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THE OFFENCE TO COMPROMISE THE INTERESTS OF JUSTICE IN THE REGULATIONS OF THE CRIMINAL CODE

Case
study

Keywords

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Abstract

When the Romanian Criminal Code was enforced on 1st February 2014, the Romanian legislative landscape saw the appearance of a new offence called "the compromising of the interests of justice", stipulated in Article 277 of the Criminal Code.

The new incrimination protects the social value of the justice's accomplishment, namely it provides the security of the data and of the information with a confidential character from criminal files which are in the criminal prosecution stage. At the same time, it represents an additional guarantee for the innocence presumption and it forbids the disclosure of the evidence means, of the official written documents and of any information from a criminal case which is in progress; it hinders the creation of a wrong opinion regarding the guiltiness of the suspected person.

The offence to compromise the interests of justice consists essentially in the disclosure of confidential information, evidence means, official written documents as well as other information from criminal cases which are in non public jurisdictional procedures by the persons who have access to such files.

I. Introduction

Justice has a social value with a special importance because the juridical order in a democratic society depends on its implementation, representing one of the basic shapes of the state's power.

The fundamental law of the state (Boroi, 2014) raises justice to the rank of supreme value establishing at the same time that justice is achieved in the name of the law, by the High Court of Cassation and Justice and by the other trial instances set out by law.

The implementation of justice has the purpose of providing the legality of the social relationships and to restore the security of these relations when they have been infringed.

Starting from the essential role that justice as a social value has within the contemporary society, the Romanian legislator understood to protect this supreme value by means of the criminal law, thus the achieved protection being a consistent one. Just as in the case of other fundamental social values, the protection of justice is mainly achieved by incriminating the deeds that prejudice it. This kind of deeds represents offences against the implementation of justice and is stipulated in the 4th Title of the Special Part in the Criminal Code called "Offences against the Implementation of Justice".

The importance and the essential role in providing the lawful order that characterises justice are the arguments that determined the criminal legislator to find for the offences against the implementation of justice an entire title in the Special Part of the Criminal Code. At the same time it places this title on a high level in the hierarchy of the social values that enjoy protection from the criminal right.

The motive presentation to the Project of the new Criminal Code shows that "in the new regulation the offences against the implementation of justice are stipulated in a different title in order to confer the adequate importance to this authority, which represents one of the three powers of the state and not only an activity of public interest".

Starting from this foundation, the Romanian Criminal Code which entered into force on 1st February 2014 brought essential modifications justified and required by the realities of the contemporary society, in the matter of the offences against the implementation of justice. Namely certain offences stipulated by the previous Criminal Code underwent significant modifications in their juridical content and at the same time a series of new deeds was incriminated, deeds which do not have a correspondence in the previous general criminal law.

Among the new incriminations brought by the newly enforced Criminal Code in 2014 in the

Romanian legal landscape there are the offence to compromise the interests of justice written in Article 277 of the general criminal law of the state.

According to the motive presentation to the Project of the new Criminal Code, this new criminal deed was inspired by the realities of the judicial practice but especially by the frequency, the intensity and the manifestation way of these deeds in recent years. It consists in the parties' or their representatives' attempts to influence and to intimidate in the shape of public slandering during a trial. Thus the result is an atmosphere able to vitiate severely the fairness of judges or prosecutors, an atmosphere that may either help the ones who use such means to take advantage in case of obtaining the expected result, or it may cause drawbacks by obtaining the magistrates' hostile attitude.

The specialty literature shows that the regulation of this new offence is aimed first at increasing the demanding extent to the clerks who perform their activities in the justice administration field in relation to the way of administrating data and information which may be obtained during a criminal trial and which may influence significantly the finding out of the truth or the right to a fair trial of the investigated or judged person (Dobrinioiu, 2014).

II. The Compromising of the Interests of Justice (Art. 277, Criminal Code)

1. Incrimination Structure

From the structural point of view, the offence to compromise the interests of justice is presented in three normative variants, namely the type variant [stipulated in paragraph (1) of Article 277, Criminal Code] and two mitigated variants [stipulated in paragraphs (2) and (3) of Article 277, Criminal Code]. The main differences among the three kinds of incrimination are given by the quality of the active subject, by the trial stage of the criminal cause in relation to which the disclosure is performed and by the object of the truth concealment.

The type variant of the offence consists in "The illegal disclosure of confidential information regarding the date, the time, the place, the way or the means by which the evidence is about to be administrated by a magistrate or by another public clerk who was informed about all that in the virtue of the position, whether the criminal prosecution may be worsened or hindered in this way." The first mitigated variant, described in paragraph (2) of Article 277, Criminal Code, consists in "The illegal disclosure of evidence means or of official written documents from a criminal case, before ordering a solution of not continuing the trial or an irrevocable

solution of the case by a public clerk who was informed by all that in the virtue of the position.”

The second mitigated variant stipulated in paragraph (3) of Article 277, Criminal Code, supposes “The illegal disclosure of information from a criminal case by a witness, by an expert or by an interpreter, when this interdiction is imposed by the criminal procedure law.”

By incriminating the basic shape of the offence, the legislator aimed at protecting the data and the information with confidential character from the criminal cases found in the trial stage characterised by the non-publicity of the procedure, namely in the stage of criminal prosecution (According to the provisions of Article 285, paragraph 2, Code of Criminal Procedure, “the procedure during the criminal prosecution is not public”).

The incrimination of the mitigated variants aims at consolidating the right to the innocence presumption as a component of the notion “fair trial” in the criminal matter, consecrated (Toader, 2014) from the European Convention of the Human Rights. Precisely, the mitigated shapes of the analysed offence have the role of protecting the innocence presumption by forbidding the disclosure of the evidence from an ongoing criminal case; they prevent the existence of wrong opinions about the suspect’s guiltiness. Thus, the withdrawal of evidence from the file’s entire probation and its bringing to the public knowledge may lead to a wrong conclusion about the guiltiness or innocence of the accused person, a conclusion which may sometimes be hard to change.⁷

2. Pre-existing Conditions

2.1. Specific Juridical Object

Being an offence included in the category of the offences against the implementation of justice, the compromising of the interests of justice has as a specific juridical object the social relations related to the correct implementation of the criminal justice, fact that involves keeping the confidentiality of the activities that belong to the criminal investigation strategy which aims at administrating the evidence in a stage of the criminal trial where the judicial procedure has a secret character. The incrimination of the deed aims at providing the confidentiality of certain data and information that are related to the administration of the evidence, of the probation means or of the official written documents from a criminal case which is not governed by the publicity principle. At the same time, the incrimination of the deed guarantees once again the compliance with the innocence presumption as well as the right to private life of the persons involved in a criminal judicial procedure. (The jurisprudence of the European Court of the Human Rights includes the infringement of Article 8 of the Convention when

the press published excerpts from the transcriptions of the phone conversations intercepted during the surveillance operations, in this way: Case Casneau versus Romania, Decision dated 16.04.2013, Case Voicu versus Romania, Decision dated 10th June 2014. These decisions are available in Romanian on [http://www.csm1909.ro/-Sectiunea-Jurisprudent –Hot rări si decizii CEDO](http://www.csm1909.ro/-Sectiunea-Jurisprudent-Hot-rari-si-decizii-CEDO)).

Also, in the subsidiary, the incrimination of the offence to compromise the interests of justice has the purpose of protecting the social relations related to the dignity, freedom and patrimony of the person affected in a negative way by the disclosing action whereas these relations constitute in this way the secondary juridical object of the examined offence.

2.2. Material Object

The offence to compromise the interests of justice mainly lacks the material object because the revealing / disclosing action does not have a direct impact upon a material entity which contains a concretised protected social value. Nevertheless, in an exceptional way, precisely when the action that makes the material element of the objective aspect is clad in the transmittal shape, the examined offence may also have a material object that will consist in the document or the support which contains the data, the confidential information, the evidence means or the official written documents from a criminal case, transmitted to a third person.

2.3. Subject of the Offence

2.3.1. Active Subject

In any of the three incriminating variants in which it is presented, the active subject of the offence to compromise the interests of justice is circumstanced; the quality that qualifies the author differs from one normative variant to another. Thus, for the type variant of the offence [stipulated in paragraph (1) of Article 277, Criminal Code], the active subject is qualified by the magistrate’s quality or by the public clerk’s quality.

In terms of the magistrate’s quality, in accordance with the provisions of Law no. 303/2004 published again, such a quality belongs to the judge or to the prosecutor appointed under the legal conditions. As long as at the moment of committing the offence, the active subject has the magistrate’s quality, it is not important if it is about an irrevocable judge/prosecutor or about a probation judge/prosecutor because even the latter, while fulfilling the tasks conferred by the law, has access to data and confidential information which he/she may disclose. Also, we believe that the active subject of the examined offence can be a judge/prosecutor who was suspended from the position, taking into account the fact that he/she can keep the magistrate’s quality even during the suspension. It is obvious that in the case of the

suspended magistrate the disclosing action must have as an object the confidential information about which the perpetrator was informed while fulfilling the tasks specific to the mentioned position, previous to the suspension from the position.

In terms of the public clerk's quality, it is important to show that such a quality is verified according to the criminal signification of "the public clerk" concept which is set out by Article 175, Criminal Code. However, the active subject of the offence to compromise the interests of justice cannot be any public clerk but only the public clerk who saw the confidential information in the virtue of the position. Being informed in the virtue of the position means that the performance of the activities circumscribed to the legal work tasks confers the public clerk the chance to see and hear certain dates and information related to a certain situation or deed.

Namely, the active subject can be the public clerk whose work activity is in relation to the progress of the criminal prosecution and who has knowledge about the confidential information from criminal files (search body of the judicial police, police body within the Department of Special Operations from the General Inspectorate of the Romanian Police that has the competence of enforcing the judge's authorisation to intercept phone discussions and/or from the ambient environment, the court clerk within the prosecutor's office or trial instance, the worker within the Romanian Information Service etc.).

In the case of the first mitigated variant, the active subject is qualified by the quality of the public clerk who has knowledge about the evidence means or about the official written documents from a criminal case in the virtue of the position. The quality required from the active subject in this incriminating variant is identical to the quality from the type variant of the offence; however, in this case, the comprehensive scope is larger because the offence in the mitigated variant may be committed by the public clerk whose work activity is in relation to the progress of the *judgment* from a criminal case, not only to the progress of the criminal prosecution.

In the second mitigated variant, the active subject of the offence can be the person who has the witness', expert's or interpreter's quality in a criminal case.

Pursuant to the criminal procedure norms, the witness is the person who has knowledge about deeds or circumstances which constitute evidence in the criminal case; the expert is a specialist in a certain field of activity, a quality in which he/she is required to bring his/her specialty contribution in order to find out, to clarify or to assess deeds or circumstances which are important for the learning of the truth whereas the interpreter is the person called or appointed by the judicial bodies in order

to contribute to the communication between the participants to the trial. The witness', expert's or interpreter's quality in a criminal case is determined by the existence of a juridical trial report between the juridical body and the person heard as a witness or used as an expert or as an interpreter (Dongoroz, 2003).

The witness', expert's or interpreter's quality in a criminal case is not sufficient for being the active subject of the offence to compromise the interests of justice; there must be a legal provision to forbid the witness, the expert or the interpreter to disclose the information from a criminal case.

The criminal participation is possible in all its shapes but it is important to mention that in the case of several co-authors, all of them must have the quality required by the incriminating norm. The magistrate's, the public clerk's, the witness', the expert's or the interpreter's quality required from the author is a personal circumstance and is not reflected upon the other participants; therefore the instigator or the accomplice can be any person who meets the general requirements in order to be held criminally responsible.

2.3.2. Passive Subject

The offence to compromise the interests of justice has as a main passive subject the state in its quality of holder of the protected social value, the good performance of the act of justice whereas the adjacent passive subject is the physical or natural person who undergoes prejudice by the activity of disclosing information, evidence means or official written documents from a criminal case.

3. Juridical Content

3.1. Premise Situation

The offence to compromise the interests of justice is conditioned by the existence of a premise situation that consists in the pre-existence of a criminal case.

The phrase "criminal case" means the existence of a criminal trial that takes place in front of the judicial bodies qualified by law, respectively in front of the criminal prosecution bodies or of the trial instances.

In the case of the type variant of the examined offence, the meaning of the phrase "criminal case" is restricted to those cases which can be found in the first stage of the criminal trial, namely in front of the criminal prosecution bodies. In the case of the mitigated variants, the notion of "criminal case" has a larger comprehensive scope, incorporating the cases that can be found during the criminal prosecution as well as the cases which can be found in the trial stage, regardless of the nature, of the trial stage and of the ongoing jurisdiction degree (the judgement of the complaint against the

prosecutor's solution of non-prosecution or non-trial, the procedure in the preliminary chamber, trial in the first instance, trial in the appeal).

In the absence of the circumstance that represents the premise situation, the offence to compromise the interests of justice cannot exist.

3.2. Constitutive Content

3.2.1. Objective Aspect

Under the aspect of the material element, the compromising of the interests of justice is achieved by two alternative actions of disclosing or revealing information, evidence means or official written documents from a criminal case which is not subject to the publicity principle.

In the description of the forbidden conduct act, the legislator used different terms but with the same signification in the case of the type shape in comparison to the two mitigated shapes of the offence. Thus, in the description of the type variant, the used term is "disclosure" whereas in the mitigated variants the term "revelation" was used. Taking into account that the two used terms (disclosure and revelation) are synonyms, we think that by their alternative use in the content of Article 277, Criminal Code, the legislator wanted to point out the difference that existed between the type shape and the mitigated shapes of the offences regarding the trial stage of the criminal case in relation to which the offence is committed. When the criminal case is in the criminal prosecution stage (case of the type variant), the compromising of the interests of justice is committed by the revealing action. If the criminal trial is in the criminal prosecution stage or in the trial stage, the compromising of the interests of justice is performed by the revealing action. The offence to compromise the interests of justice is a committing offence which can be achieved by omission (inaction) (Dungan, 2010)

In most of the situations, the disclosure is achieved by committing acts but it can also be concretised in omitting attitudes (for instance, the prosecutor leaves a home search warrant on the desk in the office while several persons (lawyers, police officers or court clerks) have access there and thus have the possibility to see and to read the content of the confidential document).

In the type variant of the offence, the material element consists in the action of illegally disclosing confidential information.

"To disclose" means to reveal, to present, to confess, to inform, to transmit a secret to another person (other persons) who has no right to find out. The disclosing action can be done orally or in written, directly or indirectly (for instance, by communicating means at a distance) to only one person or to several persons, to an interested person or to an uninterested person in the criminal

prosecution in relation to which the disclosure is achieved.

In order to achieve the objective aspect of the offence which is subject to the present examination, the disclosing action must have as an object confidential data regarding the date, the time, the place, the way or the means by which the evidence is about to be administrated. The Criminal Code does not define the notion "information" but we can find such a definition in Article 15, letter a) of Law no. 182/2002 regarding the protection of the classified information according to which the term "information" has the following meaning: "any documents, data, objects or activities, regardless of the support, shape, expression way or circulation way".

The confidential information is the information which, due to their increased importance, must not be brought to the knowledge of unauthorised persons because thus it would cause negative consequences.

The phrase "confidential information" in the meaning given by the incriminating norm means the dates, the situations and the circumstances which, in the hypothesis when they are known by unauthorised persons, may worsen or even hinder the evidence administration and implicitly may lead to the failure of the criminal prosecution. The incriminating text shows that the area of what must not be disclosed is limited to confidential information related to the date, the time and the place (for instance, the day, the time and the address where a home search must be performed), the way or the means by which the evidence is about to be administrated (for instance, the authorisation to use an undercover investigator, the organisation of a flagrant, the restraint, the surrender and the search of a postal reference).

The disclosing action has as an object confidential information related to the date, the time, the place, the way or the means by which the evidence is about to be administrated. This action must be done without the right, namely in the absence of an authorisation of the legal or of the competent authority. This requirement shows the fact that there are also situations when the person who has access to classified information from the category of the information shown in the incriminating norm has the right to transmit it, to let other people know about it. In this case, the disclosure is not circumscribed to the criminal illicit (for instance, the prosecutor who, in the context of a disciplinary search made about his/her professional activity, makes available for the judicial inspector, among others, a file of criminal prosecution which is found in the own investigation, in which there is an ongoing measure of technical surveillance of the interception and the recording of phone calls and from the ambient environment).

The objective aspect of the offence to compromise the interests of justice, in the type variant, also involves two time conditions so that the disclosure could take place: 1) the time in which the criminal case is found in the criminal prosecution stage, 2) before the evidence administration. A criminal case is considered to be in the course of the criminal prosecution since the moment when the criminal prosecution body decides by ordinance upon the beginning of the criminal prosecution with respect to the deed until its finalization when the prosecutor gives either a solution of non-prosecution and of non-trial (there is a classification of the case or a renunciation to the criminal prosecution) or gives a solution of sending the case to Court by issuing the Indictment Act. Nevertheless, in the course of the criminal investigation, there is also the criminal case in which the preliminary chamber judge decided upon the restitution of the case to the prosecutor's office for the resumption of the criminal prosecution as well as the case in which the prosecutor decided to start the criminal prosecution again, a measure confirmed by the preliminary chamber judge. The condition that the disclosure should take place before the evidence administration can be seen in the legal definition of the offence that stipulates that the disclosure of the confidential information *"may lead to the worsening or hindrance of the criminal prosecution"*. However, when the evidence administration took place (for instance, the search at the suspect's domicile was performed and the flagrant was achieved), the disclosure of the information related to the date, time, place, way or means of administrating the evidence cannot worsen or hinder the criminal prosecution.

We notice the fact that the incrimination norm does not require as a consequence of the disclosure that the criminal prosecution was actually worsened or hindered but it must have created such a possibility. Obviously, when the perpetrator's illegal conduct caused such a consequence – the hindrance or the worsening of the criminal prosecution, this aspect shall be appreciated and assessed as such within the operation of judicial individualization.

The specialty literature showed the following: when the disclosure takes place after the evidence administration, then the constitutive elements of the offence in the type shape are no longer achieved. Therefore, the deed may constitute a mitigated variant or it may even not have a criminal relevance¹

In the theoretical space there was the expression of the opinion (Dungan, 2012) according to which the offence can exist only if the disclosing action had as a consequence the worsening or the hindrance of the criminal prosecution. We consider that this opinion has no legal support because the grammatical interpretation of the juridical norm

written in Article 277, paragraph (1), Criminal Code (the legislator uses the phrase "can be...") leads unequivocally to the idea that the existence of the offence requires the possibility to worsen or to hinder the criminal prosecution.

The worsening of the criminal prosecution means difficulties, obstacles, delays, postponements or complications in the progress of the criminal prosecution whereas the hindrance supposes the impossibility and the cessation (entirely or partially) of the criminal prosecution.

In the case of the first mitigated variant of the offence, the material element consists in the revelation without the right of evidence means or of official written documents from a criminal case, before making the decision of non-trial or of a final solution to the case.

"Revealing" means to bring into the light, to show, to de-conspire, to disclose, to confess, to bring to the knowledge of another person who does not have the right to know. The object of the revealing action is limited to the evidence means or to the official written documents from a criminal case; for instance, the statement of the prejudiced person, a medical and legal expertise report, minutes of the intercepted and recorded phone conversations and communications etc.

In the case of the mitigated variant stipulated in paragraph (2) of Article 277, Criminal Code, it is necessary to meet the time requirement and namely: the disclosing action must take place before the criminal trial which owns the evidence means and the official written documents is finally solved. In other words, the revelation of the evidence means and of the official written documents must take place before the criminal juridical report of conflict is quashed as a consequence of the final irrevocable solution. Concretely, the criminal case which is mentioned by the perpetrator's revealing action must be either in the criminal prosecution stage or in the trial stage; in the latter stage, the case may be in front of the preliminary chamber judge or in front of the "chair" judge. Nevertheless, we consider that regardless of the judicial procedure's stage, it is essential for it not to be accessible to the general public. The latter requirement devolves from the very signification of the revealing action, meaning that it is impossible to de-conspire something which the general public has access to.

In order to bring together the offence's constitutive elements in this first mitigated variant, it is necessary for the revelation to be made without the right, namely the perpetrator's deed must be abusive, beyond the law.

In terms of the second mitigated variant of the offence, the material element also consists in a revealing action; only that this time, the revelation object refers to information from a criminal case about which the law of criminal procedure imposes the interdiction for the witness, expert or interpreter

to de-conspire them. Each time the criminal trial law does not forbid the witness, the expert or the interpreter to transmit to other persons certain information that they found out as a consequence of their quality from the criminal case, the activity of revealing such information does not wear “the criminal coat”. In this way, in order to exemplify, it is important to mention the provisions of Article 352, paragraph (8), Criminal Code, which stipulate the following: “The president of the judges’ panel has the duty to inform the persons who take part to the trial developed in a non-public meeting that they have the obligation to keep the confidentiality about the information they acquired during the trial”.

The condition that the revelation must be done without the right is also present in the case of this last normative variant, being inserted in the text of Article 277, paragraph (3), Criminal Code.

Immediate consequence. Regardless of the shape under which it is presented (the type shape or one of the mitigated shapes), the offence to compromise the interests of justice has as an immediate consequence the creation of a dangerous state for the accomplishment of the criminal justice. As it can be seen in the very name of the offence, the consequence of committing the deed creates a state of compromising the accomplishment of the act of criminal justice; on one hand there is a risk that the criminal prosecution bodies may not be able to gather certain evidence that is necessary for the learning of the truth; without them the criminal investigation is heading for failure; on the other hand there is a risk that the accused person may not benefit from a fair trial as a consequence of infringing the innocence presumption. The danger condition for the accomplishment of the criminal justice is supposed but it is not necessary for anybody to prove its effective existence.⁶

The examined offence may also have an immediate secondary consequence that may consist in causing prejudice for the person in relation to whom there is a disclosure or revelation of the information, evidence means or official written documents in a criminal case.

The causality connection. The offence to compromise the interests of justice supposes the existence of a causality report between the action and the inaction that shapes the material element of the deed and the immediate consequence which consists in the creation of a danger state for the good progress of the social relations regarding the accomplishment of justice. Being a formal offence, the existence of the causality report must not be proved but it results from the materiality of the deed – “*ex re*”. In other words, it is enough to prove that the disclosing or revealing action was committed under the conditions stipulated by the incriminating norm in order to retain that there was a danger state for the protected social value. In the

hypothesis when, as a secondary consequence, there was a prejudice for the person in relation to which there was a disclosure or revelation of the information, of the evidence means and the official written documents, then the causality report must be proved.

3.2.2. Subjective side

The compromising of the interests of justice represents an offence only when the deed is committed from a subjective point of view with the guiltiness shape of the intention. The intention may be direct or indirect whereas the perpetrator realises that by his/her disclosing or revealing action or inaction creates a danger state for the achievement of the criminal prosecution, wants the dangerous consequence or simply accepts the possibility of its production.

The guilty perpetration of the offence to compromise the interests of justice does not bring along the criminal liability.

The motive or the purpose of committing a deed does not present any relevance for the existence of the offence but all that shall be searched and assessed within the operation of judicial individualisation.

In case it is found out that the disclosing action of confidential information from a criminal case was performed in order to help the perpetrator elude the criminal prosecution or the trial, that deed shall be qualified as the offence to favour the perpetrator (Article 269, Criminal Code) and not the compromising of the interests of justice.

4. Attempt and Consumption of the Offence

The offence to compromise the interests of justice is susceptible of any attempt but the law does not any sanction for this kind of offence. The consumption of the offence takes place while disclosing or revealing the information, the evidence means or the official written documents, a moment when the dangerous consequence of the deed is produced.

The compromising of the interests of justice can be committed in a continuous form when it meets all the requirements stipulated in Article 35, paragraph (1), Criminal Code. In such a case, the offence shall have an exhaustion moment which shall be the moment of the last disclosure or revelation.

5. Sanctioning Regime

From the perspective of the sanctioning regime we can notice that the offence to compromise the interests of justice can bring along the application of punishments with a fine or with imprisonment because the legislator stipulated in an alternated

way the fine and the imprisonment for all the three normative variants.

For the type variant of the offence, the lower limit of the imprisonment is 3 months whereas the upper limit is 2 years. For each of the two mitigated variants, the special minimum is one month imprisonment and the special maximum is one year imprisonment. By making reference to the penalty stipulated by the law and by taking into account the overall vision of the new criminal legislator over the criminal sanctions, we may assert that the offence to compromise the interests of justice presents a relatively low gravity.

6. Explanatory Cause

In the case of the offence to compromise the interests of justice, the criminal legislator stipulated a certain situation in whose presence the unjustified illicit character of the deed is removed. Practically, the committed concrete deed is adjusted according to the abstract pattern (type) described in the incriminating norm; however, its commitment is authorised by another juridical norm so that it does not constitute an offence.

The final paragraph of Article 277, Criminal Code stipulates that *“It is not an offence the deed which discloses or reveals documents or activities that are clearly illegal committed by the authorities in a criminal case”*.

As a remark, it is important to notice the fact that in the presentation of the explanatory case, the legislator preferred using the terms “disclosure” and “revelation” which are terms used for the description of the forbidden conduct in the type variant and in the mitigated variants of the offence. We think that this method was chosen in order to forestall the existence of different interpretations related to the application scope of the explanatory case. By using both terms, the only interpretation which can be given to the juridical norm in Article 277, paragraph (4), Criminal Code is in the meaning that the text which stipulates the explanatory cause is applicable for any of the three normative variants of the offence to compromise the interests of the country.

The reason that lay at the instituting base of this explanatory cause was to encourage the de-

conspiracy of the abusive conducts adopted by agents of authorities involved in the search or trial of the criminal causes. Practically, the magistrate, the public clerk, the witness, the expert or the interpreter, when they learn about the existence of illegal conducts, shall proceed to bring those conducts to the public knowledge without fearing that they might be accused of committing the offence to compromise the interests of justice.

The explanatory cause may intervene only if two essential conditions are met, namely: 1) the abuse, the illegality to have a clear character, precisely, to be obvious to anybody; 2) the holder of the act or of the illegal activity must be a representative of the state’s authority invested to act on such a position in a criminal case.

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