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G.E.O. 13: The Abuse in the Line of Duty - between Legality and Formality

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Abstract: After parliamentary elections which have marked the end of the year 2016, the Romanian nation hoped to step into a new era, lacking political wars and ambitions of the politicians for more than a decade in a titanic battle for power, forgetting their actual primordial purpose : the welfare of the Romanian people which has provided them confidence. This fight was observed and even blamed by partners of Romania in the European Union, which, by its institutions, has taken the act and sentenced the negative effects of this political battles, factually preventing the Romanian nation to evolve on a statue by which should be regarded as an equal with the other Member States of the European Union. The Year 2017 started in a totally unexpected, with a protest at the national level, arising out of the project as regards pardon certain punishments, followed closely by the adoption of the G.E.O. 13 The new Government invested, who was watching the agreement has some regulations of the Criminal Code and the Code of Penal Procedure, with the decisions of the Constitutional Court of Romania and by the Venice Commission. Controversies created, communication faulty, misinformation and manipulation of the media which have practically split the society - made from the offense of “**abuse in the line of duty**” (the principal aim of the G.E.O. 13) a topic that deserves careful analyzed from the perspective of constitutional law, criminal law, but also of the Administrative Law, which - from my point of view, could have a decisive role in achieving this real problems. We will try in this scientific approach to expose the personal opinions on this topic, our research being supported by an analysis which correspond to the legal status of the specific regulations on the grounds and the own work designed to shape possible solutions for the subject covered.

Keywords: pardon; amnesty; abuse in the line of duty; emergency decree

1. Introduction

The incrimination of the deed of abuse in the line of duty is undoubtedly at the present time a necessity of the Romanian society. The will of the legislature criminal law was to prevent and combat the abusive acts of officials and of the civil servants. This feat was considered to be a serious and with a social threat high, as committing them by persons occupying public offices (by their nature should apply and to defend the law, to be examples of integrity and fairness) represents a true threat not only to the address of the society and the rule of law.

Should be observed outlining the concept of a *public servant* of the legislator in **article 175¹ from the Criminal Code**. We will notice that this notion doesn't refer strictly to the employees of the public

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institutions who carries on his activity based only on the grounds of the law in order to achieve the directives the three powers (the legislative, the executive, the judicial), but treated in the same way as the public servant absolutely all persons who satisfy the services of public interest and which are invested by public authorities and under the direct control of them. The persons who shall exercise their powers in the framework of legal persons carrying out activities in the public interest or contracts with a natural person treated as a public servant is differentiated from the lawmaker and is called simple - **official**. \This differentiation has no effect on the penalty applied to an *officials* or to *public servants* in the case that they were committed the same offenses, the limits of punishment falling by a third in the case of officials, as is clearly referred to in the said **article 308² from the Criminal Code** governing the corruption crimes and service committed by other persons.

Settlement of such an infringement has proved to be a two-edged sword, leaving room to multiple interpretations and abuses, reaching to use it as a weapon in the political fight.

As a result of the different interpretations and erratic practice of the courts, it has been found that that the rules of the offense of abuse of office to the service requires substantial changes in respect of both the legal content and to penalise it.

The need to alter this rule was brought to the Council and the European Parliament, by the **report of the Venice Commission³**. The Constitutional Court of Romania has allowed by **Decision 405/15.06.2016⁴** that the nuances of the contents of the formation of the offense of abuse in the line of duty are liable for the interpretation to be in agreement with the Constitution of Romania.

The two documents mentioned above, supported by the multiple of complaints from consumers and adverse reactions of the company, has led the new government empowered to adopt the G.E.O. 13/2017. This Emergency Decree has created major controversy in society both as regards the way in which it was adopted, as well as the amendments made to the content of the offense of abuse of office.

In the following we will analyze in detail, from the perspective of the said dual that generated the dissatisfaction and the movements of the street.

¹ Article 175 Civil Servant (1) public servant, for the purposes of criminal law, is the person who, by way of a permanent or temporary basis, with or without remuneration: (a) shall exercise the powers and responsibilities, laid down under the law with a view to the completion of the prerogatives of the legislative, executive or judicial proceedings; (b) to exercise a function of public dignity or a public office of any kind; (c) to exercise, alone or together with other persons within the framework of the regies autonomes, of another economic operator or of a legal person, tasks associated with the implementation of the object of activity of the latter. (2) It is also considered public servant, for the purposes of criminal law, the person exercising a public service for which it has been invested by the public authorities or which is subject to control times their surveillance on the performance of public service. (The Criminal Code, 2016, p. 73)

² Article 308 Corruption offenses and service committed by other persons. (1) The provisions of Articles 289-292, 295, 297-301 AND 304 relating to civil servants shall apply accordingly and deeds committed by or in connection with the persons exercising, permanently or temporarily, or without a remuneration, a definite duration of any kind in the service of a natural one of the cases referred to in Article 175(2) twice within any legal person. (2) In this case, special limits of the penalty shall be reduced by a third. (The Criminal Code, 2016, p. 115)

³ The report on the relation between the ministerial responsibility politics and the Penal Code, adopted on 9 March 2013 - Decision 405/15.06.2016, p. 33, point 71 - https://www.juridice.ro/wp-content/uploads/2016/06/decizia_405.pdf.

⁴ Published in the Official Monitor 517 of 08 July 2016 (M. Of. 517/2016) - <http://www.monitoruljuridic.ro/act/decizie-nr-405-din-15-iunie-2016-referitoare-la-excep-ia-de-neconstitu-ionalitate-a-dispozi-iilor-art-246-din-codul-penal-din-1969-ale-art-297-alin-1-din-179919.html>.

2. Considerations in Terms of the Mode for the Adoption of the G.E.O. 13/2017

Before the adoption of the G.E.O. 13, social revolt had a precursor which consisted in the *draft decree* formulated by the Ministry of Justice, a project that but has not been transposed into law, but which has created controversy because of the lack of communication and the misinformation of the media. Because so many people have adopted the idea that on the basis of that draft, the Government “*will release the thieves and murderers from jails*”, we will try to do it in the following to clarify what the project consists in decree.

The pardoning represents an institution of criminal law, applied in the form of an act of clemency by which it has removing in whole or in part of the *penalties execution* times *switching* them in the punishment easier, producing effects on complementary penalties and accessories, sentence with the suspension of the punishment or sentence with suspended punishments under surveillance, judicial record of those condemned having regard to as recorded the sanction of criminal prosecution. The effects of this institution of criminal law are governed by **article 160¹ from the Criminal Code**.

According to the draft decree developed by the Romanian Government, we can notice that it consists of a *collective pardoning conditional*, where even the legal literature is of the opinion that this form of pardon is a form of conditioned but to remove the execution of the balance of the remaining punishment not executed (Tanasescu & Anghel, 2016, p. 208). The project contained also clear provisions regarding the nature of the punishments that will be the president, taking into account the duration of the conviction (maximum 5 years) and the convicted person (age, lack of criminal record, pregnant women, etc.), they did not constitute criteria for differentiation because they are common to all the detailed rules for the decree. Therefore it is not possible to say that this project was intended for certain persons involved in politics, as it was claimed.

The pardoning may be granted *individually* by the Romanian President or granted *collectively*, an indefinite number of persons, to the Parliament of Romania, for certain infringements or the punishment of a certain amount.

The motivation of the pardoning project was to decongestion a part of the penitentiary system, serving as a first step in the reform of this system, overcrowding of the system has brought to Romania countless rulings of the European Court of Human Rights and its partners in Europe.

In our opinion, the idea and referred to it by the people who were outraged, in principle was mistaken, since in the content of the draft decree state clearly that the condemned for crimes committed with violence against the person, against the assets, corruption offenses, service, etc., will not fall under the decree.

While the protests seemed to decrease in intensity on the draft decree, the government has adopted the G.E.O. 13/2017, which led to one of the most ample and more to the duration of the movements of the street to the Revolution in 1989. Since the adoption of O.U.G. 13 has posed problems as regards the constitutionality of the manner in which this was done. Following a meeting of the government which has started around noon, G.E.O. was discussed in the evening, being the last point on the agenda of the

¹ Article 160 the effects of the decree. (1) Decree has the effect of removing, in whole or in part, of the penalty execution times its switching to another easier. (2) Decree will have no effect on the additional penalties and measures neprivative educational of freedom, except in the case when they provide otherwise by the act by means of decree. (3) Decree has no effect on safety and on the rights of the person aggrieved. (4) Decree will have no effect on the punishments the performance of which is suspended under surveillance, except in the case in which it provides otherwise by the act by means of decree. (The Criminal Code, 2016, p. 68).

day of that meeting, which has caused the people who protest to make use of the already famous phrase “*night, like thieves*”. The time of the adoption of the was really intrusive, because it has created in the design of the public, most without legal studies, a suspicion in respect of the purpose of the ordinances.

From the point of view of how the adoption was taken, on the basis of **Article 115, alin. (4)**¹ of the Romanian Constitution, there is no fault regarding the constitutionality. The Constitution of Romania allows the Government that in extraordinary situations that will not wait, to adopt emergency ordinances, being forced but to motivate their measure an emergency or extraordinary situation, which led to the need for the adoption of an amendment in this way.

The subject of the legislative delegation was long debated in the doctrine of the legal person. Has been explained this practice as a relief to the activity of the legislative power by means of the executive power which strengthens the role of the state and of its intervention in the complexity and the effectiveness of the economic and social rights. Hardliners found that this legislative delegation can lead to the violation of the principle of division of powers in the state and the preponderant role of the bill regulating to return the Parliament, which is the representative body of the nation (Pușcă, 2010, p. 360).

The problem acquisitions of emergency ordinances in the sphere of organic laws has been analyzed, supporting along the time countless controversy. The Constitutional Court has accepted this practice of the various governments, but the *exceptional cases* for the adoption of emergency ordinances in the sphere of organic laws (in this case Criminal Code and the Code of Penal Procedure) must result from a situation in which any delay of the relevant times of the amendment of an organic law would bring severe prejudice sovereignty or territorial integrity of the Romanian state (Muraru & Tanasescu, 2010, pp. 1094, 15).

The arguments brought against this practice of the amendments of organic laws through the procedure emergency ordinances consist in the fact that the “*both the enabling law laws and the rejection of orders are ordinary laws, not expressly referred to in neither the constitutional rule which lists the fields of organic laws and no qualified as is*” (Muraru, Ioan, & Tanasescu, 2010, pp. 1094-1095, paragraph 16).

The motivation of the emergency of the G.E.O. 13 had as foundation - heterogeneous practice the courts in respect of the offense of abuse of office, 405/2016 Decision of the Constitutional Court, but directions and mentioned in the report of the Venice Commission.

The Constitutional character of the adoption of the G.E.O. no 13 has been established by **Decision 63/2017**², in which the Constitutional Court has consisted of the fact that there was no conflict of Constitutional nature between the Powers in the state, i.e. between the Government (executive power) and the Parliament (Legislative power) or between the Government and the Superior Council of the Magistracy (judicial authority). This Decision was adopted in the following notifications made by the President of Romania and the President of the Superior Council of the Magistracy, which have argued that for the adoption of the G.E.O. 13 was necessary an opinion of the Superior Council of Magistrates and the fact that the government has undermined the power of the Constitution - The Parliament not to

¹Article 115 Legislative delegation (...) (4) The Government can adopt emergency ordinances only in extraordinary situations that cannot be delayed, having the obligation to explain their measure. (...) (The Constitution of Romania, 2015, p. 35).

² Published in the Official Monitor No. 145 of 2 February 2017 (M. Of. 145/2017) - <http://www.monitoruljuridic.ro/act/decizie-nr-63-din-8-februarie-2017-referitoare-la-cererile-de-solu-ionare-a-conflictelor-juridice-de-natur-constitu-ional-dintre-autoritata-executiv-guvernul-rom-niei-pe-de-o-186910.html>.

agree with the reasons for the urgency and considering that has been violated the principle of separation and balance of powers in a state.

In our opinion, the inclusion of Decision 405/2016 in the motivation of the urgency of the adoption of the G.E.O. 13 is not justified, because - by this Decision, does not have the unconstitutionality of article 297 from the Criminal Code¹ governing the offense of abuse in the line of duty, but is a decision interpretive statement, which provides a certain direction to be followed in the future as regards the interpretation of the words “*fulfilled in a faulty*” as “*satisfied by breaking the law*”.

The acceptance of the exception of unconstitutionality shall mean the acceptance of the application raised by the defendants concerned in which the date of the decision and a declaration of the article 297 as unconstitutional law, for it to cease the legal effects after 45 days of the date of the decision, constituting urgent on its modification.

Therefore, the mode for the adoption of the G.E.O. no 13 has been accepted and is considered as being in line with the provisions of the Constitution, fact enshrined as we mention in the Decision 63/2017 the Constitutional Court.

3. Considerations Regarding the Content of the Legal Framework of the G.E.O. 13/2017

Modifying the content of certain articles of the Criminal Code and the Code of penal procedure have created major disagreements not only in the society, but also among the jurists. The main changes that have led to the controversies were as follows:

3.1. Determination of the Value of the Threshold of the Injury that Attracts the Criminal Liability in the Case Of the Offense of Abuse of Office

In order to reach this point, you will need to start by to highlight his opinion more challenging us O.G.13, which stated that by imposing this threshold value of the injury in order to be able to be committed penal liability, to produce a disguised amnesty or part of the offense of abuse of office.

Amnesty means an act of the legislature which removes the penal liability for offenses that were committed up to the date of its entry into force in conclusion, has a retroactive character. In the case of the G.E.O. 13, we could say that we are in a situation of an amendments which partially decriminalize the offense of abuse of office and not an amnesty. The effects of the amnesty are covered explicitly provided for in **Article 152 from the Criminal Code**². Act of clemency in the form of amnesty shall be issued by the Parliament by the adoption of an organic law, produces binding effects and take advantage of all the participants in the pardoned offense (Udroiu, 2016, p. 148).

¹ Article 297 abuse in the service. (1) The deed of the public servant who, in the exercise of the service does not meet an act or it and by this causes a loss or injury to the rights or the legitimate interests of a natural or a legal person shall be punished with imprisonment from 2 to 7 years and the prohibition of the exercise of the right to occupy a public office. (2) With the same penalty shall be penalized and deed of the public servant who, in the exercise of service, restrains the exercise of a right of a person or creates for such a situation of inferiority on grounds of race, nationality, ethnic origin, language, religion, gender, sexual orientation, political affiliation, wealth, age, disability, chronic noninfectious disease or infection HIV/AIDS. - the Criminal Code, Ed. Ch. Beck, Bucharest 2016, page 112.

² Article 152 Effects of amnesty. (1) Amnesty removes the penal liability for the infraction committed. If occurs after the condemnation, removes and the execution of sentence pronounced and the other consequences of conviction. The fine previously levied amnesty is not refundable. (2) Amnesty will have no effect on the safety and on the rights of the person aggrieved. - the Criminal Code, Ed. Ch. Beck, Bucharest 2016, page 64.

The threshold value of 200,000 lei was considered to be rightfully, much too high for the reality of the economic situation of the Romanian society. Practically, the defendants sent to Court or persons investigated, in the case of which has been calculated injury less than or equal to 200,000 lei will no longer be held responsible, by ceasing the penal action willing against them or they will no longer be judged in criminal lawsuits, they according to respond to administrative under the Law 188/1999 upon the conditions governing the Civil Servant Statute, under Article 75-86 in that is now taking shape disciplinary sanctions and liability civil servants.

The assimilation of abuse of office with corruption crimes under Article 132¹ of the investigations are carried out, has created also controversy because in this case, the investigation of such offenses will come within the competence of the national anti-corruption and not the General Prosecutor's Office, the authors considered incorrect position of the legislature to consider the corruption crimes similar to those of abuse in the line of duty or as having a connection with them. The solution of governing such crimes would be that that the legislator to opt for one of the two frames and to give up the double qualification of it (Aurelian, 2011, p. 218).

The analysis of the offense of abuse in the line of duty is of relevance to the shade effects that will occur after the changes made of G.E.O. no. 13. Main levels of analysis of different jurists were focused on the interpretation of the material element of the offense, i.e. the fulfilment of the faulty way of an act or failure. If in the case that the faulty mode means an operation has been carried out in the execution of his duties otherwise than he had done, failure to unite act may consist in the ad of an act beginning what was completed, Unjustified refusal to follow orders superior or to give effect to such requests received whenever the passivity in front of the duties of the service' (Dobrinioiu, Gorunescu, Dobrinioiu, Pascu, Chis, Paun, Neagu & Sinescu, 2012, p. 585)

In respect of *pre-existing conditions* of the offense, i.e. the *subject of the offense* and its subjects, note the following:

→ **Subject to the legal** person consists in the social value defended remained unchanged following the changes proposed by the G.E.O. 13, representing the execution of the service duties with integrity and fairness and in good faith by the civil servants and the defense of the rights and interests of any person against the abusive facts of officials.

→ **Material Subject** in principle do not exist, but if we consider that serious injury, arguing and effective rights or the legitimate interests of a natural or legal person as regulated in G.E.O. 13, consists in a good or a document, that good or document may be the subject of the offense.

→ **Subject** remains active and within the framework of the G.E.O. 13, the person - which at the date of the commitment of the deed, has the capacity of public servant.

→ **Passive Subject** remains the same and in the framework of regulated in G.E.O. 13, a topic liabilities which will take the form of a *subject which is the main passive* (member as holder the social value apparatus of the standard prosecution or a legal person private, if the subject is active is one of its employees) and a *passive subject secondary* (natural or legal person who has been injured party in his rights by the deed abuse of public servant).

¹ Article 132 the offense of abuse of office to the detriment of public interests, the offense of abuse of office to the detriment of the interests of the persons and the offense of abuse in the line of duty by the restriction of rights, if the public servant has obtained for oneself or for another an advantage or matrimonial nepatrimonial, is punishable by prison from 3 to 15 years. - http://www.dreptonline.ro/legislatie/lege_prevenire_fapte_coruptie.php.

Amendments to the sale of the dissatisfactions of the G.E.O. 13 appear in the first phase in the framework of the *contents of the formation* of the offense of abuse of office, as regards *objective side*, while the *subjective side* has been clarified - the form of guilt and that of the *intent of the direct or indirect* consecrated in legal text by the expression “deliberately”, leaving no interpretation.

From the perspective of *objectivity*, we consider the following elements:

→ **Material Element** - is converted in action to the performance of an act in a faulty (non-fulfilment of act) in the performance of an act in breach of the express provisions of the law, a decree or an emergency ordinance or failure of the acts provided for by the provisions of the express in a law, a decree or an emergency ordinance of the government.

Listing of regulatory acts, what must be breached in order to engage the criminal liability of a public servant whichever is the offense of abuse of office, is in accordance with the Decision 405/2016 of the Constitutional Court - which required the interpretation of the words “*fulfilled in a faulty*”, clarifying it. This list is the tie breaker in relation to the acts of administration, the transgression of which is punishable under the Law 188/1999 upon the governing the Civil Servant Statute.

→ **Immediate Consequence** consists in serious injury, arguing and rights to become effective/the legitimate interests of a person and of creating an injury more than 200,000 lei, in execution of the element material.

A fault in the new regulations is the imposition of the threshold value 200,000 lei, the creation of a material damage to this value representing a cancellation condition for as a result of immediate to exist on the criminal law. The establishment of such a rate may lead to major social conflicts, because a value of injury which defines the deed as serious, it can be regarded differently from various natural or legal persons (for a person injury may be irrelevant - for another person can represent a major damage) due to the economic inequality of society.

The determination and enforcement of this threshold value of the injury have represented the effect of interpreting an observations in the report of the Venice Commission, which was taken over and into the substance of the Constitutional Court of Decision 405/2016. The observation consists in evoked the principle of “*last ratio*” in the application of the penal law, a principle that consists in using the employment of criminal liability as a last resort to prevent and combat a certain deed, and abuse in the line of duty should be “*interpreted in a narrow and applied at a high level*”. The expression “*high level*” has been interpreted as a threshold value of the material damage to reveal the seriousness of the offense and for the necessity of the indictment of crime.

In our opinion, is a forced interpretation, because if we will watch on the whole Directive by the Venice Commission, we can notice that the *high level* of interpretation of the abuse in the line of duty consists in the seriousness of his deed and a social danger created, invoked by the Commission by suggesting the introduction of criteria such as intent or gross negligence. *The high level* of the detention of the offenses referred to and the quality of the active subjects, i.e. civil servants. Having regard to Council that changes in the G.E.O. no 13 of the subjective analysis of the offense of abuse in the line of duty have clarified form of guilt, leaving room for interpretations and of the words “*fulfilled in a faulty*”, they do not see any motivation for the introduction of the value of the threshold of the material damage.

The introduction of paragraph 3¹ in the rules of the offense of abuse in the line of duty has created also disagreements. Probably, the will of the government was to prevent the investigation of the issue of the appropriateness of the regulatory acts, what was not necessary because the opportunity to issue normative acts is protected by the constitutional principle separation and balance of powers in the state, which has been found by the Constitutional Court by *Decision 68/27.02.2017*², following a notification made by the President of the Senate. By this decision shall be established a clear direction to be followed for the future, in which it is shown that the secretary of state may not investigation timeliness, compliance with the legislative procedure or legality of the laws, ordinances or the number of emergency ordinances. The principle of ministerial responsibility has reference in this case, the Government responding in front of the parliament and a possible motion of no confidence in the government. As regards the responsibility in this case to the Minister of Justice, it shall be responsible to the integral with the other members of the government and will also meet in front of the Parliament, risking a simple motion as a result of which to be dismissed, and prosecution of it for acts committed in the exercise of function may be requested only by the Parliament or by the President of Romania in accordance with **Article 109, paragraph 2³ from the Romanian Constitution** and not as a result of a complaint of a natural person as it happened in the case of which he debating.

Therefore, alin. (3) added article 297 has not only made to inflame spirits and more than the spirits, creating a conflicting situation not only in the society, but also between the powers formations.

Changes made by G.E.O. 13 of abuse in the service have not had an impact on the *shape of the offense* (are possible both preparatory acts and attempt, but are not punished). *The detailed rules of the offense* but have been affected, the subject active may commit the offense by:

→ fulfilment of an act in breach of certain provisions of the law, order or the emergency decree/failure of an act prescribed by a law and order or the emergency ordinance, injuring someone such rights / the legitimate interests of a person.

→ limitation of use or the exercise of a right of a person or the creation for this to a situation of inferiority on the basis for race/sex/religion/opinion etc.

→ have been differentiated penalties in accordance with the rules of the offense - has been dropped the amount of the initial sentence and has been provided for alternately the punishment of the fine criminal proceedings.

We believe in the sense that the sharp drop in the amount of the penalty involving deprivation of liberty (from 2 to 7 years at 6 months-3 years) and imposition of the value of the threshold of the injury in the case of paragraph 1, and the imposition of a tiny penalties in the case of paragraph 2, do not reach far from the purpose of the criminal sanction - which is to prevent the commitment of the new offenses, the formation of a correct attitude toward the front of the workplace, the legal order and from the rules of interethnic social inclusion.

¹ 3. The provisions of paragraphs 1 and 2 shall not apply in the case of issuing, approval or adoption of laws.

² Published in the Official Monitor 181 of 14 March 2017 (M. Of. 181/2017) - <http://www.monitoruljuridic.ro/act/decizie-nr-68-din-27-februarie-2017-referitoare-la-cererea-de-solu-ionare-a-conflictului-juridic-de-natur-constitu-ional-dintre-guvernul-rom-niei-i-ministerul-public-parchetul-de-187509.html>

³ Article 109 Responsibility of members of the government. (...) (2) It is only the Chamber of Deputies, The Senate and the President of Romania that shall have the right to demand criminal prosecutions be taken against members of the Government for acts committed in the exercise of their office. If such criminal prosecution has been requested, the President of Romania may decree that they be suspended from office. Institution of proceedings against a member of the Government entails suspension from office. The case shall be within the competence of the High Court of Cassation and Justice. - The Constitution of Romania, Ed. Legal Universe, Bucharest 2015, page 33.

Relating to the **repeal of article 298 from the Criminal Code which regulate the offense of dereliction of duty**, we believe that the decriminalization of negligence in the service is totally inappropriate, because, as mentioned above, one of the main comments by the Venice Commission has been the existence of forms of guilt because of the nature of the intention or serious negligence. We agree with the fact that the introduction of the shape of guilt of fault in regulating the offense of abuse in the line of duty create a situation much too complex and exposed to the abuse and interpretation.

We believe that he might require that threshold value 200,000 lei as regards the damages caused in the case of negligence in the service, in order to reveal the seriousness of his deed and to justify the commitment of the penal liability, for damages created by negligence in the service until that threshold value, by engaging the responsibility of the administrative and/or civil liability.

3.2. Entering a New Paragraph in the Article 290 in the New Code of Criminal Procedure Governing the Period of Time from Committing a Crime, in which they could be said the Criminal Investigation through Scold

The motivation of the Government to carry out this amendment, consists in the fact that charges will be encouraged to bring to the attention of the investigation bodies a criminal offense in this way facilitating the settlement of the connected with the penal cases, motivation but we consider quite ambiguous, because there is no a penalty if crime is unreported, practically charges is not motivated by any element in order to comply with this rule. In the case where a deed is brought to the attention of the investigation bodies after this period of 6 months, they practically will notify the ex officio.

Although in principle we believe that this addendum is positive, we want to we establish, relating to the period imposed by the government in order to be able to denounce a deed, i.e. the period of 6 months. We believe that should, however, to take account of the diversity of the circumstances in which they may commit criminal offenses and emotional status and social development of those who aware of their commitment and can advise the investigation bodies (can be constrained physical/moral, threatened, timorous etc.). In view of these aspects, we believe that strict period of 6 months to submit reports is not within a reasonable period of time and we believe that a period of 8 months would be much more appropriate under the conditions of the Romanian society. Also, if it is made this addendum, it should be possible to impose a sanction to overcome this term.

4. Conclusions

After the analysis of legality and of the shape of the offense of abuse in the line of duty from the content of the G.E.O. 13, I will expose the personal conclusions as regards the plans which we have structured this analysis. I will try to explain to these conclusions from a new perspective as the most objective bringing forward arguments both pro and against the provisions analyzed.

As regards amendment of the *contents of the offense* of abuse in the line of duty:

→ I agree in part with the amendment of the material element of the offense, the ingredients acts whose infringement attracts the criminal liability does not create confusion and interpretations and forced it creates a clear demarcation between the assumption of responsibility by the criminal and of the administrative provisions; However, failure to comply with the acts referred to in laws and ordinances or emergency ordinances, would turn, from my point of view, all civil servants at

lawbreakers, because not all of them have competent authorities and/or prerogatives to fulfill the acts provided for by law, decrees or emergency ordinances;

→ I consider the imposition of the threshold of the value of the material damage the most unfounded and abusive amendment to the emergency ordinance;

→ I believe beneficial to alternate the death penalty involving deprivation of liberty with that of the criminal fine, because it offers the courts the opportunity to individualise the penalties correctly according to the complexity of each causes;

→ differentiation of penalties depending on the material element seems a serious error. The penalty provided for the tiniest material element within the alin. (2), factually diminishes the gravity of it, discriminating right through the legal text, creating a paradox;

→ subtracting the amount of the penalty to less than half than the previous provision, it seems to me to be excessive, creating in this way the sensation of an infringement with a degree of low social threat, that is in total disagreement with reality.

Are of the opinion that the threshold value of the injury should be applied to the offense of gross negligence in the service: to the criminal liability of the civil servants who through the performance of the duties of the services to be employed only if the damages caused exceeds 200,000 lei; Up to this threshold, civil servants answering to administrative documents in accordance with the sanctions of Law 188/1999 upon.

On the observations referred to, from my point of view, legal text what incriminates the offense of abuse in the line of duty should be the following:

(1) the deed of the public servant who, in the exercise of the services with intent, does not comply with an act or it through the breach of the express provisions of the law, a decree or an emergency ordinance to obtain for himself or for other economic benefits or any other way that I shall be the property of the times through it produces a serious injury, arguing and effective rights or the legitimate interests of a natural or legal person, as are laid down and guaranteed by the laws in force, be punished with imprisonment from 1 to 5 years in prison or fines ranging.

(2) With the same penalty shall be penalized and deed of the public servant who, in the exercise of service, restrains the exercise of a right of a person or creates for such a situation of inferiority on grounds of race, nationality, ethnic origin, language, religion, gender, sexual orientation, political affiliation, wealth, age, disability, chronic noninfectious disease or infection HIV/AIDS.

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*** Decision 63/08.02.2017- relating to applications for the settlement of legal conflict of constitutional nature of the executive authority - The Romanian Government, on the one hand, and the legislative authority - the Parliament of Romania, on the other hand, as well as between the executive authority - The Romanian Government, on the one hand, and the judicial authority - Superior Council of the Magistracy, on the other hand, the request made by the President of the Superior Council of the Magistracy, respectively by the President of Romania - published in the Official Monitor No. 145 of 2 February 2017 (M. Of. 145/2017) - <http://www.monitoruljuridic.ro/act/decizie-nr-63-din-8-februarie-2017-referitoare-la-cererile-de-solu-ionare-a-conflictelor-juridice-de-natur-constitu-ional-dintre-autoritaea-executiv-guvernul-rom-niei-pe-de-o-186910.html>.

*** Decision 68/27.02.2017- relating to the request for solution to the judicial conflict of constitutional nature of the Romanian Government and the Ministry Public-Parchetul on the High Court of Cassation and Justice in the direction of the National Anti-corruption, application made by the President of the Senate - published in the Official Monitor 181 of 14 March 2017 (M. Of. 181/2017) - <http://www.monitoruljuridic.ro/act/decizie-nr-68-din-27-februarie-2017-referitoare-la-cererea-de-solu-ionare-a-conflictului-juridic-de-natur-constitu-ional-dintre-guvernul-rom-niei-i-ministerul-public-parchetul-de-187509.html>.

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