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Influence Peddling

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Abstract. Trafficking in influence is addressed at the international level in the context of affirming the need for criminalization and law enforcement in this area, in art. 18 of the United Nations Convention against corruption, adopted in New York on October 31, 2003 and ratified by Romania through Law no. 365/2004 where it is stipulated that "each state party adopts the legislative measures and other measures that prove to be necessary to assign the character of a crime, in the event that the acts were committed with intent: a) the act of promising, offering or giving to a public agent or any other person, directly or indirectly, an improper benefit, with the aim that the respective agent or the respective person abuses his real or supposed influence, in view obtaining from an administrative authority or from a public authority of the state party an improper benefit for the initial instigator of the act or for any other person; b) the act of a public agent or another person to request or accept, directly or indirectly, an improper benefit for himself or for another person, with the aim of abusing his real or supposed influence, in order to obtain a improper use from an administrative authority or from a public authority of the state party". It has been observed that the provisions of this convention have a much more extensive nature than the precedent of the instrument adopted in the matter of anti-corruption, as it addresses the requirements for the criminalization of various acts, including influence peddling. The criminal convention on corruption, adopted within the Council of Europe, in Strasbourg, on January 27, 1999, ratified by Romania through Law no. 27/2002, states, in art. 12, that "each party adopts the legislative measures and other measures that prove necessary to criminalize as a crime, according to its internal law, if it was committed with intent, the act of proposing, offering or giving, directly or indirectly, any use improperly, for remuneration, to anyone who affirms or confirms that he is able to exercise an influence in making a decision by any of the persons referred to in art. 2, art. 4-6 and of art. 9-11 [i.e. national public agents, members of national public assemblies, foreign public agents, members of foreign public assemblies, international officials, members of international parliamentary assemblies, judges and agents of international courts], regardless of whether the improper benefit is for oneself or for someone else, as well as the act of requesting, receiving or accepting the offer or promise, as remuneration, for such influence, regardless of whether the influence is or is not exercised or whether the alleged influence produces or does not produce the desired result"

Keywords. improper benefits, criminal investigation bodies, civil servant, social relations, job duties

The offense of influence peddling is provided for in Title V, Chapter I – Corruption offenses of the Special Part of the Criminal Code, respectively in art. 291 which provides:

(1) Pretending, 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 thought to have influence against a public official and who promises to cause him to perform, not to perform, to urge or delay the performance of an act that falls within his official duties or to perform a contrary act these duties are punishable by imprisonment from 2 to 7 years.

(2) Money, valuables or any other goods received are subject to confiscation, and when they are no longer found, confiscation shall be ordered by equivalent.

By criminalizing influence peddling, the prestige of officials, public or private organizations is protected, but not the property of influence buyers who, in order to solve their problems, use illegal means. That this is the result, otherwise, even from the provisions of 2 of art. 291 of the Criminal Code, which orders the confiscation of the money, values or goods that were used to buy influence, and when they are no longer found, the equivalent confiscation is ordered.

In order to be carried out in good conditions, the service activity must be beyond any suspicion that officials can be determined to act or not to act, within the scope of their duties, by interventions made by different person, who has or who lets it be understood that they have influence over an official in order to determine him to do or not to do an act that falls within his duties.

As provided in Law no. 78/2000, three categories of acts of corruption are criminalized, namely: actual acts of corruption, acts assimilated to acts of corruption and acts directly related to corruption offenses[1].

Trafficking in influence is part of the first category, along with bribery, taking bribes and receiving improper benefits.

The special law aggravates the criminal liability for the crime of influence traffic in relation to the provisions of art. 291 of the Penal Code, which represents common law, when the act was committed by a person who, according to the law, has the authority to establish or sanction contraventions or to establish, prosecute or judge of crimes against one of these persons or against an official with control attributions, in the sense that it is sanctioned with the penalty provided for in art. 291 of the Penal Code, whose limit is increased by one third (art. 7 letter d) of Law 78/2000). Also, it is provided that art. 291 C. pen. it also applies to managers, directors, administrators and censors of commercial companies, national companies and societies, autonomous governments and any other economic agents.

The immediate legal object of the crime of influence peddling is the social relations that regulate the proper functioning of public services whose normal performance involves combating and repressing the acts of those persons who, speculating their influence next to an official, creates a state of distrust in the correctness of the officials[2], letting it be believed that they could be corrupt and determined to do or not to do what is included in their duties.

The commission of influence peddling presupposes the existence of a service operating at an organization that carries out activities of public interest or other activities regulated by law, having the competence to carry out acts of the person in whose favor the influence traffic is carried out[3]. In the framework of this service, the official (or other employee) over whom the

[1] I. Lascu, L.C.Lascu, Corruption Facts. New incriminations, in R.D.P. no. 1/2001, quoted by Gh. Mateuț, Theoretical and Practical Synthesis on the Repression of Influence Peddling in the Current Regulation and in Perspective, in Law no. 5/2002

[2] Anane Ivan, *Elements of Theory and Tactics of Criminal Prosecution Bodies*, Pro Universitaria Publishing House, Bucharest, 2014

[3] Al. Boroi, Criminal Law. Special Part, 2nd ed., C.H. Beck Publishing House, Bucharest 2008

perpetrator has (or lets it be believed that he has) influence exercises his duties. The crime cannot be conceived without this premise-situation.

For the existence of the premise-situation, it is not necessary that the person of the official or other employee be specifically determined; It is sufficient to specify the act in respect of which you will intervene and therefore a reference even in general to an official or another employee or an implicit reference or an allusion. Therefore, for the crime of influence peddling to exist, it is not necessary to name the official over whom the trafficker has influence or let it be believed that he has influence, it being sufficient for him to refer to the alleged or real influence that he has on the officials of a service in whose competence is the resolution of the request of the beneficiary of influence peddling[4].

The offense of influence peddling is often confused with that of fraud, although the contents of these offenses - despite the fact that they may have some common features - are strictly delimited.

Fraud is a crime against property, while the social value protected by the law in the case of influence peddling is the activity of public interest or other activities regulated by law. Although in the case of both crimes, the perpetrator seeks through the activity to realize a benefit that is not due to him, the crime of influence peddling is not conditioned by the production of damage, while the essence of deception is the cause of material damage. On the other hand, while the realization of the deception is not possible without the alteration of the truth, the traffic of influence also exists without the distortion of reality, in the hypothesis that the passage of which the criminal prevails is real[5].

The problem that is posed is to know how to qualify the act, in the hypothesis that the passage that the author is relying on is not real. Isn't it when the author "allows it to be believed that he has influence", although in reality he does not, managing to obtain such a material benefit, we are facing an induction into error of the nature of determining the framing of the act in art. 244 Criminal Code?

Every time, however, the perpetrator will use other means of inducing error than the influence of an official - or even the influence of an incompetent official, about whom he still claims that he would has the competence to perform the act - and will cause a material damage to the person induced in the error, we will be in the presence of the crime of deception.

The legislator conditioned the existence of the offense of influence peddling on the condition that the perpetrator has influence or lets it be believed that he has influence over an official, in whose duties the act for which the promise is made the intervention. This condition is fulfilled not only when the perpetrator specifies the name of the official, but also when this is indicated by his quality, directly or indirectly[6].

The defendant's fact of having stated that through the intervention of some of his friends, he will determine a certain university professor, to declare several students passed in his discipline, to whom he requested and from whom he received for this purpose the different amount of money, does not constitute the crime of influence peddling, but that of deception, since the defendant did not claim that she would have influence over the examining professor, but claimed that she would obtain the desired result through the intermediary of another person, whom he did not identify by name or function[7].

[4] C.S.J., s. pen. , Dec. no. 1040 of 23.04.1998, in Law no. 10/1999
[5] Anane Ivan, *Elements of Criminal Procedural Law*, Pro Universitaria Publishing House, Bucharest, 2015
[6] Craiova Court of Appeal, Criminal Section, decision no. 189/ 2007, www.legalis.ro.
[7] Bucharest Court of Appeal, criminal section, decision no. 36 / 1996, in RDP no. 4/ 1996

For the existence of the crime of influence peddling, it is not relevant if the claim of the benefit was satisfied, nor if the acceptance of the promise of benefits was followed by their performance. It is not relevant whether the intervention took place or not, as well as the time when it took place, relative to the time of committing one of the actions that constitute the material element of the crime, because the production intervention is not a condition for the existence of influence traffic.

The crime of influence peddling is objectively different from the other corruption crimes.

In connection with the delimitation of the crime of influence-trafficking from the crime of bribery - without going into all the details of the distinctive elements - we note that, while the crime of bribery was understood from official and private, when it exists, and has as its object the execution, non-execution or delay in the execution by the former of an act regarding his service duties or the execution of an act contrary to these duties, to the traffic of influence, the understanding - which this time is no longer perfected with the official - and the effect is the intervention of the active subject, a private individual, next to the official to determine him to do or not makes an act that falls within his service attributions.

From the aspect of the result, the two crimes, although they involve the same legal act, differ in that the discrediting of public or private bodies is carried out directly in the case of taking a bribe (since the act shows that an official is corrupt), and indirectly, in the case of influence peddling (since the fact creates the impression that an official can be influenced in connection with the duties of the service).

The immediate active subject (author) can be any person (natural or legal) with criminal capacity who has influence or is believed to have influence over a public official. By the expression "he has influence" it is understood that that person really enjoys the trust of the official or another employee, or that the good personal relations with him correspond to reality.

By the expression "let it be believed that he has influence over an official or other employee" it is generally understood that a person brags about passing by an official or other employee (saying, for example, that due to the trust he enjoys or due to the kinship or personal relationships he maintains with that official or another employee, he can determine a certain number of times can get a certain solution). "Let it be believed that he has influence" also exists when a person, without boasting that he has influence, does not disprove the statements of others regarding his existence [8].

The main passive subject is the public authority, public institution, institution or legal person of public or private interest within which the public official is in the exercise of his duties, and the secondary passive subject is the public official with regarding which it is claimed that there is an influence.

The material element of the crime of influence peddling is the claim, receipt or acceptance of the promise of money or other patrimonial or non-patrimonial benefits, directly or indirectly, for oneself or for another, committed by a person who has influence or lets it be believed that he has influence over a public official and who promises to cause him to fulfill, not to fulfill, urge or delay performing an act that falls within his service duties or to perform an act contrary to these duties[9].

In conclusion, the essential requirements for the offense of trafficking in influence to exist are the following:

[8] Al. Boroi, Criminal Law. Special Part, 2nd ed., C.H. Beck Publishing House, Bucharest, 2008
[9] M. Udroiu, Criminal law. The special part. The new Criminal Code, Ed. C. H. Beck, Bucharest, 2014

a) the perpetrator must have real influence or let it be believed that he has influence over the public official;

b) the perpetrator must promise that he will force the public official 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 this duties, even if this promise is not fulfilled later or the act is not performed;

c) the act must be committed before or simultaneously with the fulfillment, non-fulfillment, urgency or delay of the act that falls within the duties of the official on whom the influence is trafficked, respectively before or concurrently with the performance of the act against the service duties.

The expression "let it be believed that he has an influence on an official or on another employee" means the situation in which the author boasts that he has a pass, that he is in good relations with such person, that he enjoys her trust, although his statements do not correspond to reality. Likewise, this expression also refers to the situation in which the author does not disprove the statements of others or the belief of the person concerned regarding the influence - in reality non-existent - that he would have on him to an official or other employee. In such situations, when the perpetrator lets it be believed that he has influence, even though he does not, it is also a question of an induction into error, of a deception which, however, the traffic of influence absorbs into its content, since through criminalization it was pursued with failure to protect the reputations of organizations that carry out activities of public interest or other activities regulated by law, and of officials or other employees who ensure the carrying out of these activities. The former Supreme Court stated in this sense, that the act of a defendant to have been overcome by an influence on the chief prosecutor, but which in reality he did not have, receiving 4000 RON for the intervention that in addition, it constitutes only the crime of influence peddling, although it also includes the elements of deception[10]. Likewise, the crime of influence peddling will also exist when the defendant used his influence to approach a city hall official to solve housing problems, even if he did not know anyone and fictitious name presented[11].

If the perpetrator did not use real or supposed influence with an official, in order to convince or deceive the interested third party to provide an undue benefit, the act does not constitute influence peddling. Also, the simple fact of intervening next to an official to perform or not perform an act related to his function, does not fall under art. 291 of the Criminal Code, even if the intervener received a benefit for his intervention, but he did not pretend to obtain it from any influence. Thus, the act of a lawyer who, on the basis of his mandate, legally intervenes with an authority to perform an act that falls within his duties and receives for his activity is an honorarium, if in order to obtain the mandate, he has not passed on the competent official to perform that act. The solution is natural, since the lawyer did nothing but fulfill a duty specific to his profession, which according to the law is remunerated by the individual (not directly, of course, but through the legal assistance office).

The immediate consequence is the state of danger for the proper development of service reports, within the units provided for by art. 176 of the Criminal Code [12] or of private legal entities. The causal link of the traffic offense resulting from the materiality of the act.

[10] Supreme Court, Criminal College, decision no. 1244/1961, in C.D./1961
[11] C.S.J., s. pen., dec. nr. 5.438 from 7 december 2001, Legis
[12] Criminal Code, "The term public means everything that concerns public authorities, public institutions or other legal entities that administer or exploit public property"

The offense of influence peddling can only be committed with direct intent, the purpose of which is to determine the public official to do or not to do an act that falls within his duties.

Finally, from the point of view of the subjective side, while in the crime of influence peddling the subject realizes that he is discrediting an official, by giving the impression that he is influential or corruptible, in the crime of taking of a bribe, the subject realizes that the discredit of the function he performs is due to his own corruption.

In the light of these criteria, in practice the delimitation of the two crimes is easy to do. The difficulty arises when the trafficker is an official or an employee and is part of the organization whose competence includes the performance of the official act referred to by committing the act. In this case, what qualification is to be given to his act? If the official abuses his own official duties, obliging himself to fulfill or not fulfill his official duties, or to do an act contrary to these duties in exchange for improper benefits, he commits the crime of bribery. If, however, the official takes advantage of the influence given to him either by his personal relationships or by his position - regardless of whether this influence is real or supposed, over another official, because the latter to do or not to do in favor of a third party an act regarding his service attributions, he commits the crime of influence peddling. It is true that, in this latter case, the author, although an official or other employee, commits the action provided for by art. 291 of the Criminal Code that any person who has influence or lets it be believed that he has influence over an official or employee.

In relation to the one shown above, the former Supreme Court was entitled to decide that "the act of a professor - a member of a baccalaureate committee and an examiner within that committee - of being received from two of the persons who presented themselves at the baccalaureate exam various sums of money, in order to ensure their success in this exam, constitute the crime of bribery and not that of influence peddling, because, in his capacity as a teacher-examiner, the defendant had the right and the obligation to pronounce on the preparation of the candidates in the subject for which he was destined to examine, so that he committed the act to fulfill in a certain way favorable to the bribers, his duty of service. Even if the people who gave money believed that the defendant would use his influence to get close to the other examining professors, in order to ensure their success in the exam, this circumstance - of a subjective order - is irrelevant in terms of the legal framework of the deed, as long as the defendant did not rely on such influence".

Also, it was justifiably decided, in practice, that the act of a chief accountant being alleged and receiving a sum of money to intervene with his superiors in view of hiring a person in a vacant position at the service accounting, giving a favorable opinion in this sense, constitutes the offense of influence peddling and not that of bribery.

It constitutes an aggravated variant of the offense of influence peddling, its commission by a person who exercises a position of public dignity, is a judge or a prosecutor, is a criminal investigation body[13] or having the attributions of ascertaining or sanctioning contraventions, or of the persons who, based on an arbitration agreement, are called to render a decision regarding a dispute that is given to them for resolution by the parties to this agreement, regardless of whether the arbitration procedure takes place on the basis of Romanian law or on the basis of another law[14].

[13] Anane Ivan, *Management of Criminal Prosecution Bodies*, Pro Universitaria Publishing House, Bucharest, 2014

[14] Law 78/ 2000, art. 7

In the hypothesis of the mitigated variant, the typical act of influence peddling committed in connection with the person who exercises permanently or temporarily, with or without remuneration, a task of any nature in the service of a natural person from those provided for in art. 175 par. 2 of the Criminal Code (natural person who performs a service of public interest for which he was vested by the public authorities or who is subject to their control or supervision regarding the fulfillment of the respective public service) or within the framework of any legal entity[15].

Acts of preparation are possible but not criminalized. The attempt is assimilated by the law, the consummated act (the offense being of anticipated consummation) and is not criminalized separately. The offense is consummated when the active subject directly claims or receives money or other benefits or accepts the promise of benefits or gifts, in order to determine the public official or the official to do or not do an act that falls within his duties. In the situation in which the perpetrator carries out more than one of the alternative variants of the material element of the crime, a single crime of trafficking in influence will be held, and not the series of crimes or the continued form of these.

In this case, the act is consummated at the time of the first criminal activity. The crime can be committed continuously, a situation in which it ends when the last act to be executed is committed.

In the case where, after the offense of influence peddling was consummated by receiving benefits for the promised intervention, the defendant, who fulfilled his promise, requested and received several times from the buyer of influence the different sums of money, there is only one crime of trafficking in influence, but not in the form of a continuing crime, because these crimes, subsequent to consumption, do not present, each in part, the constituent elements of the crime of trafficking in influence, but of a natural crime unit[16].

Trafficking in influence, for the typical form, is punishable by imprisonment from 2 to 7 years, for the reduced version, with imprisonment from one year and 4 months to 4 years and 8 months, and for the aggravated version, with prison from 2 years and 8 months to 9 years and 4 months.

The jurisprudence of the national courts has often faced the need to delimit the traffic offense from other offenses with which it presents a certain connection.

Influence traffic vs. Deception. Fraud is criminalized, in the basic form, in art. 244 par. (1) Criminal Code, consisting of "inducing a person into error by presenting a false fact as true or a true fact as false, in order to obtain for himself or herself another unjust patrimonial benefit and if damage was caused", punishable by imprisonment from 6 months to 3 years, and, in an aggravated form, in art. 244 par. (2) Criminal Code, if the act is "committed by using a false name or qualities or by other fraudulent means", in which case it is punishable by imprisonment from one to 5 years.

The rules regarding the contest of crimes will apply if the fraudulent means constitutes a crime by itself. When the perpetrator lets it be believed that he has influence over the public official although, in reality, he does not, there is an induction into error, a deception, which, however, is absorbed in the content of the offense of influence peddling[17].

[15] M. Udroiu, Criminal Law. The special part. The New Criminal Code, C.H. Beck Publishing House, Bucharest, 2014
[16] Bucharest Court of Appeal, Criminal Section, decision no. 34/1995, in RDP no. 1 / 1996
[17] V. Dobrinoiu (coord.), The New Penal Code commented. Special Part, 3rd ed., Universul Juridic Publishing House, Bucharest, 2016

In an illustrative case, the defendant's request to the court to change the legal classification of the crime of influence peddling, for which he was sent to trial, in the crime of fraud, was rejected by the court of judicial control maintaining the solution of the first instance. In order to decide this, it was observed that there are essential differences between these two crimes, as follows: firstly, the legal object of the influence peddling crime is represented by trust in prestige and the integrity of the official who holds a position within a legal entity, while the legal object of the crime of deception consists in the necessary good faith in the framework of social relations regarding property; secondly, in the case of the crime of deception, the violation of the property belonging to the passive subject is of the essence of the crime, unlike influence peddling, which can exist, for example, only in the modality claiming an amount of money or other benefits, regardless of the cause of any damage; thirdly, in the hypothesis in which the trafficking involves the prevalence of an influence over an official, which, in fact, is non-existent, although it constitutes the presentation as true of a false fact, which corresponds to according to the objective side of the offense of fraud, the other constitutive element of influence peddling must also be analyzed - as a consequence, while the diminution of property is specific to the offense of deception is not voluntary, in the case of influence peddling, the buyer of influence voluntarily offers the amount of money claimed by the trafficker[18].

It was argued that one of the essential conditions relating to the offense of trafficking in influence presupposes that the act is committed before or simultaneously with the performance, non-performance, urgency or delay of the act falling under the service duties of the official with respect to which his influence is trafficked before or simultaneously with the performance of the act contrary to these duties; therefore, if the claim or receipt of a sum of money or other benefits took place after the performance of the act, the crime of fraud will be considered[19].

Influence traffic vs. buying influence. The dual regulation – active and passive – of influence traffic has already been mentioned as an option for the member states of the Council of Europe. In Romania, the offense of buying influence was previously provided for in art. 61 of Law no. 78/2000, this text being repealed by Law no. 187/2012 for the implementation of the new Criminal Code, currently the norm of criminalization is placed in art. 292 Criminal Code. The doctrine appreciated this new position, considering that the crime of buying influence is closely related to the crime of trafficking in influence, so that this bilateral criminalization was seen as evidence of coherence and consistency[20].

Buying influence consists in "promising, offering or giving money or other benefit, for oneself or for another, directly or indirectly, to a person who has influence or is believed to have influence over an official publicly, to determine him to perform, not to perform, to urge or delay the performance of an act that falls within his duties or to perform an act contrary to these duties".

The limits of punishment provided by the law for the crime of buying influence are the same as those provided for the crime of trafficking in influence, respectively imprisonment between 2 and 7 years.

[18] Pitesti Court of Appeal, Criminal and Juvenile and Family Section, criminal decision no. 526/A of 8 October 2014, available on ROLLI

[19] Ivan Anane, *The Investigation of the Criminal Prosecution Bodies*, Pro Universitaria Publishing House, Bucharest, 2014

[20] S. Bogdan (coord.), The New Penal Code. The special part. Analyses, explanations, comments. The Cluj Perspective, Universul Juridic Publishing House, Bucharest, 2014

The law provides for a special cause of non-punishment in the case of the crime of buying influence, and that is when the perpetrator denounces the act before the criminal prosecution body has been notified about it.

In this context, we show that the probative capacity of the whistleblowers' depositions cannot be abstracted from the context in which the denunciations and, later, the statements were made. In this sense, we consider that the whistleblower cannot be a witness in the criminal trial, which results, in our opinion, even from the provisions of art. 114 Criminal Procedure Code, text of the law which, after establishing, in principle, that any person who has knowledge of the deed or de facto circumstances that constitute evidence in the criminal case may be heard in quality of witness, specifies that "persons who have drawn up verbal proceedings on the basis of art. can also be heard as witnesses. 61 and 62". This verbal process constitutes the act of notification to the criminal investigation bodies - according to art. 61 para. (5) and art. 62 para. (4) Criminal Procedure Code - and not evidence, as expressly provided by art. 198 par. (2) of the same code.

Since, according to the stated legal norm, only the author of this way of notifying the criminal prosecution body can be heard as a witness, it follows, on the contrary, that in all other situations - so including in the case of the complaint - the authors of these reporting methods cannot be witnesses. The initiative to commit influence peddling can belong to both the influence trafficker and the influence buyer[21].

In relation to the moment of consummation of the crime of influence peddling, different points of view have been advanced in the specialist literature: some doctrinaires have expressed the opinion that it is necessary to realize an illicit agreement between the buyer of influence and the trafficker of influence, while others, who form the majority, considered the crime of influence-trafficking to be part of the category of so-called "anticipated consumption crimes[22]", in the sense that the mere claim of money or benefits or the acceptance of promises are sufficient to consummate the offense.

Influence traffic vs. bribery. Although both crimes - influence peddling and bribery - fall under the category of corruption crimes, according to a decision issued by the Bucharest Court of Appeal, the main difference between the crime of bribery and traffic of influence are the following: first of all, in the case of the crime of bribery, "the agreement between the official and the person, if the agreement exists, and has as its object the execution, non-execution or delay execution by the civil servant of an act related to his service duties, or execution of an act contrary to these duties", and, "for the crime of influence traffic, the understanding that this time is no longer perfected with the official, but has as its object the intervention of the active subject, another person, besides the official, to determines to do or not to do an act that falls within his service attributions"; secondly, under the aspect of the result of the two crimes, although both contravene the same legal object, this violation occurs directly in the case of bribery, since the fact shows that the official is corrupt, and indirectly in the case of influence peddling, by creating the impression that an official can be influenced; finally, as regards the subjective side, in the case of influence peddling, the perpetrator represents that he is discrediting an official, while, in the case of bribery, the perpetrator is aware that discrediting the position his is determined by his own corrupt conduct.

[21] Al. Boroi, Criminal Law. Special Part, 2nd ed., C.H. Beck Publishing House, Bucharest 2008

[22] Related to this specific, the attempt in the case of influence peddling crime is assimilated by law to the consummated act, not being criminalized in a distinct manner (M. Udroiu, op. cit.)

In the same previously cited case, the court also noted that, in the event that the trafficker is himself an official of a public organization who traffics his own duties, he commits the offense of taking of bribery, however, when it is not limited to this activity, but also prevails over the influence, real or supposed, over another official, so that the latter does or does not do an act regarding his duties in the in favor of a third party, is also an active subject of the crime of influence peddling.

Delimitation of lobby influence traffic. In terms of practices for regulating lobbying activities, at the European level, both the European Union and the Council of Europe seem to prefer non-binding legal instruments ("soft-law" approach), based in generally on a system of self-regulation and the adoption of deontological codes, in contrast to the North American paradigm, which opted for a mandatory legal instrument ("hard law" approach), based on rigorous and detailed rules, which may attract sanctions in case of their violation.

As shown in a document issued by Transparency International, an efficient way to reduce the risk of inappropriate influence and, at the same time, to increase the transparency of the policy adaptation process in the U.E. framework consists in the establishment of a "legislative footprint", defined as "a comprehensive public record of lobbyists' influence on a regulatory act[23]".

In Romania, the distinction between the crime of influence peddling and lobbying is underlined in the National Anti-Corruption Strategy for the period 2020-2024, approved by H.G., which is based on art. 5 of the United Nations Convention against Corruption, regarding policies and practices for the prevention of corruption. Thus, in order to achieve the specific Objective 3.3 regarding the increase of integrity, the reduction of vulnerabilities and the risks of corruption in the activity of the members of the Parliament, the introduction of rules regarding the way in which the members of the Parliament should aim is foreseen deal with lobbyists and other third parties who try to influence the legislative process, according to GRECO Recommendation, IV Round, paragraph 42, which will be considered without affecting the criminal regulatory framework and without it generating a decriminalization of influence peddling (point 4).

A draft law on the regulation of lobbying activities in Romania was registered in 2021, and is still under the legislative process. According to the statement of reason[24] related, the purpose of this draft law is to define the specifics and limits of lobbying activities, the parties involved in such activities, the conditions for acquiring the quality of lobbyist, obligations regarding the registration and declaration of lobbying activities, as well as the relationship of lobbyists with public authorities. At the same time, it is appreciated that the regulation of lobbying activities is imperatively necessary in Romania, among other reasons, and to draw a clear distinction between the legitimate mechanism of influencing legislative decisions (lobby) and illegitimate mechanisms, which are likely to create conflicts of interest and influence peddling.

According to the drafts of the normative act, lobbying activity is defined as all the actions, carried out by the legal method, to influence the activity of the legislative or executive power, whether it is about central or local public institutions, actions carried out in favor of a third party, in exchange for material benefits, provided for as such in the lobbying contract,

[23] J. Berg, D. Freund, EU Legislative Footprint. What's the Real Influence of Lobbying?, Transparency International EU, Bruxelles, 2015

[24] Motivation of the initiating committee on the Draft Law on the regulation of lobbying activities in Romania within the Chamber of Deputies of the Romanian Parliament

respectively as the totality of the actions carried out by a lobbying company to influence the decisions of public officials, actions carried out in favor of a client, in exchange for material benefits provided for as such in the lobbying contract.

Actions specific to the lobbying activity consist of any oral or written communication, including electronic, addressed to representatives of a public authority or institution, in favor of the client. One of the draft laws regulates the manner of carrying out actions to influence the activity of the legislative and executive powers, actions carried out in favor of a third party, on the basis of a contract of lobbying.

The same project defines the purpose of a lobbying activity as one of the following activities, with the exception of the cases in which these activities become contrary to the country's defense and national security or lead to an infringement of the rights and fundamental liberties of man:

a) in the exercise of the legislative initiative: the withdrawal, modification, adoption or repeal, as the case may be, of a law, decisions or motions by the Chamber of Deputies and/or the Senate, of a decree issued by The President of Romania, of a decision or ordinance issued by the Government, or of another administrative act issued by the central or local public administration authorities;

b) in the exercise by the Government of the strategy function, application of the economic development programs of the country, by branches and fields of activity, realization of the policy in the social field, as well as the function of administration of state property, as well as in the elaboration and implementation by the ministry of policies and strategies in specific fields of activity;

c) launching the procedures for establishing the object and organizing, under the conditions of the law, a referendum;

d) the nomination, hearing or confirmation of a person in a public office who is elected by the Chamber of Deputies and/or the Senate, by the local public administration authorities, including if appointed by the authorities central public administration.

In a very edifying specialty work [25], the lobby concept is delimited by another similar concept, in a refined way, such as the notion of advocacy. The study shows that in a broad sense lobbying refers to the action of influencing the decision of others, regardless of whether the targeted decision is a personal one, of a group of individuals or of a commercial company or in nature governmental, in the narrow sense, we are dealing with the action of persons or groups of persons, each having a varied and specific interest, through which the influence of decisions is sought taken at the political level. On the other hand, the advocacy activity would have as its main objective the sensitization of the public opinion and only indirectly of the decision-making factors, with regard to the aspect that can affect the public interest. As such, although the activities of lobbying and advocacy have many points in common that mainly aim at the adoption or modification of some decisions, norms or regulations, the fundamental difference between the two would consist in the objective pursued: lobbying pursues the satisfaction of a private interest (regardless of the size or impact of the beneficiaries), while advocacy pursues the satisfaction of a public interest (regardless of how small the group of beneficiaries may be).

Regarding the lobbying activity reported on the objective side of the crime of influence peddling, we consider that there is a significant difference. In the situation of the material element of the crime of influence peddling, the active subject traffics his influence on a public

[25] Elena Simina Tănăsescu, Miruna Andreea Balosin, Cosmin Dima, Cristian Ducu, Ștefan Ilie Oanță, Ramona Delia Popescu, Lobbying in Romania verus Lobby in the EU, European Institute of Romania, Bucharest, 2015

official in order to determine him to fulfill or not to fulfill his duties service room. With regard to lobbying, the lobbyist commits to his client to influence the activity of the executive or legislative power in exchange for material benefits provided for as such in the lobbying contract. The influence must be realized exclusively through legal methods and be effective, unlike the influence peddler who can only claim to have influence over a public official. More than that, we consider that the influence of the executive or legislative power should not involve an individual influence of any public official, as it is defined in the sense of the criminal law, but the determination the change of a decision must concern an authority, to be carried out at the institutional level, not at the personal level. At the same time, the activities of the beneficiary of the lobbyist should not be limited to the sphere of buying influence. The interest of the traffic buyer conflicts with the "social" interest, in the absence of a real, legitimate or even illegitimate interest, the act will constitute a deception or, possibly, blackmail, depending on the technique used, regarding the method used by the author in order to obtain unfair material benefit. The difference between lobbying and influence peddling is the transparent conduct of a non-civil commercial activity, with the application of commercial and fiscal regulations, excluding a conflict of interest[26].

In conclusion, the 2 draft laws that wish to legislate lobbying present sufficient guarantees to categorically differentiate a commercial activity from a certain conduct prohibited by criminal law, as it is the crime of trafficking in influence or the crime of buying influence. More than that, conceptually analyzing, an activity legitimized by a normative reference should never come under the scope of the criminal law. With all this, the evolution of the phenomenon of economic-financial criminality sediments very refined modes of operation that want to be confused with legalized practices to prevent the mechanism from being set in motion prosecution. It may also be the case of active or passive corruption crimes disguised by concluding a lobbying contract, a situation that will be possible after the legalization of this commercial activity. Once the idiosyncratic nature of this economic activity is recognised, one of the main challenges ahead will be to identify and appropriately sanction possible criminal conduct formally masked by a lobbying operation..

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