

SOME CONSIDERATIONS RELATED TO OFFENCES OF WORK ABUSE PROVIDED IN THE ROMANIAN CRIMINAL CODE

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Abstract

The article includes some considerations related to offences of work abuse provided in art.297 of the Romanian Criminal Code, starting from the headquarters of the matter, going through an analyze of the constitutive elements of the offence in the light of the modifications brought to the criminal legislation from Romania beginning with 1 February 2014 and ending with the importance of the legal content, the legal object, the sanction of this offence in a good progress in work relations. This implies, on a side, the insurance of a smooth running of the activities of the legal and private entities against some abuses that come from the public officials, and on the other side it assumes the insurance of an adequate climate for a correct fulfillment of the professional attributes by respecting the rights and liberties of the people.

Keywords: *offence, work abuse, public official*

Introduction

Being in a continuous evolution process, social life has always put more problems, including the ones of administrative reasons. The needs to resolve these administrative problems had led to the emergence of public function and people who had to complete it.

In the old Romanian Criminal Code, enacted by the Law no. 15/1968, with modifications and completions brought to the former legislation, the work abuse offence was included in Title VI., the offences against some public interest activities and some other legal activities, was included in Chapter I entitled Work offences or related with work, referring to art.246.

The work abuse against people interests, art. 247., work abuse through enclosure of some rights, art. 247., work abuse against public interest.

The Romanian Criminal Code at the date of the article includes the work abuse in Title V entitled *Corruption and work offences*, Chapter II entitled Work offences at art. 297 – Work abuse.

The offences of this title have a common essential feature, namely that by committing them, they prejudice some social relations of the same nature, relations concerning the activity of work, accuracy and reliability of the public official in the performance of work attributes.

We observe that the legislator wanted a modification of the Old Criminal Code and reported to this offence, he merges the three articles in one and roughens the punishments. If for art 246 work abuse against the interests of people, the punishment was from 6 months to 3 years, but for art. 247 work abuses through enclosing some rights and art 248 work abuse against public interest the punishment was 6 months to 5 years; in the Romanian Criminal Code in effect, according to the dispositions of the art. 297, work abuse is punished with imprisonment from 2 to 7 years and banding the right of having a public position. The assimilated form of the offense referred to in paragraph 2 is under the same punishment, while the facts that have produced serious consequences (art. 297 reported in art. 309 of the Criminal Code of Romania), committed under paragraph 1, 2, of art.297, the special limits of the punishment provided by law shall be increased by half. The attenuated form of the offense (art. 297 reported in art. 308 of the Criminal Code of Romania) the special limits of the punishment provided by law shall be reduced by one third.

In the Criminal Law from Romania, the term public official has a broader meaning than in other branches of the Law, being essential to properly care for the social interests through the means, at hand, of the Criminal Law. Thus, in article 175 of the Romanian Criminal Code it is shown its meaning, in paragraph (1), as "a person who, permanently or temporarily, with or without remuneration:

- a) Exercises duties and responsibilities, established by law, in order to achieve the prerogatives of the legislative power, executive or judicial;
- b) Exercises a public dignity or a public position of any kind;
- c) Exercise, alone or with others, in an autonomous administration, of another economic operator or a legal entity with whole capital or majority state, tasks related to achieving the activity object of it¹.

In paragraph (2) the public official is defined as "a person exercising a public service which has been entrusted by the public authorities or which is subject to control or supervision of them on the performance of that public service."²

¹The New Criminal Code. The New Criminal Procedure Code, updated on 15 September 2014, Hamangiu Publishing House, 2014.

² Idem

The Legal Content provided in art. 297, has two sentences: "(1) The act of a public employee in the line of duty, does not meet an act or fulfills improperly, thereby causes a damage or harm to the rights or interests of a private or a legal person shall be punished with imprisonment from 2 to 7 years and deprivation of the right to hold public position.

(2) With the same punishment it is sanctioned the act of a public employee in the line of duty, restricts the exercise of a right of any person or creates for him a situation of inferiority based on race, nationality, ethnic origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, non-contagious disease or HIV / AIDS"³.

The principle legal object of the offence of work abuse is represented by the relationships that relate to the smooth conduct of duties and as secondary legal object we can highlight social relationships that have a patrimonial character.

The doctrine ⁴claims that the material object of the work abuse offense, often miss. However, if the action or inaction that consist the material element of the offense is moved on a good, it is the material element of the offense (eg. defective drafting of a document, modifying a public document, etc.).

By the concept of crime subjects we understand that there are people involved in the offense, both in the committing and in bearing the consequences. Since all offenses have an active subject and a passive subject, the work abuse offense has these two components.

Therefore, the direct active subject of the work abuse offense is qualified as public official within the meaning of criminal law; the essential requirement is that he exercises his work attributes. The participation is possible in all forms; however, the coauthored must have the same quality as the author, in the circumstantial subjects.

If art. 297 reported to art. 308, the provisions on corruption offenses and work committed by other people also applies to offenses committed by or in connection with people who work, permanent or temporary, with or without remuneration, "an assignment of any kind in the work of a private person of those referred to in art. 175, paragraph 2 or in any legal person's work."⁵.

The passive subject of the offence is the victim, which may vary depending on how the act is committed, variant type (simple) or assimilated variant. Thus, in paragraph (1), the simple variant is any person or entity to which it is caused damage or injuries to the rights or legitimate interests. This subject can be in some cases circumstantiated and in others qualified.

In the assimilated variant, the passive subject is qualified, and is the person who cannot exercise a right or to whom it is created a disadvantaged background of race, sex, sexual orientation, political affiliation, wealth, age, disability, non-contagious disease or infection HIV / AIDS.

³*Ibidem*

⁴V. Dongoroz și colab., *Explicații teoretice ale Codului penal român*, vol. IV, Academiei Publishing House, Bucharest, 1972, p.80; P. Dungan și colab., *Manual de Drept penal. Partea specială*, vol. II, Universul Juridic Publishing House, Bucharest, 2011, p.220; T. Vasiliu și colab., *Codul penal comentat și adnotat. Partea specială*, vol. II, Științifică și Enciclopedică Publishing House, Bucharest, 1977, p.54; M. Basarab și colab., *Codul penal comentat. Partea specială*, vol. II, Hamangiu Publishing House, Bucharest, 2008, p.569; T. Toader, *Drept penal roman. Partea specială*, ediția a III-a, revised and updated, Hamangiu Publishing House, 2008, p.243.

⁵According to art. 308, Romanian Criminal Code

The constitutive content consists of objective side and subjective side. The objective side consists of material element, which in this offence is composed of action or inaction, or from a failure to act or an improper fulfillment of act, that is performing an operation differently⁶.

In the variant type, the active subject performs actions of fulfillment of an act in an improper way or inactions of non-fulfillment to an act that causes damage or harm to the rights or interests of a private or legal person.

In the assimilated variant, the material element of the offense consists of two commissive actions, alternative, namely in the restriction of the use or exercise of the rights of a person and creating a situation of inferiority for a person on grounds of nationality, race, religion, etc.

According to the literature⁷, the restriction of a person includes restricting any right that belongs to that person's ability to use and by restricting the exercise of the rights of a citizen, it is understood that activity by which a citizen is deprived of the possibility to assert his rights by committing legal acts.

These actions or inactions which are committed by public officials in the line of duty are the essential requirement for the material element of the work abuse offense.

The immediate result of the action or inaction that is the material element to the way type, consists in creating a loss or injury to the rights or interests of a private or legal person and in the assimilated variant the immediate consequence is the restriction of the use or exercise of any right provided, or creating a situation of inferiority for the individual⁸.

For the objective side to be complete there must be a causal link between the work done by the offender and the immediate consequence, which must be determinates a crime of result.

The subjective aspect of the work abuse offense, in the form of variant type, is a direct or indirect intent. In the assimilated variant form, the guilt form is a direct intent, because the action which produces a situation of inferiority must be committed on the basis of race, nationality, ethnic origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, non-contagious disease or HIV / AIDS.

Elements of fact, which can contribute to a fair judicial individualization of the act, are the mobile and the purpose, external factors of the offense, and in the assimilated variant, the essential element of the offense is the mobile, which is an essential requirement of the subjective side.

At the time of the action or inaction, the offense is consumed instantly, so that the preparatory acts are not incriminated and the attempt is not punishable.

The offense may be exposed in different factual ways, characterized by the fact that there has been work abuse, inclusively in the form of concurrence of offenses.

⁶Ilie Pascu, Mirela Gorunescu, *Drept penal.Parteia specială*, Hamangiu Publishing House, 2008, p.356.

⁷M. Basarab și colab., op.cit., p. 488

⁸Petre Dungan, *Abuzul în serviciu în noul Cod penal*, Universității de Vest from Timișoara Annals, Law Series, Public Law Section, No. 2/2013, p.11

Conclusions

In the Romanian Criminal Code, the legislator included in one title, two chapters characterized at the least through circumstantial quality an active subject of the public official, sometimes the public official being in the exercise of his duties, sometimes being related with his duties.

The work abuse offense has an essential requirement related to the immediate result or causes damage or brings harm to the legal rights or interests of a private or legal person.

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***New Criminal Code. New Criminal Procedure Code, undated on 15 September 2014, Hamangiu Publishing House, 2014.