

COMPARISON BETWEEN THE CRIME OF DECEPTION AND THE CRIME OF INFLUENCE PEDDLING

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Abstract

The present article aims to analyse and comment on the problems generated both in theory and in judicial practice by the incidence of the crime of fraud or the crime of influence peddling. As it follows from the cited examples, the contradictory solutions pronounced before the new Criminal Code regarding the choice of the appropriate legal classification, between the two crimes analysed, did not disappear even after 2014. In this sense, we consider that this work is useful for theorists and practitioners, our aim is not only to present and analyse the controversial solutions, but also to propose solutions that, even if they are not fully taken up, can constitute a basis for discussion for future cases. As I have shown in the article, the establishment of the correct legal framework between the two facts provided for by the criminal law is essential, both for the legal order and for the repercussions it may have regarding the main procedural parties and subjects within the criminal process.

Keywords: *crime of deception, influence peddling, patrimony, corruption, fraud, misleading.*

1. Introduction

This paper tries to analyse and comment on the problems generated both in theory and in judicial practice by the incidence of the crime of fraud or the crime of influence peddling. As it follows from the cited examples, the contradictory solutions pronounced before the new Criminal Code regarding the choice of the appropriate legal classification, between the two crimes analysed, did not disappear even after 2014. In this sense, we consider that this work is useful for theorists and practitioners, our aim is not only to present and analyse the controversial solutions, but also to propose solutions that, even if they are not fully taken up, can constitute a basis for discussion for future cases. As I will prove in the article, the establishment of the correct legal framework between the two facts provided for by the criminal law is essential, both for the legal order and for the repercussions it may have regarding the main procedural parties and subjects within the criminal process.

It is essential to emphasise that, without pretending to have a categorical answer to the controversies related to the interpretation of the two crimes in the specialised literature, we aimed to express our opinion on any aspect that generated these opposite interpretations, both in criminal law courses and treaties, as well as in the practice, by the judicial bodies.

2. Paper content

Deception consists in misleading a person by presenting as true a false fact or as false a true fact, in order to obtain for himself or another an unjust patrimonial benefit and if damage has been caused. The aggravated variant involves committing the act by using false names or qualities or other fraudulent means.

According to art. 291 CP influence peddling consists in claiming, receiving or accepting the promise of money or other benefits, directly or indirectly, for oneself or for another, committed by a person who has influence or is believed to have influence over a public official and who promises that he will make him perform, not perform, expedite or delay the performance of an act that falls within his official duties or to perform an act contrary to these duties.

Fraud is a crime against patrimony, while influence peddling is a crime of corruption, there are other elements that differentiate them, some of them deriving from the specified classification itself:

- the person whose patrimony is harmed by the author of the fraud is a passive subject of this crime, having the status of an injured person, while the person who promises or hands money or other benefits to the trafficker of influence thus becomes an active subject of the crime provided by art. 292 CP (buying influence), since in the case of influence peddling, the passive subject can only be the state body or the institution within

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which the official works, for whose influence the money or other benefits were promised or paid;

- in the case of the offense provided for by art. 244 CP, causing damage to the property of the injured person is mandatory for the retention of the consumed form, while for the crime provided by art. 291 CP the buyer voluntarily reduces his patrimony in exchange for the service offered or accepted¹;
- if with regard to deception, misleading the injured party is an intrinsic condition for the realisation of the objective side of the crime, influence peddling does not exclude the possibility that the statements of the author of the act are real, that is, that he has influence on the public official, or even to use this influence to induce him to perform or not to perform the act falling within his official duties;
- the material object of the crime of fraud is represented by a movable or immovable asset, or a document with patrimonial value, while in the crime of influence peddling the material object is missing;
- the immediate follow-up of the crime of influence peddling consists in creating a state of danger with regard to trust in public institutions or legal entities within which the official referred to by the perpetrator carries out his activity, while in the case of the crime of fraud the immediate follow-up consists in creating damage;
- in the current regulations, deception is punished more mildly than influence peddling², the legislator also providing for the possibility of removing criminal liability by reconciling the parties, which, obviously, in the crime provided by art. 291 CP is not possible.

Although, in relation to the arguments presented above, there are criteria by which the two crimes can be differentiated, both in the older and the recent judicial practice there were many situations in which the magistrates were put in the situation of choosing between the apprehension of the crime of fraud or influence peddling, establishing the legal framework not being an easy operation, especially since there are also common elements of the two acts provided for by the criminal law:

- both the perpetrator of the crime of influence peddling and that of the crime of fraud seek to obtain a patrimonial advantage through the action prohibited by the criminal law;
- in the hypothesis in which the author of the deed unrealistically claims to have influence over a public official and requests money or other benefits to intervene on his behalf, we are in the presence of a misrepresentation, which can also take on the form of deception in the conditions where the amount of money or unjustly obtained benefit constitutes, at the same time, a damage to the patrimony of the person to whom intervention was promised. It should be noted that, in both situations described, the person who enters a relationship with the perpetrator of the crime is tricked by him;
- in both crimes the active subject is not qualified, it can be any person. Even if the active subject of the crime of influence peddling is an official, or public official, he appears as a third party in relation to the official concerned to perform the official act³;
- both in the case of the offense provided for by art. 244 CP, as well as that regulated by art. 291 CP, the active subject of the crime comes into possession of a sum of money or other improper benefits by dispossessing another person.

In fact, the main similarity between the two crimes is that the perpetrator aims for an undeserved gain, which is the reason why, at the time of supporting the proposal to criminalise influence peddling in the French Senate, the lawyer Jules M. Bozerian mentioned that „*Without a doubt, influence peddlers are not crooks, they are still in the same family.*”⁴

It should be mentioned that the analysis of the two crimes, in the context of the need to establish the legal framework, has been a preoccupation of the courts since the time of the application of the Charles II Code. In a case from 1961⁵ the Supreme Court considered that the offense of influence peddling committed by presenting as true a false fact (respectively the invocation by the author of the fact of the unreal influence he would have with an official), although it contains, obviously, elements of deception, will not be held in competition with deception, since, in this case, misleading is limited to the constitutive content of the crime of influence peddling.

¹ C. Duvac, *Similarities and differences between fraud and other crimes in the new Criminal Code*, in Law no. 2/2012, p. 87.

² The penalty for cheating is 6 months to 3 years in prison for the simple version and 1 year to 5 years in prison for the aggravated version, while for influence peddling the punishment is 2 to 7 years in prison.

³ V. Dobrinou, *Corruption in Romanian criminal law*, Atlas Lex Publishing House, 1995, p. 278.

⁴ The proposal before the French Senate for the criminalization of influence peddling formulated in 1889 by lawyer Jules M. Bozerian *apud* V. Dobrinou, *Corruption in Romanian criminal law, op. cit.*, p. 275.

⁵ Supreme Court, dec. no. 1244/1961, in the New Justice no. 5/1962, p. 157.

After the entry into force of the Criminal Code of 1969, in a case before the Supreme Court⁶, the issue of the retention of the crime of influence peddling was raised, in the conditions that the promise of influence peddling would have taken place after the performance of the act falling within the attributions of the official, noting, in this case, that the constitutive elements of the offense of fraud are met, and not influence peddling.

On the contrary, in a case tried after the entry into force of the new Criminal Code⁷, HCCJ assessed that, although the defendant requested money from the whistleblower to „solve” some already resolved cases, she will be sentenced for the crime of influence peddling and not of deception. It was noted that between February 2013 and April 2014 the defendant JRE, a lawyer in the Bucharest Bar (suspended at that time), requested and received several sums of money from the whistleblower SA, promising to use her influence on some judges and prosecutors for the favorable resolution of civil and criminal cases pending before the court or at the prosecutor's office in Timiș. In the first instance, CA Timișoara changed the legal classification from the crime of influence peddling to fraud. The arguments that were the basis of this solution concerned the fact that, at the time of the defendant's request and receipt of the sums of money, the files on which she was going to use her influence had already been resolved, and the defendant informed the reporting witness that the files resolved would have been in a "special procedure" and an intervention was necessary with the president of the Timișoara Court so that the magistrate would not use the prerogatives he had to resume judicial activity regarding them. Referring to all these elements, the first instance judged that the misleading did not only concern the influence peddling, but even the existence of the procedure and certain acts that the people who were said to be influenced could not even carry out. In addition, in relation to the exposed factual situation, it can be noted that, at the time of handing over the sums of money to the defendant, the reporting witness did not have any real, legitimate interest in relation to the duties of the official who was to be corrupted. The Supreme Court considered that the provisions of art. 291 CP, in relation to the following considerations:

- the crime of influence peddling is a crime with anticipated and instantaneous consummation, in the case file there is an SMS from the defendant from May 2013, from which it appears that she claimed sums of money from the informant, at which time not all the files that were the subject influence traffic had been resolved. Even if, at the time of the remittance of the sums of money, none of the respective files were pending before the judicial bodies, the consummation of the deed had already been accomplished, the remittance of the money representing only the final phase of the crime;
- the lawyer never communicated to the whistleblower that the influence peddling cases were already resolved;
- the defendant concretely showed that it is necessary to pay some sums of money to obtain favorable solutions, which would end up in the hands of the magistrates who were to decide on these disputes;
- there was an interest of the whistleblower witness, as long as the files that were the subject of influence peddling were before the judicial bodies, there being - at least theoretically - the possibility that the favorable solutions obtained would be changed, as a result of the exercise of appeals.

The cited case is an extremely interesting one - in our opinion - as it analyses the essence of the crimes that are the subject of our comparison. We consider that, beyond the justice of all the reasons that were the basis for the admission of the appeal and the return to the original legal classification, the decisive argument to retain the crime of influence peddling is the fact that, at the time of the request for the sums of money by the author of the act, there were no definitively settled all the files pending before the prosecutor's offices and courts. The supreme court appreciated that, no matter how much the people's trust in justice would be affected, the statement of a lawyer (even suspended from the profession) that he can facilitate the favorable resolution of some cases, by bribing some magistrates, as long as the cases had already been resolved, and the fact that the indicated magistrate did not have the possibility (even theoretically) to determine the modification of these solutions (even more so as he had no powers in this regard) cannot be considered a crime of corruption. If the victim's credulity is not relevant for the existence of the crime of deception, influence peddling assumes that, at the time of requesting the money to carry out an „intervention”, this is possible, at least theoretically.

In judicial practice, the problem of delimiting the two crimes was raised and in the event that the person who requested money or other benefits, promising an intervention for the favorable solution of some problems,

⁶ Supreme Court, dec. no. 309/1970, in the Romanian Journal of Law no. 12/1970, p. 181.

⁷ HCCJ, crim. s., dec. no. 353/2014, www.iccj.ro.

either did not indicate the officials with whom he would trade his influence, or they (although indicated) they did not have the resolution of the respective situation among their job duties.

In a decision from 1970⁸, the Supreme Court considered that the act of requesting money and other benefits for influence peddling in the presence of officials other than the competent ones, constitutes the crime of deception and not of influence peddling. Thus, the defendant requested money and food for the enforcement of a non-definitive court decision, stating that they would be handed over to police officers and prosecutors to enforce a court decision in civil matters. Since the civil servants indicated by the perpetrator do not have, among their duties, the execution of court decisions, and the respective sentence was not even final (therefore, it could not be executed), the supreme court judges came to the conclusion that the constitutive elements of the offense of fraud, and not of the offense of influence peddling were met. In the same sense, it was also stated in the doctrine that in the situation where the activity for which influence peddling is promised does not fall within the duties of the official indicated by the perpetrator, we are not in the presence of the crime of influence peddling but, depending on the meeting of the other elements constitutive, the offense of fraud can be retained⁹.

In another case¹⁰, it was held that the act of the defendant, who stated that, through the intervention of some of his acquaintances, he would cause a university professor to declare more students passed in a certain subject, constitutes the crime of deception, and not that of influence peddling, as long as it did not specify that it would cause the teacher in question to give favorable grades through the use of personal influence, but through other people who were not nominated.

Similar to the previous examples, in another case it was judged that in the situation where the defendant promised to intervene with an official to get him to assign a house to a person, asking him for a sum of money in exchange for this service, the act will not constitute influence peddling, since the official in question, although he had the capacity of director, did not have the assignment of housing as his duties. In consideration of these arguments, the court admitted the stated appeal and ordered the change of legal classification in the offense of fraud¹¹.

On the contrary, through a decision of the supreme court pronounced in an appeal for annulment¹², it was established that, in order to apprehend the offense of influence peddling, it is not necessary to nominate the official who is to be influenced, as long as the institution is specified or the authority within which he carries out his activity. More than that, it is not relevant if the official in question cannot solve, personally, all the problems for which the influence was trafficked, as long as he has the necessary powers to contribute to the solution of the case in question. Thus, the courts held that, between 1994 and 1995, the defendant allegedly promised several people that he would intervene with his police friends to help them register older cars, to return their license suspended as a result of committing some contraventions, not to be sent to court or to be released¹³. After the final conviction of the defendant for influence peddling¹⁴, the general prosecutor declared an appeal for annulment, reasoning that the conviction for fraud would have been imposed in the case, citing the circumstance that the defendant would not have referred to any official with specific duties in the field in which he promised to solve the problems of those who paid him, but he made certain statements of a general nature regarding the respective officials, and the policemen would not have jurisdiction over sending to court or releasing those under investigation. The panel of 9 judges rejected the annulment appeal, considering that, in the case, the provisions on influence peddling are relevant, since:

- the defendant's reference to people from the Police was not only of a general nature, being situations in which he also referred, punctually, to two police officers whom he knew;
- the defendant was seen (by one of the people who paid him for influence peddling) entering the Police headquarters and leaving accompanied by an officer, an aspect that confirmed his statements related to the

⁸ Supreme Court, dec. no. 40/1970, in the Romanian Law Review no. 7 of 1990, p. 167.

⁹ Gh. Mateuț, *Theoretical and practical syntheses regarding the repression of influence peddling in the current regulation and in perspective*, in Law no. 5/2002, p. 174; V. Dabu, *The new Criminal Code, Influence Peddling*, in Law no. 2/2005, pp. 112-113.

¹⁰ CA Bucharest, 2nd crim. s., dec. no. 36/1996, in the Journal of Criminal Law, Judicial Practice Studies (1994-2006), p. 451.

¹¹ CA Cluj. crim. s., dec. no. 213/1997, in the Journal of Criminal Law, Judicial Practice Studies (1994-2006), p. 453.

¹² Decision no. 15 of 2001, pronounced in an annulment appeal by the Supreme Court of Justice, Panel of 9 judges - Lex Expert.

¹³ In the last two cases, we are talking about people who were being investigated for committing crimes and who were in preventive detention, or were to be sent to court by drawing up the indictment, by the competent judicial body.

¹⁴ It should be noted that, initially, the Braşov Court ordered the change of the legal classification from influence peddling to deception, reasoning that the defendant's simple statement that he had relations with the police, without indicating the service he was going to call, is not likely to create certainty to the people to whom he promised the intervention that he is able to achieve it. Later, both The Court of Appeal and the Court of Appeal returned to the original legal classification, respectively that of influence peddling.

knowledge he had within this institution, thus strengthening the belief that he can solve the problems that were the responsibility of the Police;

- the lack of material competence of the police workers cannot be invoked regarding the release of the arrested persons or the prosecution of those under investigation, since certain acts of criminal investigation carried out by them can influence both the maintenance of preventive measures and solutions for sending or not sending the investigated persons to court.

In support of this opinion, the considerations of a decision pronounced by the CA Craiova in a case¹⁵ in which several crimes of fraud were found (among other facts provided by the criminal law), consisting of the following actions:

- during March 2012, the defendant ACG proposed to the injured person CDI that, in exchange for a sum of money, he would facilitate his employment as an operative officer within the General Directorate of Intelligence and Internal Protection, the victim being misled by the position of chief commissioner within the central structure of the Ministry of the Interior;
- the defendant requested and received the sum of 250 Euros from the injured person CLM to facilitate his transfer from the Balta Police Station to the Drobeta Turnu Severin Municipal Police;
- in March 2013, the defendant demanded the sum of 200 EURO from the injured person MIM, to help him transfer from the National Anti-Drug Agency - Mehedinti Anti-Drug Prevention, Evaluation and Counseling Center to a structure within the Mehedinti Police. The "help" consisted in guiding the victim in relation to drawing up the relocation report, but also the promise of approving this report.

Although the defendant was tried¹⁶ and convicted of fraud on all the facts alleged in the indictment, the Court of Appeal found, at least with respect to the three facts described above, that we are in the presence of the crime of influence peddling, ordering the change of legal framework¹⁷. In justifying this solution, the judges of the CA Craiova specified that, for the arrest of the offense of influence peddling, it is not relevant whether the defendant had a real influence on the officials, nor if he actually intervened on them. Moreover, for meeting the objective side of the offense provided for by art. 291 it is not even important to indicate the person on whom the influence would be trafficked, as long as the act that was to be drawn up as a result of the exercise of influence by the defendant was clearly indicated. A final aspect that was considered in the motivation of the solution to change the legal framework is the fact that claiming the existence of an influence on an official, even if it was not actually exercised or did not even exist in reality, although it represents a presentation as true of false facts, constitute the material element of influence peddling, as the social relations related to the proper development of service relationships were affected, and not those related to patrimony.

Even if the cases presented and subject to our analysis are not identical, we support the last cited solutions, both regarding the resolution of the legal issue and regarding the reasons for the decision. We appreciate that, as long as the solution of legal problems is invoked by paying sums of money to some officials, even if they are indicated only generically, we are in the presence of a crime of corruption and not against patrimony. It cannot be asserted that a person who pays to solve a legal problem and who knows that this money will reach some public officials could be in good faith, respectively deceived, it being obvious that, by accepting their remuneration (even if the final operation is, in reality, fictitious), the one who hands the money to the criminal who promises to trade his influence, has the belief that he will contribute to the commission of a corruption offence.

Regarding the invocation of a non-existent influence by the author of the act provided for by art. 291 CP, both the doctrine and the judicial bodies are unanimous in appreciating that this is limited to the crime of influence peddling, even more so since the very text of the law provides for the possibility for the perpetrator to let it be understood *that* he has influence. Even if there is a misrepresentation exercised by the perpetrator, it will not attract the incidence of art. 244 CP, the deception being absorbed by the crime of influence peddling, a

¹⁵ CA Craiova, crim. s., dec. no. 739/2014, Jurisprudence of the CA Craiova, www.portal.just.ro.

¹⁶ The defendant ACG was sent to court by the indictment of the Prosecutor's Office attached to the Strehaia Court for several crimes of fraud, including two in attempted form.

¹⁷ It should be noted that, as a result of the change in the legal framework, CA Craiova found – quite rightly – that the sentence handed down on the merits by the Strehaia Court is struck by absolute nullity, as it was pronounced by a materially incompetent court, for the offense of drug trafficking influences the competence for the resolution of the case on the merits belonging to the Tribunal, according to art. 36 para. (1) CPP, by reference to art. 291 CP. The natural solution was the full annulment of the decision appealed by the defendant and the prosecutor, and the referral of the case to the Mehedinti Court, for a competent resolution on the merits.

fact through the regulation of which the aim was (first of all) to protect the prestige of public authorities, persons of interest public and the officials who carry out their activity within them¹⁸, the objective side of the crime being realised even in the situation where the perpetrator does not deny the statements made by another person regarding his influence¹⁹.

In another case, it was held by the Supreme Court²⁰ that, in order to retain the offense of influence peddling, it is sufficient to nominate the official with respect to whom the existence of influence is claimed, and it is sufficient for the author to refer, generically, to officials from the service that is responsible for solving the problem that is the subject of the criminal resolution. Thus, it was held that the defendant requested and received several sums of money in order to influence officials from the Bucharest, Dolj and Pitești branches of the Romanian Auto Registry, in order to induce them to register cars purchased from outside the country, which were more than 8 years old. After the conviction by the trial court for influence peddling, CA Pitești ordered the change of the legal classification, from the original crime to that of fraud, reasoning that the defendant did not nominate the officials with respect to whom he was going to trade influence, but only did statements of a generic nature, from which it follows that he has knowledge of the Romanian Auto Registry²¹. The Court of Appeal accepted the appeal of the prosecutor's office and found that the constitutive elements of the crime of influence peddling are met in the case because, by his act, the criminal affected the prestige of the officials in the exercise of their duties, which is sufficient for the retention of the act of corruption refers to an official, even an unnamed official, as long as the institution (service) where he works could solve the request of the interested person.

In the same sense, the Supreme Court of Justice considered that, even in the situation where the criminal indicates a fictitious name of the official to whom he is going to intervene, the crime of influence peddling will be retained, as long as the duties of the respective employee are indicated, and these are able to solve the interests of the influence buyer²².

We consider that, following the amendment of the text of art. 257 CP 1969, the additional condition provided by the new text (art. 291 CP), namely that the perpetrator of the act „promises” (emphasis added) that he will cause an official to act in the interest of the buyer of influence, it is likely to facilitate the delimitation between the crime of fraud and that provided by art. 291 CP. Moreover, the opinion of the Constitutional Court expressed in the considerations of a decision rejecting²³ an exception formulated with regard to the cited article, confirms this claim, stating in the justification that, through the new description of the methods of criminalization, the legislator had in mind the avoidance of arbitrariness in the application the criminal law, even more since in practice such ways of committing the act were retained, which could have generated several interpretations. This opinion was also confirmed by HCCJ in a case decision²⁴, in which it assessed that: «*The expression that promises from art. 291 C up to now has the meaning, in addition to the clearer delimitation in judicial practice of the crime „influence peddling” by the crime of „cheating”, to remove any ambiguity regarding characterization of the influence trafficker's activity in the sense of carrying out an act of corruption (...)*».

It should be noted here that there are situations where the two crimes can coexist, even in the form of a formal contest of crimes. Thus, it was held by the Bucharest Court that the act of a defendant promising the injured person that he would trade his influence with an official in order to facilitate the purchase of a car and that, later, he would have shared the money with that official, represents an ideal competition of crimes between influence peddling and deception²⁵.

In the specialised literature²⁶, it was argued that even in the situation where the perpetrator of the crime would mislead the buyer of influence (having the initial intention to keep the money requested for mediation) there would be solid arguments for holding the crimes of deception and influence peddling in competition. In this context, the cited authors do not agree with the opinion of the practice and the majority of the doctrine,

¹⁸ G. Antoniu, T. Toader, *Explanations of the new Criminal Code*, vol. III, Universul Juridic Publishing House, Bucharest, 2015, p. 542.

¹⁹ V. Dobrinioiu, I. Pascu, M.A. Hotca, I. Chiș, M. Gorunescu, C. Păun, M. Dobrinioiu, N. Neagu, M.C. Sinescu, *New Criminal Code Annotated, Special Part*, Universul Juridic Publishing House, Bucharest, 2016, p. 536.

²⁰ Supreme Court of Justice, crim. s., dec. no. 1040/1998, in Lex Expert.

²¹ Argeș Court, sent. no. 23/1997 and CA Pitești dec. no. 57/1997, cited in the decision of the Supreme Court of Justice indicated above.

²² Supreme Court of Justice, crim. s., dec. no. 5438/2001, in *Criminal Law Review, Judicial Practice Studies (1994-2006)*, p. 451.

²³ CCR dec. no. 489/30.06.2016, published in the Official Gazette of Romania no. 661/29.08.2016.

²⁴ HCCJ, crim. s., dec. no. 213/09.06.2015, www.scj.ro.

²⁵ Bucharest Court, crim. s., crim. dec. no. 222/1991, in *Collection of Judicial Practice for 1991*, Șansa Publishing House 1992, p. 258.

²⁶ S. Bogdan, D.-A. Șerban, *Is the bribing intermediary an influence dealer?*, in *Jurisprudence* no. 2/2012, available on Babes Bolyai University website - arhiva-studia.law.ubbcluj.ro.

according to which the traffic of influence would absorb the deception, as they consider that, by operating the absorption, the damage to one of the two legal objects would not be given criminal significance, respectively that of heritage. We do not agree with this theory because:

- it is obvious that in the situation where the criminal misleads the one to whom he promises to solve his problems by corrupting an official, it is more important to damage the social value of the prestige of public organisations or public officials than to protect the patrimony of a person who accepts to participate in committing a crime;
- if we accept that the deception could be retained, in this case, in formal competition with the crime of influence peddling, we would arrive at the absurd hypothesis in which, through the same action, the payer of influence peddling would acquire a double quality: defendant for the crime foreseen of art. 292 CP and injured person for the crime provided by art. 244 CP.

In this regard, it was ruled by The Supreme Court²⁷ that the act of the defendants to interfere with high officials, even if in reality they misled the interested person, constitutes the unique crime of influence peddling. Thus, it was held that the defendant F. (at that time a member of the Romanian Parliament) claimed and received the sum of 185,000 Euro from the defendant J, in order to use his influence on some members of the Romanian Government, with the result that they would allocate the amounts of money needed to pay for the 5.6 million lei works at City Hall E., executed by the company whose administrator and sole partner was the defendant J. Even if, from the description of the facts, it emerged that there was an action to mislead the defendant J (since, from the moment of the promise, the defendant F. did not intend to intervene, in real terms, with the members of the executive, for the allocation of the amount of money indicated), having as a consequence the reduction of his patrimony, this is part of the constitutive content of the traffic offense of influence, not being incidents and the provisions of art. 244 CP.

On the other hand, we do not deny the possibility of retaining the two acts provided for by the criminal law in the competition, in the situation where influence peddling would constitute the crime of means for the achievement of the crime of purpose - deception, an opinion expressed, moreover, also by the specialised literature²⁸. In this sense, it was held by the judges of the CA Bucharest²⁹ that the claim of sums of money by the trafficker of influence in order to, in turn, offer a part of these benefits to the public official, to induce him to act in the interest to the buyer of influence, constitutes a competition between the two facts provided by the criminal law.

The High Court of Cassation and Justice also held a contest between the two crimes³⁰ in the situation where the defendant misled the injured persons that he would support them in obtaining visas for the Schengen area, cancelling the suspension of the driver's license, exemption from military service, sponsoring a place of worship or transferring students from one educational institution to another. For all the activities impossible to be carried out by the defendant, through his influence, it was assessed that he should be punished for the crime of fraud, while for the promises that targeted the activity of certain officials, the crime of influence peddling was retained.

The problems related to the similarities between the two crimes have not only concerned theorists and courts. Noticing the existence of a non-unitary practice, the General Prosecutor of Romania notified the High Court of Cassation with an appeal in the interest of the law, by which he requested the supreme court to establish the difference between deception and influence peddling, in relation to several criteria of distinction. Even if the appeal was rejected³¹ on the grounds that the conditions related to the existence of non-unitary solutions of the courts are not met³², elements that can be taken into account by both practitioners and theoreticians were indicated in the considerations of the decision. In the sense of what we also indicated in this comparison, the judges of the supreme court specified, among other things, that „(...) *between the two crimes there are essential*

²⁷ HCCJ, crim. s., dec. no. 434/2017, www.scj.ro.

²⁸ V. Dobrinioiu, *Trafficking in office and influence in criminal law*, Scientific and Encyclopedic Publishing House, 1983, p. 229; D. Ciuncan, *Trafficking in influence and deception*, in the PNA Documentary Bulletin no. 2/2003, www.dorin.ciucan.com.

²⁹ CA Bucharest, crim. s., dec. no. 106/1994, in Collection of criminal judicial practice from 1994, Continent Publishing House, 1994, p. 228.

³⁰ HCCJ, crim. s., dec. no. 1048/2004, www.scj.ro.

³¹ HCCJ, dec. no. 35/2007, pronounced on appeal in the interest of the law.

³² The Supreme Court considered that, although several court decisions were invoked in which different solutions were pronounced, the condition provided for in art. 414² para. (1) CPP 1868 is not fulfilled since the respective solutions concerned situations - different premises.

differences, both regarding the legal object and their objective side, and especially regarding the specific features that characterise their subjective side."

3. Conclusions

The importance of this distinction lies not only in relation to the different punishment limits or for determining the competence of judicial bodies in the criminal process, but especially for establishing the procedural quality of the person who interacts with the perpetrator of the crime: if, in the crime of fraud, the person who is induced in error has the status of a civil party/injured person in the criminal process, the one who is the „victim” of influence peddling will, in turn, be held criminally liable for committing the offense provided for in art. 292 CP.

If we accept that offering money to a person who lets it be believed that he has influence over an official, to solve some problems does not constitute a crime - in the situation where, for example, neither the position nor the institution where he works is specified, or if the problem was already solved - it would mean encouraging (from a certain point of view) such practices. It is obvious that, in the situation in which both the buyer and the trafficker of influence would be investigated for committing the crime provided by art. 291 CP, it would have every interest to recognize a factual situation that would attract the incidence of art. 244 CP so that the person who bought the influence becomes a victim of the crime, and the trafficker of influence is accused of fraud - a situation in which he could benefit from a possible reconciliation with his victim, and thus take advantage of the removal of criminal liability.

We are aware of the fact that there are certain situations in which the influence peddler's proposal is impossible to achieve, a situation in which it would not be necessary to hold a crime of corruption, but only deception, but we believe that such legal treatment should be applied only in situations exceptionally, in extreme cases. Otherwise, there is a risk that people who accept that they can settle their claims by paying public officials will be considered mere victims, or those who question the prestige of the authorities by asking for money to bribe them can benefit from a cause of removal of liability criminal charges, a risk society should not take.

In this context, it is up to both authors of criminal law and the judicial bodies, to interpret, respectively to apply the cited texts in such a way that there are no situations in that persons who commit the crime of influence peddling can evade criminal responsibility by presenting the fact as a fraud, by collusion with the buyer of influence who would thus become an aggrieved person with respect to the offense provided for by art. 244 CP.

References

- Antoniu, G., Toader, T., *Explanations of the new Criminal Code*, vol. III, Universul Juridic Publishing House, 2015;
- Bogdan, S., Șerban, D.-A., *Is the bribing intermediary an influence dealer?*, in Jurisprudence no. 2/2012, available on Babes Bolyai University website;
- Ciuncan, D., *Trafficking in influence and deception*, in the PNA Documentary Bulletin no. 2/2003;
- Collection of criminal judicial practice from 1994, Continent Publishing House, 1994;
- Collection of judicial practice for the year 1991, Șansa Publishing House, 1992;
- Dabu, V., *The new Criminal Code, Influence paddling*, Law no. 2/2005;
- Dobrinoiu, V., *Corruption in Romanian criminal law*, Atlas Lex Publishing House, 1995;
- Dobrinoiu, V., Pascu, I., Hotca, M.-A., Chiș, I., Gorunescu, M., Păun, C., Dobrinoiu, M., Neagu, N., Sinescu, M.C-tin, *New Criminal Code Annotated, Special Part*, Universul Juridic Publishing House, Bucharest, 2016;
- Dobrinoiu, V., *Trafficking in position and influence in criminal law*, Scientific and Encyclopaedic Publishing House, 1983;
- Duvac, C-tin, *Similarities and differences between fraud and other crimes in the new Criminal Code*, in Law no. 2/2012;
- Journal of criminal law, Judicial practice studies (1994-2006), Hamangiu Publishing House, 2008;
- Mateuț, Ghe., *Theoretical and practical syntheses regarding the repression of influence peddling in the current regulation and in perspective*, in Law no. 5/2002.