



UNIVERSITATEA DIN BUCURESTI
FACULTATEA DE DREPT

.....
FONDATA IN MDCCCLIX
.....

The perspectives of the Romanian legislation on large scale and petty corruption

Assoc. Prof. Dr. Andra-Roxana Trandafir
Vice Dean, Faculty of Law, University of Bucharest



Eurobarometer on corruption (2020)

- 64% of Romanians say their daily life is affected by corruption
- Eight out of ten people in Romania believe corruption is widespread around the country
- 48% of Romanians believe the level of corruption has increased in the last three years, 37% believe the level has remained the same
- 8 people out of ten in Romania believe there is corruption in the local, regional and national public institution
- 48% of Romanian citizens see these practices as taking place in the healthcare sector and 41% in the police and the customs authorities



Corruption offences

- approx. 2% of the natural persons sent to court are being prosecuted for corruption offences
- more persons are being prosecuted for giving bribery than for receiving bribery
- there was a peak in those numbers in 2014-2016, then they slightly decreased



Romanian legislation

- Criminal Code & Criminal Procedure Code – 2014
- Replaced the previous codes into force since 1969
- More than 200 special laws



Criminal Code

- Title V of the Special Part – Corruption and offences in public position
 - Chapter I – Corruption offences
 - Art. 289 – Receiving bribe
 - Art. 290 – Giving bribe
 - Art. 291 – Influence peddling
 - Art. 292 – Buying influence
 - Art. 293 - Acts committed by members of the courts of arbiters or in connection thereto
 - Art. 294 - Acts committed by foreign officials or related to them



Art. 289 – Receiving bribe

(1) *The action of the **public servant** who, directly or indirectly, for themselves or on behalf of others, **solicits or receives** money or other undue benefits or **accepts a promise** of money or benefits, in exchange for **performing, not performing, speeding up or delaying** the performance of an action which falls under purview of their professional duties or **with respect to the performance of an action contrary** to their professional duties, constitutes a violation of the law and shall be punishable by **no less than 3 and no more than 10 years** of imprisonment and **the ban from exercising the right to hold a public office or to exercise the profession or the activity in relation to which they committed the violation.***

(2) *The action provided under par. (1), committed by one of the persons provided under **Article 175 par. (2)**, shall constitute a criminal offense only when committed in relation with the **performance or delaying the performance** of an action related to their legal duties or related to the **performance of an action contrary** to such duties.*

(3) *The money, valuables or any other benefits received shall be subject to forfeiture, and when such can no longer be located, the forfeiture of the equivalent shall be ordered.*



What is public servant?

- professors within public schools
- judicial expert
- doctors within public hospitals
- employees of private banks



Exercise of a right – justifying cause

If the doctor receives supplementary payments or donations from patients represents the exercise of a right and thus justify receiving bribery = NO



Art. 290 – Giving bribe

*(1) The **promise**, the **giving** or the **offering** of money or other benefits in the conditions provided under Article 289 shall be punishable by **no less than 2 and no more than 7 years of imprisonment**.*

*(2) The action provided under par. (1) shall not constitute an offense when the bribe giver was **constrained** by any means by the bribe taker.*

*(3) The **bribe giver shall not be punishable if they report the action prior to the criminal investigation bodies be notified thereupon**.*

(4) The money, valuables or any other assets given shall be given back to the person who gave them in the case provided under par. (2) or given following the denunciation provided under par. (3).

(5) The money, valuables or any other benefits offered or given shall be subject to forfeiture, and when such cannot be located anymore, the forfeiture of the equivalent shall be ordered.



Art. 291 – Influence peddling

(1) Soliciting, 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 who alleges that they have influence over a public servant and who promises they will persuade the latter perform, fail to perform, speed up or delay the performance of an act that falls under the latter's professional duties or to perform an act contrary to such duties, shall be punishable by no less than 2 and no more than 7 years of imprisonment.

(2) The money, valuables or any other assets received shall be subject to forfeiture and when such cannot be located anymore, the forfeiture of the equivalent shall be ordered.



Art. 292 – Buying influence

*(1) The **promise, the supply or the giving** of money or other benefits, for oneself or for another, directly or indirectly, to a person who has influence or who alleges they have influence over a public servant to persuade the latter perform, fail to perform, speed up or delay the performance of an act that falls under the latter's professional duties or to perform an act contrary to such duties, shall be punishable by no less than 2 and no more than 7 years of imprisonment and the prohibition to exercise certain rights.*

(2) The perpetrator shall not be punishable if they report the action prior to the criminal investigation bodies be notified thereupon.

(3) The money, valuables or any other assets shall be given back to the person who gave them if they were given following the denunciation provided under par. (2).

(4) The money, valuables or any other benefits given or supplied shall be subject to forfeiture, and when such cannot be located anymore, the forfeiture of the equivalent shall be ordered.



Mitigating circumstance

Art. 308. Corruption offenses and service offenses committed by other persons

(1) The stipulations under Articles 289 – 292, 295, 297 – 301 and 304 regarding civil servants shall apply accordingly to acts committed by or in connection with the persons who carry out, on a permanent or on a temporary basis, with or without a remuneration, a duty irrespective of its nature in the service of a natural person of those provided under Article 175 par. (2) or within any legal entity.

*(2) In this case, **the special limits of the punishment shall be decreased by one-third.***



Law no. 78/2000 on preventing, discovering and sanctioning corruption offences

The law applies to:

- a) persons who exercise a **public position**, regardless of the manner applied to invest them within public authorities or public institutions;
- b) persons who fill, permanently or temporarily, according to the law, a position or a task, to the extent to which **they participate in decisions-making process, or they can influence the decisions, within public services**, autonomous administrations, trading companies, national companies, national societies, cooperative units or other economic agents;
- c) persons who carry out **control tasks** according to the law;
- d) persons who grant **specialized assistance to the units** stipulated in letter a) and b), to the extent to which they participate in the decisions-making process or can influence the decisions;
- e) persons who, regardless of their position, carry out, control or grant **specialized assistance**, to the extent to which they participate in the decision-making process or can influence the decisions, with regard to operations that involve capital circulation, banking operations, hard currency exchange or credit operations, investment operations in stock exchanges, in insurance, in mutual investment or regarding the bank accounts or those assimilated to them, internal and international transactions;
- f) persons who have a **management position in a political party or formation**, in a trade union, in an employer's organization or in a non-profit society or foundation;
- g) other natural persons than those stipulated in letters a) - f), under the terms stipulated by law.



Aggravating circumstance

Art. 7 of Law no. 78/2000 on preventing, discovering and sanctioning corruption offences

(1) The offence of taking bribe or traffic of influence committed by a person who:

- a) exercises a position of public dignity;
- b) is a judge or a prosecutor;
- c) is a criminal investigation body or is in charge with ascertaining or sanctioning contraventions;
- d) is one of the persons provided by article 293 of the Criminal Code

is punished according to art. 289 or 291 of the Criminal Code, **whose limits are increased by a third.**



Large scale and petty corruption

- Difference deriving from the criminal Code itself - depending on the type of person receiving bribe
 - public vs. private servant
 - type of public servant
- Law no. 78/2000
- Difference deriving from case law



What constitutes bribe?

- money, assets, services, promoting somebody in a certain position
- does not include sexual intercourse
- does not normally include assets having a symbolic value – *art. 4. Law no. 78/200*
 - flowers
 - chocolate
 - coffee



Case law

UNIVERSITATEA DIN BUCURESTI
FACULTATEA DE DREPT

FONDATA IN MDCCCCLIX





Case law

- painting the house (services amounting approx. 100 euros)
- chocolate, hens, eggs, alcohol, meat, honey, cakes, champagne, lamb...
- 22 years of imprisonment for a judge accused of 7 offences (receiving bribery) – reduced to 12 and 2 months



What other consequences...

- DNA – National Directorate against Corruption – established in 2002
- specialized structure of the Public Ministry – subordinated to the General Prosecutor's Office
- established for fighting “large scale and medium corruption”
- territorial structures



What other consequences...

Competence of DNA:

- criminal offences provided by Law no. 78/2000 if they caused a damage higher than 200.000 euros or if the asset which represents the object of the corruption offence is higher than 100.000 euros
- if perpetrated by certain persons, such as members of the Parliament or of the Government, police officers, mayors, judges and prosecutors



What other consequences...

- BUT in 2018 – separate division for investigating criminal offences in the field of justice
- Competent for any criminal offence perpetrated by judges and prosecutors, including corruption



UNIVERSITATEA DIN BUCURESTI
FACULTATEA DE DREPT
FONDATA IN MDCCCLIX

Thank you for your attention!

Email: andra.trandafir@drept.unibuc.ro