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APPLICATION OF THE PRINCIPLE OF LEGALITY IN THE PUNISHMENT OF CRIMINAL ACTS OF PRODUCTION, TRANSPORTATION, STORAGE, MARKETING, OFFERING FOR SALE OR FREE OF CHARGE OF PRODUCTS, PROVISION OF SERVICES, DANGEROUS TO THE LIFE OR HEALTH OF CONSUMERS

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Abstract. This paper addresses the application of the principle of criminal legality in the context of the offences provided for in article 216 of the Criminal Code of the Republic of Moldova, which punishes the production, transportation, storage, sale or supply of products and the provision of services that are dangerous to the life or health of consumers. The paper examines the requirements of clarity, predictability, and proportionality of criminal law and the need to distinguish between criminal, administrative, and civil liability in order to avoid the excessive application of criminal sanctions. It highlights the role of technical expertise as a procedural guarantee of the principle of legality, since only through an objective assessment can the dangerous nature of a product or service be determined. At the same time, the study correlates national regulations with European standards on product safety, established by Directive 2001/95/EC, Regulation (EU) 2023/988 and Directive 85/374/EEC, as well as with the case law of the Court of Justice of the European Union. The conclusions highlight that criminal liability should only be imposed as a last resort, in cases of real and proven danger, ensuring a balance between consumer protection and the legal security of economic operators.

Keywords: *criminal liability, consumer protection, dangerous products, principle of legality, technical expertise, product safety.*

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Introduction

In a functional market economy, protecting the life and health of consumers is an essential dimension of public policy and legal regulation. In this context, the criminal liability of economic operators for marketing dangerous products or providing dangerous services is an expression of the coercive function of the state, but also a constant challenge in terms of the compatibility of such measures with the fundamental principles of criminal law.

The article 216 of the Criminal Code of the Republic of Moldova criminalizes the production, transportation, storage, sale, or offering of products or services that are dangerous to the life or health of consumers [14]. The degree of harm caused by crimes against public health and social coexistence stems from the very nature of the social values that are endangered. The immediate legal object is social relations, whose existence and normal functioning are conditioned by the protection of public health. From an objective point of view, this crime is generally committed through action, and its composition is formal, since the act is considered to have been committed from the moment of transporting, storing, marketing, or offering dangerous products or services, regardless of whether a material result has occurred [9].

Conversely, for paragraph 2, letter b) (if they have caused serious or moderate injury to health or death of a person through negligence) and paragraph 3, letter c) (if they have caused the death of two or more persons), the composition is material, and the act is consummated from the moment the

harmful consequence occurs, i.e., serious or moderate injury, or the death of two or more persons[9]. The subjective aspect of the crime can be expressed in most cases by intent, i.e., the person was aware of the harmful nature of their action or inaction, foresaw its harmful consequences, desired them, or consciously accepted that these consequences would occur [14]. The material object of the offense is, as a whole, products that are dangerous to the life or health of consumers, and for the acts incriminated in paragraph 2, letter b) and paragraph 3, letter c), it is the physical body of the person [9]. We must especially recognize that this legal norm combines elements of economic criminal law, consumer protection and prevention of public risks, but it also raises important questions from the perspective of the application of the principle of criminal legality.

The principle of legality, enshrined in article 22 of the Constitution of the Republic of Moldova and in article 7 of the European Convention on Human Rights (ECHR), requires that any criminal sanction be applied only on the basis of a clear, precise and predictable law [15], [10]. This principle is essential for the legal security of the person, but also for the protection of economic freedom in the context in which commercial activities may be subject to complex and constantly changing technical rules.

This article analyzes, from a theoretical and practical perspective, how the principle of legality should guide the application of article 216 of the Criminal Code of the Republic of Moldova, insisting on the need for a restrictive interpretation, the use of technical expertise as a fundamental evidentiary tool, as well as on the clear delimitation between criminal, contravention and civil liability. The comparative dimension is also addressed, by referring to the relevant standards of European Union law on the safety of products and services.

1. The principle of legality and its requirements in the application of article 216 of the criminal code of the republic of moldova

The principle of legality in criminal matters implies that a person may not be held criminally liable except on the basis of a clear, accessible and foreseeable criminal norm. This principle is enshrined both at the national level (article 22 Constitution of the Republic of Moldova) [15], as well as internationally (article 7 ECHR) [10], and the case law of the European Court of Human Rights has established that criminal law must be sufficiently clear so that any person can reasonably adapt his or her behavior and its consequences [3].

In the case of article 216 of the Criminal Code of the Republic of Moldova, the central challenge derives from the general nature of the phrase „products or services dangerous to life or health” [3]. This wording, although it provides a general framework of protection, may generate legal uncertainty if it is not interpreted restrictively and in accordance with the requirements of legality. At the same time, the text of art. 216 imposes cumulative conditions for incurring criminal liability: the act must be committed „in large proportions” (para.1) [14], and for aggravated forms it is necessary to produce a harmful consequence (serious, moderate injury or death – para. 2 and 3) [14], or committed by an organized criminal group [14]. These elements cannot be assumed, but must be demonstrated by objective means, within a framework of strict legality.

To avoid arbitrary or extensive application of the rule, the following elements must be clearly established:

- What constitutes a „dangerous product”? Is non-compliance with technical standards sufficient or is a proven risk to life/health required?
- What means „dangerous”? Is a concrete danger needed or is a hypothetical danger sufficient?
- Is it required to prove the perpetrator's intention or is fault sufficient?

The answers to these questions must be sought in a systematic and teleological interpretation of the norm, corroborated with the relevant case law and the general principles of criminal law. Only in this way can the unjustified extension of criminal liability be avoided to the detriment of legal predictability and the function of ultima ratio of criminal law. [1, p.21].

Article 216 of the Criminal Code of the Republic of Moldova sanctions the production, transportation, storage, sale or offering of products or services that are dangerous to the life or health of consumers. However, the relatively general wording of the criminal text generates multiple problems of interpretation and application, calling into question the requirements of legality.

Expressions like „dangerous products” or „dangerous services” are not defined in the Criminal Code or in any other criminal normative act, which creates an area of legal uncertainty.

In this context, Law No. 162/2023 on market surveillance and product conformity makes an essential contribution to clarifying terminology [20]. Article 3 of that law provides detailed definitions, establishing that:

- a product that „presents a risk” is a product that, during normal use or under foreseeable conditions, may cause harm to health, safety or the environment;
- a product that „presents a serious risk” is one that involves a significant threat, even in the absence of incorrect use, and which requires immediate intervention by the authorities [20].

These definitions are not only technical, they have legal value and must be used as a reference point in interpreting the material element of the crime provided for in article 216 of the Criminal Code of the Republic of Moldova.

Thus, for an act to be classified as a crime, it is necessary that the product or service falls into one of these categories and be accompanied by a real danger, proven by scientific methods.

In addition, according to article 18 of Law No. 162/2023, the competent authorities must assess whether the product presents a risk, and this assessment must be carried out on the basis of clear criteria, such as the nature of the hazard, the probability of its occurrence, the severity of the consequences and the potential frequency of consumer exposure [20]. These elements allow the outline of an objective analysis matrix, avoiding arbitrariness and equivocal interpretation in the criminal classification of the act.

Another fundamental aspect is the distinction between abstract and concrete danger. The case law of the European Court of Human Rights, in cases such as *Kokkinakis v. Greece* [11] or *Cantoni v. France* [12], insisted on the concrete nature of the risk required to trigger criminal liability. In this regard, a simple deviation from technical standards or the existence of a formal deficiency in compliance is not sufficient to attract criminal liability. The existence of a real and quantifiable threat to the health or life of consumers is required [14].

Thus, in order to comply with the requirements of legality, criminal prosecution authorities and courts must follow a systematic and teleological interpretation of the norm, in correlation with national legislation on consumer protection (Law no. 105/2003) [21], market surveillance (Law no. 162/2023) [20], but also with the provisions of the Civil Code, article 1083 para. (2) letter b) of the Civil Code places the burden of proof of compliance on the professional, and this provision can be transposed into the criminal field as an obligation of the investigative bodies to request evidence of compliance before ordering the initiation of criminal proceedings [16].

In the absence of such a rigorous approach, there is a risk that article 216 of the Criminal Code of the Republic of Moldova will be applied extensively, in a manner that violates the principle of legality, transforming a criminal norm with a protective vocation into an arbitrary instrument of economic repression. It is essential that the activation of criminal liability be reserved only for situations in which the existence of a serious and real danger is proven, through objective expertise, and in which other forms of liability (civil or contraventional) are excluded.

2. Technical expertise - essential condition for establishing the material element of the crime provided for in article 216 of the criminal code of the republic of moldova

In the context of the application of article 216 of the Criminal Code of the Republic of Moldova, technical expertise is not only a means of evidence among others, but an indispensable condition for establishing the criminal nature of the act. In a crime in which the material element is defined by the notion of „product” or „service” that is „dangerous to life or health”, the finding of danger cannot be made empirically or intuitively by the criminal prosecution body. It must be based on an objective assessment, carried out by accredited experts, who can scientifically assess whether or not the analyzed product meets the safety conditions imposed by the applicable technical regulations.

In addition, expertise also becomes essential for establishing the proportions in which the act was committed – an express condition for the existence of the crime in its typical form. The assessment of proportions may involve the analysis of the quantities of product put into circulation,

the impact on the market or the estimated number of consumers exposed, requiring a correlation between the potential risk and the scale of distribution.

The law no. 162/2023 expressly provides in article 18 that market surveillance authorities must carry out a risk assessment whenever there are suspicions that a product does not comply with safety requirements [20]. This assessment is not optional, but a legal obligation, which may constitute the basis for the initiation of administrative measures (ban on marketing, withdrawal from the market) or, in serious cases, for criminal prosecution. The law also provides for risk classification standards (minimum, moderate, serious), which may constitute objective criteria in determining the danger [20]. Risk assessment is also governed by factors such as the nature of the hazard, the probability of occurrence, the potential severity of the outcome, and the potential number of people exposed.

In practice, the activity of detecting technical non-conformities is usually carried out by the State Inspectorate for Supervision of Non-Food Products and Consumer Protection, which has, according to art. 13 of Law no. 162/2023, the power to carry out checks, request technical documents and order remedial measures or prohibit the marketing [20].

In the event of a complaint from a consumer, the authority is obliged, according to article 17, para. (1), to initiate checks and, if necessary, to order the performance of a technical laboratory expertise [20].

The importance of expertise is also supported by Law No. 105/2003 on consumer protection. Article 25 of this law establishes that, in the event of a dispute regarding the conformity of a product or service, the burden of proof lies with the trader or provider, and the solution is made through a technical expertise carried out by accredited entities [21]. This principle can and should be extended to the criminal sphere, as an additional guarantee of the objectivity of criminal prosecution. The role of this expertise in criminal proceedings is crucial, since only on its basis can the existence of the material element of the crime be demonstrated. Any other method of ascertainment (such as simple observations by inspectors or findings by consumers) cannot replace the technical-scientific assessment, from the perspective of legality and the procedural rights of the defendant.

From a procedural point of view, once a potential case of a dangerous product is notified, the supervisory authority (or, in criminal cases, the criminal prosecution body) should be obliged to establish the following, through expertise:

- what is the nature of the product and its foreseeable use;
- what technical and normative standards are applicable to that product (national, european or international);
- if the product was accompanied by conformity documents (declaration of conformity, quality certificate, CE/SM marking);
- the causality between the non-compliant product or service and the specific damage (harm to health or death);
- how the product violates these standards;
- if the non-compliance creates a concrete and real danger to life or health [21].

This approach is essential for respecting the principle of *in dubio pro reo*. In the absence of an expert opinion, the finding that a product or service is dangerous becomes a subjective assumption, which violates not only the presumption of innocence, but also the fundamental requirements of criminal law.

Furthermore, Law No. 162/2023 provides a procedural framework of reference for criminal enforcement. Article 20 of the law provides that, in the case of suspect products, the authority must issue an assessment report, which must also include the results of the expertise [21]. This report is official and can constitute an essential piece of evidence in the criminal case. Any omission at this stage may lead to the impossibility of proving the dangerous nature and, implicitly, to the lack of the material element of the crime.

Also, the Civil Code of the Republic of Moldova (Law no. 133/2018), in art. 1083 paragraph (2) letter b), imposes on the professional the obligation to demonstrate the conformity of the service with the contract [16]. Although the norm is specific to the contractual field, its principle is relevant in criminal proceedings, in the sense that the state must ensure a framework in which compliance is

objectively verifiable, and the burden of proving non-compliance is not based exclusively on statements, but on expert opinions and official standards.

The lack of an objective expert opinion in criminal cases concerning article 216 of the Criminal Code of the Republic of Moldova is equivalent to a violation of the principle *in dubio pro reo* [6], but also with a risk of procedural unfairness, since the defendant is deprived of the opportunity to thoroughly fight the accusation. In this regard, judicial practice should establish the absolute obligation of technical expertise to demonstrate the dangerous nature of a product or service.

The expertise must be carried out by laboratories accredited in accordance with ISO/IEC 17025 and must contain a detailed description of the testing methods, clear conclusions on the degree of risk and references to the applicable standards. If the expertise report does not identify a serious risk or does not provide clear conclusions, the application of article 216 of the Criminal Code of the Republic of Moldova is groundless.

In the case law of Moldovan courts, there are sometimes cases where criminal proceedings have been initiated solely on the basis of findings by supervisory bodies, without verifiable technical support. Such a practice is incompatible with the requirements of legality and risks turning the article 216 into an instrument for excessive punishment of economic operators. That is why technical expertise must become a mandatory filter in the phase of finding and selecting cases that may constitute crimes.

Last but not least, the role of the European framework in supporting this requirement should also be mentioned. Regulation (EU) 2023/988 imposes, in articles 9 strict obligations regarding safety assessment, risk notification, and withdrawal of dangerous products, all based on rigorous technical reports, with extended applicability including in the field of services in terms of the instruments used, the associated risks, and the direct effects on consumers [13].

3. Correlation with the european union acquis: convergences and differences

In the process of harmonization with European Union standards, the application of Article 216 of the Criminal Code of the Republic of Moldova must reflect not only standards relating to product safety, but also- distinctly and clearly- the regime governing services. While the European acquis contains a robust framework for dangerous products, the regulation of services from the perspective of safety and liability is fragmented, which calls for detailed analysis and consistent interpretation.

Directive 2001/95/EC on general product safety – repealed and replaced by Regulation (EU) 2023/988 – requires manufacturers to ensure that products placed on the market are safe under normal conditions of use [13]. These acts regulate traceability mechanisms, risk assessment, incident notification, and the withdrawal of dangerous products. Directive 85/374/EEC establishes the manufacturer's strict liability for damage caused by defective products, even in the absence of fault.

Under these circumstances, in order to apply the article 216 of the Criminal Code of the Republic of Moldova in accordance with EU standards, national authorities must demonstrate a real and serious danger, using the definitions and risk tests in the European regulation as a reference [13].

Significantly, the EU does not have a comparable horizontal framework for dangerous services. Directive 2006/123/EC on services in the internal market aims to remove administrative barriers and guarantee freedom to provide services, without regulating safety aspects or criminal sanctions.

Instead, regulations on services are scattered across sectoral areas, such as:

- Directive 2011/24/EU on patients’ rights in cross-border healthcare, which imposes clinical safety and quality obligations [18];
- Directive 2008/110/EC in the field of rail transport, which lays down service safety obligations [19];
- Regulation (EU) 2017/2394 on consumer protection cooperation, applicable also to digital services [22];
- Financial services regulations (MiFID II, Solvency II), which impose requirements for due diligence and avoidance of systemic risks.

These regulations demonstrate that, in the EU, the regime for dangerous services is only functional in relation to specially regulated sectors. The acquis does not provide a uniform definition of **„**dangerous service**”,** and liability is usually civil or administrative- not criminal [13].

In this context, the application of article 216 of the Criminal Code of the Republic of Moldova to the services provided must meet the following requirements:

- The definition of danger must be based on recognized sectoral or international technical standards. (for example ISO, EN, SM);
- The existence of a serious danger to life/health must be proven by technical expertise – and not just by complaints or administrative findings;
- It is inadmissible to extrapolate analogically from the regime applicable to products to services in the absence of clear and predictable criminalization rules;
- The principles of proportionality and subsidiarity must be respected, imposing criminal liability only for services which, by their nature, pose a systemic and serious risk (e.g. health, transport, education, critical IT);
- Coordination between supervisory bodies, sectoral authorities, and criminal prosecution authorities must be ensured in order to avoid double standards and abuse of criminal classification.

Furthermore, the EU does not use the criterion of „large proportions” or „particularly large” but requires a detailed risk assessment, which justifies the integration of technical expertise in determining both the danger and the proportionality of distribution. Therefore, Moldova must adopt a criminal practice consistent with EU standards, in which proportions are clearly defined and sanctions are applied only when the act poses a real and proven danger. The Court of Justice of the European Union ruled in Case C-495/10 Danfoss that a product is dangerous if it does not offer „the safety that the consumer can legitimately expect”. This criterion can also be applied to services, by analogy, only if:

1. the service is regulated;
2. the provider has an obligation to achieve a result in terms of safety;
3. the consumer is unable to detect or avoid the danger [8].

In Case C-59/02 Commission v. Germany, the CJEU reiterated the obligation of states to prevent the marketing of dangerous products, but did not extend this principle to general services, pointing out the lack of a unified framework.

4. Delimitation of forms of legal liability for the manufacture, transport, storage, marketing, or supply of products or the provision of services that are dangerous to the life or health of consumers

One of the most important challenges in applying article 216 of the Criminal Code of the Republic of Moldova is the correct distinction between criminal, administrative, and civil liability. This distinction is required by the principle of criminal legality, as a fundamental guarantee and the need to respect the function of criminal sanctions as a last resort [6], [7]. The text of article 216 requires, as a constituent element of the typical form of the offense, that the act be committed „on a large scale” [14]. This condition excludes the criminalization of isolated or minor conduct, reserving criminal intervention for cases with a high degree of social danger. The correct distinction between forms of liability is made by analyzing the specific social danger, the degree of fault, and the nature of the damage caused. In this sense, criminal law must be applied as a *last resort*, when administrative or civil measures cannot ensure the effective protection of public interests and public health.

So, the production or marketing of a dangerous product is criminally relevant only if it is carried out on a significant scale - a criterion that requires, in practice, quantitative assessments supported by technical or economic expertise. In the aggravated forms provided for in paragraphs (2) and (3), the element of material result (serious injury, moderate injury, or death) also comes into play, as well as the subjective element- intent or negligence, including commission by an organized criminal group [14].

These elements require rigorous proof of causality and the form of guilt, which justifies a higher level of procedural rigour. We must recognise, above all, that without this rigorous screening,

there is a risk of overlap between legal regimes, affecting the coherence of the legal system and the legal security of the economic environment. In order to delimit the forms of liability, the following benchmarks may be considered:

- Administrative liability applies in cases of low-risk offenses, such as inadequate labeling, lack of translation of instructions, or omission of markings. This is punishable under consumer protection legislation, without implying any real danger [17].
- Civil liability is incurred in the event of damage (material or moral), regardless of the existence of a criminal offense. It concerns compensation rather than punishment, based on strict liability [16].
- Criminal liability arises only when: the act is committed on a large or particularly large scale; there is a real danger to the life/health of consumers; there is a prejudicial result (in aggravating circumstances); the perpetrator's guilt is proven – intent or gross negligence; there are no effective preventive measures or alternative remedies [7].

Conclusions

Legality is the central pillar of modern states governed by the rule of law, on which the entire legal order is based. In addition to the classic meaning of legality expressed by the Latin maxims *nullum crimen sine lege, nulla poena sine lege*, it is also embodied as a fundamental rule of clarity, certainty, relevance, and accessibility of norms, exclusively encompassing the constitutionality of provisions. Moreover, the law in a state must be clear and concise for all.

The applicability of article 216 of the Criminal Code of the Republic of Moldova must strictly comply with the constitutional and conventional framework of the principle of criminal legality, which provides for clarity, predictability, and proportionality. In a state governed by the rule of law, criminal sanctions against economic operators can only be imposed in strict compliance with the conditions for criminalization, excluding any broad or analogical interpretation to the detriment of the passive subject.

The current text of article 216 of the Criminal Code of the Republic of Moldova, due to its general nature, requires a restrictive and teleological interpretation, in accordance with the purpose of protecting life and health, but also with the requirements of legal certainty for those subject to the norm. Terms such as „dangerous product” and „dangerous service” must be defined in relation to applicable and recognised technical standards – national, european or international - so that the classification of the offence is not based on mere administrative or empirical assessments.

Technical expertise thus becomes an indispensable filter, not only in terms of evidence, but also in terms of the legality of criminal prosecution. In the absence of an objective report, drawn up by an accredited laboratory, establishing the existence of a concrete and serious risk to life or health, it is not possible to speak of the material element of the offense being fulfilled.

At the same time, it is essential to respect *the ultima ratio* principle, as criminal law should only be invoked when alternative forms of liability, such as administrative or civil liability, are inadequate to prevent or punish social danger. This legal hierarchy is also imposed by the case law of the ECtHR, which sanctions disproportionate interventions by the state in criminal matters.

The application of article 216 of the Criminal Code of the Republic of Moldova must be carried out within a concise, clear, strict, proportional, and subsidiary legal framework that prevents the unjustified extension of criminal liability to areas already regulated from an administrative or civil point of view. The criminal law imposes three cumulative conditions for criminal liability:

1. The existence of a product or service that is dangerous to life or health;
2. Committing the act on a large scale (or particularly large scale - in paragraph 2, (c);
3. Possibly, the existence of a result-injury or death-or an aggravated form of commission.

At the same time, the distinction between the three forms of legal liability (criminal, administrative, civil) must be made on the basis of objective criteria, such as:

- the intensity of the risk;
- the severity of the actual or potential outcome;
- the nature of the obligations breached (duty of care or duty of result);

- the existence or absence of documented technical compliance;
- the form of fault (intent or gross negligence).

We must acknowledge that not every technical non-compliance automatically falls under article 216 of the Criminal Code of the Republic of Moldova. Abstract dangers, simple labeling deficiencies, or hypothetical risks do not justify the application of criminal law.

In this context, there is an urgent need to revise article 216 of the Criminal Code of the Republic of Moldova with a view to:

- express definition of the concept of „dangerous product” by reference to Law No. 162 of 2023 on market surveillance and product compliance and other applicable standards;
- establishing mandatory technical expertise for initiating criminal proceedings;
- integration of severity and risk criteria into the incriminating text;
- creating a framework for cooperation between administrative control authorities and criminal prosecution bodies, in order to avoid parallelism and serious abuses.

In addition, for full alignment with the European acquis, judicial practice and the regulatory framework must reflect:

- the distinction between the treatment of products and services, the latter requiring clear sectoral regulations;
- subsidiary application of criminal liability to the withdrawal, prohibition, or compensation mechanisms already provided for in consumer law;
- Transposition of CJEU standards on „legitimately expected” risk and traceability and notification obligations.

In conclusion, the application of article 216 of the Criminal Code of the Republic of Moldova must be based on a coherent, legally rigorous, and proportionate approach, in which the protection of public health, social coexistence, and consumers does not become a source of legislative uncertainty for economic operators. Only a disciplined application of the principle of legality, coupled with solid procedural mechanisms, can ensure a balance between public interests and fundamental human rights.

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