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**Workplace Offences in the Light of the
New Criminal Code**

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Abstract: From the perspective of current regulations, workplace offences and also the concept of public service require shaping of a shared vision, creating effective structures, but also a rational adoption of a European vision. Also, the personality of a nation is appreciated by the degree of appreciation of its values.

Keywords: indictment; integration; European vision; legal continuity

1 Introduction

Entering into force of the New Criminal Code² has led to the revision of some concepts, among which were also workplace offences, the content of which has been modified and completed by regulations provided by special laws. These modifications take over previous approaches; give them weight, suggesting integration in a context of moral and legal standards, adopting a responsible attitude that could build a general environment of rule of law and safety.

There should be imposed some uniform regulations in the field, some criteria that should be implemented by the European Union but without dropping completely legal stand points relevant for the national mentality.

Workplace offences are found in Chapter II, Title V of the New Criminal Code. New offences were introduced aiming to bring solutions to issues of legal practice that is influenced by practice in the states with coherent legislation, shaping a new legal vision in this sense.

2. Workplace Offences in the New Criminal Code

Embezzlement provided by art. 295, refers to “acquiring, using or trafficking by a public servant in his interest or for another person, managed or administered money, securities or other assets”. The offence is punished with imprisonment from 2 to 7 months and withdrawal of the right to hold public office, and item (2) provides that attempt is punished.

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²Law no. 286/2009, published in the Official Gazette, part I, no. 510/2009, with further changes and adjustments.

In the Old Criminal Code¹, embezzlement was included among the offences against property, the current regulation was included into workplace offences. The same is found in French and Italian Criminal Code.

Abusive behavior is regulated by art. 296 and provides that “use of offensive language against a person by someone while on duty shall be punished with imprisonment from one to six months or a fine”. Item (2) provides that “threat or hitting or other violence perpetrated under paragraph. (1) shall be punished with the punishment provided by law for that offense, whose special limits shall be increased by one third.”

Abuse of office is according to art. 297 “act of a civil servant who in the exercise of duties, fails to fulfill or improperly fulfills duties and thereby causes damage or an injury to the rights or legitimate interests of a natural or a legal person.” The offense is punished with imprisonment from 2 to 7 years and deprivation of the right to hold public office.

According to item (2), “with the same punishment is sanctioned a civil servant, who in the exercise of his duties, impedes the exercise of a right of any person or creates a situation of inferiority based on race, nationality, ethnic origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, non-contagious disease or HIV / AIDS.”

Crime brings together content and abuse of office against personal interests, abuse of office against public interests and abuse of office by limiting the rights stipulated in the old regulation.

French Criminal legislation refers to abuses committed by persons holding office and in the Spanish Criminal Code are found “offences against state institutions and separation of powers”.

Negligence in office, provided in art. 298 refers to “culpable violation by a public servant of duties, by failure to fulfill it or by flawed fulfillment, if this causes damage or an injury to the rights or legitimate interests of a natural or a legal person”. The offence is punished by imprisonment from 3 months to 3 years or a fine.

Misuse of function for sexual purposes, provided by art. 299, refers in item (1) to “an act of civil servant in order to perform or not perform, expedite or delay the performance of an act concerning the duties of his office or in order to do an act contrary to these duties, claims or obtains sexual favors from a person directly or indirectly interested in the effects of that workplace act”. The offence is punished by imprisonment from 6 months to 3 years and the withdrawal of the right to hold public office or to practice his profession or work in the exercise of which the offence was committed. According to item (2) “requesting or obtaining sexual favors by a public servant who uses or takes advantage of a position of authority or superiority over the victim, arising from office, shall be punished with imprisonment from 3 months to 2 years or a fine and withdrawal of the right to hold public office or to practice his profession or work in the exercise of which the offence was committed”.

The indictment is justified by the fact that the act is likely to affect the performance by a civil of his office duties.

Misuse of office for sexual purposes is a new indictment inspired by the Spanish Criminal Code.

Usurpation of office is regulated by art. 300 and refers to “act of civil servant during his working hours performs an act that is not within his competence if by performing it occurred any of the

¹Law no. 301/2004, published in the Official Gazette, part I, no. 575/2004, with further changes and adjustments.

consequences provided for in art. 297". The offence is punished by imprisonment from one to five years or a fine.

Similar indictments are found in French and Portuguese legislation. Usurpation of office differs from usurpation of official position, the latter prejudicing the authority of the state. Usurpation of office affects office relationships.

Conflict of interest is according to art. 301 "act of civil servant in the exercise of his duties, has performed an act or participated in making a decision, through which directly or indirectly was obtained a property for himself, a spouse, a relative or up the 2nd degree relative, including another person with whom he had been in a business or work relationships in the last 5 years or from who he has received benefits or benefits of any kind". The offence is punished by imprisonment from one to five years and withdrawal of the right to hold public office. Item (2) mentions that provisions of item (1) do not apply when issuing, approving or endorsing statutes.

The regulation is found in the French Criminal Code (art. 432-12) – "an act of a person holding public authority or in charge with a public service mission or of a person holding an elective public role taking, receiving or keeping, directly or indirectly, any share in a company, or in a business or business operation, in which has, at the time of the act, in whole or in part, he plays the role of monitoring, managing, putting into liquidation or paying".

Violation of the secrecy of correspondence is according to art. 302 "opening, theft, destruction or retention, without right of correspondence addressed to another person, and disclosing without having the right the contents thereof, even when it was sent open or it was opened by mistake". The offence is punished by imprisonment from months to one year or a fine. Item (2) refers to "recording without having the right of a conversation or a communication made by telephone or any other electronic means of communication shall be punished with imprisonment from 6 months to 3 years or a fine." Item (3) states that, "if acts provided for by item (1) and item (2) have been committed by a public servant who has the legal duty to keep the professional secret and confidentiality of information to which he has access, the punishment is imprisonment from one to five years and withdrawal of certain rights." Item (4) states that "disclosure, dissemination, presentation or disclosure to another person or to the public, without having the right, the content of intercepted conversations or communications, even if the perpetrator had been informed that this act by mistake or accidentally, shall be punished with imprisonment from 3 months to 2 years or a fine". Item (5) states that, "the act shall not be considered an offence: a) if the perpetrator witnesses the commitment of an offense or contributes to proving its commitment; b) if he witnesses acts of public interest that are important for the community and the disclosure of which could have public benefits higher than the damage caused to the injured person." Item (6) states that "owning or manufacturing, without having the right, the specific means of interception or recording of communications shall be punished with imprisonment from 3 months to 2 years or a fine."

Disclosure of secret state information is found in art. 303. It provides that "disclosure, without having the right, of state secret information, by the one who knows them due to office duties, if by this are affected the interests of a legal entity stipulated in art. 176, shall be punished with imprisonment from 2 to 7 years and withdrawal of certain rights". Item (2) refers to "holding, without having the right, outside the official duties of a document containing secret state information that can affect the activity of one of the legal entities stipulated in art. 176". The offence is punished by imprisonment from 3 months to two years and a fine. According to item (3) "a person holding a document containing

state secret information, which may affect the activity of one of the legal entities stipulated in art. 176, shall not be punished if the person immediately hands it over to the issuing body or institution.”

The act has some common elements with the disclosure of secrets that endanger national security, such as the material object. The justification for indictment, in the category of office offences is shown by commitment of offence that affects the activity or interests of public legal entities.

Disclosure of secret office or non-public information is included in art. 304. Item (1) stipulates that “disclosure of office secret information or that are not aimed to be published without having the right by the one who gets hold of them due to office duties, if by this are affected the interests or activity of a person, it shall be punished with imprisonment from 3 months to 3 years or a fine.”. Par (2) stipulates that “disclosure of office secret information or that are not aimed to be published by the one who gets hold of them, shall be punished by imprisonment from one month to one year or a fine” and according to item (3) if “as a consequence of act provided by items (1) and (2), an offence has been committed against undercover investigator, the protected witness or a person included in the witness protection program, the punishment shall be the imprisonment from 2 to 7 years, and if a crime was committed with intent of offence against the life, the punishment shall be the imprisonment from 5 to 12 years.”

The act reunites the content and regulations of the Old Criminal Code regarding the disclosure of economic secret. It is a new indictment in terms of its autonomous regulating nature.

Negligence in keeping information is regulated by art. 305. Item (1) stipulates that “negligence which results in destruction, alteration, loss or theft of a document containing state secret information, as well as negligence of another person, finding out such information shall be punished with imprisonment from 3 months to one year or a fine.” And according to item (2) “the same punishment shall be applied for acts provided in art. 303 item (1) and art. 304, if these were intentionally committed”.

Illegally obtained funds are according to art. 306 “use or production of documents or false, inaccurate or incomplete information in order to receive approvals or guarantees required for granting obtained funds or guaranteed by public funds, if it results in falsely obtaining these funds. The offence is punished with imprisonment from 2 to 7 years. The attempt is punished according to par (2) of the same article.

Embezzlement of funds regulates the content of art. 307 states in item (1) that “changing the destination of funds or material resources allocated to public authorities or public institutions without complying with legal provisions, shall be punished with imprisonment from one to 5 years”. According to item (2) “the same punishment shall be applied to changing without complying with legal provisions the destination of funds from funding obtained or guaranteed by public funds.” The attempt shall be punished according to item (3) of the same article.

Corruption and office offences committed by other people are stipulated by art 308 par (1) stating that “provisions of art. 289-292, 295, 297-301 and 304 regarding public servants shall be applied accordingly to acts committed by or in relation with persons that exercise, permanently or temporarily with or without remuneration, a duty of any nature to the benefit of any individual provided by art. 175 item (2) or in case of any legal entity.” In this case, the limits of punishments shall be reduced by a third according to item.(2) of the same article.

If acts provided by art. 295, art. 297, art. 298, art. 300, art. 303, art. 304, art. 306 or art. 307 have produced serious consequences, the punishment limits shall be increased by half according to art. 309.

3. Conclusions

The unification of provisions related to workplace abuse against persons, public interests by restricting certain rights results in a simplified application of statutory provisions.

In the context of legal concept universalization, the New Criminal Code restates the national identity by keeping old indictments but it also continues our integration into the structures of the European world by assimilating new elements that are analyzed.

Current history takes the responsibility to validate a harmony between national and universal legislation. Therefore, cultures will cooperate in the European Union, keeping national identity without becoming uniform, modernization and reconfiguration process operating in a traditional system, which remains a fundamental source of law.

Tradition is not equal to the past, there are legal guidelines that offer valuable continuity, remain alive in their exemplarity. In a unifying perspective of the European Union, these traditional values have reverberations in all areas of social life.

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5. References

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