

## CHALLENGES OF DEFINING THE CRIMINAL OFFENCE OF TRADING IN INFLUENCE

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### Abstract

**Purpose.** The aim of this research is to reveal the issues related to the implementation of the requirement of the Article 12 of the Council of Europe Criminal Law Convention on Corruption (hereinafter – the Convention) to criminalize trading in influence in national criminal laws.

**Design/methodology/approach.** This analysis is based both on theoretical (logical-analytical, comparative, systematic) and empirical methods (analysis of the evaluation and compliance reports published by the Group of States against Corruption (hereinafter – GRECO) and Lithuania and other countries’ criminal laws).

**Findings.** Preliminary results of this research show that Lithuania implemented all the recommendations related to the criminalization of trading in influence provided by GRECO. Also, the majority of states carried out the same actions as Lithuania. In accordance with GRECO recommendations, they transferred the elements of this crime provided in the Article 12 of the Convention into their national regulations. Until the period of GRECO evaluation the majority of states regulated the question of trading in influence differently.

The comparative study also reveals that a significant number of the states did not provide examples of case law regarding trading in influence. This factor further makes difficulties to justify the position that the entirety of applicable norms of the criminal law properly implements the international obligations. Therefore, an assumption is made that the easiest, although doubtful if the most appropriate, way to implement the international norms is chosen, i.e. to carry out the implementation in the manner recommended by the experts of GRECO.

Only few states have not criminalized trading in influence in line with the provision of the Convention.

**Research limitations/implications.** This research attempts to provide answers to the following questions: how trading in influence is defined in the Convention and how states define or try to define trading in influence in their criminal laws. This analysis examines

how countries are struggling to implement the requirement to criminalize trading in influence, to provide a definition of this activity in the criminal law. The research attempts to reveal the main challenges of defining trading in influence as a criminal offence. It does not include the topic of penalties for trading in influence. The empirical analysis is limited to the states' criminal laws and the evaluation and compliance reports of the third evaluation round published by GRECO.

**Practical implications.** In particular, the study should be relevant to the scholars analyzing corruption offences. The results of the empirical research may be useful in further research on trading in influence. Also, it could be material for the judges, prosecutors, pre-trial investigation officers.

**Originality/Value.** So far in the Lithuanian legal science the topic of trading in influence has been very little examined. All studies are only about trading in influence as a crime in the criminal law of Lithuania. Also, the implementation of the aforementioned requirement of the Convention is only mentioned but not thoroughly analyzed in the Lithuanian legal science. Some authors from foreign states have written about GRECO evaluations and the implementation of recommendations. However, there is no particular analysis on the question of trading in influence in these studies. Therefore, the broader, complex and comparative analysis of this topic is not only necessary but also new and useful.

**Keywords:** \_Criminal Law Convention on Corruption, trading in influence, criminalization, the Group of States against Corruption, evaluations.

**Research type:** research paper.