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**CRIMINAL LIABILITY FOR OBTAINING CREDIT, LOAN,
OR INSURANCE COMPENSATION/INDEMNITY BY
DECEPTION**

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ENFORCEMENT LAW**

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CONCEPTUAL GUIDELINES OF THE RESEARCH

The relevance of the topic: Banks are strategic entities in the entire systemic chain of the national economy. They play a significant role in the stable and successful modernization of the market mechanism. Banks act as the most active participants in monetary relations, ensuring the circulation of money and capital redistribution. Efficient banking institutions significantly enhance the competitiveness of businesses and the overall economy, contributing to positive results in its reform¹. “One of the main functions of the banking system is to ensure the circulation of financial resources in the national economy and society in general”².

Alongside banks, non-bank credit institutions also facilitate the circulation of financial means, thus contributing to the state's economic development. As the national economy constitutes an existential pillar of any country, safeguarding it against criminal attacks becomes a priority for a rule of law transitioning towards a market economy. At the same time, economic crime represents one of the main obstacles to the normal development of a market economy. This necessitates the legislative approach towards socially dangerous acts that could harm or endanger the national economy. The crimes specified in Article 238 of the Criminal Code of the Republic of Moldova³ (hereafter - CrC RM) fall among the criminal acts that adversely affect the national economy. Through these provisions, the legislature prohibits, under penalty, the fraudulent acquisition of credit facilities when the perpetrator intends to use them temporarily.

The social danger of the crimes provided for in Article 238 of the Criminal Code of the Republic of Moldova (CrC RM) is much higher during banking or non-banking financial crises. Moreover, the banking system of the Republic of Moldova has recently gone through such a banking crisis, caused precisely by fraudulent lending activities of certain entities. Some of these activities exhibit the constitutive elements of the crimes specified in Article 238 CrC RM, while others involve signs of the crime of fraud. These attacks impact both the banking and non-banking financial systems, as they are essential components of a market economy.

¹ ДОБРОВОЛЬСКИЙ, О.В. *Банківська діяльність та її ефективність в умовах ринкової трансформації*: автореф. дис. на здоб. наук. ступ. канд. економ. наук. Київ, 2002, с. 3.

² ENICOV, I. *Teoria și practica riscului în banca comercială*: tz. de doct. hab. în economie. Chișinău, 2007, p. 52.

³ Codul penal al Republicii Moldova, nr. 985 din 18.04.2002. În: *Monitorul Oficial al Republicii Moldova*, 2002, nr.128-129, republicat în *Monitorul Oficial al Republicii Moldova*, 2009, nr.72-74.

The alignment of the topic with international concerns.

According to paragraph (2) of Article 24 in Chapter 2 "Economic Dialogue" of Title IV "Economic Cooperation and Other Types of Sectoral Cooperation" of the Association Agreement between the Republic of Moldova and the European Union, "the Republic of Moldova is making efforts towards establishing a functional market economy,"⁴ while "the independence of the central bank and price stability, sound public finances, and the sustainability of the balance of payments"⁵ are genuine objectives pursued by our country. According to Annex XXVIII on "Rules Applicable to Financial Services," "the Republic of Moldova commits to gradually align its legislation with a series of acts from EU legislation"⁶ concerning financial services. Several Directives of the European Parliament and the Council that pertain to the activities of banks and credit institutions are included in this list. The Republic of Moldova has undertaken the obligation to harmonize its legislation with the content of these international instruments. Consequently, the Republic of Moldova is obliged to establish an appropriate and efficient legal and criminal framework, ensuring that the activities of these entities (adjusted to the European regulatory framework) are not jeopardized. Otherwise, the process of aligning the Republic of Moldova with European standards remains ineffective.

The topic's relevance to national and regional concerns.

According to the Report on Financial Stability 2021 issued by the National Bank of Moldova (BNM), "the population's borrowing during 2021 recorded a growth rate higher compared to the previous year. At the end of the reporting year, the value of loans granted to individuals by the financial sector (both banks and non-bank institutions) reached MDL 33,486.7 million (+32.6% compared to the previous year)."⁷ The same report also highlights the following data regarding the activities of non-bank credit organizations and savings and loan associations: "The non-bank lending sector has resumed its growth momentum on all components after stagnation in 2020"; "The activity of non-bank financial institutions during 2021 showed positive developments and moderate risks."⁸

⁴ *Acordul de asociere între Republica Moldova, pe de o parte, și Uniunea Europeană și Comunitatea Europeană a Energiei Atomice și Statele Membre ale acestora, pe de altă parte.* [citată 10.03.2023] Disponibil: <https://mecc.gov.md/sites/default/files/acordul-de-asociere-rm-ue.pdf>

⁵ *Ibidem.*

⁶ *Ibidem.*

⁷ *Raportul BNM asupra stabilității financiare 2021.* [citată 25.03.2023] Disponibil: https://www.bnm.md/files/RSF-2021_v1_2.pdf

⁸ *Ibidem.*

In Annex No.1 "Strategy for the Development of the Non-bank Financial Market for the years 2018-2022" to the Law of the Republic of Moldova approving the Strategy for the Development of the Non-bank Financial Market for the years 2018-2022 and the Action Plan for its implementation, No. 129 of July 13, 2018 reveals: "Over the past 5 years of development, the non-bank lending sector, under the supervision of the National Commission for Financial Markets, represented by two institutional forms: savings and loan associations and microfinance organizations [non-bank credit institutions], has experienced positive evolution, showing an upward trend. Although this segment is still insignificant in relation to GDP, its share in the lending market is becoming increasingly visible, with a double growth over the past 5 years, exceeding 10% of the total market."⁹

These highlighted data underscore the importance of both the banking and non-banking financial sectors for the economy of the Republic of Moldova. Additionally, the financial situation of the banking sector in 2022 includes an "increase in the proportion of non-performing loans (substandard, doubtful, and compromised) in the amount of loans."¹⁰ This fact demands heightened attention in the prevention and combat of the phenomenon of obtaining credit or loans through deception.

In the process of conducting the research, the works of the following authors (both local and foreign) were taken into account, focusing either exclusively or tangentially on the analysis of crimes related to fraudulent acquisition of credit, loans, compensation, or insurance indemnities: V. Berliba, A. Borodac, S. Brînza, R. Cojocaru, L.G. Gîrla, C. Gurschi, E. Ionică, N.N. Levandovskii, I. Macari, Gh. Nicolaev, S. Prodan, V. Stati, Iu.M. Tabarcea, and others (*Republic of Moldova*); V.Iu. Abramov, D.N. Alieva, A.N. Andreev, R.B. Abdulina, E.N. Alioșina-Alekseeva, M. Bahtovari, V.N. Baleabin, E.N. Bulîcev, E.A. Drozdova, D.M. Dugricilova, O.V. Ermakova, I.Z. Fiodorov, A.V. Fedcenko, O.V. Finoghenova, V.F. Gabdrahmanov, A.A. Glazov, N.A. Golokolenco, S.V. Gudkov, G.E. Hakimova, I.G. Idrisova, I.I. Kartașov, V.V. Kocerga, M.A. Kostiuenco, N.A. Kudratov, N.G. Kutiin, V.D. Laricev, R.V. Markizov, V.A. Maslov, S.M. Mkrțcean, N.E. Osipenko, U.V. Pașințeva, A.N. Pașnin, M.E. Pokrovskii, A.Iu. Poleanskii, O.V. Rastoropova, U.T. Saighitov, M.S. Sarkisean, A.A. Seleamin, P.L. Serdiuk, Iu.I. Selivanovskaia, M.V. Stepanov, N.A. Sultanova, O.V. Șadrina, M.Iu. Șaleapina, N.V. Șetinina, Ă.K. Tataev, R.I. Tretiakov, Ia.S. Vasiliieva, S.V. Voronțova, N.G. Voldimarova, N.M. Zolotova (*Russian Federation*); A.Baida, M.L. Davidenko, O.V. Gherasimov, O.Krîșevici, I.V. Juk, O.L. Malahova, O.Sklezi, O.O. Suhaciov (*Ukraine*); A.I. Kasianik, S.M. Kazakevici, V.V. Hiliuta (*Belarus*); G.A. Abdirova (from Kazakhstan); S.Bostanov (*Kyrgyzstan*); M.-N. Radu, M.-D. Radu

⁹ *Monitorul Oficial al Republicii Moldova*, 2018, nr.321-332.

¹⁰ *Situația financiară a sectorului bancar pentru anul 2022*. [citat 24.03.2023] Disponibil: <https://www.bnm.md/ro/content/situația-financiară-sectorului-bancar-pentru-anul-2022>

(Romania); K. Mucha (Poland), and so on. These works, among others, form the theoretical and scientific basis of this research.

Interdisciplinary and transdisciplinary approaches of the topic. The research is conducted based on scientific materials from various fields, including civil, banking, non-banking financial, administrative, procedural-criminal, criminalistics, general theory of law and more. Works by authors specialized in these domains were examined, such as V. Babii (in the field of administrative law); E. Botnari (in the field of general theory of law); I. Cazac, A. Cirlan, T. Moroi, C. Nichitcin (in the field of non-banking financial); O.A. Abelev, D.G. Alekseeva, S.S. Cerneavskii, R. Cuhai, V. Cuhai, O.V. Dobrovolskii, E. Enikov, M.G. Erohina, V. Guțan, Gh. Manolescu, S. Prodan, N. Slutu (in the field of banking); M.D. Balalaeva, A.R. Bekijev, V.A. Gamza, I.B. Tkaciuk, N.R. Gherasimova, N.N. Levandovskii (in the field of criminalistics); L. Bubalo, D. Pajic, D.V. Zotov (in the field of criminal-procedural law) etc.

The purpose of this work is to conduct a comprehensive research on the criminal liability for the fraudulent acquisition of credit, loans, compensation, or insurance benefits. It aims to identify and clarify the practical difficulties in the practical application of the norms set forth in Article 238 of the Criminal Code of the Republic of Moldova, as well as to propose legislative proposals that would lead to the improvement of the incrimination framework in this matter.

The research objectives are: Identifying and examining doctrinal opinions presented during the analysis of crimes involving fraudulent acquisition of credit, loans, compensation, or insurance benefits; conducting an in-depth comparative study of foreign legal regulations concerning liability for fraudulent acquisition of credit, loans, compensation, or insurance benefits; providing a comprehensive and thorough characterization of the various aspects and components of the offenses outlined in Article 238 of the Criminal Code of the Republic of Moldova; presenting the evolutionary trajectory of the incriminatory framework outlined in Article 238 of the Criminal Code of the Republic of Moldova; distinguishing the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova from related acts and establishing correlations between the norms that encompass these acts; conducting an empirical-jurisprudential study regarding the practical application of Article 238 of the Criminal Code of the Republic of Moldova; identifying difficulties in understanding the content of the norms stipulated in Article 238 of the Criminal Code of the Republic of Moldova and their implementation in practice; determining *in concreto* the deficiencies in the normative content of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova, including legislative gaps; proposing legislative amendments in order (i) to address the identified deficiencies in understanding and applying the norms of Article 238 of the Criminal Code of the Republic of Moldova and (ii) to fill the legislative gaps that have been identified.

The research hypothesis is based on the assumption that the entities capable of granting credits and/or loans (other than banks or savings and loan associations) but not being non-banking financial organizations cannot be victims of the crimes specified in Article 238 CrC RM; the partial or total non-repayment of credit/loan, as well as the full repayment of credit/loan outside the specified time limits, should not affect the legal classification of the acts described in Article 238 CrC RM; the conduct of the credit/loan applicant must be distinguished from the conduct of the actual beneficiary of the credit/loan obtained. In some cases, their conduct falls within the scope of criminal complicity, while in others, it falls outside this category; the non-repayable nature of the funds obtained means that in the case of fraudulent acquisition of compensation or insurance benefits, the perpetrator cannot pursue the temporary use of these funds.

The research methodology and justification of the chosen research. The investigation is based on various sources such as national and foreign specialized doctrine, national criminal and non-criminal regulations, criminal regulations of foreign states, and domestic judicial practice. The bibliography used has influenced the research methodology. To achieve the established purpose and objectives, the following methods were employed: logical (rational) method, systemic method, historical method, comparative method, empirical method, etc.

The logical (rational) method was extensively used, especially in determining the content of the crimes specified in Article 238 of the Criminal Code of the Republic of Moldova (CrC RM), distinguishing these crimes from other similar criminal acts, and correctly classifying acts within the scope of Article 238 CC RM.

The systemic method was employed to identify the constitutive elements of the crimes specified in Article 238 CrC RM, by correlating the norms of this article with other incrimination norms, as well as with other extra-criminal norms (referenced in Article 238 CrC RM).

The historical method was used to trace the evolution of the normative content of the crimes specified in Article 238 CrC RM.

The comparative method was utilized to differentiate the crimes stipulated in Article 238 CrC RM from certain similar criminal and non-criminal acts. It was also used to compare the crimes specified in Article 238 CrC RM with similar offenses found in the penal legislations of other countries such as Greece, Belgium, Denmark, Spain, Sweden, the Netherlands (Holland), Austria, Bulgaria, Czech Republic, Croatia, Estonia, Germany, Finland, Italy, Latvia, Lithuania, Romania, Poland, Portugal, Slovakia, Slovenia, Hungary, Russia, Kazakhstan, Ukraine, Belarus, Georgia, Turkmenistan, Azerbaijan, etc.

The empirical method was employed to analyze domestic judicial practice in matters related to criminal liability for fraudulent acquisition of credit, loans, compensation, or insurance benefits. Approximately 140 court decisions issued between 2010 and 2022 were analyzed.

THESIS CONTENT

The thesis consists of three chapters. Each chapter ends with a summary section (conclusions) of the addressed issues and the results obtained.

Chapter I- "*Doctrinal and comparative study in the field of criminal liability for obtaining credit, loans, or insurance compensation by deception*" - scientific materials regarding criminal liability for committing offenses outlined in Article 238 of the Criminal Code of the Republic of Moldova were examined. These materials were published by both domestic and foreign authors. Specifically, the works authored by the following individuals were examined: V.Berliba, A.Borodac, S.Brînza, R.Cojocar, L.G. Gîrla, C.Gurschi, E.Ionică, N.N. Levandovskii, I.Macari, Gh.Nicolae, S.Prodan, V.Stati, Iu.M. Tabarcea etc. (*Republic of Moldova*); V.Iu. Abramov, D.N.Alieva, A.N. Andreev, R.B. Abdulina, E.N. Alioșina-Alekseeva, M.Bahtovari, V.N. Baleabin, E.N. Bulıceev, E.A. Drozdova, D.M. Dugricilova, O.V. Ermakova, I.Z. Fiodorov, A.V. Fedcenko, O.V. Finoghenova, V.F. Gabdrahmanov, A.A. Glazov, N.A. Golokolenco, S.V. Gudkov, G.E. Hakimova, I.G. Idrisova, I.I. Kartașov, V.V. Kocerga, M.A. Kostıucenko, N.A. Kudratov, N.G. Kutiin, V.D. Larıcev, R.V. Markızov, V.A. Maslov, S.M. Mkrıcean, N.E. Osıpenko, U.V. Pașınțeva, A.N. Pașnin, M.E. Pokrovskii, A.Iu. Poleanskii, O.V. Rastoropova, U.T. Saıghıtov, M.S. Sarkısean, A.A. Seleamin, P.L. Serdıuk, Iu.I. Selıvanovskaıa, M.V. Stepanov, N.A. Sultanova, O.V. Șadrına, M.Iu. Șaleapına, N.V. Șetınına, Ȃ.K. Tataev, R.I. Tretıakov, Ia.S. Vasılıeva, S.V. Voronțova, N.G. Voldımarova, N.M. Zolotova (*Russian Federation*); A.Baida, M.L. Davıdenko, O.V. Gherasımov, O.Krıșevıcı, I.V. Juk, O.L. Malahova, O.Sklezi, O.O. Suhacıov (*Ukraine*); A.I. Kasıanık, S.M. Kazakevıcı, V.V. Hılıuta (*Belarus Republic*); G.A. Abdırova (*Kazakhstan Republic*); S.Bostanov (*Kyrgyzstan Republic*); M.-N. Radu, M.-D. Radu (*Romania*); K.Mucha (*Poland*) etc.

Furthermore, within this section of the thesis, a comparative research was conducted on the criminal regulations in the legislation of certain states concerning obtaining credit, loans, or insurance compensation through deception. Similarities and differences between the incriminating norms subjected to comparative analysis were identified. Good legislative practices were also identified, leading to the conclusion that the Moldovan legislator should adopt some of them.

Among the scientific materials published on the topic of the thesis in the Republic of Moldova, a notable group of works was elaborated by S. Prodan¹¹

¹¹ PRODAN, S. *Răspunderea penală pentru infracțiunile legate de creditare*. Chișinău: CEP USM, 2011. 294 p. ISBN 978-9975-71-187-6; PRODAN, S. Subiectul infracțiunilor prevăzute la art. 238 și la art. 239 CP RM. În: *Revista științifică a USM „Studia Universitatis”*, *Seria „Științe sociale”*, 2007, nr. 6, pp. 171-179; PRODAN, S. Latura subiectivă a infracțiunilor prevăzute la art. 238 și 239 c. pen. RM. În: *Revista Națională de*

during the period of 2007-2011. S. Prodan is the first author from the Republic of Moldova to have developed a doctoral thesis focused on the subject of criminal liability for committing credit-related offenses, including those specified in Article 238 of the Criminal Code of the Republic of Moldova. Therefore, the scientific materials attributed to this author have served as an essential theoretical support for the present research. According to S. Prodan, "deception represents the legal essence of presenting false information."¹² The author observes that in the case of offenses mentioned in Article 238 of the Criminal Code of the Republic of Moldova, "the content of deception is limited to information."¹³ Indeed, the perpetrator misleads the victim by providing false information, not through other means. Remarkably, the author proposes a *lege ferenda* (a proposal for future law) that suggests introducing the passive form of deception in the provision of Article 238 of the Criminal Code of the Republic of Moldova. Another part of the conducted research is focused on the comparative investigation of credit-related offenses included in the criminal legislation of certain states. Aspects related to preparation, attempted offenses, and participation in credit-related activities are examined.

In 2009, one of the commentaries on the Criminal Code was elaborated under the editorship of A. Barbăneagră¹⁴. Authors of the segment dedicated to the analysis of the offense specified in Article 238 of the Criminal Code of the Republic of Moldova are V. Berliba and R. Cojocar. The authors conduct a comprehensive study in the field under consideration. They establish that the offense specified in Article 238 of the Criminal Code of the Republic of Moldova has a direct basic legal object and an optional direct legal object. The authors opt for the solution of concurrence of offenses (either with the offense specified in Article 332 of the Criminal Code of the Republic of Moldova or, as the case may be, with the offense specified in Article 361 of the Criminal Code of the Republic of Moldova and the criminal act referred to in Article 238 of the Criminal Code of the Republic of Moldova) in the hypothesis where the perpetrator, before presenting false information to the victim, forges official documents. V. Berliba and R. Cojocar¹⁵ are right in mentioning that if the falsification concerns a circumstance that cannot influence the victim's decision to

Drept, 2007, nr. 2, pp. 51-57; PRODAN, S. Răspunderea penală pentru infracțiunile legate de creditare în conformitate cu legislația altor state. În: *Revista științifică a USM „Studia Universitatis”*, 2007, nr. 3, pp. 181-190; PRODAN, S. Problemele tentativei și participăției în contextul stabilirii răspunderii penale pentru infracțiunile legate de creditare. În: *Revista Națională de Drept*, 2007, nr. 4, pp. 82-85.

¹² *Ibidem*, p.161.

¹³ *Ibidem*, p.164.

¹⁴ BARBĂNEAGRĂ, A. et al. *Codul penal al Republicii Moldova. Comentariu. (Annotat cu jurisprudența CEDO și a instanțelor naționale)*. Chișinău: Sarmis, 2009. 860 p. ISBN 978-9975-105-20-0

¹⁵ *Ibidem*, p. 498.

grant or not to grant the credit, the acts committed cannot be classified under Article 238 of the Criminal Code of the Republic of Moldova.

The scientific articles elaborated by V. Stati in the years 2010 and 2011¹⁶ deserve particular attention. They are among the first doctrinal attempts to explain the essence of legislative amendments made in 2008 to Article 238 of the Criminal Code of the Republic of Moldova, through Law no. 277 of December 18, 2008¹⁷, which modified and supplemented the Criminal Code. In this context, V. Stati specifies that in the current legislative context, the special legal object of these offenses has a complex character. The arguments presented by the author in establishing the correlation between the offense stipulated in Article 238 of the Criminal Code of the Republic of Moldova and the one established in Article 361 of the Criminal Code of the Republic of Moldova are extremely judicious.

It is worth noting the scientific material dating back to 2014¹⁸, authored once again by V. Stati. The author criticizes the legislator's initiative to amend the text of Article 238 of the Criminal Code of the Republic of Moldova, specifically regarding the scenario of presenting false information to the insurer to obtain compensation or insurance benefits through deception. These amendments were made as a result of the adoption of Law no. 180 of July 25, 2014¹⁹, which modified and supplemented certain legislative acts. By this law, the circle of potential victims was considerably expanded, including the insurer in the list of victims (alongside the financial institution). The author disagrees with the legislative amendment, stating that "in objective reality, it would be impossible for the purpose pursued in this hypothesis [of presenting false information to the insurer to obtain compensation or insurance benefits through deception] to be of temporary benefit."²⁰

In 2015, the same author, V. Stati, published another scientific article.²¹ This material provides a detailed analysis of the signs and elements of the offenses outlined in Article 238 of the Criminal Code of the Republic of Moldova. The research is of interest as it represents one of the first attempts to investigate the content of the offenses specified in Article 238 of the Criminal Code of the Republic

¹⁶ STATI, V. Infrațiunea de dobândire a creditului prin înșelăciune (art. 238 C. pen. RM): noi tendințe și abordări. Partea I. În: *Revista Națională de Drept*, 2010, nr. 12, pp. 2-10; STATI, V. Infrațiunea de dobândire a creditului prin înșelăciune (art.238 C.pen. RM): noi tendințe și abordări. Partea II. În: *Revista Națională de Drept*, 2011, nr.1, pp. 2-9.

¹⁷ *Monitorul Oficial al Republicii Moldova*, 2009, nr. 41-44.

¹⁸ STATI, V. Infrațiunile prevăzute la art. 238 și 239 CP RM în lumina amendamentelor operate în Codul penal la 25.07.2014. În: *Revista Științifică a USM „Studia Universitatis Moldaviae”*, *Seria „Științe sociale”*, 2015, nr. 3 (83), pp. 205-224.

¹⁹ *Monitorul Oficial al Republicii Moldova*, 2014, nr. 238-246.

²⁰ *Ibidem*, p. 14.

²¹ STATI, V. Infrațiunile prevăzute la art. 238 și 239 CP RM în lumina amendamentelor operate în Codul penal la 25.07.2014. În: *Revista Științifică a USM „Studia Universitatis Moldaviae”*, *Seria „Științe sociale”*, 2015, nr. 3 (83), pp. 205-224.

of Moldova from the perspective of the legislative amendments made by Law no. 180/2014.

The object of the offense is thoroughly analyzed. The author adheres to the position that credit, loans, compensation, or insurance benefits form the category of goods acquired through the commission of the offense. The objective aspect of the offense is extensively examined. It is argued that the harmful act consists of two successive actions. The author notes that, in the context of the analyzed offenses, false information appears as a means of committing the crime. V. Stati specifies that Article 238 of the Criminal Code of the Republic of Moldova contains specific regulations in relation to the norms found in Article 196 of the Criminal Code of the Republic of Moldova.

The scientific material elaborated in 2015 by the authors S. Brînza and V. Stati²² is noteworthy. The authors argue that the objective aspect of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova consists of the following elements: the harmful act, the harmful consequence, the causal link between the act and the harmful consequence, as well as the means of committing the offense. Unlike other authors, S. Brînza and V. Stati believe that the false information provided to the victim constitutes a means of committing the analyzed offenses, but not the material object of these offenses.

The authors propose a solution for qualifying the scenario where the perpetrator obtains financial means from the victim's account through passive deception. Specifically, they recommend applying either Article 106 of the Contravention Code or Article 196 of the Criminal Code of the Republic of Moldova in such cases. S. Brînza and V. Stati provide the following explanation regarding the proposed qualification solution: "in cases of causing material damage through deception or abuse of trust, the content of deception is not limited to the active form of deception."²³

Another scientific material that was subject to research is an article elaborated in 2018 by the authors S. Brînza and V. Stati²⁴. It is a study where the authors conduct a critical analysis of some cases from the domestic judicial practice. The study addresses the issue of how to classify situations when the perpetrator (a credit or loan applicant) uses false official documents in the commission of offenses specified in Article 238 of the Criminal Code of the Republic of Moldova, documents that grant rights or release from obligations. In this context, the authors examine the

²² BRÎNZA, S., STATI V. *Tratat de drept penal. Partea Specială. Vol. II.* Chișinău: Tipografia Centrală, 2015. 1300 p. ISBN 978-9975-53-470-3

²³ *Ibidem*, p. 51.

²⁴ BRÎNZA, S., STATI, V. Corelația dintre infracțiunile prevăzute la art. 238 și 361 din Codul penal al Republicii Moldova: analiza practicii judiciare. În: *Modern Scientific Challenges and Trends: a collection scientific works of the International scientific conference (20th July, 2018)* - Warsaw: Sp. z o. o. „iScience”, 2018, pp. 31-38.

correctness of classifying either as concurrence of offenses or as a single offense. They argue that in many of the studied cases, alongside Article 238 of the Criminal Code of the Republic of Moldova, Article 361 of the Criminal Code of the Republic of Moldova is incorrectly retained in the qualification. The authors opt for the solution of a single offense, suggesting that the acts committed, due to the concurrence of norms, should be solely classified according to Article 238 of the Criminal Code of the Republic of Moldova.

In 2019, V. Stati's course support²⁵ was published, providing a highly detailed theoretical and practical exploration of the objective and subjective aspects of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova. V. Stati supports the legislator's idea of including non-banking financial organizations as victims of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova. The author suggests that these entities, in the process of providing financial services to citizens, are susceptible to deception. V. Stati highlights that "the advantage of non-banking financial organizations lies in their proximity to consumers of financial services, as well as in the reduced cost of the services provided."²⁶

The analysis of scientific materials published by domestic authors concludes with the doctoral thesis defended in 2020 by N.N. Levandovskii²⁷. Although the thesis primarily focuses on procedural and criminalistic aspects in detecting credit-related offenses, some aspects of the thesis are relevant to our research. Particularly noteworthy is N.N. Levandovskii's proposal to amend the text of Article 238 of the Criminal Code of the Republic of Moldova. Specifically, the author recommends that the Moldovan legislator consider the legislative models of Belarus and Kazakhstan to incriminate the passive form of deception (i.e. failure to communicate to the victim information regarding circumstances that could lead to the termination of credit or limitation of the credit amount to be granted).

In the realm of scientific materials published by foreign authors, the doctoral thesis defended in 2003 by the author G.A. Abdirova²⁸ stands out. The author argues that the primary legal object of the discussed offenses is formed by "social relations in the sphere of credit activities related to banks and other credit organizations."²⁹ At

²⁵ STATI, V. *Infrafracțiuni economice: note de curs. Ed. a 3-a, rev. și actualizată până la data de 1 mai 2019*. Chișinău: Tipografia Centrală, 2019. 600 p. ISBN 978-9975-146-73-9

²⁶ *Ibidem*, p. 86.

²⁷ ЛЕВАНДОВСКИЙ, Н.Н. *Криминалистическое расследование преступлений в сфере кредитования*: дис. на соиск. учен. степ. докт. право. Кишинэу, 2020. 222 с.

²⁸ АБДИРОВА, Г.А. *Использование специальных экономических (бухгалтерских) знаний при расследовании преступлений, совершаемых в сфере банковской деятельности (по уголовно процессуальному законодательству Республики Казахстан)*: дис. на соиск. учен. степ. канд. юрид. наук. Челябинск, 2003. 200 с.

²⁹ *Ibidem*, сс. 33-34.

the same time, G.A. Abdirova mentions that the secondary legal object of these offenses consists of "the property interests of creditors."³⁰ Furthermore, G.A. Abdirova maintains that credit obtained through deception falls into the category of the material object of the offense.

The abstract of the doctoral thesis defended in the same year, 2005, by the Belarusian author *S.M. Kazakevici*³¹ is also noteworthy. The author's statement is worth mentioning: "As the main sign in differentiating offenses of obtaining credit through deception and fraud, the direction of intent appears: if the perpetrator, from the start, seeks the goal of appropriating the obtained monetary means, then the committed acts contain signs of theft."³²

In other words, S.M. Kazakevici highlights that the distinguishing factor between these offenses lies in the direction of the perpetrator's intent - whether they aim to appropriate the money obtained or simply commit theft. On another note, S.M. Kazakevici argues that there is a discrepancy between the norms of the civil code and the norm that regulates criminal liability for illegal credit acquisition. Specifically, in the author's view, there is a collision between the civil norms governing the full legal capacity of an individual and the penal norm that sets the minimum age for criminal liability for committing the offense of illegal credit acquisition. Consequently, the author recommends that criminal liability for the act of illegal credit acquisition should begin at the age of 18.

The article written by *A.I. Kasianik*³³, published in 2008, focuses on the analysis of the signs of the subjective aspect of the offense corresponding to those in Article 238 of the Criminal Code of the Republic of Moldova, as provided in the legislation of the Republic of Belarus. A.I. Kasianik does not exclude the possibility that, in committing the examined offenses, the perpetrator may act, including through negligence, regarding the harmful consequence. In this regard, the author mentions the following: "By obtaining credit through deception, the credit applicant believes that they will repay it, but this assumption is not always correct, and therefore harm is caused. In cases of imprudence, the perpetrator foresees the possibility of causing harm but, in the absence of sufficient grounds, relies on the fact that harm will not occur or does not foresee the possibility of causing harm, although they should have

³⁰ *Ibidem*, с. 34.

³¹ КАЗАКЕВИЧ, С.М. *Уголовно-правовые и криминологические аспекты предупреждения выманивания кредита или дотаций*: автореф. дис. на соиск. учен. степ. канд. юрид. наук. Минск, 2005. 21 с.

³² *Ibidem*, с. 11.

³³ КАСЬЯНИК, А.И. *Признаки субъективной стороны в составе выманивания кредита или дотаций*. *Ін: Веснік Брэсцкага ўніверсітэта. Серыя гуманітарных і грамадскіх навук, 2008, № (32), сс. 125-131. ISSN 1813-405x*

and could have foreseen it."³⁴ Regarding the purpose of the offense, A.I. Kasianik identifies both an initial and a final purpose, both being obligatory signs. This means that there are specific intentions and objectives that the perpetrator aims to achieve throughout the commission of the offense.

The scientific article published in 2013 by the Polish author *K. Mucha*³⁵ focuses on the offense of obtaining a bank credit through deception, from the perspective of the legislation in the Republic of Poland. Regarding the object of criminal protection, K. Mucha argues that "by obtaining funds through the presentation of false information, the fairness and reliability of economic circulation, as well as its balance, are jeopardized."³⁶ This emphasizes the importance of protecting the integrity and stability of economic transactions. Regarding the subjective aspect of the offense, the Polish author mentions that in the case of the analyzed offenses, "the intention is conditioned,"³⁷ specifically to obtain the credit. In other words, the perpetrator's intention is qualified by their goal. This demonstrates that the perpetrator can only act with direct intent, meaning their actions are deliberate and aimed at achieving the specific purpose of obtaining the credit through deception.

The scientific article elaborated by the Ukrainian author *O. Krîșevici*³⁸ dates back to 2014. The study focuses on differentiating between the offense of fraud (a property offense) and the offense corresponding to Article 238 of the Criminal Code of the Republic of Moldova. O. Krîșevici argues that in the case of fraud, the perpetrator pursues a specific purpose, which is expressed in obtaining foreign property for their own benefit or for the benefit of third parties. In other words, in fraud, the perpetrator aims for a purpose of greed. The author concludes that in the case of obtaining credit through deception, "the perpetrator's intention is not directed towards appropriating the obtained financial means, whereas in fraud, these means become the property of the perpetrator."³⁹ Therefore, O. Krîșevici specifies that if the perpetrator does not intend to repay the credit, the committed act constitutes fraud. This distinction is crucial in properly qualifying and prosecuting the offenses under consideration.

³⁴ *Ibidem*, c. 128.

³⁵ MUCHA, K. Economic crime in the Polish legal system on the example of the crime of obtaining a bank credit by false pretenses. În: *Annales Universitatis Apulensis, Series Jurisprudentia*, vol. 16, 2013, No. 1, pp. 120-132.

³⁶ *Ibidem*, p. 126.

³⁷ *Ibidem*, p. 129.

³⁸ КРЫШЕВИЧ, О. Разграничение уголовной ответственности за мошенничество в кредитно-финансовой деятельности и мошенничество по законодательству Украины и России. În: *Jurnalul juridic național: teorie și practică*, 2014, № 5, cc. 53-60.

³⁹ *Ibidem*, c. 58.

The scientific article elaborated by *E.N. Alioşina-Alekseeva*⁴⁰ dates back to 2019. In this scientific endeavor, the author aims to create a multifaceted differentiation between the offense of fraud committed in the credit sphere and the offense of obtaining credit through deception. E.N. Alioşina-Alekseeva highlights the following objective circumstances that confirm the presence of the intent to appropriate the credit funds pursued by the perpetrator during the process of obtaining credit: knowingly lacking real financial capacity to fulfill an obligation; lack of necessary licenses for carrying out activities related to fulfilling obligations under an agreement; use of fictitious statutory documents or false letters of guarantee; concealing information about existing debts and encumbrances on assets; creation of false pseudo-enterprises that act as contracting parties in agreements.⁴¹

These objective circumstances are indicative of the fraudulent intent of the perpetrator in obtaining credit, as they involve intentional misrepresentation or concealment of relevant information to secure credit without the genuine intention of repayment. Properly identifying and understanding these aspects are crucial for effectively addressing and prosecuting such financial crimes.

The scientific article written in 2020 by authors *I.I. Kartaşov* and *N.E. Osipenko*⁴² was also subjected to analysis. The authors highlight multiple problematic aspects related to the objective content of offenses committed in the credit sphere. Through the prism of the objective content of the offense, the authors attempt to distinguish the offense of obtaining credit through deception from fraud committed in the credit sphere.

Additionally, the research also included the doctoral thesis defended in 2020 by *N.A. Sultanova*.⁴³ The thesis addresses offenses committed in the credit sphere, following the legislative model in Russia. This category also includes offenses analogous to those in Article 238 of the Criminal Code of the Republic of Moldova. N.A. Sultanova emphasizes that the harmful consequence is not causally connected to the action of obtaining credit but rather with the failure to fulfill the obligation of repayment.

In the comparative study conducted, the author observed that in none of the foreign legislations studied, the act of obtaining compensation or insurance benefits through deception is criminalized alongside the act of obtaining credit or loans

⁴⁰ АЛЕШИНА-АЛЕКСЕЕВА, Е.Н. Отграничение мошенничества в сфере кредитования (ст. 159¹ УК РФ) от незаконного получения кредита (ст. 176 УК РФ). *Ип: Вестник Санкт-Петербургского университета МВД России*, 2019, № 2 (82), сс. 124-130.

⁴¹ *Ibidem*, сс. 127-128.

⁴² КАРТАШОВ, И.И., ОСИПЕНКО, Н.Е. Спорные аспекты объективных признаков преступлений в сфере кредитных отношений. *Ип: Электронный научный журнал «Наука. Общество. Государство»*, 2020, № 2 (30), сс. 83-94.

⁴³ СУЛТАНОВА, Н.А. *Уголовно-правовое противодействие преступлениям в сфере кредитования*: дис. на соиск. учен. степ. канд. юрид. наук. Грозный, 2020. 204 с.

through deception. Unlike the Moldovan legislation, foreign lawmakers do not include compensation or insurance benefits (alongside credit and loans) as assets acquired through the commission of the offense corresponding to Article 238 of the Criminal Code of the Republic of Moldova. In the legislations of these states, the responsibility for obtaining compensation or insurance benefits through deception arises under the norm that criminalizes fraud or insurance fraud specifically.

Several legislative positions regarding the criminalization of offenses corresponding to Article 238 of the Criminal Code of the Republic of Moldova have been identified in the legislation of other states. This includes considering the existence or absence of specific norms that criminalize fraud in the sphere of insurance or fraud in the sphere of credit.

In some legislations, similar norms to those stated in Article 238 of the Criminal Code of the Republic of Moldova are found, which provide for the responsibility for obtaining credit or loans through deception (*e.g.*, Lithuania, Latvia, Ukraine, Azerbaijan, Georgia, Kazakhstan, Turkmenistan, Slovenia, North Macedonia, Bulgaria, Poland). In other legislations, there are no similar norms to those in Article 238 of the Criminal Code of the Republic of Moldova (*e.g.*, Armenia, Belgium, France, Hungary, Spain, Switzerland, Denmark).

In some legislations, specific provisions are dedicated to the criminalization of the fraudulent misappropriation of financial resources granted as credit (referred to as credit fraud). This category includes the legislations of Cyprus, Montenegro, Italy, Turkey, Slovakia, Albania, Germany, the Czech Republic, and others. On the other hand, in other legislations, there are provisions that establish liability for insurance fraud (*e.g.*, in Slovenia, Bulgaria, North Macedonia, Serbia, Slovakia, the Czech Republic, Albania, Romania, Portugal, the Netherlands, Greece, Finland, Sweden, Estonia, Croatia, Austria).

In the legislations of certain states (*e.g.*, Slovenia, Poland, Belarus, Kazakhstan), the harmful result can manifest not only in active form (*i.e.*, by presenting false or incomplete information) but can also take a passive form (*i.e.*, by concealing information). Foreign lawmakers hold different positions regarding the structure of the objective elements of the examined offenses. Some include the harmful result in the construction of the objective elements (*e.g.*, Latvian, Belarusian, Russian, Georgian, Azerbaijani, or Kazakh legislators), while others do not include the harmful result in the list of essential elements (*e.g.*, Slovenian, Polish, Ukrainian, or Lithuanian legislators).

In Chapter 2, titled *"Legal and criminal analysis of offenses referred to as obtaining credit, loan, compensation/insurance indemnity by deception,"* the objective and subjective elements of the offenses defined in Article 238 of the Criminal Code of the Republic of Moldova were thoroughly examined. Specifically, the analysis delved into the object of the offenses specified in Article 238, including the legal object and the victim of these crimes. The legal nature of credit, loan, compensation, insurance indemnity, or an increased amount thereof, as well as the

credit or loan obtained on favorable terms, was identified. The characteristics of the objective elements, which encompass the harmful act, the harmful result, and the causal link between the act and the harmful result, were carefully described, along with the means used to commit the offense, which involve false information. Moreover, the study explored the peculiarities concerning the individuals and legal entities that can be considered subjects of the offenses outlined in Article 238. The correlation between the criminal liability of natural persons and legal entities for the commission of the offenses provided in Article 238 was established. Additionally, the research delved into the subjective elements of the offenses, including culpability, purpose, and motive. The paper also investigated the relationship between the offenses specified in Article 238 and some similar criminal acts, such as fraud, causing material damage through deceit or abuse of trust, and forgery of public documents.

Throughout the application of materials and methods necessary for the criminal law analysis of the offenses provided in Article 238 of the Criminal Code of the Republic of Moldova, several significant conclusions were drawn.

For instance, it was determined that the incriminations outlined in Article 238 primarily aim to protect those social relations that naturally derive from the interactions within the national economy. However, concerning the obtaining of compensation or insurance indemnity through deceit, the object of penal protection should align with the generic legal object of property offenses. Hence, when determining the primary legal object of the offenses specified in Article 238, the legal framework of obtaining credit, loan, compensation, or insurance indemnity should be emphasized.

The protected social relations involved in these incriminations are not linked to any material entities. In these offenses, the harm to the object of criminal protection arises through influencing the victim of the offense.

Currently, the present understanding of the notion "financial institution" in both the criminal law and other normative acts is derived from the definition of "bank" in Law No. 202/2017 of the Republic of Moldova. In cases where credit is fraudulently obtained from a bank branch as a victim of the offense, the bank itself, rather than the branch, assumes the role of the victim.

Regarding the analyzed offenses, only non-bank financial organizations capable of engaging in lending activities should be considered non-bank financial institutions. Entities engaged in lending activities do not fall under the category of participants in the non-bank financial market when they also engage in other activities, excluding lending. The focus for the application of the provisions of Article 238 of the Criminal Code of the Republic of Moldova should be on the lending activity, which can be practiced by savings and loan associations, rather than other activities.

It was also highlighted that the mere presentation of false information, without the fraudulent obtaining of requested financial means, constitutes an attempted

offense under Article 238 of the Criminal Code of the Republic of Moldova (if the offender aimed to obtain credit, loan, etc.). The initial action from the content of the harmful act bestows these offenses with their unique character. This initial action establishes the correlation between these offenses and other related, including concurrent, criminal acts (e.g., offenses of fraud (Article 190 of the Criminal Code of the Republic of Moldova) or causing material damage through deceit or abuse of trust (Article 196 of the Criminal Code of the Republic of Moldova)).

As for credit (granted by banks), it can be obtained in cash or through a money transfer (to the current account or card account of the credit applicant, opened at the same bank or a different bank). It is also possible that the credit amount is transferred to the account of the creditors of the credit applicant (e.g., in the case of refinancing). In cases where the credit amount is transferred to the bank account of the credit applicant, the moment of obtaining the credit can be considered the actual transfer of money to the credit applicant's bank account, rather than the actual withdrawal of money from this bank account. Another moment of obtaining the credit could be when the bank or non-bank financial organization makes the transfer of the credit amount to the current account of the seller/service provider (if the credit applicant uses the credited funds to pay for the purchased goods or services).

However, the inaction of non-repayment of the obtained credit/loan is not considered an element of the objective elements of the offenses provided in Article 238 of the Criminal Code of the Republic of Moldova. The socially dangerous act, consisting of (i) the harmful action in the form of presenting false information and (ii) the harmful action manifested in the actual obtaining of financial means, constitutes the cause. The harmful result, in the form of (i) significant damages (in the case of the offense specified in paragraph (1) of Article 238) or (ii) particularly significant damages (in the case of the offense in paragraph (2) of Article 238), represents the effect.

The application of criminal law is not justified, opportune, nor does it align with the principle of *ultima ratio* to prohibit, through penal means, the mere act of presenting false information in order to obtain credit or a loan.

Concerning the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova, the documentation for credit/loan/insurance (a form of expressing false information) coexists with the harmful act. Therefore, the respective documentation is considered a means of committing the offense.

People who have reached the age of 16, although legally capable of criminal responsibility, are not held accountable in practice because they cannot enter into credit or loan contracts. The minimum age of criminal responsibility for the commission of the analyzed offenses, in practical terms, is determined by the entities liable to grant credits/loans, *i.e.*, the victims of these crimes.

To be an accomplice to one of the offenses provided in Article 238 of the Criminal Code of the Republic of Moldova, a person with competences in granting credit/loan must undertake actions of a different nature than those stipulated in

Article 239 of the Criminal Code of the Republic of Moldova. In cases where the amount of damage caused to the victim must be equal to the sum of financial means granted as credit or loan, the perpetrator can only desire the occurrence of the harmful result.

The purpose of obtaining compensation or insurance indemnity, or the purpose of obtaining them in an increased amount, is not compatible with the legal nature of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova. An exception to the rule of classifying criminal acts based on achieving the criminal purpose is evident in the analyzed offenses. Thus, achieving the primary purpose is necessary. Conversely, the failure to achieve the primary purpose can be classified as an attempt of one of the offenses specified in Article 238. The primary purpose evolves into the ultimate goal pursued by committing the initial action, *i.e.*, by presenting false information. The attainment of the primary purpose marks the moment of committing the final action from the content of the harmful act, resulting in the actual obtaining of financial means. It is at this point that the harmful result is caused to the detriment of the victim.

In judicial practice, there is little distinction made between the three primary purposes that can be pursued by the offender in the case of committing offenses specified in Article 238 of the Criminal Code of the Republic of Moldova.

The purpose of not returning the financial means obtained as credit or loan to the victim is not compatible with the essence of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova. *De jure* and *de facto*, the insurer can be a victim of the offense of fraud. However, in the case of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova, the insurer can only be considered a victim *de jure*, not *de facto*. *De facto*, the insurer cannot be a victim of the latter offenses.

In cases of committing fraud in the field of lending, only the natural person will be criminally liable, not the legal entity, despite the fact that the legal entity can be the applicant/beneficiary of credit or loan. In cases of fraud (compared to the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova), the financial institution, non-bank financial organization, savings and loan association, as well as the insurer, are deprived of the possibility to exercise the attributes of property rights concerning the financial means granted to the perpetrator.

For the application of Article 238 of the Criminal Code of the Republic of Moldova, it is irrelevant whether the perpetrator has not returned the sum of financial means obtained within the specified term. It is also of no consequence whether the perpetrator has fully or partially returned the sum of financial means obtained. Furthermore, it is not of interest whether the perpetrator, in general, has returned any amount of the credit or loan obtained. The important aspect is that in all these scenarios, the perpetrator aimed to use the financial means temporarily, with subsequent repayment to the creditor.

The acts committed should be classified based on Article 238 of the Criminal Code of the Republic of Moldova, not based on Article 190 of the Criminal Code of the Republic of Moldova, when the intention not to repay the credit/loan arises after the moment of obtaining the financial means.

In Chapter 3, titled "*Results obtained from the research of offenses grouped under the name of obtaining credit, loans, or insurance indemnities through deception*" - the author's contributions were presented. These were derived from the conducted research, based on the materials and methods used in section two of the work. The obtained results represent a quantitative and qualitative synthesis of the investigation carried out in the previous section of the work, using appropriate materials and methods. The obtained results target: the object of the offenses provided for in Article 238 Criminal Code of the Republic of Moldova; the objective aspect of the offenses stipulated in Article 238 Criminal Code of the Republic of Moldova; the subjective elements of the offenses under discussion, as well as the correlation between the offenses provided for in Article 238 Criminal Code of the Republic of Moldova and some similar criminal acts.

Regarding the object of the offense, the following results were outlined: 1) the incorrect placement, in the text of the special part of the Criminal Code, of the act of obtaining insurance compensation or indemnity through deception from the insurer; 2) in the vast majority of foreign states' legislations, the act of obtaining insurance compensation or indemnity through deception from the insurer is placed (*i*) within the chapter of the special part of the Criminal Code dedicated to the protection of property and (*ii*) alongside the offense of swindling; 3) *de lege lata*, the offenses provided for in Article 238 Criminal Code of the Republic of Moldova have the same generic legal object when they manifest themselves in obtaining, from the insurer, insurance compensation or indemnity through deception. *De lege ferenda*, obtaining insurance compensation or indemnity through deception must form the content of a distinct norm, and be relocated within the content of Chapter VI "Offenses against property" of the special part of the Criminal Code (alongside swindling offenses); 4) the main legal object of the offenses provided for in Article 238 CrC RM is related to the harmful act, while the secondary legal object is related to the harmful consequence; 5) in identifying the content of the main legal object of the offenses stipulated in Article 238 Criminal Code of the Republic of Moldova, one must take into account (*i*) the quality of the victims of these criminal acts and, implicitly, (*ii*) their sphere of activity; 6) in the sense of the offenses stipulated in Article Criminal Code of the Republic of Moldova, credit includes other manifestations besides the creditor's commitment to lend money to the debtor, such as, for example, the creditor's commitment to acquire a receivable or make a payment (*e.g.*, the hypothesis of refinancing carried out by banks or non-banking credit organizations); 7) the victim of the offenses recorded in Article 238 Criminal Code of the Republic of Moldova can be a branch of a foreign bank (licensed by the NBM accordingly), but not the foreign bank itself; 8) the victim of the offenses stipulated in Article 238

Criminal Code of the Republic of Moldova can be not only a savings and loan association but also the central national association of savings and loan associations; 9) in fact, the insurer (insurance company) cannot be the victim of the offenses provided for in Article 238 Criminal Code of the Republic of Moldova. The insurer can be the victim of the offense of swindling. In law, however, the legislator has admitted a non-existent possibility when attributing the insurer to the category of victims of the offenses specified in Article 238 Criminal Code of the Republic of Moldova.

Regarding the objective aspect of the offense, the following results were established: 1) the material element of the offenses provided for in Article 238 Criminal Code of the Republic of Moldova is characterized by its realization in a phased form; 2) there must be a causal connection between the action of presenting false information and the action of illegally obtaining credit or a loan. The commission of the initial action contributes (facilitates) the perpetrator to commit the final action, materialized in obtaining credit or a loan (*i.e.*, the commission of the initial action constitutes a premise in achieving the final action); 3) concerning the qualification of those committed in accordance with the provisions of Article 238 Criminal Code of the Republic of Moldova, the moment of actually obtaining the financial means is relevant, but not the moment of concluding the credit or loan agreement; 4) the final action of the harmful act, materialized in the actual receipt of the credit or loan amount, is not explicitly provided but arises from the essence of representing the harmful consequence as a mandatory sign; 5) the harmful consequence of the offenses provided for in Article 238 Criminal Code of the Republic of Moldova is presented through a quantitative and qualitative variable; 6) the harmful consequence must be considered caused at the moment of granting the credit or loan, but not at the moment of full or partial non-reimbursement of the granted credit/loan amount; 7) partial or complete non-reimbursement of the credit/loan amount, as well as the total reimbursement of the credit/loan (but outside the temporal limits established by the repayment schedule), should not matter for the legal classification of the offenses committed but for the individualization of the punishment; 8) in the case of offenses recorded in Article 238 Criminal Code of the Republic of Moldova, we note a double causal connection (ordinary and non-ordinary (atypical)); 9) the passive behavior of the perpetrator, materialized in the non-reimbursement of the credit or loan amount, cannot appear in the content of the inherent causal chain of the offenses provided for in Article 238 Criminal Code of the Republic of Moldova; 10) in the sense of Article 238 Criminal Code of the Republic of Moldova, false information may be in the form of a photograph, a drawing, a plan, a sound recording, etc.

In terms of the subjective elements of the offenses specified in Article 238 Criminal Code of the Republic of Moldova, the following results deserve attention: 1) we do not exclude the hypothesis in which the offenses provided for in Article 238 Criminal Code of the Republic of Moldova are committed by persons aged

between 16 and 18 years old (*e.g.*, when the credit is granted to an emancipated person (obviously, if the policy of the bank or non-banking credit organization allows it) or when a person of such age commits the offense as a secondary participant (*e.g.*, contributing to the commission of the offense as an accomplice)); 2) those committed cannot be classified under Article 238 Criminal Code of the Republic of Moldova when the credit or loan applicant considers mistakenly that the information provided to the victim is true or when they suspect (presume), but do not know for certain, that this information is false; 3) the offenses provided for in Article 238 Criminal Code of the Republic of Moldova have an initial (primary) purpose and a final purpose. The final purpose arises, in particular, from the systemic interpretation of the provisions of Article 238 Criminal Code of the Republic of Moldova in relation to the provisions of Article 190 and Article 196 Criminal Code of the Republic of Moldova; 4) the primary purpose is related to the initial action in the content of the harmful act (the perpetrator tends to achieve the purpose when presenting false information); 5) the final purpose of the offenses provided for in Article 238 Criminal Code of the Republic of Moldova consists of (*i*) the temporary use of the financial means representing the credit or loan amount obtained and, consequently, (*ii*) their reimbursement; 6) the non-reimbursable nature of the financial means obtained makes the difference between compensation/insurance indemnity and credit/loan; 7) the non-reimbursable nature of the financial means obtained denotes that, in the case of obtaining compensation or insurance indemnity through deception, the perpetrator aims at misappropriation.

In terms of the correlation between the offenses provided for in Article 238 Criminal Code of the Republic of Moldova and some similar criminal acts, the following results were noted: 1) in the case of swindling offenses, including those committed in the credit sphere, the perpetrator aims for the purpose of greed, *i.e.*, to gain permanent possession of the goods /financial means obtained. Accordingly, unlike the offenses provided for in Article 238 Criminal Code of the Republic of Moldova, the perpetrator does not intend to reimburse the obtained financial means. In contrast, in the case of offenses recorded in Article 238 Criminal Code of the Republic of Moldova, the perpetrator aims for the purpose of temporary use of the obtained financial means. Subsequently, in this latter case, the perpetrator intends to return the financial means obtained as credit or loan; 2) in the presence of doubts regarding the purpose of temporary use or the purpose of misappropriation pursued by the perpetrator when obtaining the financial means through deception, the committed offenses should be classified in accordance with the provisions of Article 238 Criminal Code of the Republic of Moldova; 3) it is not excluded that initially, the perpetrator aims for the purpose of temporary use of the financial means, but later pursues the purpose of misappropriation, in which case, the classification will fall under Article 190 Criminal Code of the Republic of Moldova (provided that the modification affects the initial intention until its consummation, not after its consummation); 4) the offenses provided for in Article 238 Criminal Code of the

Republic of Moldova do not constitute special (particular) cases of the offense of swindling, provided for in Article 190 Criminal Code of the Republic of Moldova; 5) there is no relationship of competition between the provisions of Article 190 Criminal Code of the Republic of Moldova and those of Article 238 Criminal Code of the Republic of Moldova in the sense of general norm versus special norm; 6) concerning the offenses stipulated in Article 238 Criminal Code of the Republic of Moldova, the special character of causing material damage through deception (in the sense of offenses listed in Article 196 Criminal Code of the Republic of Moldova) resides in: a) the special sphere in which the criminal act is committed; b) the special quality of the victim of the offense, as well as the goods obtained as a result of the offense; c) the form of expression of the deception, as well as its content; d) the special quality of the means used to commit the offense; 7) the offenses provided for in Article 238 Criminal Code of the Republic of Moldova are dissociated from the offenses listed in Article 240 Criminal Code of the Republic of Moldova, *inter alia*, from the perspective of the source of the financial means obtained as credit or loan; 8) only Article 238 Criminal Code of the Republic of Moldova should be applied when two or more persons cooperate in committing the offenses stipulated in Article 238 Criminal Code of the Republic of Moldova, one of whom fabricates the false official document, and another presents the respective document to a financial institution, non-banking financial organization, or savings and loan association to obtain credit or a loan; 9) there is a dual relationship of competition between the provisions of Article 238 and 361 Criminal Code of the Republic of Moldova, namely a) general norm versus special norm, and b) whole norm *versus* partial norm.

CONCLUSIONS AND RECOMMENDATIONS

Following the theoretical-empirical and normative research conducted, the following results have been obtained: 1) the doctrinal opinions concerning the acts of acquiring credit, loans, compensation, or insurance benefits through deception have been identified and examined; 2) a thorough comparative study of foreign normative regulations regarding the responsibility for acquiring credit, loans, compensation, or insurance benefits through deception has been carried out; 3) the various aspects and components of the offenses stipulated in Article 238 of the Criminal Code of the Republic of Moldova have been extensively characterized; 4) the evolutionary path of the incriminatory framework prescribed in Article 238 of the Criminal Code of the Republic of Moldova has been displayed; 5) the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova have been distinguished from related acts, and the correlation between the norms encompassing these acts has been established; 6) an empirical-jurisprudential study regarding the practical application of Article 238 of the Criminal Code of the Republic of Moldova has been conducted; 7) difficulties in understanding the content of the norms included in Article 238 of the Criminal Code of the Republic of Moldova and their implementation in practice have been identified; 8) concrete deficiencies in the

normative content of the offenses provided in Article 238 of the Criminal Code of the Republic of Moldova, including legislative gaps, have been determined; 9) proposals *de lege ferenda* have been put forward (i) to address the understanding and application issues of the norms in Article 238 of the Criminal Code of the Republic of Moldova and (ii) to fill the legislative gaps that have been identified.

The significant scientific problem solved through the obtained results lies in the elaboration of a complex and comprehensive conceptual framework regarding the constitutive content of the offenses stipulated in Article 238 of the Criminal Code of the Republic of Moldova. This contribution has led to the identification of shortcomings encompassed by the mentioned article and, consequently, to difficulties in its practical implementation. As a result, recommendations *de lege ferenda* have been formulated to improve the investigated incriminatory text and ensure its proper application.

I. Conclusions:

The important scientific problem has been demonstrated through the formulated conclusions, taking into account the research hypotheses, as follows:

1. **Entities that can grant credits and/or loans (other than banks or savings and loan associations) but are not non-bank financial institutions cannot be victims of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova.** Entities falling into this category include pawnshops (lombards) and payment service providers (payment companies, electronic money issuers). Pawnshops are credit institutions but not non-bank financial institutions. They are not considered professional participants in the non-bank financial market, and their activities are not authorized, regulated, or supervised by the National Commission for Financial Market (CNPf). Similarly, payment service providers and electronic money issuers are not financial institutions, although they can be non-bank financial institutions when engaging in other activities, such as currency exchange operations or custody services. However, it should be noted that payment service providers and electronic money issuers cannot operate as non-bank financial institutions when engaging in credit activities. These service providers can only be considered non-bank financial institutions when they undertake other activities. For instance, payment service providers may assume the role of non-bank financial institutions when providing operational and related services to payment services, such as currency exchange operations, custody services, etc. (*see: Chapter 3, Subchapter 3.1*).

2. **The partial or full non-repayment of credit/loan and the complete repayment of credit/loan outside the established repayment schedule should not be relevant to the legal qualification of offenses under Article 238 of the Criminal Code of the Republic of Moldova.** The harmful consequence of the analyzed offenses must be exclusively related to the actual amount of credit or loan obtained or the increased amount of credit or loan obtained or the credit or loan obtained on favorable terms. Thus, the harmful consequence must be considered to

arise at the moment of granting the credit or loan, not at the moment of partial or full non-repayment of the credit/loan. The victim is harmed at the moment when they transfer the credit/loan amount while being deceived by false information presented by the perpetrator, and this transmitted amount resulting from the deception should be regarded as the harmful consequence. If authentic information had been provided, the bank, for example, would have refused to grant the requested credit. Additionally, at this moment, there is a secondary harm to the social relations concerning the possession of financial means representing credit, loan, compensation, or insurance benefits. It is true that in most cases, the falsity of the presented information is detected when the credit applicant fails to pay the credit installments on time. However, this does not imply that Article 238 of the Criminal Code of the Republic of Moldova should not be applied from the moment of actual receipt of the credit or loan. Subsequently, this does not mean that Article 238 of the Criminal Code of the Republic of Moldova is inapplicable when the credit applicant pays the credit installments on time and in full. The perpetrator's conduct is inherently criminal since obtaining financial means was possible due to the presentation of false information, i.e., through fraudulent conduct.

If we were to admit that the harmful consequence consists of the unpaid credit/loan amount (in whole or in part), including other payments owed to the creditor (e.g., contractual interests, penalties, etc.), it would mean that causing the harmful consequence is dependent on a future and uncertain event. It would also imply that in such a hypothesis, until the occurrence of the harmful consequence, which is distanced significantly from the moment of committing the harmful act, the perpetrator would be at the stage of execution of acts. It is unacceptable for the moment of consummation of an offense to occur under such circumstances (dependent on future and uncertain events). Similarly, it is impossible for the perpetrator to be in the stage of executing acts over an uncertain period of time. (*see: Chapter 3, Subchapter 3.2*).

3. The conduct of the credit/loan applicant must be distinguished from the conduct of the actual beneficiary of the obtained credit/loan. In some cases, their actions fall within the scope of criminal participation, while in other cases, they may lie outside this category. If the credit/loan applicant is aware that the documents presented to the victim are false, criminal participation is evident. In such cases, the actions of the credit/loan applicant should be classified under Article 238 of the Criminal Code of the Republic of Moldova (as the author of the offense). On the other hand, the actions of the actual beneficiary of the obtained funds should be classified under Article 238 of the Criminal Code of the Republic of Moldova, with reference to paragraphs (3)-(5) of Article 42 of the Criminal Code of the Republic of Moldova (depending on the legal role played). The conduct of the actual beneficiary of the funds obtained through credit or loan exceeds the scope of the objective elements of the offenses specified in Article 238 of the Criminal Code. The actual beneficiary of the funds does not execute any part of the objective elements

of the analyzed offenses (not even partially). Therefore, they cannot be the principal offender. The credit/loan applicant is the one who presents false information and also the one who obtains the amount of the credit/loan. Hence, the credit/loan applicant fulfills the objective elements of the offense and is, therefore, the author of the offense. At the same time, the actual beneficiary of the funds plays a secondary (auxiliary) role in the committed offense. In conclusion, the scenario of indirectly obtaining credit/loan through an innocent credit/loan applicant (e.g., being deceived) must be distinguished from the scenario of indirectly obtaining credit/loan through a culpable credit/loan applicant. In the former situation, the actions do not constitute criminal participation. In this case, the actual beneficiary of the obtained funds is a mediate subject of the offense. The credit/loan applicant will not be held liable under Article 238 of the Criminal Code of the Republic of Moldova because they acted without culpability (they did not know that the information presented to the victim was false). In the latter situation, these actions represent criminal participation. The credit/loan applicant assumes the role of the author of the offense, while the actual beneficiary of the funds assumes the role of organizer, instigator, or accomplice (*see: Chapter 3, Subchapter 3.3*).

4. The non-repayable nature of the funds obtained results in the case of obtaining compensation or insurance indemnity through deception, the perpetrator cannot pursue the purpose of their temporary use. Banks, non-bank credit institutions, and savings and loan associations conduct their activities, among other things, based on the principle of repayment of funds obtained by debtors. However, this repayment rule does not apply to insurance relationships. Compensation and insurance indemnity are not provided to the recipient for temporary use and subsequent repayment to the insurer. Consequently, the non-repayable nature of the funds obtained distinguishes compensation/insurance indemnity from credit/loan. The non-repayable nature of the funds obtained indicates that in the case of obtaining compensation or insurance indemnity through deception, the perpetrator pursues the purpose of misappropriation. As a result, the insurer (insurance company) cannot be considered a victim of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova. Instead, the insurer (insurance company) can be considered a victim of fraud offenses. Thus, the act of obtaining compensation or insurance indemnity through deception does not align with the legal essence of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova. This scenario does not fit with the essence of these offenses, which necessarily involve the purpose of temporary use of the obtained funds. Accordingly, by regulating this act, the legislator has allowed for an impossible application of Article 238 of the Criminal Code of the Republic of Moldova. It is inconceivable for the same provision to encompass contradictory acts from the perspective of the criminal intent pursued by the perpetrator (*see: Chapter 3, Subchapter 3.3. and 3.4.*).

The description of personal contributions emphasizes the theoretical significance and practical value of the research. *These personal contributions* are manifested through a comprehensive investigation from theoretical, practical, and normative perspectives regarding the elements of the offenses stipulated in Article 238 of the Criminal Code of the Republic of Moldova. The work is in line with the current incriminating text and remains in unison with the latest extralegal framework. Furthermore, it presents a fresh approach to the crimes defined in Article 238 Criminal Code of the Republic of Moldova.

The personal contributions can be attributed to the following aspects: a detailed analysis of the extralegal normative framework (as a reference for the provisions of Article 238 Criminal Code of the Republic of Moldova), clarification of the dilemma regarding the content of the prejudicial consequences of the investigated offenses, dissociation of the offenses outlined in Article 238 Criminal Code of the Republic of Moldova from some similar criminal acts, identification of good practices related to the criminalization of the act of obtaining compensation or insurance indemnity through deception, determination of the deficiencies in the text of Article 238 Criminal Code of the Republic of Moldova, and proposing legislative measures to address the identified shortcomings.

The research is based on both *legal* and *empirical foundations*, including the text of Article 238 Criminal Code of the Republic of Moldova, laws amending and complementing this provision, general norms of the Criminal Code relevant to the classification of the analyzed offenses (*e.g.*, Articles 26, 27, and 42 Criminal Code of the Republic of Moldova), other incriminating norms found in the Special Part of the Criminal Code that contain offenses subject to comparative analysis concerning the criminal acts specified in Article 238 CrC RM (*e.g.*, Articles 190, 196, 240, 332, and 361 Criminal Code of the Republic of Moldova), relevant extralegal acts, judicial practice regarding the classification of offenses involving obtaining credit, loan, compensation, or insurance indemnity through deception, and penal regulations from the legislation of other states containing norms similar to those in Article 238 Criminal Code of the Republic of Moldova.

The scientific basis of the work comprises scientific materials published by both domestic and foreign authors.

The theoretical significance of the thesis lies in: a) the thorough approach (in some cases, from new perspectives) to the constitutive elements of the offenses specified in Article 238 of the Criminal Code of the Republic of Moldova (CrC RM); b) presenting a solid theoretical foundation necessary for the continuous development of the science of criminal law; c) outlining new research directions; c) providing solutions for optimizing the text of Article 238 CrC RM.

The practical value of the thesis. The work has practical importance as it is based, in part, on the analysis of approximately 140 court decisions. From this point of view, the present thesis can be valuable for practitioners of criminal law (criminal investigators, prosecutors, defense attorneys, judges). The thesis identifies

difficulties faced by practitioners when applying Article 238 CrC RM. Some of these difficulties are due to the poor quality of the incriminating text contained in Article 238 CrC RM.

To facilitate the work of those authorized to apply criminal law, solutions for correctly classifying the committed offenses under the provisions of Article 238 CrC RM are formulated. Additionally, to address problems arising from the poor quality of the legal text in Article 238 CrC RM, proposals for legislative amendments aimed at improving the relevant incriminating framework are presented.

Data on the approval of the results. The main conclusions of the thesis are formulated in 13 scientific publications. Some results have been presented in scientific communications at various national and international forums.

Indicating the limits of the obtained results and identifying unresolved issues. The limits of the obtained results are related to: a) conducting a theoretical investigation of the offenses stipulated in Article 238 CrC RM, including their correlation with other incriminating norms (some of which may be concurrent); b) analyzing extralegal norms (as reference for the text of Article 238 CrC RM); c) researching judicial practice regarding offenses involving obtaining credit, loan, compensation, or insurance indemnity through deception; d) examining provisions from the legislation of other states containing similar criminal acts to those specified in Article 238 CrC RM.

II. Recommendations

1) Modify the title and content of Article 238 of the Criminal Code of the Republic of Moldova (CrC RM) as follows:

"Article 238. Obtaining Credit or Loan by Deception

(1) Obtaining, by deception, from a financial institution, non-banking credit organization, or savings and loan association, a credit or loan in an amount of at least 500 conventional units, if the actions do not constitute embezzlement,

shall be punished [...]

(2) The same act committed in relation to a credit or loan in significantly large proportions

shall be punished [...]."

2) Amend the Criminal Code of RM with a new article:

"Article 190¹. Insurance Fraud"

3) Add a new article to the Criminal Code of RM:

"Article 190². Fraud in Credit Transactions

Fraud in credit transactions, which involves the misappropriation of monetary funds representing a credit or loan from the account of a bank, non-

banking credit organization, or savings and loan association through the presentation of false information or other fraudulent means, shall be punished [...]."

4) Add a new article to the Contravention Code of RM:

"Article 290^l. Obtaining Credit or Loan by Deception Obtaining, by deception, from the account of a financial institution, non-banking credit organization, or savings and loan association, a credit or loan, if the act does not constitute a crime, shall be penalized [...]."

Suggestions for potential future research directions related to the addressed topic:

a) Developing an explanatory resolution on liability for obtaining credit, loan, compensation, or insurance indemnity through deception;

b) Examining criminological and victimological aspects concerning the offenses specified in Article 238 CrC RM.

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

a) In scientific research, contributing to the continuous development of criminal law science; b) In the practical work of individuals responsible for implementing Article 238 CrC RM (criminal investigators, prosecutors, defense attorneys, and judges); c) In the legislative process, considering the implementation of proposed legislative amendments to ensure effective application of Article 238 CrC RM in concrete cases; d) In the education and training of students, master's, and doctoral candidates.

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ADNOTARE

Stratan Andrei, „Răspunderea penală pentru dobândirea creditului, împrumutului sau a despăgubirii/indemnizației de asigurare prin înșelăciune”.

**Teză de doctorat în drept. Școala doctorală de Științe Juridice
a Universității de Stat din Moldova. Chișinău, 2023**

Structura lucrării. Teza cuprinde: Introducere, 3 capitole, concluzii generale și recomandări, bibliografia din 525 titluri, 276 pagini text de bază. Rezultatele sunt publicate în 13 lucrări științifice.

Cuvinte-cheie: credit, împrumut, despăgubire/indemnizație de asigurare, înșelăciune, dobândire, folosință temporară, daune materiale, instituție financiară, organizație financiară nebancaară, asociație de economii și împrumut, asigurător, practică judiciară, studiu comparat.

Domeniul de studiu. Lucrarea face parte din domeniul Dreptului penal, Partea Specială.

Scopul și obiectivele lucrării: Scopul investigației consistă în efectuarea unei cercetări temeinice în materia răspunderii penale pentru dobândirea prin înșelăciune a creditului, a împrumutului, a despăgubirii sau a indemnizației de asigurare, în determinarea și clarificarea dificultăților de transpunere practică a normelor consemnate la art.238 CP RM, precum și în înaintarea unor propuneri legislative care să conducă spre perfecționarea cadrului incriminator în materie.

Pentru atingerea scopului au fost trasate următoarele *obiective*: realizarea unui studiu comparat profundat al reglementărilor normative străine în sfera ce vizează răspunderea pentru dobândirea prin înșelăciune a creditului, a împrumutului, a despăgubirii sau a indemnizației de asigurare; caracterizarea multiaspectuală și temeinică a elementelor componentelor de infracțiune înscrise la art.238 CP RM; delimitarea infracțiunilor specificate la art.238 CP RM de unele fapte conexe, precum și stabilirea corelației între normele ce cuprind aceste fapte; efectuarea unui studiu empiric-jurisprudențial privind la aplicarea practică a art.238 CP RM; depistarea dificultăților de înțelegere a conținutului normelor înscrise la art.238 CP RM și de transpunere a acestora în practică; înaintarea propunerilor *de lege ferenda* pasibile (i) să înlăture carențele de înțelegere și aplicare a normelor de la art.238 CP RM, și să (ii) acopere golurile legislative depistate.

Noutatea și originalitatea științifică a rezultatelor obținute se concretizează în faptul realizării unei cercetări complexe, din perspectivă teoretică, practică și normativă, a elementelor componentelor de infracțiune înscrise la art.238 CP RM. Lucrarea este în consonanță cu textul incriminator actual, precum și în unison cu cadrul extrapenal de ultimă oră. Nu în ultimul rând, lucrarea conține o abordare, de pe noi poziții, a infracțiunilor prevăzute la art.238 CP RM.

Problema științifică importantă soluționată rezidă în elaborarea unui cadru conceptual complex și comprehensiv cu privire la conținutul constitutiv al infracțiunilor prevăzute la art.238 CP RM, fapt ce a contribuit la identificarea unor neajunsuri pe cale le cuprinde articolul indicat și, în consecință, a unor dificultăți de transpunere în practică a acestui articol, ceea ce, în rezultat, a permis să formulăm recomandări *de lege ferenda* apte să conducă la perfecționarea textului incriminator cercetat și la buna sa aplicare.

Semnificația teoretică și valoarea aplicativă a lucrării. *Semnificația teoretică a tezei* constă în: a) abordarea temeinică (în unele cazuri, de pe noi poziții) a elementelor constitutive ale infracțiunilor prevăzute la art.238 CP RM; b) prezentarea unui suport teoretic solid, necesar pentru dezvoltarea continuă a științei dreptului penal; c) trasarea unor noi direcții de cercetare; c) oferirea soluțiilor de optimizare a textului art.238 CP RM. *Valoarea practică a tezei.* Lucrarea comportă însemnătate practică, întrucât aceasta este fundamentată, inclusiv pe analiza a cca 140 de hotărâri judecătorești. Din acest punct de vedere, lucrarea de față poate fi utilă practicienilor dreptului penal (ofițerilor de urmărire penală, procurorilor, avocaților, judecătorilor). În teză sunt identificate dificultăți cu care se ciocnesc practicienii dreptului penal atunci când aplică art.238 CP RM. Pentru a facilita activitatea persoanelor îndrăgite să aplice legea penală sunt formulate soluții de încadrare corectă a celor comise în tiparul art.238 CP RM.

Implementarea rezultatelor științifice. Acestea își găsesc aplicare în procesul de instruire a studenților și masteranzilor de la facultățile de drept din instituțiile de învățământ superior.

АННОТАЦИЯ

Стратан Андрей, „ Уголовная ответственность за получение кредита, займа или страхового возмещения и/или компенсации путем обмана”.

Диссертация на соискание ученой степени доктора юридических наук. Докторская Школа Юридических Наук Государственного Университета Молдовы. Кишинев, 2023

Структура работы: Диссертация содержит: введение, 3 главы, общие выводы и рекомендации, библиографию, включающую 525 наименования, 276 страницы основного текста. Полученные результаты были опубликованы в 13 научных работах.

Ключевые слова: кредит, заем, страховая выплата/компенсация, обман, приобретение, временное использование, материальный ущерб, финансовое учреждение, небанковская финансовая организация, кредитно-сберегательная ассоциация, страховщик, судебная практика, сравнительное исследование.

Область исследования: Диссертация является частью Уголовного права, Особенная часть.

Цель диссертационного исследования и задачи исследования состоит в проведении тщательного исследования в области уголовной ответственности за получение кредита, займа, компенсации или страхового возмещения путем мошенничества, определение и устранение практических трудностей, связанных с применением норм, содержащихся в статье 238 УК РМ, а также разработка законодательных предложений, направленных на усовершенствование уголовно-правовой базы в этой области. Для достижения этой цели были поставлены следующие задачи: проведение глубокого сравнительного исследования нормативных актов зарубежных стран, касающихся уголовной ответственности за получение кредита, займа, компенсации или страхового возмещения путем мошенничества; многогранное и тщательное описание элементов составляющих преступления, описанных в статье 238 УК РМ; разграничение указанных в статье 238 УК РМ преступлений от некоторых связанных деяний, а также установление взаимосвязи между нормами, содержащими эти деяния; проведение эмпирически-юридического исследования по вопросам практического применения статьи 238 УК РМ; выявление трудностей в понимании содержания норм, содержащихся в статье 238 УК РМ, и их применении на практике; разработка законодательных предложений, которые могут (i) устранить недостатки в понимании и применении норм статьи 238 УК РМ, и (ii) заполнить выявленные пробелы в законодательстве.

Научная новизна и оригинальность полученных выводов выражается в проведении комплексного исследования, с учетом теоретического, практического и нормативного аспектов, элементов состава преступления, предусмотренного в статье 238 УК РМ. Работа соответствует действующему законодательству, а также последним изменениям во вне-уголовном секторе. Также, работа содержит новый подход к преступлениям, предусмотренным в статье 238 УК РМ.

Решенный важный научный вопрос заключается в разработке сложного и всеобъемлющего концептуального каркаса относительно составляющих элементов преступлений, предусмотренных статьей 238 УК РМ. Это привело к выявлению недостатков, содержащихся в этой статье, и, следовательно, к трудностям в ее практической трансформации, что позволило сформулировать рекомендации по законодательной деятельности, способные привести к усовершенствованию изучаемого уголовного текста и его правильного применению.

Теоретическая значимость и практическая применимость результатов исследования. Значение исследования в теоретическом плане заключается в следующем: а) тщательный подход (в некоторых случаях - с новых позиций) к элементам состава преступлений, предусмотренных статьей 238 УК РМ; б) представление надежной теоретической базы, необходимой для непрерывного развития науки уголовного права; в) новые направления исследований; с) решения для оптимизации текста статьи 238 УК РМ. Практическое значение тезиса. Работа имеет практическое значение, так как она основана, в том числе, на анализе около 140 судебных решений. С этой точки зрения, данная работа может быть полезна практикующим уголовным юристам (следователям, прокурорам, адвокатам, судьям). В диссертации выявлены трудности, с которыми сталкиваются практикующие уголовного права при применении статьи 238 УК РМ. Чтобы облегчить деятельность уполномоченных лиц по применению уголовного закона, предложены решения для правильной квалификации совершенных действий в соответствии со статьей 238 УК РМ.

Внедрение результатов диссертационного исследования. Они находят применение в процессе обучения студентов юридических факультетов высших учебных заведений.

ANNOTATION

Stratan Andrei, “Criminal liability for obtaining credit, loan, or insurance compensation/indemnity by deception”.

PhD Thesis, Doctoral School in MSU Doctoral Law School Chisinau, 2023

Thesis structure: Introduction, 3 chapters, general conclusions and recommendations, bibliography of 525 titles, 276 pages basic text. The fundamental ideas and scientific results are exposed and published in 13 scientific papers.

Keywords: credit, loan, insurance compensation/indemnity, deception, acquisition, temporary use, material damages, financial institution, non-bank financial organization, savings and loan association, insurer, judicial practice, comparative study.

The domain of study: This thesis belongs to the Criminal Law domain, the Special Part.

The purpose and objectives of the study is to conduct a thorough research on the criminal liability for acquiring credit, loan, insurance compensation or indemnity through deception, to identify and clarify the practical difficulties in implementing the provisions of Article 238 of the Criminal Code of the Republic of Moldova, as well as to propose legislative solutions that would lead to the improvement of the incrimination framework in this area.

In order to achieve the goal, *the following objectives were outlined:* conducting a thorough comparative study of foreign regulatory provisions in the sphere of responsibility for obtaining credit, loans, compensation, or insurance benefits through deception; a comprehensive and thorough characterization of the multi-aspect elements of the components of the offense listed in Art.238 of the Criminal Code of Moldova; distinguishing the offenses specified in Art.238 of the Criminal Code of Moldova from some related acts, as well as establishing the correlation between the rules that include these acts; conducting an empirical-jurisprudential study regarding the practical application of Art.238 of the Criminal Code of Moldova; identifying difficulties in understanding the content of the rules listed in Art.238 of the Criminal Code of Moldova and their implementation in practice; proposing a *lege ferenda* that can (i) eliminate deficiencies in understanding and applying the rules of Art.238 of the Criminal Code of Moldova, and (ii) cover the identified legislative gaps.

The scientific novelty and originality of the obtained results resides in conducting a comprehensive theoretical, practical, and normative research on the components of the offense specified in Article 238 of the Criminal Code of the Republic of Moldova. The work is in line with the current criminal text, as well as in track with the latest extra-criminal framework. Last but not least, the paper contains a new approach to the offenses provided for in Article 238 of the Criminal Code of the Republic of Moldova.

The solved scientifically issue consists of developing a complex and comprehensive conceptual framework regarding the constituent content of the offenses provided for in Article 238 of the Criminal Code of the Republic of Moldova. This has contributed to identifying shortcomings in this article and, consequently, difficulties in its practical implementation. As a result, recommendations for *lege ferenda* have been formulated to improve the investigated incriminatory text and ensure its proper application.

The theoretical importance and the practical value of this thesis. The theoretical significance of the thesis lies in: a) a thorough approach (in some cases, from new perspectives) to the constitutive elements of the offenses provided for in Article 238 of the Criminal Code of the Republic of Moldova; b) providing a solid theoretical basis necessary for the continuous development of the science of criminal law; c) outlining new research directions; and d) offering solutions to optimize the text of Article 238 of the Criminal Code of the Republic of Moldova. The practical value of the thesis is significant, as it is based on the analysis of approximately 140 court decisions. From this point of view, the thesis can be useful to criminal law practitioners (criminal investigators, prosecutors, lawyers, judges). The thesis identifies the difficulties that criminal law practitioners face when applying Article 238 of the Criminal Code of the Republic of Moldova. In order to facilitate the work of those authorized to apply criminal law, there were proposed certain solutions for correctly qualifying offenses within the framework of Article 238 of the Criminal Code of the Republic of Moldova.

The implementation of the scientific results. They are applied in the process of training students from the law faculties of higher education institutions.

STRATAN ANDREI

**CRIMINAL LIABILITY FOR OBTAINING CREDIT, LOAN, OR INSURANCE
COMPENSATION/INDEMNITY BY DECEPTION**

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