

ABUSE OF OFFICE

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Abstract: *Against the background of universalization of legal concepts, the regulations of the New Criminal Code call into question the interferences between national and European, local identity and globalization, tradition and modernity. The changes brought to the Criminal Code that focus on offenses of office keep a part of previous approaches, complete them, extend the semantic sphere, suggesting the prestige of the public office, its integration into a context of moral rules, the inducing of more accountable attitudes in order to generate a stable social climate.*

Keywords: *civil servant, juridical fundamentals, continuity, approximation*

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1. INTRODUCTION

The New Criminal Code outlines a new perspective of crimes of office, whose contents was amended and completed. Previous approaches are partly kept as an element of continuity and some concepts are extended, which shows the relevance of the field.

2. CRIME OF ABUSE OF OFFICE

The crime of abuse of office is provided by art. 297 of the New Criminal Code. Paragraph 1 bans the “crime of the civil servant who, in the performance of his official duties, does not perform an act or performs it improperly and hence causes damage or impairs the rights or legitimate interests of an individual or of an entity”. Paragraph 2 bans the “crime of the civil servant who, in the performance of his official duties, limits or hinders one’s free exercise of any rights or creates a situation of inferiority based on race, nationality, ethnicity, language, religion, gender, sexual orientation, political appurtenance, belief, wealth, age, disability, non-contagious chronic disease or HIV/AIDS infection”.

In the old Criminal Code the crime is at art. 246 - 248. Art. 246 of the old regulation set – abuse of office against persons’ interests: “crime of the civil servant who, in the performance of his official duties, willingly does not perform an act or performs it improperly, hence damaging the legal interests of a person”.

Art. 247 – Abuse of office by limitation of rights is “the limitation by a civil servant of the use or exercise of the rights of a person or creation of a situation of inferiority based on race, nationality, ethnicity, language, religion, gender, sexual orientation, political appurtenance, belief, wealth, social origin, age, disability, non-contagious chronic disease or HIV/AIDS infection”.

Art. 248 – Abuse of office against public interests is “the crime of the civil servant who, in the performance of his official duties, willingly does not perform an act or performs it improperly and hence impairs the good operation of a state authority or institution or of another unit of those contemplated in art.145 or causes damage to its assets”.

Subject to art. 297 the crime is punished by imprisonment from 2 to 7 years and the forbiddance to fill any public service vacancy, if the offender is a civil servant. If the offender is a clerk under art. 308, the punishment with imprisonment from 1 to 4 months and from 4 months to 8 months and art. 309 specifies that for crimes that produced very serious effects the special limits of the punishment provided by law are increased by half.

According to the New Criminal Code (art. 175), the civil servant is the person who permanently or temporarily, with or without compensation:

- a) performs assignments and responsibilities as established by law in order to achieve the prerogatives of legislative, executive or judicial power;
- b) fills a public dignity office or public office of any kind;
- c) exerts by himself or together with other persons within a public company, another venture or of a legal entity with full or majority state-owned capital or of a legal entity declared as public utility, assignments connected to the operation of such organization’s business.

Alin. (2) of the same article specifies that a civil servant, within the meaning of this law, is the person who performs a service of public interest for which he was appointed by public authorities or whose performance in such office is subject to their control and supervision.

Art. 147 of the old code defined the civil servant as being “any person who exerts permanently or temporarily under any title, irrespective of how he was appointed, any assignment of any kind, compensated or no, in the service of a unit specified under art. 145”, and the clerk is according to paragraph (2) “the person mentioned at paragraph (1), and any employee who performs a duty in the office of another legal entity than that provided in that paragraph”. The term of “public” according to art. 145 is understood as “anything related to public authorities, public institutions, institutions or legal entities of public interest, the administration, the use or the operation of assets which are public property, services of public interest and assets of any kind, which by law are of public interest”.

According to the decision of the High Court of Cassation and Justice (United Sections) no. III/2002 (Official Gazette of Romania no. 113 of 24 February 2003) regarding the applicability of the provisions of art. 147 paragraph 2, “the administrator of the owners’ or tenant’s association holds the position of a clerk.”

At a comparative analysis of the legal texts of the old and of the new code, the notion of civil servant benefits is the current code of a more complex and detailed presentation compared to the old code, expressly assimilating persons who perform a service of public interest. This category comprises individuals who perform a profession of public interest who need a special licensing by public authorities, such as notaries or court enforcement officers.

The New Criminal Code adds a condition to be met, namely their appointment by a public authority or the necessity of having their performance of office supervised or controlled by such a public authority.

In this context, a controversial issue gets into shape: how to classify certain legal professions as per art. 175 paragraph (2), such as notaries public, court enforcement officers or mediators. In terms of criminal liability, it is relevant to know whether these professional categories fill public offices, from the perspective of crimes committed in such position, more numerous in the current regulation than in the previous one.

The crime presented by art. 297 presents a great social danger, is a breach of law and the paragraph 2 of the same article focuses on the violation of the constitutional guaranteed provided by art.16 paragraph 1. The office of civil servant should be effective at the time of committing the crime. In the case of the co-author, collaboration can be made both simultaneously and successively (A. Boroi, p. 404)

Paragraph 1 provides two types of crimes: the performance willingly of an act or the improper performance of an act and paragraph 2 provides two types of crimes: the limitation of rights or the creation of a situation of inferiority based on race, nationality, ethnicity, language, religion, gender, sexual orientation, political appurtenance, belief, wealth, age, disability, non-contagious chronic disease or HIV/AIDS infection (A. Boroi, pp. 404-405).

The French criminal law tackles the abuses committed by persons who hold a public office and the Spanish Criminal Code “the crimes against state and power separation institutions”.

CONCLUSION

By banning crimes of office, the focus is on ensuring correctness of civil servants in performing their duties and on the prevention of third parties’ interference in such performance.

These changes to the public position provided in the New Criminal Code involve some previous approached that were kept, completed and bring relevance to the subject, suggesting implicitly the prestige of these dignities, of the public office, its integration into a context of moral rules and the inducement of a more responsible attitude that can generate a stable safe and lawful social climate.

Analyzing the public offices in terms of the criminal and administrative regulations and of the regulations of the European Court of Human Rights, unitary regulations and criteria to be met by civil servants of the entire European Union are required, by universalizing juridical concepts and without going astray from the juridical

fundamentals, the juridical set of rules relevant for the national mentality.

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