



## Statements by the Prism of the Criminal Law

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**Abstract:** *Analyzing in detail the notion of justice, it has several meanings, two of which are directly related to the study of the court system: justice is a function - the function of the judge to decide on conflicts between different subjects of law enforcement respectively, justice is all the activities which contribute, directly or indirectly, may exercise the judicial function. In fact, the primary purpose of this article, highlighting the need for protection is the accuracy of the information through the criminal rules. The problem arises when the statements of witnesses against a person narration and/or information that don't correspond to reality. Perjury in judicio falsitas is that a witness who, in a criminal, civil, disciplinary or any other case in which listening to witnesses, making false statements, or does not say everything he knows concerning the circumstances essential to the which was asked and is prosecuted by the provisions of articles of Criminal Code.*

**Keywords:** *statements; justice; veracity; truth; false statements criminal liability*

Ensuring accessible and functional justice is one of the priority objectives of judicial reform. The primary role in resolving social conflicts is played by the state. On the other hand, an imminent danger to the current judiciary, but also to political rights, labor rights, other constitutional rights of citizens, public trust, other areas are presented by ill-willed statements, which produce various legal consequences, necessary to resolve certain relationships. social. In this context, the legal-criminal protection of the declarations producing legal consequences implies a nuanced topicality. The criminal acts regarding the stated statements undermine the normal activity of the judicial system and the law enforcement bodies, they infringe the act of justice. In order to satisfy the imperatives of the criminal policy, the state's reaction to the commission of any crimes must materialize in the restoration

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of the rule of law and the prosecution and sanctioning of the perpetrators. The administration of justice, in a broad sense, is the activity of the courts to seek and establish what is just and correct in the cases it resolves. Justice is the art of good and equity (*Jus est ars boni et aequi*).

An effective lever in ensuring the legality of evidence is the criminal law, with certain rules of incrimination. Copyright, public trust, other social spheres also raise criminal protection against malicious statements, producing legal consequences, as ensured by the rules of criminality provided by the Criminal Code of the Republic of Moldova. Here is a part of the instrument of legal-criminal protection of the declarations producing legal consequences. The functional purpose of this instrument is to guarantee the objective establishment, through prohibitions and measures of criminal law, of the circumstances of the case, as well as to respect the rights and freedoms of the person. At the same time, the arguments put forward point out that these rules of law, in most of cases, are non-functional. In addition to the relatively high latency of these categories of offenses, certain clauses address the lack of clarity and insufficient elaboration or sometimes approximation of the rules of criminal law, their complete inconsistency with the rules of criminal procedure. All these realities create difficulties in the unequivocal interpretation and in the uniform application of the rules of law on liability for declarations of ill-will in criminal law. Also, in the case of the submission of certain forensic statements, in each separate case, their harmful consequences are fully considered. A prudent attitude is also needed to determine certain criteria that differentiate criminal liability in the situation of regulating the components of crime related to the legal-criminal protection of statements producing legal consequences.

In fact, the primary purpose of this analysis is to highlight the need to protect the veracity of information through the rules of criminal law. The problem arises when the statements made by witnesses against a person contain information and / or data that do not correspond to reality, so they are not true.

The statements of the witness mean the reports made before the law enforcement bodies by persons who have knowledge of a nature to serve to find out the truth in a criminal trial knowingly, the term that would be equivalent to knowing, having full knowledge of the facts. Considering the provisions of art. 312 Criminal Code of the Republic of Moldova false statement, false conclusion or incorrect translation we can say that the person giving statements does so knowingly or in good faith.

Intimate conviction of a person that what he does is right, according to the law; obligation to behave in accordance with the rules of coexistence, which rests with the parties when concluding and executing an agreement. Good

faith has an important role in the activity of law enforcement agencies, its existence is manifested in the adoption of sound and legal solutions. The legal concept of good faith was founded by the Roman jurist Cicero and is found under different definitions in modern doctrines of law.

Good faith is also the subject of several articles in the Civil Code. It is also important to distinguish between the witness of good faith and the witness of bad faith (false witness).

If we are referring to false testimony *falsitas in iudicio* is the act of the witness who, in a criminal, civil, disciplinary case or any other case in which witnesses are heard, makes false statements or does not say everything he knows about essential circumstances on which was asked and is incriminated by the provisions contained in art. 312 of the Criminal Code of the Republic of Moldova. At the same time, two other crimes are incriminated in the mentioned article: false conclusion and incorrect translation or interpretation.

By presenting the false conclusion is meant the action of presenting reports with conclusions that do not correspond to the truth on the occasion of the performance by the specialist or expert of the technical-scientific or medico-legal finding and, respectively, of the expertise.

To present an incorrect translation means to make a false translation in writing either by false statements made by the translator in the translation operations or by omission, i.e. of passing over in silence some ideas that were to be translated.

The statements of those witnesses who make false statements or do not say everything they know about the essential circumstances about which they were asked are socially dangerous, in that they hinder, confuse and compromise the work of the judiciary, and may implicitly lead to untrue solutions.

The false testimony has as an immediate consequence the creation of a state of danger for the normal development of the activity of the administration of justice. This state of danger is likely to lead to an unfair settlement of the case. In this sense, the doctrine and in the national practice accept a position in which it is considered that the crime from art. 312 of the Criminal Code of the Republic of Moldova is consumed when the hearing of the witness, who made false statements, ended and he signed his statement, so for the consumption of the crime of perjury it is not necessary to have ruled unjustly, but it is enough that because of the false statements made by the witness, there is a danger that such a solution will be pronounced. If this danger materializes, then this will be taken into account when individualizing the punishment.

With reference to the criminal liability for the declaration of ill-will producing legal consequences, the concepts of the authors Sergiu Brînză and Vitalie Stati are also of interest, stating that for the qualification of the deed based on art. 309 of the Criminal Code, it does not matter if the person is forced to make false or truthful statements. Likewise, it does not matter whether the expert is compelled to make a false or truthful conclusion. In this respect, the offense specified in art. 309 of the Criminal Code differs from the offense provided in art. 314 Penal Code.

In the latter case, the liability applies to the compulsion of the witness or injured party to make only false statements, or of the expert to make only false conclusions. As for the translator or interpreter, he is forced to make an incorrect translation or interpretation both in the case of the offense provided by art. 309 of the Criminal Code, as well as in the situation of the crime specified in art. 314 Penal Code. They also indicate that it is necessary for the perpetrator to show good knowledge when committing the crime specified in art. 312 Penal Code. Perception errors are a normal phenomenon in our lives, so that these misjudgments of reality, perceived in relation to what really happened, are possible.

Next, we highlight the opinion of the same authors according to which the declarations with the attribution to produce, according to the law, legal consequences are specified in different normative acts that refer to declarations having this attribute. The circumstances that give a statement the ability to produce legal consequences are exceptional circumstances that do not allow delays in considering a statement (force majeure, state of necessity, etc.). In the opinion of the authors Sergiu Brînză and Vitalie Stati, no. 3, art. 3301 Criminal Code of the Republic of Moldova, but para. 2, art. 315 of the Criminal Code of the Republic of Moldova, if the information in the declarations regarding income and property, as data of the criminal investigation, in the context of the criminal investigation or in connection with it, will be disclosed by the person conducting the criminal investigation or by the person empowered with control over the conduct of the criminal investigation, if this action caused moral or material damages to the witness, the injured party or their representatives, or if he made the guilty party evade liability. In the view of the authors Sergiu Brînză and Vitalie Stati, liability will be applied in accordance with certain criminal norms, not according to art. 3521 of the Criminal Code of the Republic of Moldova, if the untrue statement has a special quality: inauthentic data on damages with excessive environmental pollution, radioactive, chemical, bacteriological or other dangerous consequences for the life or health of the population, environmental pollution (art. 255 Criminal Code of the Republic of Moldova); distorted data on income or expenses, or expenses that are not

based on real operations, or that are based on operations that did not exist (art. 244 Criminal Code of the Republic of Moldova); inauthentic or misleading information to be included in the prospectus or other documents on the basis of which the issue of securities is recorded, or the results of the issue are manifestly inauthentic (art. 245 Criminal Code of the Republic of Moldova); knowingly lying information about the act of terrorism (art. 281 Criminal Code of the Republic of Moldova); knowingly misleading information in the form of a complaint against a person who has committed a crime, presented to a body or person in charge, who are entitled to prosecute. In similar cases, instead of art. 3521 of the Criminal Code of the Republic of Moldova, the norms of the Contravention Code may be applied.

It should be noted that the same authors mention that in some cases, false statements may be part of a whole. Thus, in accordance with the rule set out in art. 118 of the Criminal Code of the Republic of Moldova, liability shall apply not for the offense provided in art. 3521 of the Criminal Code of the Republic of Moldova, but for one of the offenses specified in art. 190, 196, 353, 355 (when it involves the presentation of false documents) or others, from the Criminal Code.

The objective side of the crime provided in par. 3, art. 3301 Criminal Code of the Republic of Moldova consists in the prejudicial act expressed in the action. This action shall be taken in respect of information in statements of income and property which have become known in the course of the performance of duties or the exercise of control. The alternative modalities of the prejudicial action specified in par. 3, art. 3301 of the Criminal Code of the Republic of Moldova are: 1) disclosure; 2) publication.

By "disclosure" is meant the disclosure of appropriate information about certain persons who should not have known it. Disclosure may be made orally or in writing. It does not matter whether the information, which is the intangible object of the offense in question, was transmitted to a single person, several persons or a large group of persons. By "publication" is meant the editing or circulation of relevant information or the opening of access to it through electronic information systems. In case of publication, the information that represents the immaterial object of the crime provided in par. 3, art. 3301 Criminal Code of the Republic of Moldova are transmitted to a wide circle of persons. In this respect, publication often involves a comparatively higher degree of harm than disclosure. The means of committing the crime in case of publication may be the following: written or electronic media; flyers; posters, including electronic posters, etc .

The work of the authors Sergiu Baieş and Nicolae Roşca was also important, where it is stated that most often, the law does not describe the actions that can be considered as committed in good faith or in bad faith. In principle,

this is impossible, because, in reality, it is difficult to envisage the full range of actions that can be considered as a bad faith exercise of civil rights. However, in some cases, the legislator has determined which actions fall into the category of what is called the exercise of rights in bad faith. Such actions are considered illegal. The person who commits such actions shall be subject to the sanctions provided for by law”.

The subject of the topic is also referred to by the researcher Canțer Oleg, who specifies the following: a lawsuit can only be successful when it is based on a minimum of evidence. Although the evidence on which a trial is based is extremely varied, the statements of the witness are, in many cases, decisive for the settlement of a lawsuit. For this reason, witnesses are given a special place not only in procedural law, but also in other socio-legal sciences. In other words, the witness is not a strictly legal category. If the information held by the witness does not obtain legal value, if it remains, for some reason, only in the mind of the witness, it is simply useless, because, from a legal point of view, this information simply does not exist.

The next paper in question is that of the authors Stanislav Copețchi and Igor Hadîrcă, who, examining the subject of error and its influence on the classification of the crime, state that in the process of applying the legal-criminal norms we encounter situations when a legal-criminal assessment must be given prejudicials committed on the basis of erroneous representations about objective reality. This is the case for crimes committed under the influence of error. The rule is that, in accordance with the principle of guilt, enshrined in art. 6 of the Criminal Code of the Republic of Moldova, the perpetrator is to be held criminally liable only for the prejudicial act committed with guilt. The perpetrator should be charged only with those objective circumstances which have been brought to his notice. When committing intentional crimes, the person may be wrong in one or the other circumstance, and the admitted mistake may significantly influence the content of the guilt, therefore - also on the criminal liability. In particular, the presence of the error can have a decisive influence on the classification of the act committed.

Remarkable for our study is the work of a group of authors led by the authors Alexei Barbăneagră, Gheorghe Alecu, Viorel Berliba and others, where it is established that the form of materialization of guilt in determining the fraudulent behavior in the segment of declarations producing legal consequences is to be taken into account only the intention. The intention in the criminal norm is characterized in terms of its manifestation in two ways: a) the direct intention is manifested in the situation where the person realizes the harmful nature of his action or inaction, predicts its harmful consequences and wants the consequences; b) the indirect intention is

manifested in the situation in which the person realizes the degree of damage of the deed, foresees its prejudicial consequences, does not want, but consciously admits the occurrence of these consequences. The understanding of the prejudicial character of the deed and the provision of its consequence constitutes the intellectual element of the intention, and the desire or conscious admission of the occurrence of the prejudicial consequence represents its volitional element. The understanding of the prejudicial character of the deed committed both by direct intention and by indirect intention includes the representation in the person's conscience of the object of the crime, action, or inaction by which the criminal activity is carried out.

The volitional element of intention is characterized by a certain volitional attitude towards the harmful consequence. The person who acts with direct intent wants the harmful outcome to occur and deliberately strives to achieve the desired result. Unlike the direct intention, when committing the crime by indirect intent, the person, providing for the possibility of the actual occurrence of the prejudicial consequence, does not want it, but consciously admits it. He therefore has an attitude of indifference, of indifference to the harmful consequences. According to the author Alexei Barbăneagră, the crime (art. 1853) consists in intentionally lying to AGEPI in order to produce a legal consequence in favor of the person submitting the declaration or in favor of another person and to the detriment, and to undermine the authority of the person holding the title. protection of the object of the industrial property or made the national regulatory deposit.

Also in this paper, the researcher Gheorghe Ulianovschi, characterizing the objective side of the crime component provided by art. 309 of the Criminal Code, mentions that it is incriminated in two variants. The objective side in both variants is characterized by the coercive action that differs from one variant to another by the methods of its implementation. In par. 1 art. 309 of the Criminal Code, the coercive action is carried out through threats or other illegal acts, and in para. 2 art. 309 - by violence or accompanied by the conclusion of the plea agreement. To constrain in the sense of par. 1 and 2 art. 309 Criminal Code means to force, to force the person under interrogation (heard) to make statements, to force the expert to conclude, or the translator, the interpreter to make an incorrect translation or interpretation. The use of threats means the use of psychic coercive means likely to cause a state of fear, under the control of which the mental freedom of the threatened person is achieved. In the case of coercion by threat of murder or serious intentional harm to bodily integrity or health, the actions of the perpetrator fall only based on para. 1 art. 309 Penal Code. The use of violence means the use of means of physical coercion, the use of one's own force or another coercion. From the comparative analysis of the provisions

of art. 309 and 3091 of the Criminal Code, it results that the analyzed crime includes violence that by its nature cannot be considered as torture. Other illegal acts of coercion may be considered the hearing of the suspect or accused in a state of fatigue or during the night, insulting and humiliating the witness for the purpose of his determination to testify, and other inhuman or degrading treatment that does not constitute torture. Coercion accompanied by the conclusion of the plea agreement means the coercion of the accused, by the methods mentioned, at the conclusion of such an agreement. The constraint to make statements is the crime with a formal component (dangerous crime). For its existence, it does not matter whether the statements, conclusions, interpretations, or translations have been obtained or not, statements, conclusions or interpretations and translations have been obtained, whether desired or unwanted, true, or false. This situation is because through the provisions of art. 309 of the Criminal Code, the very methods of obtaining statements, conclusions, interpretations, or translations are incriminated. Therefore, the immediate criminal consequence of coercion is to create a state of danger for the normal conduct of criminal proceedings.

According to the author Gheorghe Ulianoschi, the phrase presenting the false conclusion is deciphered as an action to present reports with conclusions that do not correspond to the truth when performing by the specialist or expert the technical-scientific or medico-legal finding and respectively - the expertise. It constitutes a material element of the false conclusion and the false statements made by the expert at the hearing under the conditions of art. 153 Code of Criminal Procedure. At the same time, we mention the fact that, in the opinion of the author Gheorghe Ulianoschi, physical coercion is manifested by the exercise of violence that generates physical suffering. The legislator, when incriminating the deed provided by this article, by physical coercion has in view the ill-treatment or other acts of violence other than those provided in art. 151-152 Penal Code. If, through the physical coercion of the witness, the injured party, the expert, the translator or the interpreter, one of the consequences of the facts provided by art. 151-152 Criminal Code, the compulsion to make false statements, to draw false conclusions or to make incorrect translations or interpretations is in ideal competition with one of these crimes. Psychic coercion is achieved through various illegal acts of mental violence, such as threatening to kill or injuring bodily integrity or health, damaging property, or abducting a witness, interpreter, translator, relatives.

We also consider the statements of the researcher Gîrlea Anastasia, who considers that the false statement of the witness or the injured party has the capacity to affect the normal activity of the judicial bodies. The social danger



of these facts is determined by the fact that they are able to lead the law and judicial bodies in the wrong way. It is precisely because of false statements that situations of criminal release of guilty persons, unfounded application of a milder punishment and conviction of those who are not guilty are possible. The false statement of the witness or of the injured party directly attacks the normal and correct activity of the court and of the criminal investigation bodies, oriented towards the accomplishment of the tasks of justice. For this reason, the general object of the criminal components examined is the correct activity of the courts. The direct object of the examined components is determined according to the concrete social relations, which are affected because of the false statements.

As the author Gîrlea Anastasia mentions in another of her works, unlike the false denunciation, the content of the false statement encompasses a larger circle of information. The false statement may relate to the distortion of the circumstances and facts to be established in a specific case, including data on the person of the accused, the injured party and the nature of the witness's relations with these persons, on guilt, consequences, etc. Some differences persist in the forms of materialization, external reflection of these crimes. False reporting always involves taking active action, while a false statement can also be made through inaction (for example, failure to disclose circumstances that are essential to determining the person's guilt). This delimitation is based on the different nature of the offenses in question. The false statement is always given in a criminal case already filed, and the false denunciation of the commission of a crime serves as the very basis and basis for initiating criminal proceedings.

We also attribute the works of the author Vitalie Stati to the category of materials used in our research process. The author notes that the declaration on income and property (within the meaning of the Law on the Declaration and Control of Income and Property of State Officials, Judges, Prosecutors, Civil Servants and Leaders, adopted by the Parliament of the Republic of Moldova on 19.07.2002) cannot represent the material object of the crime provided in art. 2441 Criminal Code of the Republic of Moldova. According to para. 2 and 3 of the Law on the declaration and control of revenues and property of state dignitaries, judges, prosecutors, civil servants and persons with management positions, failure to submit the declaration by the subject of the declaration within the deadlines established in art. 8 of the said law constitutes a contravention and is sanctioned according to art. 3302 of the Contravention Code; the intentional indication in the declaration of inaccurate or incomplete data constitutes a crime and is punished according to art. 3521 Criminal Code of the Republic of Moldova.

The late presentation of the fiscal report (including the declaration regarding the income tax) does not attract the responsibility for one of the offenses provided in art. 2441 Criminal Code of the Republic of Moldova. Likewise, it can be argued that the evasion of the presentation of the declaration regarding the income tax does not attract the liability according to par. 2 art. 260 of the Fiscal Code. In conclusion, only the categorical and definitive evasion from the presentation of the declaration regarding the income tax falls under the incidence of art. 2441 Criminal Code of the Republic of Moldova. If such theft is limited in time, the liability will be applied based on para. 2 art. 260 of the Fiscal Code.

Under the incidence of par. 1 art. 2441 of the Criminal Code of the Republic of Moldova includes only the inclusion in the income tax return of data distorted by the declarant. This rule does not apply in the event of falsification of that document by way of either counterfeiting (i.e. making a false income tax return) or altering the content of the authentic income tax return. In such cases, depending on the quality of the subject, the corresponding provision of art. 332 or 361 Criminal Code of the Republic of Moldova.

The application of par. 1 art. 2441 of the Criminal Code of the Republic of Moldova (assuming the inclusion of distorted data in the income tax return) excludes the application of art. 3521 Criminal Code of the Republic of Moldova. Or, in the analyzed hypothesis, par. 1 art. 2441 of the Criminal Code of the Republic of Moldova must be regarded as a special norm in relation to art. 3521 Criminal Code of the Republic of Moldova. For similar reasons, it will not be necessary to further apply one of the provisions of art. 361 Criminal Code of the Republic of Moldova (considering the hypothesis of using false official documents, which grant rights or release from obligations).

The dangerous nature of the crime is also recognized by the practice of some courts in other states, such as France, which inserts between the specific elements of the act the possibility of causing damage. This practice repressed false testimony, even if it did not have an effective influence on the solution of the trial, but no doubt such an intention on the part of the perpetrator existed.

It can be stated, therefore, that in the administration of justice, the statements of witnesses, as well as expert reports, are considered evidence, they contribute to finding out the truth and thereby to solving the case in which they are administered. The soundness of the evidence depends on the accuracy of the evidence and the likelihood of those who are competing to find out the truth.

Finally, it is necessary that the statement made be one of those statements which, according to the law or the circumstances, serve to produce a legal consequence. In other words, it is required that the statement have, according to the law or circumstances, probative value and legal efficiency, be able to serve, by the very fact that it was made, to produce the legal consequence considered by the perpetrator.

The incorrect statement of truth made to a competent body and producing legal consequences has, in some cases, a distinct incrimination. In such cases, the act constitutes another offense.

As our practice shows, offenses against ill-will, which have legal consequences, are largely latent. This belief is required because of the analysis of materials in criminal cases. At present, there is no appropriate response to cases of false statements, false statements, as varieties of falsification of evidence.

### **Conclusion**

We consider that one of the obsessive causes of the situation is the difficulties encountered in the legal classification of such facts and the argumentation of the elements of the criminal composition. They are largely determined by the absence of a correct perception of the signs of the components of the crime, which undermines the statements producing legal consequences. A cause of this situation is also due to errors in the wording of the provisions related to the rules of criminal law regarding criminal liability for the declaration of ill-will, producing legal consequences, which has the effect of misinterpreting the law.

Viewed in all their complexity, the activities of the administration of justice carried out in the criminal process are aimed at finding out the truth so that no innocent person is held criminally liable and unjustly convicted.

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