de drept penal privind protecţia juridico-penală a secretului profesional în legea penală a României şi în cea a Republicii Moldova; efectuarea unor abordări teoretice referitoare la stabilirea elementelor constitutive obiective şi subiective, precum şi a circumstanţelor agravante ale infracţiunilor al căror obiect imaterial îl constituie secretul profesional; identificarea unor perspective asupra cadrului ştiinţific vizând limitele şi condiţiile răspunderii penale pentru faptele infracţionale săvârşite în domeniul protecţiei juridico-penale a secretului profesional.

Valoarea aplicativă: studiul efectuat a permis constatarea unor deficienţe ce marchează prevederile art.227 CP Rom. şi ale legii penale a Republicii Moldova în general, acestea împiedicând aplicarea şi interpretarea corectă a reglementărilor în cauză. Întru a înlătura aceste neajunsuri, comunităţii ştiinţifice îi sunt înaintate concluzii şi recomandări menite să contribuie la perfecţionarea cadrului normativ.

Implementarea rezultatelor ştiinţifice: acestea sunt aplicabile în activitatea organelor de drept, în special în ce priveşte calificarea corectă a faptelor în conformitate cu prevederile art.227 CP Rom., precum şi calificarea faptelor infracţionale similare celor contravenţionale în legea penală a Republicii Moldova. Ele pot fi utile la elaborarea de publicaţii ştiinţifice cu caracter de îndrumare pentru cadrele didactice, studenţi, masteranzi, doctoranzi.

АННОТАЦИЯ

Моцок Костикэ, «Профессиональная тайна в уголовном законе Румынии и Республики Молдова: уголовно-правовое исследование», Диссертация на соискание ученой степени доктора права, Специальность 554.01 – Уголовное право и уголовно-исполнительное право, Кишинэу, 2021

Структура диссертации: Введение, 3 Главы, общие выводы и рекомендации, библиография из 292 наименований, 2 приложения, 167 страниц основного текста. Полученные результаты опубликованы в 16 научных работах, из которых одна монография.

Ключевые слова: профессиональная тайна; тайна частной жизни; первичная тайна; вторичная тайна; информационная безопасность; неприкосновенность информации; защита конфиденциальной информации.

Цель диссертации: состоит в выработке научно-практической концепции профессиональной тайны в уголовном законе Румынии и Республики Молдова в свете аспектов *de lege lata* и *de lege ferenda*.

Задачи исследования: аргументирование необходимости самостоятельного уголовно-правового санкционирования преступлений, посягающих на безопасность профессиональной тайны, являющихся частью преступлений, посягающих на безопасность конфиденциальной информации; анализ уголовно-правовых норм, обеспечивающих безопасность профессиональных тайн в уголовном законе Румынии и Республики Молдова; установление обстоятельств, подлежащих выяснению судебными инстанциями по уголовным делам о преступлениях, нарушающих профессиональную тайну и т.д.

Научная новизна и оригинальность результатов исследования: многоаспектный, междисциплинарный и новый подход в части уголовно-правовой охраны профессиональных тайн путем установления взаимосвязи законодательных положений внутреннего законодательства с доктринальными позициями, международными инструментами регионального и универсального характера и механизмами их применения в части обеспечения уголовно-правовой защиты профессиональных тайн. Состоит также во всестороннем исследовании уголовной ответственности за совершение преступных деяний, предусмотренных уголовным законом обеих государств (Румынии, Республики Молдова) на уровне настоящего диссертационного исследования.

Полученные результаты, способствующие решению особо значимой научной проблемы, разрешенной в рамках проведенного диссертационного исследования: состоят в научном обосновании элементов и признаков преступных деяний, посягающих на безопасность и неприкосновенность конфиденциальной информации, а также в выработке и предложении целого спектра рекомендаций по совершенствованию содержания действующих уголовно-правовых норм, что, в свою очередь, способствует предупреждению разглашений и иных нарушений профессиональной тайны и борьбе с ними, повышению эффективности деятельности правоохранительных органов и правоприменительной практики в указанной сфере.

Теоретическая значимость: установление теоретических основ научного уголовно-правового исследования профессиональных тайн в уголовном законе Румынии и Республики Молдова; проведение теоретических исследований в части установления объективных и субъективных признаков составов преступлений, а также отягчающих обстоятельств преступлений, предметом преступления которых составляет профессиональная тайна; определение перспектив научного исследования пределов и условий уголовной ответственности в области уголовно-правовой охраны профессиональных тайн.

Практическая применяемость исследования: проведенное научное исследование позволило обнаружить законодательные недоработки ст.227 УК Румынии и в целом уголовного закона Республики Молдова, создающие препятствия правильному и единообразному применению и толкованию соответствующих уголовно-правовых норм. В целях их устранения и усовершенствования нормативно-правовой базы, автор предлагает научному сообществу свои выводы и рекомендации.

Апробация результатов диссертационного исследования: Полученные результаты используются в учебном процессе, могут быть применены в практической деятельности правовых органов, особенно при квалификации деяний, предусмотренных в ст.227 УК Румынии и ст.177 УК РМ, а также смежных деяний. Они могут быть использованы при разработке научных публикаций для преподавателей, студентов, магистров, аспирантов.

ANNOTATION

Moțoc Costică „Professional Secrecy in the Criminal Law of Romania and of the Republic of Moldova: Criminal Law Research", Ph.D. Thesis, Specialty 554.01 – Criminal law and law of penal execution, Chisinău, 2021

Structure of thesis: Introduction, 3 Chapters, general conclusions and recommendations, 292 bibliography of titles, two appendices, 167 basic text pages. The obtained results are published in 16 scientific papers including one monographic study.

Key-words: professional secrecy; privacy secrecy; secondary secrecy; informational security; information's inviolability; protection of confidential information.

The purpose of the Ph.D. thesis: elaboration of the scientific and empirical concept of professional secrecy penal protection in Penal Law of Romania and Republic of Moldova, by approach of *de lege lata* and *de lege ferenda*.

The objectives of investigation: demonstration of necessity of penal sanctioning of criminal misdeeds which violate the professional secrecy as a part of criminal misdeeds which are committed against security of confidential information; analysis of penal norms which provide security of professional secrecy in accordance with the penal legislation of Romania and Republic of Moldova; identification of some circumstances which are important to be found by the judicial courts during examination of those criminal misdeeds

The scientific novelty and originality of the obtained results: those results are flowing out the multifaceted, interdisciplinary and the newest application of criminal liability for criminal misdeeds which are committed against security of confidential information protected in the regime of professional secrecy, by means of strengthening national incriminating regulations well-adjusted to the doctrine, as well as to the universal and regional international instruments and mechanisms relevant for crimes in this sphere, and consists of a manifold scrutiny of criminal liability for the misdeeds incriminated by those articles of the Criminal code of Romania and Republic of Moldova on a standard of a Ph.D. thesis.

The obtained results which contribute solving of the foremost scientific problem: it consists in groundwork pivotal elements and items of crimes using penal law, along with suggesting recommendations *de lege ferenda* which will contribute to increasing of prevention and its counteraction of violation of professional secrecy by means of fortifying law enforcement authorities' efficiency, as well as improvement of relevant law practice in this domain.

Theoretical importance: it is expressed in the defining the conceptual basis of the scientific research in the Criminal Law concerning criminal liability for the criminal misdeeds of violation of professional secrecy, as well as in identifying some scientific perspectives concerning limits and conditions of the criminal liability for those criminal misdeeds.

Practical value of the research paper: the performed research permitted to establish that there exist several gaps and deficiencies in the art.227 of the Criminal code of Romania and art.177 of the Criminal code of the Republic of Moldova, they create obstacles in the correct application and interpretation of the penal regulations concerning penal protection of professional secrecy. As a result, in order to eliminate those gaps there are proposed several recommendations in order to improve the present penal regulations.

Implementation of the scientific results: the scientific results can be applied in the professional activity of the law enforcement authorities, especially concerning correct legal appreciation of the misdeeds incriminated by the art.227 of the Criminal code of Romania and art.177 of the Criminal code of the Republic of Moldova, as well as the collateral crimes. At the same time, they can be useful during the elaboration of some scientific publications and other issues for the scientific workers, teachers, students, including those who are pleading for master degree and Ph.D.

MOTOC COSTICA

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