

## **A COMPARATIVE PRESENTATION OF THE CRIMINAL OFFENCE OF CORRUPTION IN THE ROMANIAN CRIMINAL CODE AND THE HUNGARIAN CRIMINAL CODE**

**A.F. HOBLEA (BRADEA)**

**Alina Florentina Hoblea (Bradea)**

Faculty of Juridical Sciences – Law, M.A. Student in Criminal and Forensic Sciences

Agora University, Oradea, Romania

Email: [florentina.bradea@gmail.com](mailto:florentina.bradea@gmail.com)

### **Abstract:**

*As a reverberation of the motto “Whoever has power, is tempted to abuse it”<sup>1</sup>, the term “corruption” is often used nowadays in Romania and not only, corruption being the abusive use of the power granted, whether in the public sector or the private one, in order to satisfy personal or group interests, and the fight against this phenomenon is a prerequisite for proving the existence of a healthy rule of the law and of a good government.*

**Keywords:** *bribery, corruption, trafficking, criminal, official, criminal offence*

### **Introduction:**

*Corruption refers to immoral, illicit, illegal activities, carried out not only by individuals in leading positions or who exercise a public function, but also by various groups and organizations (public and private) with a view to obtaining material or moral benefits or a superior social status, by using different forms of coercion, blackmail, fraud, bribery, buying, bullying<sup>2</sup>.*

Synthesizing the phenomenon of corruption, it represents a vast social phenomenon characterized by bribery, protectionism and the use by persons in positions of responsibility, for personal or group interests, of their work-related duties and of the opportunities and benefits that the public position they hold provides. Corruption, as a whole, harms the economic and social development of the country, violates people’s rights to equal treatment and opportunities, and encourages the lack of professionalism. Practically speaking, “corruption benefits a few at the expense of the many”<sup>3</sup>.

### **1. A brief presentation of the criminal offence of corruption in Romania and Hungary**

Corruption is one of the greatest challenges of our age, a challenge that must and can be dealt with. Both Romania and Hungary have made sustained efforts to thwart this phenomenon. In the Romanian Criminal Code of 1968 the term “corruption” was avoided out of an ideological caution, more specifically, the use of a term which, in the minds of the state-party’s representatives designated a reality specific to capitalist societies, was not acceptable, although the phenomenon of corruption was present in totalitarian societies, as well. The concept of

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Montesquieu

2 Elena Cherciu, *Coruptia. Caracteristici și particularități în România (Corruption. Characteristics and Particularities in Romania)*, 2004

3 Johnston Michael, *Syndromes of Corruption: Wealth, Power, and Democracy (Corupția și formele sale. Bogăție, putere și democrație)*, 2007

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corruption is only present in special regulations adopted after year 1990, but the concept of “criminal offence of corruption” is mentioned for the first time in the Romanian Criminal Code that became effective as of 1<sup>st</sup> February 2014. Romania’s Parliament adopted in the year 2000 Law 78/2000 with subsequent completions and amendments on preventing, discovering and sanctioning corruption deeds.

In Hungary, as in Romania, the criminal code underwent many changes over time. The new Hungarian criminal code is based on the regulations of the previous codes, but major changes were made in terms of the more serious offences, among which the criminal offence of corruption. The Hungarian state has toughened the provisions of the new criminal code and continues the fight for the prevention of corruption, which is a priority on the agenda of the current government. Also, cooperation with organizations dealing with the prevention and fight against the corruption phenomenon such as Transparency International is a priority and proves to be effective.

**2. A comparative analysis of the criminal offence of corruption in the Romanian Criminal Code and the crime of corruption in the Hungarian Criminal Code**

**2.1. Regulation**

In the Romanian Penal Code, the criminal offence of corruption is regulated in Chapter V entitled “Crimes of Corruption and Service”, Chapter I “Crimes of Corruption” in Article 289 (taking bribes) and Article 290 (giving bribes) next to the crimes of trafficking in influence (Article 291), buying influence (Article 292), crimes committed by members of Courts of Arbitration or in connection with them (Article 293), crimes committed by foreign officials or in connection with them (Article 294).

The Hungarian Criminal Code regulates the crime of corruption in Chapter XXVII, entitled “Crimes of Corruption” in section 290 (Active Corruption) and section 291 (Passive Corruption) next to the crime of active and passive corruption of public officials and the crime of active and passive corruption in court. I will present, as follows, the similarities and differences between the criminal offences of giving and taking bribes in the two codes, as a component of the crime of corruption.

In the Romanian Criminal Code the offence of taking bribes (Article 290) is defined as the deed of the public official who, directly or indirectly, for himself or for another, claims or receives money or other benefits that are not due to him or accepts the promise of such benefits, in connection with the fulfillment, non-fulfillment, urging or delay in fulfilling an act that is part of his service duties, and the offence of giving bribes is defined as the promise, offering or giving of money or other benefits in the conditions of Article 290.

The Hungarian Criminal Code defines active corruption as follows: any person who gives or promises an unlawful advantage to a person working for or on behalf of an economic operator to induce him to breach his official duty – which is the equivalent of the act of giving bribes in the Romanian Criminal Code, and passive corruption is defined as follows: any person who requests or receives an unlawful advantage in connection with his actions carried out for or on behalf of an economic operator, for himself or for a third party, or accepts a promise of such an advantage, or accepts an advantage from a third party, which is the equivalent of the act of taking bribes in the Romanian Criminal Code.

**2.2. Constituent elements of the criminal offence**

a) In both codes, the legal object is represented by the social relationships that protect the optimal unfolding of work relationships.

b) In both codes, the material object does not exist, because the criminal offence of giving and taking bribes is not directly and immediately prejudicial to a material object.

c) As regards the subjects of the criminal offence, we find a number of similarities in the two codes, in both of them the active subject is any person, public official exercising an activity in the service of a public authority, public institution or other legal entity of public interest. The difference is that in the Hungarian Criminal Code the crime of active corruption of public

officials is regulated separately, in section 293 of Chapter XXVII, from passive corruption of public officials, which is regulated in section 294 of the same chapter. Passive subjects of the criminal offence in the two codes are: the public authority, public institution or legal entity of public or private interest, but may also be the public authority of the foreign state in which the active subject exercises his service.

d) The objective side of the crime of giving bribes is the same in both codes, it refers to the promise, offering or giving of money or other undue benefits to a person, public official, in order to breach their official duties, which is an essential requirement for the existence of the crime of giving bribes. In both codes, claiming, receiving an unlawful advantage (money or other undue benefits) by any person, public official, for himself or for a third party or accepting the promise of such unlawful advantages or even not rejecting the promise of receiving unlawful advantages in exercising one's service duties, represents the crime of taking bribes.

e) As regards the subjective side, we notice that, in both codes, there is direct intent both in the case of bribe giving and bribe taking.

f) Sanctions

In terms of the sanctions for the crime of corruption we find differences between the two codes. In the Romanian Criminal Code, the criminal offence of giving bribes is punishable by imprisonment from 2 to 7 years, but the act may not constitute a criminal offence if the briber was coerced by any means by the person who took the bribes. In the Hungarian Criminal Code the crime of giving bribes is punishable by imprisonment for 1 to 5 years. Also, the criminal offence of taking bribes is punishable by the Romanian Criminal Code by imprisonment from 3 to 10 years and the denial of certain rights, and in the Hungarian Criminal Code the crime of taking bribes is punishable by imprisonment for 1 to 5 years. In terms of similarities, in both codes there is a non-punishment clause, in relation to the criminal offence of giving bribes, which refers to the case where the doer, the briber (in the Romanian Criminal Code) reveals the deed to the criminal prosecution body before the latter takes any action, gives up the unlawful advantage and/or discloses the circumstances of the act of corruption. The non-punishment clause is also present in the Hungarian Criminal Code in relation to the crime of taking bribes.

g) Aggravated forms

In both criminal codes, Romanian and Hungarian, aggravated forms of the criminal offences of giving and taking bribes are also mentioned. The difference between the two codes is as follows: in the Romanian Criminal Code the aggravated form is present in the case of the criminal offence of taking bribes if it is committed by an official with control duties or a person with duties of finding or sanctioning contraventions or of finding, prosecuting or judging crimes, and the punishment is imprisonment for 3 to 15 years and the denial of certain rights<sup>4</sup>, the deed of taking bribes being more serious than that of giving bribes, all the more so if it is committed by an official or high-ranking person. In the Hungarian Criminal Code, the aggravated form is present both in the case of giving bribes if the deed is committed by an official with control duties, which is punishable by imprisonment for 2-8 years, and in the case of taking bribes, the punishment being imprisonment for 2 to 8 years, and if there is criminal association and complicity the punishment is imprisonment from 5 to 10 years.

### **Conclusions**

From the above analysis, we deduce that in the case of aggravated crimes of corruption the deed is much more serious and the punishment is greater.

We note that both in the Romanian and the Hungarian Criminal Codes, the non-punishment clause is included.

Both the Romanian and the Hungarian legislators condemn acts of corruption, take great efforts to prevent and diminish them by establishing specialized organizations, schools and citizenship education, the rigorous enforcement of a regulatory and institutional framework,

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<sup>4</sup> Law no.78/2000 on preventing, discovering and sanctioning corruption deeds, Article 7

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constructive cooperation with other organizations or bodies that have as their main object of activity the fight against the phenomenon of corruption, the punishment of any acts of corruption, the development of policies in the field.

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8. Hungarian Criminal Code.