

## **CORRUPTION AS A PHENOMENON OF SOCIAL DEVIANCE IN IMPLEMENTING THE LAW**

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*Corruption is one of a large and diverse phenomenon both in form and content, but defined and reflected insufficiently in the legal system of the Republic of Moldova. The definitions provided by local researchers in the field of this phenomenon focuses more on the public sphere, on the official servant and his duties, whereas, the issue of corruption is a variety and complexity much greater than the one proposed in local literature. The author comes with an attempt to broaden the concept of corruption in legal field, Thereby trying to explain the deviant impact of corruption on different forms of realizing the right.*

**Key words:** *corruption, social deviance, realizing of law, corruption impact.*

Corruption has always been the subject of studies by specialists. Corruption is probably the oldest social phenomenon that has developed in human society gradually and peaked with the advent of statehood. History shows that namely this phenomenon has been the catalyst for the various events that have stagnated, while in other cases, on the contrary, led to the development of society. Of course, the second aspect is quite debatable, but we can't disapprove that in the history were enough paradox moments and, in some cases, namely corruption in different periods gave the main impetus to faster development of the state [1, p.11].

Corruption in the understanding of some native researchers, widespread conception in the world of legal contemporary sciences, is abuse of power committed in public office by an employee of the public administration, regardless of status, structure or hierarchical position, in order to obtain a personal advantage, direct or indirectly, for himself or for another physical or legal person [2, p.187].

Here we can mention the relevant opinion of the Romanian author Mr. Dorin Ciuncan in whose concept "corruption is a phenomenon typical to the bureaucratic state, the budget state which governs/manages by itself directly or „from underground” all the energies of the nation by his permanent supply with resources and not by natural healthy and normal evolution [3].

However according to Romanian Language Explanatory and Etymologically Dictionary [4, p.171] the term [corruption] is a deviation from morality, of honour, of duty [<fr. Corruption, lat. Corruption, -onis].

In "The Oxford Modern English Dictionary [5, p.223]" the meaning explained in paragraph 2 and 4: <[corrupt] ... two or influenced by using bribery or 4. make fraudulent activity or become corrupt or

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*Veaceslav Zaporozjan, doctor în drept constituțional: Constituția Republicii Moldova nu prevede posibilitatea revizuirii Constituției prin referendum. FLUX, Ediția de Vineri Nr.20122 din 20 ianuarie 2012 În:*  
<http://archiva.flux.md/editii/20122/articole/12828/>

depraved>. Also the term [Corruption] in the same source says: <1. moral deterioration, widespread. 2 use of corrupt practices, esp. bribery or fraud.>

Corruption phenomenon is universal and it is proper to all societies. Democratic experience has shown that corruption has a direct impact on economic and social development, destroying the potential benefits of free market forces, market economy rules are distorted, and the companies „play on commission” to obtain an economically profitable contract.

It should be noted that corruption in the legal sphere is indispensable to organized crime and in fact it is a form of it. Mr. Valeriu Cuşnir, D.Sc. in law, proposes the following meanings of the crime of corruption: "the act of a public officer or servant employed in the private sector, which consists of trafficking duties of the held position in exchange for favours, or speculation in the same purposes, of the influence on public servants, as stipulated in criminal law".

Same as his other colleague of his guild, criminologist Ilie S., which defines the phenomenon as follows: "Corruption is a negative social phenomenon, that consists in use of the position held and the possibilities related to it in by people that are in accountability positions of public administration in order to obtain illegal material goods or other benefits (profits) and personal advantages". An important aspect, proposed by Sergiu Ilie, is represented by the following forms of corruption:

1. Bribery;
2. Self-spoiling;
3. Protectionism.

Bribery is the "classic" form of corruption. Self-spoiling presupposes the existence of a single party that based on abuse of power from the office or contraband, harms the organization where they work. Protectionism is apparent from the influential position as an official that can influence decisions making factors in favour of someone using trophic of influence for example. The scientist claims that corruption should be treated not as just criminal act, but as a social phenomenon which manifests itself only through a sum of actions with the same essential idea (officials intentionally using their position for personal interests) and it constitutes a distinct entity.

In this regard, looking on corruption as a social phenomenon, we expand research area of it receiving legitimacy namely from the scientists in law and criminology, where each legal term needs concrete scientific support and have very precise definition, which means that, corruption is the object of study for several social sciences such as psychology and anthropology and sociology, all related to behaviourism.

International normative documents define corruption differently. From UNO documents about fighting corruption there is such a definition of this phenomenon: "abuse of power in order to gain private purposes"[6, p.10]. It follows that corruption goes beyond bribery. It subsumes itself bribery (reward in order to slip from the standpoint debt of service), nepotism (protection based on personal relationships) and appropriation of public funds for personal purposes. The statement released by the secretary UNO based on the experience of different countries in the notion of corruption include fraud, embezzlement (misappropriation), appropriation of state property by state officials, abuse of service to obtain illicit personal gain as a result of unofficial use of their status as officials. This is the conflict between civic duty and personal interest. As per forms or manifestations of corruption, the official website of the United Nations Office for the Fight against Drugs and Crime, we find the following list of behavioural conflict of interest, embezzlement, fraud, bribery, political corruption, nepotism, bureaucracy and extortion.

Respectively as key elements that underpin the workings of corruption are: the existence of two parties in the corruption, abuse of performing function that has one of the parties, offering a illicit good between the parties, facilitating an advantage of the one that offers. According to some authors only two elements are sufficient to develop the mechanism or corruption actions: narrow interest (personal or group) and use duties in their own interest or of the group.

Corruption represents a large typology variety, diverse as we have seen, manifesting itself all over the world, both in terms of behaviour tolerated (tips, offering gifts), manifestations blamed by society (fraud, nepotism, patronage, clientelism, favouritism, cronyism) [7], or corruption actions envisaged in the Criminal Law of most states (bribery, traffic of influence, money laundering, fraud, embezzlement, extortion, conflict of interest, fiduciary risk). There is also another category of typologies that address corruption as state macro-phenomenon (sporadic corruption and systematic corruption, big and small corruption, corruption and controlled and uncontrolled corruption, political corruption, bureaucratic corruption, captured state, kleptocracy).

The most typical manifestation of corruption is bribery of officials and political activists, protectionism, promoting workers on the principle of kinship, personal loyalty and friendship relations. Key here is the power category. Where no relations of state power there are cannot exist state corruption.

Institutions, organizations and businesses attacked by corruption can be alike private or public. They may have management functions (ministries, city halls etc.), provision of services (schools, hospitals etc.) or production (firms, factories, farms, etc.). To be effective and to be successful, the fight against corruption must be fought on several fronts: social - cultural; economic; legal; political.

Nowadays, corruption is regulated at national level by several laws. Depending on the nature of the actions and character of the sanctions set out can be distinguished following types of corruption regulations:

1. The general regulation;
2. Special regulation, which includes: a) criminal regulations; b) contravention regulations; c) institutional regulation.

The most important piece of legislation governing corruption in Moldova is the Criminal Code. Therefore we appeal to the criminal legal framework of corruption in Moldova.

Any criminal phenomenon is complex and is manifested in a bigger or smaller variety of private behaviours. Therefore, methods of counteracting that have a legal character and concerns human behaviour, cannot directly strike the phenomenon, but are geared toward particular events, human behaviour, individual or group.

In these circumstances, the need arises to reveal exactly behavioural manifestations of corruption, so that criminal repression to serve fully in counteraction. For a start it is necessary however, to determine precisely those behaviours corruption that have already been criminalized by the criminal law.

In intrinsic terms corruption is the use of function duties in private interest. In terms of extrinsic corruption is a socially morbid phenomenon that affects or even paralyzes the normal functioning of institutions, organizations and businesses.

Therefore, corruption acts are distinguished from the point of empirical sees from the other by the presence of two main elements, indissoluble related to: (1) use of function duties and (2) for personal interest. Through function duties we mean rights and obligations available to a person under the position they occupy and exercise in an institution, organization or business for personal interests. By personal interests we understand any form of using arbitrary function duties conducive to satisfy their needs, material or of other nature.

It is worth noting at the outset that in the chapters XV and XVI of the Criminal Code are for committed offenses related to corruption; however the definition of corruption is not given in these chapters, being stipulated in fact crimes related to bribery and abuse of power or abuse of office.

Performing a statistical analysis of articles that criminalize corruption, those related to them or those which may manifest as corruption reveals the following data: in total there are 62 articles that relate to the criminalization of corruption, of facts on corruption related and of those that may occur as corruption, which constitutes 24.1%, that counts almost 1/4 of the total (258) Articles of the special Part of the Criminal Code, and 15.78% of all Criminal Code (388 articles), which is about 1/6 of the total Moldovan

Criminal Code. Of the 62 items, seven criminalize corruption, ie 11.3%, 3 criminalises acts of corruption related, ie 4.8%, and 52 criminalize acts that may manifest as corruption, i.e. 83.9% [1, p.42].

So from a legal perspective corruption "is a concrete expression of a set of documents and illegal acts, illegal and immoral, which contrasts strongly with the social norms and existing legal and accepted in society values, being determined by a complex of social, economic and political causes and conditions" [8, p.127].

From the above data we can conclude that a considerable number of articles include criminality, direct or indirect, of some behaviours that have the character of corruption. These data confirm the assumption of more scientists that corruption manifests itself in a much wider variety of shapes than those considered traditionally called events "classic" of corruption but was never proven with empirical data. "In light of the extraordinary diversity of forms noticed, reveals the complexity and specificity of corruption phenomenon. The picture shows peremptory that corruption is an extremely poli-form, criminal and expanded phenomenon. It is, of course, incomplete as exposes only the criminal manifestations and not all of them, but just those incriminated, while corruption is a more complex social phenomenon, representing as well contraventional actions, as well as of disciplinary or civil liability "[9]. However, reviewing the manifestations of corruption incriminated in Criminal Code projects a relatively faithful picture to the criminal side of the phenomenon and makes possible a new approach to corruption.

As shown, de facto, anti-corruption legislation is very broad and includes crimes like more than a simple citizen could imagine. This legal and statistic aspect demonstrates how important is the law in preventing and combating corruption, and this is just one case, that of Moldova. While equally insistent is the Criminal Code of Romania, for example, where corruption is not included as a separate concept, but forms of corruption related to corruption are just as much, maybe even more than in the Moldovan legislation. So the European Commission and Council of Europe have adopted a whole set of laws, decisions and binding recommendations on preventing and combating corruption. One of the methods most innovative to improve anti-corruption legislation is the formation of Group of States against Corruption GRECO to which Moldova is a party and whose recommendations are binding on the national laws of member countries with financial support from the Council of Europe [11]. In this context, we can conclude that these anti-corruption committed institutions demonstrates how diverse and multidimensional in terms of institutional and behavioural corruption manifests. That is why some authors believe that the emergence at the ending of XX-th century of dozens of institutions and organizations that manage resources and capital is directly related to the diversification of offenses of corruption. Namely this explains the high number of indictments targeting job performing responsibilities and, accordingly, those aimed corruption, directly or indirectly. "If in the future society will know a different pattern of evolution, characterized by considerable reduction of institutions, organizations and of businesses, it is expected that the extraordinary diversity of forms of corrupt behaviour to know the same reduction, one relatively proportional" [10, p. 40].

Particularly the danger of corruption is that it is like a metastasis, destroy the state apparatus and its treatment is possible only "surgically". Most importantly however, that corruption is the catalyst (ie catalyst, and no generator) of organized crime, one of the components of "environment surrounding them". Acting together these two phenomena is the most serious threat to the state and society, especially in the incipient democracy [6, p.24].

Most often, corruption is seen as a deviation from norms: law, professional deontology or from generally accepted ethics. In this way, corruption ranks as deviant behaviour in society in general and in particular to the realization of law. However, realization of law is made through institutions of law, as executors and by applying the principles of law realization as an institution. Thus, corruption is a phenomenon that interacts directly with institution of realization of law and that of the rule of law. In particular, the corruption belonging to the „choice” domain, meaning narrow interest vs. legal integrity,

affects the realization of law through the forms of realization. Let's look at the types of action on law realization and the impact of corruption on them:

1. Law compliance, as a form and fundamental principle of releasing of the law is not applicable and cannot be achieved when corruption is present. Since the essence of this form of action is manifested by refraining from committing actions prohibited by law, and corruption manifest, as I concluded, just committing actions at the expense of equality and social justice and denotes social betray in favour of personal or group interests.

2. Execution of law, which provides active actions resulting from the mandatory provisions of legal regulations, and it, is also imperative vitiated by corruption. Corrupt officials being bribed, or favoured not taking enough "active measures" to bring the truth in light, but even the opposite, by not applying the law and not taking actions is trying to favour someone into detriment of the law and the spirit of regulations. By the way, in case of execution act of realization of the law, we are witnessing a form of corruption that often gives official a certain amount of psychological comfort, he not having to actually do anything. In fact, it includes lack of actions, actions which by law official was obliged to undertake, but he may not do them intentionally favouring his private interests. For example delaying or rejecting criminal prosecution or unfounded failure to execute the obligations in reasonable terms, for which of them sanctions envisaged are vague.

3. Use of law, assuming the realising some of the individual rights by its own will, it can also bump corruption when the individual will try to use its rights. For example, under certain procedural deviations of certain state officials, the individual will not be able to access or bring to life his right by using it. The deviant and corrupt official will not give him the possibility to do it and by that killing the spirit of law.

4. Application of law (implementing act), as complex activity of particular empowered subjects, is the most tempting action that fuels scourge development of corruption. Applying the law is the action that represents all law institutions regulating social relations, including the judiciary. The largest deviations and shortcomings are at the level of application of the law, because here officials of public institutions use their advantaged position compared to citizens, last being ready to maximal favouring officials within obtaining an expected personal interest in the detriment of law, no way talking here of social justice and equality in front of the law.

In conclusion the author is of the opinion that the greatest act of corruption itself is the social injustice. From here start all foibles of rule of law, of the nihilist legal consciousness, and disappointment of society, respectively the lack of credibility in public institutions in particular and in the rule of law in general. The crisis of credibility in public institutions leads to profound social unrest leading to internal disorder, legal anxiety and social disobedience. This anxiety serves some grounds for resignation or emigration, and for others, a way to survive and feed the system with the adage "the strongest survive" or the Machiavellian "the scope justifies the means". Therefore, the society becomes increasingly distorted, increasingly corrupted being driven, legally, by the legislation (Constitution, organic laws, special laws, rules) and de facto, is driven by interests and kin personal or group relationships on the basis of existing legal relationships. By the way, the law is itself an instrument of blackmail and fostering corruption because any penalty prescribed by law is dealt with by officials. Those who actually have to apply the law, namely those are in many cases generators and catalysts of corruption.

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