

## Relationship between influence trafficking, lobbying and advocacy

**Sorin-Gabriel AILENEI, Ph.D**

Prefect Institution - Bacau County, Romania

[gab\\_sorin@yahoo.com](mailto:gab_sorin@yahoo.com)

**Abstract:** *The idea of this work imposed itself naturally, given the events of recent years at the national level regarding the facts of corruption of which are suspected most of the civil servants holding important positions in the state apparatus, whether we are talking about people who exercise powers in executive, legislative or judicial areas. One of the most frequently mentioned crime in such cases is influence trafficking, because there is a fine line between facts which may be included in such a legal qualification and those that relate to what we know as notional concepts that belong to the spheres of lobbying and advocacy. Next, the definitions of these terms will be analyzed and will be presented a comparison between those concepts to capture aspects that differentiate them in order to better understand the relationship between them.*

**Keywords:** *influence trafficking; lobby; advocacy.*

### I. PRELIMINARIES

#### 1.1 With regard to trading in influence

In article 291, paragraph (1) of Law no. 286/2009 on the Criminal Code, updated, influence trafficking is defined as *demanding, receiving or accepting the promise of money or other benefits, directly or indirectly, for himself or another, committed by a person who has influence or lets it believe that (s)he has influence over a public servant under the promise that (s)he will determine that public servant to fulfil, not fulfil, speed up or delay the performance of an act falling within its service duties or to fulfil an act contrary to these duties* (Parliament, 2009).

Regarding this definition, there are some clarifications that must be presented in relationship with the fulfilment of certain conditions that a deed must meet to be considered influence trafficking. First, it is necessary for the perpetrator to have or to insinuate that (s)he has influence over the public servant or the person exercising "a task which was entrusted by the public authorities or is subject to control or supervision of them on the performance of that public service" (article 175, paragraph (2) of Law no. 286/2009).

Then, the public official or person entrusted with assignments that fall within the exercise of public authority to be affected should have the power to perform the act for which the influence is trafficked; otherwise the act would not be considered influence trafficking, but deception.

Lastly, it should be noted that the act constituting the material element of the crime of influence trafficking must be committed before the public servant or similar person of such qualities fulfils it on regularly basis as part of his duties (Dobrinoiu & col., 2012, pp. 554-555).

But the defining element of influence trafficking is "demanding, receiving or accepting the promise of money or other benefits, directly or indirectly, for himself or another", which means the offense is committed due to a material interest that does not allow any doubts about the lucrative sense of the intervention.

#### 1.2 Concerning the lobbying

Another concept, the *lobby*, which seems to have a similar meaning with influence trafficking has deep roots in the Saxon mentality, being used in both, political and economical, contexts. The term "lobby" in the political sense, seems to have been first used in 1829, under the term "lobby-agent", designating a person who was paid to obtain privileges and, for this purpose, frequented the corridors of the buildings

where the laws were issued in Albany. Later, Thurlow Weed, together with his colleagues, was considered to have established the rank of accredited profession for the lobby activity would have based its methods and would have established its reputation (Lane, 1964, p. 19).

Once, in the beginning, the lobby was accepted as a practice to represent the interests of a single person or entity (19<sup>th</sup> century), then it evolved in trying to plead in favour of different interest groups (first half of the twentieth century), and, then, it transformed to represent, again, fragmented and specialized interests, giving rise to a phenomenon that has been termed "the rise of the direct participation of interest groups" (Andres & Hernnson, 2016, p. 204).

Another important notion is the *lobby contact*, which is defined as "any form of verbal or written communication (including communication by electronic means) with an official that relates to: 1) the formulation, modification or adoption of a federal law (including legislative proposals); 2) formulation, modification or adoption of federal rules, regulations, executive dispositions or any program, policy or position of the US Government; 3) the administration or enforcement of federal programs and policies (including the negotiation, award or implementation of a government contract, grant, loan, permit or license); or 4) the nomination or confirmation of a person to a post whose employment falls within the jurisdiction of the United States Senate" (Lunenburg & Susman, 2005, pp. 200-201).

Nowadays, the goal of lobby is circumscribed only to the activity of influencing just those with responsibilities in the legislative branch, legislators and members of their teams, provided it relates and reflects a point of view on a particular regulatory act. If the communication implies the public contributions, then it must be followed by a "call to action". This call to action is an important detail because a public debate on the issues of law cannot be considered lobbying, as long as such a request has not been made" (Boris & Steuerle, 2016, p. 200).

### 1.3 With regard to advocacy

The term "advocacy" has at least three meanings, depending on the area to which we refer. Thus, for a lawyer in the judicial system of Saxon influences, advocacy refers primarily to the art of speaking in court and of questioning the witnesses. Naturally, such an approach will focus on personal skills, legal duties and ethical principles which must be observed in such an undertaking.

On the other hand, the medical and the social fields of activity, in turn, bear the mark of this concept because, first, there is a moral obligation for workers in these public systems to fight for improving the living conditions of the socially disadvantaged. Even if such an approach seems childish (e.g. letter from a doctor, nurse, psychologist or social worker to a public authority to facilitate access of a person in need to appropriate clothing or better accommodation), it can be included within the scope of the advocacy concept.

In addition, in the recent period, there is a new form of materializing the meaning of the term advocacy which translates itself into events organized by members of the various communities that aim to improve services provided by public institutions. When such an event is related to a problematic situation precisely determined, we can talk about *hard advocacy* and when it relates to a complaint that is not clearly specified and neither can determine the extent of its claims, we deal with *soft advocacy* (Bateman, 2000, pp. 15-17).

Such an approach should not be confused with a pre-revolutionary attitude, because the role of those who use this form of influencing the authorities to intervene in a particular context is one that is confined strictly to legal proceedings and possibly to the persistence of determination to change a certain status quo (Hepworth, 2010, p. 416).

In conclusion, we can say that the term advocacy refers *to representation of the interest of another person before an official, to the maximum abilities and skills own in order to present the facts in the most favourable way or ... to recommend someone or to speed up certain undertakings* (Bateman, 2000, p. 17).

This term is most often used in connection with the medical, social fields and less with the civic or judicial domains. In such a context, it refers, first, to advocate in favour of an undertaking or idea which is believed to increase the standard of living of an individual, group or population. In this sense, this kind of approach, the advocates that promote the interests of others adopt strategies that focus on several fronts, among which: 1) *informing those that conceive public policies* (e.g. distribution of brochures or leaflets); 2) *creation of coalitions by mobilizing* colleagues, academics, getting support from institutions, organizations,

associations or groups; 3) *increasing the visibility* through the mass media; 4) if needed, *the initiation of legal proceedings*; and the final stage, 5) *community mobilization* in order to emphasise their points of view (Kirch, 2008, p. 19).

Noteworthy is that *the main difference between lobbying and advocacy is given by the non-profit character of the latter concept* (Pekkanen, Rathgeb Smith, & Tsu, 2014). However, sometimes, there is a possibility that an advocacy organization to create a parallel body for lobbying, as a lobbying organization may find it appropriate to initiate an advocacy undertaking as well, if it better serves its own interests.

## II. ANALYSIS

### 2.1 Analysis relationship between influence trafficking - advocacy

As one can see, the relationship between advocacy and influence trafficking involves some major differences. First, those involved in advocacy work are not intended to obtain benefits in cash or otherwise on their approach, but implement their strategy motivated to correct a situation which affects large numbers of people or to prevent more problematic cases. Unlike these, when speaking about influence trafficking, obtaining material benefits or other gains is essential, without which the offense cannot subsist.

Then, the character of advocacy is by its own nature, prone to obtain as much visibility as possible. In this regard, the promoters of this approach intend and do everything possible that idea or cause they fight for to gain as quickly and as accurately as possible the public attention in order to mobilize a large number of supporters. Therefore, the public nature of the debates and the involvement of supporters from fields as diverse as possible is a key point in the success of the whole process of advocacy.

In contrast, perpetrators of crime of influence trafficking are concerned that their deeds to be known by a small circle of collaborators. Moreover, initiators of advocacy are convinced of the justness of their creed and seek to prove this publicly; on the contrary, the perpetrators of influence trafficking suspect at least that their actions violate the criminal law.

Thirdly, because of humanitarian characteristic of the advocacy approach, advocacy is carried out, usually in connection with the medical and social work fields. In general, workers in these fields (doctors, nurses, psychologists, sociologists and social workers) feel the need to intervene on behalf of the disadvantaged, who cannot fight for themselves, keeping in mind that the undertaking they initiate will correct a problematic context and will help not only those whose problems are known, but also others who are in similar situations and, most importantly, will change the way authorities and communities react in order to prevent these problems from happening.

### 2.2 Analysis relationship between influence trafficking - lobbying

In contrast to such ideals, influence trafficking involves satisfying a momentary interest, which is by its very nature a particular one, without considering the repercussions that such action may have on the social level. So, in any case, one cannot speak of a humanitarian intent, in order to help someone in an unselfish manner.

Unlike advocacy, which is a clearly different approach from influence trafficking, the situation changes when lobbying is considered. Due to the definition formulated by the Romanian law maker, it may be considered that the influence trafficking and lobbying are quite similar. First of all, such a situation is generated by the phrase "demanding, receiving or accepting the promise of money or other benefits, directly or indirectly, for himself or for another person" which might refer to the lucrative aspect of lobby.

But this definition with a very broad spectrum clearly shows the intention of the legislator, in this case the Romanian Parliament, to protect the prestige of public institutions from any form of suspicion regarding the honesty of public officials.

On the other hand, the lobby carries major differences from influence trafficking. The established practice shows that one can say firmly that lobby can be undertaken only in relation to public servants exercising their professional duties in institutions which fall within the sphere of legislative power, and not in relation to those who work in public institutions exercising by the executive and judicial powers of the state.

Therefore, one can conclude that lobbying cannot happen except in connection with the creation, modification, suspension, postponement or cancellation of a normative act.

Also, the lobby cannot be categorized as secret or discrete undertaking as the majority of undertakings that may be classified as influence trafficking. This is due mainly to one of the defining characteristics of lobbying - call to action. Thus, it can be concluded that besides its public characteristic, lobbying bears the stamp of a process of general interest, initiated by a person or interest group. Therefore, lobbying cannot be undertaken to solve only a private matter as is often the case of influence trafficking.

Finally, the lobbyist cannot be considered similar to trafficker of influence, since (s)he cannot claim to have influence over key decision-makers within the legislative power, because such a thing, at least in the Romanian legal system, would be very difficult, as the laws are the result of discussions held in a collegial forum.

## CONCLUSIONS

As can be inferred from the above, influence trafficking appears as a crime in itself, with a very broad range of coverage of facts which involve real or imaginary influence over the civil servants, so there could be no doubt about whether to criminalize such illegal acts. This situation has its roots in the Romanian national penal policy which aims to protect, in this way, the prestige of public institutions, so that their authority in the Romanian society to be an important one.

On lobbying and advocacy, it can be concluded that these are undertakings that must be made in a transparent manner, which require the involvement of a large number of people and which distinguish themselves due to the fact they are directed against certain acts or ways of implementing public policies or programs of general interest. In other words, the initiators of such actions are focused on changing the regulations of realities that affect large numbers of people, while influence trafficking refers, above all, to specific situations related, most times, to the executive and judicial spheres of state authority and less to the legislative process.

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