

Corruption acts and deeds. Provisions of the legislation in force

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Abstract: Romanian legislation provides for three categories of acts and deeds: corruption offenses, crimes assimilated to corruption offenses and offenses directly related to corruption offenses.

According to the Decision of the Supreme Council of National Defense of February 28, 2005, one of the "pillars of the new national security strategy" concerns the policies of "good / bad governance", in which the fight against corruption is essential. In this regard, in line with Romania's aspirations for European integration, it is imperative to know all the issues affecting good governance, including corruption in public sector institutions (in correlation with budgetary transparency), the corruption-crime correlation, corruption and the environment business etc.

Key words Romanian legislation, corruption offenses, crimes assimilated to corruption, Romania's aspirations for European integration, corruption-crime correlation, corruption and the environment. Business

JEL Classification: K20, K29.

Introduction

Corruption has existed since antiquity, as evidenced by the origin of the Latin term (corruptio-onis). In Romanian, he was assimilated from French, expressing, on the merits, inappropriate, immoral behaviors of civil servants. Over the centuries, the unstable geographical and historical environment, as well as violent or inefficient political systems, have generated acts and acts of corruption and determined initiatives, concerns and reactions to prevent and counteract, including through legal regulations.

Especially the periods of crisis were marked by the weakening of state authority, degradation of living standards, altered moral judgment, lack of effective control levers, diminished public confidence in social institutions and values, non-adaptation of legislation to economic and social conditions.

Acts and acts of corruption, which have closely accompanied the work of civil servants, are the expression and consequence of human rights violations, freedom of expression and action according to social needs.

Corruption has been assessed, most often, from partisan ideological perspectives, which have induced different perceptions in public opinion. In certain historical periods, the offering and receiving of benefits by officials has

even been accepted as something natural, due to a certain courtesy. In our country, for example, in the Phanariot era, the tip was not incriminated, but only reprobated, possibly, by the norms of morality.

The issue of corruption has returned to the present, in the context of the transition to democracy and the rule of law, as well as Romania's efforts to integrate into the European Union. The recent European Commission Report confirms that the phenomenon of "corruption" remains a widespread problem affecting many aspects of society, such as health, education, public procurement, the award of infrastructure contracts and the relationship between the citizen and the local authority. The experience of Romania in the last decade, as well as of other countries in Central and Eastern Europe, shows that most of the anti-corruption actions materialized, mainly, in punitive measures, the effect of which was far from expected.

Corruption is a threat to democracy, the rule of law, social equity and justice, erodes the principles of an efficient administration, undermines the market economy and endangers the stability of state institutions. Therefore, the fight against this phenomenon must be carried out by the legally competent authorities, with the support of civil society, without any obstruction, so that no one is perceived as above the law. In this context, the prevention of acts and acts of corruption, by monitoring conflicts of interest and incompatibilities, as well as by controlling illegally acquired assets, must be the support of any strategy in the field. Adopting adequate measures to prevent the phenomenon of "corruption" requires knowledge of its real dimension, its complexity, its triggering mechanisms and the consequences produced.

The complexity and continuous diversification of the manifestations of this phenomenon, together with globalization trends, require the design and development of appropriate strategies to address scientifically and systematically the sources of crime and the effects of crime and provide effective tools for prevention and social control.

3.1. Corruption offenses

Romanian legal norms include in the category of acts and acts of corruption actions that refer to: diversion of resources from their normal circuit, non-supply of the state budget, production of "dirty money", smuggling and tax evasion, unfair competition against economic agents, granting or facilitating the obtaining of preferential loans by various officials, issuing payment documents of credit institutions without the existence of the guarantee or coverage necessary to carry out certain operations, granting credits with subsidized interest based on false documents, legalization of fictitious documents, legalization of documents regarding the tax exemption or their establishment below the level of realized incomes, sale of inadequate qualitative products, conditioning of the execution of some services at prices exceeding the legal tariffs, claiming pecuniary advantages for the ordered works. Romanian legislation provides for three categories of acts and deeds: corruption offenses, crimes assimilated to corruption offenses and offenses directly related to corruption offenses.

The Penal Code of 1968, specified the following: *offenses of corruption, but offenses of service or in connection with the service (in Title VI “Offenses affecting activities of public interest or other activities regulated by law”, Chapter I “Offenses of service or in direct connection with the service”): **taking bribery, bribery, receiving undue benefits, influence peddling.***

Article 254

(1) Taking a bribe is the act of the official who, directly or indirectly, claims or receives money or other benefits that are not due to him or accepts the promise of such benefits or does not reject it, in order to fulfill, not fulfill or delayed the performance of an act relating to his duties or for the purpose of performing an act contrary to those duties.

(2) It is punishable by imprisonment from 3 to 12 years and the prohibition of certain rights.

(3) The deed provided in par. (1), if it was committed by an official with control attributions, shall be punished with imprisonment from 3 to 15 years and the prohibition of certain rights.

(4) The money, valuables or any other goods that have been the object of taking a bribe are confiscated, and if they are not found, the convict is obliged to pay their cash equivalent.

▲ Article 255

(1) Bribery represents the promise, offering or giving of money or other benefits, in the ways and purposes shown in art. 254.

(2) He shall be punished by imprisonment from 6 months to 5 years.

(3) The deed provided in the previous paragraph does not constitute an offense when the bribe-taker has been coerced by any means by the one who took the bribe.

(4) The bribe-taker shall not be punished if he denounces to the authority the deed before the investigating body has been notified for that crime.

(5) The provisions of par. (3) shall apply accordingly even if the offer has not been followed by acceptance.

(6) The money, the values or any other goods shall be returned to the person who gave them in the cases shown in par. (2) and (3).

▲ Article 256

(1) **The receipt of undue benefits** represents the receipt by an official, directly or indirectly, of money or other benefits, after having performed an act by virtue of his function and to which he was obliged under it.

(2) He shall be punished by imprisonment from 6 months to 5 years.

(3) The money, the values or any other received goods are confiscated, and if they are not found, the convict is obliged to pay their cash equivalent.

▲ Article 257

(1) **Traffic of influence** represents the receipt or claiming of money or other benefits or the acceptance of promises, gifts, directly or indirectly, for oneself or for another, committed by a person who has influence or is believed to have influence on another official to determine him to do or not to do an act that falls within his duties.

(2) It shall be punished by imprisonment from 2 to 10 years.

The new Penal Code expressly provides as offenses of corruption: bribery, bribery, receiving undue benefits, unfair pay and traffic of influence.¹

▲ Article 308

Bribery is the act of a public official who, directly or indirectly, for himself or for another, claims or receives money or other benefits that are not due to him or accepts the promise of such benefits or does not reject it, in order to fulfill, does not perform or delay the performance of an act relating to his duties or in order to commit an act contrary to those duties.

The provisions of the law also apply to the following persons:

- public officials or persons carrying out their activity on the basis of an employment contract or other persons exercising similar attributions, within an international public organization to which Romania is a party;
- members of the parliamentary assemblies of the international organizations to which Romania is a party;
- officials or persons pursuing an activity on the basis of an employment contract or other persons exercising similar duties within the European Communities;
- to persons exercising judicial functions within the international courts whose competence is accepted by Romania, as well as to the officials from the registers of these courts;

¹ Law no. 301/2004 published in the Official Gazette no. 575 of June 29, 2004

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- *officials of a foreign state;*
 - *members of the parliamentary or administrative assemblies of a foreign state.*

Bribery is punishable by imprisonment from 3 to 15 years and the prohibition of certain rights. If it was committed by an official or by a person exercising a service of public interest, it is punishable by strict imprisonment from 3 to 12 years and the prohibition of certain rights.

If it has had particularly serious consequences, the penalty is imprisonment from 15 to 20 years and the prohibition of certain rights.

The money, valuables or any other goods that have been the subject of bribery are confiscated, and if they are not found, the convict is obliged to pay their cash equivalent.

▲ **Article 309**

Bribery means:

- *the promise, offering or giving, directly or indirectly, of money or other benefits to a public official or to an office clerk or to a person exercising a service of public interest, for himself or for another, in order to fulfill, not to fulfill or to delay in the performance of an act relating to his duties or for the purpose of performing an act contrary to those duties;*
- Bribery is punishable by imprisonment from one year to 5 years (if the bribe is given to a public official or to an office clerk or any person performing a service of public interest) and imprisonment from one to 7 years (if the bribe is given an official of a foreign state or of an international public organization).
- The deeds provided by law don't constitute an offense when the bribe-taker has been coerced by any means by the one who took the bribe.

▲ **Article 310**

Receipt of undue benefits means the receipt by a public official, directly or indirectly, of money or other benefits after he has performed an act by virtue of his function and to which he was obliged under it.

Receiving undue benefits is punishable by imprisonment from one year to 7 years. If the act was committed by a public official or a person exercising a service of public interest, he shall be punished by imprisonment from one to five years.

The money, valuables or any other goods are confiscated, and if they are not found, the convict is obliged to pay their cash equivalent.

▲ **Article 311**

Unfair remuneration is the act of a public official who, by virtue of his office, had under the supervision or control of a legal person under private law, to receive remunerated duties from such a person, before 3 years have elapsed from the date of retirement, of resignation, dismissal or revocation.

Unfair remuneration is punishable by imprisonment from one year to 3 years or by fine.

The leaders of such legal entities under private law are considered accomplices in committing this offense.

▲ Article 312

Traffic of influence is the receipt or claiming of money or other benefits or the acceptance of promises, gifts, directly or indirectly, for oneself or for another, committed by a person who has influence or is believed to have influence over a public official or of an official to cause him to do, not to do or to delay an act falling within his duties or to perform an act contrary to these duties.

The offense is punishable by imprisonment from 2 to 10 years. The same penalty is sanctioned for the promise, offering or giving of money, gifts or other benefits, directly or indirectly, to a person who has influence or is believed to have influence over a civil servant or a civil servant, in order to determine him to do, not to do or to delay an act that enters his duties or to do an act contrary to these duties. The deed is not punished if the perpetrator denounces it to the authority before the investigation body has been notified.

The money, valuables or any other goods that were the object of the offense are confiscated, and if they are not found, the convict is obliged to pay their cash equivalent. The money, valuables or any other goods are returned to the person who gave them, in case he denounces to the authority before the pursuit body has been notified.

The differences between the two Penal Codes are fundamental:

▲ Penal Code in force: !!!!!

- uses the generic term of offense, in the sense of a deed that presents social danger, committed with guilt and provided by the criminal law (art. 17);

- does not expressly provide for “corruption offenses”, but only assimilates them to those “on duty” or “in connection with the service”;

▲ New Penal Code:

- uses the terms "crimes and offenses"; This category includes: taking bribes, giving bribes, receiving undue benefits, traffic of influence.

3.2. Crimes assimilated to corruption offenses²

a) the establishment, with intent, of a diminished value, compared to the real commercial value, of the goods belonging to the economic agents in which the state or an authority of the local public administration is a shareholder, committed

in the context of a privatization action or in the course of a commercial transaction, or of property belonging to public authorities or public institutions, in an action for their sale, committed by those who have management, administration or management responsibilities;

- granting credits or subsidies in violation of the law or crediting norms, not following, according to the law or crediting norms, the contracted destinations of credits or subsidies or not following the outstanding credits;
- the use of credits or grants for purposes other than those for which they were granted.

Conditions: if they are committed for the purpose of obtaining for oneself or for another money, goods or other undue benefits.

They are punished with imprisonment from 5 to 15 years and the prohibition of certain rights

b) performing financial operations, as acts of commerce, incompatible with the function, attribution or task performed by a person or concluding financial transactions, using the information obtained by virtue of his function, attribution or assignment;

- the use, in any way, directly or indirectly, of information that is not intended for publicity or allowing the access of unauthorized persons to this information.

Conditions: if the deeds are committed for the purpose of obtaining for oneself or for another money, goods or other undue benefits.

They are punishable by imprisonment from 1 to 5 years.

c) the act of the person who, by virtue of the function, attribution or assignment received, has the task of supervising, controlling or liquidating a private economic agent, of fulfilling for him any task, of mediating or facilitating the performance commercial or financial operations by the private economic agent or to participate with capital in such an economic agent.

Condition: if the deed is likely to directly or indirectly bring him undue benefits.

² Law no. 78/2000 for the prevention, discovery and sanctioning of corruption, published in the Official Gazette no. 219 of May 18, 2000

It is punishable by imprisonment from 2 to 7 years. If the deed was committed within 5 years from the termination of office, assignment or assignment, it is punishable by imprisonment from 1 to 5 years.

d) the deed of the person who fulfills a management function in a party or political formation, in a trade union or in a non-profit association or foundation and which uses its influence or authority.

Condition: if the deed is committed for the purpose of obtaining for oneself or for another money, goods or other undue benefits.

It is punishable by imprisonment from 1 to 5 years.

3.3. Crimes directly related to corruption offenses

a) *concealment of property* arising from the commission of a crime of corruption or assimilated to corruption offenses, as well as *the favoring of persons* who have committed such a crime;

b) *association in order to commit a crime of corruption or assimilated to corruption crimes*;

c) *forgery and use of forgery* committed in order to conceal the commission of one of the corruption offenses or those assimilated to corruption offenses;

d) *abuse of authority against public interests*, committed in the achievement of the purpose pursued by a corruption offense and those assimilated to corruption offenses;

e) *money laundering offenses*, provided in the Law no. 21/1999 for the prevention and sanctioning of money laundering, when the money, goods or other values come from the commission of a corruption offense or assimilated to corruption offenses;

f) *smuggling of goods resulting from the commission of a crime of corruption* or assimilated to the crimes of corruption or committed in the achievement of the purpose pursued by such a crime;

g) *the offenses provided in Law no. 87/1994 for combating tax evasion*, committed in connection with corruption offenses and those assimilated to corruption offenses;

h) *the offense of fraudulent bankruptcy and the other offenses provided in Law no. 31/1990 on commercial companies*, republished, with subsequent amendments and completions.

Condition: if they are committed in connection with corruption offenses and those assimilated to corruption offenses;

i) *drug trafficking, non-compliance with the regime of firearms and ammunition, trafficking in human beings*

Condition: if committed for the purpose of prostitution, in connection with corruption offenses and those assimilated to corruption offenses.

Conclusions

According to **the Decision of the Supreme Council of National Defense of February 28, 2005**, one of the "pillars of the new national security strategy" concerns the policies of "good / bad governance", in which the fight against corruption is essential. In this regard, in line with Romania's aspirations for European integration, it is imperative to know all the issues affecting good governance, including corruption in public sector institutions (in correlation with budgetary transparency), the corruption-crime correlation, corruption and the environment business etc.

From this perspective, we appreciate that the aspects presented in the study - can be a theoretical contribution with real practical values, a topical, conceptual approach, which manages to be distinguished from other materials devoted to this issue, by the manner of interdisciplinary and analytical presentation of the causes and consequences assimilated to the manifestation of acts and deeds of corruption, the dimensions and implications of this phenomenon.

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