



PRIVATE LAW

The Particularities of the Civil Servant's Criminal Liability in the Case of the Crimes of Trafficking and Buying Influence

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Abstract: *In the exercise of the duties, the civil servant has the obligation to respect principles such as legality, impartiality and objectivity, transparency, responsibility in accordance with the legal provisions and others similar with the role of ensuring the exercise of the public service in the interest of the citizens as well as the central and local public administration authorities. The liability of the civil servant arises in the situation of violation of the legal provisions depending on the nature and severity of the consequences on the legal order and can be administrative-disciplinary, civil, contraventional and criminal. In this article, we will analyze the particularities of the criminal liability of civil servants in the exercise of their duties.*

Keywords: *public service; administrative law; criminal liability*

1. Introduction

The notion of public official benefits from a double meaning, having slightly distinct meanings in the scope of the regulations provided by the Administrative Code, unlike those contained in the Criminal Code.

Referring to this aspect, the Administrative Code stipulates in the content of article 371 the obligation to be appointed to a public office, as a condition for the validity of the state of civil servant, as well as the ways of exercising the duties of the service in accordance with principles such as impartiality, professionalism, objectivity and legality.

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Public administration is based on the principle of legality, therefore, any deviation from the legal norms as a result of committing acts intended to harm protected values attracts the responsibility of the civil servant in its multiple forms (Gladchi & Glavan, 2010). According to the Administrative Code in art. 490 as well as the doctrinal opinions, the civil servant's liability can be classified according to the antisocial acts committed, respectively the disciplinary liability for the violation of the disciplinary rules, the contraventional liability in case of committing some contraventions, the patrimonial liability regulated by the Romanian Constitution, the civil liability for the personal acts of the civil servants, who have caused damage to third parties, regardless of the exercise of the public function, the criminal liability, which is committed at the time of committing acts classified as crimes by the Criminal Code or by special laws.

Changing the field of law, we note the fact that in the meaning of the Criminal Code of Romania, the notion of public official benefits from a wider area of definition. Thus, the criminal law does not provide as a condition for the validity of being classified as a public official the manner of investiture, respectively by appointment, election, assignment.

In this sense, in order to fulfil the quality of the active subject of a corruption offence, it is sufficient to fulfil a service task within a public authority, public institutions or a legal person of public interest. In view of these aspects, it is crucial that civil servants show responsibility in the exercise of their duties, acting with the belief that they fully understand their status and duties. They must be convinced that serving the public interest with integrity is the foundation of their professional and moral behavior.

Consequently, the criminal liability of the civil servant takes place under the conditions regulated by the Criminal Code and the Criminal Procedure Code of Romania.

2. Analysis of the Regulations in the Criminal Code of Romania regarding the Crimes of Influence Buying and Influence Peddling

In this section, we will analyze the particularities of the offenses of buying influence and influence peddling provided for in the Criminal Code of Romania in articles 291 and 292 regarding the role and status of public officials.

Thus, according to art. 291 influence peddling is represented by *"claiming, receiving or accepting the promise of money or other benefits, 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 and who promises that he will cause him to fulfill, not to fulfill, to expedite or*

*delay the fulfillment of an act that is part of his official duties or to perform an act contrary to these duties, shall be punished with imprisonment from 2 to 7 years"*¹.

Buying influence refers to *"promising, offering or giving money or other benefits, for oneself or for another, directly or indirectly, to a person who has influence or is believed to have influence over a public official, in order to induce him to perform, not to perform, to expedite or delay the performance of an act that falls within his official duties or to perform an act contrary to these duties, shall be punished with imprisonment from 2 to 7 years and the prohibition of the exercise of certain rights"*².

Analyzing in detail the rules that regulate the two crimes, we notice that the expression "has influence" defines the profile of the active subject, in this case the person who actually attributes to himself the help or trust of a public official, having the ability to determine him to fulfill or not perform service duties that have as their finality an illicit purpose.

At the same time, through the phrase "let it be believed that he has influence" on a public official, the doctrine admits the ability of the active subject, in this case the person who mediates the influence, to claim a pseudo-influence, this being contrary to reality. The offense of influence peddling, or as the case may be, buying influence, is retained, regardless of the tangible or fictitious existence of influence on a public official.

According to constant jurisprudence, in order to retain the crime of influence peddling, it is not necessary for the defendant to name the public official over whom he claims to have influence, as long as his statements show his competence to dispose of the trafficked act. It is important that the alleged influence of the defendant is the reason for the transaction for the interested person.

In order to complete the objective side of the offense of influence peddling, several cumulative conditions must be met, including that the influence the perpetrator claims to have concerns an official or other employee with duties related to the act for which he received or claimed money or other uses. It does not matter if the name of the indicated official is real or fictitious; it is important that the perpetrator's influence was the determining reason for the transaction for the interested person.

In the current regulation of the crime of influence peddling, the legislator introduced a new condition of typicality, in order to realize the objective side of the crime. Thus, the perpetrator must promise the buyer of influence that he will cause the public official or another person to perform, not to perform, to expedite or delay the

¹ Law no. 286/2009 regarding the Criminal Code, published in the Official Monitor no. 510 of July 24, 2009 supplemented and updated, art. 291.

² Idem, art.292.

performance of an act that falls within his official duty or to perform an act contrary to these duties.

To complete the objective side of the crime of influence peddling, it is necessary that the real or imaginary influence of the perpetrator, along with the promise to cause the public official or another person to adopt the conduct desired by the buyer of influence, are fulfilled. The realization of this condition implies the assumption by the perpetrator of the obligation to induce the official to adopt the trafficked conduct.

It is important to note the key role of the civil servant. Thus, being classified as corruption offences, it is essential that the illegal actions take place in the exercise of official duties with a public official acting as an intermediary with direct power over the act or fact that constitutes the object of the crime.

Next, we will analyze the above-mentioned offenses from a jurisprudential point of view by presenting decision no. 429/RC of September 28, 2022, issued by the Criminal Section of the ÎCCJ¹.

Thus, according to the criminal sentence handed down by the Bucharest Court - First Criminal Section, the defendant A was convicted for the crime of "buying influence", provided for by art. 292 para. (1) Criminal Code with the application of art. 41 para. (1) Penal Code.

Briefly mentioning the context in which the crime was committed, the court held that on June 22, 2020, the defendant X promised the sum of 2000 euros to the defendant Y who, in exchange for the latter's promise, that, through A and B, the latter, having arrived at the Bucharest District Court 5, will intervene at the trial panel of the Bucharest District 4 Court charged with resolving the request for conditional release of convict A in order to obtain the admission of the request for his release, the fact that meets both from the point of view objectively as well as subjectively the constitutive elements of the crime of "buying influence", provided by art. 292 para. (1) Criminal Code, with the application of art. 41 para. (1) Criminal Code.

Defendant Y filed an appeal in cassation, invoking the cassation case provided for by art. 438 para. (1) point 7 of the Criminal Procedure Code "the defendant was convicted for an act that is not provided for by the criminal law"².

The appeal in cassation was based on the thesis that the defendant was convicted according to the modality of the promise. Thus, in order to apprehend the commission of this crime in the form of the promise of a sum of money, it is

¹ Decision no. 429/RC of September 28, 2022, issued by the Criminal Section of the High Court of Cassation and Justice.

² The Criminal Procedure Code of July 1, 2010, supplemented and amended.

necessary for the perpetrator of the crime of buying influence to approach the person who has influence or is believed to have influence over a public official and to promise the trafficker of influence a sum of money for the latter to cause the civil servant to perform, not to perform, to expedite or delay the performance of an act that falls within his official duties or to perform an act contrary to these duties.

In this sense, the defense of the defendant X, focused on the conviction based on an error reporting to the crime norm. At the same time, it was mentioned that an attempt is made to demonstrate the existence of the crime of buying influence by reporting those elements that could constitute the typicality of this crime in the charge of a person who did not initiate the causal chain, being foreign to this report.

Reporting the motivation of the defendant's conviction to the norm of incrimination regulated in art. 292 of the Criminal Code, it is noted that the elements from the probation do not demonstrate the action of the defendant to promise anything. At most, it could be argued that Defendant X tacitly accepted the proposal made by Y. The court attributed the objective and subjective typicality of an influence peddling to Defendant X through Defendant Y's actions.

Examining the merits of the appeal in cassation, within the limits provided by art. 442 paragraph (1) and (2) Criminal Procedure Code, declared by the defendant A, the supreme court found that it is unfounded, for the reasons that will be shown below: the defendant claimed, in essence, that the facts in relation to which he was convicted do not meet the constitutive content of the crime of buying influence provided by art. 292 para. (1) of the Criminal Code in consideration of the fact that the material element of the reference crime is not fulfilled in the alternative normative modality of the promise and the condition attached to the material element is missing, consisting in the fact that the deed must relate to money.

The High Court notes that the material element of the crime can be carried out in three alternative ways, namely the promise, offering or giving of money or other benefits. At the same time, it is noted that when the material element consists of "promise" or "offer", the existence of the crime of buying influence is not influenced by their acceptance or rejection.

Among other matters, it has been held that for the existence of the crime of buying influence, the reaction of the official who is offered money is meaningless, so that if the alleged influence peddler rejects the promise or offer, the crime of buying influence can exist without having a correspondence in the crime of influence peddling.

Considering the above considerations, the High Court of Cassation and Justice rejected, as unfounded, the cassation appeal filed by the defendant.

3. Peculiarities of Engaging in Criminal Liability of the Civil Servant

Criminal responsibility includes both the right of the state to prosecute the criminal, to apply the legal sanction and to compel him to carry it out, as well as the obligation of the criminal to bear the consequences of his act - the application and execution of the punishment - to ensure the authority of the law and the restoration legal order. In this sense, criminal liability is identified with the content of the criminal coercion report.

Offenses that may make public officials criminally liable include, but are not limited to, abuse of office, bribery, buying influence, influence peddling and others. Public officials involved in such crimes are subject to the criminal procedure provided for by the Criminal Code and the Criminal Procedure Code.

Thus, the provisions of art. 202 of the Criminal Procedure Code of Romania regulates the purpose, conditions and categories of preventive measures applicable if there is a reasonable suspicion that a person, regardless of legal status, has committed an act provided for by criminal law. Of interest to our study is para. (4) of this article in which preventive measures are listed, namely detention, judicial control, judicial control on bail, house arrest and preventive detention.

As a consequence, following the disposition by the criminal investigation body of a preventive measure on a public official on whom there is a reasonable suspicion regarding the commission of an act stipulated by criminal law, the administrative law regulations complement these measures in order to maintain the legal order and the proper functioning of the public institution to which the suspect belongs.

In this sense, the Administrative Code of Romania regulates the liability of public officials in several articles, including articles 501 and 513. We will analyze these articles to better understand how the regulations on the criminal liability of public officials are completed in the sphere of administrative law.

Article 501 of the Administrative Code of Romania refers to a series of additional measures in the case of criminal liability of civil servants. In essence, it establishes that civil servants are liable for the culpable violation of official duties, the norms of professional and civic conduct, provided by law or other normative acts, as well as the internal regulations of public authorities and institutions.

Therefore, at para. (3) of the article in question, it is regulated the situation in which, if, following the initiation of the criminal action, the public official has the ability to influence the investigation, the person competent to appoint to the public office is obliged to order the transfer of the investigated person for the entire period of the investigation within the same institution but in another department, or within another structure without legal personality in the same public institution.

At the same time, Article 513 of the above-mentioned normative act refers to the legal suspension of service relationships. Thus, paragraph (1) letter a) provides for the de jure suspension of the employment contract of the civil servant in the situation where one of the preventive measures provided for by the Code of Criminal Procedure has been ordered, namely preventive arrest, house arrest, judicial control or judicial review on bail.

4. Conclusion

Public official liability for corruption offenses is a central aspect in maintaining the integrity and efficiency of public administration. Corruption has negative effects on public trust in state institutions, on resource allocation, and on economic and social development. Therefore, the liability of civil servants regardless of its nature, administrative, civil or criminal, is essential for maintaining the integrity and efficiency of the public administration.

The liability of civil servants' benefits from a complex legal framework in the Romanian legal system, from various fields of law such as administrative law, civil law and criminal law and includes criminal, contraventional, disciplinary and preventive sanctions, as previously analyzed.

This responsibility is crucial for ensuring an efficient, transparent and fair public administration, thus protecting the public interest and strengthening citizens' trust in state institutions.

5. References

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