

**LEGISLATION
IN
TOURISM**

GENERAL ASPECTS REGARDING WORK-RELATED CRIMINAL OFFENCES

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Abstract: *This article aims to raise awareness among public servants and clerks on work-related criminal offences.*

In the old penal code the current offence of misfeasance in office came under three aspects, namely misfeasance in office against people's interests, misfeasance in office by limiting some rights and misfeasance in office against public interests. Therefore, the offence of misfeasance in office was much more detailed, separated according to regulated interests and other applicable penalties.

In the current penal code these crimes of misfeasance in office were merged in the sense that they are provided in a single legal content, the sanctions changing: imprisonment from 6 months to 5 years and aggravated form imprisonment from 3 to 15 years in the old penal code and from 2 to 7 years and deprivation of the right to hold public office, and the aggravated variant increases by half or imprisonment from 2 years and 8 months to 9 years and 4 months and deprivation of the right to hold office.

Keywords: *abuse, appropriate behaviour, crime, legal content, incrimination*

1. INTRODUCTION

Offences committed by persons with managerial positions that are found in the criminal statistics have increased in recent years, but there are cases that have not been discovered. The criminal investigation and sanction of such persons shall be carried out as required by the legislator in the new Criminal Code, according to the crimes committed. This article addresses the theme of crimes, especially work-related ones, committed by persons with certain positions who are public servants or clerks. The deeds contained in the new Criminal Code under work-related offences are a great social danger given that the perpetrators are most often in managerial positions, contributing to the functioning of state institutions.

By the positions they hold, certain public servants or clerks commit extremely dangerous offences, causing damage to the legitimate interests of citizens, to public interests and thus to the whole society. By abusing their position, some persons in managerial positions participate in destroying the

country's economy through money laundering, extortion of goods, receiving gratifications or neglecting their duties, abusing power, forgery of public documents, which will lead to holding them accountable and applying a penal sanction.

2. BODY OF ARTICLE

Criminal law is structured around three fundamental aspects as follows: crime, criminal liability and sanction. Between the three mentioned aspects there is a close connection and conditioning, which is the existence of the crime determines the occurrence and functioning of the other two. Unless there is a crime, there will be no criminal liability, while in the absence of criminal liability the sanction will be absent since it would have no reason and no perpetrator.

In the case of social cohabitation relations, some members of society commit, for various reasons and under certain conditions, acts that are dangerous and harmful, against which society reacts by various defensive measures to conserve and promote its values and interests that ensure its existence and development.

Against acts with negative consequences on relations and social values protected by certain legal norms, society intervention is performed by applying sanctions, disciplinary sanctions (reprimand, termination of employment contract) or administrative sanctions (warning, fine).

The social and human experience has shown that when the social danger of the crime is greater, the above mentioned penalties are not sufficient to protect the interests and values of society. Therefore, if an act of murder were punished by a fine, such a penalty would not be able to discourage people who are tempted to carry out such acts, thus creating a climate of social insecurity, which would seriously affect human relations. That is why, throughout its evolution, society has built a system of measures to combat antisocial serious acts that aim to ensure a proportion between the social danger of the crime and the consequences to be borne by the offender, so that the penalty should determine a deterrent, a conscious restraint on having done so. These facts prohibited by law, under penalty of severe punishment, called criminal sanction, are what we call crime in our law.

The crime is a dangerous social act, committed with intent, for which a criminal sanction is applied.

The Criminal Code is the only law that contains acts considered crimes. A person cannot be prosecuted unless they commit an act that is under the criminal law.

For an act to be considered a criminal offence it needs to be committed with guilt. Guilt is a person's attitude towards the act he commits and to the consequences that it can produce. Thus, the guilt of a person can be expressed

by intent with all its forms and recklessness. The intention is when a person understands that the deed he is to commit is dangerous, he understands its results and wants those results to occur or admits that they can occur.

Imprudence is when the person understands that the deed he is to commit is dangerous, has foreseen its results, but lightly hopes that they will not come up or sometimes he does not foresee them, although he was obliged to do so.

The offence is regarded under three aspects, namely: a material objective aspect, the result of a person's conscious activity, by which certain rules of conduct and cohabitation established between members of society are broken. Breaking the rules of conduct that are protected by law is an inconvenient activity for society, since it has to defend itself against such negative manifestations, by the most appropriate means, namely applying criminal law sanctions.

The act is considered an offence only if committed with guilt required by the criminal law, an act committed with intent, wilful or grossly exceeded, according to Article 16 of the Criminal Code.

The deed is done recklessly when the perpetrator foresees the consequences of his act, but does not accept it, believing without reason that this result will not occur, or does not foresee the consequence of his act although he should have and could have done it. The exceeded intention exists when the intentional action or inaction produces a more serious result which is due to the perpetrator's guilt.

The act committed intentionally is an offence only when expressly required by law.

The offence has a social aspect too; it is an act performed by men, which occurs in society and has a negative impact on it. At the same time, it is an act of conduct expressing the perpetrator's attitude towards the rules of coexistence established by law, reflecting negatively within the social relations sphere by affecting their proper development.

The offence takes on the significance of unlawful and antisocial act by breaking the codes of conduct, which is a social phenomenon by its nature and genesis, but also an antisocial phenomenon by the consequences it causes.

The third aspect is the legal aspect. Regarding this antisocial phenomenon the State develops rules of law and guarantees respect for them. As a result, a series of legal effects come up, of which the most significant is the establishment of criminal liability. The misfeasance in office is one of the offences by which a public servant, under Article 297 paragraph 1 of the Criminal Code, in the exercise of his duties, does not fulfil an act or fulfils it improperly, causing damage or harm to the rights or legitimate interests of a natural or legal body. This offence is punishable by imprisonment from 2 to 7 years, followed by deprivation of the right to hold office. According to paragraph 2 of the same article, is sanctionable with the same punishment the

act of the public servant who, in performing his duties, limits the exercise of a right of any person or creates a situation of inferiority based on race, nationality, ethnic origin, religion, language, gender, sexual orientation, age, wealth, political affiliation, disability, non-contagious chronic disease or HIV / AIDS infection.

According to Article 297 of the current penal code in relation to Article 308, the aggravated version of the offence of misfeasance in office is reflected by the act, commission of any nature for any individual, of those mentioned in Article 175 paragraph 2 of the current penal code, either within any legal body, by a person who exercises them permanently or temporarily.

The misfeasance in office that had as result the production of quite serious consequences under Article 297 of the penal code in relation to article 309 of the current penal code is an aggravated variant of the offence. The offence is retained only if the act committed by the public servant is not perceived as a specific offence by another incriminating code, which determines its subsidiary character.

The new penal code reunited offences of misfeasance in office as stipulated in the old penal code, namely: misfeasance in office against personal interests, misfeasance in office against public interests and misfeasance in office by limiting certain rights in one form of abuse of power.

The special legal object of the offence of misfeasance in office consists of social relations on ensuring development, under the best conditions, of the activity of public or private legal bodies, or the protection of the legitimate interests of individuals against abuses by public servants under the best conditions.

The offence of misfeasance in office is devoid of purpose, and the crime subjects are the active subject and the passive subject. The active subject is the public official as defined under Article 175 paragraph 1 of the penal code, namely the person who, permanently or temporarily, with or without remuneration, carries out activities by which he commits such an offence. The active subject has attributions and responsibilities established under the laws in order to achieve the prerogatives of the legislative, executive or judicial power, and can also be any person exercising a public office of any kind, such as public servants or those with special status, public servants from the central or local administration, mayors and policemen.

The active subject can be the person who exercises alone or with others, in an autonomous authority, of another operator or a legal entity partially or totally owned by the state, legal powers to accomplish the object of its activity.

Also, an active subject may be the person who exercises a service of public interest for which he has been invested by public authorities or which is supervised and controlled regarding the performance of that public service, only if the offence is committed in the line of duty, such as notaries, authorized technical experts, bailiffs, interpreters and certified translators.

Private clerks, i.e. persons exercising permanent or temporary, with or without remuneration, a commission of any nature in the service of individuals from those referred to in Article 175 paragraph 2 from the current penal code or under any legal body, may be active subjects of the offence of misfeasance in office attenuated version, if the offence is committed in the line of duty.

The courts of law are sovereign in determining both the evidence in the cases vested, and the legal texts applicable, giving them the interpretation they deem appropriate, and the delivery of solutions by prosecutors, following the specific activities of criminal investigation and according to their own conviction, cannot be equalled by abusive exercise of their duties under the law and thus cannot constitute, by themselves, the grounds for withholding offences of misfeasance in office or negligence (see High Court of Cassation and Justice, criminal Division, decision no. 3126/2008, www.scj.ro).

Criminal participation can exist in all its forms, co-authorship, if all offenders have the status of public servants and complicity or instigation, regardless of the quality the participants have.

The passive subject of the offence of misfeasance in office is the public authority, public institution, public or private legal body, or natural body, who has been caused damage or harm to his legitimate rights or interests, or a natural person whose exercise of rights was restricted or was put in a situation of inferiority based on race, nationality, ethnic origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, non-contagious chronic disease or HIV / AIDS infection.

The passive subject of the misfeasance in office has two forms: a general passive subject who is represented by the state and a particular passive subject who is a natural or legal body who has suffered loss or harm of legitimate rights or interests by criminal activity.

In terms of the objective side of the crime analyzed, the material element provided in the version of Article 297 paragraph 1 of the penal code consists of either failure to act or defective achievement by a public servant or a clerk during performance of his duties. The act should be part of service duties and by the term act used by the legislators we understand the operation to be performed by the public servant or person exercising a public interest which he has been assigned to perform. Therefore, a failure to act is a public servant's mission to carry out the operation for which he was invested, and the defective achievement of an act is performing an operation differently. Failure to act may be total or partial. It may also consist of an act of abandonment of work that had to be completed, or the unjustified refusal to give effect to orders or requests received or in other situations of remaining in passivity contrary to duties.

In judicial practice it was noted that there is misfeasance in office from the defendant who sold products over the legal price, a waiter who overcharged the bill, the doctor or any member of the medical personnel who refuse to pay

emergency medical care, regardless of specialty, place or whether during or outside working hours, whereas the obligation to provide healthcare is provided by law, a defendant who as postal agent received for communication a civil sentence, introduced the act between the boards of the fence, then mentioned the evidence of communication that he attached the document on the door of the house, so the act did not come into possession of the victim, the police officer who wrongly does not return the driving license of the victim as ordered by the final sentence of annulment of the minutes by which that licence was taken.

The option provided for in paragraph 2, the material element of the misfeasance in office consists either of restricting the exercise of a person or creating for a situation of inferiority in the manner specified, the active subject taking into consideration the belonging of a person or situation in any of the variants exhibited, thereby violating the constitutional principle of equality of all citizens of our fundamental law. The essential requirement is that the offence be committed by the public servant in the performance of his duties.

The immediate result is causing a loss or harm to the rights or interests of a natural or a legal body, respectively the material or moral damage of a person's right by creating a situation of inferiority.

By causing damage we mean the production of a material loss brought to a natural or legal body which is the passive subject of the misfeasance in office, the damage caused by the abusive act of a public servant or other person exercising a public service. In terms of the subjective side of the manner provided for in paragraph 1, the offence is committed with direct or indirect intent, in the variant of paragraph 2, the intention must be direct.

The offence can be committed continuously, case in which it is exhausted at the time of the last act of execution. The sanctioning in both cases is imprisonment from 2 to 7 years and deprivation of the right to hold public office. For the aggravated variant, special limits of the penalty shall be reduced by a third.

CONCLUSIONS

We appreciate the presentation of crime, considering the extremely important tasks that public servants or clerks are employed for. Compliance with responsibilities and appropriate behaviour in institutions will lead to a better consolidation of the system, the economy and the protection of the rights of every citizen. Lately, there are more cases of abuse uncovered, acts or omissions by public servants or clerks, offences committed both recently and some time ago, since the old penal code and its provisions were in effect. These acts depend on the discretion of the court, respectively on the old or the new code and in relation to the deed. In some situations the offence of misfeasance in office brings about other crimes, the offenders coming to commit corruption, bribery, blackmail.

Giving public servants and clerks notice of committing such crimes is very important for reducing crime.

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