VIOLATION OR FAILURE TO FULFILL OFFICIAL DUTIES – INCRIMINATED RISK TO NATIONAL SECURITY

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Summary: *The present research is limited only to the crimes under Article 282, paragraph 1, sentence one and two of the Criminal Code - violation or failure to fulfill official duties. The perpetrator can only be an official who belongs to the system and structure of the bodies of power and management in the state apparatus. This person must directly and absolutely meaningfully aim to benefit himself or others, violating imperative legal requirements required by the functions of his position. Executive acts - violation and inaction - related to official duties, must be understood as both divisible and indivisible, and both at the same time. There is a legal paradox that arises from the complexity and phenomenality of reality itself. That is, it is possible to have a breach of duty, also an omission of duty, as well as a breach and omission of duty at the same time. A special case of violation of official duties and failure to fulfill official duties is the case when the perpetrator is a judge. In this way, confidence in the judiciary is violated, legal certainty is ruined, and national security in general is subsequently torpedoed.*

Key words: *crime, official, judge, legal certainty, national security*

INTRODUCTION

According to the legal definition, "Risk to national security" is the probability of a change in the security environment, caused by a deliberate action or inaction, that could lead to a violation of the state of national security[1].

From the normative definition it can be concluded that conscious action or inaction can only be a human act because it is predetermined by the will inherent only in human beings (it would be difficult to defend the thesis that Artificial Intelligence could possess will, and not guided by a complicated algorithm based on a huge database).

Following the above legal formulation, we come to the conclusion that the violation of the state of national security could be caused by a human act that would change the security environment in a negative direction.

This in itself is a generally dangerous act, because it threatens not only the state as a power organization, but also all other legal entities (citizens and legal entities) who rely on the state for their well-being, which is also guaranteed by the security system.

[1] Vide: § 1, p.1 from the Law on the Management and Functioning of the National Security Protection System, Pub. State Gazette. No. 61 of August 11, 2015, in force since November 1, 2015.

Logically, it comes to the next conclusion - obviously, this individual (or group) action or inaction of human beings should be brought into the rank of crime - the most serious offense in any legal state.

And that's right. In the Republic of Bulgaria, the Criminal Code[2] (CC), which incriminates numerous socially dangerous acts precisely in the sense discussed here.

Incrimination is the process and result of declaring a human act or omission to be criminal. It only happens through legislative enforcement, due to its particular importance. In addition, it must be widely publicized and publicized to reach the knowledge of all citizens, so that there is a preventive effect of preventing the commission of similar acts, in view of the severity of the penalties for them..

A sufficient number of actions and inactions that can be linked to a potential risk to national security are found in the Bulgarian Criminal Code. In this case, we will focus on only two of them (in view of the limited volume of the text) - the violation or non-fulfilment of official duties.

The normative composition of these crimes can be found in art. 282, paragraph 1, first and second sentence of the Criminal Code. The full text of the law is as follows: An official who violates or fails to fulfill his official duties...in order to obtain for himself or for another benefit or to cause harm to another and as a result of which not insignificant harmful consequences may occur, shall be punished by imprisonment up to five years, and the court may order deprivation of the right under Art. 37, para. 1, point 6, or with probation.

Regarding the harmful consequences, the judicial practice is sufficiently detailed: "The composition of the crime under Art. 282, para. 1 of Criminal Code is carried out when the specified behavior of the official may have significant harmful consequences. The law does not specify what the content of the concept of "insignificant harmful consequences" is, and in the practice of the courts there are different opinions about the insignificance and type of harmful consequences. Some courts consider only pecuniary damages, while others include non-pecuniary damages as well. The amount of damage is also determined in a different way - insignificant, insignificant and significant, in view of whose consequences the lower or higher degree of public danger of the act is determined. Harmful consequences can be pecuniary or non-pecuniary in nature. They are expressed not only in the encroachment of public or personal property rights and interests, but also in the creation of significant disturbances in the proper functioning of state bodies and public organizations, in a serious weakening of the authority and trust of those working in them. When solving the question of the insignificance of harmful consequences, all the factual circumstances of the

[2] Vide: Criminal Code, Pub. State Gazette. No. 26 of April 2, 1968, in force since May 1, 1968.

specific act should be taken into account, taking into account the importance of the violated public material interests, the negative impact on the collective and society, etc. The question of the insignificance of harmful consequences must be thoroughly and thoroughly clarified in the case, because it concerns not only an objective sign, without the presence of which the crime would not have been committed, but also because this sign serves as an objective distinguishing criterion between crime in office and a number of administrative, disciplinary and other offenses[3]".

There are two different executive acts – first, breach of official duties, and second, failure to perform official duties. In a large number of life situations, it is possible for them to mix with each other and partially overlap. From a formal-legal point of view, however, they are distinguishable - one is done through action, and the other - through inaction.

Systematically, these two crimes are listed in Chapter Eight "Crimes against the activities of state bodies, public organizations and persons performing public functions", Section II "Official Crimes" of the Criminal Code. The conclusion should be drawn from this that, in essence, these crimes are official, that is, they concern every individual who performs an official duty.

In essence, in the modern understanding of this concept, the service is a professional activity in the interest of the state or other legal entities. The Bulgarian legislator made the distinction by tying the office to a special quality of the perpetrator of these crimes - the quality of "official", which will be discussed below in the exposition.

1. THE CRIMINAL JUSTICE SETTING

As outlined above, the present study is limited only to the crimes under Article 282, paragraph 1, proposition one and two of the Criminal Code - violation or failure to fulfill official duties.

The legal dogmatics on the issue discussed here has taken strong roots in the Bulgarian criminal law theory and practice. According to it: "The provision of Art. 282 of the Criminal Code provides for a general composition of an official crime and applies when there is no special composition. The general official crime by office can be committed only by an official who is a participant in public relations related to the activity of state bodies and public relations and is in their system. t is on this basis that official crimes are distinguished from crimes against government order (Section 9, Chapter Eight of the Special Part of the Criminal Code)." That is, the crimes considered by us, which pose a risk to national security, are "general official crimes"[4].

[3] Vide: item 2 of Resolution No. 2 of June 9, 1980 in criminal case No. 2/80, Plenum of the Supreme Court.
[4] Vide: item 1 of Resolution No. 2 of June 9, 1980 in criminal case No. 2/80, Plenum of the Supreme Court.

Here, however, one must start with the general principle of criminal law that liability is incurred only for a crime previously designated as such. This is the principle of "constitutionality of crime". The judicial practice in this direction is clear: "The sources of a normative nature, filling the blanket disposition of Art. 282 of the Criminal Code should be in force at the time of the committed crime, create specific rights and obligations, be issued by a competent authority and their violation ... should be in a direct causal relationship with the harmful consequences that have occurred ... or with possibly possible ones"[5]. This means that responsibility cannot be sought for the violation of a requirement that did not exist in the regulatory framework at the time of the reprehensible act; the normative prescription must have been clear and specific in its requirements to the legal entity; it was issued by an authorized body, as well as there is a logical connection between these actions and inactions of the subject and the socially dangerous consequences (in the context of this thesis – risk to national security).

Moreover, the crystal clarity of what was legally due and required, and what was violated, must be present in every single case. That is, common official crimes by service are impossible under criminal law. They would not exist as a risk to national security if they were not pre-defined through the positive and categorically stated normative obligation. The following case law is also in this sense: "Regardless of the type of the executive act and the sources of the duties and powers of office, the court is obliged to establish what the violation or non-fulfillment of the official duties, the excess of power or rights, as well as the relevant legal act (regulation, ordinance, decree) consists of , order, etc.) or an act of a public organization in which they are specified. In the next place, the constant judicial is unambiguous and consistent practice, that the sources of the actions/inactions on duty, including the stated "legal obligation" should be acts of a normative nature or from acts of a public organization. Therefore, the composition of Art. 282 of the Criminal Code should always be filled with specific content aimed at a specific addressee - the source of the lawful behavior of the official should be indicated, its normative nature should be clear, the specific manifestation/inaction should be outlined and what constitutes its illegality, understood as such carried out contrary to the rule of conduct established in the relevant source.[6]“

It is the violation of extremely clear rules of conduct that can be considered a crime of the above type. As explained by the judicial practice: "the actor, performing a certain function in a state body, public organization or himself, performing a public function purposely assigned to him by virtue

[5] Vide: Decision No. 107 of November 18, 2022 in criminal case No. 377/2022 of the Supreme Court of Cassation, First Criminal Division.

[6] Vide: Decision No. 50 of July 21, 2022 in criminal case No. 85/2022 of the Supreme Court of Cassation, First Criminal Division.

of the law, objectifies illegal behavior, with which he violates the positively regulated order regulating the functioning of the state apparatus and public organizations[7]".

The positively regulated order regulating the functioning of the state apparatus and public organizations can be found in all Bulgarian legislation, as long as it requires any intervention of a public function.

In turn, the public function can be expressed in norm-making, control, supervision, authorization, licensing, prescription, finding, sanctioning and others. By itself, it cannot be exhaustively listed in all its manifestations. However, the main criterion here is the dominant role of the state over other legal entities under its own jurisdiction.

And the violation of the positively settled order in relation to the work of the state apparatus is an obvious risk to national security *per se*.

Moreover, national security is essentially predetermined by the existence and functioning of the state. The latter could not be expected to be recognized by any legal entity if it did not have actual control over a certain territory. This control is expressed precisely by creating rules of conduct for everyone (with the legislative power), by specifying the necessary behavior in specific cases (with the executive power), by sanctioning the illegal behavior of the responsible legal entities (with the judicial power). In this way, the community of all legal subjects of a territory (society) recognizes a dominant power subject (state) and the two entities become inseparable for the purposes of national security.

Precisely for this reason, the legal definition is in the sense that: "National security is a dynamic state of society and the state, in which the territorial integrity, sovereignty and constitutionally established order of the country are protected, when the democratic functioning of institutions and fundamental rights and freedoms are guaranteed of citizens, as a result of which the nation maintains and increases its welfare and develops, as well as when the country successfully defends its national interests and realizes its national priorities.[8]"

That is, *the protected and guaranteed state of society* and the state can be put at risk by criminal behavior falling under the category of "general official crimes".

It is of particular importance to strongly emphasize that general official misconduct is a fine distinction from unprofessionalism, bad management and general incompetence.

The latter are equally reprehensible, but from other, non-criminal legal positions. The difference between all these intolerable for a stable state and

[7] Vide: Decision No. 60180 of April 12, 2022 in criminal case No. 584/2021 of the Supreme Court of Cassation, First Criminal Division.

[8] Vide: Art. 2 of the Law on the Management and Functioning of the National Security Protection System, Pron. State Gazette. No. 61 of August 11, 2015, in force since November 1, 2015.

a self-respecting society is rooted in the specific orientation of the perpetrator to the crime. *A clear goal in this particular case* – it is the manifest form of the crime that distinguishes it from the above social deformations.

The following case law can be cited as support for this construction: "In order for an act to be constitutive under Art. 282 of the Criminal Code, regardless of whether it is the main or a qualified composition, it is necessary to have collected sufficient in volume, suitable and undoubted evidence, on the basis of which the conclusion can be formed that official violations are not accidental, isolated, as a result of bad organization, or a vicious practice, but are subordinate to one of the manifestations defined in the disposition of the criminal law norm from the special part of the Criminal Code forms of the special purpose. The latter must necessarily fulfill the motivation of the perpetrator to commit the specific crime on duty.[9]"

In the context of national security risk, attention must be paid to any change in the dynamics of society and the state. But this is achieved with all the available resources of the national security protection system - state bodies and structures that carry out diplomatic, defense, intelligence, counter-intelligence, operational-search, law enforcement and security activities[10], and not only with criminal sanctions.

The latter, as an instrument of state coercion, has a limited scope due to its normative and interpretative nature: "Object of protection under Art. 282 of the Criminal Code are public relations related to the proper and normal functioning of the state and public apparatus and its bodies, the activity of state bodies with authoritative powers from the sphere of the bodies of power and management as part of the state apparatus. They violate the citizen-state authority relationship. The provisions of Art. 282 et seq. of the Criminal Code should find application only for the activity of the authorities and management, not in the activity of the management of economic entities, outside of public ownership. Therefore, the previous judicial practice on the broad and arbitrary application of the provisions of official crimes to actions carried out in institutions located outside the sphere of state bodies must be rejected... The object of protection under Art. 282 of the Criminal Code and following, evident from the systematic place of the texts in the Criminal Code, refers only to the activity of the bodies of power and management, related to their correct and lawful functioning.[11]"

That is, the national security protection system in its law enforcement function by sanctioning the judicially proven general office crimes counteracts the national security risks. This is done through the realization

[9] Vide: Decision No. 138 of June 5, 2014 in criminal case No. 219/2014 of the Supreme Court of Cassation.
[10] Vide: Article 3 of the Law on the Management and Functioning of the National Security Protection System, Pron. State Gazette. No. 61 of August 11, 2015, in force since November 1, 2015.
[11] Vide: Decision No. 235 of December 10, 2003 in criminal case No. 79/2003, Third Criminal Division of the Supreme Court of Cassation.

of the goals of the punishment in the sense of the Criminal Code - the punishment is imposed with the aim of correcting and re-educating the convicted person to observe the laws and good morals, to have a warning effect on him and to deprive him of the opportunity to commit other crimes and to has an educational and warning effect on other members of society[12].

General prevention is particularly important here - the warning effect on all other natural persons about the adverse consequences of the act committed collectively. The consequence expected by the legislator is to deter anyone from such a criminal act.

2. SUBJECT

According to the current Bulgarian legislation, the perpetrator of common official crimes can only be a person who has the status of an official. The statutory explanation is found in the Criminal Code and states that an official is one who has been assigned to perform a function for pay or gratuity, temporary or permanent service in a state institution, with the exception of those performing activities only for material performance; management work or work related to the safekeeping or management of other people's property in a state enterprise, cooperative, public organization, other legal entity or at a sole trader, as well as of a notary and assistant notary, private bailiff and assistant private bailiff[13].

The judicial practice specifies this concept in the following way: "When defining the concept of "official" under the Criminal Code, where is also its legal definition, the legislator has formulated two separate and independent of each other main criteria, each of which gives a separate and independent content of the concept of "official" under the Criminal Code. First, the quality of an official is determined by the person's affiliation to the system and structure of the bodies of power and management in the state apparatus. Therefore, it is such whenever it is assigned to perform a service in a state institution, with the exception of the activity of material execution. The second criterion, which independently of the first, also determines the quality of the subject of the crime as an "official", is functional. It is divided into two sub-criteria, one is related to the quality and volume of its powers, which contain only managerial and decision-making functions in the organizational structure of the subjects of civil turnover - in a state enterprise, public organization, cooperative, legal entity, sole trader, as well as a private notary (or notary assistant). The second functional sub-criterion consists only in the

[12] Vide: Art. 36 of the Criminal Code, Pub. State Gazette. No. 26 of April 2, 1968, in force since May 1, 1968.

[13] Vide: Art. 93, Item 1 of Additional Provisions of the Criminal Code, Pub. State Gazette. No. 26 of April 2, 1968, in force since May 1, 1968.

attitude of the person towards the foreign property of the subjects in the civil turnover, which is kept and/or managed.[14]“

For the purposes of the national security risk considered here in official crimes, it is implied that the emphasis is placed on the official who belongs to the system and structure of the bodies of power and management in the state apparatus. This does not mean that it is not possible for national security to be put in jeopardy by the actions and the inactions of, say, a private notary, who improperly updated an immovable object strategic for national security. But this is rather an extreme exception, and for that reason will not be discussed at present.

The leitmotif in the doctrinal views of the author of this thesis is the special importance of legal security as an element of national security. Legal certainty is predetermined by the behavior of all legal entities without exception, but the role of jurisprudence in all its dimensions is particularly important. All positions, professions and activities of a legal nature should be considered here. There is no doubt, and there could be no doubt, that among them the one with the greatest weight is the office of the judge.

If even a single judge commits a common official crime in his office, he puts the entire legal, and therefore national security, at risk. This is because with this act he ruined the confidence in the normal functioning of the democratic institutions, in particular – of the entire law enforcement system.

The following judicial practice is detailed in this direction: "The judge is part of a state body, which is authorized to carry out a particularly significant part of state power - the administration of justice, as no other body can have any powers in this sphere. It concerns a special, only inherent power of the court, derived also as a constitutional principle of every modern state - the administration of justice only by a court. Through the actual activity of the court, the protection of individual freedom, the rights of citizens against illegal encroachments is achieved, and order in society is preserved, arbitrariness is avoided in the public environment, the integrity of society and the state is guaranteed... judges work in areas that affect the very essence of human life, and the powers given to them are closely related to the values of justice, truth and freedom. The judge issues acts which, after their entry into force, are binding on all bodies and persons and cannot be amended or revoked by non-judicial bodies. From the point of view of the way in which ordinary judges carry out the function of administering justice, the authority of the court and the public trust in its activity are mainly determined... Given the nature of the activity for the judge, his official position is too specific, implying a high level of duty and responsibility. In order to overcome the fluctuations in judicial practice on the issue of whether the official position

[14] Vide: Decision No. 235 of December 10, 2003 in criminal case No. 79/2003, Third Criminal Division of the Supreme Court of Cassation.

of judges, prosecutors and investigators is responsible within the meaning of the Criminal Code, in 2010 the legislator introduced an amendment, albeit only in the text of Art. 302 item 1 of the Criminal Code, concretizing his understanding that judges, prosecutors, investigators and jurors are also officials in responsible positions. Taking into account one of the main rules in the drafting of legal regulations - the introduction of a single meaning in the specific terminology used, there is no reason to deny that the meaning given to the term "official holding a responsible official position" in Art. 302, item 1 of the Criminal Code and its scope are the same with which this term is used in the text of Art. 282, para. 2 of the Criminal Code. In addition, it is necessary to point out that the grammatical interpretation of the said norm and the word "including" used, placed after the expression "a person holding a responsible official position", unequivocally show that judges, jurors, prosecutors and investigators are included in the category persons occupying a responsible official position[15]".

Hence, the subjects of official crimes must be considered in the context of the risk to national security in view of their functional weight in all dimensions of statehood.

3. SUBJECTIVE SIDE

Under the subjective side of general official crimes, all mental states of the perpetrator of the act should be understood - form of guilt, motives for his behavior, goals of the action or inaction, and the like.

The judicial practice assumes that: "The purpose of profit is a basic element of the composition of the crime under Art. 282 of the Criminal Code and the proportionality of an act is determined not only by the established elements from the objective side, but also by the subjective state of the act - to be presented sufficiently convincing arguments for the direct intention of the actor and his special purpose.[16]" That is, the *official directly and absolutely meaningfully aimed at benefiting himself or another by violating imperative legal provisions* required by the functions of his position.

The dogmatic understanding is anchored in the following dimensions: "On the subjective side, the composition of the crime of service - art. 282 of the Criminal Code, is characterized by two signs: direct intent and special purpose. The official must be aware that he is violating or failing to fulfill certain of his duties or that he is exceeding his authority or rights. t is also necessary to provide that the act may have significant harmful consequences, and according to Art. 282, para. 2 of the Criminal Code - that significant harmful consequences have occurred. The official cannot be exonerated by

[15] Vide: Decision No. 244 of February 5, 2020 in criminal case No. 970/2019 of the Supreme Court of Cassation, Third Criminal Division.

[16] Vide: Decision No. 75 of June 13, 2022 in criminal case No. 144/2022 of the Supreme Court of Cassation, Second Criminal Division.

the circumstance that others also knew about the committed act that received the consent of other persons from the establishment, enterprise or organization. Such objections are justified only in cases where it was carried out in fulfillment of an illegal order given in accordance with the established procedure, if it does not impose an obvious crime on the perpetrator. Careless violation or non-fulfilment of official duties or exceeding authority or rights may be grounds for administrative or disciplinary liability. If significant material damages were caused by such an act, the composition of some of the crimes under Art. 219, para. 1 and 2 Criminal Code, etc. For the subjective side of the crime under Art. 282 of the Criminal Code is a typical and special purpose that the official pursues - to procure for himself or another a benefit or cause another harm. The benefit can be pecuniary or any other benefit and benefit. It refers to any favorable change in the state of the perpetrator or another person, where a benefit is obtained. By causing harm, we must understand the unfavorable change in the property status of another or moral damages. The benefit or damage pursued may be at the expense of the state institution, enterprise, organization or individual citizens[17]".

That is, not only the acquisition of a benefit, but also the infliction of harm is perceived by the judicial panels for a special purpose in the general official crimes by service. And if damage is caused to, for example, an institution, enterprise, organization, which are of particular importance for national security, this act in itself puts at risk *precisely it, and not only the* establishment, the enterprise, the organization. In this sense, if these establishments, enterprises and organizations have objects in their assets or carry out activities that can be considered as strategic objects and activities of importance for national security, then the subjective side of the crime is present[18].

For example, if damage is caused to a large industrial warehouse for food storage, then this directly affects national security, because the strategic activity "Agriculture" includes, among other components, such as food production and their storage.

4. THE EXECUTIVE ACT IN CASE OF VIOLATION OF OFFICIAL DUTIES

Even here, the stipulation should be made that executive acts - violation and inaction - related to official duties, must be understood in the legal text of Article 282 of the Criminal Code and as *divisible, and as indivisible, and as both at the same time*. There is a legal paradox that arises from the complexity and phenomenality of reality itself. That is, it is possible that

[17] Vide: Item 3 of Resolution No. 2 of June 9, 1980 in Criminal Case No. 2/80, Plenum of the Supreme Court.

[18] Vide: Decree No. 181 of July 20, 2009 of the Council of Ministers, on determining the strategic objects and activities that are important for national security, Pron. State Gazette. No. 59 of July 28, 2009.

there is *breach of duty, also omission of duty, as well as breach and omission of duty at the same time*.

Therefore, only formally, the presentation in this text will consider in two separate sections executive acts for violations and for inaction. Below in the text they will be mentioned both separately and together.

The judicial practice convincingly asserts that: "In its essence, the provision of Art. 282 of the Criminal Code, represents a blanket criminal legal norm, and it is not disputed that the composition of the crime is supplemented by norms from other laws and by-laws. In these normative acts, the specific obligations and rights should be sought, the violation, excess or non-fulfillment of which could lead to the emergence of grounds for criminal liability by the perpetrator of the crime. These legal acts should be in force at the time of the committed crime, create specific rights and obligations, be issued by a competent authority and their violation (respectively non-fulfilment or violation of rights created by them) is in a direct causal relationship with the harmful consequences that have occurred (under Art. 282, para. 2 and para. 3 of the Criminal Code) or with possibly possible ones (Art. 282, para. 1) from Criminal Code[19]".

Scilicet, the judicial panels themselves indicate that *the provision is cross-referencing provisions from other legal acts*, and in order to resolve any criminal case based on it, rights and obligations under other statutes must be examined. Usually, they are of a sectoral nature - they settle hypotheses from transport, defense, education, family, production, etc. character. It is from there that the essence (substance) originates, which then "fits into the form" of Article 282 of the Criminal Code.

The author's thesis logically follows the legal dogmatics, which in a brilliant and fresh way justifies the following: "In judicial practice, the forms of the executive action of the panel under Art. 282 of the Criminal Code - violation or non-fulfillment of official duties, excess of authority or rights. In some cases, factual and legal facts are not presented reasons why the court accepts one or another form of the executive act. It is also not indicated what the violation or non-performance of official duties, the excess of authority or rights consists of. In all cases, the courts should establish what constitutes the violation or non-fulfilment of official duties, the excess of power or rights, as well as the relevant legal act (regulation, ordinance, decree, order, etc.) or an act of a public organization, in which they are specified.

The official violates his official duties when, within the limits of his competence, within the scope of the assigned tasks and functions, he performs an activity that is not in accordance with the established requirements of the position held. It refers to an act in violation of the service.

[19] Vide: Decision No. 130 of October 11, 2016 in criminal case No. 440/2016 of the Supreme Court of Cassation, First Criminal Division.

The official does not fulfill his official duties when he does not take actions related to the requirements of the office and established in a normative act or an act of a public organization (rules, regulation, decree, order, etc.). It refers to unfulfilled official duties, i.e. to inaction on duty[20]".

Again, a clear theoretical distinction between executive acts of the offense in office and inaction in office are impossible, despite this legal dogma. On the practical side, in each specific case, it should *examine the rights and obligations of the official under relevant substantive and procedural laws outside of criminal law*, concerning the case.

5. THE EXECUTIVE ACT IN CASE OF NON-FULFILMENT OF OFFICIAL DUTIES

This is about illegal inaction. The court panels accept the following: "The action under Art. 282 of the Criminal Code is constitutive when it is carried out objectively and subjectively (in the presence of direct intent and special purpose). The intended provision is blanket, therefore, in order to realize the composition of the crime, through the form of the executive act "failure to perform official duties" should be established that the official did not take actions related to the requirements of his office and expressly regulated in a normative act, and in violation of the specifically established rules requiring active legal behavior, was inactive[21]".

Not taking action is *doing nothing*. But it must be against the requirements of the service. Here there must be an explicit regulation in a normative act, regardless of its rank - legal or by-law.

In addition, established rules must also be violated. Since a discussion would break out here in the sense of whether it is possible for these rules to be purely professional, moral-ethical, technological in nature (and not normatively established), the opinion of the author of this thesis is positive.

The counter-thesis of the opponents would be in the sense that there is an obstacle for such an opinion, because art. 46, para. 3 of the Law on Normative Acts[22] (LNA) is categorical that criminal, administrative or disciplinary liability cannot be justified in accordance with the previous paragraph two, and it is in the sense that when the normative act is incomplete, the provisions that refer to similar cases shall apply to the cases not regulated by it, if this meets the purpose of the act. If there are no such provisions, the relations are regulated according to the basic principles of the law of the Republic of Bulgaria.

That is, there is a prohibition in criminal law to apply *analogia legis* (analogy of law as statute) and *analogia juris* (analogy of spirit of the law).

[20] Vide: Resolution No. 2 of June 9, 1980 in Criminal Case No. 2/80, Plenum of the Supreme Court.
[21] Vide: Decision No. 52 of April 23, 2018 in criminal case No. 56/2018 of the Supreme Court of Cassation, Second Criminal Division.
[22] Vide: Law on Normative Acts, Pub. State Gazette. No. 27 of April 3, 1973.

The answer is as follows - there is no prohibition to substantiate criminal (both administrative and disciplinary) liability under the first paragraph of Art. 46 of the LNA, which stipulates that the provisions of the normative acts are applied according to their exact meaning, and if they are unclear, they are interpreted in the sense that most corresponds to other provisions, the purpose of the interpreted act and the basic principles of the law of the Republic of Bulgaria.

Precisely in search of the exact meaning of the executive act of proposal two of the first paragraph of Article 282 of the Criminal Code - failure to fulfill official duties, the above-mentioned judicial practice uses the linguistic and legal construct "specifically established rules requiring active legal behavior".

And they can be of any nature - technological, ecological, statistical, sanitary and others - and there is no obligation to be explicitly reflected in a normative act. They just *are learned in the process of education and in the process of practicing the relevant activity.*

Therefore, it must be assumed that the violation of obvious rules inherent in official duties is also inaction within the meaning of Art. 282 of the Criminal Code. Such a case would be, for example, if an employee of the engineer-command officer staff of the fire protection *pay no attention to a pile of flammable materials outside a gas station* on a hot August day.

An interesting jurisprudence shows that *the fine line between a violation and failure to fulfill official duties* (especially when they are multiple and algorithmic in nature) cannot be crossed and described: "The court has given an answer to the stated objections, rejecting them with convincing reasons. It is lawful to conclude that the defendants were assigned thematic inspections on value added tax and they requested and received from the witness M. loan contracts, warehouse lease contracts, transport contracts. However, the defendants did not have the task, nor did they have the opportunity to assess that the documents presented to them were false in content, as well as to investigate the circumstances regarding the financing of the company, the origin of the funds and whether taxes were paid for these funds. The objective analysis of the actions of the defendants - tax officials when issuing each of the incriminated acts for public receivables were correctly evaluated by the court as pointing to the accurate performance of their official duties. It is also correct to conclude that the provision of ... obliged the defendants to refund value added tax when it was paid to the "VAT account" of the supplier. The Supreme Court of Cassation finds the conclusions of the supervised instance to be lawful, that the defendants have fulfilled their official duties, therefore the objective signs of the crime under Art. 282 of the Criminal Code... For the sake of completeness, the cassation panel finds the appellate court's opinion that the K-6 and K-12 procedures cannot fulfill the blanket norm of Art. 282 of the Criminal Code and to

establish criminal liability of the tax officials because they are not of a normative nature. It is true that the disposition of Art. 282 of the Criminal Code has a blanket character, because it does not indicate the specific rights and obligations or the range of established powers of the official, which may be violated or exceeded, and should be supplemented with acts regulating the relevant state or public activity. Judicial practice assumes that the specific official duties or competence should be established in a law, a normative act or an act of a public organization. In this case, the prosecuting authority incriminated violations... which regulate in a more general way the duties of the revenue authorities in the proceedings to establish tax liabilities - their duty to collect evidence ex officio, to subject it to objective assessment and analysis, to demand from the inspected person presentation of evidence /information, documents, papers, etc./ to judge the regularity of the entries in the accounting books…. A specific regulation of this activity of theirs is prescribed by the cited procedures, which were issued by the executive director of the National Revenue Agency, in fulfillment of his powers...These procedures do not have a production, technical or labor law character, they directly concern the interception and recovery proceedings that the revenue authorities carry out and represent a detailing of their legal obligations arising from the incriminated norms ... Therefore, their violation, which is not present in this case, can lead to criminal liability under Art. 282 of the Criminal Code[23]".

It is unnecessary to substantiate the claim that crimes in the service of tax officials by action or inaction is a risk to national security, because every single lev in the state budget could be directed to the implementation of its diverse and numerous functions.

Here, the other thing is more valuable - the judicial panel advocates the same thesis as the author of the present work developed above - *that even non-normative rules are part of official duties*. In this case, the court describes them as procedures that detail the legal obligations of tax officials for certain actions referred to in tax legislation.

It is this detailing that does not imply *an expansive interpretation*, on the contrary - a meaningful understanding of the complexity, complexity and intertwining of the executive act "violation or failure to fulfill official duties" under the first and second sentences of the first paragraph of Article 282 of the Criminal Code.

This is because with the complexity of all processes in human civilization, it is usually a question of *multi-step, multi-phase, interdependent and sequential actions* that lead to a certain result. Therefore, the "omission" of one of these actions could be qualified *both as a violation and as an official omission*.

[23] Vide: Decision No. 102 of April 27, 2017 in criminal case No. 198/2017 of the Supreme Court of Cassation, Second Criminal Division.

Only for simple, clear, categorical and visible actions that arise from imperative normative requirements can a distinction be made between violation of and failure to act on official duties - something that is becoming increasingly difficult and incomprehensible in the dynamic social and legal world.

As new generations enter active civil life, where the concept of responsibility is blurred, and sometimes does not exist at all, it should be reminded that: "The official cannot be exonerated by the fact that others also knew about the committed act , that it has received the consent of other persons from the establishment, enterprise or organization. Such objections are justified only in cases where it was carried out in fulfillment of an illegal order given in accordance with the established procedure, if it does not impose an obvious crime on the perpetrator. Reckless violation or non-fulfilment of official duties ... may be grounds for administrative or disciplinary liability[24]".

Id est, we arrive at the legal postulate that *Ignorantia legis neminem excusat* (lat. - Ignorance of the law does not exonerate anyone). It is impossible to be justified for this and it is a public servant (official, officer, magistrate, etc.), because according to the nature of their activity and profession, and according to the requirements of their position, you need to familiarize yourself with the law and follow him.

The fundamental rule in this direction is found in our basic law and states that civil servants are executors of the will and interests of the nation, and in the performance of their duties they are obliged to be guided only by the law and to be politically neutral[25].

CONCLUSION

Violations or non-performance of official duties are executive acts (crimes), for which the following must be known:

First, they are legally regulated in Article 282, paragraph 1, proposition one and two of the Criminal Code.

Second, the subject of these crimes can only be an official. As a rule, the quality of an official is determined by the person's affiliation to the system and structure of the bodies of power and management in the state apparatus. Therefore, it is such whenever he is assigned to perform a service in a public institution. Emphasis is placed on the official who belongs to the system and structure of the bodies of power and management in the state apparatus.

[24] Vide: Item 3 of Resolution No. 2 of June 9, 1980 in Criminal Case No. 2/80, Plenum of the Supreme Court.

[25] Vide: Art. 116, para. 1 of the Constitution of the Republic of Bulgaria, Pub. State Cazette. No. 56 of July 13, 1991, in force since July 13, 1991.

Third, on the subjective side, they must have direct intent as a form of guilt and a specific criminal goal - obtaining benefit from the crime.

Fourth, no clear theoretical distinction can be made between official misconduct or official omission. The stipulation is made that the executive actions – violation and inaction – related to official duties, must be understood in the legal text of Article 282 of Criminal Code as both divisible and indivisible, and both at the same time. There is a legal paradox which it derives from the complexity and phenomenality of reality itself. That is, it is possible to have a breach of duty, also an omission of duty, as well as a breach and omission of duty at the same time. Each specific case gives an answer to this question, depending on the circumstances of the case and the applicable material-legal and procedural-legal norms, other than the criminal-legal ones.

Fifth, a special case of violation of official duties and failure to fulfill official duties is the case when the perpetrator is a judge. In this way, confidence in the judiciary is violated, legal certainty is ruined, and national security in general is subsequently torpedoed. That's because it's there *fractality in the following picture*: because the judiciary carries out law enforcement activities as an element of national security, and legal security is an invariable part of national security, it *institutions and public figures such as the judge must be impeccable in the performance of their official duties*.

The irony is that it is the judge who is supposed to be aware of the legal situation, as the ancient sentence is *Judex novit curia* (lat. - The judge knows the law). That is, any violation or inaction of a judge must be interpreted as an intentional crime under Article 282 of the Criminal Code (as long as it does not cover the composition of any other provision of the same code).

Finally and sixthly, it should not be forgotten for a moment that any action or inaction concerning the security environment *could be* a risk to national security. In the turbulent and "burdened by our historicity" reality, every action or inaction *of an official* must be assessed as potentially risky, subject to authorization, documentation, archiving, control, supervision, audit and attestation, and only then "be forgotten ".

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