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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 word "*corruptio*" means "*to abuse or destroy*"¹.

Corruption is the complex phenomenon having different forms of ex-

pression in different countries around the world. Therefore, despite existing more than 300 definitions of corruption², 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.

¹ *International Dictionary. Third Revised Edition*, Alma littera, Vilnius, 2004, p. 405.

² Shatiene, G. (2005), "The Peculiarities in describing Corruption's Criminalistic Description", *Jurisprudencija*, No. 65(57), p. 114.

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 benefit³. The others think that corruption is the abuse of not only of the state but also the other forms of official power or positions⁴. 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

3 Ackerman, S.R. (2001), *Corruption and Government: Causes, Consequences and Reform*, Vilnius, p. 129.

4 Klitgaard, R. (1997), "The Role of International organizations in the fight against corruption", *International Seminar. Prevention of Corruption. Lithuanian Police Academy*, 7-8 April, pp. 547-561.

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 Corruption⁵ and United Nations Convention against Corruption⁶.

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

5 "Criminal Law Convention on Corruption", *Official Gazette*, 2002, No. 23(853).

6 "United Nations Convention against Corruption", *Official Gazette*, 2006, No. 136(5145).

entrusted public or private power for a private gain⁷. The illegal enrichment of officials from public and private sectors is also emphasised in the concept of corruption provided by World Bank⁸. 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)⁹. 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 Transactions¹⁰ by including the illegal activity of public officer for reaching any monetary or other illegal benefit from a foreign country.

7 Raudoniene A. (2002), "The Modernizing Change of Classic Definition of Corruption", *Jurisprudencija*, No. 32(24), p. 116.

8 "The World Bank Search on the corruption", available at <http://search.worldbank.org/all?qterm=corruption>

9 "Agreement establishing the group of states against corruption", available at: [www.coe.int/t/dghl/monitoring/greco/documents/1999/Greco\(1999\)1_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/1999/Greco(1999)1_EN.pdf)

10 "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions", available at: www.oecd.org/corruption/oecdantibriberyconvention.htm

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 laws¹¹. 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-

11 Gardiner, J.A. (2002), "Defining Corruption", *Heidenheimer, A., Johnston M. Political Corruption. Concepts&Contexts. 3rd ed.*, Transaction Publishers, New Brunswick, London, p. 145.

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 corruption¹². 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 politics¹³.

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 thereof 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 thereof 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 thereof due to the performance or omission of action according to the office held by public servant or a person equivalent thereof as well as mediation in the committing illegal acts specified above¹⁴.

Meanwhile, the concept of corruption is not established in the Law on the Prevention of Corruption of the Republic of Lithuania¹⁵. 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 mea-

12 Heidenheimer, A., Johnston, M. (2002), "Perspectives on the Perception of Corruption", *Political Corruption. Concepts & Contexts. 3rd ed.*, Transaction Publishers, New Brunswick, London, p. 78.

13 Mikhailovich, I. (2004), "Corruption in the European Union Documents and Some Peculiarities of its Criminal – Legal Regulation in Lithuania", *Teisė*, No. 50.

14 "Law on Special Investigation Service of the Republic of Lithuania", *Official Gazette*, 2000, No. 41(1162).

15 "Law on the Prevention of Corruption of the Republic of Lithuania", *Official Gazette*, 2002, No. 57(2297).

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 state¹⁶. 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 cor-

ruption: 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 rich¹⁷. The concept "*state*

16 "National Anti-corruption Program of the Republic of Lithuania", *Official Gazette*, 2009, No. 60(2346).

17 Beresten', V.I. (2005), *Corruption and its social danger [Korrupsiya i ee obshchestvennaya opasnost']*, RIVSh, Minsk, 166 p.

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 advantage¹⁸.

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

18 Palidauskaite, J. (2005), "Corruption And Problem of Accountability in the Public Administration System", *Public Policy and Administration*, No. 13, p. 29.

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 elite¹⁹. 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 manifestation²⁰. 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.

20 Pruskus, V. (2007), "Corruption in Education: the Causes of Arising and Forms of Expression", *Education*, No. 15, p. 63.

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 corruption exists as long as public service and confidence in its executors exists. If a certain behaviour is commonly recognized being against public morality, the responsibility thereof is usually envisaged in certain criminal laws of the state. Hence, by criminalizing bribery (Art. 225 of Criminal Code of the Republic of Lithuania), bribery of an intermediary (Art. 226 of Criminal Code of the Republic of Lithuania), graft (Art.

227 of Criminal Code of the Republic of Lithuania), abuse of office (Art. 228 of Criminal Code of the Republic of Lithuania), unlawful registration of rights to an item (Art. 228 of Criminal Code of the Republic of Lithuania) and failure to perform official duties (Art. 229 of Criminal Code of the Republic of Lithuania) the narrow corruption is stipulated in the Criminal Code of the Republic of Lithuania.

The bribery of different levels of government representatives, existed, exists and it must be assumed that it will exist for a long time despite whether 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 Lithuania²¹) 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 people²². Public servants and officials must properly execute their official duties and to adhere the established labour and state discipline.

21 "Law on Public Service of the Republic of Lithuania", *Official Gazette*, 1999, No. 66(2130).

22 "Constitution of the Republic of Lithuania", *Official Gazette*, 1992, No. 33(1014).

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 Strasbourg. 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 acts²³.

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 2003²⁴ and in the Article 225 – 228 and other of the valid up to date Criminal Code of the Republic of Lithuania²⁵. 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

23 "Criminal Law Convention on Corruption, Strasbourg, 27.I.1999", available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>

24 "Criminal Code of the Republic of Lithuania", *Official Gazette*, 1997, No. 118(3046).

25 "Criminal Code of the Republic of Lithuania approved by the Law No. VIII–1968 on 26 September 2000", *Official Gazette*, 2000, No. 89(2741).

a corruption related crime but the other crime whose composition his illegal activity 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 satisfied with the result obtained. In most cases, both sides have a material or other 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 special efforts of intelligence services. The official statistics become and whose cases where there is no mutual interest, or, in other words, one party is not satisfied.

Usually the crimes against public service, especially bribery, bribery of an intermediary or graft, are not revealed because of the absence of direct victim. Therefore, it is natural that the criminal investigations of mentioned crimes are even not started usually.

It should be noted that crimes against public service poses particularly serious threat to the state and to the society. The extent of threat highlights the following arguments:

– corrupt officials do not supervise the activities entrusted to supervise

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 public servant;

– corruption can increase the public 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 public servants reflects in the fact, that the strengthening of democracy, the execution of state power, the creation of the rule of law, the organization of nation's economic for general welfare and management of the other state and public affairs 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 institutions shall serve the people, emphasises the importance of state apparatus as the

²⁶ *The TI Source Book Part A: Analytical Framework*, London, 2000, p. 125-126.

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 acknowledge 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 interests²⁸. 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

28 Rose-Ackerman, S. (1997), "Which Bureaucracies Are Less Corruptible?", *Heidenheimer, A., Johnston, M., Le Vine, V.T. Political Corruption: A Handbook*, Transaction Publishers, New Brunswick, London, p. 241.

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.

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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 указывает и анализирует 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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