

# Some Methodological Elements for Investigating Corruption Offences

**Cosmin Butură**

*Romanian Forensic Association, Bucharest, Romania  
cosminbutura@yahoo.com*

**ABSTRACT:** Corruption arose from the moment when the need for a leader, guide, idol, etc., to ensure the proper functioning of a community arose. According to the statements of the great literary geniuses, who expressed their opinion on humanity in their works, a person is limited, as a result he cannot exceed the limits endowed by mother nature. This article will focus on the subject of the crime of corruption from the perspective of forensic investigation by going through different methodological elements in this regard. The first part of the article will present some preliminary considerations related to the provenance of corruption, some aspects related to the regulations of the corruption offense at European and national levels. The article will analyze the general criteria of forensic investigation of corruption represented by indices and problems related to the criminal investigation. Another sub-point framed in the article will be the finding of the flagrant offense consisting of elements such as the procedure of preparation for the finding of the crime, the essential problems, the composition of the investigation team, the forensic traps and the actual realization of the action. In the end, this article will explore tactics of carrying out other acts of criminal prosecution, represented by peculiarities in hearing the suspect, hearing the injured party, conducting confrontations and peculiarities regarding the search on computers.

**KEYWORDS:** corruption, politics, methodological elements, leader, justice, people, methods of investigation

## **Introduction**

To explain the idea of politics, we do a psychological analysis of a small community. Once a community grows in terms of the number of people, there is a need for guidance for the implementation of rules or laws. It is almost impossible for decisions on a set of laws to be made by the whole community, as a result, it is necessary for a person to represent it and to make decisions on the laws that ensure proper functioning. After a representative person has been selected, the community notes that there is no possibility for only one person to solve all the problems of the guild, as a result of which councils, commissions of law, public authority, etc. are born, meant to implement the policies issued by the leader.

So, here is how the psychology of leadership behavior intervenes, more precisely, the man who has reached a position of leader develops instincts of greed, the desire for master, supreme idol, etc. appears. In the literary works of the great geniuses, this behavior was described as a sense of God, more precisely those who ruled had their consciences reconciled with the idea of the undead. So, with the dominion comes wealth, because in the community, according to history and the present, the leader is the richest, followed by people occupying public office. According to history, there were only intellectual persons in public offices, the church clergy made up of priests and people who were enriched by trade activity such as: boyars, merchants, craftsmen. Therefore, we can say that only one aspect outlines the idea of corruption, the fear of riots.

Throughout history, peoples have rebelled over their conudence very often, through riots, civil wars, protests, etc. that have ultimately led to the removal of the leader and influential people around him. This fear that arises with the coming of the main character, to the leadership, develops the instinct of political survival, so in order to keep his position as a leader, that person needs support and we are not talking about the people themselves, but about the key people who can manipulate the people in favor of the leader, regardless of his acts. (Giurescu 1937, 377)

## Regulations on corruption offences in the European system

From a legal point of view, corruption is a relatively difficult concept to outline, although the term is used as such or in its derivative forms in several normative acts (Pascu, Buneci and Buneci 2020, 8).

To begin with, we specify that at the level of the Multidisciplinary Group on Corruption set up by the Committee of Ministers of the Council of Europe, in 1994, the notion of corruption was defined as “*Corruption includes occult commissions and all other actions involving persons invested with public or private functions, who have violated their obligations arising from their capacity as a public official, as a private employee, as a self-employed agent or from such a relationship, with a view to obtaining illicit advantages, whatever the nature of whatever nature, for themselves or for others*” (Council of Europe Criminal Convention).

From the point of view of the European doctrine in the legal field, corruption is divided into two categories, as follows:

- a) **active corruption:** refers to the promise, offer or intentional giving, by any person, directly or indirectly, of any undue use, to a public official, for another or himself, with the purpose of obtaining or refraining from performing an act or exercise of his function.
- b) **passive corruption:** refers to the intentional request or receipt by a public official, directly or indirectly, of an undue use, for himself or for another towards accepting a promise of different benefits, but which towards the end some acts or exercises lead to their fulfillment or abstention.

The effects of corruption have been felt over time in several areas at social, economic, public and private level. According to a World Bank study, corruption has contributed to:

- increasing the decline in living standards by providing poor quality services as well as to dismantle the economy;
- occupying public offices in the structures of organized crime, which bring prejudices at the economic and administrative level;
- the weaknesses that fuel corruption, such as the police, the court, and other areas where decisions can be made at the policy level.

## Corruption regulations at national level

Regarding the notion of corruption, we note that such a definition does not exist at the international level. Nor is the Convention against Corruption published in the Official Gazette no 903 of October 5, 2004, did not formulate such a definition. The Convention does not define corruption in general, but specific forms of its manifestation, such as taking a bribe, giving a bribe, influence peddling, buying influence, embezzlement, abuse of office etc. (Hegheş 2021, 236).

The process of seizing corruption in state and private institutions undermines the central powers in the state, the local administration and implicitly the way of activity of the emergency, security, medical, country defense institutions, etc. (G.D. no. 1065/2001).

However, corruption could not be allowed to become a control factor over the Romanian state, as a result it appears in the New Criminal Code, more precisely in art. 289-292, as corruption acts, the following: taking bribes, bribery, influence peddling, buying influence, acts committed by arbitration members or in connection with them.

The institution empowered to fight corruption at national level is the National Anticorruption Directorate headed by a prosecutor who meets the conditions for occupying the position. In addition to the above-mentioned offences, the competence of the National Anticorruption Directorate also includes corruption acts regarding crimes against the financial

interests of the state and of the European Union, provided for in article 300 of the New Criminal Code, updated with subsequent additions and amendments.

### **International cooperation in the fight against corruption**

In a union, if an allied member (i.e., a country) is going through a period when corruption has reached a higher level, steps are taken to ensure that that ally becomes again a “healthy part of the union”. On the other hand, however, if that criminal activity reaches the whole of the Union, the Member States need to resort to various measures to mitigate the accelerated increase in corruption in order to establish the normal course of the union's diplomacy and policy in the present case.

That is why, at European Union level, the initiative to develop laws to combat the criminal factor that had seized South-Eastern Europe was used. The laws in question were adopted in the Initiative for the Development of Laws of South-Eastern Europe, hereinafter referred to as I.D.L.S.E. This initiative had as main purpose the more thorough analysis of the criminal factor, namely corruption, meant to show what really specifies the problem of corruption at the public level and especially the seriousness of the phenomenon in social, institutional involvement and political decision-making groups.

### **General criteria for the forensic investigation of corruption and criminogenic indices**

Whether we are talking about an isolated case or a case at global level, in the field of forensics, the activity of corruption, several criteria are established that can give an overview of the phenomenon and, at the same time, sessions can be developed to implement solutions aimed at detecting, investigating and framing the legal of each case of corruption. As a result, several indices of a general criminogenic nature have been established as follows:

- the suspicion of actively participating in corruption: this index assesses a person's preferences in terms of achieving compromises of values and social principles, under the pressure of certain circumstances;
- the spread of corruption: this index refers to the wishes of some people to share corrupt practices, among the ranks of public officials, but also those in the political sphere;
- the prospects for corruption: this index refer to the definition of the potential of a shock that fights corruption.
- These criminogenic indices are subject to evaluation criteria, which are measured from individual to individual as follows:
  - the ability of a person, public official or politician, to exert direct or indirect pressure on citizens to obtain material benefits from them;
  - the capacity of professional groups, i.e., groups of doctors, policemen, magistrates, etc., to act in a professional group with the aim of imposing, through public pressure, the obtaining of material benefits illegally;
  - participation in corrupt practices, which refers, first of all, to self-participation in various forms of corruption, especially in countries that have crossed freshly from a totalitarian political regime to a liberal, democratic one.

### **Special measures for investigating the crime of corruption**

According to the New Criminal Code and the New Criminal of Procedure Code, when there are credible reasons for committing corruption acts by persons in public or private offices, in order to obtain for themselves or for a party of material benefits, the prosecutors of the National Anticorruption Directorate may order the following measures that may not exceed the duration of no more than 30 days:

- supervising bank accounts;

- putting suspects under operational supervision and/or intercepting them in real time;
- accessing the information systems used by the suspects.

The special surveillance methods listed in art. 138 paragraph 1 of the Romanian Criminal of Procedure Code are evidentiary procedures that are performed without the person concerned being notified (Buneci 2020, 154).

The Anticorruption Prosecutor's may also appeal to undercover investigators in order to collect data referring to the existence of the crime and the identification of the persons who committed the corruption acts. However, this method is adopted only if there is no impossibility to identify the perpetrator or the crime itself.

### **Finding of the flagrant offence**

It should be noted that this action is the best method of proving corruption. According to art. 293 of the New Code of Criminal Procedure *“is flagrant the offense discovered at the time of committing or immediately after a commission or the crime whose perpetrator, immediately after committing, is pursued by the public order and national security bodies”*.

As crimes with instantaneous consumption, we refer to bribery, bribery and influence peddling, so that is, these crimes cannot be subjected to the method of flagrant finding. In order to understand more precisely what bribery is, well this is the action that a public or private person having a status or influence of a decision-making nature, receives from a third person a certain amount of money or other material benefits in order to achieve his objectives in his personal interest.

It should be understood that the act of surprise in flagrante does not represent the finding of the commission of the crime, but on the contrary the finding of the receipt of material property illegally by a public or private official. Exceptions to such actions are made in cases where the receipt of material benefits are in conjunction with the crime itself and the catching in flagrante. As for the catching in flagrante, its organization is carried out carefully, in relation to the facts, the competent bodies being notified ex officio or by denunciation, in case of committing the act of corruption. When it comes to the action of taking or giving bribes, both participants profit from illegal arrangements. (Wisom and Murphy 1996, passim)

References on the facts of corruption of this kind also rule from:

- Family environment: We are talking here by close relatives, even husband or wife, affected by some frustrations at the psychic;
- Professional environment: We are talking here by the workers or the heads or subordinates of the person or persons concerned, determined by the frustrations at the psychic;
- The environment of those trained in the Corruption Act: We are referring to those who have been forced to bribe or forced to pay a sum of money.

### **Preparation of forensic traps and use of other forensic technical means**

Specialized investigators have recourse to different methods of surprise of the corruption offense in an attempt to discourage certain criminal actions. One of the methods chosen by investigators in the case of crime making or bribery, refers to the registration of invisible banknotes, which can be detected using UV lamps, with the “bribes” inscription using a fluorescent pencil. This false money is then used for the purpose of bribing the person who has asked or subjected to the fidelity test towards the institution of which he is part of. Following this flagrant gripping action of the perpetrator, falsified banknotes by inscribing the word “bribes” reach a specialized laboratory where they will be subject to technical and scientific analyzes (Stancu 2015, 760).

### **Technical means of registration or supervision**

Although the investigators have successfully undertaken the action of the perpetrator's flagrant grip, cannot be used as unique and solid sample against the defendant. Ever since the laws and decisions that regulated the use of audio and video recordings as a means of evidence, many processes have proven to be effective, the applicants have a great deal.

As a result, only the flagrant gripping action is not considered to be effective, so the investigators also recourse to the audio and video recording of the deed, to become a solid and safe evidence to the dossier on the judiciary. Following the records, according to the procedure, the criminal prosecution body will draw up a minute that will include the following:

- the authorization given by the prosecutor;
- the numbers of the telephone stations between which the conversation is carried;
- the numbers of the people who carry the conversation;
- date, time and duration of each conversation;
- the name and quality of the person who made the registration;
- the number of ordines of the cassette, in the record of the service that performs the recording;
- Records played in written form.

According to the criminal proceedings, attached to the minutes will be sealed, the registration demonstrating the act committed. At the request of the prosecutor, the court or injured party, these records may be exposed to specialized expertise (Apetrei 1994, 94-95).

### **Tactics of other prosecution acts**

Regarding the peculiarities of listening to the suspect, it should be noted that the criminal prosecution body must prepare thoroughly for such activity. Note that the suspected profile shows it as a well-trained character in hijacking its interrogation process through various psychological methods.

As a result, the investigator's obligation is to analyze in detail all tracks that lead to the confession in the end of the suspect about the deed for which it is accused. The investigator needs to receive from the suspect, following the interrogation, all the steps he has taken, speaking here about the values that have been the subject of corruption, quantities and related amounts, or any other methods that can become evidence at the research dossier criminal. So, we mention that the investigator must draw up a suspect listening plan according to the particularities of each corruption, depending on the complexity and severity of the deed. In large part, the investigator must find out the workplace and the duties of the suspect, the circumstances that led to the third person in the action committed, the place, the time and conditions in which the material benefits arrived in possession of the suspect.

The criminal investigation body must gather evidence both in favor and against the suspect or defendant, even if he admits his facts (Buzatu 2013, 106).

### **Conclusion**

As a result of the analyzed documentation, they can unfortunately say that the crime of corruption cannot be eliminated, but this may be diminished or isolated in the sphere of areas that do not affect society. From the author's perspective, the education of generations that follow us should also include some legal materials in which young people learn about the facts of corruption, namely the ways of achieving, but also the consequences of the acts committed. An educated generation on citizens' rights and obligations as well as the types of offenses and their ways of achieving, as well as their consequences, can lead to a healthy society based on morality and respect for democratic laws and principles.

Finally, we can say that the crime of corruption can be the most serious and aggravating deed of a criminal nature that can lead to other serious facts such as the killing of a person, the fraud of money and material that are intended for charitable acts or acts of Nature to be used in the development of certain areas such as education, medicine, science, etc. However, corruption will remain the only criminal deed that cannot be fully controlled and can be avoided in criminal proceedings by corruption.

## References

- Antoniou, G., Bulai C., Chivulescu Gh. 1976. *Penal Law Dictionary*. Bucharest: Științifică și Enciclopedică Publishing House.
- Apetrei, M. 1994. *Audio and video recordings, evidence in the criminal trial*. Bucharest: R.D.P. Publishing House.
- Buneci, B. 2020. *Criminal Procedural Law. The General Part. University Course*. Bucharest: Universul Juridic Publishing House.
- Buzatu, N.E. 2013. *Forensics*. Bucharest: Pro Universitaria Publishing House.
- Government Decision no. 1065/2001 on the approval of the National Program for the Prevention of Corruption and the National Action Plan against Corruption, Published in the Official Gazette no. 728 of November 15, 2001.
- Hegheș, N.E. 2021. "Investigation Methods of Corruption Cases". *Proceedings of the 22nd International RAIS Conference on Social Sciences and Humanities*, Princeton, NJ, USA, June 20-21, pp. 236-239.
- Pascu I., Buneci P. and Buneci B. 2020. *Criminal Law. Special Part*. Vol. II. Bucharest: Hamangiu Publishing House.
- Stancu, E. 2015. *Treated of Forensics*. Bucharest: Universul Juridic Publishing House.
- The Criminal Convention of the Council of Europe in Strasbourg, 1999.
- Wison O.W. and Murphy, P. 1996. *Tracing the line of conduct*. FBI, USA.