

## ***Regulations of the Romanian law system regarding corruption offences***

Tackling corruption offences in Romania led to drawing up new regulations and from this set I would like to present you certain particular elements, hoping they could constitute sources of improving the legislation of other countries.

Thus, I focused my presentation on three main points:

1. elements of substantial law;
2. elements of competence of carrying out the criminal investigation;
3. means of evidence

1. the Romanian legislation also stipulates as corruption offences, in addition to the classic ones, such as giving and taking bribe, receiving of undue advantages, traffic of influence, the following offences assimilated to those of corruption:

a) the establishing, deliberately, of a diminished value, compared to the real market value, of the goods belonging to the economic agents in which the state or an authority of the local public administration is a shareholder, committed during the privatization activity, forced execution, judiciary reorganization or liquidation or on the occasion of a commercial transaction, or of the goods belonging to public authorities or public institutions, during a selling activity or forced execution of these, committed by those holding management, ruling or having administration, forced execution, judiciary reorganization or liquidation attributions;

b) the granting of subsidies by breaking the law, not supervising the destinations of the subsidies, according to the law;

c) the utilization of the subsidies for other purposes than those for which they had been granted, as well as using for other purposes the credits granted from the public funds or which have to be reimbursed from the public funds, all of the above, if committed for the purpose of obtaining for himself or for other person, money, goods or other undue advantages.

It is worth mentioning that the last two offences have been also applied for credits, until this year, but these aspects have been annulled.

d) The deed of a person who, by virtue of his position, of the duty or of the task received, has the obligation to supervise, to control or to liquidate a private economic agent, to carry out for it any task, to mediate or facilitate the carrying on of certain commercial or financial operations by the private economic agent or to participate with capital to such economic agent, if the deed is of such nature as to bring him directly or indirectly undue advantages;

e) performing of financial operations, as acts of merchant, incompatible with the position, duty or task which is carried out by a person or the financial transactions contracting, using information obtained by virtue of the position, duty or task and

- the use, in any modality, directly or indirectly, of information that are not meant for publicity or allowing the access of unauthorized persons to these information, if both offences are committed for the purpose of obtaining for himself or for other person, money, goods or other undue advantages;

f) The deed of the person who has a leading position in a party or in a political formation, in a trade union or in employer's organization or a foundation that uses his influence or authority for the purpose of obtaining for himself or for somebody else money, goods or other undue advantages.

Thus, the Romanian legislator identified socially dangerous offences which are now regulated as offences assimilated to those of corruption.

2. Regarding the competence of carrying out the criminal investigation of corruption offences, it is worth mentioning that when dealing with high level corruption cases, legally established depending on the sum of money given or taken as bribe, the caused prejudice or the quality of the person, they are investigated by the National Anticorruption Directorate and, for all the other cases, by the classical prosecutor's offices.

The existence of a specialized structure in carrying out the criminal investigation for high level corruption cases obviously intensified the fight against this type of corruption.

3. Regarding the means of evidence of corruption offences I would like to talk about the institution of the undercover investigator and about audio or video interceptions and recordings.

Thus, regarding the first aspect, according to the Romanian Criminal Procedure Code, if there are strong and concrete grounds that an offence has been committed or is about to be committed and if that offence is also provided by the Law number seventy-eight per two thousand for preventing, discovering and sanctioning corruption offences, with its subsequent modifications and completions, or if it is any other serious offence which cannot be discovered or if the perpetrators cannot be identified through any other means, then, we can use investigators with another identity than the real one in order to gather information regarding the existence of the offence and the identification of the persons who allegedly committed the offence.

The undercover investigators are operative workers within the judicial police and they may be used only for a determined period, under certain conditions.

The undercover investigator gathers information and data based on the authorization issued by the prosecutor and subsequently he places all this information at the prosecutor's disposal.

The authorization is granted based on a justified ordinance, for a period of no more than sixty days and it may be extended for very goods reasons. Each extension is of no more

than thirty days and the authorization cannot exceed a year for the same case and regarding the same person.

The request for the authorization addressed to the prosecutor contains the data and the clues regarding the offences and the persons who allegedly committed the offences, as well as the period for which the authorization is requested.

The prosecutor's ordinance authorizing the use of the undercover investigator has also to contain the following:

- strong and concrete clues which justify this measure and the reasons for which this measure is necessary;
- the activities the undercover investigator is authorized to carry out;
- the persons who allegedly committed the offences;
  - the identity the undercover investigator will use in carrying out the authorized activities;
- the period for which the authorization is given;
- other things provided by the law.

In case of emergency, and perfectly justifiable, it is possible to request the authorization of other activities than those for which there already is an authorization and the prosecutor has to express himself concerning this subject immediately.

The data and information obtained by the undercover investigator can be used only in the criminal case and only for those persons mentioned within the authorization issued by the prosecutor.

These data and information could also be used in other cases and for other persons, if they are useful and conclusive.

The real identity of the undercover investigators cannot be revealed during or after the investigation

The competent prosecutor to authorize the use of an undercover investigator has the right to know his real identity, respecting the professional secret.

Regarding the audio or video interceptions or recordings, according to the Romanian Criminal Procedure Code, the interception and recording of conversations or communications carried out on the phone or through any electronic communication means, can be accomplished with the motivated authorization given by the judge, following the request of the prosecutor who carries out or supervises the criminal investigation, according to the law, if there are strong data or clues regarding the preparation or perpetration of an offence for which the criminal investigation takes place ex officio, then, the interception and recording would be necessary to establish the situation or if there were no other way to identify and localize the participants or if the investigation were considerably delayed.

The interception and recording of conversations or communications carried out on the phone or through any electronic communication means can also be authorized for the offences provided by the Law number seventy-eight per two thousand for preventing,

discovering and sanctioning corruption offences, with its subsequent modifications and completions.

The authorization is given for the period necessary for the interception and recording, but not for longer than thirty days, in the council chamber, by the president of that court which has jurisdiction to judge the case in the first instance or from a court with an equivalent level to this one, where the prosecutor investigating or supervising the case is employed. If the president of the court is not present, the authorization is given by the judge appointed by him.

The authorization can be renewed, before or after the previous one expires, under the same conditions, for strong and well justified reasons, each time for no longer than thirty days. The authorized interceptions and recordings can only last for one hundred twenty days for the same person and for the same offence.

The recording of the conversation between the lawyer and the client cannot be used as means of evidence unless its content reveals conclusive and useful information regarding the preparation or the perpetration of a certain offence, by the lawyer.

The prosecutor orders for the interceptions and recordings to stop before the authorization expires if there are no longer reasons to justify them, informing the court of law which issued the authorization about it.

Following the justified request of the injured party, the prosecutor may solicit the judge to authorize the interception and recording of conversations or communications carried out by this person on the phone or through any electronic communication means, regardless of the nature of the offence which is the object of the investigation.

The authorization for the interception and recording of conversations or communications is done through justified closing, which will contain: the concrete clues and facts which justify the measure; the reasons for which otherwise it is not possible to establish the situation or to identify or localize the participants without delaying the investigation for too long; the person, the means of communication or the place that would be supervised; the period for which the interception and the recording are authorized.

These are two means identified by the Romanian legislator in order to prove the corruption offences, accomplished with the observance of the human rights and freedoms.

It was my intention to present you these aspects since they have already proved to be useful in combating corruption offences in Romania.

Dr. Balaban Cosmin -Daniel