

THE CRIME OF TRAFFIC OF INFLUENCE IN THE NEW INCRIMINATION FORMULA

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Abstract

Corruption is an extremely complex phenomenon, contrary to the democratic principle, manifested negatively in both domestically and internationally. Thus, mainly internally, corruption generates distrust in the institutions of the state and the administration of justice, affects economic progress and good governance, and externally, alter the credibility and image of the state. Corruption can know in practice a variety of forms, traffic of influence being one of the most representative expressions of corruption. Since traffic of influence falls in the category of the crimes with a very high degree of social danger, it has been incriminated in international and community legal documents of reference for combating corruption. In our country, it tries to combat this crime by regulations aimed at a variety of concrete forms of expression, regulation which are the subject of our study.

Keywords: corruption, traffic of influence, crime, domestic criminal law, criminal liability, community law.

JEL Classification: K14

1. Preliminary issues

This paper is based on a thorough scientific research, with particular importance both theoretically and practically, since it contributes to the development of legal doctrine² and use in practice the ideas expressed.

The objective of the study is the analysis of the offence of traffic of influence through the new vision of legislation in force and through the need to prevent and combat such offences under criminal law.

The work captures the innovations introduced by national and international standards, highlighting both progress and issues regulations on the levels of these new regulations in order to improve national legislation to criminalize corruption.

The personal contribution is reflected throughout the entire work and highlights the way in which the concepts used were analyzed, through how reasoned opinions were submitted to doctrines, by personal opinions and conclusions. In preparing this paper, it was considered five dimensions: historical, comparative, descriptive and analytical methods and logical perspective.

2. Legal international framework regarding traffic of influence offence

Traffic the influence is the subject of the legal instruments to reference in the fight against corruption existing national and European, namely the United Nations Convention against Corruption and the Criminal Law Convention on Corruption, adopted by the Council of Europe.

Thus, the United Nations Convention against Corruption was adopted in New York on October 31, 2003 and in art. 18 it states that "each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: a) the promise, offering or giving to a public official or any other person,

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² On the relevant doctrine in the field see Dan Banciu, Sorin M. Rădulescu, *Corupția și crima organizată în România*, Continent XXI Publishing House, Bucharest, 1994, p. 5 et seq.; Dan Banciu, *Sociologie juridică*, Hyperion Publishing House, Bucharest, 1995, p. 20 et seq; Ophelie Brunelle-Quraishi, *Assessing the Revelancy and Efficacy of the United Nations Convention Against Corruption: A Comparative Analysis*, „Notre Dame Journal of International & Comparative Law”, vol. 2, Issue 1, Article 3, p. 103-166; Theodor Mrejeru, *Infrațiunile de corupție. Aspecte teoretice și practice*, All Beck Publishing House, Bucharest, 2000, p. 10 et seq.; I. Ristea, *Manual de drept penal. Partea speciala*, Universul Juridic Publishing House, Bucharest, 2013, p. 25 et seq.; T. Toader, *Drept penal roman. Partea speciala*, 6th ed, Hamangiu Publishing House, Bucharest, 2012 p. 25 et seq.; M. Udriou, *Drept penal. Partea speciala. Noul Cod penal*, C.H. Beck Publishing House, Bucharest, 2014, p. 30 et seq.

directly or indirectly, of an undue advantage, in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or a public authority of a State Party an undue advantage for the original instigator of the act or for any other person; b) the solicitation or acceptance by a public official or any another person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage".

The Convention was ratified by Romania by Law no. 365/2004.

Criminal Law Convention on Corruption was adopted in the Council of Europe in Strasbourg on 27 January 1999.

Art. 12 of this document states that "Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result."

Our country has ratified this Convention by Law no. 27/2002. The Explanatory Report on the Council of Europe Convention stated that the offence of traffic of influence was included in the content of the Convention in accordance with the Program of Action against Corruption, which seeks to eradicate "background corruption"³.

3. The content of the offence of traffic of influence

Traffic of influence is incriminated as offence in the text of art. 291 of the Criminal Code, worded as follows:

(1) demanding, receiving or accepting the promise of money or other benefits, directly or indirectly, for himself or for another person, committed by a person who has influence or who suggests that he has influence on a public servant and who promises that it will determine him to fulfill, not to fulfill, to expedite or to delay the performance of an act falling within the duties of his office or to perform an act contrary to these duties, shall be punished with imprisonment from 2-7 years.

(2) The money, valuables or any other goods received are confiscated, and when they can not be found, it will be disposed the confiscation by equivalent.

Unlike the situation existing in the previous regulation, we notice that the new incrimination formula, the legislator extended the promise of trafficker of influence on how the public official performs his duties, in the sense of fulfillment, failure, speed up or delay the fulfillment of an act corresponding to his duties of his office or in the sense of fulfillment of an act contrary to these duties.

Also⁴, the aggravated form implies a more severe punishment for the author of this offence, when he exercises a dignity public function, is a judge or prosecutor, criminal investigation body or its responsibilities either of discovering or of punishing contraventions or if he is one of the persons shown in art. 293 Criminal Code. We note that in the previous regulation, the aggravated form was contained in art. 7 of Law no. 78/2000 and it included within the incidence of the offense of traffic of influence also the offences committed by people who had, according to law, attributions in discovering and punishing contraventions or of finding, prosecution or trial of the offences or of those committed against such a person.

³ Council of Europe, *Explanatory Report to the Criminal Law Convention on Corruption*, 1999, p. 14.

⁴ By rephrasing art. 7 of Law No 78/2000 on preventing, detecting and sanctioning corruption published in the Official Gazette no. 219/18 May 2000.

Special legal object of the offence of traffic of influence is the social relations regarding the activity of public institutions or private ones in order to be protect professional prestige and public confidence in the staff of these institutions, as well as in the case of taking bribery offence, indicating that, although their committing involves the violation of the same social values protected, in the case of taking bribery, the violation occurs directly, which proves, by committing the offence, that the public official is corrupt, unlike the case of traffic of influence offence, where the violation occurs indirectly, by the impression created that a public official could be influenced⁵.

The offence of traffic of influence has no material object, money, goods or values received are only goods acquired by committing the offence.

Active subject may be any person, including a public official, but here we must distinguish whether he has or hasn't attributions in connection with the act that follows to be fulfilled by that public official of whose favor relies. Thus, if the active subject has no attributions in connection to the act that follows to be fulfilled by the public servant of whose favor it prevails, then he will be merely a third party in relation to him. Conversely, if the act fulfillment is in the competence of another public servant of whose favor he is prevalent, but the active subject affecting the fulfillment of this act through the way it carries out his own duties, and the offender has informed the beneficiary that he will take advantages including of services falling in his competence, then the active subject will be liable for the offence of taking bribery together with the offence of traffic of influence. In this regard, see the Court of Appeal, Section II Criminal decision no. 819/A from June 3, 2015, where Court pointed out that when a trafficker operates in a public institution as a public servant and he traffics his own service duties, it will be retained only the offence of taking bribery, but if he will prevail also by the influence, real or supposed, in addition to another public servant for the latter to perform or not perform an act relating to his service duties for the benefit of other person, it will hold held both the offence of taking bribery and traffic of influence.

We subscribe to the opinion expressed in the doctrine that 'active subject of this offence may be any person who has influence or suggests he has influence over a public servant (or official), these issues not being conditions of the subject of the offence, but modalities of committing the offence'⁶.

There are numerous cases when relatives, friends, acquaintances, who sometimes do not even know that the official prevail by the influence of a public servant or official relied and, in such circumstances, the question is which should be the legal classification of the offence. In our opinion, it would be appropriate retention of the offence of cheating and not that of the traffic of influence.

Art. 7 of Law 78/2000 on preventing, discovering and sanctioning of corruption, amended by Law 187/2012 regulates the aggravated form of this offence, establishing that the quality of qualified active subject for the persons that exercises a dignity public function, are judges, prosecutors, criminal investigation bodies or persons responsible for finding or sanctioning of contraventions, or persons that, on the basis of an arbitration agreement, are called upon to take a decision on a dispute that it is given to them to the settlement by the parties to this agreement, whether the arbitration procedure is conducted under Romanian law or under any other law (art. 293 criminal Code).

According to art. 293 of the current Criminal Code, persons who, based on an arbitration agreement, are called upon to give a ruling on a dispute that is given to them to the settlement by the parties to this agreement, whether the arbitration procedure is conducted under Romanian law or under any other law, may be active subjects of the offences of taking and giving bribery, unlike the previous Criminal Code which did not provide this possibility. Also, art. 243 of Law no. 187/2012 stipulated that art. 293 of the Criminal Code finds its applicability whether members of arbitration courts are Romanian citizens or foreigners. We believe that the legislator would have to expand even in the current Criminal Code the incidence of this text over the art. 291 (traffic of influence)

⁵ In this regard, see decision no. 819/A of 3 June 2015 the Court of Appeal, Criminal Division II. The document is available online at: pna.ro/comunicat.xhtml?id=7138, accessed on 01.11.2019.

⁶ Alexandru Boroî, *Drept penal. Partea specială. Conform Noului Cod penal*, C.H. Beck Publishing House, Bucharest, 2011, p. 383.

and 292 (buying influence), especially since art. 7 of Law 78/2000 covers only offences of taking bribery and traffic of influence. Moreover, we see from the analysis made, that the aggravating manner provided in art. 7 of Law 78/2000 can not even work for the offence of buying influence.

Given how badly it is affected the image of the authorities and of the state institutions by committing this offence, we consider it is necessary to introduce this aggravating modality in the text of the Criminal Code.

Criminal participation is possible both co-authored form and in the complicity or instigation form.

It should be noted that the one who is buying real or only supposed influence, determining a person to exercise her influence over a public servant or official by the promise, offering or giving money or other benefits, is the author of the offence of buying influence (art. 292), not instigator or accomplice to the offence of traffic of influence. Also, the author of the offence of traffic of influence can not act as instigator or accomplice to the crime of buying influence.

In practice, there are situations when the active subject of the offence of traffic of influence uses an intermediary to obtain money or benefits, circumstances in which the intermediary shall, where appropriate, one of the following qualities:

- accomplice to the offence of traffic of influence, if he committed the act in order to provide support to the active subject;
- accomplice to the offence of buying influence if committed the act in order to provide support to the buyer;
- instigator to the offence of traffic of influence;
- instigator of the offence of buying influence.

When "who conceived the offence and led the author to commit it is even intermediary, then he combines the quality of instigator, as well as the accomplice, finally being punished only for instigating traffic of influence"⁷.

It is irrelevant to the existence of the offense if the active subject has actually influence over a public servant or if he only suggests this. What matters is that he claims, receive or accept money or other benefits in exchange for a promise to intervene to a public official in order to determine the latter to fulfill, not to fulfill, to expedite or to delay the fulfillment of an act falling into his service duties or to perform an act contrary to these duties.

The passive subject of the offence of traffic of influence, mainly, is the state, represented by one of its organs or institutions, one of the institutions listed in art. 176 Criminal Code or any other legal entity in which it operates that public servant or official, for whose influence the active subject claims, receives or accepts money or other benefits. Secondly, the passive subject of this offence is even public servant or official whose image is affected by the author of the traffic of influence.

The provisions of art. 291 of the Criminal Code relating to public officials apply accordingly to the facts committed by or in relation to persons exercising, temporarily or permanently, with or without remuneration, an assignment of any kind in the service of individuals from those set out in art. 175 paragraph (2) or under any legal entity.

We note that the legislator has criminalized this act and if the author commits it indirectly, not only directly, "for himself or another" and we express our view that the "other" may be another individual than active subject or even a legal entity. We must say that it is also incriminated the assumption of the offence committed in order to expedite fulfilling of an act.

The material element of the objective side of the offence of traffic of influence is that of trafficking influence that can be materialized through three actions provided alternative: receiving, demanding or accepting the promise of money or other benefits. We mention that the act of non-rejecting of a such a promise is not an action that falls within the modalities of achieving material element of this offence.

Demanding money or other benefits involves a request made directly or indirectly for himself or for another, having no importance whether or not the request was addressed. Receiving money or

⁷ *Idem*, p. 384.

benefits are achieved by delivering them to the buyer of influence. In the event that, prior to receiving the author accepts the promise of receipt, the consuming time of the offence will be that of the promise of receipt of acceptance. We believe that receiving for the purposes existing regulation in art. 291 Criminal Code is materialized by taking the property, detain or possession, directly or indirectly, for himself or for another. Accepting the promise of money or other benefits has been incriminated as a way to commit this act without any convention against corruption in our country is a party to impose. Acceptance implies a prior agreement, very certain about the promises made by the buyer of influence. Acceptance can be both express and implied, but in the latter case, we believe that it cannot take the form of silence. The explanation is quite simple: silence is not equivalent to an agreement. In our opinion, it is essential the offender's attitude subsequent his "silence", because from his activities we can determine whether or not the acceptance of the promise of money or other benefits is actually an acceptance under article. 291 of the Criminal Code.

We believe that "other benefits" equivalent with benefits of any kind, as the legislator intended sanctioning of all the circumstances in which the impartially exercise of official duties of the public servant public could be affected. However, the character of "undue" for the obtained benefits may seem groundless, if we consider the special legal object of the offence of traffic of influence, which involves social relations concerning the smooth running of work relations. But only in appearance, since this activity exercised in conditions of non-impartiality, integrity and transparency in the decision or with disregard the public interest in the exercise of public functions and dignities would become impossible.

In view of the above, however, we believe that the text of the first paragraph of art. 291 of the Criminal Code they should be amended as follows: "(1) demanding, receiving or accepting the promise of money or other undue benefits, directly or indirectly, for himself or for another person, committed by a person who has influence or who suggests that he has influence over a public servant and who promises that it will determine him to fulfill, not to fulfill, to expedite or to delay the performance of an act falling within the duties of his office or to perform an act contrary to these duties, shall be punished with imprisonment from 2-7 years".

It should be point out that the intention of the legislator was also to prevent such events, resulting in the ways of achieving of the material element, respectively "demanding" or "accepting the promise", that denotes a sufficiently high degree of social danger even when a such criminal agreement is not committed.

There are a number of essential requirements for the existence of the offence of traffic of influence. Thus, it is necessary for the offender to have influence or to let believe that he has influence, which means either that he really is in friendly relations with those officials, enjoying their confidence or that only creates a false impression about this, being enough for the condition to be satisfied if that public servant really exists, the influence buyer is aware of this and he is convinced that the active subject may influence the official. This way of achieving the material element of the offence which creates a distorted impression about the reality resemble the offence of traffic of influence with that of cheating, but there is the decision XXXV of May 7, 2007 of the High Court of Cassation and Justice, which clarify this issue⁸.

Thus, the general prosecutor attached to the High Court of Cassation and Justice promoted an appeal regarding the legal classification of the offence of a person to pretend, to receive or to accept money or other benefits to deliver them to a public servant over he has influence or suggests he has influence, in order to determine him to do or not to do an act within his service duties, asking to decide that the act of a person to pretend, receive or accept money or other benefits to deliver them to a public servant over he has influence or lets to believe that he has influence, to determine him to do or not to do an act falling into his service duties, is in any case the offence of traffic of influence

⁸Published in the Official Gazette no. 764 of November 12, 2007; appeal in the interest of the law regarding the legal classification of the offence of a person to pretend, to receive or to accept, directly or indirectly, money or other benefits, to remit them to a public servant over whom he pretends has or let to believe he has influence in order to determine him to do, not to do an act that falls into his service duties.

provided for in art. 257 of the Criminal Code⁹, but not the offence of cheating provided for in art. 215 of the same code¹⁰. Deliberating on the appeal, the High Court found that the courts were given different decisions on the legal classification of the offence of a person to pretend, to receive or to accept money or other benefits, in order to be delivered to a public servant over whom he claims to have influence, in order to determine him to do or not to do any act within his service duties. Thus, some courts have ruled that such action represents the offences of traffic of influence referred to in art. 257 of the Criminal Code and other courts have ruled that the legal classification of the crime is the offence of cheating referred to in art. 215 of the same code.

For this reason, the appeal was formulated in order to establish the distinction between the offence of traffic of influence and that of cheating taking into account the following criteria:

- the nature of the influence that the active subject is able to exert on the public servant concerned by traffic, such an influence couldn't be otherwise than real or possible and credible, and without it the prestige of that public servant would not be affected, and the legal classification in art. 257 of the Criminal Code would be unjustified;

- the expression "for other", which refers to both articles. On this criterion, it was argued that this is not so relevant to differentiate the offence of cheating from that of traffic of influence, as much as some instances considered, since the notion 'for other' may also include the public servant to whom the author has or claims to have influence;

- the juridical object of the two offences, namely confidence in the prestige and integrity of the public servant that works within the service of a legal entity, in the case of the offence of traffic of influence, and good faith that must exist in the social relations regarding property, in the case of offence of cheating. From this point of view it was held that, if the buyer of influence wants to accomplish a particular interest, legal or illegal, in exchange of the benefit that he provides for the person who has influence or who suggests that he has influence over the public servant he claims he will determine to do or not to do a certain act within his service duties, it can not be considered that would be affected by that act as long as he has voluntarily reduced his property in exchange for the desired or accepted service.

The Supreme Court examined the appeal in relation to invoked situations, and issues of judicial practice to which reference was made, noting the following: as it results from the text of two law's articles, between the two crimes there are essential differences, both on the juridical object and objective side of those two and regarding the specific features that characterize their subjective side. For this reason, it was considered that the circumstances revealed by the appeal have no difficulties in interpreting the text of the offence of traffic of influence compared to the offence of cheating of the same code, when the facts refer to the offer or acceptance to give money or other benefits in exchange for promised acts of a person with real or supposed influence over a public servant who has through his service attributions the possibility to fulfill that acts. In addition, it was pointed out that the invoked solutions in the notification of appeal contain no comparison elements to justify the requirement to give rulings on a question of different legal classification given by instances on the identical particular cases, the decisions that it is referred to in the annexes on offences committed under different conditions, which obviously would not justify the same legal classification. Considering the above and taking into account the provisions of art. 414² paragraph 1 of the previous Criminal Procedure Code, according to which the High Court of Cassation and Justice may be solicited by an appeal to rule only on points of law that have received a different solution from courts and not when the solutions evoked concern different situations-premise, the supreme court found that there are not accomplished the necessary conditions to adopt a solution in the interest of the law on the legal classification of the offence regarding referred referral and

⁹ According to art. 257 para. 1 of the Criminal Code, the influence trafficking offense consists of "receiving or demanding money or other benefits or accepting promises, gifts, directly or indirectly, for themselves or for another, committed by a person who has influence or leaves to it is believed that it has an influence on an official to determine him to do or not to do an act that falls within his duties of service ... "

¹⁰ Art. 215 para. 1 of the previous Penal Code consists in "misleading a person, by presenting as true a lying or as a lying a true fact, in order to obtain for himself or another an unjust material use and if a damage ... "

consequently, the High Court dismissed the appeal.

Also, rejecting the defendant's request to change the legal classification of the offence from the traffic of influence in that of cheating, in decision no. 526/A of October 8, 2014, the Criminal Division and for Juvenile and Family Causes of Pitesti Appeal Court motivated to maintain the decision at first instance, pointing out three essential differences between those offences. Thus, the court stated that the first difference is noted on the legal object of those two offenses under the criminal law, in case of traffic of influence the social value protected being the confidence in the prestige and integrity of public institutions and in their officials, and in case of cheating, the social value protected being the conduct on property relations in a climate of good faith. That the offence of traffic of influence can be committed in the modality of claiming money or other benefits, not being conditioned by any act of causing other damage, unlike cheating where the violation of active subject's property is of the essence of the offence, this being another difference between the two regulations. When the influence on an official, which is invoked for the purpose of trafficking is nonexistent, the difference between the two offences can be achieved by analyzing other constituents, namely if the reduction in property is involuntary case of cheating offence, in case of traffic of influence, money or other benefits are offered to the trafficker voluntarily.

So, if the public servant or official shall not benefit from necessary competence required to perform, failure, speed up or delay the fulfillment of an act that is interested the influence buyer, then the legal classification of the offence committed by the active subject will be to cheating, not traffic of influence.

In judicial practice it is considered that this condition is satisfied for the existence of the material element of the offence of traffic of influence, even if the author does not indicate the name of the public servant about he claims that he would pass under the condition that, from his remarks, to result the competence on performance, failure, delay or expedite the fulfillment of an act of that official whose influence is trafficking¹¹. Also, if the author assigned a pseudonym for that public servant, the requirement is still accomplished if for the person concerned, the decisive reason of the transaction was the influence of the active subject. There is another circumstance when this requirement is accomplished, namely when a person says that the author would have influence on a public servant or official and active subject does not reject his words.

A second essential requirement the existence of the offence is that the active subject to promise to intervene to a public servant or official. It is irrelevant whether the promised intervention has been materialized or not, whether or not the act was performed or whether the act was a legal or illegal one. If the solicited document is not for the public servant's competence or of the competence of the institution in which he operates, we are in the presence of the offence of cheating, not the traffic of influence. Therefore, to achieve material element of the offence of traffic of influence it is necessary that the requested act to be within the competence of the public servant and of the institution where that official operates. Also, the Constitutional Court's decision no. 489/2016 states that "the promise may be express or implied, when it results from the factual circumstances and the offence exists whether the promised intervention occurred or not and whether the solicited act was legal or illegal. In these circumstances, the Court held that by the regulation, in addition, of the above cited requirement, just the act of training which is close enough to damage the social value protected will be criminal sanctioned, in this respect the new law being the criminal law more favorable, in the same time, the new Criminal Code regulating in a more clear and predictable way the offence of traffic of influence"¹². The Explanatory Report on the Convention of the Council of Europe¹³, it is stated that the trafficker of influence "can not take decisions himself, but he uses in an illicit way his real or pretended influence on other people. It is unimportant whether trafficker of influence exercised or not in reality his influence over these people or if the influence led to the desired result." Analyzing the formulation of the offence of traffic of influence that exists in the current Criminal Code in relation to the Council of Europe document, we can say

¹¹ Supreme Court of Justice, Criminal Section, decision no. 2383/1999, in "Revista de Drept Penal" no. 4/2001, p. 158.

¹² Published in the Official Gazette of Romania no. 661 of August 29, 2016.

¹³ Council of Europe, *Explanatory Report to the Criminal Law Convention on Corruption*, 1999, p. 14.

that the legislator managed to circumscribe this incrimination to the European requirements.

The third essential requirement that must be accomplished for the existence of the offence regards the action moment forming the material element of the objective side. Thus, we specify that the moment of claiming, receiving or acceptance may be earlier or the same with the moment when that act will be fulfilled, not fulfilled or speed up that act, because otherwise we are in the presence of the offence of cheating. This requirement is deductible from the legal text, meaning that by committing the offence of traffic of influence the reason is precisely to determine the public servant to perform, not to perform, to speed up or to delay the fulfillment of an act falling within his service duties or to perform an act contrary to these duties.

We subscribe to the view expressed in the doctrine that the offence of traffic of influence "must be sanctioned together with cheating if trafficking is a modality of cheating in order to misled. For example, the trafficker of influence, over the payment of influence, falsely claiming a benefit for official too. In this case, the traffic of influence serves as a fraudulent modality for deceit, specific to cheating"¹⁴.

For a claim to constitute the material element of the objective side of the offence of traffic of influence, we believe that several conditions must be met cumulatively, as follows:

- the claiming object to be money, goods, valuables or other benefits;
- pretended money, goods, valuables or the benefits to be legally undue to the trafficker of influence;
- for the act of the trafficker of influence to be criminal, it is required that the demand for money or for other benefits to be earlier or in the same time with the moment when the public servant whose influence was trafficked fulfilled or not the requested act;
- claiming must be a current, firm, serious request and must relate to something determined or determinable;
- the claiming initiative to be exclusively of the active subject;
- claiming, by its formulation's modality, to be able to be understood by the influence buyer; the condition requested results also from the provisions of art. 28 of United Nations Convention against Corruption: "Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances". We believe that, if the influence buyer would not have understood the claiming of the trafficker of influence, although he should and could do so, the act does not have the high degree social danger required for the existence of the offence. In addition, the influence buyer must understand also that the active subject's claims are undue, unlawful;
- from the wording request should result credible and feasible claiming;
- between pretended and received goods and benefits and the claimed or actually realized act to be no disproportion;
- claiming to be motivated by an action that regards the official duties of that public servant, taking the form of an award or an equivalent payment for the service offered to the influence buyer;
- pretending to be illegal, and payments and rewards to be undue, prohibited by law, the public servant having the legal obligation to perform the act or not to perform it if that act is improperly or unlawfully solicited.

When the act was committed by an intermediary, meaning indirectly, it is imperative that the claiming initiative to have been belonged to the active subject, the intermediary to be fully and correctly submitted the request and its reason, and the recipient to be understood the claiming.

The immediate result is to create a state of danger for the proper functioning of the activity of an organ of state, of a state institution, of a unit which shall be noted in art. 176 of Criminal Code or of any other legal entity where the public servant whose influence was trafficked works. We note that the danger state created affects including professional prestige, reputation and honor of the public servant or official concerned.

The causal connection between the active subject's activity and the immediate result of his

¹⁴ Alexandru Boroi, *op. cit.*, 2011, p. 386.

actions results from the materiality of the act and it is not necessary to be proved, because the law didn't condition the offence's existence by producing of some certain damages, except creating a state of danger.

In terms of the subjective side, we specify that the guilty form necessary for committing the offence of traffic of influence can be only direct intent, classified by purpose, since the act is committed in order to determine a public servant to fulfill, not to fulfill, to speed up or to delay the fulfillment of an act falling within his service duties or to perform an act contrary to these duties. So, for the offense of traffic of influence, the author has the representation of the fact that by the act committed he discredits a public servant, unlike the case of taking bribery offence, when the author is aware that its position was discredited by his own corrupt conduct.

Analyzing the ways of achieving the material element of this offence, we find that at least accepting the promise falls into the category of preparatory acts to receiving money or other benefits, while claiming not merely otherwise than a beginning of execution, meaning an attempt to effective receipt of money or other benefits. So, basically, legislator incriminated as having the same degree of social danger, the committing of this act whether it was committed in the manner of preparatory acts, of attempt or of a consumed offence, while establishing the same sanction regime. Or, in other words, acts of preparation and attempt are treated as consumed offence. Having an alternative content, the offence may be committed in one single normative modality or in all three incriminated by the legislator, without being altered the criminal unit. Factual modalities (such as receiving money through an intermediary), if any exists, it will be considered for individualization of criminal responsibility. Consumption moment of the offence is considered to be the time of the demanding, receiving or accepting money or other benefits, being an offence of anticipated consumer. It is irrelevant to the existence of the offence if the intervention was made or not, and if they would materialize, again is irrelevant whether the public servant concerned has settled in any way acts that fall within his service duties.

Regarding the offence of traffic of influence committed in continued form, "in the legal literature have been conflicting, some authors opined that it is not possible, others saying that there is no impediment to the application of art. 36 paragraph (1) The new Criminal Code, where, under the same criminal resolution, there are repeated at different intervals of time the incriminated material acts"¹⁵.

The offence of traffic of influence is sanctioned with imprisonment for committing it in type version from 2-7 years, in aggravated form provided in art. 7 of Law 78/2000, special limits laid down in art. 291 shall be increased by one third, and for committing it in attenuated version, regulated in art. 308 of Criminal Code, the special limits laid down in art. 291 Criminal Code are reduced by one third. Although the law does not provide it, according to the person of the author and depending on the severity and of the circumstances of the offence, the court may order additional punishment of prohibition of exercising certain rights. According to paragraph (2) art. 291 of Criminal Code, money, valuables or any other goods received are confiscated, and when they can not be found, it will operate the confiscation by equivalent, understanding by this that money, goods and valuables are taken from the one in whose possession they are, even if he is other than the defendant.

In the case of the offence of traffic of influence, "the goods are not confiscated if the buyer of influence denounced the act before the prosecution body has been notified of that action. It is no longer allowed, as it was sustained in theory, the solution of keeping the goods and benefits in case of psychological constraint of the buyer of influence, because this situation is not provided by law".

We note that the new regulation in matter of corruption offences provides for all these acts the same penalty limits (except the offence of taking bribery), the sanction differing only by the quality of the active subject, namely whether he is a public servant or if is one of the category of persons shown in art. 308 of Criminal Code.

¹⁵ *Idem*, p. 387.

4. Conclusions

Given the exposed within the scientific approach taken, we consider that currently, national legislation criminalizing the offence of traffic of influence in a fairly comprehensive and efficient in combating a wide area of practical forms of expression.

However, on this occasion, we would like to point out that, although the national legislation on the prevention, detection, combating and sanctioning of corruption stands as Law no. 78/2000 and the Penal Code, which are incriminated offences of corruption and those assimilated to them, and also the offences against the financial interests of the European Union, we express the opinion that these regulations are rather limited character, if we consider the small number of categories of people who can be held criminally liable for committing these acts of corruption and that they have only partially transposed the obligations under international treaties to which Romania is a party.

Combating corruption must be a priority for all countries of the world, including our country, which is why, in our opinion, Romania still needs the intervention of the legislator in order to develop the legal framework and for the purposes of adopting policies and practices to prevent this phenomenon¹⁶.

Even if we have some institutional framework and even if some rules are found in certain special laws, capable to provide somehow the implementation of the obligations under international treaties, we believe that even these rules should be subject to their own special laws on prevention, similar to the legislation on combating corruption.

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¹⁶ T.C. Medeleanu, *Traficul de influență. Confiscare specială*, „Revista de Drept Penal” no. 1/2001, p. 88.