

Corruption in Serbia - Political and Legal Aspects

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Abstract

Corruption exists in all contemporary states; however, in the Republic of Serbia the consequences of wars in the area of former SFRY and economic sanctions have contributed significantly to its establishment. Although the Serbian legislators have set up a series of legislative and organisational changes with a view to create conditions for an efficient fight against corruption, notable results in fighting against this negative phenomenon were not achieved until a demonstration of powerful political will for its suppression was made.

Key words: corruption, legal system, political will, international cooperation.

Introduction

Corruption is quite certainly a global phenomenon plaguing entire modern society. Corruption is present in all countries of the world regardless of their economic, social and political system. Through time, it seeped ever deeper into the corridors of the 'state power apparatus' and hence in present conditions it represents one of the tallest obstacles to achieving rule of law in a democratic system. There are numerous reasons behind this; they can be economic, political, social, psychological, cultural and other. What is quintessential to corruption is the fulfilment of private interests at the expense of the public interest and the common good, which can most often be seen in misallocating budget funds¹.

Etymologically, corruption (lat. *corruptio*) represents neglect and abuse of office for achieving personal gain; bying off; and bribery of officials. In a broader, legal sense, it encompasses all forms of abusing official duties and office due to greed (bribery, abuse of position and authority, provision and use of privileges, mutual favours, acceptance of commissions and gifts), whereas in the narrow sense, it implies the crime of giving and/or receiving a bribe².

¹Which is why the Council of Europe established the provisional definition of corruption in 1994, phrasing it as the "behaviour in relation to persons entrusted with responsibilities in the public or private sector, which violates the duties that follow from their status [...] aimed at obtaining undue advantages of any kind "

²BOŠKOVIĆ, M. *Lexicon of Criminology (Kriminološki leksikon)*, Matica Srpska; University of Novi Sad, Novi Sad; 1999; p. 145.

The author's intention was to point out the specificities of corruption in the Republic of Serbia, i.e. to analyse its important characteristics, legal preconditions for suppressing it and the overall engagement and possibilities of social action.

The History of the Fight against Corruption in Serbia

Corruption is rightfully considered as the companion to development of society, which would imply that it has existed since ancient times, manifesting itself in a number of forms. Diverse socioeconomic and political relations within our historical development contributed to the origins, development and survival of corruption in these parts. In its origins, corruption emerged as a part of the local customs and was long considered to be a normal occurrence. According to an ancient Serbian tradition, any reward given to anybody can not be considered bribery. According to customary norms, presentation of gifts was usually connected to an event of significance for the individual or his/her family and hence was considered an expression of gratitude, whereas bribery would usually be faced with a negative reaction of the citizenry. It is important to stress that the reaction of the environment against the bribe-giver was in most cases milder than the reaction against the bribe-taker. It was considered that the bribe-taker was engaged in it out of greed rather than out of some necessity, and therefore the judgment was greater. Faced with corruption in its inception, Serbia criminalised this behaviour, which can be traced back to the rule of the Nemanjić dynasty.

Dušan's Code from 1349 is considered to be the most important law of Medieval Serbia. This Code was intended to safeguard against arbitrariness and violence and in particular against the abuses done by the nobility and other favoured strata of society. Although it did not have any direct provisions against abuse of office, the Code did contain many provisions on abuses – including illegal execution of a duty or office to the benefit, or at the expense, of another.

Karadorđe's Criminal Code was in force during the course of the First Serbian Uprising (1804 – 1813); its individual provisions criminalised the abuse of office and bribe taking. Of the four articles dealing with corruption, one was related to bribery in the army. Bribery in the army consisted of bribe-taking by the superior officer in order to discharge a particular soldier from service earlier than planned. The legal sanction provided for this was that the perpetrator was obligated to pay back the exact amount taken from each individual soldier as bribe to discharge them from service.

As specific forms of the abuse of office, the 1929 Kingdom of Yugoslavia Criminal Code³ provided for the the criminal act of bribe-taking, included court bribery as a separate crime⁴. It should be noted that the 1929 Criminal Code was in force until the beginning of the demise of the Kingdom in April 1941. Aside from this, the Kingdom of Yugoslavia Special Law on suppressing abuse of office when contracting with the state or self-government bodies was adopted on 30 March 1929; it stipulated the procedure for examining dubiously acquired income for state officials, including Ministers.

After WWII fighting against various forms of illegal activities, corruption included, was considered a paramount task, which yielded the adoption of a number of Laws regulating abuse, as follows: The 1945 Law on the Protection of People's Property and Its Management; the 1945 Law on Protection of People's Property and Property Under State Management, the 1948 Law on Criminal Offences against Official Duty and the 1951 FNRJ Criminal Code, which was in force until 1977. The FNRJ Criminal Code was amended several times and corruption criminal offences were listed in chapter XXIV of individual offences as 'Criminal Offences against Official Duty', such as the abuse of office or authority; violation of the law by the judge; illegal collection and payment; bribe taking. After the 1974 constitutional changes the Republic of Serbia proscribed the criminal offences and sanctions in its own criminal legislation⁵.

There fore, corruption developed and obtained new forms, depending on social, economic and political conditions, impacting harmful consequences on the society with its antisocial and illegal nature⁶.

The demise of former SFRY, wars, economic sanctions and the beginning of transition created a base conducive to the development of corruption. In these conditions there were hardly any measures suppressing corruption and it became a commonplace occurrence of sorts. Furthermore, there is an opinion that – among the numerous causes conditioning the emergence of corruption – the crucial factor was the imposition of economic sanctions during 1992. The sanctions triggered shortages of a number of goods and created the conditions for

³ Kingdom of Yugoslavia Criminal Code ('Official Gazette' No. 33-XVI/1929; 245-LXVV/1931).

⁴ To be compared to Šoškić N: Forms and Manners of Suppressing Corruption (*Oblici i načini suzbijanja korupcije*), Akademska štampa, Zemun, 2004, p. 32; Tomanović M: Crimes of Corruption – Abuse of Office, Bribe Giving and Taking and Criminal Acts with Similar Characteristics (*Krivična dela korupcije - zloupotreba službenog položaja, primanje i davanje mita i krivična dela sa sličnim obeležjem*), Kultura, Belgrade, 1990, p. 52.

⁵ The amendments to the 2002 Republic of Serbia Criminal Code introduced a new chapter, XXIa, entitled 'Criminal Offences of Corruption', including nine criminal offences from the field of corruption

⁶ Jelačić, M: Corruption – Social and Legal Aspects and Methods of Coping (*Korupcija – društveno pravni aspekti i metodi suprotstavljanja*), Republic of Serbia MI, Belgrade, 1996, p. 42.

the strengthening of the grey economy and corruption. Their participants had to bribe customs officers, inspectors, the police and other officials in order to procure goods or in order to obtain permits for unobstructed sales of said goods. In parallel, a significant portion of the workforce and employees was left jobless and transferred to the realm of grey economy, i.e. started engaging in contraband. Hence, on the one side sanctions have led to the impoverishment of the society overall, whereas on the other they have led to a number of people acquiring wealth quickly and easily, which was even more conducive to the spread of corruption.

After signing the Dayton Agreement in 1995 economic sanctions were reduced, but a system of quotas and contingents – i.e. permits for import and export of goods in short supply – was introduced. It was needed to bribe a civil servant in order to engage in import or export and therefore the ability of procuring permits was one of the instruments individuals used to gain wealth. Certain other factors also contributed to the rise and development of corruption, like the existence of different exchange rates for one currency (the official and ‘black market’ rate), poverty, unemployment, unharmonised legal system etc.

Corruption polls in the Republic of Serbia in general and in separate segments of society and at local level demonstrated without a doubt that corruption has seeped into almost all pores of society in Serbia and become the daily mode of behaviour and operation of the political elite, public servants and citizens alike. Apart from universal reasons, corruption in Serbia was also assisted by the following circumstances: the demise of the previous system and its mechanisms of checks and balances; transformation of property rights; refugees; conflicts along ethnic and religious lines; various forms of sanctions up to military interventions; decline of individual, collective and socioeconomic power; a high level of centralisation of society; inconsistency in the behaviour of government bodies according to political party and other affiliations⁷.

⁷ See more in: VUKOVIĆ, S. *Law, Morality and Corruption (Pravo, moral i korupcija)*, Institute of Social Sciences; Draganić, Belgrade, 2003; Begović B. et al, *Corruption in the Judiciary (Korupcija u pravosuđu)*, Center for Liberal-Democratic Studies, Belgrade, 2004; Sekulović M: *Transition and Corruption (Tranzicija i korupcija)*, DDA et al, Niš, 2000. Begović B. Et al, *Corruption in the Customs Service (Korupcija na carini)*, Center for Liberal-Democratic Studies, Belgrade, 2002; etc.

The Political and Legal Aspects of the Fight against Corruption in Serbia

Facing with a high level of social hazard and its determination to become a member of the EU were the decisive factors for the Republic of Serbia to take more efficient measures in the fight against corruption. One of the foundations of the fight against corruption was the National Anti-Corruption Strategy, adopted in the National Assembly in late 2005, and the Action Plan for its implementation, adopted at Government level. The above mentioned Strategy defined corruption as a relationship entered into through the abuse of authority in the public and private sectors with the aim of obtaining personal gain or benefits for another party. This definition does not only include bribe giving and taking, but expands onto all criminal offences committed out of greed and through the abuse of authority, expanding the scope of the concept to abuses performed in the private sector as well. The Action Plan for the implementation of the National Anti-Corruption Strategy precisely defines activities that need to be taken in the implementation of the Strategy, leaders of individual activities and deadlines for the implementation of said activities, possible challenges etc. Apart from the above, it should be pointed out that the National Judicial Reform Strategy was adopted as well, which is very important in the fight against corruption as the independent and efficient judiciary is one of the preconditions for a successful fight against corruption; also the Public Administration Reform Strategy was adopted as well etc.⁸.

This orientation and the new legislative solutions open up vastly greater possibilities in discovering corruption crimes. Apart from this the Republic of Serbia has ratified all international anti-corruption conventions adopted by international organisations to which it is a member: United Nations Convention against Corruption, Civil Law Convention on Corruption, Criminal Law Convention on Corruption and the Additional Protocol to the Criminal Law Convention on Corruption.

After having been readmitted into the Council of Europe and taking over international obligations, the Republic of Serbia adopted a set of laws significant for the prevention and fight against corruption, such as: the Law on Public Procurement, the Law on Free Access to Information of Public Importance, the Law on the Prevention of Conflicts of Interest, the Law on Funding of Political Parties, the Law on the Protection of Participants in Criminal Proceedings, the Law on Ombudsman, the Law on State Audit Institution, the Law on the Prevention of Money Laundering, the Law on Police, the Law on the Judicial Academy

⁸ To be compared to JANKOVIĆ, S. Prevention and Suppression of Corruption in Serbia (*Sprečavanje i suzbijanje korupcije u Srbiji*), *Authoritative Legal Newsletter* No 3/2007, p. 64-68.

(training of judges, public prosecutors, deputy public prosecutors and assistant judges and prosecutors) etc.

As a social issue with economic and social consequences, the fight against corruption is based on three crucial elements defined in the National Anti-Corruption Strategy, as follows: efficient implementation of anti-corruption regulations, prevention, i.e. removing the possibility of corruption and raising awareness to receive public support for the implementation of the anti-corruption strategy.

Considering that the fight against corruption calls for a comprehensive and planned involvement of the entire society, alongside an organised and long-term process of implementing defined preventative and suppressive measures to fight corruption, various anti-corruption bodies were established in Serbia, as follows:

The Anti-Corruption Agency is an independent state body whose competences are, among others, supervising the implementation of the National Anti-Corruption Strategy, Action Plan for the implementation of the strategy and sector plans and providing opinions about their implementation. It has been functioning in full capacity since 01/01/2010.

The Anti-Corruption Council is an expert advisory body to the Government that, among other things, comments on laws from the field of fight against corruption and deals with current criminal offences with elements of corruption.

The Commissioner for Information of Public Importance and Personal Data Protection, acting under the Law on the protection of personal data, supervises the implementation of this law, i.e. supervises over the implementation of data protection and decides on appeals in cases falling under this Law.

The Ombudsman, an independent state body, authorised to protect and enhance the observance of freedoms and citizens' rights. Aside from this the Ombudsman performs checks, by way of verifying allegations behind accusations or according to his/her own initiative, whether or not state bodies, the public prosecutor and organisations discharging public authority to the citizens act in accordance with laws and other regulations.

The State Audit Institution was established by the Law on the State Audit Institution in 2005. Its competences are to perform audits, adopt bylaws and other acts and provide opinions, alongside checking the flow of money from the budget to its direct and indirect beneficiaries – which is its primary activity contributing to the fight against corruption.

When speaking of fighting corruption through the implementation of suppression measures, it is widely known that criminal offences with elements of corruption are difficult to prove; this especially stands for bribe giving and taking. In respect of the bodies and

services tasked with fighting against corruption in the republic of Serbia, it should first be noted that the Anti-Corruption Agency is in charge of supervising the implementation of the National Anti-Corruption Strategy and the Action Plan, coordinating state bodies in the fight against corruption, implementing regulations on funding political parties and electoral campaigns and property declarations for officials. The Agency is answerable to the Assembly for discharge of duties within the scope of its authority. The bodies of the Agency are the Board and Director. The Board of the Agency appoints and relieves the Director of duty, decides on appeals against the Director's decisions pronouncing measures in accordance with this Law, adopts the Annual Report on the work of the Agency, supervises the Director's work, proposes budget funds for the operation of the Agency and handles other affairs in accordance with the Law. The Board of the Agency has nine members elected by the Assembly at the proposal of authorised proponents, which are: the Assembly Administrative Board, the President of the Republic, the Government, the Supreme Court of Cassation, the State Audit Institution, Ombudsman and Commissioner for the Information of Public Importance, the Social-Economic Council, the Bar Association of Serbia and the Association of Journalists, which represents 11 three branches of government and relevant professional associations.

On the other hand, the Law on the Foundations of Regulating Security Services of the Republic of Serbia, adopted in late 2007 established the *National Security Council* as an operative body of the Republic of Serbia, within the scope of whose activities is the consideration of the situation in the field of protection of national security, consideration of issues related to the functioning of interior affairs bodies and security services, their mutual cooperation, their cooperation with other competent state bodies and international cooperation.

Protection of personal and property security of the citizens, crime prevention and discovering perpetrators of criminal acts, maintaining public order and safety of road traffic fall within the scope of the General Police Directorate with the Ministry of Interior. The Directorate has an autonomous position within the Ministry, established with the 2005 Law on the Police. The crucial organisational units of the Directorate for the Fight against Corruption are: the Criminal Force Directorate, the Police Directorate, the Unit for the Protection of Participants in Criminal Proceedings, the Border Police Directorate, the Administrative Affairs Directorate, the Analytics Directorate and the IT Directorate. The territorial set up of the Police is based on the City of Belgrade Police Directorate, 26 territorial Directorates and the Coordination Directorate for Kosovo.

The Security Information Agency (BIA), formed by the 2002 Law on the Security Information Agency, is a civil service with the status of an autonomous institution directly answerable to the Government. BIA is competent for: a) protection of safety in the Republic of Serbia and discovering and preventing activities aimed at subversion or destruction of the Constitutional order; b) research, collection, processing and assessment of security related intelligence data and any information of significance for the safety of the Republic of Serbia and informing competent state bodies, and; c) other affairs regulated by Law, including the most serious forms of organised crime and corruption.

Regarding the authority and tasks of the Military Security Agency (VBA), it is regulated that the VBA shall discover, monitor, document and intercept: intelligence and other hostile activities of foreign intelligence services in and towards the Serbian Army; domestic and international terrorism; illegal circulation of hazardous materials, contraband of armaments and military equipment and subversive activities targeting the Serbian Army and the Ministry of Defence, as well as criminal offences against the Constitutional order and security, against humanity and international humanitarian law and the most serious acts with elements of corruption and organised crime. Parliamentary oversight over the operation of the VBA is performed by the National Assembly Security and Defence Board.

Over the previous years the Government of the Republic of Serbia and particularly the Ministry of Interior have set the fight against corruption as one of the priorities in their programme papers, which has resulted in sizeable improvements of police efficiency in suppressing this phenomenon. Thereby, since 2012, through increased activity of the police and other state bodies, the number of uncovered criminal offences of bribe taking and giving rose by more than twice.

Finally, the Ministry of Justice of the Republic of Serbia is taking all necessary steps to establish the legal framework and capacities for a decisive fight against corruption and towards meeting international requirements and recommendations (GRECO, UN, EU). Namely, it is a generally known and accepted fact that the phenomenon of corruption is closely connected with the phenomenon of organised crime, even to such an extent that one phenomenon stems from the other and vice versa; these two phenomena are not substantially different when compared and are therefore always analysed in a certain synergy. This is why, in order to perceive the spread of corruption and fight it in its inception, the report made by

the international organisation GRECO (Group of States Against Corruption) regarding the state of corruption in Serbia must be taken into consideration.⁹

The above mentioned report deals with the complete set of anti-corruption legislation, e.g. the changes that had to be made in the Serbian legal system to render it able to face the challenges of corruption and organised crime. Suggestions made by GRECO concerning improvements in the anti-corruption sector were on the most part fully implemented, which started producing results. It can certainly be said, considering the nature of corruption, that a demonstration of political will was also paramount for its suppression.

Closing Reflections

Although corruption exist to a lesser or greater extent in all other contemporary countries, it is especially characteristic of societies undergoing economic transition. In addition to everything stated above, the Republic of Serbia is faced with consequences of wars on the territory of former SFRY and economic sanctions conducive to the strengthening of corruption. Various forms of corruptive activities in the Republic of Serbia around the end of the previous and the beginning of the current century have become so widespread that they grew into a serious threat for the economic prosperity of the country. Thereby the fight against this plague became a priority of the ruling party, which won the previous election on an anti-corruption platform.

Over the past the Republic of Serbia has undertaken a series of legislative and organisational changes with the aim of creating conditions for a more efficient fight against corruption in cooperation with the international community. However, notable progress in suppressing this negative trend occurred only after the demonstration of a strong political will to support the fight against corruption. Even with a clear tendency towards more efficiency in

⁹ The report on the evaluation of the judiciary and corruption in the Republic of Serbia was adopted at the 29th GRECO plenary session in Strasbourg, 19-23 June 2006; this was, in fact, the first and second round of evaluations combined. The report was written by Kazimir Eberg, director of international relations in the Swedish Economic Crime Authority, Jorn Gravversen, Danish Public Prosecutor, Anca Jurma, chief prosecutor in charge of international cooperation in the Romanian Office of Public Prosecutor and Kestutis Zaborskas, Head of Analytics Department with the Lithuanian Special Investigations Service. Taken from the GRECO website: [www.coe.int/dg1/greco/evaluations/round2/Greco-evall-1\(2005\)1rev-Serbia-en.pdf](http://www.coe.int/dg1/greco/evaluations/round2/Greco-evall-1(2005)1rev-Serbia-en.pdf). The most important of the 25 suggestions made are: improve implementation of the La on Public Procurements, enhance the manner of selection of judges and prosecutors, form a special unit within the Public Prosecutor's Office to handle corruption cases, amend legislation in view of the implementation of special investigation techniques, expand the use of confiscation and seizure of property in corruption cases, appoint an Ombudsman, adopt ethical codes of conduct for officials and limit licences related to possible corruptive activities. Quoted according to: Ćirić J: 'GRECO in the fight against corruption', *Foreign Legal Life (Strani pravni životi*, br. 1-3/2006, str. 245-260.

the work that the state bodies were doing to suppress organised crime – as testified in the positive opinions expressed in annual reports of the European Commission and Transparency International – it is necessary to create a social climate that will ensure the continuation of this process in due time. It is a fact that the conditions for the spread of corruption are not as favourable in democratic systems because numerous channels of alarming the public and ensuring political responsibility of holders of public office exist. This is also contributed to by nongovernmental organisations engaged in exposing corruption at national and international level. A significant role is also played by the free media that are essential to point out corruption in politics and business¹⁰.

Bibliography

BEGOVIĆ, B. et al. Corruption in the Customs Service (*Korupcija na carini*). Center for Liberal-Democratic Studies, Belgrade, 2002.

BEGOVIĆ, B. et al. Corruption in the Judiciary (*Korupcija u pravosuđu*). Center for Liberal-Democratic Studies, Belgrade, 2004.

BOŠKOVIĆ, M. Lexicon of Criminology (*Kriminološki leksikon*). Matica Srpska; University of Novi Sad, Novi Sad, 1999.

DELLA PORTA, D. (edit.). *Democracy and Corruption in Europe*. Pinter, London etc., 1997.

HEYWOOD, P. *Political Corruption*. Blackwell Publishers, Oxford etc., 1997.

JANKOVIĆ, S. Prevention and Suppression of Corruption in Serbia (*Sprečavanje i suzbijanje korupcije u Srbiji*), Authoritative Legal Newsletter No. 3/2007.

JELAČIĆ, M. Corruption – Social and Legal Aspects and Methods of Coping (*Korupcija – društveno pravni aspekti i metodi suprotstavljanja*), Republic of Serbia Ministry of Interior, Belgrade, 1996.

ĆIRIĆ, J. GRECO in the Fight against Corruption (*GRECO u borbi protiv korupcije*), Foreign Legal Life No. 1-3/2006.

SEKULOVIĆ, M. Transition and Corruption (*Tranzicija i korupcija*), DDA et al, Niš, 2000.

VUKOVIĆ, S. Law, Morality and Corruption (*Pravo, moral i korupcija*), Institute of Social Sciences Institut društvenih nauka; Draganić, Belgrade, 2003.

TOMANOVIĆ, M. Crimes of Corruption – Abuse of Office, Bribe Giving and Taking and Criminal Acts with Similar Characteristics (*Krivična dela korupcije - zloupotreba službenog položaja, primanje i davanje mita i krivična dela sa sličnim obeležjem*), Kultura, Belgrade, 1990.

ŠOŠKIĆ, N. Forms and Manners of Suppressing Corruption (*Oblici i načini suzbijanja korupcije*), Academic Press, Zemun, 2004.

¹⁰ See more in DELLA PORTA D. (edit.), *Democracy and Corruption in Europe*, Pinter, London etc., 1997; Heywood P. *Political Corruption*, Blackwell Publishers, Oxford etc., 1997.

Republic of Serbia Criminal Code (*Official Gazette of the RS* Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009).

Code of Criminal Procedure (*Official Gazette of the RS* Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 i 55/2014).

Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime, Corruption and Other Severe Criminal Offences (*Official Gazette of the RS* Nos. 42/2002, 27/2003, 39/2003, 60/20003, 67/2003, 29/2004, 58/2004, 45/2005, 61/2005, 72/2009).

Law on the Protection Programme for Participants in Criminal Proceedings (*Official Gazette of the RS* No. 85/2005).

Law on International Legal Assistance in Criminal Matters (*Official Gazette of the RS* No. 20/2009).

Law on the Bases Regulating Security Services of the Republic of Serbia (*Official Gazette of the RS* No. 116/2007).

Law on the Police (*Official Gazette of the RS* No. 101/2005, 63/2009).

Law on the Security Information Agency (*Official Gazette of the RS* Nos. 42/2002, 111/2009 and 66/2014).

Law on Seizure and Confiscation of the Proceeds from Crime (*Official Gazette of the RS* No. 97/2008).

Criminal Code of the Kingdom of Yugoslavia (*Official Gazette* Nos. 33-XVI/1929; 245-LXXV/1931).

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