

DELIMITATION OF CONSTRUCTION-RELATED OFFENCES FROM OTHER ECONOMIC CRIMES IN THE REPUBLIC OF MOLDOVA: DOCTRINAL AND JURESPRUDENTIAL CRITERIA AND CHALLENGES OF LEGAL QUALIFICATION

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Abstract: *Construction-related offences constitute a distinct category within the broader spectrum of economic criminality, distinguished by their technical complexity and the interplay between administrative, civil, and criminal liabilities. The primary aim of this study is to examine the delimitation of these offences from other economic crimes in the Republic of Moldova, specifically fraud, abuse of office, and negligence. The research utilizes a doctrinal and jurisprudential methodology, relying on a comprehensive analysis of the Moldovan Criminal Code, relevant legislative acts, scholarly writings, and case law. Data sources include published judicial decisions, expert reports, and academic commentaries addressing the classification and qualification of construction offences. The study identifies key doctrinal criteria such as the nature of the protected social value, the form of guilt, and the specific subject of the offence and assesses their practical application in judicial practice. Findings indicate that overlapping elements between construction offences and other economic crimes often create significant challenges in legal qualification, particularly when acts involve both technical violations and fraudulent or negligent behaviour. The research further highlights the ambiguity of certain legislative formulations, including broad references to 'public interest' or 'damage,' which contribute to inconsistent judicial interpretation. Overall, the study concludes that effective delimitation requires clearer legislative definitions, systematic judicial guidance, and enhanced technical expertise within the judiciary. By addressing these gaps, the legal system can ensure more consistent enforcement and protection of both public safety and patrimonial interests in the construction sector.*

Keywords: *construction offences, economic crimes, fraud, abuse of office, negligence, legal qualification*

JEL: K14, K19, L74.

Introduction

The development of the construction sector in the Republic of Moldova has been accompanied by a notable increase in offences related to building activities, including illegal construction, substandard works, and violations of technical and safety regulations. These practices not only undermine public safety and urban planning standards but also generate significant economic and social consequences. In many cases, construction-related offences intersect with other economic crimes, such as fraud, abuse of office, or professional negligence, which complicates the process of legal qualification and enforcement. This overlap creates challenges for both doctrinal analysis and judicial practice, highlighting the need for a systematic approach to delimiting these offences within the broader framework of criminal law.

The motivation for choosing this topic stems from the practical and theoretical importance of ensuring legal clarity in the construction sector, which is critical for safeguarding public interest, promoting accountability, and preventing economic losses. Despite the growing relevance of these issues, there is a gap in the existing literature regarding the precise criteria for distinguishing construction offences

from other economic crimes in the Moldovan context, particularly in light of doctrinal debates and divergent judicial interpretations.

The primary goal of this research is to analyze the delimitation of construction-related offences from fraud, abuse of office, and negligence, through a combination of doctrinal review and jurisprudential examination. The study employs a qualitative methodology, relying on a detailed analysis of the Moldovan Criminal Code, legislative acts, scholarly writings, and selected judicial decisions. The research stage synthesized current knowledge on legal qualification, identifying key criteria such as the nature of the protected social value, the form of guilt, and the specific subject of the offence. The study also highlights the practical difficulties encountered by courts when multiple offences overlap, providing a foundation for proposals aimed at improving legal clarity and enforcement practices.

Basic content

The regulation of construction-related offences in the Republic of Moldova is primarily established by the art. 257 of Criminal Code of Republic of Moldova, particularly Article 257, which criminalizes the execution of low-quality, non-compliant, or otherwise unsafe construction works that may threaten public safety or cause significant material damage. These offences are distinguished by several specific characteristics:

Material object – the target of the offence generally involves buildings, infrastructure projects, or other construction works.

Special subject – the responsible parties often include engineers, project managers, or other professionals directly involved in planning, supervision, or execution.

Technical normative framework – these offences are closely tied to technical and construction standards, codes, and regulations that prescribe quality, safety, and compliance measures.

Unlike general economic crimes, which primarily concern financial or patrimonial interests, construction offences frequently involve technical violations, meaning the act itself endangers public safety or urban order rather than directly aiming for financial gain (State Report on Construction Compliance, 2025).

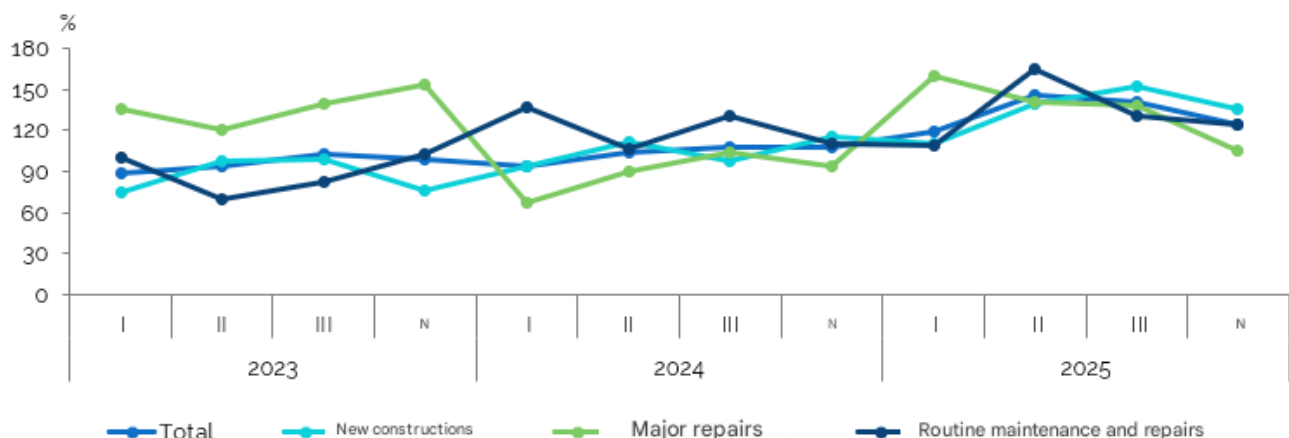


Figure 1. Volume indices of construction works executed, by structural elements, in 2023-2025 (by quarters), in % compared to the corresponding period of the previous year

Source: https://statistica.gov.md/ro/lucrari-de-constructii-executate-in-ianuarie-iunie-2025-9801_61936.html

According to Article 190 of the Criminal Code of the Republic of Moldova, fraud is defined as the unlawful acquisition of another person's property through the use of deception or by exploiting a relationship of trust. The fundamental elements of this offence include the employment of misleading actions or representations, the occurrence of patrimonial damage, and the existence of intent to obtain an illicit benefit (Criminal Code of the Republic of Moldova).

The differentiation between construction-related offences and fraud is grounded in several essential criteria that reflect both the legal nature of the act and the underlying intent of the perpetrator.

First, with regard to the purpose of the act, fraud is primarily characterized by the intention to obtain unlawful financial gain or enrichment. By contrast, construction offences are generally committed in the course of executing building works, even when such works fail to comply with legal or technical standards. In these cases, the objective is not necessarily illicit profit, but rather the completion of the construction activity, albeit in a defective or non-compliant manner.

Second, concerning the role of deception, fraud inherently requires the use of deceptive practices or the exploitation of trust as a central element of the offence. In contrast, construction-related offences may arise independently of any deceptive conduct, often resulting from breaches of technical regulations, professional errors, or non-compliance with established construction norms.

Third, the protected social value differs significantly between the two categories of offences. Fraud is primarily aimed at protecting patrimonial interests and property rights, whereas construction offences are designed to safeguard public safety, ensure structural integrity, and maintain compliance with urban planning and technical standards.

From a practical perspective, difficulties arise in situations where construction contracts involve misrepresentation of completed works or artificially inflated costs. In such cases, the factual circumstances may simultaneously satisfy the legal elements of both fraud and construction-related offences. Therefore, judicial authorities must carefully determine whether the deceptive conduct constitutes the core element of the offence or merely plays a secondary role in relation to technical violations (Constitutional Court, 2017).

According to Article 327 of the Criminal Code of the Republic of Moldova, abuse of office is defined as the deliberate and unlawful exercise of official powers by a public official, carried out in contradiction with the duties and obligations established by law, and resulting in harm to legally protected interests. This offence presupposes the existence of a special subject, namely a person vested with public authority or entrusted with the exercise of public functions, who intentionally deviates from the legal framework governing their conduct.

The essential elements of abuse of office include the misuse or excess of authority, the intentional nature of the act, and the occurrence of damage affecting either public institutions, the rights of individuals, or broader societal interests. The violation may consist in actions or omissions that contradict statutory responsibilities, demonstrating a conscious disregard for legal norms and professional duties.

Furthermore, the offence is characterized by a direct link between the improper use of official capacity and the resulting prejudice, whether material or non-material. In this context, the protected social values extend beyond patrimonial interests, encompassing the proper functioning of public administration, the integrity of public service, and the trust of citizens in state institutions.

Thus, abuse of office represents a serious infringement of legal and ethical standards in public administration, requiring a careful assessment of both the subjective element (intent) and the objective consequences (damage) in order to ensure correct legal qualification (Criminal Code of the Republic of Moldova, Art. 327).

The differentiation between abuse of office and construction-related offences is based on several fundamental doctrinal criteria, which reflect both the legal nature of the conduct and the characteristics of the individuals involved.

First, with respect to the subject of the offence, abuse of office is inherently limited to individuals who hold a public position or who are entrusted with the exercise of public authority. This category includes public officials or other persons performing functions of public interest, whose actions are governed by specific legal obligations. In contrast, construction-related offences are not restricted to such subjects and may be committed by private individuals, contractors, or corporate entities that operate outside the sphere of public authority.

Second, regarding the legal duty that is violated, abuse of office presupposes the infringement of obligations that are explicitly established by legal norms governing public service. The misconduct arises from the improper execution or deliberate disregard of duties "*granted by law*," reflecting a breach of the legal framework applicable to public administration. Conversely, construction offences typically involve the violation of technical rules, building codes, or regulatory standards specific to the construction sector, rather than statutory duties associated with public office.

Third, the nature of the damage constitutes another essential point of distinction. In the case of abuse of office, the harm primarily affects institutional interests, public administration, or the broader public interest, often undermining trust in state authorities. By contrast, construction-related offences generally produce consequences related to safety risks, diminished quality of works, and threats to the structural integrity of buildings and infrastructure. This distinction has been emphasized in judicial practice, including the jurisprudence of the Constitutional Court of Moldova, which highlights the importance of clearly identifying the protected social value in order to ensure proper legal qualification (Constitutional Court of Moldova, 2017).

According to Article 329 of the Criminal Code of the Republic of Moldova, negligence is defined as the failure of a person to duly perform their professional or service-related duties as a result of insufficient care, lack of diligence, or inadequate attention, in the absence of any intent to cause harm. This form of criminal liability arises when an individual, although bound by specific legal or professional obligations, does not meet the required standard of conduct expected in the exercise of their functions.

The defining feature of negligence lies in the absence of intent, as the harmful consequences are not deliberately pursued but occur due to imprudence, carelessness, or a failure to foresee risks that could reasonably have been anticipated. The conduct may manifest either through omission such as failing to take necessary precautions or through improper action that does not comply with established professional standards.

Furthermore, negligence presupposes the existence of a causal link between the inadequate performance of duties and the resulting damage, whether material or non-material. The offence typically affects the proper functioning of professional activities, institutional efficiency, or the protection of legally safeguarded interests.

Thus, negligence represents a breach of the duty of care imposed on individuals in the exercise of their professional responsibilities, requiring a careful evaluation of both the objective conduct and the subjective element namely, the lack of foresight or diligence in order to ensure correct legal qualification (Criminal Code of the Republic of Moldova, Art. 329).

The distinction between negligence and construction-related offences is primarily determined by several doctrinal criteria, which focus on both the subjective and objective elements of the conduct.

First, with regard to the form of guilt, negligence is characterized by the absence of intent, manifesting instead through imprudence, carelessness, or a failure to foresee foreseeable consequences. In contrast, many construction-related offences involve intentional conduct or a mixed form of guilt, where deliberate actions are combined with elements of negligence, particularly in situations where professionals consciously disregard applicable standards while underestimating potential risks.

Second, the presence of material interest represents a significant differentiating factor. From a doctrinal perspective, the pursuit of material gain is generally incompatible with negligence, as negligent acts lack the intentional component required for such an objective. Consequently, when evidence indicates that the perpetrator acted with the purpose of obtaining a financial advantage, the legal classification may shift toward offences such as abuse of office or other intentional crimes (Popenco, 2020).

Third, the degree and nature of the violation further contribute to the distinction. Negligence typically involves omissions, insufficient diligence, or failure to comply with professional standards due to inattention. By contrast, construction-related offences may involve the conscious and deliberate

disregard of technical norms, safety regulations, or quality requirements governing construction activities.

From a practical standpoint, significant challenges arise in the process of legal qualification. Deficiencies in construction quality may stem either from simple negligence such as design flaws or miscalculations or from intentional practices, including cost reduction strategies that compromise safety or compliance. In the latter case, criminal liability may extend beyond negligence to include construction-related offences or even fraud. Accurately distinguishing between these scenarios often requires specialized technical expertise, as well as a thorough analysis of the factual circumstances.

In light of doctrinal approaches and judicial practice, several general criteria for legal qualification can be identified. These include the nature of the protected social value (whether related to property, public safety, or institutional integrity), the form of guilt (intentional or negligent), the specific subject involved (public official or private actor), the means by which the act is committed (such as deception, abuse of authority, or technical violations), and the primary purpose underlying the conduct (profit-oriented versus the execution of construction works).

In situations where multiple legal norms appear applicable, the guiding principle is to apply the provision that most accurately reflects the true legal nature and substance of the act, ensuring a correct and consistent legal qualification in accordance with established doctrine and jurisprudence.

A major difficulty in the legal qualification of construction-related offences arises from the phenomenon of normative overlap, whereby these offences frequently intersect with other categories of economic crimes. In practice, the same factual situation may simultaneously exhibit elements specific to fraud, particularly in cases involving financial manipulation or misrepresentation of costs, abuse of office when public officials unlawfully authorize or tolerate non-compliant constructions, and negligence where there is a failure to adequately supervise or ensure compliance with technical standards. This convergence of legal provisions complicates the process of identifying the most appropriate legal classification and may lead to inconsistent judicial outcomes.

Another significant challenge is the ambiguity of legal norms, especially the use of broad and indeterminate concepts such as "*damage*" or "*public interest*." These notions lack precise legal boundaries, which creates a risk of divergent interpretations in judicial practice. As emphasized in the jurisprudence of the Constitutional Court (2017), the absence of clear and predictable definitions may undermine legal certainty and open the door to arbitrary or inconsistent applications of criminal law.

Furthermore, the technical complexity inherent in construction activities presents an additional obstacle for judicial authorities. Cases in this field often involve highly specialized knowledge related to engineering standards, building regulations, and safety requirements. As a result, courts are frequently dependent on expert opinions, which, although essential, may vary in quality or interpretation, thereby leading to differing conclusions and affecting the consistency of judicial decisions.

Finally, the principle of the subsidiarity of criminal law, reflected in its *ultima ratio* character, requires that criminal sanctions be applied only in situations where the degree of social harm justifies such intervention. However, in the construction sector, it is often difficult to clearly distinguish between administrative violations, civil liability, and criminal offences. This blurred boundary creates practical challenges in determining when criminal law should be engaged, highlighting the need for clearer criteria and more coherent legal regulation.

Table 1. Delimitation of Construction-Related Offences from Other Economic Crimes in the Republic of Moldova

Criteria	Construction Offences (Art. 257 CC RM)	Fraud (Art. 190 CC RM)	Abuse of Office (Art. 327 CC RM)	Negligence (Art. 329 CC RM)
Legal nature	Technical-economic offence related to construction activities	Economic offence against patrimonial relations	Service-related offence affecting public administration	Professional/service-related offence based on lack of diligence
Protected social value	Public safety, structural integrity, construction quality	Property rights and financial assets	Proper functioning of public administration and public trust	Proper performance of professional duties
Subject of the offence	Often special (engineers, builders, project managers), but may include legal entities	General subject (any person)	Special subject (public official or person exercising public authority)	Special subject (person with professional/service duties)
Form of guilt	Intent or mixed guilt (intent + negligence)	Direct intent (purpose of unlawful gain)	Direct intent	Negligence (imprudence, lack of care)
Purpose of the act	Execution of construction works (even if defective)	Unlawful enrichment	Obtaining benefits or causing damage through misuse of office	No purpose to harm; result of carelessness
Means of committing	Violation of technical norms and construction standards	Deception or abuse of trust	Misuse of official position contrary to legal duties (Constitutional Court of Moldova, 2017)	Failure to properly fulfill duties
Nature of damage	Physical damage, safety risks, infrastructure failure	Patrimonial damage	Damage to public or private legally protected interests	Damage caused by lack of diligence
Role of deception	Not required	Essential element	Not essential (may exist incidentally)	Absent
Material interest	Possible but not mandatory	Essential	Usually present (personal or third-party benefit)	Generally absent (Popenco, 2020)
Type of violation	Breach of technical and regulatory standards	Manipulation of facts or trust	Violation of legal duties granted by law (Constitutional Court of Moldova, 2017)	Omission or improper execution of duties
Typical practical situations	Poor-quality construction, unsafe buildings, non-compliance with standards	False contracts, financial deception	Illegal authorization of construction, tolerance of violations	Lack of supervision, design errors
Main delimitation difficulty	Overlap with fraud (false reporting) and negligence (technical errors)	Distinguishing deception from technical non-compliance	Distinguishing administrative fault from criminal misuse	Differentiating negligence from intentional misconduct

Source: Constitutional Court of Moldova, 2017; Popenco, 2020

Table 1. *Delimitation of Construction-Related Offences from Other Economic Crimes in the Republic of Moldova*, which presents the delimitation of construction-related offences from other categories of economic crimes in the Republic of Moldova, underscores that the fundamental distinctions between these offences are primarily based on two key factors: the protected social value and the form of guilt of the perpetrator. Construction-related offences are principally aimed at safeguarding public safety,

structural integrity, and compliance with technical and regulatory standards, whereas other economic crimes, such as fraud or abuse of office, are oriented toward protecting patrimonial interests, institutional integrity, or public trust. Similarly, the form of guilt whether intentional, negligent, or a combination thereof plays a decisive role in differentiating these offences, as it reflects the mental state and deliberate or inadvertent conduct of the actor.

Despite these doctrinal distinctions, practical challenges frequently emerge due to the overlapping factual elements inherent in many construction-related cases. For instance, acts such as false reporting of construction progress, cost inflation, or failure to supervise technical compliance may simultaneously exhibit characteristics of fraud, abuse of office, or negligence, complicating the process of legal qualification.

In accordance with the principles established under Moldovan criminal law, the correct legal classification of an act must be guided by its true legal nature, rather than relying on broad or extensive interpretation. Ensuring fidelity to the principle of legality requires that judicial authorities accurately identify the essential elements of the offence, weigh the intent and conduct of the perpetrator, and distinguish between overlapping norms. This approach guarantees consistency in enforcement, prevents arbitrary application of criminal provisions, and upholds the legal protection of both public interests and patrimonial rights within the construction sector.

Conclusions

The process of distinguishing construction-related offences from other types of economic crimes in the Republic of Moldova constitutes a highly intricate legal issue, reflecting the convergence of technical, economic, and administrative dimensions within the construction sector. While doctrinal and jurisprudential criteria such as the nature of the protected social value, the form of guilt, and the specific subject of the offence serve as important guides for legal classification, they are often insufficient to guarantee uniform and consistent application in practice. The overlapping elements of offences, coupled with ambiguities in legislative language and the technical complexity of construction activities, frequently create challenges for judicial authorities in determining the appropriate qualification of acts.

This analysis underscores the pressing need for several key improvements to enhance legal clarity and enforcement effectiveness. First, the adoption of clearer legislative definitions that precisely delineate the boundaries of construction-related offences would reduce interpretative uncertainty and provide a firmer basis for judicial decision-making. Second, specialized training for judges, prosecutors, and legal practitioners is essential to ensure that technical aspects of construction and engineering standards are properly understood and accurately assessed within criminal proceedings. Third, the development of a more coherent and harmonized jurisprudential approach would help to unify the interpretation of relevant norms, minimize discrepancies in case law, and strengthen the predictability of legal outcomes.

Only through the combined implementation of these measures can the principles of legal certainty and effective criminal enforcement be fully realized in the construction sector, ensuring the protection of public safety, structural integrity, and patrimonial interests while maintaining the integrity and credibility of the Moldovan legal system.

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