

# Considerations regarding the Regulation of the Crime of Abuse of Office

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## Abstract

In contrast to the European situation regarding the criminalization of the offence of abuse of office, in which many states have chosen to include in separate regulations belonging to the scope of their criminal law a series of facts that together could be classified as abuse of office, in Romania, the legislator, incriminated such illicit conduct in a single text of law, under the generic name of abuse of office. The national criminal provisions on “abuse of office”, “excess of authority” and similar expressions should be related only to the exercise of public power, strictly interpreted, being possible to be invoked and applied only in that cases in which the offence is of a grave nature, such as for example serious offences against the national democratic processes and against fundamental rights, infringement of the impartiality of the public administration and so on. This kind of provisions must cover various forms of serious offences that public servants may commit and they are not easy to be incriminated in detail in advance.

**Keywords:** abuse of office, Criminal Code, European Union, incrimination, public officer.

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## INTRODUCTION

### Criminalization of Abuse of Office at the Level of European Union Member States

At European level, a number of states, such as Austria, Germany, Spain, Finland, have regulated a multitude of specific crimes of what is found in Romania in a single article, respectively article 297 of the Criminal Code under the generic name of abuse of office. Specific to his multitude of offences is the fact that they characterize a series of illicit conducts from a criminal point of view, incriminating them distinctly as offences related to the service, as they aim at obtaining money or other benefits by a public servant in connection with the exercise of his duties, without the act of that official realizing the content of the crime of taking bribery.

The Criminal Code of the *Czech Republic* criminalizes abuse of office in Chapter X, entitled Crimes against public order, Division 2 - Crimes committed by civil servants. Thus [i], according to article 329:

“(1) The public servant who, with the intention to cause damages or to create other serious damages or to obtain for himself or another undue benefits,

- a) Exercises his duties in a manner contrary to the provisions of another normative act,

- b) Exceeds his attributions or
- c) Does not fulfill his attributions, is punished with imprisonment from one year to five years or when the activity is prohibited.

(2) The perpetrator will be sentenced to imprisonment from three to ten years if:

- a) He gains substantial benefits for himself or another by committing an act provided for in subsection (1), or
- b) Commits such an act on another persons, on the grounds of their real or presumed race, membership of an ethnic group, nationality, political beliefs, religion or because of their lack of real or perceived religious faith,
- c) Causes serious disturbance to the activities of a central public administration body, of the local public administration, of a court or of another public authority by committing such an act,
- d) Causes serious disturbance of the activities of a legal person or of a physical authorized person, by committing such an act,
- e) Commits such an act taking advantage of the lack of defense, dependence, suffering, mental weakness or lack of experience of another person, or
- f) By committing a such acts cause considerable damage.

(3) The preparatory acts constitute an offense”.

In *France* [ii], the French Criminal Code [iii] provides in the text of article 432 - 1 that: “The act by which a representative of the public authority, acting in the exercise of his functions, takes measures to prevent law enforcement is punishable by 5 years imprisonment and a fine of 75,000 Euro”. At the same time, article 432 - 2 stipulates that: “The offence provided in article 432-1 is punishable by 10 years imprisonment and a fine of 150,000 Euro if it was followed by effect”. Article 432-3 provides that: “The act by which a representative of the public authority or a person in charge of a public service mission or a person holding a public elective mandate, after being officially informed of the decision or circumstance of termination of his office, continues to exercise it, is punishable by 2 years imprisonment and a fine of 30,000 Euro”.

In *Lithuania* [iv], the Criminal Code criminalizes abuse of office, in the content of article 228, as it follows:

- 1) “A public servant or a person equivalent to him who abuses his official function or exceeds his duties, if it causes major damage to the state, to an international public organization, to a legal or physical person, is punishable by deprivation of the right to be employed in a particular position or to engage in a particular type of activity or to be fined, arrested or imprisoned for a period of up to four years.
- 2) A person who commits the act provided for in paragraph 1 of this article in order to obtain a material or other gain, in the absence of the characteristics of the offence of taking bribery, shall be punished with deprivation of the right to be employed in a certain position or to engage in a certain type of activity or imprisonment for a period of up to six years.
- 3) The legal person shall also be criminally liable for the acts provided for in this article”.

Also, article 229 of the same Code criminalizes the non-exercise of official duties, having the following content [v]: “A public servant or a person equivalent to him who does not perform his duties through negligence or performs them improperly, if this causes major damage to the state, a legal or physical person, is punished with deprivation of the right to be employed in a certain position or to engage in a certain type of activities or with a fine or arrest or with imprisonment for a period of up to two years”.

In *Slovakia*, the legislator incriminated in Title II, entitled Crimes committed by public servants, Section 326 of the Criminal Code, abuse of office committed by a public servant, with the following content [vi]:

“(1) The public servant who, in order to cause harm to another person or to obtain undue benefits for himself or for another person,

- a) Exercises his duties illegally,
- b) Exceeds his legal authority or
- c) Does not fulfill an obligation arising from his legal authority or from a court decision, shall be punished by imprisonment from two to five years.

(2) The perpetrator shall be punished with imprisonment from four to ten years if he commits the crime provided in paragraph (1)

- a) Acting in aggravating circumstances,
- b) Against a protected person, or
- c) By virtue of a specific motivation.

(3) The perpetrator shall be punished with imprisonment from seven to twelve years if he commits the crime provided in paragraph (1),

- a) And causes serious bodily injury or death by committing it,
- b) And causes substantial damage by committing it, or
- c) In order to prevent or impede the exercise of fundamental rights and freedoms by another person.

(4) The perpetrator shall be punished with imprisonment from ten to twenty years if he commits the crime provided in par. (1),

- a) And causes serious bodily injuries or death of several persons by committing it,
- b) And causes widespread damage by committing it,
- c) In a crisis situation”.

In *Slovenia*, the Criminal Code criminalizes Chapter XXVI, entitled Offences against official duties and public authorizations, abuse of office or of official duties. Thus [vii], according to article 257:

- 1) “The official or the public servant who, with the intention of obtaining non-patrimonial benefits for himself or for another person or to harm another person, abuses his function or exceeds the limits of his official attributions or does not fulfill his official attributions, is punishable by imprisonment for up to one year.
- 2) If, by committing the crime provided in the previous paragraph, the perpetrator causes considerable damages or seriously violates the rights of another person, he shall be sanctioned with imprisonment of up to three years.
- 3) The official or the public servant who, with the intention of obtaining material benefits for himself or for another person, abuses his function or exceeds the limits of his official attributions or does not fulfill his official attributions, shall be sanctioned with

imprisonment of three months up to five years.

- 4) The perpetrator referred to in the previous paragraph, who abuses his function or illegally influences the increase of his property with a significant amount, shall be sanctioned with the punishment provided in the previous paragraph.
- 5) If the perpetrator has acquired for himself or for a third party considerable material benefits corresponding to his original intention, by committing the offence provided for in paragraphs 3 and 4, he shall be punished by imprisonment from one to eight years”.

Also, the Slovenian legislator provided in the content of article 258, usurpation of office, as it follows [viii]: “The official who knowingly violates regulations and other provisions or does not exercise his right of supervision properly or performs his duties in an unscrupulous manner, although he provides or should and could provide that such conduct could lead to a serious breach of another person's rights or major damage to public property or a substantial material loss, and such breach or damage actually occurs, is punishable by a fine or imprisonment up to a year”.

In *Italy* [ix], abuse of office is defined in Article 323 of the Italian Criminal Code, in the sense that: “Unless the act constitutes a more serious offence, an official or a public servant who, in the performance of his duties or service, violating legal or regulatory norms, or failure to abstain from an interest in himself or of a close relative or in other cases provided for, intentionally obtains for himself or for others an undue patrimonial benefit or causes unjust harm to others, is punishable by imprisonment every 1 to 4 years” [x].

The penalty is increased in cases where the advantage or damage is of a very serious nature.

In *Portugal*, in article 382 of the Criminal Code, the abuse of power is incriminated, according to which [xi]: “The public servant who, except in the cases provided in the previous articles, abuses power or violates his duties which are inherent to his function, with the intention of obtaining undue benefits for himself or for a third party or for to harm someone, is punishable by imprisonment for up to 3 years, if he does not fall into a more severe punishment according to another legal provision”.

In *Austria*, the Criminal Code criminalizes abuse of office, in Title XXII, entitled Breach of office duties, corruption and related criminal offences, in Section 302, which reads as it follows [xii]:

- 1) “The act of an official who, acting with intent to cause injury of another person's rights, knowingly abuses the prerogative of performing an act on behalf of the Federation,

of the federal state, of an association of communes, of a commune or of a legal person governed by public law as an implementing law body is punishable by imprisonment from 6 months to 5 years.

- 2) The person who commits the deed in connection with a foreign power or with a supra or interstate organization shall be punished with imprisonment from 1 year to 10 years. The same punishment is applicable to the person who, by committing the deed, causes a damage whose value exceeds the amount of 50,000 Euro”.

In *Spain*, the Criminal Code incriminates in the first chapter of Title XIX – Crimes against the Public Administration – the following facts [xiii]:

Article 404 – “The authority or the public servant who, knowing that it is incorrect, gives an arbitrary resolution in an administrative problem, will be punished with special resignation from the position or public office for a period of 7 to 10 years”.

Article 405 – “The authority or the public servant who, in the exercise of his competence, knowing that it is illegal, proposes, appoints or gives the right to exercise a certain public task to a person, without fulfilling the established legal requirements, will be punished with a fine of 3 up to 8 months and suspension from position or public office for a period of 6 months up to 2 years”.

Article 406 – “The same punishment shall apply to the person who accepts the proposal, appointment or accepts the right to perform a public task, knowing that the person lacks the legally established requirements”.

At the same time, the Spanish Criminal Code provides in Chapter IX, negotiations and activities prohibited to public servants and abuse in the exercise of their functions, during several articles, as it follows [xiv]:

Article 439 – “Authority or public servant who must be informed by the duties of office, in connection with any kind of contract, business, operation or activity, takes advantage of this circumstance to force or facilitate any form of participation, direct or through intermediaries, in such negotiations or actions, shall be punished by imprisonment from 6 months up to 2 years, a fine from 12 to 24 months and a special resignation from position or public office for a period of 1 to 4 years”.

Article 440 – “Experts, arbitrators and executors who commit acts in the manner provided for above in respect of property or things whose valuation, division or adjudication is dealt with and guardians,

curators or executors of property relating to property belonging to wards or heirs, shall be punished with a fine from 12 to 24 months and special resignation from position or public office for a period of 3 to 6 years”.

Article 441 – “The authority or public servant who, excepting the cases permitted by law or regulation, carries out, directly or through intermediaries, a professional or assistance activity, permanently or occasionally, under the subordination or in the service of a private entity or private persons, in business in which he must be involved or he has been involved by the duties of his office or in those which are carried out or resolved at the office or management center on which he depends, shall be punished by a fine of 6 to 12 months and suspension from position or public office for a period of 1 to 3 years”.

Article 442 – “The authority or public servant who makes use of a secret of which he is aware through the attributions of his function or of a privileged information, in order to obtain economic benefits for himself or for a third party, will be punished with a fine starting from the amount equivalent to the benefit pursued, obtained or facilitated, up to triple it and the special forfeiture of the position or public function for a period of 2 up to 4 years. If he obtains the intended benefit, the punishment will be applied in its upper half.

If there is serious harm to the public cause or to a third party, the penalty will be imprisonment from 1 up to 6 years and special revocation from position or public office for a period of 7 to 10 years. For the purposes of this article, privileged information means any information of a specific nature which is held exclusively by reason of the duties of a trade or of a public office and which has not been notified, published or disseminated”. Article 443

- 1) “Will be punished with imprisonment from 1 to 2 years and absolute revocation of position or of public office for a period of 6 to 12 years, the authority or public servant who makes sexual proposals to a person who, for her or for her husband or for another person to whom he is bound by a stable relationship of similar affectivity, ascendant, descendant, natural brother, by adoption or by alliance of the same degree, has claims whose resolution depends on his resolution or in connection with which he must inform or consult on his superior.
- 2) The official of penitentiary institutions or of centers for the protection or correction of minors who makes sexual proposals to a person under his guard shall be punished with imprisonment from 1 to 4 years and absolute revocation of the post or public office for a period from 6 to 12 years.
- 3) The same punishments shall apply when the person to whom the sexual proposals were

made is ascendant, descendant, natural brother, by adoption or by alliance of the same degree, of the one who takes care of him. These penalties will also apply when the person to whom the proposal was made is the husband of the person in their care or to whom they are bound by a stable relationship of similar affectivity”.

Article 444 – “The penalties provided for in the preceding article shall be applied, without prejudice to those appropriate for crimes against sexual freedom actually committed”.

### **The Incrimination of the Abuse of Office in Romania**

In *Romania*, the Criminal Code criminalizes in the content of article 297 the offence of abuse of office, having the following content:

- 1) “The deed of a public servant who, in the exercise of his duties, does not perform an act or performs it in a defective manner and thereby causes damage or injury to the rights or to the legitimate interests of a physical or of a legal person shall be punished by imprisonment from 2 to 7 years and shall be prohibited from exercising the right to hold public office.
- 2) The same punishment shall be sanctioned for the deed of a public servant who, in the exercise of his duties, restricts the exercise of a person's right or creates for it a situation of inferiority on the grounds of race, nationality, ethnic origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, chronic non-communicable disease or HIV / AIDS infection”.

### **RESEARCH METHODS**

The author used established research methods: documentation method, comparative method, analytical method, the logical method, examination of judicial practice or application method [xv].

“The research represents an analytical, conceptual and statutory approach to a complex issue, [...] much debated at international level” [xvi], namely the crime of abuse of office. “Based on the problems above, the specifics of this research, the author implements the normative legal research which is supported by the research method of the normative law” [xvii], for obtaining a systematic analyze of this topic.

All data are selected and processed “from literature, cases and reports [...] in order to explain, states the fact clearly in addition to avoid using irrelevant data” [xviii].

## DISCUSSIONS AND RESULTS

### Some Considerations Regarding the Material Element of the Offence of Abuse of Office Provided by Article 297 of the Romanian Criminal Code

Any normative act is elaborated according to the legislative technique. In this context, the expression used, formally and aesthetically, must not affect the legal style, clarity and precision of the regulations. The legal language is specialized and institutionalized, and the used terminology must respect its current meaning, be unequivocal, orthographically and grammatically correct, clear, precise, concise and sober. Therefore, even if a normative act contains terminology specific to common law, it must be used according to that field of law.

In view of the above, we express the opinion that a certain terminology, in this case the term "defective", although it is also found in other normative acts outside criminal law [xix], may still have a different meaning, depending on the way how it was defined. On the other hand, when such a term is not defined, there is a risk that its interpretation will be made subjectively, discretionary [xx].

In the case of the crime of abuse of office, as it is incriminated by the Romanian legislator, the material element consists in the non-fulfillment of an act or in its defective fulfillment, by a public servant who, obligatorily, is in the exercise of his duties.

Regarding public offices, it should be noted that they fall into several categories and, as a consequence, the duties of public servants will also be different, but specified in a complexity of legal rules, some of a general nature, others with special character.

The fulfillment of the service attributions constitutes the effect of some actions of the public servant undertaken with the purpose of fulfilling his obligations, well determined obligations, circumscribed to the normative provisions.

Therefore, when the office duties are not well determined, allowing the existence of an area that exceeds the relevant legal provisions in criminal matter, we consider that the violation of the principle of predictability of the law can be questioned and, in this case, the public servant could no longer be held liable in failure to perform certain office duties.

There are also situations in which certain customs or usages that do not find their correspondence in any legal text have taken root in order to fulfill a service attribution. If the public servant does not respect or violate these customs, this does not mean that his deed is of a criminal nature, because otherwise the principle of legality of incrimination would be violated.

For the reasons shown, we consider it is imperative that in the process of drafting the law, the legislator to attach a particular importance to compliance with the clarity and predictability of the law.

"The qualitative requirements of accessibility and foreseeability concerning the law must be satisfied as regards both the definition of an offense and the penalty the offense in question carries. It is unacceptable that a person will not be able to understand from the wording of the relevant provision what acts and omissions will make him criminally liable and what penalty will be imposed for the act committed and / or omission" [xxi].

At the same time, it is extremely important that the courts, when determining whether an act in the field of office duties has been performed in a defective manner, should strictly refer to the prescribed legal regulations.

We consider that the term "defective" does not constitute a specific term of criminal law. We also emphasize the fact that the legislator did not define this term in the context of the crime of abuse of office and did not condition the existence of the material element in the way of defective fulfillment of a certain criterion that should be taken into account when analyzing the defective.

In this context, we can appreciate that an act can be considered to have been performed in a defective way either by reference to its content or extent, or if it was drafted late or with non-compliance with the substantive and formal conditions at the time of preparation. Therefore, the defective performance means the performance of the act differently than it should have been done. In practice, at the level of courts, there has been a general tendency to frame the deed of the active subject in the crime of abuse of office in the manner of committing it by improper performance of an act, when the act was performed in violation of law or of other normative acts assimilated to laws.

In our opinion, the problem of lack of clarity and predictability of this crime arises when the act was performed defective by violating a normative act other than criminal law, normative acts having lower legal force than criminal law (government decisions, ministers' orders, internal regulations, codes of ethics, etc.).

In view of the above, as the term "defective" does not know any definition of the legislator in the Criminal Code, it could be appreciated that the regulation of the crime of abuse of office in the manner of defective performance of an act is lacking in clarity and predictability, resulting in the risk of its application

as a result of arbitrary interpretations. However, by the nature of the activity he carries out and by the professional training he has, any public servant within the meaning of criminal law must be able to determine whether or not his conduct and actions have criminal significance. Moreover, the text of article 297 of the Criminal Code conditions the existence of the offence by causing damage or harm to the rights or legitimate interests of a person, regardless of whether it is a physical person or a legal person. Therefore, in our view, it is impossible to assume that a public servant in the performance of his duties does not have the necessary knowledge to understand what it means to perform those duties in a defective manner. These phrases are fluent, precise, intelligible, clear, from a syntactic point of view they do not involve difficulties, unequivocally specifying the conduct that the public servant must follow. It is easy to understand from the incrimination formula that the criminal sanction intervenes only in the hypothesis in which the active subject commits in the exercise of his office duties an action that he had the obligation to perform, but performs it abusively, otherwise than it provided by law, so contrary to the law [xxii]. Therefore, it cannot be said that the public servant could not have the representation of his deeds or that he could not foresee the consequences of his deeds as an effect of non-compliance with the law by the chosen conduct.

Therefore, we are of the opinion that the phrases "office duties" and "defective fulfillment" used by the legislator in the text of criminalization of the offence of abuse of office do not affect the predictability of the criminal law, first of all because the recipient of this law he is a public servant.

In addition, from the economics of the incriminating text, we note that the legislator does not, explicitly and limiting, specify the actions or inactions that could form the material element of the offence of abuse of office. On the other hand, the specification of these actions would be impossible to achieve, due to the multitude of variants in which the deed could be committed in the manner of non-fulfillment or defective fulfillment of an act.

But, considering that the criminal sanction is incidental only in the case of committing the worst acts, the consequences of a criminal sanction being commensurate, we consider that the non-fulfillment or defective fulfillment should be analyzed only in relation to office duties regulated by laws or ordinances of the Government, which are assimilated to the law by the effects they produce. According to the constitutional provisions, in Romania, "the Parliament is [...] the unique legislative authority of the country" [xxiii], and the Government may issue ordinances and emergency ordinances, having the force of law, based on legislative delegation [xxiv]. Therefore, prohibited conduct should

be subject only to such provisions, so as not to give rise to arbitrary convictions.

In the Romanian legal system, the solutions pronounced by the courts do not constitute a source of law, reason for which the meaning of a normative act cannot be established by jurisprudential way [xxv]. Admitting that the non-fulfillment or defective fulfillment of an act could be analyzed in relation to other provisions than the laws or ordinances of the Government, would mean recognizing an unacceptable situation for criminal law, namely that the material element of the offence of abuse of office it could also be regulated by other state bodies or even by a legal person in the field of private law.

Therefore, for the regulation of the offence of abuse of office provided by the Criminal Code to be in accordance with national constitutional provisions, as well as with international documents to which our country is a party, in other words, in order the principle of legality of incrimination, "*nullum crimen sine lege, nulla poena sine lege*" to be respected, it is necessary that the meaning attributed to the phrase "fulfills in a defective way" is that of "fulfills by breaking the law" [xxvi].

#### **The Purpose Pursued by the Romanian Legislator by Criminalizing the Abuse of Office Committed by a Public Servant within the Meaning of Article 175 paragraph (1) letter c) of Criminal Code**

An issue regarding the offence of abuse of office could be raised in the hypothesis that the active subject is a public servant within the meaning of article 175 paragraph 1 letter c) of the current Criminal Code. According to this text of law, a public servant, within the meaning of the criminal law, is the person who, permanently or temporarily, with or without a remuneration exercises, alone or together with other persons, within an autonomous administration, another economic operator or to a legal person with full or majority state capital, attributions related to the achievement of its object of activity.

In the following, we will try to analyze whether the legislator aimed at ensuring an increased legal protection regarding the private property of the state, belonging to the legal persons described in article 175 paragraph (1) letter c) of the current Criminal Code, unlike the protection provided to the property of legal entities with majority or wholly private capital, thus creating discrimination on the basis of equal rights.

The notion of public servant in the sense of criminal law has an autonomous meaning, distinct from that of administrative law, which limits the notion to which we refer only to persons appointed, under the law, in public office. Moreover, the Constitutional Court of Romania ruled in a decision [xxvii] that the

notion of public servant, according to criminal law, has a broader meaning than that of administrative law, due to both the nature of social relations defended by criminalizing socially dangerous acts and the fact that the requirements of defending the property and promoting the interests of the community require the best possible protection through criminal law. (...) In criminal law, the public servant is defined exclusively by the criterion of the position he holds or, in other words, if he exercises his activity in the service of a unit determined by criminal law, subject to a certain status and legal regime.

But the crime of abuse of office belongs to the group of corruption and service offences. Consequently, its legal object concerns the social relations established in connection with the proper conduct of the professional activities of public servants, social relations which are incompatible with their commission of acts which constitute the material element of the offence of abuse of office and which violate the principles of impartiality, of integrity, of transparency of the decision and of the supremacy of the public interest in the exercise of public dignities and functions.

On the other hand, the purpose of including by the legislator of this category of public servants in the sphere of the potential active subjects of the offence of abuse of office by reference to the provisions of article 175 paragraph (1) letter c) of the Criminal Code, is the prevention of the commission of this deed by the persons who carry out their activity within the legal persons listed in its content, and not the protection of the social relations of patrimonial nature.

Discrimination is a concept that involves granting a different legal regime to individuals or legal entities that are in identical situations. In our opinion, it is not possible to speak about an identical situation between the activities undertaken by physical persons employed by a legal person from the category of those provided in article 175 paragraph (1) letter c) of the Criminal Code and the activities carried out by physical persons employed by a legal entity with full or majority private capital. Their situation is different in terms of the social importance of the first category of activities, as well as in terms of the importance of the object of activity of the respective legal entities. The key argument in this regard is both the way in which the legislator regulated the different categories of public servants within the meaning of the criminal law, and the fact that it included the abuse of office committed by these persons within the sphere of service offences.

The provisions of article 175 paragraph (1) letter c) of the Criminal Code are not such as to restrict rights, but to include in the category of public servants within the meaning of criminal law persons who meet the conditions provided in this rule, thus showing the

importance that the legislator attaches to the activities they carry them out[xxviii].

Therefore, it cannot be stated that the incrimination of abuse of office as a crime having as active subject the public servant within the meaning of article 175 paragraph (1) letter c) of the Criminal Code aims at ensuring an increased criminal protection of the social relations regarding the private property of the state by reference to the private property belonging to the legal persons of private law. We consider that the incrimination was based on the fact that the general interest of the company is paramount, "interest that is obviously limited to the areas in which the state exercises prerogatives of any kind, in this case being its quality of shareholder, majority or exclusive, within autonomous utilities, economic operators or other legal entities" [xxix].

## CONCLUSIONS

The architecture of criminal law presupposes a fair and coherent criminal policy, focused on ensuring the protection of the general interest of society, and the existence of decisions of the Constitutional Court establishing the constitutionality of provisions does not mean that the legal text meets the other requirements.

Although in Romania there was an attempt to change the content of the crime of abuse in service, and this attempt was motivated by the need to comply with the decisions of the Constitutional Court, the changes completely ignored the Court's decisions, seeking only to change the state's criminal policy, in the sense of restricting the possibility of indictment and to make criminal liable the persons who are guilty of committing offences of abuse of office.

We are of the opinion that a number of changes are needed with regard to the relevant criminal regulations, and, assuming that they find their legal expression, it is not possible to specify with certainty whether in practice they will achieve the expected results, especially if they do not be accompanied by other measures likely to ensure a comprehensive approach in order to prevent and combat such crimes. Therefore, any changes in the relevant criminal law must be coupled with other measures, such as legal literacy of citizens, proper training of all those who work together for the administration of justice, development of tools to guide criminal prosecutors and the authorities, implementation of mechanisms appropriate for data collection.

In our opinion, in the event that a certain existing regulation in the Criminal Code would be ambiguous or would be elaborated in a way that is far too general, it would definitely not be possible to speak of a legal certainty regarding that text. Therefore, in order to prevent potential abuses and for the most efficient implementation, any criminal rule must

comply with the criteria of predictability and accuracy specific to criminal law.

In defining the material element of the objective side of any offence, the legislator must avoid any expression that is too vague, but no excessive enumeration of how to carry it out is indicated.

With regard to the application of the sentence, the court has a limited margin of appreciation for the special maximum sentence provided for in the rule of incrimination, which is a way of ensuring judicial efficiency. Therefore, an act can be more severely punished by reference to the circumstances in which it was committed, even if certain characteristics are not expressly mentioned in the criminalization rule.

We believe that criminal law instruments need to be effective in detecting, investigating, prosecuting and judging acts of abuse of office, as they play a key role in achieving a strong deterrent against this criminal phenomenon.

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19. For example, article 25 letter e) of Law no. 296/2004 on the Consumer Code, republished in the Official Gazette of Romania, Part I, no. 224 of March 24, 2008 or article 182 paragraph (1) of Law no. 85/2014 on insolvency prevention and insolvency procedures, published in the Official Gazette of Romania, Part I, no. 466 of June 25, 2014.
20. See in this regard Decision no. 390 of July 2, 2014, published in the Official Gazette of Romania, Part I, no. 532 of July 17, 2014, paragraph 31.
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22. See Decision no. 336 of April 30, 2015, published in the Official Gazette of Romania, Part I, no. 342 of May 19, 2015, paragraph 48.
23. Article 61 paragraph (1) second sentence of the Romanian Constitution.
24. Provided by art.115 of the Romanian Constitution.
25. Decision no. 23 of January 20, 2016, published in the Official Gazette of Romania, Part I, no. 240 of March 31, 2016, paragraph 16.
26. In this sense, see also the Decision of the Constitutional Court of Romania no. 405/2017.



27. Decision of the Constitutional Court of Romania no. 2 of January 15, 2014, published in the Official Gazette of Romania, Part I, no. 71 of January 29, 2014.
28. See in this regard, the Decision of the Constitutional Court of Romania no. 11/2016 regarding the rejection of the exception of unconstitutionality of the provisions of article 175 paragraph (1) letter c) of the Criminal Code, published in the Official Gazette of Romania, Part I no. 245 of April 1, 2016.
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