



## Corruption Offenses Concerning Civil Servants with Special Status within the Ministry of Internal Affairs

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**Abstract:** In this paper, we aim at highlighting some aspects related to corruption offenses provided for by the Criminal Code and Law no. 78/2000 for the discovery, prevention and sanctioning of acts of corruption, committed by civil servants with special status within the Ministry of Internal Affairs (MAI). At the same time, this study emphasizes a special concern for the prevention and combating these offenses by identifying the risks and vulnerabilities existing within the Romanian Police that can influence the correct functioning of this structure. Corruption among public servants with special status within the MAI erodes moral values, mainly integrity, a trait that requires them to exercise their duties according to certain values and principles, without compromise. We believe that an important role in reducing corruption among police officers and in preventing these acts can also be played by harshening the penalties, although, currently, there is an aggravated version of the sanctioning of acts of corruption committed by police officers, provided for in art. 7 of Law no. 78/2000, a variant that consists in sanctioning with the penalty provided for in art. 289 and 291 Criminal Code, whose limits are increased by one third. The main methods employed were survey, observation and case study. Therefore, at the end of our study, de lege ferenda proposal: as, in the case of the crime of assault (art. 257 of the Criminal Code) there is a paragraph in which the sanction is provided with the penalty provided by law whose limits are increased by half if the crime is committed against a policeman in the exercise of his duties, the punishment applied based on the special quality of the victim, a policeman, the same should be done in the case of the crime of bribery (art. 289 of the Criminal Code) respectively, the addition of a new paragraph stipulating that if the acts were committed by a police officer in the exercise of his duties, he shall be punished with the punishment provided by law for that crime, the limits of which should

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increase by half. Our belief is that these legislative amendments are necessary to lessen the incidence of corruption among police officers, thereby making them aware of the risks associated with bribery from the standpoint of the more severe punishment system.

## 1. General Aspects

Corruption is the complex and insidious phenomenon that involves the abuse of power in order to obtain personal, financial or other advantages. It manifests itself in various fields, including politics, administration, justice and the private sector, distorting the fundamental principles of a fair and just society.

Corruption constitutes a threat for democracy, for the supremacy of the rights, social equity and of justice, is eroding the principles of one efficient government, it undermines market economy and it endangers the stability states' institutions.

The phenomenon of corruption, to its real extent, but also by the impact that it has on public opinion, has long been a problem of national interest and, inevitably, a subject of public debate of general interest (Bodoroncea, 2022, p. preface).

In Romania, corruption among civil servants with special status within the MAI (Ministry of Internal Affairs) is a persistent and significant issue that affects public trust in law enforcement institutions and the integrity of the legal system, although in the recent years the authorities have undertaken various efforts to combat it through increasing transparency, strengthening anti-corruption legislation and improving internal oversight and control systems.

However, it is absolutely necessary for these efforts to be continuous and coordinated in order to effectively address this problem and restore public confidence in the authorities.

This paper aims to emphasize the significance and ongoing relevance of the corruption issue from the perspectives of criminal law and society.

Corruption offenses are crimes often encountered among MAI officials, mainly bribery (art. 289 Criminal Code) and influence peddling (art. 291 Criminal Code) regulated by the Criminal Code, but also in the aggravated version of art. 7 of Law no. 78/2000, having in view the quality of the active subject: a criminal research organization or someone with the authority to investigate or approve violations.

Art. 289 para. (1) Criminal Code provides the typical variant of the bribery offense and consist in *“the act of the public servant who, directly or indirectly, for himself or for another, claims or receives money or other benefits that are not due to him or*

*accepts the promise of such benefits, in connection with the fulfillment, non-fulfillment, urgency or delay of the fulfillment of an act that falls within his official duties or in connection with the performance of an act contrary to these duties, is punishable by imprisonment from 3 to 10 years and the prohibition of exercising the right to hold a public office or to exercise the profession or activity in the execution of which committed the deed.”<sup>1</sup>*

The crime of influence peddling is regulated by art. 291, paragraph (1) Criminal Code and consists of: *“(1) Claiming, receiving or accepting the promise of money or other benefits, directly or indirectly, for himself or for another, committed by a person who has influence or is believed to have influence over a public official and who promises that will cause him to perform, not to perform, to expedite or delay the performance of an act that is part of his official duties or to perform an act contrary to these duties, shall be punished with imprisonment from 2 to 7 years.”<sup>2</sup>*

Art. 7 of Law no. 78/2000 regulates the two offenses in an aggravated version, as follows: *“The acts of bribery or influence peddling committed by a person who: a) exercises a function of public dignity; b) it is judge or prosecutor; c) is a body that conducts criminal research and has the authority to determine violations and to sanction them; d) one of the individuals listed in Criminal Code article 293 is subject to the penalty specified in either article 289 or article 291 of the Criminal Code, the latter of which limits has a one-third increase.”*

These two offenses constitute **passive corruption**, defined as follows: *“soliciting or receiving, with intention, by a public official, directly or indirectly, an wrongful benefits, for himself or for another, or the acceptance of one offer or promise of one such benefits, in view of accomplishment or refraining from performing an act in the exercise of its functions”* (Bodoroncea, 2022, p. 388).

At the same time we have also analyzed the offense breach of duty in order to obtain *wrongful benefits* for himself or for another as provided in art. 13<sup>2</sup> of the Law no. 78/2000, an offense which in the recent years *“has been the subject of a permanent public debate, starting from the Constitutional Court’s rewording of its definition and the ongoing efforts of the agencies with the legislative authority to enact laws imposing new definitions of crimes through emergency ordinances or Criminal Code amendments, but to no avail* (Bodoroncea, 2022, p. 388).

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<sup>1</sup> Criminal Code, art. 289, paragraph (1), [www.legislatie.just.ro](http://www.legislatie.just.ro).

<sup>2</sup> Criminal Code, art. 291, paragraph (1), [www.legislatie.just.ro](http://www.legislatie.just.ro).

In practice, two opinions have emerged: the first supports the fact that art. 13<sup>2</sup> of Law no. 78/2000 incriminates a new, independent act and that this is an offense assimilated to corruption offenses; the second opinion supports the fact that in art. 13<sup>2</sup> of Law no. 78/2000, a new independent offense is not regulated and, as a result, it cannot be an offense assimilated to corruption crimes, but it is a special legal aggravating circumstance of increasing the special limits of the punishment provided by the Criminal Code.

The offense of *breach of duty with obtaining some wrongful benefits* is often encountered among the MAI civil servants, exercising the job duties being exceeding by appropriating sums of money, without legal grounds.

One of key ways of committing the crime is the appropriation of money or other wrongful assess by achieving defectively service attributions, mode of operation that is characterized by willful breach of duty by MAI officials.

In this article we pay special attention to the prevention and combating corruption offences committed by MAI officials, in accordance with the Anti-corruption National Strategy 2021-2025, in which we have identified a number of risks and vulnerabilities within the Romanian Police Department, which can influence its legal and correct operation.

The main measures, actions and activities that aim at reducing or even eliminating the risks of corruption and vulnerabilities specific to police activity are as follows:

- awareness of all aspects of the corruption problem and its updating through educational methods;
- the ongoing education of employees by integrating subjects that are unrelated to their job duties but emphasize the integrity whistleblowing in the fight against corruption;
- imposing accountability on all leaders for keeping an eye out for unethical activity on their employees and collaborating with them to implement internal measures that will raise awareness of the consequences of systemic corruption;
- conducting surprise field inspections, auditing the planning and performance of police officers' duties, and reviewing the documentation used to apply preventive measures—particularly when there are concerns about certain officers' possible involvement in activities that are inconsistent with their positions;

- allowing supervisors to know about the concerns and knowledge of their subordinates' personal lives, which may raise the likelihood of their committing corruption offenses and harming the unit;
- the leaders must be informed during the training sessions about the integrity events that were reported to the IGPR and the repercussions that followed the commission of corrupt acts;
- also, the leaders need to be very mindful of how the works are distributed, the files that their subordinates handle, and making sure they have no personal ties to the people being investigated;
- last but not least, the application of Law No. 360/2002's responsibilities, duties, and prohibitions pertaining to the Police Statute, Code of Ethics, and Deontology, which Police Officers are required to uphold and implement while doing their tasks.

The prevention of corruption constitutes the set of measures taken in order to reduce the incidence of acts of corruption committed by the MAI staff, to adopt an honest behavior and to increase citizens' trust in the institution.

Institutions with attributions in prevention and combating corruption facts in Romania are as follows:

- The National Anticorruption Directorate is a structure that leads the activity of sending medium and high level corruption cases to court;
- The General Anticorruption Directorate is the structure of the Ministry of Internal Affairs, specialized in preventing and combating corruption at the level of the MAI staff;
- The National Integrity Agency, responsible for evaluating the fortune declarations of assets and interests and conducting the administrative investigations regarding conflicts of interest.

We exemplify, from the judicial practice:

In the case, it was ordered to send the policeman to court, investigated under the aspect of committing the crime of **influence peddling, an act provided in art. 291 paragraph 1 of Criminal Code, with the application of art. 7, letter c of Law no. 78/2000**, because he directly received, for himself, sums of money from the denouncing witness, after letting it believed that he has influence on his colleague, who was processing the criminal case file in which the reporting witness was being investigated, as a suspect. The policeman was sentenced to **2 years and 6 months**

**in prison**, and because he admitted his offense, he had no other previous records, he did not evade the trial, he did not try to thwart the discovery of the truth or the identification and prosecution of the author or the participants, the court ordered, based on art. 91 of the Criminal Code, suspending the execution of the sentence under supervision and established a term of supervision of **3 years**, according to the provisions of art. 92 Criminal Code; it also assessed that there is no need to impose complementary penalties or an accessory penalty.

At the same time, based on art. 93 paragraph 1 of the Criminal Code, the court obliged the defendant to comply with a series of surveillance measures during the supervision period and pursuant to art. 291, paragraph 2 of the Criminal Code ordered the special confiscation of the amounts received from the denouncer witness and the obligation to pay court costs to the state.

The issue of corruption among MAI officials is current, and in order to raise awareness among them of the consequences they incur by engaging in such activities, it is imperative that measures to prevent and combat it be intensified.

In addition to acting in the public interest rather than their own, MAI officials must set an example of justice and honesty.

Any participation on their part in corrupt activities is directly at odds with the legal requirements, prohibitions, and duties they have when performing their duties. Violation of these laws can have dire repercussions, including an increase in crime and a decline in public safety.

Thus, it is important to recognize the risks and weaknesses in the system that could affect the way it operates legally and correctly and apply some policies, procedures, and other initiatives targeted at minimizing or even eliminating them.

We believe that one of the measures that can contribute to reducing the number of corruption offenses among MAI officials and preventing these acts is harsher punishments.

Currently, there is an aggravated version of the sanctioning of acts of corruption committed by MAI officials, provided for in art. 7 of Law no. 78/2000, a variant that consists in sanctioning with the penalty provided for in art. 289 (bribe-taking) and 290 of the Criminal Code (bribery), whose limits are increased by one third.

But, in our opinion, the punishments should be harsher, considering the increased number of cases of corruption crimes in which the police are involved, the

sanctioning in the aggravated version should also be provided for in the Criminal Code, not only in the special laws.

Therefore, our *de lege ferenda* proposal refers to the seriousness of the acts committed both against the policemen and by the policemen, people who are called to defend the citizens against the commission of crimes. Therefore, we believe that bribery committed by a police officer is more serious and calls for the completion of art. 289 of the Criminal Code, which should add a new paragraph stating that a police officer will be punished with the maximum penalty allowed by law for that crime if the act was done in the course of performing or in connection with his duties.

Even though it falls under a different category of crime, the assault (art. 257 of Criminal Code) has a paragraph in its legal content that highlights the punishment allowed by law. If the crime is committed against a police officer while they are performing their duties, the punishment is doubled. It is also applied based on the victim's unique features. We think that these new laws will lessen the likelihood that police personnel will engage in corruption and, consequently, be aware of the higher penalties that may be imposed in the event of bribes.

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