

## The corruption concept in the Romanian Penal Law

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### 1. Corruption, a social and juridical phenomenon

Corruption represents a menace to democracy, to the rule-of-law state and to justice. Moreover, corruption undermines the principles of an efficient administration, negatively affects the market economy and endangers the stability of state institutions. Although it has been known ever since, it is unacceptable that this one acquires a status of normality. At present the Romanians have become skeptical regarding the efficiency of the fight against corruption.<sup>1</sup>

Even though at the end of 2001, the Government approved a *National action plan against corruption*, most Romanians are still convinced that the Government is not really interested in fighting corruption.<sup>2</sup> The European Commission continues to criticize Romania for the actual situation as corruption and the perception of corruption still is widely spread.

At the same time with the appearance of the state and the law, the public servants emerged performing their activity within a public service, serving the state but also the citizen.

The temptation to make illicit earning has existed since the beginning of time and exists also at present, also among public servants. Actually corruption derives from the term of Latin origin *corruptio* which referred to the illicit negotiation for a position in exchange of money or other advantages.

The corruption phenomenon is based on subjective but also objective factors..

Within social life, everyone's conduct is appreciated, evaluated by the other society members and it is considered "convenient" or "inconvenient" for them or for the constituted social group, as it harmonizes or enters into conflict with these ones.<sup>3</sup>

From this perspective of course, corruption is part of those actions of man which are inconvenient to the society, for its members.

Corruption always develops at a social level within the social relations which are built up among society members. As exposed above, it is influenced by subjective factors, but also by objective factors.

If we refer to *subjective factors* it should be pointed out that there have been and will be persons in the exercise of public functions who did not understand and do not understand the social importance of their activity, allowing the sale of their duties in exchange of certain material values or values of other nature. The causes which facilitate the display of this social phenomenon can be on one side, the insufficient level of instruction of that person, or on the other side, the extremely subjective evaluation by these persons that this position allows them to do everything, ignoring the obligation to protect the social values imposed by law.

It is obvious that from this point of view corruption becomes an antisocial phenomenon due to its consequences, and the attitude of those who allow its materialization is condemnable on a social level but also on a penal level.

Through its negative effects on society but as well on its members, corruption is and has been incriminated, therefore becoming a legal phenomenon. It has been ascertained that the

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<sup>1</sup> Alina Grigoraş According to GFK survey Romanians percieve an increased corruption, Nine O'Clock no. 3155 p. 2 (22 April 2004).

<sup>2</sup> Alina Grigoraş *supra note 4*.

<sup>3</sup> See V.Dongoroz *Drept penal* 1939 edition revised reissued by the Romanian Association of criminal science. Bucharest, 2000 p. 7.

manifestation of this corruption phenomenon leads to disgrace of public authorities, but moreover, even the stability of the rule-of-law state is endangered if the phenomenon persists and becomes general in the whole system of public institutions.

Beside subjective factors, we should mention also the *objective factors* which contribute to the development and preservation of this social phenomenon. Among these, we mention that the legislation is consistent and contradictory becoming thus possible through permissive regulation and the existence of several legal interpretations. The long line of interpretive laws, of emergency ordinances or simple Government ordinances, of different methodological norms, which are all adopted with delay in order to provide clear explanation regarding the application of the adopted law, allows various law interpretations during transition periods. Certainly the choice of interpretation can be influenced through *stimulation* of that servant who no longer acknowledges that he broke the law but, on the contrary, that he applied the law correctly. Then, although decentralization is wanted in relation to the activity of state institutions, although a simplification in the activity of these institutions to the benefit of the citizen is sustained, actually it is ascertained that bureaucracy is preserved and even increased within certain domains. Another factor that contributes to the maintenance of the corruption phenomenon is the motivation of the public servant. The material state of the latter determined by an insufficient remuneration is inappropriate, diminishing the power of the employed personnel to resist to temptations. Remuneration should represent a shield against any pressures which could influence their independence, objectivity.<sup>4</sup>

We could also identify as objective factors the insufficient number in some areas of public servants, the excessive work load, lack of endowments and of appropriate working conditions, inappropriate relationships between the political factor and public servants, diminution of administration apoliticism, professional competence.

The idea has been supported that without a depoliticized, professional, stable and motivated administration, progress is not possible.<sup>5</sup> We believe as well that the expressed idea is very valuable and pertinent and it is possible to be sustained for justice, this meaning that without a professional, stable, motivated justice, independent of external pressures (political, mass-media) the progress of the Romanian society is not possible.

OSI reported that “an extremely high level of distrust contributes to the generalized perception that Romania is rather governed by different interests than by the principle of the rule-of-law state.”<sup>6</sup>

At present, corruption is the main form of expression of the moral crisis proper to Romania, manifesting itself at all levels of social life.

At the same time, failure to preserve human dignity, an inability of the people to defend law and justice is noticed.

The fight against corruption should be continued permanently and not only in election campaigns, the weapons being supplied by legal disposition, firstly the criminal ones, but also by the promotion of real moral values in public life.

In the following we will enunciate some of these morality values.

One of the most important constitutional values is linked to the *dignity of the human being*, which is reflected on the legal plan by means of the right to dignity of the human being<sup>7</sup>. This right implies the right to reputation, the right to honor, the right to moral integrity, to intimacy, to protection of the private life. Protection of morality, of public morality, of decent exposure determines restrictions for the fundamental rights and liberties granted by Constitutions. Actually

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<sup>4</sup> Vedinaş, V. *Valori deontologice în viaţa publică* in Scientific Book no. 7/2005 by the Institute of administrative science „P Negulescu” Sibiu p. 345

<sup>5</sup> Alexandru, I *Politică, administraţie, justiţie*. ALL Beck, Bucharest 2004, p. 216

<sup>6</sup> OSI/EU The program for surveillance of adhesion, *Monitorizarea procesului de aderare la Uniunea Europeană; Corupţia şi strategiile de combatere a corupţiei* p.. 493 QED Publishing 2002

<sup>7</sup> See V.Vedinaş *Valori deontologice în viaţa publică* in Scientific Book no. 7/2005 by the Institute of administrative science „P Negulescu” Sibiu p. 339

no liberty or right is unlimited. In order to avoid abuse, one should determine the barriers of that law or liberty exercise.<sup>8</sup>

Another consecrated value also in the contents of the European Constitution is that of *loyalty*. It is necessary that the states by their external politics should promote and prove the *loyalty spirit* and the *mutual solidarity*. The competent institutions within the member states of the Union should promote *mutual trust*,<sup>9</sup> *equality* among the citizens of the Union before the institutions, bodies and organism of the Union. In the IIIrd Part of the European Constitution entitled *Politics and operation of the Union*, among the obligations of the European Commission members, it is stipulated that *of restraining from any act not compatible with their function*. On the other side, these persons should respect *the obligation of honesty* and prudence in accepting after termination of the mandate certain positions or advantages.

In other words, we witness a moral obligation which exists during the mandate but will be preserved after the mandate as well.

These desiderates on European level should be mentioned in the domestic politics of our state, especially in the actions and activities of our state regarding *the reform in justice and public administration*.

These values enunciated above should be taken into account for the whole activity performed by the persons who are employed in public institutions and who serve the interests of the citizen.

## 2. The concept of corruption in Romanian criminal legislation

Napoleon's Code and other French models have constituted the main source of inspiration for the Romanian Law system. Romanian language is a Romanic language and Romania has had strong cultural links with France, extended to the legal sphere as well. The French influence is underlined by the Constitution in the Penal Code, Civil Code, as well in the The Codes of Civil and Criminal procedure adopted in the XIX<sup>th</sup> century. The structure of the judicial authority follows the French model in which the Ministry of Justice still plays an important role in administrating justice, managing actually the budget funds allotted to this power within the state.

On corruption we have dates from the Old Testament – The Book of the Kings chap. 8-3 where reference is made to the sons of Samuel, appointed judges, by stating that: "His sons walked not in his ways, but they turned aside after lucre, and took bribes, and perverted judgment."

In ancient Greek, the corruption phenomenon in which judges took bribes determined Plato to propose death punishment for all servants who accepted gifts in the exercise of their duty.<sup>10</sup>

In ancient Persia, the king Cambise, the II<sup>nd</sup> pronounced the killing of a judge guilty of corruption and used the skin of this one to upholster his chair. In exchange, king Darius sentenced to death by crucification the corrupted judges.

Ancient Rome, took measures to repress corruption through the Calpurnia laws (year 1941 BC); Iulia repetundarium (year 591 B.C.); Acilia (year 123 B.C.); Servilia (year 110 B.C.); Cornelia (year 81 B.C.).<sup>11</sup>

No society regardless of the economic-social stage of development and of the essence of the political regime has been and is avoided by the corruption phenomenon and its dangerous and extremely serious effects.

Therefore, along history the reaction of the society towards this calamity has been different in relation to the economic-social conditions, historical, religious conditions, to the moral values protected by law. Corruption is the effect of man's interaction with his social environment, thus becoming a historical product. As mentioned above, man has certain limits of his own,

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<sup>8</sup> Morange, Jean *Droits de l'homme et libertes publiques* Presses universitaires de France 1995, III<sup>rd</sup> edition p. 33

<sup>9</sup> Article 1-42 of European Community Treaty

<sup>10</sup> Antoniu, G., Popa, M., Daneş, Şt. *Codul penal pe înţelesul tuturor*. Politică Bucurest, 1970 p.210

<sup>11</sup> See Th.Mommsen *Le droit penal romain* vol.III Paris 1907, p. 19

influenced by the degree of instruction but also by the degree of resistance to “stimulants”, as well by the exercise of duties within the limits of the law. In other words, it should be taken into consideration the actual man integrated in that society in which honesty, correctness, honesty are essential values, leading the actions of its members.

Romania, although a fresh member of the European Community is confronted further and resents the major danger of corruption due to internationalization of this phenomenon.

Romania already disposes of a sufficiently comprising legal frame in order to fight corruption. The latter is defined in art. 254-257 of the Romanian Penal Code. As the provisions of the Penal Code cover only “traditional corruption infractions,” such as giving and taking bribe, the intercession, receiving undue advantages, all these are completed by Law no. 78/2000<sup>12</sup> on preventing, discovering and sanctioning of corruption acts.

In the period from the issuance until now, both the Penal Code and Law 78/2000 have been several times amended. More than that, Romania adopts additional legal provisions concerning the aspects linked to corruption. On this basis, Romania signed and ratified different international convention on fighting corruption on a global level.<sup>13</sup>

As the legislative frame was created, it was necessary the creation of bodies which have duties in the field of fighting the corruption phenomenon: The National Anticorruption Directorate<sup>14</sup>, The Directorate of Organized Crime and Terrorism within the Public Ministry,<sup>15</sup> the territorial prosecutor’s offices, the police<sup>16</sup>, The Customs Authority<sup>17</sup>, Fraud Squad<sup>18</sup>, The National Office for prevention and fighting money laundering<sup>19</sup>, The control body of the Prime Minister, The Competition Council and Competition Office<sup>20</sup>.

Until now, the Romanian criminal legislation did not contain a regulation to incriminate corruption or to define this concept.<sup>21</sup>

For the first time and indirectly, the penal corruption concept has been approached via Law no. 83/1992 regarding the urgent criminal prosecution and trial procedure for certain corruption crimes whose field of application has been confined to crimes linked to taking bribe (art. 254 of penal code), giving bribes (art. 255 of penal code), receiving undue advantages (art. 256 of penal code) and intercession (art. 257 of penal code).<sup>22</sup>

The elaboration of the regulation frame to incriminate corruption is the result of a longer process. Together with the care to protect the rule of law and to preserve basic social values, the legislator has regulated through the Penal Code the sanction of this antisocial phenomenon by including in the large category of corruption crimes all those crimes provided in the Penal Code or in special laws which are committed in view of receiving an advantage, a material, moral or other

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<sup>12</sup> Published in the Official Gazette no. 219/18.05.2000

<sup>13</sup> See *Penal law Convention and the Civil law Convention within the Council of Europe on corruption* *Convenția de drept penal, United States Convention on transnational organized crime, European Convention on extradition, European Convention on mutual assistance in criminal matters and the Convention on the transfer of sentenced persons.*

<sup>14</sup> Introduced by E.O. no.43/2002 under the name PNA published in the O.G.: no. 244 of 11 April 2002

<sup>15</sup> Introduced by Law no. 508/2004 modified by E.O. no. 131 of 21 Dec. 2006 published in the O.G. no. 1046 of 29.12.2006

<sup>16</sup> Introduced by the decree law no. 2 / 27 Dec. 1989 modified by Law 26 / 1994 and Law 218/23.04.2002 published in the O.G. no. 305 of 10 Dec. 2002

<sup>17</sup> Introduced by G.R. no. 498/1994 and G.R. no. 147/1996 modified and completed by G.R. no. 939/1998, modified by G.R. 495/2007 published in the O.G. no. 382 of 6 June 2007

<sup>18</sup> Introduced by E.O. no. 91 of 2 Oct. 2003

<sup>19</sup> Introduced by Law no. 21/1999 published in the O.G. no. 18/1999 modified and completed by Law no. 656/2002 published in the O.G. no.904 of 12.12.2002

<sup>20</sup> Introduced by Competition law no. 21/1996 published in the O.G. no. 88/1996 modified and completed by E.O. no.121/2003 published in the O.G. no. 875/2003

<sup>21</sup> See J.A.Gardiner *Defining corruption A raport to the Fifth Internațional Anti Corruption* Amsterdam 9 March 1992 quote by V.Dobrinoiu in *Corupția în dreptul penal roman*. Atlas Lex București, 1995 p.10; D.Banciu S.M.Rădulescu *Corupția și crima organizată în România*. Continent XXI, 1994 p. 16

<sup>22</sup> Published in the Official Gazette no. 173/22.07.1992

benefit. Thus the following have been included: treason (art. 155 Penal Code); treason by transmittal of secrets (art. 157 Penal Code); espionage (art. 159 Penal Code); disruption of national economy (art. 165 Penal Code); crimes against patrimony (art 208-209 and 211 Penal Code); abuse of trust (art, 213 Penal Code); deceit (art. 215 Penal Code); dilapidation (art. 215/1 Penal Code); arrogation of official qualities (240 Penal Code); theft of written documents (art. 242 Penal Code); avoidance of writ of execution (244 Penal Code); specula (art. 295 Penal Code); disclosure of economical secret (art. 298, Penal Code) etc.<sup>23</sup>

Under these conditions, the intervention of the legislator has been imposed in order to articulate, in a more evident way, the fight against corruption, by limiting the infraction sphere to four crimes, those stipulated in art. 254-257 in the Penal Code. This has been achieved by adopting as shown above, of Law no. 78/2000. In the contents of the law, the idea comes out that in this group, those crimes stipulated in special laws will be included as specific modalities of the infractions stipulated in the Penal Code- from 254 to 257 – depending on the capacity of the persons that commit the acts or in relation to the activity domains where these are committed.

Law 78/2000<sup>24</sup> has been modified by Law no. 161/2003<sup>25</sup> on certain measures for ensuring the transparency in the exercise of public dignities, of public functions or in the business environment, on preventing and sanctioning of corruption, extending itself to the penal concept of corruption by incriminating other two infractions – those provided by art. 6/1 and 8/2 – of the law. The deed of bribe taking, stipulated in art. 254 of the Penal Code if committed by a person who, according to the law has duties of finding or of sanctioning of the contraventions or of finding pursuit or judging the infractions, is sanctioned with the punishment provided in art. 254 para 2 in the Penal Code concerning the committing of the crime by an official with control duties.

(2) The deed of bribing carried out towards one of the persons stipulated in paragraph (1) or towards an official with control duties is sanctioned with the punishment stipulated in article 255 of the Penal Code the maximum of which is increased by 2 years.

(3) The crimes mentioned in art. 256 and 257 of the Penal Code as well as the crimes stipulated in art. 6<sup>^</sup>1 and 8<sup>^</sup>2 of the present law, if committed by one of the persons mentioned in paragraph (1) and (2), the special maximum of the punishment is increased by 2 years.

The following deeds are considered the infractions stipulated in art. 254-257 of the Penal Code, art. 6<sup>^</sup>1 and 8<sup>^</sup>2 of the actual law and the incriminating deeds from these texts, committed by managers, directors, administrators, auditors or other persons with control duties of trading companies, national companies and societies, autonomous regies and any other economic units. In the case of crimes stipulated in this section, if committed in the interest of a criminal organization, association or group, or of one of their members, or to influence the negotiations of international commercial transactions or the international exchanges or investments, the maximum of the punishment provided by law for such crimes shall be increased by 5 years.

Nevertheless, for the first time in the Romanian legislation, crimes related to those of corruption (section 3) and crimes directly related to these (section 4).

Infractions assimilated to corruption infraction

The following deeds shall be punished by imprisonment from 5 to 15 years and the interdiction of certain rights, if committed for the purpose of obtaining for himself or for somebody else money, goods or other undue advantages:

a) the establishing, deliberately, of a reduced value, compared to the real market value, of the goods belonging to economic units in which the state or an authority of the local public administration is a shareholder, committed during the privatization activity or the enforcement of a judgement, during the reorganization or liquidation by the Court or on the occasion of a commercial

<sup>23</sup> See V.Dobrinioiu *Corupția în dreptul penal roman*. Atlas Lex București 1995 p. 9-12

<sup>24</sup> Published in the Official Gazette no. 219 of 18.05.2000, modified by E.O. no. 237 of 24 November 2000 published in the Official Gazette no. 614 of 29 November 2000. See also Law no. 27 for ratification of the Penal Convention on corruption, adopted at Strasbourg in 27 January 1999, published in the Official Gazette no. 65 of 30 January 2000 and the Council of Europe and the fight against corruption, Bucharest, November 2001

<sup>25</sup> Published in the Official Gazette no. 279 of 21 April 2003

transaction, or of the goods belonging to public authorities or public institutions during a selling or foreclosure activity of these, committed by those holding management, ruling, administration, foreclosure, reorganization duties or duties to perform the liquidation by the Court;<sup>26</sup>

b) the granting of subsidies by infringing the law, the non-following up according to law of the contracted destinations;<sup>27</sup>

c) the utilization of subsidies for other purposes than those for which they have been granted, as well as the utilization for other purposes of credits granted from public funds or which are to be reimbursed from public funds.<sup>28</sup>

(1) The deed of the person who, by virtue of his position, of the duty or of the task received has the obligation to supervise, control or dissolve a private economic unit, to carry out for it any task, to mediate or facilitate the carrying on of certain commercial or financial operations by the private economic unit, if the deed is of such nature as to bring him directly or indirectly undue advantages, shall be punished by imprisonment from 2 to 7 years.

(2) If the deed stipulated in paragraph (1) has been committed within a period of 5 years from the cessation of the function, duty or task, it shall be punished by imprisonment from 1 to 5 years.

The following deeds shall be punished by imprisonment from 1 to 5 years if committed in view of obtaining for himself or for somebody else money, goods or other undue advantages:

a) the carrying out of financial operations as acts of merchant, incompatible with the position, duty or task which is carried out by a person or the conclusion of financial transactions, using information obtained by virtue of the position, duty or task;

b) the usage in any modality, either directly or indirectly of information that are not meant for publicity or allowing the access of unauthorized persons to these information.

The deed of the person who has a leadership position in a party, in a trade union or in a Employer's association, or in a legal unit without a patrimonial purpose, that uses its influence or authority for the purpose of obtaining for himself or for somebody else money, goods or other undue advantages, is punished by imprisonment from 1 to 5 years.<sup>29</sup>

The infraction of blackmail is stipulated in art. 194 of the Penal Code that involves a person from those mentioned in art. 1 shall be punished by imprisonment from 7 to 12 years.

The crime linked to abuse of office against public interest and abuse of office against the interests of the persons and abuse of office by confining certain rights if the civil servant obtained for own benefit or another's a patrimonial or non patrimonial advantage is punished by imprisonment from 3 to 15 years.

If the deeds stipulated in art. 12 and 13 are committed according to art. 9, the maximum punishment provided by law shall be increased by 3 years.

The attempt to the crimes stipulated in this section is subject to punishment.

If the deeds stipulated in this section constitute more severe crimes, according to the Penal Code or to special laws, these are punished under the terms and sanctions established in those laws.

#### Infractions directly connected to corruption infractions

<sup>26</sup> Let. a) of art. 10 has been modified by point 1 of the unique article in EMERGENCY ORDINANCE no. 124 of 6 September 2005, published in the OFFICIAL GAZETTE no. 842 of 19 September 2005.

<sup>27</sup> Let. b) of art. 10 has been modified by point 1 of the unique article in LAW no. 69 of 26 March 2007, published in the OFFICIAL GAZETTE no. 215 of 29 March 2007.

<sup>28</sup> Let. c) of art. 10 has been modified by point 1 of the unique article in LAW no. 69 of 26 March 2007, published in the OFFICIAL GAZETTE no. 215 of 29 March 2007.

<sup>29</sup> Art. 13<sup>1</sup> has been introduced in point. 8 of art. I in Title I, Book II of LAW No. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003. Art. 13 has been modified in point 7 of art. I in Title I, Book II of LAW No. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003. Art. 13<sup>2</sup> has been introduced in point. 1 of the unique art. of LAW no. 521 of 24 November 2004, published in the OFFICIAL GAZETTE no.123 of 29 November 2004.

In the meaning of the present law, the following infractions are in direct connection with the corruption infractions, with infractions assimilated to them or to infractions against the financial interests of the European Community:<sup>30</sup>

a) the concealment of goods originating in the commitment of an infraction stipulated in sections 2 and 3, as well as favouring the persons that committed such infraction;

b) the association for the purpose of committing an infraction stipulated in sections 2 and 3 or in letter a) of the present article;

c) the false and use of forgeries committed for the purpose of hiding the perpetration of one of the infractions stipulated in sections 2 and 3 or committed for the achieving of the aim pursued by such an infraction;

d) the abuse in office against the public interests, abuse in office by confinement of rights committed for the achieving of the aim pursued by such an infraction, stipulated in sections 2 and 3;<sup>31</sup>

d^1) blackmail perpetrated in connection with the infractions stipulated in sections 2 and 3;<sup>32</sup>

e) the infractions of laundering money stipulated in Law no. 656/2002 on preventing and sanctioning the laundering money, when the money, goods or other values originate in an infraction stipulated in sections 2 and 3;<sup>33</sup>

f) the contraband with goods originating in the commitment of an infraction stipulated in sections 2 and 3 or committed for achieving the aim pursued by such crime;

g) the infractions stipulated in Law no. 87/1994 on fighting tax evasion, with subsequent modifications committed in connection with infractions stipulated in sections 2 and 3;<sup>34</sup>

h) the infractions of fraudulent bankruptcy and the other infractions stipulated in Law no. 31/1990 on trading companies, republished, with subsequent modifications and completions committed in connection with a crime stipulated in sections 2 and 3;<sup>35</sup>

j) The infraction of the traffic of persons stipulated in Law no. 678/2001 on preventing and fighting human trafficking, committed in connection with the infraction stipulated in sections 2 and 3;<sup>36</sup>

k) The infraction stipulated in the Government Emergency Ordinance no. 159/2001 on preventing and fighting the use of the financial-banking system in view of financing terrorism acts, approved by Law no. 466/2002, committed in connection with a crime stipulated in sections 2 and 3.<sup>37</sup>

(1) The infractions stipulated in art.17 letter a)-d^1) shall be sanctioned with the punishments stipulated in the Penal Code for these crimes the maximum of which shall be increased by 2 years.<sup>38</sup>

(2) the infractions stipulated in art. 17 letter e) shall be sanctioned with the punishments stipulated in Law no. 656/2002 on preventing and sanctioning the laundering money the maximum of which shall be increased by 3 years.<sup>39</sup>

<sup>30</sup> The introductive part of art. 17 has been modified in point 2 of the unique article in EMERGENCY ORDINANCE no. 124 of 6 September 2005, published in the OFFICIAL GAZETTE no. 842 of 19 September 2005.

<sup>31</sup> Letter d) of art. 17 has been modified in point 2 of the unique article in LAW no. 521 of 24 November 2004, published in the OFFICIAL GAZETTE no. 1.123 of 29 November 2004

<sup>32</sup> Let. d^1) of art. 17 has been introduced in point 9 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>33</sup> Let. e) a art. 17 has been modified by point 10 al of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>34</sup> Let. g) a art. 17 has been modified by point 11 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>35</sup> Let. i) a art. 17 has been modified by point 12 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>36</sup> Let. j) a art. 17 has been modified by point 13 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>37</sup> Let. k) a art. 17 has been introduced in point 13 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>38</sup> Para (1) al art. 18 has been modified by point 14 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

(3) The infractions stipulated in art. 17 letter f) shall be sanctioned with the punishments stipulated in Law no. 141/1997 on the Customs Code of Romania, the maximum of which shall be increased, in the case of simple contraband, by 3 years and in the case of qualified contraband by 5 years.

(4) The infractions stipulated in art. 17 letter g) shall be sanctioned with the punishments stipulated in Law no. 87/1994 on fighting tax evasion, with the subsequent modifications, the maximum of which shall be increased by 2 years.<sup>40</sup>

(5) The infractions stipulated in art.17, letter h) shall be sanctioned with the punishments stipulated in Law no. 31/1990, republished, the maximum of which shall be increased by 2 years.

(6) The infractions stipulated in art.17 letter i) on drug trafficking shall be sanctioned with the punishments stipulated in Law no. 143/2000 on fighting drug traffic and illicit drug consumption, the maximum of which shall be increased by 2 years, the crime regarding trafficking of toxic substances shall be sanctioned with the punishment stipulated in art. 312 of the Penal Code, the maximum of which shall be increased by 2 years and the infraction of non-observance of the firearms and ammunitions regime is sanctioned with the punishments stipulated in art. 279 of the Penal Code, the maximum of which shall be increased by 2 years.<sup>41</sup>

(7) The infractions stipulated in art. 17 lit. j) on the traffic of persons is sanctioned with the punishments stipulated in Law no. 678/2001 on preventing and fighting the traffic of persons, the maximum of which shall be increased by 2 years.<sup>42</sup>

(8) The infraction stipulated in art. 17 let. k) is sanctioned with the punishment stipulated in the Government Emergency Ordinance no. 159/2001 on preventing and fighting the usage of the financial-banking system for the purpose of financing terrorism acts, approved by Law no. 466/2002, the maximum of which shall be increased by 2 years.<sup>43</sup>

#### Infractions against the financial interests of the European Communities<sup>44</sup>

(1) Usage or presentation of false, inexact or incomplete documents or declarations which result in undue fund procurance from the general budget of the European Community or from the budgets administrated by them or on their behalf shall be punished by imprisonment from 3 to 15 years and interdiction of certain rights.

(2) The same punishment shall be applied for deliberate omission to supply the data requested pursuant to law for the purpose of getting funds from the general budget of the European Communities or from the budgets administrated by them or on their behalf if the deed results in undue procurance of these funds.

(3) If the deeds provided in para. (1) and (2) produced extremely serious consequences, the punishment shall be imprisonment from 10 to 20 years and interdiction of certain rights.<sup>45</sup>

(1) The change without observance of the legal provisions, of the fund destination obtained from the general budget of the European Communities or from the budgets administrated by them or on behalf of them shall be punished by imprisonment from 6 months to 5 years.

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<sup>39</sup> Para.(2) al art. 18 has been modified by point 14 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>40</sup> Para. (4) al art. 18 has been modified by point 15 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>41</sup> Para. (6) al art. 18 has been modified by point 16 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>42</sup> Para. (7) al art. 18 has been introduced in point 17 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>43</sup> Para. (8) al art. 18 has been introduced in point 17 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>44</sup> Section 4<sup>1</sup>-a of Chap. III has been introduced in point 18 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>45</sup> Art. 18<sup>1</sup> has been introduced in point. 18 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

(2) If the deed stipulated in para (1) generated extremely serious consequences, the punishment shall be imprisonment from 5 to 15 years and interdiction of certain rights.

(3) The change without observance of the legal provisions, of the destination for an acquired legal advantage if the deed has as a result the illegal diminution of the resources from the general budget of the European Communities or from the budgets administered by them or on their behalf, shall be sanctioned by the punishment stipulated in para. (1).<sup>46</sup>

(1) Usage or presentation of false, inexact or incomplete documents or declarations which result in undue fund procurement from the general budget of the European Community or from the budgets administered by them or on their behalf shall be punished by imprisonment from 3 to 15 years and interdiction of certain rights.

(2) The same punishment shall be applied for deliberate omission to supply the data requested pursuant to law for the purpose of getting funds from the general budget of the European Communities or from the budgets administered by them or on their behalf if the deed results in undue procurement of these funds.

(3) If the deeds provided in para. (1) and (2) produced extremely serious consequences, the punishment shall be imprisonment from 10 to 20 years and interdiction of certain rights.<sup>47</sup>

Attempt to commit the infractions stipulated in art. 18<sup>1</sup>-18<sup>3</sup> is punishable.<sup>48</sup>

Deliberate non-performance by the director, administrator or the person who has decisional or controlling attributes in an economic unit, of a job duty, by not carrying it out or by carrying it out erroneously, if it resulted in the perpetration of one of the infractions provided in art. 18<sup>1</sup>-18<sup>3</sup> or in the perpetration of a corruption or money-laundering crime in connection with the funds of the European Communities, by a person who was under his rule and acted on behalf of this economic unit, is punished with imprisonment from 6 months to 5 years and interdiction of certain rights.<sup>49</sup>

### 3. Justice in fighting corruption

Protection of social relationships from criminal law is possible only by means of defending social values. Perpetration of any infraction endangers or directly harms a certain social value and through this, it menaces or injures social relationships.<sup>50</sup> Through sanction of penal deeds, the social values are protected and social relationships are protected by their means.

The axiological researches have disclosed the existence in any society of a system of values in which these relations form a hierarchy according to their importance. There has been and there is a system of values for each human community, subject to historical and social changes able to bring modifications both in relation to the value criteria and to the value hierarchy conferring a certain dynamics to values.

In the process of selecting social values worth of penal protection, the legislator has in mind the subsidiary character of criminal constraint, meaning that the use of the incrimination norm should be justified only in the absolutely necessary cases, namely to the extent that other forms of constraint would not be efficient. The exertion of a psychological pressure on the addressees of the penal law is needed although this implies the observance of less important values.

Corruption as a phenomenon is manifested in all the domains of social and political life acquiring special valences at present from the point of view of case frequency and of expansion. Corruption has become a major problem both on national level and on international level, the phenomenon, not at all serial, involving persons in a leadership position within the state and at the

<sup>46</sup> Art. 18<sup>2</sup> has been introduced in point 18 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>47</sup> Art. 18<sup>3</sup> has been introduced in point 18 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>48</sup> Art. 18<sup>4</sup> has been introduced in point 18 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>49</sup> Art. 18<sup>5</sup> has been introduced in point 18 of art. I in Title I, Book II of LAW no. 161 of 19 April 2003, published in the OFFICIAL GAZETTE no. 279 of 21 April 2003.

<sup>50</sup> Dongoroz, V and collaborators *Introducere în Explicații teoretice ale Codului penal român*, Vol. III. Academia Română. Bucharest, 1971. p. 7

political level. It has profound social and economical implications, affecting numerous persons and countries.

In the case of this phenomenon the states shall set forth adaptable and rapid strategies as an efficient reaction against the phenomenon.

The Multidisciplinary Group on corruption (MCG) created by the Committee of Ministers of the Council of Europe in the year 1994 has temporarily adopted the following definition: “*Corruption linked to the activity of MCG of the Council of Europe includes the occult commissions and all the other steps that imply the persons appointed in public or private positions who disregarded the obligations derived from their quality as a civil servant, as a private employee, independent agent or from a similar relation in view of getting illicit advantages, regardless of the type, for themselves or for others.*”

The Penal Convention of the Council of Europe on corruption signed by Romania on 27 January 27, 1999, defines corruption in terms of the two possibilities of committing it, actively or passively:

*Active corruption* consists of the deliberate act of promising, offering or giving, directly or indirectly, of any person, an undue advantage to a civil servant, for himself or for somebody else, for the purpose of carrying out an act in the course of their official obligations.”

*Passive corruption* consists of “the deliberate act on the part of a civil servant of requesting or receiving indirectly or directly, undue advantages for himself or for somebody else or of accepting an offer or promise of such an advantage in view of carrying out or of refraining from carrying out an act in the course of their official obligations.”

Corruption represents a special social danger that may be unsuspected in a superficial research of the phenomenon and its causes, causing harm to civilized, state social life, to rule of law, democracy and it may endanger even the existence of the rule-of-law state. Corruption represents a danger to the individual, since it deforms the moral characteristics, the conceptions on honest and dignified life, but also to the society in general because it may lead to dissolution of the state.

The international community reacted accordingly by the available means and ways. In this regard, the warranty consists in the international manifestations in which the voice of the international community has been heard: The conference of the United Nations held in Haga on December 1, 1989; The VIII<sup>th</sup> Congress of the United Nations on preventing crime and treatment of perpetrators, held in Cuba in August-September 1990, which adopted a special Resolution on “Corruption at Government level”; The international Conferences against corruption, organized every 2 years (Washington 1983, New York 1985; Hong Kong 1987, Sidney 1987, Amsterdam 1992, Caucum-Mexic 1994); The international Seminar held in Budapest in 1994; The interdisciplinary Conference held in Friburg – Swiss 1994 and the 19<sup>th</sup> Conference of the European ministers of justices from Malta 1994 on the “Administrative, civil and penal aspect, as well on the roll of court power in fighting corruption.”

At the level of the states, a distinction is made between *big corruption* which is the high level of corruption and *small corruption* involving less extended prejudices. Obviously, both forms of manifestation are of major importance in the politics of each state, and the fight on all levels against this calamity in order to prevent, discover and sanction it, is a primary necessity without involving any debates.

The control of the corruption phenomenon through acts of prevention, attacks the basis of the pyramid representing the phenomenon, namely it attacks small corruption with a particular impact on public opinion.

In order to render more efficient the fight against corruption, it is necessary to establish the domains of operation as well to define the terms of: public function, public servant, type of infractions, contents of infractions, methods of prevention, applied sanctions and their effects.