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Evolution of the Penal Legislation in Romania and Hungary, in the Post-Communist Era

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Evolution of the Regulation of Corruption Offenses

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Abstract:

Criminal conduct in the sphere of civil service has experienced serious mutations post-1990, particularly through the particularization of criminal liability in the area of combating corruption as a social phenomenon, the fight against corruption and, especially, the fight against the corruption of the public power's agents becoming a priority for Romania, being, at the same time, considered as a priority at European Union level as well.

In this regard, under the aegis of the Council of Europe, on January 27th 1999, in Strasbourg, was adopted the Criminal Law Convention on Corruption, which entered into force on July 1st 2002, ratified by Romania through Law no. 27/2002,[1] *according to which "corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society".*

Furthermore, the Member States of the Council of Europe and the European Community have adopted in Strasbourg, on November 4th 1999, the Civil Law Convention on Corruption,[2] *which defines in Article 2 "corruption" as "requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof".*

Keywords: *corruption offenses; active bribery; passive bribery; Penal Code of 1968; new Penal Code.*

In an attempt to draft a definition of corruption, it has been stated that corruption offenses are those acts "committed in connection with the exercise of functions, official duties and consist in violations of attributions, pursuing, in all cases, a profit".[3]

Regulation of corruption offenses in the 1968 Penal Code. The Penal Code adopted in 1968[4] regulated, in Title VI of its Special Part, the offenses affecting activities of public

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[1] Published in the "Official Journal of Romania", Part I, no. 65 of January 30th 2002.

[2] In the Explanatory Report of the Civil Law Convention on Corruption, it was stated that: "The Council of Europe became strongly interested in the international fight against corruption because of the obvious threat corruption poses to the basic principles this Organisation stands for: the rule of law, the stability of democratic institutions, human rights and social and economic progress".

[3] A. Boroi, N. Neagu, *Armonizarea legislației române cu legislația comunitară în materie de corupție*, in Dreptul no. 4/2003, p. 117.

[4] The Penal Code was adopted by Law no. 15/1968, published in the "Official Journal of the Socialist Republic of Romania", Part I, no. 79-79bis from June 21st 1968, and entered into force, according to the provisions of Article 363, on January 1st 1969. It was republished in the "Official Journal of Romania", Part I, no. 65 from April 16th 1997.

interest or other activities provided by law,[5] the most numerous texts of the Penal Code being comprised under this title, which presented a wide range of incriminations, unified by the same generic legal matter: "the body of social relations whose existence is ensured through the protection of social values such as: proper functioning of state, as well as public, organisations, legal interests of individuals, course of justice, railroad traffic safety".[6] Thus, in this title was included the first chapter, entitled "Misfeasance in office or in connection with the office" (Articles 246-258), which incriminated as corruption offenses, without explicitly using this term: passive bribery (Article 254), active bribery (Article 255), receiving undue advantages (Article 256) and influence peddling (Article 257).

Subsequent to the extensive amendments brought by Law no. 140/1996,[7] followed by the decision to republish the Penal Code, *passive bribery* was defined by Article 254 para. (1) of the 1968 Penal Code as "the act of that public official who, directly or indirectly, requests or receives money or any other undue advantages or accepts the promise of such advantages or does not reject it, in order to act, to refrain from acting or to delay to act in the exercise of his or her official duties or in order to act contrary to these official duties", an act punishable with imprisonment from 3 to 12 years and the prohibition of certain rights. Para. (2) regulated the aggravated form of this offense, providing that "the act stipulated in para. (1), if committed by a public official with control functions, shall be punished with imprisonment from 3 to 15 years and the prohibition of certain rights" and, according to para. (3) "the money, valuables or any other goods which were the subject of passive bribery shall be confiscated, and if they are not to be found, the convict is compelled to pay their equivalent in money".

Article 255 incriminated *active bribery* as "the promising, offering or giving of money or other advantages, in the forms and for the purposes set out in Article 254", the penalty provided being imprisonment from 6 months to 5 years.

Para. (2) of Article 255 regulated a cause which removed the criminal nature of the act, providing that the act does not constitute an offense when the briber was constrained in any way by the person who took the bribe, and para.(3) regulated a special cause of non-punishment, which applied when the briber denounced to the authorities the act before the prosecution body had already been notified of the respective offense and, in such cases, the money, valuables or any other goods were returned to the person who had offered them.

Para. (4) of Article 255 provided that "the provisions of Article 254 para. (3) shall apply accordingly, even if the offer was not followed by acceptance", establishing the obligation of applying the safety measure of the special confiscation (forfeiture).

Receiving undue advantages, incriminated in Article 256 para. (1) represented "the receipt by a public official, directly or indirectly, of money or other advantages, after

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[5] Initially, the name of Title VI of the Special Part was "Offenses affecting the activity of state organisations, public organisations or other activities provided by law".

[6] See S. Kahane, *Explicații introductive (Infracțiuni care aduc atingere activității organizațiilor de stat, organizațiilor obștești sau altor activități reglementate de lege)* in „Explicații teoretice ale Codului penal român. Partea specială" by V. Dongoroz et al., vol. IV, Academiei Publishing House – All Beck Publishing House, Bucharest, 2003, p. 63.

[7] Published in the "Official Journal of Romania", Part I, no. 289 from November 14th 1996.

having performed an act by virtue of his/her office, an act which he/she was compelled to perform on the grounds of his/her office", the penalty provided by law being imprisonment from 6 months to 5 years. The money, valuables or any other goods received were confiscated, and if they were not to be found, the convict was compelled to pay their equivalent in money.

Influence peddling was incriminated by Article 257 of the 1968 Penal Code, the legislator defining the offense as "the receipt or request of money or other advantages or the acceptance of promises or gifts, directly or indirectly, for oneself or for another, committed by a person who asserts influence or leaves the impression that he/she can exert an influence over a public official in order to persuade him/her to do or refrain from doing an act falling within the scope of his/her official duties", the penalty provided being imprisonment from 2 to 10 years. According to para. (2) of this article, the provisions of Article 256 para. (2) were applied correspondingly, which meant that the money, valuables or any other received goods were confiscated, and if they were not to be found, the convict was compelled to pay their equivalent in money.

Law no. 78/2000 on preventing, discovering and sanctioning of corruption acts[8] was the first regulatory act which used, *expressis verbis,* the notion of "corruption", being the result of the transposing into Romanian legislation of the Programme of Action against Corruption adopted by the Committee of Ministers of the Council of Europe in November 1996, following the recommendations of the 19th Conference of European Ministers of Justice in Valletta, from 1994, and of Resolution no. 1 adopted by the European Ministers of Justice at the 21st Conference in Prague, from 1997, which called upon the Member States to rapidly implement the Programme of Action against Corruption.

Law no. 78/2000, in its Article 5 para. (1)-(3), classified the corruption offenses into three categories: "corruption offenses" – the offenses provided in Articles 254-257 of the 1968 Penal Code, as well as the offenses provided under special laws, the specific forms of the offenses provided in Articles 254-257 of the Penal Code; "offenses assimilated to corruption offenses" – the offenses provided in Articles 10-13 of the law and "offenses directly related to corruption offenses" – the offenses covered by Article 17 of the law.

Subsequently, after the amendments brought to Law no. 78/2000 by means of Law no. 161/2003 on certain measures to ensure transparency in the exercise of public dignitary functions, public offices and in the business environment, and to prevent and sanction corruption,[9] a fourth category of offenses was added, category which includes offenses against the financial interests of the European Communities, governed by Articles 18^1-18^5 of the law, which, however, were not qualified by the legislator as corruption offenses.

Originally, Law no. 78/2000 provided that in corruption cases, the provisions governing the procedure applicable for the prosecution and trial of corruption offenses are those to be found in the Criminal Procedure Code and in special laws and, in

[8] Published in the "Official Journal of Romania", Part I, no. 219 from May 18th 2000.
[9] Published in the "Official Journal of Romania", Part I, no. 279 from April 21st 2003.

accordance with Article 27, when there are solid indicators regarding the perpetration of one of the offenses provided for by this law, "for the purpose of gathering evidence or of identifying the offender, the public prosecutor may order, for a maximum period of 30 days:

a) the placing under surveillance of bank accounts and their related accounts;
b) the placing under surveillance or wiretapping of telephone lines;
c) the access to informational systems;
d) the communication of authentic documents or under private signature, of banking, financial or accounting documents".

For solid reasons, during the prosecution stage, the measures could be extended by the prosecutor by means of a motivated ordinance, each extension not exceeding 30 days, and, during the trial stage, by the court by means of a motivated ruling.

Also, in accordance with Article 22 of the law, the prosecution is necessarily conducted by the prosecutor, Article 28 instituting the Section for combating corruption and organized crime, which operated within the Prosecutor's Office attached to the Supreme Court of Justice, as specialized structure in this area at national level, the services for the combat of corruption and organized crime within the prosecutors' offices attached to the Courts of Appeal, as well as the offices to combat corruption and organized crime within the prosecutors' offices attached to tribunals, as local structures specialized in this field. The activity of these services and offices was coordinated and controlled by the Section for combating corruption and organized crime, which operated within the Prosecutor's Office attached to the Supreme Court of Justice.

Subsequent to the ratification by Romania through Law no. 27/2002 of the Criminal Law Convention on Corruption, adopted in Strasbourg on January 27th 1999, by means of Law no. 161/2003 the legislator introduced in Law no. 78/2000 Article 6^1, incriminating the offense of *buying influence*, consisting in "promising, offering or giving money, gifts or other advantages, directly or indirectly, to a person who asserts influence or leaves the impression that he/she can exert an influence over a public official in order to persuade him/her to do or refrain from doing an act falling within the scope of his/her official duties", the penalty provided by law being imprisonment from 2 to 10 years.

According to para. (2) of the same article, the legislator also established a special cause of non-punishment, similar to the one regulated in the case of active bribery, the offender being exempted from punishment "if he/she denounces to the authorities the act before the prosecution body had already been notified of the respective act", in this case, the money, value or any other goods being returned to the person who had offered them.

Para. (3) also regulated the obligation of the application of the safety measure of the confiscation, providing that "the money, valuables or any other goods which represented the object of the offense provided in para. (1) shall be confiscated and, if they are not to be found, the convict shall be compelled to pay their equivalent in money".

Thus, Romania complied with the obligation under Article 12 of the Criminal Law Convention on Corruption, incriminating, albeit in a separate text, the active variation of

the offense referred to in the Convention as "influence peddling". Therefore, the passive form of the offense was still to be found in Article 257 of the 1968 Penal Code, and in its active form, in Article 6[1] of Law no. 78/2000, republished.

The Government Emergency Ordinance no. 124/2005[10] introduced Article 26[1] which regulated the institution of the undercover investigators. Thus, if there were solid and concrete indicators that an offense has been committed or is about to be committed by a public officer, an offense of passive bribery, provided in Article 254 of the Penal Code, an offense of receiving undue advantages, provided by Article 256 of the Penal Code, or of influence peddling, provided by Article 257 of the Penal Code, the prosecutor was entitled to authorise, by means of a motivated ordinance, the use of undercover investigators or of investigators with real identity, for the purpose of discovering the facts, identifying the perpetrators and gathering evidence.[11]

While undercover investigators are operative workers within the judicial police, especially appointed for this purpose, under the law, the investigators with real identity are operative workers within the judicial police. Both undercover investigators and those with real identity could be authorized to promise, offer or, where appropriate, give money or other advantages to a public official, under the conditions provided in Articles 254, 256 or 257 of the Penal Code, drawing up minutes regarding the performed activities, which could constitute evidence and could only be used in the criminal case for which the authorization had been given. Also, undercover investigators or those with real identity could be heard as witnesses with protected identity, under the conditions of Article 86[2] of the 1968 Criminal Procedure Code.

Regulation of corruption offenses in the new Penal Code. The new Penal Code, adopted by means of Law no. 286/2009[12], which entered into force, in accordance with the provisions of Article 246 of Law no. 187/2012,[13] on February 1st 2014, regulates in Title V of its Special Part "Corruption offenses and misfeasance in office", structured into two chapters: Chapter I – "Corruption offenses" (Articles 289-294) and Chapter II – "Misfeasance in office" (Articles 295-309).

Unlike the 1968 Penal Code which regulated, as shown above, in Chapter I of Title VI of its Special Part, misfeasance in office and corruption offenses together, under the name "misfeasance in office or in connection with the office",[14] this regulatory approach being criticized ever since the publication of the Code, the 2009 Penal Code, re-establishing the order of the social values protected by criminal law and,

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[10] Published in the "Official Journal of Romania", Part I, no. 842 from September 19th 2005.

[11] The authorization of the use of undercover investigators or of investigators with real identity was given by means of a motivated ordinance by the prosecutor in charge of the criminal proceedings for a period of maximum 30 days, which could be extended, on the basis of a motivation, only if the grounds which determined the authorization maintained themselves. Each extension could not exceed 30 days and the total period of the authorization, concerning the same case and the same person, could not exceed 4 months.

[12] Published in the "Official Journal of Romania", Part I, no. 510 from July 24th 2009.

[13] Published in the "Official Journal of Romania", Part I, no. 757 from November 12th 2012.

[14] It has been stated that misfeasance in office "can have as direct active subjects only public officers or other employees", whilst in the case of misfeasance in connection to the office, "the direct active subjects can be represented by any persons". In this respect, see S. Kahane, *op. cit.*, p. 68.

consequently, the order of incriminations, has achieved this goal by the regulation, under Title V of the Special Part, of the two chapters, the ordering of offenses by placing the corruption offenses in a pre-eminent regulatory position being generated by the importance given to the process of combating corruption, both in Romania and in the European socio-political context.

With the implementation of the new Penal Code, Article 79 of Law no. 187/2012 also modified Law no. 78/2000, with its subsequent modifications and completions, which provides in Article 5 that "for the purpose of the present law, corruption offenses are those offenses provided in Articles 289-292 of the Penal Code, including when they are committed by the persons provided in Article 308 of the Penal Code", being offenses assimilated to corruption offenses those offenses provided in Articles 10-13. Moreover, in para. (3) of the same regulatory text, it is stated that "the provisions of the present law are also applicable to the offenses against the financial interests of the European Union, provided in Articles 18^1-18^5, their sanctioning aiming to ensure the protection of the European Union's funds and resources".

It follows that the legislator has abandoned the category of offenses related to corruption offenses, covered by Article 17 of Law no. 78/2000, this text being repealed *expressis verbis* through the provisions of Article 79 point 10 of Law no. 187/2012.

At present, the Penal Code incriminates as corruption offenses four offenses: passive bribery (Article 289); active bribery (Article 290); influence peddling (Article 291); buying of influence (Article 292), maintaining the dissociated incrimination of influence trafficking and buying of influence and abandoning the distinct incrimination of the offense of receiving undue advantages, the latter being found in the constitutive content of the offense of passive bribery, provided by Article 289.

Passive bribery is governed by Article 289 of the Penal Code and Article 7 of Law no. 78/2000, republished, the previously mentioned texts incriminating a standard form, an assimilated form, a mitigating form, as well as an aggravated one.[15]

The standard form is provided in Article 289 para. (1) of the Penal Code, consisting in "the act of the public official who, directly or indirectly, for himself/herself or for another, claims or receives money or other advantages which are not due to him/her or accepts the promise of such advantages in connection with the performance, failure to perform, acceleration or delay of an act falling within the duties of his/her office or in relation to the performance of an act contrary to these duties", the penalty provided being imprisonment from 3 to 10 years and the prohibition of the right to hold a public office or to exercise the profession or activity in the execution of which he/she committed the act.

The new Penal Code, unlike the 1968 Penal Code, no longer provided as variation of the material element *(actus reus)* of the objective aspect in the passive bribery offense the failure to reject the promise of money or other undue advantages, which presupposed the lack of a firm reaction of rejection of the public official when faced with the promise of money or other advantages.

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[15] V. Dobrinoiu, *Infracțiuni de corupție și de serviciu* in „Noul Cod penal comentat. Partea specială" by V. Dobrinoiu et al. vol. II, Universul Juridic Publishing House, Bucharest, 2012, p. 527.

The assimilated form is provided in para. (2) of the same incrimination text, which stipulates that "the act provided in para. (1), committed by one of the persons stipulated in Article 175 para. (2), constitutes an offense only when committed in connection with the failure or delay in performing an act falling under his/her legal duties or in connection with the performance of an act contrary to these duties".

The mitigating form is provided in Article 308 of the Penal Code and consists in the act provided in Article 289 committed by or in connection with the persons who exercise, permanently or temporarily, with or without remuneration, a duty of any kind in the service of one of the natural persons stipulated in Article 175 para. (2) or within any legal person, in this case the special limits of penalty being reduced by one third, in accordance with the provisions of Article 308 para. (2) of the Penal Code.

The aggravated form is provided in Article 7 of Law no. 78/2000, republished, which stipulates that, when the active subject is one of the subjects provided in letters (a)-(d) of the regulatory text quoted hereabove, the penalty limits provided in Article 289 of the Penal Code shall be increased by one third. As follows, the categories of subjects provided in Article 7 are:

a) persons exercising a public dignitary function;
b) judges or prosecutors;
c) persons who are criminal investigation bodies or which are responsible for the establishment or sanctioning of contraventions;
d) persons provided in Article 293 of the Penal Code, respectively, the persons who, based on an arbitration agreement, are called upon to decide on a dispute which is entrusted to them for settlement by the parties to this agreement, regardless of whether the arbitration proceedings shall be conducted under Romanian or any other law.

Although the safety measure of special confiscation is regulated in Article 112 of the Penal Code, the legislator chose to expressly provide it also in Article 289 para. (3), which stipulates that "the money, valuables or any other goods received are subject to confiscation, and when they can no longer be found, confiscation by equivalent shall be applied". As shown in the regulatory text mentioned hereabove, in order to be confiscated, the money or any other goods must have actually been received, since those only promised to the bribed person cannot be confiscated.

Active bribery is governed by Article 290 of the new Penal Code, the legislator incriminating a standard form (in Article 290 of the Penal Code) and a mitigating form (in Article 308 of the Penal Code).

Article 290 para. (1) of the Penal Code defines active bribery as "promising, offering or giving money or other advantages, under the conditions shown in Article 289", punishable by imprisonment of 2 to 7 years.

Article 308 of the Penal Code, just like in the case of passive bribery, provides that if the act is committed by a person or in connection with a person "who exercises, permanently or temporarily, with or without remuneration, a duty of any kind in the service of one of the natural persons stipulated in Article 175 para. (2) or within any legal person", the special limits of penalty are reduced by one third.

The new incriminating regulation, unlike the old Penal Code, which required that the promising, offering or giving money or other advantages be achieved before the performance or non-performance of the act or, at the latest, during the performance of the official duties, claims that the act be committed "in connection with the performance, failure to perform, acceleration or delay of an act falling within the duties of his/her office or in relation to the performance of an act contrary to these duties".

Article 290 of the Penal Code regulates in para. (2) a cause of non-imputability, and in para. (3) a cause of non-punishment.

Thus, according to Article 290 para. (2), "the act does not constitute an offense when the briber was constrained in any way by the person who took the bribe" and, according to para. (3) of the same article, "the briber is not punished if he/she denounces the act to the authorities before the prosecution body has been notified of the respective offense". In these situations, according to para. (4), the money, valuables or any other goods are returned to the person who gave them, if they were given in the case referred to in para.(2) or given after the denunciation provided in para. (3). Therefore, the money or goods given prior to the denunciation shall not be returned, but they shall be made subject to confiscation.

Para. (5) provides *expressis verbis* that "the money, valuables or any other goods offered or given shall be confiscated, and if they are not to be found, the confiscation by equivalent shall be applied".

Influence trafficking is incriminated by Article 291 of the Penal Code and consists in "claiming, receiving or accepting a promise of money or other advantages, directly or indirectly, for himself/herself or for another, committed by a person who asserts influence or leaves the impression that he/she can exert an influence over a public official and who promises to persuade him/her to perform, to refrain from performing, to accelerate or to delay an act falling within the scope of his/her official duties or to perform an act contrary to these duties", the penalty provided by law being imprisonment from 2 to 7 years.

Article 291 para. (1) regulates the standard form of the offense of influence trafficking, with Article 7 of Law no. 78/2000, republished, regulating the aggravated form, under the same conditions, which relate to the quality of the active subject, just like in the case of passive bribery and, therefore, we will no longer comment upon them. Also, Article 308 para. (1) of the Penal Code, just like in the case of the other corruption offenses, provides a mitigating form.

Buying of influence is incriminated by Article 292 of the Penal Code in its standard form and by Article 308 of the Penal Code in its mitigating form. The standard form of this offense represents "promising, offering or giving money or other advantages, for himself/herself or for another, directly or indirectly, to a person who asserts influence or leaves the impression that he/she can exert an influence over a public official, in order to persuade him/her to perform, to refrain from performing, to accelerate or to delay an act falling within the scope of his/her official duties or to perform an act contrary to these duties", the penalty provided by law being imprisonment from 2 to 7 years and the prohibition of exercising certain rights.

As in the case of the other offenses, according to Article 308 of the Penal Code, the special limits of the penalty are reduced by one third when the act is committed by or in connection with the persons who exercise, permanently or temporarily, with or without remuneration, a duty of any kind in the service of one of the natural persons stipulated in Article 175 para. (2) or within any legal person.

Para. (2) of Article 292 of the Penal Code regulates a cause of non-punishment in the situation in which the offender denounces the act to the authorities before the prosecution body has been notified of the respective offense. Also, in accordance with the provisions of para. (4), the money, valuables or any other goods offered or given shall be confiscated, and if they are not to be found, the confiscation by equivalent shall be applied"; furthermore, the provisions of Article 112^1 of the Penal Code regulating extended confiscation also apply.

Article 293 of the Penal Code provides that, as regards to offenses of passive and active bribery incriminated in Articles 289 and 290, the provisions of these articles shall apply, accordingly, also to those persons who, based on an arbitration agreement, are called upon to decide on a dispute which is entrusted to them for settlement by the parties to this agreement, regardless of whether the arbitration proceedings shall be conducted under Romanian or any other law.

In addition, Article 294 of the Penal Code provides that the provisions of Chapter I of Title V of its Special Part also applies to the corruption acts committed by foreign officials or related to them, if not otherwise provided in the international treaties to which Romania is a party, and letters (a)-(g) enumerate the categories of foreign officials concerned.

Procedural issues regarding corruption offenses. Both in the case of corruption offenses and in that of the offenses assimilated to the former, the prosecution is carried out by the prosecutor, and the initiation of the criminal proceedings is done in all the manners provided in the Criminal Procedure Code.

In 2002, the Government Emergency Ordinance no. 43/2002 established the National Anti-Corruption Prosecutor's Office as a prosecutor's office specialized in combating corruption offenses, which exercises its attribution throughout Romania by prosecutors specialized in combating corruption.

The National Anti-Corruption Prosecutor's Office was organized as an autonomous body, with legal personality, within the Public Ministry, being headed by a general prosecutor and coordinated by the general prosecutor of the Prosecutor's Office attached to the Supreme Court of Justice.

Subsequently, after the Constitutional Court, through its Decision no. 235 of May 5th 2005[16], has found that the provisions of art. I point 2 of the Law approving Government Emergency Ordinance no. 103/2004 amending Government Emergency Ordinance no. 43/2002 on the National Anti-Corruption Prosecutor's Office, with reference to Article 13 para. (1) letter (b) from the Government Emergency Ordinance no. 43 of April

[16] Published in the "Official Journal of Romania", Part I, no. 462 from May 31st 2005.

4th 2002 on the National Anti-Corruption Prosecutor's Office, which establishes that the National Anti-Corruption Prosecutor's Office has jurisdiction over the offenses provided in Law no. 78/2000, with the subsequent modifications and completions, committed by deputies and senators, are unconstitutional, by way of the Government Emergency Ordinance no. 134/2005[17] was amended the Government Emergency Ordinance no. 43/2002, stating that "the National Anti-corruption Department is established as an autonomous body, with legal personality, within the Prosecutor's Office attached to the High Court of Cassation and Justice, through the reorganisation of the National Anti-Corruption Prosecutor's Office".

At present, due to the changes introduced by Law no. 54/2006 approving Government Emergency Ordinance no. 134/2005, within the Prosecutor's Office attached to the High Court of Cassation and Justice functions, as a body with legal personality, the National Anti-corruption Directorate, headed by a chief-prosecutor.

Conclusions. The entry into force of the new Penal Code has brought added rigour and concision to the regulation of corruption offenses. Furthermore, the changes introduced by Law no. 187/2012 eliminated the previous regulatory parallelism by splitting the incrimination between the old Penal Code and Law no. 78/2000, which, at present, regulates in Article 7 only an aggravated form of passive bribery and influence trafficking and, in Articles 10-13[2], the offenses assimilated to corruption offenses.

Also, we deem as inspired the adoption of the French model as regards the passive bribery with respect to abandoning the condition of the precedence of the perpetration of the act in relation to the performance of the official duty, which resulted in the elimination of a separate incrimination for receiving undue advantages; however, this system has not been transposed in the case of influence trafficking.

Currently, even if not completely immune to critics, Romania has an incriminating system in the matter of corruption offenses which has transposed into national law the provisions of the Criminal Law Convention on Corruption, which entered into force on July 1st 2002 and was ratified by Romania through Law no. 27/2002.

[17] Published in the "Official Journal of Romania", Part I, no. 899 from October 7th 2005.