

Combating Corruption in Kosovo

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Abstract

The consequences of the phenomenon of corruption are harmful to any society. The weight of the consequences of corruption in any concrete society depends on many economic, social, political factors. The consequences of corruption depend on the type of corruption that dominates in the respective society. This criminal phenomenon creates poverty and general economic decline, severely undermines state mechanisms by reducing the effectiveness of their functioning and reducing or losing citizens' trust in state institutions.

The problems of detecting and combating corruption are very complex and caused by various political, legal, economic and social factors in general. Laws always require enforcement, and while the limit of legal conduct has generally narrowed over time, the temporal movement of enforcement quality is less clear. Enforcement requires some form of initial information about the corrupt action - reported by either a government investigator or a third party - and then a legal action based on that information.

Keywords: Corruption, misuse, personal gain, investigation, detection, official person.

1. Introduction

Corruption is a general phenomenon and a serious threat to society, and in particular to countries that are going through a transition phase. Kosovo is not immune from this criminal phenomenon either, which is still going through a general transition, and in particular its justice system which is still fragile and this has affected that this harmful and criminal phenomenon has not yet been brought under control in Kosovar society.

Corruption means any form of abuse of power for personal or collective gain, whether in the public or private sector. Corruption exists if the principle of impartiality is intentionally violated in the case of a decision, in order to appropriate a good - favor. Appropriation of favors, respectively gaining personal benefits for the one who makes unilateral decisions, can take various forms. It is common for corruption to mean embezzlement of money (this form of corruption is most often referred to as bribery), although personal gain may also mean expensive gifts or doing some counter-favors.

2. Detection and investigation of corruption

The criminal prosecution for corruption begins with the reporting of the person in charge of state-public function, from the exercise of control of the prosecutor during the preliminary investigations, from the anonymous notifications, from the various information placed in the print and electronic mass media, etc. The basic task in the study of these materials is to determine whether the actions or omissions of

persons charged with state and public responsibility, have the elements of the figure of corruptive crime, respectively abuse of office. Another task when reviewing these materials is to verify the accuracy of the data. The first investigative actions in the investigation of corruption crimes are the inspection of the scene, seizure, inspection of documents and control (Begeja, 2004, pp. 588-599).

According to the Criminal Procedure Code of Kosovo, the police have a duty to provide a report to the competent state prosecutor within the prescribed time of twenty-four (24) hours as soon as they receive a reasonable suspicion that a criminal offense has been committed (Criminal Procedure Code of Kosovo, 2012). Based on this report, the prosecution decides whether or not to initiate criminal proceedings (Criminal Procedure Code of Kosovo, 2012). In the event that the prosecution decides to withdraw from a criminal proceeding a decision must be drafted clearly stating the reasons for terminating the criminal proceedings by a written decision within thirty (30) days (Criminal Procedure Code of Kosovo, 2012). The police play a major role in prosecuting criminal offenses when it comes to gathering the information needed to start an investigation and the police are obliged to follow the prosecution's request. If the indictment is not filed two years after the start of the investigation, then it is considered that the investigation ends automatically (Criminal Procedure Code of Kosovo, 2012).

Depending on the corruption case, the first investigative actions and other actions may be economic - financial, urban, technological expertise, as well as interrogation of the person, etc. All these actions are verified, becoming acquainted with the structure and character of the activity of the body or institution where the corruptive crime took place, etc. Verification is done through several investigative actions, such as questioning witnesses and, if necessary, confronting them, questioning the defendant, various expertise, starting with financial, economic, forensic, urban, etc. During the investigation phase of the crime - abuse of official duty, the causes and circumstances that influenced the commission of this corrupt act are revealed.

Corrupt crimes in the exercise of duty are committed primarily in the workplace, but exceptionally also outside it, but which are always related to financial interests or certain benefits for state or public officials. For this reason, any illegal action or inaction of public officials is noticed by other officials who can provide information on various abuses of public officials, including information on where important documents can be located and with interest for the body of investigative procedure, respectively court, etc. This evidence clarifies the circumstances related to the illegal actions or omissions of the persons in office and the personality of the defendant. The competent state institutions have the obligation to build a policy or strategy for the prevention of the factors that influence the commission of this crime, at the national and local level, in the bodies where the abuse of official duties, respectively corruption is committed (UNDP, USAID, Riinvest, 2005).

3. Some features of the current legislation in function of combating corruption

Implementing existing legislation and issuing new anti-corruption norms is facing a major challenge in every country. This circumstance can be considered as an obstacle

in the fight against corruption. But, as a factor with a strong impact on preventing and combating this phenomenon, is the performance of full and fair functions of state and administrative mechanisms of the state.

In all chapters of the Criminal Code of Kosovo (Criminal Code of the Republic of Kosovo, 2018) where it speaks of crimes in official duties or against the authority of the state, there are many criminal offenses, which in one way or another, are related to the exercise of duty in not accordance with the law, in its distortion done as to create favors or of the most varied benefits, even without expecting such income to come. These special laws define behaviors, which are subject to the prohibition of corruption and social areas that are highly sensitive to corruption. One of the most common features of this type of legislation is that it mainly provides:

- the responsibility and obligations of official persons to declare their income and assets;
- prevention of conflict of interest;
- preventing any possibility of corruption in the government procurement process;
- Special administrative sanctions and investigative methods that are generally known through these laws, in some cases, the police and other anti-corruption bodies or parliamentary committees are established in order to monitor the activity of law enforcement and judicial activity as well as proposed new prevention strategies.

It should be noted that the United Nations Convention against Corruption¹ exclusively provides that all states are obliged to prevent corruption and the necessity of mutual cooperation.

Establishment of the Anti-Corruption Mechanism: as a consequence of raising awareness against corruption (Manevski, 2005, p. 21) many countries have developed or are still in the process of developing, specific anti-corruption authorities and special programs in order to strengthen the fight against, prevent and coordinate, including international co-operation, against corruption. Specialized units are part of legislative and institutional reform which aims to implement such tasks-measures under anti-corruption initiatives taken by each government authority. The formation of specialized units has been implemented in various institutions but mostly in law enforcement agencies, prosecuting authorities, public procurement, the Ministry of Finance, etc. Their main task is to undertake special procedures, using special tools in the fight against and prevention of corruption as a phenomenon within their field of activity (Latifi, Beka, 2013).

4. Some forms of combating corruption

We will succeed in the fight against corruption only if we are ready to draw bold conclusions from concrete cases, and highlight the shortcomings of our state institutions. For a long time, the promotion of these policies and the failure to implement them in practice has turned the phenomenon of combating corruption

¹ The United Nations Convention against Corruption was adopted on 09.12.2003. in Meride - Mexico, at the conference held from 9-12.12.2003, with the participation of 120 countries.

into a daily rhetoric. The subject of investigations and filing of corruption indictments, continue to remain low profile persons, eventually middle. It is rare for indictments to be filed for high-profile corruption, especially those involving politicians or powerful business people (IKD, 2015, p.11). According to the EU Commission 2013 Progress Report on Kosovo, political interference in the work of the judiciary remains a serious concern (KIPRED, 2014).

It should be noted that corruption is not only an internal matter of individual states that have a problem with corruption, but it is part of the international interest.²

Some of the forms of fighting corruption from the perspective of international cooperation include:

- Expanding and improving judicial, prosecutorial, police cooperation with other countries through bilateral and multilateral agreements;
- Establishment of a judicial network system between our institutions and foreign ones in the field of legal and criminal matters;
- Cooperation in the field of surrender of criminals and their extradition;
- Cooperation in the transfer of criminal prosecution to criminal cases;
- Cooperation on transfers of convicted persons;
- Recognition and adherence to international agreements and conventions governing international relations in these areas;
- International co-operation in financial crime and money laundering investigations, which should include relevant institutionalized co-operation between international partners and the police, prosecution and intelligence service units, etc (Gjonca, 2004, pp.297-298).

Cooperation at local, regional and international level against corruption cannot be successful if it is not uniquely organized and regulated nationally and internationally. Successful fight against corruption, as well as organized crime in general, requires comprehensive treatment, continuity, consistency and strength in implementation based on previously recognized rules and responsibilities. Among the most basic elements of the fight against corruption can be singled out:

- Determining and firmly establishing the political leadership of the country and all their anti-corruption bodies³;
- Organization and institutional cooperation at local, regional and international level against corruption;
- Ensuring accountability of all those in the state administration, government, parties, who are implicated in corruption;
- Reform of the police, judiciary and prosecution in terms of organizing specialized

² Kosovo is in the early stages of fighting corruption. Little progress has been made in recent years, mainly in building co-operation between the Anti-Corruption Agency and prosecutors, and in obliging officials to declare assets and gifts. However, overall progress is limited and strong political will and commitment is needed to address this phenomenon appropriately. A strategic and comprehensive approach is necessary to ensure real results in combating endemic corruption in Kosovo. See: European Commission Progress Report for 2015, for Kosovo.

³ Political interference and group interests still remain a concern for the state of Kosovo. The fight against this phenomenon should be intensified, especially by attacking the corrupt actions of the "white collars". It remains the obligation of all mechanisms of the justice system to promote as much as possible the efficiency, impartiality and justice of this system.

bodies to fight organized crime and corruption in particular, etc. On this occasion, the role of the media and non-governmental organizations in combating against corruption should be emphasized (Sharles, 1994, p. 181). Two institutional mechanisms are essential in helping to fight corruption in the new democracies: a strong, aggressive, independent media and a vibrant civil society⁴ and developed with non-governmental organizations and public interest groups (Glaser, Goldin, 2004, p.19).

These two mechanisms in Kosovo have managed to sensitize the prevention and fight against corruption at high levels, therefore the profile of the positions of the persons against whom indictments have been filed, has included: Ministers, Deputy Ministers, Mayors, police officers, political officials and other mostly low-level officials (IKD, 2017, p.24).

Conclusions

The problem of fighting corruption must be treated, programmed and fought differently from other crimes. Corruption is committed and "lives" through officials, government representatives, political parties, governmental and non-governmental institutions. This phenomenon is intertwined in the field of employment, licensing, tenders, obtaining official documents and permits in trade, economy, education, health, police, army, parliament, government, ministry, etc.

Thus, when appointed or elected: the President of the country, the Speaker of Parliament, the Prime Minister, ministers, chairmen of political parties, the chief of police, the mayor, the chief executive and other officials, these officials are required to meet essential moral and political conditions. The issue of prosecution or criminal convictions is not discussed, because this circumstance is an obstacle for the post he takes. Therefore, it is not reasonable in the name of fighting corruption, after the abuse of their official duties, to seek criminal responsibility or to prove their involvement in the crime, to prosecute, dismiss, suspend from office. Although, these conditions are met before they come to the assigned task, they are implied and a priori applied. Investigation and other measures in the detection, trial and execution of the sentence belong to the bodies of intelligence, prosecution and trial that are established by special procedures, with professional, political, constitutional responsibilities. Anti-corruption policies must be transparent and accountable to citizens. Systematic recognition, collection and dissemination of information on the real extent of the extent of corruption, the damage that this phenomenon brings to the state and society on other negative consequences of corruption and the causes of their occurrence should be done. The fight against the criminal activity of corruption must be carried out in the form of avoiding the causes and consequences that create corruption, in addition to legislative regulation, punitive policy, organization and increase of efficiency for detecting, combating and prosecuting organized crime and corruption.

⁴ Civil society actors estimate that the SPRK's performance has failed in many segments in the fight against crime, with special emphasis on the fight against high-profile corruption. " NGO: IKD Interview with Senior Researchers of KIPRED Institute, November 2015.

References

- Begeja, Skender (2004). *Criminology*, Tirana.
Code no. 04 / 1-123 of Criminal Procedure, Official Gazette of the Republic of Kosovo / no. 37/28 December 2012.
- Criminal Code of the Republic of Kosovo, no. 06 / L-074 dated: 23 November 2018.
- Gjonca, Luan (2004). *Corruption (Constituent criminal offenses, organized crime)*, Tirana.
- Glaser L. Edward; Goldin, Claudia (2004). *Corruption and reform: an introduction* (National Bureau of Economic Research), Cambridge.
- IKD (2017). *War, persecution or amnesty in the name of fighting corruption*, Pristina.
- KIPRED (2014). *Corruption investigation in Kosovo: (Non) Cooperation between police and prosecution*, April, No. 1/14, Pristina.
- Kosovo Law Institute (2015). *Fighting corruption in Kosovo, priority on paper*, Pristina.
- Latifi, Vesel; Beka Agron (2013). *Murders, Organized Crime, Terrorism*, Prishtina.
- Manevski, Mihajlo (2005). *Korupcijata vo Republika Makedonija, Preventivni i kazneni merki za sprečuvanje*, Skopje.
- Sharles, Lervis (1994). *The Role of the Media and Non-Governmental Organizations in the Fight against corruption, "Corruption § Democracy"*, Tirana.