The conception of corruption and its forms in public administration of Lithuania

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Abstract

The complication of corruption could be proved by existing different concepts of this social phenomenon in local and international laws. By describing corruption as regular, recurrent, integral criminal offence committed by person either under public service having a contact with private subject, electors, mass media by abusing of authority or confidence due to personal gain, the narrow concept of corruption is established in Lithuanian laws.

Notwithstanding, the concept of corruption has to be expanded and concretized in order to fight against all forms of corruption not only in public but also in private sector. Only a precise and uniform definition of corruption could be easily applied in legislation, practice of public administration bodies, the society would understand it better and, finally, it would facilitate the application of anti-corruption laws.
The crimes related with corruption could be committed not only having direct relation with abusing of possessed power or competence, but also by influencing the other to commit illicit activity in the public service. Occupied position in the public service, its nature and importance usually has direct impact to the nature of consequences and degree of malfeasance. What is more, not only general requirements for public service established in laws, but also special requirements established in the other legal acts, such as statutes of services, work descriptions are violated by committing crimes against public service.

Anti-corruption policy should be developed and implemented by joint efforts of all institutions which take part in the management of corruption by exactly defining the responsibilities, functions and constantly evaluating achievements of each of them.

**Keywords**

Corruption, corruption prevention, corruption prevention measures, anti-corruption programs, public administration.

**Introduction**

Corruption is a complex social, political and economic phenomenon, whose influence is felt in all states all over the world.

But the problem lies in the difficulty to find the precise definition of corruption. The Latin world "corruptio" means "to abuse or destroy".

Corruption is the complex phenomenon having different forms of expression in different countries around the world. Therefore, despite existing more than 300 definitions of corruption, its doubtful weather is possible to formulate a common and comprehensive definition of corruption nowadays. Despite this, the following common features could be seen in all forms of corruption:

- gaining personal or group benefit (corruptive exchanges);
- hiding of activity;
- durability.

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Durability is very important feature of corruption. The corrupt public servant must act giving the impression of his performance legitimacy and compliance with laws and procedures on the same time hiding illegal use of an imperfect legal basis for a particular awarded decision making. Therefore, the difference between crimes related with corruption and abuse of power is the secrecy.

It is necessary to point out, that not every offence committed by public servant, politician or journalist is criminal offence related with corruption.

The various definitions of corruption could be found in the scientific literature. Some of the scientists tend to believe that corruption is the abuse of state power for private benefit\(^3\). The others think that corruption is the abuse of not only of the state but also the other forms of official power or positions\(^4\). And this is only a few types of concepts provided by the specialists of criminal law and criminology. However, none of them fully disclose the essence of the phenomenon of corruption and can be criticized. The absence of briber activity considering as a criminal activity is the essential lack in both mentioned concepts. What is more, the private sector is not involved in the second definition of corruption. This is only a few examples that demonstrate the complexity of the concept of corruption and the opportunities for broad discussions related with the essence of this complex phenomenon.

The differences in defining the phenomenon of corruption exist not only among single scientists but also among international organizations: some of them support narrow, some – broader definition of corruption. It is commendable that broader definition of corruption, including not only the public but also the private sector corruption phenomena, is established in Criminal Law Convention on Corruption\(^5\) and United Nations Convention against Corruption\(^6\).

The international non-governmental organization Transparency International is also supporting the above-mentioned position due to definition of corruption. According to Transparency International, corruption is the abuse of


entrusted public or private power for a private gain. The illegal enrichment of officials from public and private sectors is also emphasised in the concept of corruption provided by World Bank. The bribery in order to gain the illicit benefit for bribetaker or the others and occurring in the public or private sectors is distinguished among other forms of corruption in the definition provided by The Council of Europe's Group of States against Corruption (GRECO). The definition of corruption is extended in The Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions by including the illegal activity of public officer for reaching any monetary or other illegal benefit from a foreign country.

The legality-illegality ratio in the public sight could be an important criterion in defining the corruption. If there is an obvious difference between how the laws defines corruption and how the citizens perceive it, according to J. A. Gardiner, it may happen that public officials will also be more inclined to comply with the prevailing values of society than to the requirements of laws. Also, any effective action against corruption is impossible or difficult to implement, if public opinion is very different from the legal definition of corruption.

The decisions and activities of public officials and institutions affect not only the legal foundations for the development of the country and its society but also its practical implementation. On the other hand, private and non-government sectors business opportunities whereof are heavily dependent on the decision of the government institutions and the existing relations with them, has not less impact on the development of society. Corruption in the private sector (cartels, monopolies, unfair competition participation by participating in public procure-

ment, etc.) not only negatively affects the other subjects of business but also the society which pays for long-term and not always obvious consequences of corruption\(^\text{12}\). Therefore, it could be agreed with I. Mikhailovich opinion that the concept of corruption could be narrow (traditional) describing it as a phenomenon existing only in the public service or wide (modern) describing it as the phenomenon existing in private business, media and politics\(^\text{13}\). 

It is necessary to point out, that not only a list of corruption-related crimes, but also the concept of corruption is established in Lithuanian laws. According the Law on Special Investigation Service of the Republic of Lithuania, corruption is direct or indirect pursuit, demand or acceptance of property or other personal gain (gifts, service, promise, benefits) of a public servant or a person equivalent whereof for himself or another person due to the performance or non-performance of action according to his office, as well acts or omissions of public servant or a person equivalent whereof by seeking, requiring material or other personal gain for himself or another person or by accepting mentioned benefit also direct or indirect offering or granting material or other personal gain (gifts, services, promise, benefits) for public servant or a person equivalent whereof due to the performance or omission of action according to the office held by public servant or a person equivalent whereof as well as mediation in the committing illegal acts specified above\(^\text{14}\).

Meanwhile, the concept of corruption is not established in the Law on the Prevention of Corruption of the Republic of Lithuania\(^\text{15}\). Nevertheless, all corruption related criminal offences are listed in the Article 2 of the mentioned Law: bribery, bribery of an intermediary and other criminal offences committed with the pursuit of personal or other persons' advantage in the public administration sector or by providing public services, namely: the abuse of office or exceeding one's authority, abuse of one's authority, tampering with official records and mediat-


suring devices, fraud, misappropriation or embezzlement of property, disclosure of an official secret, disclosure of a commercial secret, misrepresentation of information about income, profit or property, legitimization of the proceeds of crime, interference with the activities of a public servant or a person discharging public administration functions, or other criminal acts, if these acts are committed with the aim of seeking or demanding a bribe, offering a bribe, or concealing or covering up the act of taking or offering a bribe.

National Anti-corruption Program of the Republic of Lithuania defines corruption as conduct of public servant or a person equivalent whereof which does not comply with their powers or the prescribed standards of conduct or the promotion of such conduct for the benefit of himself or the others by undermining the interests of individuals and the state. Despite the fact, that this concept is formulated according to the existing international laws and the laws of the Republic of Lithuania, it too abstract.

All things considered, it is obvious that all the above mentioned legal acts provide the narrow concept of corruption: existing only in state management and public administration spheres.

After the disclosure the essence of corruption, its forms and types should be analysed. But first of all, it is necessary to pay your attention that sometimes types of corruption are confused with its forms while they are not equivalent. It should be noted that type of corruption is more related with the context of corruption manifestations whereas the forms of corruption are more related with the particularity of mentioned behaviour. The classification of corruption according various aspects and parameters – the sphere of occurrence, level, duration, public perceptions – is based on the prevalence of corruption, as criminal offence, in practically all areas of public life.

The following types of corruption could be distinguished according the sphere of its prevalence: political, administrative, private sector and existing in the sphere of international transactions.

Political corruption is the deviant behaviour of political elite occurred by illegal use of resources of country having the objective to reinforce the possessed power or to get rich. The concept "state anti-corruption Program of the Republic of Lithuania", Official Gazette, 2009, No. 60(2346).
"capture" has the similar meaning with political corruption and is usually used alongside. State capture could be described as the illegal activity of individuals, groups or firms acting in public and private sectors and having the objective to influence a state's decision-making processes to their own advantage.\(^\text{18}\)

Meanwhile, the administrative corruption is described as intentionally distortion of existing laws, rules and regulations in the process of their implementation or the granting of personal gain by illegal and non-transparent means for public servants. The criminal offences related with administrative corruption occur either through performing that what is required by rules (illegal benefit is received for the performance of direct duties), or by violating it. The main difference between political and administrative corruption is the direction of it: the first one is directed in the policy-making while the second one is directed in the implementation of policy.

Quantitative criteria and the corruption level allows to distinguish "small-scale" corruption which is particularly prevalent in public administration and public service sectors and is occurring in paying small pays for expected favourable decision, and "large scale" corruption which is occurring in the highest government circles by affecting the legislation and trends of state and society by the highest political and business elite.\(^\text{19}\)

Furthermore, the *episodic* and *systemic* corruption could be distinguished according to the duration or time criteria. Episodic corruption is related with more casual and isolated behaviour. While, the corruption-related behaviour is institutionalized and dysfunction performed by it is defended and justified in a case of systemic corruption. Moreover, *black, grey* and *white* corruption is also distinguished according to public attitudes towards the corruption manifestation.\(^\text{20}\) If a certain operation the majority of society perceives as corrupt by demanding the appropriate punishment for committing it, then such a criminal offense is identified as black corruption. While, black corruption is a well-defined area of not tolerated behaviour, white corruption, on the other hand, is the behaviour that is tolerated by the public in a given society and not looked upon as misbehaviour. Grey corruption is an area in between.


\(^{19}\) Ibid. P. 4.

The conception of corruption and its forms in public administration of Lithuania, which is tolerated by a part of the society, while seen as corruption by the other part.

The corruption-related criminal offences are detailed in the Part 2 of Article 2 of Law on Corruption Prevention of the Republic of Lithuania. Whereas, the bribery, abuse of office, illegal use of public resources, conflicts of interest, nepotism (patronage of relatives and fellows) and etc. are the most common forms of corruption expression in the sphere of public administration. Therefore, the collision between private and public interests which usually ends in the benefit of private interest is emphasised then the corruption is analysed from the perspectives of public administration.

**Corruption-related crimes against public service**


The bribery of different levels of government representatives, existed, exists and it must be assumed that it will exist for a long time despite weather it would be tolerated or not. However, the problem of corruption is being ideologized and politicized more often nowadays. Normal functioning of the state is largely dependent on activity, which has to be implemented according to the Constitution, laws and other legal regulations, of public servants and officials (bureaucrats), conscientious execution of their powers, duties and rights arising from their service. Unfortunately, the issues related with public service are not regulated detailed, comprehensive and consistent in Lithuania. Inconsistent, illogical and contradictory laws governing the public service could be easily found. In addition, the concept of "public service" is correlated with the concept of
"civil service" stipulated in the Law on the Combination of Public and Private Interests in the Public Service of the Republic of Lithuania. These two concepts sound very similar in Lithuania (public service in Lithuanian is "valstybės tarnyba", civil service in Lithuanian is "valstybinė tarnyba") therefore they could be easily confused. But they are not of the same meaning. Although, the concept "civil service" includes the concept "public service", it has a broader meaning. According to Article 2 of the Law on the Combination of Public and Private Interests in the Public Service of the Republic of Lithuania persons employed in the civil service include, public servants (the concept is defined in the Part 2 of Article 2 of the Law on Public Service of the Republic of Lithuania) and those who are not public servants: politicians, officers, judges, professional soldiers, engaged in operational activities, professional military officers, individuals working in state and municipal enterprises, budgetary institutions and having administrative powers, persons employed in public institutions and associations that receive funds from the Republic of Lithuania and municipal budgets and having the powers of administration, Lithuanian bank staff with administrative powers, managers and their deputies of private limited liability companies and public limited liability companies whose shares conferring more than half of votes at the general meeting of shareholders are owned by the state or municipality, as well as other persons who have administrative powers. As we can see, it is necessary to have the deep analyses of not only of other provisions of a particular law but also of other related laws in order to clarify one provision regulating public service. All things considered, it is obvious that the legislator should pass the laws which are more explicit and is not required an additional explanation.

According to Article 5 of the Constitution of the Republic of Lithuania, In Lithuania, State power shall be executed by the Parliament, the President of the Republic and the Government, and the Judiciary. The scope of power shall be limited by the Constitution. State institutions shall serve the people. Public servants and officials must properly execute their official duties and to adhere the established labour and state discipline.

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Disciplinary, administrative, material and criminal liability could be applicable for committing public service related offence.

The most important international law related with corruption is Criminal Law Convention on Corruption No.173 (hereinafter – Convention). The duly authorised representatives of Lithuania signed Convention on 27 January 1999 in Strasbour. The following forms of corruption are stipulated in the Convention:

1. Active bribery of domestic public officials;
2. Passive bribery of domestic public officials;
3. Bribery of members of domestic public assemblies;
4. Bribery of foreign public officials;
5. Bribery of members of foreign public assemblies;
6. Active bribery in the private sector;
7. Passive bribery in the private sector;
8. Bribery of officials of international organisations;
9. Bribery of members of international parliamentary assemblies;
10. Bribery of judges and officials of international courts;
11. Trading in influence;
12. Money laundering of proceeds from corruption offences;
13. Account offences;
14. Participatory acts\textsuperscript{23}.

Almost all corruption-related offences listed in the Convention could be found in the Article 282 – 284 and other of the Criminal Code of the Republic of Lithuania which was valid until 1 May 2003\textsuperscript{24} and in the Article 225 – 228 and other of the valid up to date Criminal Code of the Republic of Lithuania\textsuperscript{25}.

Nevertheless, despite all the possessed obligations according to the signed international documents, the criminal liability for committing corruption-related crimes in the private sector are not directly stipulated in the Criminal Code of the Republic of Lithuania. Therefore, although a person whose illegal activity is related with corruption in private sector wouldn't avoid criminal liability but he would be accused of committing not


a corruption related crime but the other

crime whose composition his illegal ac-
tivity would correspond.

The latency aggravates fight
against corruption-related crimes. The
question is – why this is so? The answer
probably is simple and clear – both the
giver and the recipient are interested in
committing it, and both of them are sat-
ished with the result obtained. In most
cases, both sides have a material or oth-
er benefit. In the case of mutual benefit
there is no complainants, therefore there
is no precise victims. In this case, only the
separate crimes are revealed by the spe-
cial efforts of intelligence services. The
official statistics become and whose cases
whereof and do not prevent the further
spread of corruption;

– bribed public servant fails to
carry out properly the duties assigned to
him;

– the fundamental human rights
could be violated due to the graft of pub-
lic servant;

– corruption can increase the pub-
lic investment cost of any country of up
to thirty per cent;

– due to corruption each country
attracts less foreign investments, because
usually the corruption is a fee for direct
foreign investment26.

The damage of bribery of pub-
linc servants reflects in the fact, that the
strengthening of democracy, the execu-
tion of state power, the creation of the
rule of law, the organization of nation's
economic for general welfare and man-
agement of the other state and public af-
fairs is not possible without particular
system of institutions – the government
which is working legally and effective27.

The statement established in Part
3 of Article 5 of the Constitution of the
Republic of Lithuania that state institu-
tions shall serve the people, emphasises
the importance of state apparatus as the

26 The TI Source Book Part A: Analytical

27 Ibid.
guarantee for the protection and realization of Human Rights and Freedoms.

It is necessary to get acquainted with the concept of public service in general in order to get deeper knowledge about offenses against the public service and its nature. However, it is an object of criminal and administrative law. Therefore, we will not analyse it in this article.

It should be noted that the effective and stable, acting under the Constitution, laws and other legal acts state machine is especially important in the existence of state, society and every human. It depends greatly on the honesty, responsibility, a sense of responsibility of the public servants. Public Service of the Republic of Lithuania is based on the principles of the rule of law, equality, political neutrality, transparency, and career development established in the part 1 of Article 3 of the Law on Public Service of the Republic of Lithuania. The compliance with these principles in the public service actually guarantees the protection of human rights and legitimate interests, legitimacy in state and society life, economic welfare and etc. On the other hand, the protection of the public service itself by legal, including criminal, means from attempts to destroy the normal functioning of its activities is important as well. Particularly serious harm for the normal functioning of public service could be done by encroaching to it from "in-house" – then the crimes are committed by its public servants'.

Public servants are responsible for the performance of functions of certain public bodies and institutions or have the rights and obligations to provide the public service for society. However, they disorganize and undermine the work of public service in the various areas and at different level, inhibit or even destroy the implementation of important projects and laws by failed to perform or by performing improperly and unfairly of their duties or by using their official positions for their own interests. By doing it, directly or indirectly, human rights and freedoms are violating, the material well-being of all members of society are impoverishing and etc. It should be noted that the amount of consequences of committing crimes to encroach on the normal functioning of the public service depend on the importance of office held by the criminal: the perpetrators holding senior positions in the public service

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cause more serious consequences, especially in a political sense, by committing their criminal actions. Therefore, the constitutional provisions on the government obligation to serve the people are distorted or denied by committing crimes against public service. That undermines the confidence of the people not only on the public service, but also on the state at general.

**Conclusion**

*Crimes against public service* are dangerous offences done by individuals holding an office at public service and by illegally using it causing the substantial injury for the interests of the state or the other individuals. These crimes are always related with the official position of the subject. The perpetrator takes a certain position in the public service and therefore can be subject of mentioned crimes.

Precisely, the official position of public servant allows him to carry out the activities which compose the objective side of crime against the public service. The official positions and powers in the public service are used (create opportunities) in order to commit a crime – to act contrary to the interests of the public service. Such conduct violates the principles of the public service, normal functioning of public service institutions and is contrary to the obligations and functions of the public service.

Occupied position in the public service, its nature and importance usually has direct impact to the nature of consequences and degree of malfeasance. At the same time it should be noted that, not only general requirements for public service established in laws, but also special requirements established in the other legal acts, such as statutes of services, work descriptions, are violated by committing crimes against public service.

**References**


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Определение коррупции и ее проявлений в системе государственного управления Литвы

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Аннотация
В статье рассматриваются проблемы, связанные с пониманием места коррупции в системе государственного управления Литвы. Рассматриваются понятие и особенности коррупции, ее укорененность в общественном сознании и факторы, способствующие формированию антикоррупционного мировоззрения. Авторы также указывают и анализируют основные международные нормативно-правовые акты и принятые в Литве, закрепляющие правовые нормы о коррупционных преступлениях.

Ключевые слова
Коррупция, взятка, безопасность, преступление, общественная опасность, административные меры, уголовная ответственность, юридическое лицо.

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