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The Approver in Corruption Cases: A Witness in His Own Trial?

Lecturer Ph.D. ***FLAVIU CIOPEC****[*]*
West University of Timisoara, Law Faculty

Abstract:

The study aims at analyzing a controversial issue of criminal trials when it comes to corruption offenses, namely the legal standing of the approver. It examines the compatibility of the approver with the status of witness of the accusation, his possibility to participate in a trial as a distinct subject, as well as the impossibility of using his testimony as evidence. A distinction is made between the approver who assisted or found out about an offense, thus revealing facts from the perspective of an observer, and the approver-participant to an offense, a situation in which, given certain exculpatory defenses or circumstances that entail a decrease in the limits of penalties which operate in his benefit, he appears as a person with an interest at trial. Several examples from case-law are discussed, in order to assess the manner in which judicial authorities addressed the topic under debate, as well as the arguments of the doctrine in the same matter. Finally, the study focuses on the criteria applied to assess the evidence derived from the approver or obtained with his support, from the perspective of the new evidentiary standard, i.e. 'beyond a reasonable doubt', which has emerged in the Romanian criminal trial.

Keywords: *approver; corruption offenses; witness of the accusation; exculpatory defenses; reasonable doubt.*

I. According to the least complicated definition, an approver is the author of a denunciation. There is a legal definition for the denunciation, *i.e.* the reporting of a person to the authorities about the commission of an offense (art. 290 in the Romanian New Code of Criminal Procedure, hereinafter 'the New Code'). This reporting has a private nature, which distinguishes it from the formal notice, a duty of public clerks that hold high offices within a public authority or a legal entity of public law, as well as of persons acting as supervisors in the course of their duties or perform services of public interest (art. 291 in the New Code). In this case, the denunciation has been referred to as 'formal report'.

The Romanian Code of Criminal Procedure is silent as to the status of the approver. In order to clarify this issue, it is necessary to start our debate from the question on how a private individual comes to be in possession of information that allows him to report an offense. Several sources can be thus identified: (i) he found out about the offense indirectly, from the accounts of third parties, (ii) he was present upon commission of the offense or (iii) he was involved in the commission of the offense as a participant.

The first two hypotheses can be easily assimilated to the position of a witness at trial. A witness is the person who has knowledge of facts or circumstances that represent evidence in a criminal trial (art. 114 in the New Code). According to art. 115 of the New Code, any person can be summoned and heard as a witness in a criminal trial,

[*] E-mail: flaviu.ciopec@e-uvt.ro.

except for the parties (the defendant, the aggrieved party, the party incurring civil liability) and the main subjects that participate in a trial (the suspect and the injured party). Therefore, if the approver does not participate in a trial in any of the qualities mentioned before, and he has direct or indirect knowledge of aspects related to the criminal case, he could be heard as a witness.

The third hypothesis refers to the situation in which the approver was involved in the commission of the offense. In such a case, we are not confronted with a mere denunciation, but with a specific category of denunciation, namely the self-incriminating report. Although the self-incriminating report has not been provided by the Code of Criminal Procedure, we consider that the legal rules governing denunciation will correspondingly apply. When an approver has taken part to an offense, he does not reveal facts about its commission from the position of a neutral person, uninvolved in the criminal activity, but as a person who, given the opportunity to collaborate with judicial authorities, can be easily assimilated to an interested party.

In what follows we deem necessary to analyze in detail the status of the approver-participant to an offense in a criminal trial, and, especially, due to their sensitive nature, his involvement in corruption offenses. We shall approach the situation of the approver as a voluntary participant to an offense, in order to distinguish it from the case where the participant was constrained, by any means, to commit the offense. In this last situation, if the constrained person also makes a denunciation, there is no impediment to hear the denunciator as a witness, since the act he took part in shall not constitute an offense, therefore it cannot be imputable on him [art. 290 para. (2) of the Penal Code].

As regards the criminal liability of the participant to an offense, the New Penal Code has set out, in art. 51 para. (1) that he shall not be punished if, before the discovery of the offense, he reports about its commission, so that completion of the offense can be prevented, or if the participant himself prevents completion of the offense. The new dispositions are different from the ones in the former Penal Code, which provided only the prevention, by the participant himself, of the commission of the offence (ex-art. 30 of the Penal Code).

Presently, if a report to the authorities has the ability to prevent completion of the offense, shall be legally qualified as a new exculpatory defense. This defense applies to all offenses, since the law aims to encourage the reports on crimes and to grant impunity if completion of offenses is deterred. *A contrario,* if the report takes place after the offense has been committed, even though before the discovery of the act by the authorities, the exculpatory defense is no longer applicable, yet the authorities can use it as a mitigating circumstance.

In case of corruption offenses, the situation is rather different. Thus, the person who offers the bribe (art. 290 of the Penal Code) or the influence peddler (art. 292 in the Penal Code) shall not be punished if they report the act before the investigation authorities have been informed about it. Such instances represent, according to criminal law, exculpatory defenses of special nature, and apply in situations that are not covered by the general defense stipulated at art. 51 of the Penal Code. Thus, in case of corruption offenses, even after the moment the offense has been completed, reporting about it shall lead to impunity. Such provision is aimed to be an instrument destined to efficiently combat corruption, by stimulating individuals to reveal commission of such acts.

Further on, pursuant to art. 19 of the Government's Act no. 43/2002[1] on the National Anti-Corruption Department, the person who has committed one of the offenses prosecutable by the Department, but who, during the criminal investigation reports and facilitates the identification and prosecution of other persons who have committed such offenses, shall benefit from the decrease by a half of the limit of penalties provided by law. In this case, there operates an exculpatory defense.

It is recommendable to address as well the dispositions governing art. 19 of Act no. 682/2002[2] on the protection of witnesses which provide that a person who is a witness[3] in a criminal trial and who committed a serious offense, and who, before or during the criminal investigation or the judgment, reports and facilitates identification and prosecution of other persons who committed such offenses, shall benefit from the decrease by a half of the limit of penalties provided by law. In this case, too, there shall operate an exculpatory defense.

Therefore, there are four stages depending on which criminal law draws legal consequences for the person who makes a report to authorities. The first is the stage when the offence was completed, the report being due before completion, so as to prevent it. The second is the stage when judicial authorities find out about the offense, the report being due before they are notified about the offense by other means. The third stage is when criminal investigation of the corruption offense initiates, the report being due any time during said investigation. Finally, the fourth stage is when the judgment has started, the report being due at any moment within the trial. Either we refer to an exculpatory defense (in the first two situations) or to a decrease in the limits of penalties (in the last two cases), the benefit that the law offers is consistent and tempting for a report to be made, and it thus becomes clear that the approver has a well-defined interest at trial.

The Romanian Code of Criminal Procedure does not actually condition the hearing of a person on a lack of interest at trial. At the same time, it does not prohibit the hearing of a person who has an interest at trial. The best example in this sense is that the injured party who has been affected by the offense (art. 79 in the New Code) has the right to be heard (art. 81 and art. 111 in the New Code). It is obvious that the injured party has an interest therefore he/she shall participate in a criminal trial. In case the injured party does not want to participate in a criminal trial, he/she can be heard as a witness [art. 81 para. (2) of the New Code]. Similarly, when the judge aims at hearing the spouse or the relatives (art. 117 of the New Code), the law confers these persons the possibility to refuse to testify, the reason for that being precisely the existence of an interest at trial. Corroborating such provisions with those of art. 115 in the New Code, it seems to appear that a witness cannot be but a person devoid of interest at trial.

Additionally, according to art. 116 para. (2) of the New Code, the hearing of a witness can be extended to all circumstances necessary to verify his/her reliability. Although this condition of reliability is quite uncommon for Romanian criminal procedure, the fact is the New Code allows to be used in a trial only those subjects who

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[1] Published in the Official Journal no. 244 of April 11th 2002.

[2] Republished in the Official Journal no. 288 of April 18th 2014.

[3] A witness, according to the special law (subsidiary laws), also means the *person devoid of legal standing* in a trial, who, by his/her determinant information or data, can contribute to the discovery of truth in cases of serious offenses or to the prevention of substantial damage that could result by commission of such acts, or to the recovery of said damage; this category also includes the person who is a defendant in another case [art. 2 letter a) paragraph (2)].

enjoy a high degree of credibility. Hence, we must admit that a person with an interest at trial could not be a witness, because this legal status would be affected by lack of credibility.

The requirements of good-faith and reliability seem to result as well from the examination of international conventions to which Romania is a contracting party. Thus, the United Nations Convention against Corruption[4] adopted at New York on October 31st 2003 provides that 'Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports *in good faith and on reasonable grounds* to the competent authorities any facts concerning offences established in accordance with this Convention' (art. 33).

Similar provisions are to be found in the Council of Europe's Civil Law Convention on Corruption[5] adopted at Strasbourg on November 4th 1999, which states that 'Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have *reasonable grounds to suspect* corruption and who *report in good faith their suspicion* to responsible persons or authorities' (art. 9).

Consequently, an approver could not have the legal standing of a witness, being easily assimilated to an interested party of low credibility. The legal standing of the approver needs explanations also due to the fact that there are cases where such quality becomes the essential element in a criminal trial. We shall present three cases and try to analyse the way in which the approver may have a certain legal standing.

II. In a case,[6] the first instance court refused to grant the good-faith presumption to approvers when the only direct and immediate evidence on which the accusation was based was their testimony. By comparing the testimony of the approver with the statement of the defendant, the court conferred a higher evidentiary value to the latter, whose content revealed that the defendant did not admit to having accepted bribe. Consequently, the court acquitted the defendant.

Commenting on this case, the author noted that according to the provisions of the former code, there is no order of preference between the statement of the defendant and the testimony of a witness, even if the latter is an approver. Excluding the testimony of the approver based on the fact that it is a singular one, doubled by a presumption of his interest at trial, would be against the provisions that govern the assessment of evidence. Thus, according to the ex-art. 69 in the former code, the statement of the defendant shall have an evidentiary value only if it is corroborated with other facts and circumstances that result from all the evidence of the case-file. Instead, the testimony of the witness has an evidentiary value in itself, unconditioned by the existence of other evidence that it must be corroborated with.

Finally, pursuant to art. 63 para. (2) of the former Code of Criminal Procedure, no evidence shall have a previously established value. Presently, the references in the former code related to the conditional or unconditional nature of the statements made

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[4] Ratified by Romania through Act. no. 365 of September 15th 2004, published in the Official Journal no. 903 of October 5th 2004.

[5] Ratified by Romania through Act. no. 147 of April 1st 2002, published in the Official Journal no. 260 of April 18th 2002.

[6] Tribunal of the Mureș County, Penal judgment no. 100 of July 1st 2011, critically commented upon by *Cristian-Valentin Ștefan* in Caiete de drept penal no. 4/2013, pp. 142-145.

by the defendant or the witness no longer exist, since the New Code has not provided them at all.

Since we deal with the testimony of an approver, in order to assess whether or not it reflects the truth, other criteria should be applied, distinct from that of the singularity of such evidence. Thus, the following elements should be taken into account:

- the interest of the approver at trial;
- the relation between the approver and the bribed person;
- the criminal record of the approver;
- existence of data about the influence or incitement to report the offense, derived from the conduct of judicial authorities;
- if the approver is involved in pending criminal proceedings or whether he is arrested;
- if the approver incited to the commission of the offense, in order to obtain evidence.

As to the circumstances of the case, it has been pointed out that the only interest of the approver at trial is to recover the amounts of money unduly pretended from him, that he paid in exchange for a service to which he was entitled for free. Also, the approver did not use to have a criminal record, was not subject to a pending criminal proceeding, did not have prior connections with the defendant, did not have the initiative to commit the offense and was not influenced by judicial authorities in his activities.

On the other hand, one must be very careful when assessing the evidence provided by the approver. This is due to the fact that the author who offers the bribe is necessarily involved in the acceptance of bribe, and that is why his objectivity is reasonably questioned.

The conclusion was that, from a practical point of view, it is extremely difficult that the person who accepts the bribe be convicted solely on the testimony of the person who correlatively offers the bribe. For that conviction, the testimony of the approver is not enough, but other evidence is required, in order to supplement the factual elements contained in the testimony. In the absence of such elements, the acquittal is a more cautious solution than a conviction.

As we may notice, the above-cited case has not solved the issue of the legal standing of an approver. The court assimilated the approver to a mere witness, and solved the problem guiding itself by the evidentiary value of his testimony. The invalidation of his testimony was not done on grounds of incompatibility between the status of the approver and that of the witness, but on the impossibility to corroborate his testimony with further evidence.

In accordance with the provisions of the Romanian New Code of Criminal Procedure, we consider that the case is able to be solved by using other coordinates, as well. Thus, pursuant to art. 103 para. (2) of the New Code, conviction shall be ruled only when the court is convinced that the accusation has been proved beyond a reasonable doubt. The idea is repeated in art. 396 para. (2) of the New Code. In commenting upon such texts, the doctrine[7] has underlined that the standard in assessing evidence is no longer that of the intimate conviction of the judge (art. 63 of the former code), but one

[7] Cristinel Ghigheci, *Principiile procesului penal în noul Cod de procedură penală* [Principles of criminal trial in the new Code of Criminal Procedure], Universul Juridic Publishers, Bucharest, 2014, p. 93.

that is specific to the adversarial system, *i.e.* beyond a reasonable doubt. The effect of this approach shift is that the judge is not convinced by himself, but he must be convinced in order to rule conviction. Applying these new coordinates to the above-mentioned case, it results that the mere statement of the approver and its denial by the defendant do not satisfy the exigencies of the new standard, so it becomes obvious that conviction could not be ruled beyond a reasonable doubt.

III. In another case, judicial authorities decided to prosecute the defendant for accepting bribe, as he pretended certain amounts of money from the administrator of a company where he was performing a control, in order to refrain himself from fulfilling activities in the discharge of his duties. In the critical comments upon this case[8], it was noted that the audio recording on magnetic tape, made by the approver who used a tape recorder, of a conversation secretly recorded in a private place, without the defendant being aware of it, shall not be treated as lawfully obtained evidence, therefore, shall be excluded from the case-file. The case addresses the involvement of the approver beyond his testimony in front of judicial authorities, denoting much or less interest. The issue here is to establish the legal regime of the evidence obtained by the approver or with his essential contribution.

According to the former Code of Criminal Procedure, the audio recordings made by the parties could be used as evidence, if they are not forbidden by the law [art. 91^6 para. (2)]. In such a context, it was highlighted that the recording offered by the approver is contrary to the law, since, on the one hand, the approver is not a party in a trial, and, on the other hand, the secret nature of the recording represents a violation of the fundamental right to private life, being affected by the presumption that the approver aimed to incite the defendant to commit the offense in order to obtain evidence, which was prohibited by the law [ex-art. 68 para. (2) in the former code].

When examining the situation of the case, it must be taken into account that upon receipt of the magnetic support that contains the recording (the audio cassette), no official delivery-receipt report was concluded, and the transcript of the conversation into the transcript-report was done according to the perception of the prosecutor, in the absence of technically specialized assistance. The prosecutor would not have the competence to transcribe an audio-recording obtained without a warrant issued to that end. This competence belongs solely to an expert, after having certified the authenticity of the recording and the absence of elements that might alter its content.

The New Code settles this issue in a different manner, including, alongside with the parties, other persons that may perform audio-recordings, on condition that said recordings refer to their own conversations or communications with third parties [art. 139 para. (3) of the code].

From this perspective, the approver could be qualified as 'another person' and his recordings would be susceptible of being used in a trial.

The case is interesting because it allows the possibility that, when all conditions provided by the law were respected, an audio recording made by the approver, although 'unauthorized' by a judge, but authenticated by an expert, may have the ability to be used as legal evidence. In such hypothesis, the hearing of the approver as a witness can

[8] The Prosecutor's Office attached to the Court of Appeal of the Cluj County, Indictment no. 166 of March 22nd 2002, critically commented upon by *Gheorghe Cocuța, Magda Cocuța* in Dreptul no. 7/2004, pp. 155-156.

no longer be prevented on the ground of his lack of reliability. This can no longer represent, as in case of his testimony, a criterion of admissibility.

The issue can be dealt with from another perspective, namely the principle of loyalty in obtaining evidence, according to which it is forbidden to incite a person to commit an offense in order to obtain evidence. In this sense, it is relevant to know who had the initiative of the conversation or the communication, the manner in which the discussion took place, as well as the terms used by the approver, namely if they reveal the intention of inciting a person to commit the offense.

IV. In another case[9], it was sustained that the approvers had been illegally heard as witnesses, because they made financial claims as aggrieved parties, soliciting the amounts of money or the equivalent of the goods offered to the defendant. Examining the file documents, the court noticed that the persons who reported the offense gave testimonies as witnesses and were applied the exculpatory defense set out by art. 255 para. (3) in the former Penal Code.

The fact that these persons solicited the restitution of money or the equivalent of the goods offered to the defendant does not confer them the legal standing of aggrieved parties, since their right is consecrated by art. 255 para. (5) in the former Penal Code, pursuant to which the money, the items of value or other goods shall be restituted to the person who offered them, in case he/she reports the offense to judicial authorities before said authorities were notified about its commission, a condition fulfilled in the present case. Therefore, as regards the approvers who were heard as witnesses and legal rules were respected, the dispositions on nullity (art. 197) or those set out by art. 64 para. (2) in the former Code of Criminal Procedure are not applicable.

The case is of interest, since it raises the question whether, following the solicitation to be restituted the amounts of money offered as bribe, the approver becomes incompatible to give testimony at trial, since his legal standing can be assimilated to that of an aggrieved party. The Supreme Court stated that the compensation of the damage incurred by the approver is not grounded on the status of an aggrieved party, but on a special provision in the criminal law [art. 255 para. (5) in the former Penal Code]. The legal text represented the incorporation into national law of the dispositions of the Council of Europe's Civil Law Convention of Corruption. According to art. 3 of said Convention: '1. Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage. 2. Such compensation may cover material damage, loss of profits and non-pecuniary loss' Also, pursuant to art. 4, '1. Each Party shall provide in its internal law for the following conditions to be fulfilled in order for the damage to be compensated:

i the defendant has committed or authorized the act of corruption, or failed to take reasonable steps to prevent the act of corruption;

ii the plaintiff has suffered damage; and

iii there is a causal link between the act of corruption and the damage.

2. Each Party shall provide in its internal law that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable'.

[9] The High Court of Cassation and Justice, Criminal Chamber, Penal judgment no. 3690 of November 10th 2009, available at http://www.scj.ro/SP%20rezumate%202009/SP%20dec%20r%203690%202009.htm.

As regards this issue, it is to be noted the legislative solution recommended by the New Code of Criminal Procedure, according to which a distinction must be made between the participant constrained to commit the offense and the approver who participated to the offense. The money, the items of value and other goods that were given to the defendant shall be fully restituted in case of a person who was constrained to offer bribe. Whereas, in case of the approver, there shall be restituted only the goods given to the defendant after the formal report about the offense, namely under control of judicial authorities. The goods offered before the formal report about the offense shall not be restituted, a legislative solution that is remote from the one in the former code, where no such distinction was applicable. Thus, the law protects the good-faith persons, who, confronted with a solicitation from a corrupt public officer, notify judicial authorities and offer goods in order to catch the dishonest agent in the act, following the official notification. The person who offers bribe and does not notify judicial authorities, accepting the commission of the offense, shall be exempt from liability if he makes an official report, but shall not benefit from restitution of his goods. In this case, the immorality of the person must be sanctioned from the civil law perspective.

V. In its turn, the Romanian doctrine has adopted a different approach on the issue whether the approver who participates to an offense can cumulate the legal standing of a witness at trial. According to one opinion,[10] the approver can be a witness, on the reason that the law does not expressly provide the interdiction to cumulate both statuses. Where the legislator had a well-defined aim, he provided interdictions for a certain person to be a witness or set out his/her right to refuse to give testimony (art. 115-117 in the New Code). On the other hand, the testimony of an approver may be extremely useful in order to hold criminally liable the persons who committed offenses, thus ensuring the discovery of truth.

Therefore, a strategic goal, the discovery of truth, would legitimize this type of evidence, given that the New Code does no longer provide for a limited enumeration of what can constitute evidence in a trial. It becomes thus possible, according to art. 97 para. (1) f) in the New Code which stipulates that in a criminal trial, evidence shall be obtained by all evidentiary proceedings that are not prohibited by the law, to comprise within the case-file, the testimony of the approver, even without assimilating him to a witness.

According to another opinion,[11] the approver is not a witness and cannot be heard in such a legal standing, in order to prove the criminal law acts that he himself notified to judicial authorities. By its very essence, the denunciation, which can be used to notify judicial authorities, becomes an instrument of the accusation. The testimony of the approver cannot be evidence to be used in a criminal trial, since it is merely a source of information for judicial authorities as to the commission of an act provided under criminal law. By participating to the accusation, the approver cannot be his own witness, namely the witness to the accusations he referred to in the denunciation, since he would thus cumulate several legal standings and it would be contrary to the principle that promotes the separation of functions within a trial.

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[10] Florin Radu, Cristiana Radu, *Considerații referitoare la cumularea calităților de denunțător și martor* [Considerations upon aggregation the approver and witness in the same person], Dreptul no. 9/2007, pp. 206-207.

[11] Horia Diaconescu, Ruxandra Răducanu, *Reflecții cu privire la calitatea procesuală a denunțătorului* [Reflections upon the legal standing of the approver], Dreptul no. 10/2011, p. 218.

These arguments are indeed fascinating, if we take into account the fact that the New Code seems to set out such interdiction in an equivalent situation. Thus, according to art. 61 in the code, the report concluded by the authorities expressly indicated in its content, while they officially report the commission of an offense, shall constitute an official notification of judicial authorities, and cannot be subject to review in administrative proceedings before the court. Such a solution is obviously miles away from the provisions in the former code, which stated that the above-mentioned report could be used as evidence in a trial, a solution vehemently criticized by the doctrine.[12] Consequently, since according to the new trial philosophy, the findings contained in reports no longer have an evidentiary value, being merely acts of formal notification and instruments to be used in the accusation, the same reasoning should be applied to denunciation, for similar motives.

However, this conclusion is relativized by another legal provision (art. 114 of the New Code) which states that the persons who concluded a report in the conditions of art. 61 can also be heard as witnesses. So, it is perfectly possible for a person who is authorized to issue a report about the commission of an offence, to acquire later on the legal standing of a witness and be heard in order to reveal the circumstances under which he drew up the report.

As the studies in this area[13] have demonstrated, there are at least three reasons for which the approver who participated to an offense should be approached with reserve:

(a) the participant to an offense is susceptible of false statements in an attempt to defend from responsibility. This hypothesis is all the more plausible as the self-incriminating report is not an exculpatory defense for all offenses, if it occurs after their completion;

(b) the participant to an offense must be presumed to be an immoral person, susceptible of disregarding the oath taken at the beginning of the hearing;

(c) the participant gives testimony in exchange of the promise that he shall benefit from impunity, which leads to the risk that he shall sustain the version of the accusation. The approver shall declare all that judicial authorities require him to declare, in order to make their task easier, a version which may later on prove far from the truth.

Hence, a conclusion is clear: the necessity to corroborate the testimony of the approver with further evidence. This corroboration rule results from art. 103 in the New Code, according to which no evidence shall have a previously established value, being subject to the free assessment of judicial authorities, after an evaluation of all evidence adduced in the case. In ruling upon the existence of the criminal act and the guilt of the defendant, the court shall pronounce a motivated decision, by referring to all evidence that has been assessed and only when convinced that all accusations have been proved beyond a reasonable doubt.

The law on the application of the New Code of Criminal Procedure added a new paragraph within art. 103 on the assessment of evidence, which stipulates that conviction, cannot be based, in a determinant proportion, on the testimony of the investigator, the collaborator or the protected witnesses.

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[12] Diana Ionescu, Gheorghiță Mateuț, *Inadmisibilitatea utilizării ca mijloc de probă în procesul penal a proceselor-verbale și a actelor de constatare obținute în procedurile administrative de control* [Impossibility of using documents issued in administrative proceedings as evidence], Caiete de drept penal no. 1/2005, pp. 11-40.

[13] http://www.lawteacher.net/criminology/essays/evidentiary-value-of-an-approvers-testimony-law-essay.php#ixzz3IajXPqfI.

The approver cannot be integrated in any of the three categories. We therefore consider that there is a legislative gap in this domain, and it is recommendable for the future, that the approver be included in that enumeration. He cannot be assimilated to a collaborator of justice, given his involvement as a participant to the offense. It is true that the approver may have the legal status of a protected witness, in case there is a reasonable suspicion that the life, the corporal integrity, the freedom or the goods of the witness or a member of his family could be endangered as a result of the data that he provides for judicial authorities or of his testimony (art. 125 in the New Code). Although it is obvious that the approver runs a risk when he accepts to give a testimony, as he may be subject to serious pressure by threats, this is not necessarily a rule in cases of corruption. In such situations, the category of protected witnesses does not include the approver, therefore the issue of basing the conviction on his testimony in a determinant proportion, is still open.

Returning to the rule of corroboration, we consider that the following observations need to be taken into account, namely:

- it is not necessary that the testimony of the approver be corroborated in detail with other evidence, since it would thus become useless;
- the testimony of the approver must refer to and involve the defendant, in order to prove their connivance;
- the testimony of the approver must not constitute direct evidence against the defendant, being sufficient that it reveals a chain of causation between the approver and the offense;
- the evidence that is corroborated must not derive from another participant to the offense.

VI. In conclusion, the approver may be a witness in a criminal trial. On the one hand, no provision in the New Code prohibits this. On the other hand, the present code has not granted much attention to this issue. In order to avoid judicial errors, it is recommendable to approach with utmost reserve the testimony of the approver and to absolutely apply the rule on corroboration of evidence with other evidence adduced in the case. Under no circumstances, the testimony of the approver shall by itself support a decision of conviction nor represent the determining element on which it is based. All such exigencies are intrinsic to the new standard on the assessment of evidence, which binds the court that, upon ruling the conviction, it must be convinced that the accusation has been proved beyond a reasonable doubt [art. 103 para. (2) and art. 396 para. (2) in the New Code]. Or, in the case of an approver, there are multiple reasons for which his testimony should be approached with caution. Only by providing reasonable guarantees of objectivity, the approver shall be metamorphosed into a trustworthy trial participant, able to contribute to the respect of the right to a fair trial.