

Crime and motivation towards corruption as a result of countries in transition: A case study of Serbia

Abstract

Corruption is an illegal and anti-social phenomenon which cannot be fully neutralised. Therefore, it is necessary to create a unique system and applicable mechanisms for controlling and managing corruption, at both national and international level. The causes of corruption are: economic; legal; political; institutional; and historical. The objects of corruption are the political system; the judicial system; the police; government and public services; the public financial and economic systems; the media; and citizens and civil society. Serbia's authorities have yet to demonstrate the necessary political willpower and readiness for the practical implementation of anti-corruption measures. Nevertheless, the quality and effectiveness of anti-corruption measures depend on the moral level and quality of both the Serbian authorities and the citizens of Serbia in general. Ultimately, it will be necessary to pass and enforce a law on criminal motivation: if the state does not control corruption, corruption will control the state.

Keywords: *greed, giving bribes, taking bribes, motivation, corruption*

Introduction

The linguistic meaning of 'corruption' is depravity, immorality, bribery, bribe, deterioration, rot, decay, forgery. The meaning of 'corrupter' is a forger, an immoral person, one who receives or gives a bribe; while 'inducement' means decay, bribery, payoff, seduction.¹ A subject of philosophical, sociological, political and legal research, the definition of corruption can be classified in either a traditional or a modern manner. Traditionalists such as Plato, Aristotle, Polybius and Montesquieu believed that corruption was the deterioration of authority, or conduct which is not in the public interest; while Machiavelli and Rousseau believed that corruption was the moral corruption of people. Modern definitions are:

1. administrative – corruption is a deviant behaviour of individuals in relation to their formal role
2. economic – corruption is a way of maximising profits by violating laws and social community ethics
3. public interest – corruption is the use of public funds for personal interests.² In part 2 paragraph 1 section 1 of the Anti-Corruption Law,³ corruption is defined as a relationship based on the abuse of authority, social position and influence, in the public or the private sector, in order to gain a personal advantage.

1 Vujaklija, M (1980) *Lexicon of foreign words and phrases* Belgrade, p. 472.

2 <http://www.antikorupcija-savet.gov.rs/en-GB/content/cid1006/definitions>.

3 *Official Law Gazette RS* No. 97/2008 and 53/2010.

Serbia's National Strategy for Combating Corruption⁴ is also defined as a relationship based on the abuse of authority in the public or private sector in order to gain one or other personal advantage. So, in essence, we can say that corruption is greed.

Criminal motivation

Guilt, as a psychological and normative category, is both a psychologically willing relationship between the perpetrator and the completed offence, as well as the basis for passing an ethically legal punishment to the guilty offender. The Serbian legislature requires that a psychologically willing normative relationship be established in criminal proceedings, i.e. the court must determine, in each particular case of action, the content and degree of culpability: guilt must be proved. For a precise determination of the degree of guilt, it is necessary to determine, in addition to awareness, the exact criminal motive associated with the criminal activities. Motive is also a psychological and normative category and, as an integral mental factor, it creates and determines the criminal conduct materialised in the undertaking and execution of criminal acts. The basic functions behind the criminal motive are creating and determining. It is intent and negligence that determine the content and the degree of culpability.

Criminal motivation is the integral psychological (or motivational) process of the creation, development, selection and implementation of criminal motives. The motivation process consists of two elements:

1. initial (the effect of the motive, needs, incentives and the other determinants of personality)
2. acceptance of the initial elements, thus creating a motive. Criminal activities are determined, usually, by a group of motives. Motivation may be determined by any of three principles:
 - the principle of deprivation
 - the principle of saturation
 - the principle of hierarchy.

Criminal law and the criminological analysis of criminal motivation is a psychological study of the personality structure of the culprit and the ethical evaluation of their psychological behaviour and actions.⁵

The structure of the criminal motivation process consists of the following phases:

1. updating the mental components (the necessity, aspirations, interests, etc.) which have appeared under the influence of either internal and external factors
2. the conscious knowing or understanding of the psychological components which represent a state of need
3. the formation of representations of goals and ideas on about how to achieve consciously-set goals, i.e. the objectives (evaluation and selection of methods, the place and time for the realisation of motives and their objectives)
4. the selection of one or more perceived needs; the selection of a single (most rational and optimal) need from among the existing notions; the selection of a single (most

4 www.korupcija.gov.rs

5 Đurić, A (2006) *Motive in Criminal Law* (monograph), Nis, pp. 96, 133, 311.

rational and optimal) from among the existing ideas of the manner, place and time for achieving the goal; and the making of a decision on the execution of criminal acts. Furthermore, all that is considered through internal conflict in line with the personal moral traits of personality, value orientation, emotional state, temperament, abilities and experiences

5. the desire to achieve a selected goal, the performance of a specific goal or desire for the crime (the taking of physical activity to complete the desired action, the forecast of the possible results of the actions taken; or the control, correction and analysis of the activities undertaken) which form a motive within the offence and motivational process.

The functions of the criminal motivation process are: creating, selecting, determining power, affirming, regulating and controlling.

Criminal types of motivation are:

1. the motivation for deliberate offences
2. the motivation for criminal acts out of habit
3. motivational-impulsive intentional criminal acts
4. the motivation for crimes of negligence.

The type of criminal motivation determines the content of the motivation, or it determines the function of the motive and motivation. Criminal motivation is always destructive and is executed by the committing of a criminal act, i.e. attacking an object which is protected by criminal law.⁶

Motivation towards corruption

The common motive for corruption is greed. According to some experts, self-interest is 'material benefit',⁷ while others define it as 'reckless egotistical desire',⁸ 'character personality trait',⁹ 'pursuit of the acquisition of financial gain',¹⁰ or as 'physical or moral advantage'.¹¹ We think that the motive of greed should be legally defined as an acquired character of personality, a trait towards inconsiderateness, excessive and egotistical desire, or greed for material gain. Greed contains a very intense and concentrated mental energy that drives a person to act, and may be sub-divided into greed of the first degree (where the criminal motive acts as a qualifying legal circumstance); the second degree (the criminal motive is a separate element of the crime); or the third degree (the criminal motive is an optional statutory aggravating circumstance).¹²

6 *ibid*, p. 57, pp. 313-314.

7 Zivanovic, T (1938) *Fundamentals of Criminal Law* Special Part, Book II, Belgrade, p. 20.

8 Zlatarić, B (1958) *Criminal code in practical application* Second Part, Belgrade, p. 80.

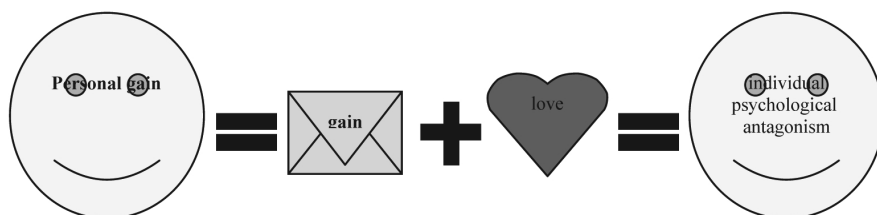
9 Subotic, S (1938) *Motive and its importance* Belgrade, p. 236.

10 Simic-Jekic, Z (1968) *Determination of gain in the Criminal Law* Faculty of Law in Belgrade, No. 4, Belgrade, p. 451.

11 Frank, S (1934) *Criminal Law* Special Part, First Volume, Belgrade, p. 37.

12 Đurić (2006) *op. cit.* pp. 274, 308.

The content of the term ‘self interest’ is determined by the following formula:



(The cause of split personalities, i.e. various forms of illnesses of the soul in the psychological character)

If we can establish the causes of greed, we may be able to prevent and eliminate its consequences. The previous Criminal Law of the Republic of Serbia, in Chapter 21, *Crimes against official duties* contained the following characterisation of corruption:

1. abuse of authority (Article 242, paragraph 1)
2. illegal charges and payments (Article 246)
3. fraud in the public service (Article 247, paragraph 1)
4. unlawful appropriation of objects during the conduct of a trial (Article 250)
5. embezzlement (Article 251, paragraph 1)
6. trading in influence (Article 253, paragraphs 1-2)
7. accepting bribes (Article 254, paragraphs 1-2)
8. active bribery (Article 255, paragraphs 1, 2 and 3).¹³

Particularly significant was Chapter 21A, *Crimes relating to corruption*:

1. corruption in government (Article 255A)
2. misusing available budget funds (Article 255b)
3. corruption in public procurement (Article 255v)
4. corruption in the privatisation process (Article 255g)
5. corruption in the judiciary (Article 255d)
6. abuse of office counsel or attorney members (Article 255đ)
7. corruption in health care (Article 255e)
8. corruption in education (Article 255ž)
9. anti-competitive behaviour (Article 255z).

Common characteristics mentioned regarding corruption and criminalisation are:

1. the first paragraph prescribes the basic form of offence, while the second and third paragraphs refer to more severe examples of this form of incrimination
2. the law makes use of the terms ‘obtaining a benefit’, ‘gain’, ‘benefit’, ‘acquired through use’, which means that this characterisation includes the indirect motive of gain

13 Criminal Code of the Republic of Serbia: *Official Law Gazette* 26/77; 28/77 – corr; 43/77 – corr; 20/79; 24/84; 39/86; 51/87; 6/89; 42/89; 21/90; *Official Law Gazette* 16/90; 26/91 – Decision No. USJ. 197/87; 75/91 – Decision No CCRS. 58/91; 9/92; 49/92; 51/92; 23/93; 67/93; 47/94; 17/95; 44/98; 10/2002; 11/2002 – corr; 80/2002 – Dr. Law 39/2003 and 67/2003.

3. the action taken is made up of exploitation or abuse in the process of carrying out official duties or powers
4. intent is not contained in the precise form of incrimination, other than abuse of office counsel or attorney
5. the terms 'intention' and 'intent' are not included in the precise form of incrimination, but guilt is a specific type of intent because the term corruption implies the contents of criminal actions arising from anti-social (criminal) motives, in which a minimal degree of culpability and intent is possible
6. the object seeking protection against criminal behaviour is official authority, someone in official position or otherwise the property used to carry out duties or actions in the state administration, judiciary, health care, education, sport and other forms of competition, and encompassing the powers of the legal profession.

Unfortunately, this group of criminal offences has not been carried over in the specific provisions of the applicable Criminal Law of Serbia. A separate part of the current Criminal Law of Serbia contains the following characterisation of corruption:

1. giving and accepting bribes in connection with voting (Article 156)
2. accepting bribes (Article 367)
3. giving bribes (Article 368).¹⁴

In direct relation, through an analysis of criminal motives and motivation, the law states that forms of corruption are tax evasion offences¹⁵ and money laundering.¹⁶ Analysing the contents of the applicable provisions of the Criminal Law of Serbia, we have found two ways of prescribing criminal motives:

1. immediate conformity to rules, or containment, in criminal law norms
2. implied conformity to rules, or containment, in criminal law norms.¹⁷

Consequences of corruption

In the report by Transparency International, with regard to the *Corruption Perception Index* for 2010, it was stated that Serbia received a score of 3.5, on a scale of 1 to 10, and is placed 78th out of 178 ranked countries. This score is not considered to be a pass; however, this is common to countries where corruption is a systemic problem (Colombia, Lesotho, Peru, Thailand, Greece and China). From 2000 up to the present day, the Serbian CPI has always been assessed at a grade below pass mark. Thus, in 2000, as the Federal Republic of Yugoslavia, we were given a score of 1.3 and, in the coming years, our country's rating was between 2.4, 2.7, 2.8 and 3.0, rising to 3.4 in 2007 and 2008. In 2009, Serbia saw a further slight upwards shift with an increase to 3.5, while in 2010 there has been no change. Between 2007 and 2010, Serbia's grade has moved up by 0.1 points, which means that there is absence of improvement.

The Serbian government has brought in plenty anti-corruption initiatives (laws, strategies, action plans); ratified many relevant international documents; signed up to almost all of the anti-corruption international associations; and become a member of

- 14 Stojanovic, Z (2006) *Criminal law comment* Belgrade, pp. 400-402, 766-772.
- 15 Article 229 paragraph 1 of the Criminal Law of Serbia.
- 16 Article 231, Criminal Law of Serbia.
- 17 Đurić (2006) *op. cit.* pp. 260-276.

many anti-corruption institutions – but the Serbian executive power has not attained the necessary political will and readiness for the practical implementation of all the mentioned anti-corruption measures. This is confirmed by one of the five conditions set on Serbia's road towards the EU being the reduction of corruption.

In addition, according to recent data from the Agency for the Fight against Corruption, in the past year, some 2 000 politicians in Serbia have increased their own assets by more than €3 800.¹⁸ Ultimately, it will be necessary to adopt and implement a law on criminal motivation.

When we compare Serbia with other countries in the region, Slovenia is ranged in 27th place, with an index of 6.4; Croatia and Macedonia share 62nd place, with an index of 4.1; Montenegro and Romania share 69th place, with an index of 3.7; and right behind them in 73rd place, with an index of 3.6, is Bulgaria. Albania is placed lower than Serbia, being ranked in 87th with an index of 3.3; as is Bosnia and Herzegovina, in 91st place with an index of 3.2. In the rest of the world, the least corruption is found in Denmark, New Zealand, Singapore, Finland, Sweden, Canada, Netherlands, Australia, Switzerland and Norway; while the worst corruption perception index is found in Somalia, Afghanistan, Myanmar, Iraq, Russia, Uzbekistan, Turkmenistan, Sudan, Chad, Burundi, Equatorial Guinea, Angola and Venezuela.

The Chair of TI, Huguette Labelle, has commented that corruption, along with the problems of financial market instability, poverty and climate change, is a huge obstacle to achieving progress across the world. Non-prosecution for corruption is unacceptable and the consequences always firstly attack poor and vulnerable people right around the world. It is necessary to strengthen existing rules and laws, and to integrate anti-corruption measures in all segments at both national and international levels.¹⁹

Human rights are the most frequent object of corrupt attack. The main problem in the implementation of existing, constitutionally guaranteed, human and minority rights in Serbia, human rights stressed the use of bad, or non-existing, constitutional and legal provisions. Serbian government authorities and specialist agencies are not the best guardians of legality; nor do they apply in practice the existing mechanisms to guarantee human and minority rights and their protection under law. This situation at the national level, conducted to protect human and minority rights, is confirmed by reports of the Ombudsman at the national level, the AP of Vojvodina, the Serbian local government and the Commissioner of Public Information of the Government of Serbia. Serbia did not fulfil all the requirements of GRECO – the Group of States Against Corruption –

18 *Blic* 5019, 2 January 2011, pp. 2-5.

19 http://www.transparency.org/support_us [page subsequently changed since quote was recorded, although similar can be found in the press release launching the 2010 *Corruption Perceptions Index*, at: http://www.transparency.org/news_room/latest_news/press_releases/2010/2010_10_26_cpi2010_en].

in its 2010 report. The most stunning fact of all is that the Serbian government had no enforceable record of the property which it possesses.²⁰

Metastasis occurs when corruption meets organised and institutionalised crime.²¹ Article 2 of the *Law on the Organisation and Jurisdiction of Government Authorities in the Suppression of Organised Crime*²² defines it as criminal activity by organised criminal groups, or other organised groups or the members of such. An organised criminal group is a group of three or more people which has spent a certain amount of time acting with the intention to commit one or more crimes in order to gain, directly or indirectly, financial or other material benefit.²³ Under other terms, an organised group means a group which has not been specially trained to execute a criminal act, and neither has it developed an organisational structure, role or continuity of membership of its members, but is nevertheless a functional member of organised crime.²⁴

In addition to greed, corrupt actions may be opting for other criminal motives (revenge, hatred, terror, ruthlessness, arrogance, pride, cruelty, malice, envy).²⁵ For western Balkan states, it is characteristic to have a joint network of corruption and people executing the act of corruption. In this way, corruption is becoming a regional anti-social and criminal process – transnational crime. Starting from the absolute minimum that corruption is practically impossible to neutralise, we believe that the state must manage and control corruption. If the state does not control corruption, corruption will control the state.

Conclusions

Basically, the triangle between corruption, organised crime and institutionalised crime is a psychological attitude of the citizens towards corruption and its impact on the individual, and also of the people in the legislative, executive and judicial power. The most important is the psychological change in the personality structure of every citizen of Serbia. The quality of these and other such changes depend on the quality and effectiveness of the socio-economic, economic, legal and political reforms taking place in Serbia. The executive government power is derived from the citizens themselves, the basic unit of the state. On the psychological qualities and orientations possessed by the majority of citizens in the state depends the faith of politicians and civil servants in the state government. Likewise, on the level of enlightenment and civility possessed by the citizens of the state depends the impact, in both quality and quantity

- 20 See GRECO Third Evaluation Round report on Serbia, available at: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/Greco-Eval3%282010%293_Serbia_One_EN.pdf. See also: <http://www.bgcentar.org.rs/>; <http://www.srbija.gov.rs/>; and <http://www.vojvodina.gov.rs/index.php>
- 21 The term ‘institutionalised crime’ was first used in the twentieth century by a French Professor, Dr. Mark Anselm, who was the founder of a Criminal Social Defence school.
- 22 *Official Government Gazette* 42/2002; 27/2003; 39/2003; 67/2003; 29/2004; 58/2004 – Dr. Law, 45/2005; and 61/2005.
- 23 Article 3, paragraph 1 of the Law.
- 24 Article 3, paragraph 2 of the Law.
- 25 Đurić (2006) *op. cit.* p. 283.

terms, of corruption on the nation and the state. It is because corruption is impossible to neutralise completely that the essence of the struggle against it has become the neutralisation of its causes and the need for recovery from it. Aspects of this struggle confirm the need for a number of preventive and repressive measures.

The content of an anti-corruption strategy and its implementation is directly dependent on the intentions of people in the state authorities of Serbia, as prescribed in the official state mechanisms preserving constitutionality and legality, the rule of law and the legal protection of the basis of the state of Serbia. More specifically, the personal qualities of the people depend on the quality and personality of the executive acting on behalf of the citizens. The temptation of people in power is much stronger and perfidious than the temptations of people under their rule.

We recall the words of Cesare Beccaria, from the book *Of Crimes and Punishments* from the late eighteenth century:

Make sure that the people are afraid of the law and only of the law. The fear of the law is salutary, but disastrous is a fear of one person in front of another.

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