

REGULATION FOR INFRACTIONS OF ABUSE IN SERVICE AND CORRUPTION IN THE PENAL FRENCH LEGISLATION

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Abstract:

The incriminations contained in other penal legislations than the Romanian one are edifying to the importance the lawgivers give to the abuse in service and corruption acts, by including these in the penal illegal area, even if the same foreign lawgivers have sometimes different opinions on the penal liability of some categories of people due to their position.

The compared right aspects in what service and service connected infractions are concerned especially refer to the penal French legislation, without omitting other incriminations that highlight, in essence, the conception of some west-european lawgivers on the incrimination of these acts.

The abstraction and misappropriation of goods is provided as a separate infraction, consisting of the deed of a person exercising public authority or commissioned with a public service mission, of a public accountant, public depositary or of one of its subordinates to destroy, missappropriate or abstract an act or a title, public or private funds or other effects, pieces, titles, objects that have been handed in to them on behalf of their functions or missions.

Key words: abuse, corruption, French legislation.

1. The incriminations contained in other penal legislations than the Romanian one are edifying to the importance the lawgivers give to the abuse in service and corruption acts, by including these in the penal illegal area, even if the same foreign lawgivers have sometimes different opinions on the penal liability of some categories of people due to their position.

As shown before, the supression of these acts is based on the criterion of a good functioning state of the socio-economical activities and of activities of other nature, functioning that cannot be perturbed by committing abuse and corruption infractions.

The comparative presentation of the incriminations has influence not only on the theoretical discussions that necessarily arise, but also has practical goals that will be materialized in a modified penal legislation.

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2. The new French Penal Code was published through four laws of 22nd of July 1992. The fifth law, from 16th of December 1992, called the adaptation law (“loi d’adaptation”), modifying the French Penal Code of Procedure and other material penal right texts⁸⁶, his redaction resulting from the law of 19th of July 1995, established at 1st of March 1994 the entering into force of the new French penal Code and the abrogation of the Penal Code of 1810. The decree of 19th of March 1993 regarding the part regulated by the new French Penal Code and applicable to the same date completes the reformation.

After a few years of applying the new French Penal Code, the continuity of penal right, refound by the lawgiver, is confirmed. The new jurisprudence from the Court of Cassation does not mark, in whole, any breach from the previous jurisprudence, which appeared under the old Napolean code empire.

The new French Penal code is structured on seven book, entitled as follows: Book I – General provisions (Title I – About penal law [French], Title II – About civil liability, Title III – Punishments), Book II - Crimes and delinquencies against persons (Title I – Crimes against humanity, Title II – Attempts against physical persons), Book III – Crimes and delinquencies against goods (Title I – Fraudulous attempts, Title II – Other attempts to goods), Book IV – Crimes and delinquencies against the nation, state and public peace (Title I – Attempts against the fundamental interests of the nation, Title II – Terrorism, Title III – Attempts against the state authority, Title IV – Attempts against public confidence, Title V – About the participation in organized gangs⁸⁷), Book V – Other crimes and delinquencies, Book VI – Contraventions (Title I – General provisions, Title II – Contraventions against persons, Title III – Contraventions against goods, Title IV – Contraventions against the nation, peace or public peace, Title V – Other contraventions), Book VII – Provisions applicable on the territories beyond sea and in the territorial community of Mayot.

The service and service connected infractions from the Romanian penal code have correspondence in the new French Penal Code in Chapters II and III of Title III – Attempts against state authority, Book IV – Crimes and delinquencies against the nation, state and public peace, called “Attempts against public administration committed by persons in public functions” (Chapter II) and

⁸⁶ *French Penal Code*, Dalloz, 1997-1998, 2006.

⁸⁷ *L’association de malfaiteurs* (French in the original).

“Attempts against the public administration committed by private persons” (Chapter III)⁸⁸.

Chapter II (“Attempts against public administration committed by persons in public functions”) regroups the infractions committed by persons in public functions described in the new Penal Code through the generic expression of “person exercising public authority or commissioned with a public service mission”.⁸⁹ This designation is substituted to multiple notions used by the new French Code, such as “public servant”, “agent or government delegate”, “judge”, “administrator”, “agent or public administration delegate”.

This expression is used in order to define the majority of infractions under Chapter II. The expression is likewise used in Books II and III, in order to show the quality of the author or of the victim of certain infractions, when this quality constitutes an aggravating circumstance. The expression is also used in the next chapter dealing with attempts to public administration committed by private persons for infractions that provide for the victim (passive subject) the quality of person in public functions.

The formulation discussed is not new, considering that it was issued by doctrine and jurisprudence, it was used many times by the lawmakers, especially in articles 177 and 187-1 of the current French Penal Code.

Besides the advantage to simplify and homogenize the redaction of incriminations, this expression is, essentially, pertinent to the highest degree. It adopts a functional criterion, contrary to present terms that show the status of the person in question (such as the term of “public servant”), which is not satisfactory and, moreover, obliges jurisprudence to interpret these terms in an extensive manner. Thus, it is not important to know the professional status of the author of the infraction, but to know whether he exerts functions that take part in the public affairs management.⁹⁰

Likewise, the expression “person exercising public authority” designates persons that exert an authority function, other administrative, jurisdictional or military. The person’s status, either private (such as a juror or an unprofessional assessor in the court for minors), or public (such as a professional magistrate) is not important. The expression “person commissioned with a public service mission” implies private or public persons who, without exercising a part of public authority⁹¹, fulfil, temporarily or permanently, voluntary or following an authorities’ recruitment, a public service of any kind. These expressions indicate, in particular, the public or ministerial officers, to the extent to which the last

⁸⁸ Chapitre II, *Des atteints à l’administration publique commises par personnes exerçant un fonction publique*; Chapitre III, *Des atteintes à l’administration publique commises par les particuliers*. (French in the original).

⁸⁹ *Personne dépositaire de l’autorité publique ou chargée d’une mission de service publique*. (French in the original).

⁹⁰ *The circulary of 14th of May 1993 which discusses upon the New French Penal Code provisions*, Dalloz, 1997-1998, 2006.

⁹¹ *D’une parcelle de autorité publique*. (French in the original).

mentioned, according to the activities fulfilled, either exert authority functions (such as an executor that proceeds to the execution of a book debt or of a expulsion), or are commissioned with a public service (such as a notary effectuating a real estate sale).

There is no doubt about the assimilation, to the same extent, of civil servants or of territorial units agents who, according to the decentralization laws, are exercising parts of public authority (although current texts, especially the expression “agent or government delegate”, do not seem to refer to them).⁹²

Finally, this expression seems to also refer to international civil servants, considering that their powers of authority or public service missions on French territory are acknowledged in the application of international conventions.

Before examining the various infractions provided under Chapter II, it must be noticed that some of them can be invoked only against persons who are simply commissioned with a public service and that others, in their reason, do not include persons who exert public functions (for example, the crime made by an old servant, provided in art. 432-13 from the French Penal Code). Moreover, other infractions can be invoked, to the same extent, against persons commissioned with an elective public mandate (for example, delinquencies regarding interference, corruption or traffic of influence) who are not necessarily exercising public authority (such as a deputy who, if compared to a mayor, does not exert an authority function). The lawgiver often mentioned, by enumerating the persons susceptible of committing certain infractions, particular functions that are obviously included in the generic expression of “persons exercising public authority or commissioned with a public service mission” (for example, article 432-15, that represses the goods abstraction, refers to accountants and public depositaries).

Chapter II is structured on three sections that contain the infractions committed by persons exercising public authority or commissioned with a public service mission, sections called as follows: authority abuses against the administration itself (section I);⁹³ authority abuses against private persons⁹⁴ (section II) that refer to attempts to individual freedom, discriminations, attempts to the inviolability of domicile, attempts to the secrecy of correspondence; infringements of the probity obligations⁹⁵ (section III) that refer to the abuse in levying taxes and duties⁹⁶, passive corruption and traffic of influence committed by persons exercising public functions⁹⁷, attempts to the freedom to accede and equality between candidates regarding markets, public transactions⁹⁸, abstraction and determination of goods.

⁹² *Agent ou préposé du Gouvernement*; préposé, e-personne (fonctionnaire, employé etc.) chargé d'un service particulier ; Hâchette, Dictionnaire de français, 1997, page 879.

⁹³ Des abus d'autorité dirigés contre l'administration elle-même (Frech in the original).

⁹⁴ Des abus d'autorité commis contre les particuliers (Frech in the original).

⁹⁵ Des manquements au devoir de probité (Frech in the original).

⁹⁶ De la concussion (Frech in the original).

⁹⁷ De la prise illégale d'intérêts (Frech in the original).

⁹⁸ Des atteintes à la liberté d'accès et à l'égalité des candidats dans les marchés publics.

If compared to the Romanian penal code, in the new French Penal Code there are provided infractions that concern abuses and corruption committed by persons indicated by law, but grouped differently in comparison to the Romanian penal code. Although resemblances can be found through the fact that abuses can concern public, as well as private interests - in the Romanian penal code there are distinctively incriminated deeds under art. 246 and art.248 Penal Code – some of the abuses regard specific actions that are provided in the Romanian penal law in chapters, sections, other than those incriminating service infractions.

For example, the attempt to the individual freedom of physical persons – that refers first of all to the illegal measures to limit freedom – is provided as infraction in Chapter II of Title VI of the Romanian penal code (special part) – art.266 Penal Code, illegal arrest and abusive investigation. Attempts to the inviolability of domicile are provided as infraction in Chapter II, Title II of the Romanian Penal Code (special part), in which the deeds causing damages to individual freedom and to all attributes regarding individual freedom are incriminated (art. 192 – violation of domicile). In the same chapter under the Romanian penal law, the infraction of violating the secrecy of correspondence (art.195 penal code) is provided, corresponding to the attempts to the secrecy of correspondence from the French law.

Discriminations – as infraction – correspond in the Romanian penal code to the abuse in service through the limitation of rights (art. 246). The French lawgiver distinctively incriminates the deeds of infringement of the probity obligation, that consist in abuses at levying taxes and duties, passive corruption and traffic of influence, legal influence of interests, attempts to the freedom of access and equality of candidates to public market, abstraction and missappropriation of goods. Thus, the French penal code provides as distinctive infraction the abuse in levying taxes, duties, which would be classified, according to the Romanian penal law, as abuse in service against individual interests – incrimination with a general character. Different from the Romanian penal law, the French lawgiver incriminates the traffic of influence committed by public, as well as private persons.

It is also distinctively incriminated the deed of a person exercising public authority or commissioned with a public service mission or invested with a function through a public elective mandate to have, conserve, directly or indirectly, an interest of any kind in an enterprise or in an operation, having, in a moment of the deed, the total or partial task to ensure supervision, administration, liquidation or payment (payments) – infraction of illegal influence of interests. The attempts to freedom of access and equality of candidates to public markets and to the empowerments in public services that might be also qualified as abuses, meaning the deed of a person exercising authority or commissioned with a public service mission or invested with an elective public mandate or exercising functions as representative, administrator, agent of state, of territorial units, of public institutions or of mixed economical societies of national interest, commissioned with a public service mission, or of mixed local societies, to obtain or to attempt at

obtaining for another person unjustified advantages through an act contrary to the legislative provisions or to regulations, aiming at ensuring free access and equality of candidates to public markets and to empowerments in public services.

The abstraction and misappropriation of goods is provided as a separate infraction, consisting of the deed of a person exercising public authority or commissioned with a public service mission, of a public accountant, public depositary or of one of its subordinates to destroy, missappropriate or abstract an act or a title, public or private funds or other effects, pieces, titles, objects that have been handed in to them on behalf of their functions or missions. The deed could have as a correspondent the infraction of abstraction and destruction of documents, but documents (acts, titles) are “goods” – patrimonial values and regarded as such, not as documents without economical value, whose destruction, abstraction would damage the public authority relations.

Corrupt practices are provided and punished in this chapter, as well as in the next chapter, entitled “Attempts to the activity of justice”, as distinct penal facts committed by a magistrate, juror or by any other person fulfilling attributions in a jurisdictional activity.

The traffic of influence activity can be committed by persons to whom the above mentioned Chapter II is addressed, by private persons and by magistrates or by any other persons involved in acts of justice.

The French penal code does not incriminate the infraction of abusive behaviour, as provided in the Romanian penal code – service infraction, but under violent infractions, the violent acts committed by servants are considered aggravating circumstance (art. 223-13 French penal code).

The infraction of negligence on duty could have as correspondent the infraction provided in the new penal French code under art. 413-10, section II (“Attempts to the national defence secrecy”), Chapter III, Title I (“Attempts against the fundamental interests of the nation”), Book IV. The infraction consists of the deed committed by any person depositary, by means of the state, profession, function or a temporary or permanent mission, of a piece of information, procedure, object, document, file that represent a secrecy regarding the state defence to destroy, abstract, missappropriate or reproduce it or to disclose it to the public or to any unqualified person. The infraction also consists of the deed of a depositary person to let destroy, missappropriate, abstract, reproduce or disclose the information, procedure, object, document, file referred to in the previous paragraph. The deed can be committed by fault, in the form of intention or guilt. Obviously, besides the existence of the guilt, the deed must be of such nature so as to affect state interests.

3. *Exempli gratia*, there will be defined and presented some abuse and corruption acts provided in the new French Penal code.

According to art.432-1 French penal code, it constitutes abuse against the administration itself the deed of a person exercising public authority to take measures destined to fail the execution of the law, during the exercise of his

function⁹⁹, and, according to art. 432-3 French penal code, it constitutes infraction the deed of a person exercising public authority or commissioned with a public service mission or invested with a public elective mandate, informed on the decision or the circumstances of his function's termination, to continue to exert his attributions¹⁰⁰. Article 432-3 French penal code is applied, for example, to the police commissary who continues to exercise his function after having been declared available, and this measure has been communicated to him; elected civil servants that continue to exercise their attributions after having been replaced, without being necessary for them to have been revoked, suspended, legally removed.¹⁰¹

According to art.432-7 French penal code, it constitutes infraction the discrimination – defined in art. 225-1, committed against an physical or moral (juridical) person by a person exercising public authority or commissioned with a public service mission, when exercising his function or on the occasion of exercising his functions or missions, (...), when the deed consists of:

1. the refusal to award the benefit of a right provided by law;
2. the limitation of the normal exercise of an economical activity.¹⁰²

It constitutes discrimination, according to art. 225-1 French penal code, any distinction made between physical persons based on origin, sex, social status, health, handicap, mores, political opinions, union activities, true or assumed ethnic affiliation of non-affiliation, nation, race, determined religion. It also constitutes discrimination according to art. 225-1, paragraph 2 French penal code, any distinction made between moral (juridical) persons based on origin, sex, social status, health, handicap, mores, political opinions, union activity, true or assumed ethnic affiliation of non-affiliation, nation, race, determined religion of members or of certain members of these moral persons.

The provisions of art.432-7 French penal code are not applicable when the deeds referred to in the article are according to the Government directives, taken depending on its economical and commercial policy or by applying its international commitments¹⁰³. The jurisprudence shows that it does not constitute religion based discrimination the expell of two pupils in a schooling institution on the grounds of

⁹⁹ Art.432-1 French penal code :''Le fait, par une personne dépositaire de l'autorité publique agissant dans l'exercice des ses fonctions, de prendre de mesures destinées à faire échec à l'exécution de la loi (...)' '(Frech in the original).

¹⁰⁰ Art.432-3 French penal code :''le fait, par une personne dépositaire de l'autorité publique ou chargée d'une mission de service public ou par une personne investie d'un mandat electif public, ayant été officiellement informée de la decision ou de la circonstance mettant fin à ses fonctions, de continuer à les exercer(...)' '(Frech in the original).

¹⁰¹ *Nouveau Code pénale*, ancien code pénale, Dalloz, 1997-1998, page 537.

¹⁰² Art. 432-7 French penal code ''La discrimination définie à l'article225-1, commise à l'égard d'une personne physique ou morale par une personne dépositaire de l'autorité publique ou chargée d'une mission de service public, dans l'exercice de ses fonctions ou de sa mission, est punie d'une activité économique quelconque.' '(Frech in the original).

¹⁰³ *Code pénale*, Dalloz, 1997-1998, 2006, page 540, mentioning art.32-III of Law no.77-574 of 7th of June 1977, modified through Law no. 92-1336 of 16th of December 1992.

their religious propagandistic attitude contrary to the laic constitutional principles and of their infringement of interior regulations¹⁰⁴.

The passive corruption and the traffic of influence are incriminated in a single article that constitutes part of section III (“infringement of the probity obligation”). According to art.432-11 French penal code, it constitutes infraction the deed of a person exercising public authority, commissioned with a public service mission, to unrightfully claim (request) or accept, directly or indirectly, offers, promises, gifts, benefits or advantages of any nature:

1. so as to commit or not to commit an act that enters into the attributions of his function, mission or mandate or an act facilitated by his function, mission or mandate;
2. so as to abuse his real or assumed influence, in order to obtain from an authority or from public administration distinctions, jobs, transactions or any other favorable decision¹⁰⁵.

In French jurisprudence, it has been decided that it is equally a constitutive element the promise to have sexual relations in order to retain the application of art. 432-11 French penal code¹⁰⁶, but the act of requesting subjective advantages, consisting of the “termination of resentments, of hatred” is not assimilated to the requests for offers, promises, goods (gifts) or other benefits¹⁰⁷. It constitutes, according to art. 432-11 French penal code, a civil servant’s infraction of passive corruption (corrupt practices) the deed of a Ministry of Reconstruction’s agent, for example, to request and receive goods from the distressed in order to control files and to redirect them to the fund ordering department; the deed of a tax inspector to promise to delay the expertise, in exchange for benefits, no matter the party requesting it, considering that this “deed” enters in his attributions; the deed of an agent in the architecture department of a city to request and receive gifts from a contractor, in order to approve the construction awarding projects and in order to “attenuate” control; it does not constitute corrupt practice the act of a police commissary in favour of an individual presented as informer, the moment the corruptibility is revealed through univocal acts.¹⁰⁸

The expression “favorable decision” used in the text from art.432-1 French penal code must be understood in the broader sense and applied to all deeds which,

¹⁰⁴ Idem page 540.

¹⁰⁵ Art.432-11 French penal code: “Est puni [...] le fait, par une personne dépositaire de l’autorité publique, chargée d’une mission de service public, ou investie d’un mandat électif public, de solliciter ou d’agréer, sans droit directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques : 1 soit pour accomplir ou s’abstenir d’accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, a mission ou son mandat ; 2 soit pour abuser de son influence réelle ou supposée en vue de faire obtenir d’une autorité ou d’une autorité ou d’une administration publique des distinctions, des emplois, de marchés ou toute autre décision favorable.” (French in the original).

¹⁰⁶ *Code pénale*, Dalloz, 1997-1998, page 546.

¹⁰⁷ Idem page 546.

¹⁰⁸ Idem page 546.

instead of being obtained through legitimate means, are obtained through guilty influence.¹⁰⁹

It constitutes infraction of traffic of influence, provided in art. 432-11, paragraph 2, French penal code, the deed of a commune agent to inform on some construction demands, by means of his function and relations, being able to obtain the permits which will be requested, to determine the persons to trust he will elaborate the plans and the bill of quantities in order to constitute de file and to claim various amounts of money as remuneration for his effort¹¹⁰. The existence of the traffic of influence infraction is given by the fact that the beneficiary of the gifts or of the benefits must be considered or be present as an intermediary of the real or assumed influence, of such nature so as to obtain a favour of any sort or a favorable decision of a public authority or of an administration; a contrario, passive corruption, as infraction, is retained for the public servant receiving the goods or the benefits in order to personally execute the act by means of his function – legal or illegal act.¹¹¹

4. Chapter III concerns attempts against public administration committed by private persons. The chapter consists of eleven sections, entitled as follows: Active corruption and traffic of influence committed by private persons (section I), intimidation acts committed against persons exercising a public function (section II), abstraction and missappropriation of goods from a public warehouse (section III), assault (section IV), rebellion (section V), opposition to the execution of public works (section VI), usurpation of functions (section VII) referring to the involvement in a public function and to acts of nature to cause confusion about a public function, usurpation of signs reserved to public authorities (section VIII), usurpation of titles (section IX), illegitimate use of the quality (section X), attempts to the persons' civil status (section XI) concerning the non compliance with the civil acquired name, bigamy, celebration of religious matrimony before the civil one and attempts to funeral freedom.

As resulted from the above, the majority of infractions shown as a correspondent in the Romanian penal code, the penal acts incriminated under Title V – Infractions against authorities. Besides these, infractions included in other chapters are stipulated, such as active corruption (corrupt practices) and traffic of influence or bigamy (art. 303 Romanian penal code) – chapter I (“Infractions against family”), Title IX Penal Code – special part. Moreover, the French lawgiver incriminated acts that have no correspondent in the Romanian penal code as distinctive incriminations, but these could be included in law text provided in the Romanian penal code or in special laws.

For example, the infraction provided in art.238 penal code (offense against authority), currently abrogated through art. I, point 3 of G.U.O. no. 58/2002, represented essentially the infraction provided in art. 433-3, French penal code (incrimination acts committed against persons exercising public functions), assault

¹⁰⁹ Idem page 549.

¹¹⁰ *Nouveau Code pénale*.

¹¹¹ Idem page 549.

(art. 239 Romanian penal code) is the same in both law texts (art. 433-5 French penal code). Function usurpation acts (art. 433-12 and 433-13 French penal code) are usurpation of official qualities acts (art.240 Romanian penal code). Moreover, the French lawgiver makes a regulation distinction by providing two function usurpation infractions, one referring to the deed of the person who, acting without a title, interferes in the exercise of a function, by fulfilling an act reserved to the titular of function, and the second to the deed of the person to exert an activity in conditions of such nature so as to create in the public conscience a confusion connected to a public function exercise or to an activity reserved to public or ministerial officers or to make use of documents and acts presenting a resemblance of such nature so as to create confusion in the public conscience. Also, usurpation of signs reserved to public authority (art. 433-14, art. 433-15, art. 433-16 French penal code) has as correspondent, grosso modo, the infraction provided in art.241, Romanian penal code (illegally bearing of decorations or distinctive signs). Moreover, in the new French penal code, the title usurpation infractions (art. 433-17, French penal code) and the illegal use of quality (art. 433-18, French penal code) are provided. The infraction of illegal use of quality consists of the deed of a founder to make appear or to let appear during a publicity activity organized for the interest of his company the name and quality of a former or current member of the Government, Parliament, European Parliament, Constitutional Council, State Council, Economical and Social Council, Superior Magistracy Council, Court of Cassation, Court of Accounts, French Institute, Directory council of the French National Bank, the name and function of a former or current magistrate, of a former or current civil servant, of a former or current public or ministerial officer etc.

Moreover, the French penal code provides in this chapter infractions that have correspondent in the Romanian penal code. It is the case of rebellion, provided and punished by art. 433-6, 433-7, 433-8, French penal code, consisting of – by comparison with the assault – the deed to oppose violent resistance to a person exercising public authority or commissioned with a public service mission, in the exercise of his functions, implying the execution of laws, public authority's orders, decision or justice mandates. Up to a certain point and with some limitations, the act resembles to the infraction of non compliance to court decisions (art. 271 Romanian penal code). The infraction of opposition to public works execution is also provided (art. 433-11, French penal code). "Public works" is understood as authorized works, not only those executed for the French state, but also, in equal measure, those performed for a department, given that the execution was provided by the prefectorial authority¹¹². The French lawgiver also incriminates attempts to the civil status of a person through art.433-19, art.433-20, art.433-21, art. 433-21-1, French penal code, consisting either of the deed of the person who, through a public or authentic act or through a administrative document aimed for the public authority uses a name other than the one had or acquired or by

¹¹² *Code pénale*, Dalloz, 1997-1998,2006, page 571.

changing it alters or modifies the name detained through his civil status (art. 433-19 French penal code), or through the religious ceremony of marriage, anterior to the civil one (art. 433-210), or in the deed of a person giving the funeral a character contrary to the will of the defunct or to a judiciary decision, by knowing the will or the judiciary decision (art. 433-21-1 French penal code).

In the French lawgiver's conception, the corruption infractions, such as abuse, are not penal acts that affect job relations, but the authorities of the state, the job relation not being important, but the quality of the person involved, in one way or the other, in committing the infraction and also the fact that, through committing certain deeds, the state authorities are damaged directly or indirectly.

5. This is also the situation of the active corruption and traffic of influence infractions committed by private persons, infractions provided in section I of chapter III.

According to art.433-1 French penal code, it constitutes infraction the deed of a person to unrightfully propose, directly or indirectly, offers, promises, gifts, benefits or advantages of any nature in order to obtain from a person exercising public authority, commissioned with a public service mission or invested with a public elective mandate:

1. to commit or not to commit an act by means of his function, mission or mandate or an act facilitated by his function, mission or madate;
2. to abuse his real or assumed influence in order to obtain distinctions, jobs, advantages or any favorable decision from a public authority or from a public administration.

According to paragraph 2 of art.433-1 French penal code, it constitutes infraction the deed of a person who gives in to a person exercising public authority, commissioned with a public service mission or invested with a public elective mandate, that unrightfully requests, directly or indirectly, offers, promises, gifts, benefits or other advantages of any nature in order to fulfill or not to fulfill an act provided in point 1 or to abuse his influence under the conditions shown at point 2.

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The Romanian penal code does not make the distinction between corruption offers in terms of direction – whether the offering, promise, giving of money or other benefits to a civil servant or the traffic of influence is the result of the briber's or the influence trafficker's will or of the servant's will – as proceeded by the French lawgiver. Moreover, in the case of the traffic of influence, if the civil servant acts through an intermediary and claims influence, money or other benefits from a person in order to fulfill or not to fulfill an act entering in his job

¹¹³ Art.433-1 French penal code :''Est puni[...] le fait proposr, sans droit, directement ou indirctement, des offres, des promesse, des dons, des présentts ou desavantages quelques pour obtenir d'une personne dépositaire de l'autorité publique, chargée d'une mission de service public ou investie d'un madat electif public : 1.Soit qu'elle accomplisse ou s'abstienne d'accomplir un act de sa fonction, de sa mission ou de son ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre decision favorable.

attributions, he will not be charged for the infraction provided at art. 257 penal code, but for corrupt practices (art. 254 penal code), and the intermediary will answer, as the case may be, for complicity or instigation to the corrupt practices infraction.

Corruption results of offers, promises, goods or other benefits, made with the intention to corrupt, no matter whether these are object to verbal or written proposals¹¹⁴. The infraction is consumed when the one doing it has made use of means provided by law in order to reach the goal indicated by it; for example, offering an amount of money does not constitute an unpunishable attempt, but an active corruption infraction¹¹⁵.

In what the active corruption is concerned, it is not important whether the corruption offer has succeeded or not, in the sense that the civil servant has been corrupted or not, these circumstances being used for characterizing the infraction of active corruption.¹¹⁶

The active corruption infraction has been charged on the defendant who offered a certain amount of money to some police inspectors so they wouldn't elaborate a penal file or they would release him after arrest.¹¹⁷ The person who, caught by a peace officer when committing the infraction of assault against good mores¹¹⁸, gives in to the officer's wish to have sexual relations with him, so he wouldn't elaborate a minute¹¹⁹, commits the active corruption infraction on a civil servant.

It constitutes infraction in a more attenuated form and less severely punished the deed of any person who claims or accepts, directly or indirectly, offers, promises, gifts, benefits or any other advantages of nature to abuse his real or assumed influence, in order to obtain distinctions, jobs, advantages or any other favorable decision from a public authority or a public administration, as well as the deed of any person to give in to the requests provided in the previous paragraph or to unrightfully claim, directly or indirectly, offers, promises, gifts, benefits or other advantages of any nature so as a person would abuse his real or assumed influence in order to obtain distinctions, advantages or other favorable decisions from public authorities¹²⁰ (art. 433-2 French penal code).

¹¹⁴ *Code pénale*, Dalloz, 1997-1998, page 559.

¹¹⁵ *Idem* page 560.

¹¹⁶ *Idem* page 560.

¹¹⁷ *Code pénale*, Dalloz, 1997-1998, page 560.

¹¹⁸ L'outrage public à la pudeur (French in the original).

¹¹⁹ *Code pénale*, Dalloz, 1997-1998, page 560.

¹²⁰ Art.433-2 French penal code: "Est puni[...] le fait, par quiconque, de solliciter ou d'agréer directement ou indirectement, des offres, des promesses, des dons, des présentes ou des avantages quelconque pour abuser de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre décision favorable. Est puni des mêmes peines le fait de céder aux sollicitations prévues à l'alinéa précédent, ou de proposer, sans droit, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques pur qu'une personne abuse de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique, des distinctions, des emplois, des marchés ou toute autre décision favorable." (French in the original).

Through the incrimination at art.433-2 French penal code, the infraction of traffic of influence provided in art.433-1 of paragraph 1 point 1 and paragraph 2 French penal code is actually performed, in the ways indicated by law, with the single mentioning that the requests do not address to civil servants and the giving in does not happen at a servant's request, but to any person. In this way, the French lawgiver defends social relations born in connection to public authority that can be indirectly breached in this manner, not having in mind a person exercising state authority, commissioned with a public service mission or invested with a public elective mandate.