



The Crime of Influence Trafficking in the Romanian Criminal Law

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Abstract

The crime of influence trafficking is one of the most frequent corruption offenses in Romania. In this study the author analyzes the crime of influence trafficking in the Romanian criminal law in a classic approach. So, the author analyses the object, the subjects, the objective and the subjective aspects of the crime of influence trafficking. The relationship of the crime of influence trafficking with other crimes, such as misrepresentation or complicity in bribery, is also analyzed. At the same time, the author presents a large national judicial practice regarding the crime of influence trafficking.

Keywords: influence trafficking, corruption, misrepresentation, civil servant

1. Introduction

The offence of trading in influence was covered by Art. 257 of the old Criminal Code. The new Criminal Code, which became effective on 01.02.2014, regulates this offence in Art. 291 of the Criminal Code (hereinafter the C.C.), according to which "demanding, receiving or accepting the promise of money or other benefits, directly or indirectly, for oneself or for another person, committed by a person who has influence or allows it to be believed that he/she has influence over a public official and who promises to persuade the latter to perform, not to perform, to expedite or delay the performance of an act falling within his/her official duties or to perform an act contrary to such duties, is punishable by imprisonment for a term of 2 to 7 years". The analysed offence has an aggravated version regulated in Art. 7 of Law no. 78/2000 and a mitigated version in Art. 308 of the C.C.

1.1 Legal object

The legal object of the offence of trading in influence is the social connections relating to the proper conduct of official relations. In the case of the offence of trading in influence, the damage to the prestige of state or public bodies is done indirectly by creating the impression that an official may be influenced in connection with his/her duties (Stoica, 1976, p. 252; Bogdan, Șerban, 2020, p. 302. In similar context, see also High Court of Cassation and Justice, Criminal chamber, decision no. 1181/2010, apud Udriou, 2023, p. 1111).

1.2 *Material object*

The offence of trading in influence has no material object. The money or undue advantage is the property given for the purpose of committing the offence and not its material object (Udroiu, 2023, p. 1111; Bodoroncea et al, 2016, p. 919; Brutaru et al, 2016, p. 264; Dobrinou, Neagu, 2014, p. 499).

1.3 *Subjects of the offence*

The active subject is not circumstantialised and can be a natural or legal person (In the sense that a legal person may also be criminally liable for the offence of trading in influence, see Rotaru, Trandafir, Cioclei, 2020, p. 247; Udroiu, 2023, p. 1111; Brutaru et al, 2016, p. 264. In similar context, see also High Court of Cassation and Justice, Criminal chamber, decision no. 382/A/2020, apud Udroiu, 2023, p. 1111. In the sense that a legal person cannot be the perpetrator of the offence of trading in influence, since influence is a notion inextricably linked to a natural person, see Bogdan, Șerban, 2020, p. 303). The active subject may also be a public official who promises to intervene on behalf of another public official (for example, a judge demands money by claiming that he will persuade another judge to give a favourable ruling in a case involving the buyer of influence). It has been correctly stated that where the influence peddler is at the same time a public official who has competence over the act in relation to which he is peddling his influence, there is a concurrence of the offence of bribery and trading in influence (Bulai, Filipaș, Mitache, 2001, p. 448-449; Bodoroncea et al, 2016, p. 919; Udroiu, 2023, p. 1112; Rotaru, Trandafir, Cioclei, 2020, p. 247; Bodea, Bodea, 2018, p. 416; Dobrinou, Neagu, 2014, p. 499. In this regard, it was decided that the act of a judicial police officer to demand and receive sums of money in order to administer evidence in favor of one of the parties or not to administer evidence in criminal cases, and to demand and receive sums of money, giving the impression that he has influence over prosecutors to induce them to adopt decisions not to initiate prosecution, meet the constituent elements of the offenses of bribery and trading in influence, in real concurrence. See High Court of Cassation and Justice, Criminal chamber, decision no. 3690/2009, apud Bodoroncea et al, 2016, p. 919; Udroiu, 2023, p. 1112; Rotaru, Trandafir, Cioclei, 2020, p. 247) (for example, a judge sitting on a panel of judges demands money from a defendant, on the one hand, to adopt a favourable decision in favour of the defendant and, on the other hand, to persuade the other judge on the panel to adopt the same decision). Participation is possible in all its forms: co-perpetration (Co-perpetration in the crime of trading in influence was presumed in the situation in which the defendant lawyer stated that, in exchange for the sum of USD 50,000, he could support the representative of a company in order to succeed in the purchase of an industrial object, and, subsequently, after co-opting two other persons, legal advisors, they all decided to try to obtain a sum of money, under the pretext that they could have influence over the syndic judge appointed to resolve the claim, which could thus induce him to pronounce a favorable decision. In the end, the defendants received the sum of €75,000, which was handed over to them by the complainant, the sum being divided and numbered by the defendants. See High Court of Cassation and Justice, Criminal chamber, decision no. 1547/2009, apud Bodoroncea et al, 2016, p. 919-920; Udroiu, 2023, p. 1113; Rotaru, Trandafir, Cioclei, 2020, p. 248), complicity or instigation.

In the case of the aggravated version provided in Art. 7 of Law no. 78/2000, the perpetrator of the offence of trading in influence is circumstantialised, being a person who has one of the following qualities: he/she holds a position of public dignity (for example, minister, mayor, parliamentarian); is a judge or prosecutor; is a criminal investigation body or has the power to ascertain or sanction contraventions; on the basis of an arbitration agreement, is called upon to rule on a litigation that is referred to him/her for settlement.

It was pointed out that an intermediary's mediation activity between the buyer and the trafficker in influence will constitute, as the case may be, complicity in buying influence or in trading in influence, depending on whether the intermediary has intended to assist the buyer or the trafficker in influence by his actions (Dobrinou, Neagu, 2014, p. 501. For a similar opinion, see Bogdan, Șerban, 2020, p. 306). Thus, it has been reasoned that, just as the buyer of influence is not an accomplice or instigator to the offence of trading in influence, nor is the trafficker in influence an accomplice or instigator to the offence of buying influence, neither can the intermediary be accused of two offences in concurrence between complicity in the offences of buying and trading in influence (Dobrinou, Neagu, 2014, p. 501. In similar context, see also High Court of Cassation and Justice, Criminal chamber, decision no. 381/A/2019, apud M. Udroiu, 2023, p. 1143-1145). However, the opinion has also been put forward, which I do not share, that the same person can be an accomplice both to the offence of trading in influence (for example, communicating the amount requested by the trafficker to the persons concerned) and to the offence of buying influence (for example, collecting the amount of money from the person concerned and handing it over to the trafficker), if he/she supports both the acts of the trafficker in influence and

the acts of the buyer of influence (Udroiu, 2023, p. 1113). In this regard, it was decided that the intermediary who facilitates the actions of both the buyer and the seller of influence will be liable for both complicity in buying influence and complicity in trading in influence. See also High Court of Cassation and Justice, Criminal chamber, decision no. 948/2010, apud Brutaru et al, 2016, p. 265).

It has been decided that in the case of the offence of trading in influence, even though the activity of the accomplice may be carried out by the same actions as those of the perpetrator, the difference is that while the perpetrator, in carrying out the criminal activity, invokes his own real or imaginary influence over an official, the intermediary, i.e. the accomplice, acts on behalf of another, the perpetrator, who actually has or claims to have influence over the official (High Court of Cassation and Justice, Criminal chamber, decision no. 5071/2003, apud Bodoroncea et al, 2016, p. 920). Thus, where the intermediary does not promise to carry out an act of his own, but merely passes the money or benefits from the briber to the official, he/she will be held liable for complicity in the offence of giving or taking bribes. If, in contrast, the intermediary receives the money or benefits with a view to carrying out his own conduct, namely to intervene with an official, even if part of the sum of money received from the buyer of influence passes to the official, the intermediary will be liable for the offence of trading in influence and, if he actually remits part of the money to the official in exchange for the intervention, for the offence of giving bribes.

The same person was held to be guilty of trafficking in influence in actual concurrence with complicity in trafficking in influence where, as a lawyer, he demanded and received a sum of money from the complainant claiming to have influence over a magistrate and thus to obtain a favourable judgment for the complainant, and then, before trial, put the complainant in contact with another lawyer, telling him that he had to give him money in order to intervene with another magistrate at the court in order to obtain a favourable judgment (High Court of Cassation and Justice, Criminal chamber, decision no. 500/2008, apud Bodoroncea et al, 2016, p. 920; Rotaru, Trandafir, Cioclei, 2020, p. 248; Udroiu, 2023, p. 1136).

It has been correctly indicated that a person who induces another person to exert influence over an official by promising or giving him/her money or other benefits for this purpose is not considered to be an instigator of the offence of trading in influence, but to be the perpetrator of a separate offence, namely buying influence, as provided for by Art. 292 of the C.C. (Dobrinou, Neagu, 2014, p. 500).

The passive subject of the offence of trading in influence is the public authority, public institution or legal person within which the public or private official carries out his/her duties. Moreover, the view has been put forward that the offence also has a secondary passive subject, namely the public official with regard to whom influence is alleged (Udroiu, 2023, p. 1115; Bodoroncea et al, 2016, p. 921; Dobrinou, Neagu, 2014, p. 501). This view was criticised on the grounds that the public or private official cannot be a passive subject of the offence of trading in influence because he cannot be harmed in any way by the offence of trading in influence and sometimes he is not even aware of its commission (Brutaru et al, 2016, p. 265).

It has been shown that a single offence of trading in influence will be deemed to have been committed where, although the act of trading in influence concerns two or more officials or a single official with several duties, the material element of the offence of trading in influence is committed by a single act (Udroiu, 2023, p. 1116 and Bogdan, Șerban, 2020, p. 319). In this regard, it has been emphasised that a single offence of trading in influence will be established if the act was committed, in the same circumstance, in respect of several buyers of influence by a single action (Udroiu, 2023, p. 1142-1143 and Bogdan, Șerban, 2020, p. 319-320. See also High Court of Cassation and Justice, Full Court of 9 Judges, decision no. 604/2003, apud Brutaru et al, 2016, p. 276 and Bodoroncea et al, 2016, p. 931). The natural unity of the offence is also not affected where the sums of money demanded by the trafficker are subsequently paid to him in several successive instalments in accordance with a prior agreement, and it is not correct in this case to hold that the offence is a continuing offence (High Court of Cassation and Justice, Criminal Section, decision no. 346/A/2018, apud Udroiu, 2023, p. 1145. In the sense that, in the situation of claiming or accepting the promise, followed by the actual receipt in instalments of the money or goods claimed or promised, a continuous offence of trading in influence will be considered, see Bogdan, Șerban, 2020, p. 318-319). It has been stressed that where the acts of trafficking are carried out at different intervals of time, it is necessary to consider not only the hypothesis of a concurrence of offences, but also the possibility of a single continuing offence of trading in influence (Udroiu, 2023, p. 1116). Where the trafficker in influence requests money or other benefits from the same purchaser of influence in order to make representations to a public official by means of separate acts and in respect of separate representations, a concurrence of offences will be established (Udroiu, 2023, p. 1143).

2. The Objective Side

The material element is achieved exclusively through an action that may be represented by the demanding, receiving or accepting the promise of money or other pecuniary or non-pecuniary benefits, directly or indirectly, for oneself or for another person. The abovementioned material element can be achieved in alternative ways, therefore, if the active subject carries out several alternative ways, a single offence of trading in influence will be considered (Udroiu, 2023, p. 1142; Bulai, Filipaş, Mitrache, 2001, p. 449; Dobrinou, Neagu, 2014, p. 505). The normative modality of not rejecting the promise is no longer criminalised in the new Criminal Code (in the sense that, although not rejecting the promise is not explicitly incriminated, it may, in certain circumstances, be assessed in concrete terms as an implicit or tacit acceptance of the promise, see Bogdan, Şerban, 2020, p. 305). If the defendant accepted the promise of money or other benefits prior to receipt, the offence is consummated at the moment of acceptance of the promise. The existence of the consummated form of the offence is not affected by whether or not the money or goods demanded or to which the accepted promise relates were actually delivered to the defendant subsequently.

Demanding is the action initiated by the offender by words or gestures, whether expressed or implied, by which the trafficker offers to intervene in exchange for a benefit (Stoica, 1976, p. 252 and Bodea, Bodea, 2018, p. 417).

Receiving is taking into possession money, goods or benefits, with the corresponding action being their remittance by the buyer of influence.

Accepting the promise means the trafficker's agreement to a later remittance of the money, goods or benefits by the buyer of influence, i.e. the willingness of the trafficker to receive the benefits in the future.

The act for the fulfilment, non-fulfilment, urgency or delay of which the influence is trafficked may be legal or illegal (Udroiu, 2023, p. 1117; Bodoroncea et al, 2016, p. 926; Brutaru et al, 2016, p. 270).

An essential requirement for the existence of the offence is that the offence must relate to money or other pecuniary or non-pecuniary benefits, whether the person who traffics in influence claims, receives or accepts for himself or for another person. It has been indicated (Udroiu, 2023, p. 1120-1121) that money, i.e. RON or foreign currency, received in cash or by bank transfer, including when it is remitted in the form of a simulated loan or simulated contracts for the provision of services, tangible or intangible property (e.g. shares), other financial (e.g. free use of property, labour for the construction of a house) or non-financial (Obtaining a leadership position for the defendant's concubine in a financial institution constitutes a benefit for another within the meaning of the offence of trading in influence. See High Court of Cassation and Justice, Criminal chamber, decision no. 171/2010 and High Court of Cassation and Justice, Criminal chamber, decision no. 171/A/2019, apud Udroiu, 2023, p. 1122) (e.g. ensuring the presence of a high-level official at a reception), may be the object of trafficking in influence. It has been shown that money or benefits may be demanded by the trafficker in influence even from the official in respect of whom the influence is claimed (Udroiu, 2023, p. 1134). Unlike the offence of taking bribes, in the offence of trading in influence, sexual favours may also be demanded or received in order to exercise influence, given that the provisions of Art. 299 para. (1) of the C.C. do not refer to the hypotheses of trading in influence (Udroiu, 2023, p. 1121 and Bogdan, Şerban, 2023, p. 304. See also Court of Appeal Timişoara, Criminal chamber, decision no. 550/2016 and Court of Appeal Bucureşti, Criminal chamber, decision no. 925/2017, apud Bogdan, Şerban, 2020, p. 304).

It has been rightly pointed out that in the case of the offence of trading in influence, unlike the offence of taking bribes, the legislator no longer expressly states that the benefits are not due to the defendant, because, since he is not a public or private official, he cannot, under any circumstances, receive money or other benefits in connection with his activity (Rotaru, Trandafir, Cioclei, 2020, p. 249).

A further essential requirement for the existence of the offence of trading in influence is that the defendant must have real influence or give the impression of having influence over a public or private official. It has been indicated that a person has influence over an official if in the circumstances of objective reality, he/she can effectively demand and obtain a certain behaviour, or a change in it, or the performance of a certain activity by the official (Udroiu, 2023, p. 1122).

The defendant's influence must be the determining motive for the action of the buyer of influence and, as such, the claimed influence must be credible in relation to the level of education or life experience of the potential buyer of influence (Udroiu, 2023, p. 1123. In similar context, see also Court of Appeal Alba Iulia, Criminal chamber, decision no. 366/2016, apud Bodoroncea et al, 2016, p. 923 and Udroiu, 2023, p. 1138).

We are in the presence of the so-called "chain" influence where the trafficker does not have a personal influence on the official, but may exert an influence on an "intermediary", the latter having a personal influence on the official. In judicial practice, the offence of trading in influence has also been recognised in the case of "chain" influence (High Court of Cassation and Justice, Criminal chamber, decision no. 5071/2003 and High Court of Cassation and Justice, Criminal

chamber, decision no. 2314/2011, apud Bogdan, Șerban, 2020, p. 309). It has been recognised in legal doctrine that the structure of "chain" trading in influence can only be admitted exceptionally, "only when the chain of intermediation is well determined and certain and the perpetrator claims to the buyer that all the links are willing to engage in the behaviour of trading in influence" (Bogdan, Șerban, 2020, p. 310).

The act also constitutes an offense when the alleged influence of the trafficker over the official is not real. Thus, it was explained that the expression "lets it be believed that he has influence" over an official means that the defendant boasts that he has influence over an official or other employee (for example, by claiming that because of the trust he enjoys or because of his kinship or personal relations with that official he can influence the latter's conduct), or claims or asserts, contrary to the facts, that he/she is on good terms with the official, enjoys the official's confidence and esteem to such an extent that he/she is able to solve the problem in which the buyer of influence is interested (Constitutional Court, decision no. 489/2016, apud Udrioiu, 2023, p. 1123-1124. In similar context, see also Bodoroncea et al, 2016, p. 922). It has been demonstrated that the crime of trading in influence can also be established if the defendant, although he/she does not claim to have influence over an official, does not deny the allegations made by another person that he/she has influence over the official (Bodea, 2018, p. 418; Bodoroncea et al, 2016, p. 923; Brutaru et al, 2016, p. 266; Dobrinou, Neagu, 2014, p. 502. In similar context, see also High Court of Cassation and Justice, Criminal chamber, decision no. 65/A/2015, apud Udrioiu, 2023, p. 1124). It has been decided that the use of a non-existent influence on an official, although it constitutes a misrepresentation of a false fact - an action which realizes the material element of the crime of deceit - by the will of the legislator it constitutes a separate offense, since the traffic of influence exists, unlike deceit, regardless of whether or not material damage has been caused (High Court of Cassation and Justice, Criminal chamber, decision no. 3420/2007, apud Bodoroncea et al, 2016, p. 923; Udrioiu, 2023, p. 1137; Rotaru, Trandafir, Cioclei, 2020, p. 251 and Constitutional Court, decision no. 489/2016, apud Udrioiu, 2023, p. 1123-1124). At the same time, it has been decided that the misleading specific to fraud results in damage to the assets of the passive subject with which he does not agree, whereas in the case of the crime of trading in influence, the buyer of influence voluntarily offers the amount of money demanded by the trafficker (Court of Appeal Pitești, Criminal chamber, decision no. 526/2014, apud Udrioiu, 2023, p. 1134). It has been argued in the legal doctrine that, by invoking an influence which does not actually exist, trading in influence covers the crime of deception (Stoica, 1976, p. 253; Bodea, 2018, p. 418; Dobrinou, Neagu, 2014, p. 503). In my view, a more appropriate wording would be that, in the modality of invoking an influence which is not real, the crime of trading in influence is a special form of the crime of deception (See Bogdan, Șerban, 2020, p. 307, 322).

It was decided that it is irrelevant whether or not the defendant has specified the name of the official over whom he has influence, it being sufficient to have determined it only by his capacity or from the content of what he said to result from the competence of the official to act in relation to the act on which the influence is being trafficked (Constitutional Court, decision no. 489/2016, apud Udrioiu, 2023, p. 1123-1124 and High Court of Cassation and Justice, Criminal chamber, decision no. 65/A/2015, apud Udrioiu, 2023, p. 1124). In this regard, it was shown that the offense of trading in influence is also committed when the official is indicated by a fictitious name, but reference is made to the state body, public institution or legal entity to which he/she belongs and which has the competence to perform or not to perform the act (Udrioiu, 2023, p. 1125-1126 and Bodea, 2018, p. 418. In similar context, see also High Court of Cassation and Justice, Criminal chamber, decision no. 5438/2001, apud Brutaru et al, 2016, p. 268). At the same time, in order to establish the offense of trading in influence, it is sufficient only to specify the act for the performance of which the defendant's influence is to be exercised, and it is not necessary to indicate the person over whom it will be exercised. The determination of the act implicitly determines the person who will perform it, namely the official within whose duties the act is to be performed (High Court of Cassation and Justice, Military section, decision no. 52/1995, apud Bodoroncea et al, 2016, p. 924 and Udrioiu, 2023, p. 1137).

As a rule, the official is not aware of the trafficker's activity in relation to his/her official duties. Otherwise, the official's conduct constitutes complicity in trading in influence, provided that he/she also commits acts of moral or material support for the trafficker (Bulai, Filipaș, Mitache, 2001, p. 448).

Another requirement attached to the material element is that the defendant promises to induce the official to perform, not to perform, to hasten or delay the performance of an act falling within his official duties or to perform an act contrary to those duties, even if that promise is not subsequently fulfilled or the act is not performed.

It has been decided that the actions of demanding, receiving or accepting the promise have no criminal relevance in the absence of the promise to intervene on the official, in the same way, only the promise, without any of the three alternative actions, does not constitute the material element of the crime of trading in influence. The idea of an implied or presumed promise is unrelated to the crime of trading in influence (Court of Appeal Iași, Criminal chamber, decision no.

1011/2017, apud Udriou, 2023, p. 1118). It has been established in the legal doctrine that the act does not constitute an offense if the trading in influence takes place disinterestedly, gratuitously, without expecting or receiving any benefit (Udriou, 2023, p. 1121 and Bogdan, Șerban, 2020, p. 305). It has also been decided that for the existence of the crime of trading in influence it is not necessary that the defendant's promise takes a specific verbal form, it is sufficient that the defendant's conduct and statements unequivocally show that he/she is committed to use the alleged influence to induce the official to behave as the buyer of influence wishes (High Court of Cassation and Justice, Criminal chamber, decision no. 237/A/2018, apud Udriou, 2023, p. 1129).

In the case of trading in influence over a public official as such or over a private official, the act must consist in demanding, receiving or accepting a promise of money or other benefits in connection with the performance, non-performance, urgency or delay in performance of an act within the scope of his/her official duties or the performance of an act contrary to those duties. In the case of trading in influence over a public official treated as a public official, the act must consist in demanding, receiving or accepting a promise of money or other benefits in connection with the failure to perform or delay in performing an act falling within the official's duties or the performance of an act contrary to those duties, not in connection with the performance or the urgency of the performance of an act falling within the official's duties (Udriou, 2023, p. 1125).

The act also constitutes an offense if, after accepting the promise, the defendant no longer induces the official to perform the act which is the subject of the trafficking action or, although the defendant attempts to intervene with the official, the official rejects the attempt to intervene.

Where the official concerned by the offense of trading in influence does not have competence in relation to the act which is the subject-matter of the trafficking, the offense of trading in influence will not be considered to be trading in influence, but that of deception (Udriou, 2023, p. 1126; Stoica, 1976, p. 253; Bodea, Bodea, 2018, p. 418-419; Bodoroncea et al, 2016, p. 926; Rotaru, Trandafir, Cioclei, 2020, p. 252; Brutaru et al, 2016, p. 268; Dobrinou, Neagu, 2014, p. 503. In similar context, see also Court of Appeal Craiova, Criminal chamber, decision no. 168/2016, apud Udriou, 2023, p. 1133-1134 and Court of Appeal Cluj, Criminal chamber, decision no. 213/1997, apud Udriou, 2023, p. 1137). However, the offense of trading in influence will also be established where the official concerned by the action of the trafficker, although not having exclusive competence to carry out the act, is competent to do so, but where the competence lies with a collective body or decision-maker and the official carries out activities within the service which may contribute to the settlement of the request of the buyer of influence (Rotaru, Trandafir, Cioclei, 2020, p. 252).

It has been stated that the offense must be committed before or concurrently with the performance, non-performance, urgency or delay in the performance of the act falling within the official's duties on whom the influence is trafficked, that is, before or concurrently with the performance of an act contrary to these duties. Therefore, if the demand for or receipt of money or other benefits was made after the performance of the act in question by the buyer of influence, the offense of trading in influence will not be considered as trading in influence, but as deception (Udriou, 2023, p. 1131-1132; Bodea, Bodea, 2018, p. 419; Rotaru, Trandafir, Cioclei, 2020, p. 251; Bogdan, Șerban, 2020, p. 313. In similar context, see also High Court of Cassation and Justice, Criminal chamber, decision no. 171/A/2019, apud Udriou, 2023, p. 1132. and High Court of Cassation and Justice, Criminal chamber, decision no. 65/2015, apud Bodoroncea et al, 2016, p. 926).

If the trafficker actually carries out the promised intervention in order to induce the official to carry out, fail to carry out, or delay or hasten the performance of an act falling within his official duties or to carry out an act contrary to those duties, by buying the official's favour, he will be held guilty of a concurrence between the offences of bribery and trading in influence (Udriou, 2023, p. 1134-1135; Bodea, Bodea, 2018, p. 419; Brutaru et al, 2016, p. 270. See also High Court of Cassation and Justice, Criminal chamber, decision no. 1140/2014, apud Bodoroncea et al, 2016, p. 935. The abovementioned legal issue has been nuanced in the doctrine, arguing that the concurrence of the offence of trading in influence and bribery should be held only in the situation where, without the knowledge of the buyer of influence, the author of the trading in influence also performs acts of bribery of the official in order to convince him/her to adopt the conduct intended by the buyer. See Bogdan, Șerban, 2020, p. 317).

When an official demands, receives or accepts the promise of money or other benefits both in order to exert influence over another official and in order to carry out in a certain way his/her own duties, the offenses of bribery and trading in influence are considered to be concurrent (High Court of Cassation and Justice, Criminal chamber, decision no. 242/2017 and Court of Appeal București, Section I. criminal, decision no. 85/2011, apud Bogdan, Șerban, 2020, p. 324).

It has been shown that if the defendant uses his/her influence in a negative sense, by telling a person that if he/she does not remit a sum of money, he/she will, by exercising his/her influence, induce an official to adopt a conduct detrimental to that person, the offense of blackmail and not that of trading in influence will be considered. Thus, in the

case of the offense of trading in influence, the object of the "agreement" between the parties is to use the influence to obtain a benefit for the buyer of influence, and not to avoid causing unjust harm to the buyer (Bogdan, Șerban, 2020, p. 324).

The immediate consequence of the offense of trading in influence is a state of danger to the proper conduct of the professional relationships.

The causal link arises *ex re*, from the materiality of the act, the crime being one of abstract danger.

2.1 *Form of guilt*

The offense of trading in influence is committed with direct intent (Udroiu, 2023, p. 1139; Brutaru et al, 2016, p. 270.; Stoica, 1976, p. 254; Bodea, Bodea, 2018, p. 419; Dobrinou, Neagu, 2014, p. 504-505. In similar context, see also High Court of Cassation and Justice, Criminal chamber, decision no. 65/2015, apud Udroiu, 2023, p. 1139. In the sense that the offense of trading in influence may also be committed with indirect intent, see Bulai, Filipaș, Mitache, 2001, p. 449; Bogdan, Șerban, 2020, p. 318; Rotaru, Trandafir, Cioclei, 2020, p. 253; Bodoroncea et al, 2016, p. 927), the offense being committed with a specific purpose, namely to induce an official to perform, not to perform, to hasten or delay the performance of an act falling within his/her official duties or to perform an act contrary to those duties.

2.2 *Forms of the offense*

The offense of trading in influence is one with anticipated consummation (Udroiu, 2023, p. 1142; Brutaru et al, 2016, p. 271; Dobrinou, Neagu, 2014, p. 505; Bodoroncea et al, 2016, p. 929). Thus, the conduct of certain aspects of the material element (claiming and accepting the promise) which by their nature would constitute an attempt in relation to another aspect of the material element (receiving) are criminalized by the legislator as consummated forms of the offence of trading in influence. As such, in the case of the crime of trading in influence the attempt is not possible.

The offense is consummated at the moment of demanding or receiving money or benefits, or at the moment of accepting the promise of such money or benefits, regardless of whether the interference with the official was actually carried out or not.

The offense of trading in influence may be committed in a continuous form (Rotaru, Trandafir, Cioclei, 2020, p. 254.; Dobrinou, Neagu, 2014, p. 506.; Brutaru et al, 2016, p. 273.; Udroiu, 2023, p. 1143. See also High Court of Cassation and Justice, Criminal chamber, decision no. 1180/2010 and High Court of Cassation and Justice, Criminal chamber, decision no. 4171/2011, apud Bodoroncea et al, 2016, p. 931).

2.3 *Aggravated version*

In the case of the aggravated version provided for by Art. 7 of Law no. 78/2000, the perpetrator of the offence of trading in influence is a person who holds a position of public dignity (for example, minister, mayor, parliamentarian); judge or prosecutor; criminal investigation body or a body with powers to establish or sanction contraventions; a person who, on the basis of an arbitration agreement, is called upon to rule on a dispute that is referred to him for settlement.

In judicial practice it has been held that for the existence of the analysed aggravated version it is necessary that the offence of trading in influence is committed in the context in which the perpetrator takes advantage of the above-mentioned functions held by him/her, because otherwise there would be an objective aggravated criminal liability, determined by the position of the defendant, regardless of the relevance of this position in the commission of the offence of trading in influence (High Court of Cassation and Justice, Criminal chamber, decision no. 223/A/2017, apud Udroiu, 2023, p. 1140. For a similar opinion, see Bogdan, Șerban, 2020, p. 320-321. In the sense that in order for the aggravated version to be held, it is not necessary that the defendant uses his/her position or function to commit the offence of trading in influence, see Brutaru et al, 2016, p. 276). However, it has been decided that the offence of trafficking in influence in the analysed aggravated version will be held regardless of whether or not the offence is related to the professional duties of the active subject, a police officer, being sufficient that the defendant has the status of a criminal investigation body (High Court of Cassation and Justice, Criminal chamber, decision no. 404/A/2014, apud Udroiu, 2023, p. 1140).

2.4 Mitigated version

In the standard version of the offence of trading in influence, the offence of trafficking in real or false influence over a public official as provided for in Art. 175 para. (1) of the C.C. or on an assimilated public official referred to in Art. 175 para. (2) of the C.C. is criminalised.

The mitigated version shall be applied in the case where the offence of trading in influence is committed in relation to a private official referred to in Art. 308 of the C.C., i.e. a person who permanently or temporarily, with or without remuneration, exercises a task of any kind in the service of a natural person referred to in Article Art. 175 para. (2) or within any legal person.

2.5 Sanctions and procedural aspects

In the case of the standard variant provided for in Art. 291 para. (1) of the C.C., the penalty is imprisonment for 2 to 7 years. In the case of the aggravated variant provided for by Art. 7 of Law no. 78/2000, the limits of the penalty provided for by Art. 291 para. (1) of the C.C. is increased by one third. In the case of the mitigated variant provided for by Art. 308 para. (1) of the C.C., the limits of punishment provided for in Art. 291 para. (1) of the C.C. shall be reduced by one third.

According to Art. 291 para. (2) of the C.C., money, valuables or any other received goods are subject to confiscation, and when they are no longer found, confiscation in equivalent is ordered. These sums of money or goods will be returned to the buyer of influence who reported the offence before the criminal prosecution body was notified of it, if they were given after the offence was reported. Therefore, if the money or goods have been given by the buyer of influence to the trafficker before the offence has been reported to the criminal prosecution authorities, although the buyer of influence will benefit from the non-punishment provided for by Art. 292 para. (2) of the C.C., the money or property will be subject to confiscation. However, the money or goods demanded or those in respect of which a promise that they will be given has been accepted will not be subject to confiscation.

It was correctly pointed out that, in the case of criminal participation, the value of the property from which each participant actually benefited by committing the offence will be confiscated in the equivalent amount, and the provisions of the civil law on solidary liability are not applicable, since confiscation does not relate to the civil side of the case, being a criminal law sanction and thus personal in nature (Udroiu, 2023, p. 1148. For a similar opinion, see Bodea, Bodea, 2018, p. 420).

The criminal proceedings are initiated ex officio.

In recent years, technical surveillance methods have been used to prove crimes. These are more difficult to combat, but under the conditions provided by law and in compliance with procedures (Hegheş, Franguloiu, Niţă, 2024, p. 320-324), as they are measures that intrude on the fundamental rights and freedoms of individuals, so that the fairness of the procedure as a whole is ensured (Bitanga, Franguloiu, Sanchez-Hermosilla, 2018, p. 34).

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