

MANIFESTATION OF CORRUPTION IN THE EDUCATIONAL SYSTEM

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Abstract: *In the current context, the educational system in Romania faces a rather high phenomenon of corruption, generated among teachers as well as among students, pupils and, last but not least, parents. At the same time, it should be emphasized that this phenomenon should not be generalized, because, at the same time, the Romanian school has in its structure professors that are dedicated to their profession and honest teachers who want to reach performances with their students. Among the main factors determining this phenomenon facing not only the educational system but also the society as a whole are the economic factors, the lack of stability in legislation, the rigidity of the bureaucracy, and the lack of adequate education in the sense of scarce awareness by preschoolers, pupils, students, of the effects of corruption and the risk people who violate criminal law are subject to. The main corruption crimes and malfeasance while in office regulated and punished by the criminal law committed by educational staff are quite numerous and some of them shall be subject of the following analysis, such as: bribery (both in the form of offering and accepting), lobbying, receiving undue benefits and abuse of office.*

Key words: *corruption; educational system; teachers; crimes; causes of corruption; legislation.*

1. General Aspects of Corruption

In order to prevent corruption, it is imperative to know the legislation in the field of education and, not the last, in the field of anti-corruption as only by knowing the legal provisions in force, the entire staff in education will really understand the extent of the corruption phenomenon, but also the risks to which those who defy the rigors of the law are exposed.

The fact that Romania has adhered to a series of conventions and treaties in recent years has attracted the obligation of the Romanian state to harmonize the internal legislation with the European Union legislation, even if the degree of harmonization of the legislation is still questionable.

The role of teachers in the harmonious development of students is indisputable, as they have the obligation to convey to students through their teaching behaviors, values such as integrity and paying respect to the rules in force, but also to their peers.

As a socio-human phenomenon, education through the information it transmits during school time has as a final destination the development of the young generation, of man in general, in order to facilitate their integration into a society that is constantly changing.

According to Article 26 of the Universal Declaration of Human Rights (Universal Declaration of Human Rights, 1948), education is an inherent right of man, and in the internal legal system it is known a constitutional guarantee, as it is referred to by the fundamental law of the Romanian State, the Constitution of Romania, in Article 32 named the right to teaching.

Currently, the educational process in Romania is undergoing constant process of "inspection" and has to face a number of negative aspects such as: overgrown classes, schools with inadequate buildings in terms of maintenance, lack of school materials, excessive bureaucracy, legislative instability, and the low level of teaching staff salaries.

Given the multitude of issues faced by today's school, the phenomenon of corruption is steadily increasing, and the effort put forward by the authorities must be one to fight and even annihilate it. Educational institutions aim at preparing a fair, tolerant and equal society, but the presence of corruption diminishes this role of education, directly affecting social cohesion. (Heyneman, 2002)

At present, corruption is the greatest challenge of our society, and authorities are trying to use the most effective methods of combating it, so both literature in this field and the jurisprudence have tried to outline this concept. Broadly speaking, corruption is a departure from the principles of morality but also ethics, but for a deed of corruption to be an offense and therefore to fall within the scope of criminal sanctions, it must meet the elements provided by the criminal law.

The Council of Europe Criminal Law Convention on Corruption, signed by Romania on January 27, 1999, defines corruption in the two ways of committing, both active and passive. Thus, Article 2 of the Criminal Convention of the Council of Europe refers to active corruption: "the promise, offering or giving, intentionally, by any person, directly or indirectly, of any undue advantage to a civil servant, for himself or for another, in order to fulfill or obtain an act in the performance of its functions".

Article 3 of the Criminal Convention also defines the passive corruption: "the intentional request or receipt by a public official, directly or indirectly, of undue advantage, for himself or for another, or acceptance of an offer or promise of a so useful in fulfilling or abstaining from performing an act in the exercise of his functions."

In accordance with the provisions of the Convention, these acts constitute corruption when they are committed by national civil servants, foreign public officials, national and foreign parliamentarians and international parliamentary assemblies, international officials, as well as by individuals representing international organizations.

2. Corruption and corruption offenses

The new criminal code, when conceptualizing the notion of offense in general, has taken into account both inter-war Romanian criminal law and European Criminal Codes. Therefore, the institution of the offense was defined according to the criminal code, in Article 15 1 as "the act provided by the criminal law, committed with guilt, unjustified and imputable to the person who committed it." The fundamental features of the crime result from the definition given by the Criminal Code, these being the typical, anti-judicial and imputability features. (Udroiu, 2015: 70). In order to be charged with the criminal responsibility of the perpetrator, the Romanian legislator compulsorily provided that the deed meets all the constitutive elements of a crime.

In the following, we will briefly present the corruption offenses foreseen and punished by the Romanian criminal law, as well as other offenses related to the service that may be committed by the educational staff.

3. Bribe taking

Bribe taking is regulated by art. 289 of the Penal Code and Article 7 of Law 78/2000, republished, which criminalizes a type variant, an assimilated variant, a mitigating variant and an aggravated variant. (Dobrinou, 2012: 527)

Pursuant to Article 289 (1) of the Criminal Code, the offense of bribe taking is "the act of an official who directly or indirectly for himself or for another claims or receives money or other benefits that he does not have a claim to, or accepts the promises of such benefits in connection with the fulfilment, non-fulfilment, urgency or delay of the accomplishment of an act that enters his or her duties or in connection with performing an act contrary to these duties.

At the same time, the Criminal Code contains provisions on the applicable sanctions, so the commission of bribery is punishable with imprisonment from 3 to 10 years and it is compulsory to forbid certain rights such as complementary and auxiliary punishment.

Also, after having consumed the criminal activity, the legal provisions provide for the confiscation of money, valuables or any other goods received, and in the event they are no longer found, equivalent confiscation is required.

An accentuated manifestation of corruption among teachers is also represented by the extra tuition phenomena, which has become a trend for today's education system students. In this situation, the active subject of the bribery offense, provided by the legislation in force, is the teacher in the class where the student is studying. Thus, teachers constrain students to accept tuition, gaining considerable sums from these harmful habits. Students who refuse or come from families who have no financial means to participate in these meditations receive scores much

worse than others, sometimes being in a difficult situation not to get the pass mark at the end of the semester or the school year at one or more many subjects.

Many of the teachers who practice such "meditations" motivate their behavior by the fact that the level of pay is rather low compared to other professions and, through them, they manage to outline their income.

In order not to generalize this phenomenon, which is steadily increasing, we also need to highlight those situations where certain teachers practice these tuitions free of charge with students after classes at school without looking for a patrimonial advantage. These situations must be welcomed, and the teachers in question must be given at least a moral gratitude.

4. Bribing

In the sense of the current criminal investigation, the bribery offense is the deed of a person who promises, offers or gives money or other unfair advantage to a clerk in order to fulfill, not to fulfill or to delay the fulfillment of an act regarding his duties or act contrary to these duties.

As far as the doctrine is concerned (Dobrinou, 2012: 541), "bribery is characterized by a corrupt action exerted by an individual on a civil servant or a person with service duties in the service of a public servant assimilated or any legal person."

In the case of this offense, the author, or the active direct subject is uncircumcised, which boardly means it can be any natural or legal person. Regarding the sanction that comes after such an act, the criminal law provides for the punishment of imprisonment from 2 to 7 years.

The situation is similar to that of the bribery taking offense in terms of seizure of money, valuables and other assets, and if they do not exist, the way of confiscation is applied by their equivalent. The ruler also provided a cause of non-punishment if the perpetrator denounces the deed before the criminal prosecution body had been notified.

In the case of bribery offense, the active subject is the parent of the child under the care and education of the teacher. So, there are often situations of so-called "masked" corruption, manifested by the gifts and little attention given on March 1 or 8. It should be noted that at first glance this custom has the purpose of respecting tradition, but in certain situations these small tendencies hide other aspects, such as offering these expensive gifts and not just symbolic to teachers in exchange for getting higher marks. There are situations where these "little attention" are offered, not only on special occasions, but in exchange for passing an exam or getting a higher mark.

5. Influence trafficking

In accordance to Article 291 (1) of the Criminal Code, the offense of trafficking of influence means: "claiming, receiving or accepting the promise of money or other benefits, directly or indirectly, for himself or for another, committed by a person having influence or misleading that he or she has an influence on a clerk and who promises to cause him to fulfil, not to fulfil, to expedite or delay the fulfilment of an act that enters his/her duties or to do an act contrary to these duties."

Those committing such offenses can be sentenced to 2 to 7 years in prison. Also, in the case of trafficking of influence offense, similar to other corruption offenses, the money, but also other goods received, are subject to confiscation, and if they are no longer available, the confiscation by equivalent is ordered.

Specialty literature (Dobrinou, 2012: 554-556; Udriou, 2014: 357-358), has synthesized three essential requirements for the existence of the crime.

"First of all, the perpetrator must have a real influence or let it be thought to have an influence on the clerk, this influence being, moreover, the determinant cause of the buyer's influence action. Secondly, the perpetrator must promise that he will cause the civil servant to fulfil, not fulfil, to urge or delay the fulfilment of an act that enters his / her duties or to perform an act contrary to these duties. Thirdly, the deed must be committed before or concurrently with the fulfilment, non-fulfilment, expedition or delay of the fulfilment of an act that enters the civil servants' duties, respectively, before or simultaneously with the accomplishment of an act contrary to these duties." (Fanu- Moca, 2014: 15-16)

In the sphere of these crimes there are the illegal ways of appointing and promoting teachers for political reasons and personal interests. There are quite often cases where teachers are appointed school principals with the help of the political factor. All these appointments and promotions that are made without regard to professionalism lead to a degradation of the educational act. Thus, teachers who teach are very poorly trained and vulnerable to corruption in the education system.

6. Influence buying

This offense is incriminated by Article 292 Criminal Code in the plain version and Article 308 Criminal Code in mitigating version.

The offense of influence buying consists in "promising, offering or giving money or other utilities for himself or for another, directly or indirectly, to a person who has an influence or i thought to have an influence on a civil servant, in order to cause him to meet, do not fulfil, urge or delay the fulfilment of an act that falls within the duties."

The punishment provided for committing such offenses is the prison from 2 to 7 years and, at the same time, the legislator also provides for the prohibition of exercising certain rights.

Also, in accordance with the provisions of Article 292 of the Criminal Code, paragraph 4, money, valuables or any other goods given or offered are subject to confiscation and, if they are no longer available, the confiscation by equivalent is, at the same time possible, not to mention about large-scale confiscation in accordance with provisions 112 ind. 1 of the Criminal Code.

The provisions of the Criminal Code refer to a cause of unpunishment of this offense. Accordingly, under Article 292 (2), if the perpetrator denounces the act before the criminal investigative body has been notified of that, then you are in a situation of non-punishment.

In the case of a person exercising, on a permanent or temporary basis, with or without remuneration, being either a natural or legal person, but in the service of a person referred to in Article 175 (2) or within any legal person, in accordance with Article 308 of the Criminal Code, the special penalty limits are reduced by one-third.

It is quite common in practice in the cases of this crime, the situation in which university professors' promise to other teachers, in exchange for useful materials to intervene among department directors, deans or even rectors, in order to help them start a university carrier.

7. Abuse in service

According to the provisions of the Criminal Code, respectively Article 297, paragraph 1, the offense of abuse of service constitutes of: "the act of a public official who, in the exercise of his duties, does not perform an act or fails to do so and causes damage or injury to the rights or legitimate interests of a natural person or a legal person".

The occurrence of such acts of service can be punished by imprisonment from 2 to 7 years and the prohibition of exercising the right to hold a public office.

As far as this crime is concerned, the active subject, namely the teacher in the exercise of his/her duties, fulfils or fails to perform an act or fails him/her badly. There were cases, according to the investigators, when during the national Baccalaureate exams the teachers in the committees overrated or counterfeited the papers in the examination subjects in order to obtain bigger grades for certain students. Thus, in such cases, the competent bodies accused the teachers in the examination commissions, of both the offense of abuse of office and the offense of false material in official documents.

Conclusions

The main significant factors of corruption identified in the education system are: legislative instability, inadequate pay, a poor system of assessment and promotion of teaching staff, insufficient and inefficient channels of continuous information, lack of legal culture in schools and, last but not least, the economic state of society. The legal framework that refers to the organization, administration and functioning of education in Romania is established by the fundamental law of the Romanian State, namely the Romanian Constitution, the Law of National Education no.1/2011 and the Government Ordinances.

Considering the complexity and the extent of the phenomenon of corruption in the educational system, which is even on a much wider scale in society, we consider it opportune to introduce in the curricula a legal culture subject beginning from primary education, so that everyone knows the risk to which they are exposed in case of law violation and to know the means of preventing and combating the phenomenon of corruption.

All these corruption-related acts of different circumstances alter the educational system on all levels and produce effects that propagate over time, passing from generation to generation, despite the fact that parents are the ones who have high expectations of the school that educates their children for society and the last has a very difficult mission in order to achieve the best results.

Corruption in the education system is detrimental to the young generation who is in training at school, and these acts of corruption regulated by the Romanian legislature in the Criminal Code must be strangled by all the necessary means. Thus, civil society, together with public authorities, must make a sustained effort to create ideal educational lives, which must be in line with the current and ever changing demands of the European Union. The legislation of our country, namely the Law on National Education no. 1/2011 refers in Article 2 paragraph 1 to the vision of education, a very important aspect, as follows: "The law aims at promoting a value-oriented, creativity, cognitive, volitional and acoustic capacities, fundamental knowledge, skills and abilities of direct utility in the profession and society."

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