

Corruption as a form of Organized Crime

Ismail Zejneli, PhD

Associate Professor
Faculty of Law
South East European University
Tetovo, Republic of Macedonia

Jeton Shasivari, PhD

Assistant Professor
Faculty of Law
South East European University
Tetovo, Republic of Macedonia

Albana Metaj-Stojanova, MA

Assistant
Faculty of Law
South East European University
Tetovo, Republic of Macedonia

Abstract

This paper presents an analysis of the corruption as a form of organized crime with special emphasis in the Republic of Macedonia. Corruption is a misuse of public office in order to gain a personal benefit for oneself or for another. In terms of criminal law, corruption includes the following offenses: bribe receiving (passive bribery), bribe giving (active bribery) and affected trading, in order to misuse public authorisations of the responsible official person, as well as any misuse of the official position of the perpetrator in order to gain personal benefits. In this regard, the paper analyzes the international aspects and domestic legal aspects of fighting the corruption in the Republic of Macedonia by analyzing the relevant statistical data.

Keywords: corruption, organized crime, active and passive bribery, embezzlement in the service, falsifying an official document

1. Introduction

Criminality is a very heterogeneous occurrence, both as far as forms and the causes of appearance are concerned. Criminal behaviours are very diverse and organized crime is treated as a very dangerous form, which qualifies with its features.

Even though corruption is not identified as organized crime, it is an integral part of it.

Corruption is one of the most severe forms of crime that has a widespread manifestation in modern societies and unfortunately some forms of corruption have become an everyday concern of the country. Corruption, as a criminal offense, cannot be identified as organized crime, but it operates in close collaboration with it, with open agreements as well as drawing benefits from each other and especially in the organized protection of criminal activity. This social danger is the reason why quite often corruption and the fight against it in the world are treated with a planned fight against organized crime.

Corruption is a misuse of public office in order to gain a personal benefit for oneself or for another. In terms of criminal law, corruption includes the following offenses: bribe receiving (passive bribery), bribe giving (active bribery) and affected trading, in order to misuse public authorisations of the responsible official person, as well as any misuse of the official position of the perpetrator in order to gain personal benefits.

2. Corruption as a form of organized crime

2.1 Meaning of corruption

Corruption is one of the most severe forms of crime that has a widespread manifestation in modern societies and unfortunately some forms of corruption have become an everyday concern of the country. Corruption, as a criminal offense, cannot be identified as organized crime, but it operates in close collaboration with it, with open agreements as well as drawing benefits from each other and especially in the organized protection of criminal activity. This social danger is the reason why quite often corruption and the fight against it in the world are treated with a planned fight against organized crime¹.

According to prof. Kambovski, corruption is a misuse of public function in order to gain a personal benefit for oneself or for another. In terms of criminal justice, corruption includes the offenses: bribe receiving (passive bribery), bribe giving (active bribery) and affected trading in order to misuse public authorisations of the responsible official person, as well as any misuse of the official position of the perpetrator in order to gain personal benefits.

From a historical point of view, it is known that corruption has been mentioned since the Roman law, where the negative public opinion was emphasized, as well as the criminal political opinions of that time, in which case explicitly was foreseen the term „corruptire“. Cicero’s speeches often treated issues related to receiving and giving bribe to the civil servants².

Corruption as a major evil, is present today in every society, certainly it is more common in some countries, while in others less.

Corruption in a broader sense of the word represents every kind of misuse of position aimed at personal material benefits, which is done on the part of state employees or the person that exercises any public function. According to Article 2 of the Law on prevention of corruption in Macedonia, by corruption is meant abuse of the function, public authorisation, public duty and authorisation in order to exploit any benefits for oneself or for someone else³.

On the other hand, the first and full formulation in international documents of the meaning and definition of corruption, even the most accepted hitherto, done by the Interdisciplinary group of the Council of Europe convened in Strasbourg in 1990, which formulated a somehow different definition of corruption, in which case it is intended as corruption of an official, and any other action of the persons charged with plenipotentiary in public or social sector who violates obligations arising from the status as an official (in a state sector), in private sector and in all the relations of this nature, which aim to gain privileges for themselves or for somebody else.

In this regard, if we take a look at the legislations of different countries, we will see that they appear to expand the notion of corruption, and corruption is not understood only as bribery of official persons, but it includes different shapes of misuse of official duty, trade for any specific purpose, and corruption on a national and international level⁴.

2.2 International dimensions

In international documents and agreements we encounter different kinds of formulations, where at times they adhere to it’s narrower meaning especially the ones before 1990, and at times they treat it in the broader sense. Recently efforts are being made to approach the formulations towards a precise and unified legal definition. The Assembly of the UNO, held in 1990, in the interregional seminar in Havana, with a topic on anti-corruption, defined corruption as “misuse of office for achieving personal benefits or group benefits as well as benefits of state employees as a result of their official position”. From this definition is evidenced the fact that we are talking about material benefits only, that are characteristic for bribery criminal offenses.

¹Dr. I. Zejneli, Cited work, Euroatlantic integration processes and the R. of Macedonia, Tetovo, 2008, p. 137

²Dr. V. Latifi, Criminalistics, Prishtina, 2009, p. 200

³Group of authors, Organized crime, Tetovo, 2009, p. 189

⁴Dr. J. Shasivari, Euroatlantic integration processes and the R. of Macedonia, Tetovo, 2008, p. 209

In the document drafted in the 8th session of UN also held in 1990, yet again corruption was treated somewhat in a narrow sense in the wake of the above definitions, but the particularity of this international document lies in the unbundling of its distinguishing characteristic elements and the change that exists in the conception between the phenomenon of corruption and criminal behaviour of civil servants. In the document are also evidenced and specified the meanings for the illegality of corruptive acts, and the forms in which it appears in the state officers.⁵

In the following part we will present some international acts applicable for corruption and organized crime:

- UN Declaration against corruption and bribery in international commercial transactions – Resolution No. 51/191, December 1966;
- The International code of conduct for public officials – Resolution No. 51/91, December 1966;
- Anti-corruption measures – General Assembly of the UN – Resolution No. 54/128;
- “Preventing and combating corrupt practices and illegal transfer of funds”, UN Resolution No. 55/188;
- UN Document – On counter-narcotics and global anti-corruption program, June 2001;
- Convention against corruption involving European officials or officials of Member States of the European Union of 26 May 1997;
- The agreement and respective declaration, On combating corruption in the private sector of 31 December 1998;
- Criminal law Convention on corruption of 27 January 1999 etc.

3. Legal protection against corruption

3.1. An overview of the state of corruption in the Republic of Macedonia

In every country's legislation are set provisions which sanction and prevent this phenomenon that is very dangerous for the society, phenomenon which, according to many authors, if not prevented today, tomorrow might be too late.

There is nothing more dangerous for an organized, democratic society than public service officials accepting a bribe. Accepting bribes from these persons represents a form of corruption in case of seeking gifts, accepting gifts as well as accepting a promise for a gift or for other benefits.

The International Crisis Group (ICG) has warned several times for the extension of corruption in Macedonia. In its reports, as the most corrupted institutions in the country are highlighted the customs, tax services, healthcare and administration.

The fact that Macedonia is a country mired in corruption is also shown by the data of the Ministry of Interior. According to this Ministry in the year 2004 were presented 631 authors of criminal acts with 504 committed criminal acts, while one year ago, i.e. in 2003 were presented 1130 authors with 854 committed criminal acts⁶.

The latest observations conducted by foreign agencies staying in Macedonia, show that Macedonia ranks among the countries with a high level of corruption, respectively lies somewhere in the 62nd place according to the ranking index of Transparency International, for the year 2012, the same place as Croatia, while following them are: Albania, Bosnia and Herzegovina, Serbia, Romania and Bulgaria. For the presence of the phenomenon of corruption also speak the European Commission progress reports on Macedonia, where it is emphasized that this phenomenon continues to be a serious problem that challenges the country in the Euro-Atlantic integration process⁷.

In the Criminal code of Macedonia, criminal offenses related to corruption are: bribery at elections and voting (article 162); defraud (article 247); defrauding buyers (article 248); unauthorized reception of gifts (article 253); false bankruptcy (article 254); misuse for the procedure of bankruptcy (article 256); money laundering (article 273); security and share fraud (article 275); disclosing and unauthorized acquisition of a business secret (article 281); embezzlement in the service (article 354); defraud in the service (article 355);

⁵Dr. L. Gjonça, Corruption, integral criminal offences, organized crime, Tirana 2004, p. 59

⁶Journal, the fact, dated 1 march 2005-04-03. Through a telephone line for presenting cases of corruption, 778 calls were received from citizens, the largest number of which are complaints from citizens regarding unresolved legal-property matters, illegality in private and public enterprises and related issues. Concrete measures were taken in 20 reported cases, of which three were successfully resolved.

⁷The efficiency of the judiciary against corruption, Skopje, 2011, p.10

helping oneself in the service (article 356); receiving a bribe (article 357); giving a bribe (article 358); unlawful mediation (article 359); illicit enrichment and concealment of property (article 359-a); disclosing an official secret (article 360); misuse of state, official or military secret (article 360-a); falsifying an official document (article 361); unlawful collection and payment (article 362) and illegal influence on witnesses (article 368-a).

In the Criminal code of Macedonia, in the Articles 357 and 358 as criminal offenses are also foreseen “receiving a bribe” and “giving a bribe”. The criminal offense “receiving a bribe” is committed by the official or responsible person, and should include the awareness of the perpetrator that he/she is receiving gifts or other benefits. While, the criminal offense “giving bribery” is committed by the person who wants to give or promises to give to the official a gift or other benefit so that within his official authorization he performs official actions that he should not carry on, or even the one who has mediated in this. The perpetrator of this criminal offense can be any person and this offense is considered to have been committed with the mere fact of promise or gift giving, while it is not essential whether the official has committed or not the unlawful action.

Hereinafter, we will use the tables to present persons convicted during the years 2001-2010 in Macedonia, for committing criminal offenses against official duty:

Table 1: Persons convicted in the years 2001-2010 for committing criminal offenses against official duty in Macedonia

2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
66	58	66	102	138	117	153	175	167	142

It is evident from Table 1 that criminal offenses against official duty of which corruption is a part of, from year to year are growing until 2008, then during 2009 and 2010 is marked a slight decrease.

During the year 2010, a total of 262 criminal offenses were committed against official duty.

Table 2: Criminal offenses against official duty in the year 2010 in Macedonia

	Accused persons	Females	Were found guilty	Interrupted procedure	Released from charges	Dismissed indictment	Security measures
Embezzlement in the service	192	41	90	50	29	23	-
Misuse of the official duty	21	2	11	2	8	-	-
Violation of the state boarder protection	1	-	1	-	-	-	-
Misuse of the duty	6	1	6	-	-	-	-
Defraud in the service	4	-	4	-	-	-	-
Helping oneself in the service	2	-	2	-	-	-	-
Receiving a bribe	14	3	13	-	-	1	-
Giving a bribe	7	-	7	-	-	-	-
Unlawful mediation	4	-	3	1	-	-	-
Falsifying an official document	9	1	3	1	-	5	-
Other	2	-	2	-	-	-	-

From Table 2 we notice that for receiving a bribe and giving a bribe a total of 21 persons were convicted, 7 for giving a bribe and 14 persons for taking a bribe. Also, regarding the perpetrators by genders, males as well as females have taken part in committing these criminal acts.

On the other hand, regarding the manner of committing criminal offenses, out of a total of 192 persons accused of committing criminal offenses against official duty, a total of 142 persons were convicted, of whom 83 perpetrators of these criminal offenses, have committed the offense by themselves; 4 persons have been found perpetrators of the criminal offense; 54 persons were found accomplices and one person is sentenced as an instigator in the criminal offense.

Of all persons convicted of criminal offenses against official duty, 9 of them were recidivists, 4 of them were earlier convicted for the same offense, while 5 persons were convicted for other criminal offenses of this group.

According to a report of 2010, from the Citizens Coalition “All for fair trials in Macedonia”, who observed 154 cases of criminal proceedings for corruption related offenses, is noticed that according to the territory of the courts, the largest percentage of the observed corruption related cases is conducted in the Basic court in Bitola – 33,12%, in Tetovo – 1,3%, while in the courts in Štip, Veles and Skopje , from 11%-17%, in the courts in Kavadarci, Kočani and Strumica 7%.

The above data shows that in the Basic court in Tetovo for the year 2012, there were a small number of cases being processed in the field of corruption.

According to the domiciles of the perpetrators of corruption related criminal offenses is noticed that most of them live in cities, while about 14% of the defendants have rural backgrounds, and in 0,3% of cases the international element is present.

Regarding the age groups of the persons involved in corruption related criminal offenses for the year 2012, persons from these age groups are presented: from 46-55 years old (24%), from 36-45 years (20%), from 18-25 years (2%) and over 65 years (1%).

Out of 154 cases observed in the first instance courts from the Citizens Coalition “All for fair trials in Macedonia”, 60 cases are completed: in the Basic court in Bitola – 16 cases, in the Basic court in Veles – 12 cases and in the Basic court in Skopje I – 10 cases.

4. The prevention of corruption

Corruption represents a system malfunction that originates in and affects the legislative system, the institutional system and the interpersonal relationships specific to social institutions. As a complex phenomenon, it requires special methods of prevention considering all appropriate legal ones as well as administrative ones. The measures for the prevention of corruption should be the most varied, such as legislative, administrative, as well as measures of social character etc.

The development of an effective anti-corruption strategy requires first of all, the selection of rules defining the main directions for action, measures, responsibilities and resources. From the international instruments that describe policies to prevent and combat corruption, the most important are: The Resolution of the Council of Europe of 1994, On the twenty guiding principles for the fight against corruption, Criminal Law Convention and Civil Law Convention on corruption of 1999 and UN Convention against corruption of 2003.⁸

The purpose of approving anti-corruption laws is to increase public and political consciousness in the fight against corruption. Contemporary forms of corruption are often covered:

- with fictitious contracts for deed;
- with falsified travel accounts;
- by concluding fictitious labour relations;
- by allowing unreal provisions;
- with the issuance of guarantee letters;
- with the engagement of certain persons in the quality of external collaborators, professional advisors or counsellors;
- with fictitious expenses for representation and advertising which cover the giving of expensive gifts;
- by engaging certain persons in various committees and other bodies which are formed only for this;
- by performing various services without payment or for a symbolic compensation;
- with a fictitious processing of goods in a foreign firm;
- by selling goods for prices that are significantly lower than the real ones etc.⁹

⁸Ibidem

⁹V.Latifi and others, Prishtina, 2012, p.198

In preventing and combating corruption, criminalistic and penal measures and actions will be more effective if the criminals property acquired by organized crime was confiscated. The problems of confiscation (seizure) of the criminal's property obtained through a criminal offense, are of special interest to the professional opinion and scientific domestic and international opinion. Seizure and confiscation of material benefit, obtained through criminal offense has the criminalistic and procedural penal specifications, which should be studied, planned and implemented efficiently.

The organs that have direct competence for detection of criminality in general and corruption in particular are: courts, prosecutors offices, the police, customs services, the financial police, and indirect competence: the State Commission for prevention of corruption, the Public revenue office, Money laundering prevention directorate, various state inspectorates etc.

5. Conclusions

Corruption is one of the most severe forms and has a widespread manifestation in the modern societies, but it is not the only form of crime, and unfortunately some forms of corruption have become an everyday concern of some countries.

The ways of obtaining material benefits from officials and government officials, receiving of remunerations from judges, customs officers, clerks and others who are in position, are just some of the forms of corruption.

The development of an effective anti-corruption strategy requires first of all, the selection of rules defining the main directions for action, measures, responsibilities and resources. From the international instruments that describe policies to prevent and combat corruption, the most important are: The Resolution of the Council of Europe of 1994, On the twenty guiding principles for the fight against corruption, Criminal Law Convention and Civil Law Convention on corruption of 1999 and UN Convention against corruption of 2003.¹⁰

References

- Criminal Code of the Republic of Macedonia;
- Criminal Code of the Republic of Kosovo;
- Criminal Code of the Republic of Albania.
- V. Kambovski Corruption – the biggest social evil and threat to the state of law, Skopje, 2002
- V. Latifi Criminalistics, Prishtina, 2011
- P. Eigen The corruption network, Germany, 2003
- C. Danilet Corruption and anti-corruption in the justice system, Tirana, 2011
- L. Gjonca Corruption, integral criminal offenses, organized crime, Tirana, 2004
- I. Zejneli Criminal law, special part (lectures), Tetovo, 2007
- I. Salihu, Criminal law (special part), Prishtina, 2010
- R. Halili Criminology, Prishtina, 2011
- V. Hysi Criminology, Tirana, 2009
- R. Gashi Organized crime, Prishtina, 2010
- Group of authors Organized crime, Tetovo, 2009
- Group of authors The policy of combating crime, Prishtina, 2012

¹⁰Ibidem