

The Evolution of Understanding Corruption in Romania and other European Countries

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Abstract

Corruption has left its mark over the way the public and private sector of each country evolves. When it comes to countries that have a socialist past, the liberalization process has its particularities and thus corruption has its own particular forms. The present article aims to share light into the conceptualization of corruption with regards to its practical applications and classifications. The present article will also underline the main forms of corruption that took and continue to take place in the Romanian society.

Keywords: corruption, liberalization, bribery, privatization

J.E.L. classification: K40; K49; P37; P48

1. Introduction

In the last 30 years society has gone more through the process of liberalization regarding economy policies. Lately the enthusiasm has focused on liberalization, while developing the public institutions took on a secondary role. Yet, healthy and strong public institutions don't stand in the way of free participation in both economic and politic participation, but rather help can help protect it. Where political organizations and civil societies are weak or completely inexistent, officials can abuse power without facing punishment and conflicts in society are less likely to be maintained at a moderate level.

2. Literature review

Political corruption, or the great corruption at the top of the political hierarchy, targets corrupt people responsible for drafting and enforcing legislation and bureaucratic corruption is limited to public administration, considered as the small corruption that citizens experience every day:

✚ The literature distinguishes between functional and dysfunctional corruption, emphasizing that the low level of corruption "*anoints the mechanisms of bureaucracy*" in the sense that it ensures the functioning of bureaucratic institutions, while the high level of corruption produces dysfunctions in political, economic, social activities etc. (Harris, 2010, p.24)

✚ Internationally, the issue of corruption is treated interdisciplinary and not just from the criminal law point of view, but from a social, economic and managerial point of view also. (Andrei, 2008, p.14)

The Romanian literature insists in presenting corruption from a prevention and sanction point of view, underling the fight against corruption that the public system had to take in the last 30 years. Many Romanian authors (Johnston, Nicolae, Parlăgi, Sabău and many others) underline the importance of understanding corruption from both a legal point of view, but mostly from a managerial point of view, they insist on preventing and fighting this phenomenon using risk management tools.

3. Research methodology

Literature review represents a key starting point of the current article, that proposes to underline the struggle of different authors to understand the concept of corruption. The main research question of the current article is „*What are the main marks evolution has left in understanding the corruption phenomenon in Romania but also in the European culture in general?*” In order to respond to this research question the article will at first define the concept of corruption from different point of view, and then it will try to sort out the definitions into different categories. Last but not least, the article will underline the main forms of corruption in some main European countries, but also the ones that have shaped the Romanian society. This qualitative analysis using comparative law analysis and also document analysis will help readers understand the evolution of the complexity of this concept, in its European understanding.

4. Defining corruption

The Romanian dictionary defines corruption as: “*a state of deviation from morality, from honor, from duty*”. Defining corruption is not universal as legal procedures don't apply to all societies. Specialists in the field have defined corruption in close connection with the field of activity to which is related to, and sometimes this concept has been defined evasively and ambiguously. (Andrei, 2008, p.34)

Thus:

➤ **From the criminal systems point of view** the definition of corruption is treated by the specialists in the field under normative aspect and defined as “*those illegal deeds and acts committed by those who hold political, administrative, judicial power, etc.*” (Johnston, 2007, p.57)

➤ **In terms of operationalizing** the concept of corruption for analytical and practical purposes, empirical research has defined corruption as a variety of the state-society relationship and has distinguished between political and bureaucratic corruption.

The phenomenon of corruption has constantly eroded the credibility of state institutions and their representatives, producing a serious state of danger if we take into account the fact that a large part of the population has come to consider the corruption as characteristic of some economies, markets, or public policies. Putting the sign of equality between democracy and corruption has been and is an obstacle to the democratization of a society. Corruption has always accompanied any political order, totalitarianism or democracy, past or present, all over the world.

Although it is a concept, not yet very well defined, within the phenomena of corruption are included those actions, omissions or attitudes that do something else, either to violate the rule of law or just to bypass the legal norms of a state.

If we were to use a formula to define corruption, then we could consider that:

$$C = M + Dp - R,$$

where *Dp* = discretionary power; *R* = responsibility; *C* = corruption; *M* = monopoly position or monopoly (Nicolae, 2010, p.42)

Whether an activity is public, private or non-profit, whether it is an activity carried out in Romania or in any part of the world, corruption can be identified where someone has a monopoly position over a good or service, exercises a discretion regarding its distribution or provision and there is no regulated liability for it, nor is it otherwise held liable for the distribution or provision made.

5. Practical application of definitions of corruption. Classifications

However, such a definition has rather a didactic utility, as any public authority has a certain monopoly position in the field of public services, has public power. Although theoretically it is not discretionary, it often happens to be so, and the legislation establishes the responsibilities of all public authorities, even if in practice these responsibilities, in the case of corruption, are circumvented. Therefore, the given definition is functional only insofar as one's monopoly position, discretion and responsibility are practically assessed. However, in every case of corruption, the corrupt person behaves as if he had a monopoly position, exercises discretionary power and acts as if he had no so-called responsibilities. (Pedrero, 2008, p.71)

The notion of corruption can be understood in various ways. Going into detail and presenting comprehensive studies on the notion of corruption would only be a waste of time from a practical point of view. In order to have a functional tool in the pragmatic approach to corruption and, in particular, to combat and prevent it, a general definition is sufficient.

In principle, corruption in public administration could be understood as the misappropriation of public office for private purposes.

The forms of corruption are:

- *taking and receiving bribe*
- *influence peddling*
- *nepotism*
- *fraud and forgery*
- *receiving improper benefits (undisclosed earnings)*
- *embezzlement*

Although corruption mainly appears as the prerogative of the civil service, it also manifests itself in the private sector. In reality, the private sector is involved in most cases of corruption of public authorities. Especially in the weaker institutional framework, the unbalanced growth of political and economic opportunities allows one of the dominant groups of these two spheres to exploit the other.

The problem raised by these relations is not only the differences between a lower degree of corruption and a more pronounced one. Thus, it is considered that the state and the tendencies at the level of participation and institutions influence the types of corruption we encounter, namely, the participants, the relations between them, the things at stake as well as the implications.

Looking for corruption syndromes means asking ourselves what underlying development processes and issues can indicate corruption in a society. Samuel P. Huntington suggested that in situations where economic opportunities outnumber political ones, ambitious people use wealth to gain power. On the contrary, where there are more political and less economic opportunities, power is used by people to get rich. (Sabău *et al*, 2011, p.40)

The types of political and economic systems, as well as the levels of institutional power tend to correspond to patterns identified by four corruption syndromes. These are:

A. Influence Market corruption - occurs in consolidated democracies with strong institutions, where the market cannot be directly affected, but through the exercise of indirect influences on its members (private interests represented through lobbyists and legislative staff)

B. Elite Cartel corruption - it develops mainly in new or reforming democracies that have new liberalized markets and only moderately strong institutions. Corruption exists but is mostly controlled through elites in business, politics, the military and the media. Even though the economy might be liberalized, there is resistance to new participants and the sharing of influence and wealth.

C. Oligarchs and Clans - In some societies, political and economic liberalization, which are simultaneous if not embedded forms of political/economic transition, and the insecure boundaries between the public and private sectors have led to a wide variety of opportunities in weak public institutions. The dominant form of corruption in this case will be a disorderly, sometimes violent, struggle between competing elites who seek to use their personal resources to gain both material benefits and political influence.

D. Official mogul corruption - exists in authoritarian states with dysfunctional markets, and weak official institutions where there is an enrichment of family and friends of the leaders, as well as pervasive bribery and extortion at all levels. Unlike oligarch and clan situations where there is unclear who is in charge of the state, in this case of corruption, power is monopolized by an individual.

6. Findings. Corruption in Romania and other countries

In post-communist Romania, corruption was the shortest path to wealth and power. As we argued in previous chapters, the choice of corruption depends on the dominant institutional context, the type of resources valued by society, the pressures on society and the individual, the opportunities or benefits and the risks or costs perceived by individuals. (Parlagi, 1999, p.29-30)

Thus, various manifestations of corruption have taken place in our country:

a) fictitious settlements - are manifested both in Romania and in other former communist countries such as the Czech Republic or Hungary, where dummy (bogus) companies acted as ticks or leeches with public wealth. Their main modes of operation consisted in: undervaluation of imports and/or declaring them as something other than they were in reality, VAT refunds, export premiums, joint ventures method, etc.

b) non-performing loans - the Romanian state was the majority shareholder in four banks in 1998 (BANCOREX, the Commercial Romanian Bank (BCR), The Romanian Bank for Development (BRD) and The Agricultural Bank). BANCOREX and the Agricultural Bank were the worst managed due to the corruption of officials. Depositors' money were often granted as loans to individuals (natural or legal) who did not meet the criteria for lending and / or had no intention of ever repaying them. Thus, the banks were the ones that suffered and as a result the Romanian state as the majority shareholder. These banks went bankrupt (these two, and the others, respectively BCR and BRD, who were to be privatized later). Another illegal method of operating in the Romanian banking system was to favor customers who benefited from substantial advantages by buying currency at a lower exchange rate.

c) privatization - it is the main method by which the former socialist technocrats were enriched not only in Romania but in all the states that went through the process through which property was transferred from the hands of the state to private interests. It is estimated that over 50,000 medium and large enterprises were subjected to this process in transition states in Central and Eastern Europe and this only in the early 90's. In Romania the main method of operation was the purchase of socialist enterprises by their former managers through their own companies or through intermediaries. In fact, from AVAS statistics in Romania (AVAS – the National Romanian Authority of Administration of State Assets), over 95% of the privatization contracts were concluded with companies represented by Romanian capital.

d) bribery - last but not least, bribery is the method by which the share capital (share capital referring to the position in the hierarchy) is transformed into economic capital. Public procurement, the issuance of agreements and licenses, the granting of loans (as we can intuit from the Bancorex case), access to education, access to the health service, the exercise of legitimate violence by the police, even justice itself are all subjects to bribery activities. and can all be found in a country after the fall of communism.

However, not only Romania is a model in terms of all forms of corruption that have found application in society. Given the models of corruption exemplified above, we can refer to the following bribery legal incriminations in different states, as bribery is the main form of corruption that can be found in each country:

- **In Romania**, bribery is punishable by imprisonment for no less than 3 years and no more than 12 years.

- **In Finland**, bribery is punishable by imprisonment for up to 2 years or a fine (there is also a "serious bribe" for which the sentence can be up to 4 years)

- **In Sweden** as in the previous case, bribery is punishable by imprisonment for up to 2 years or a fine ("aggravation" up to 6 years)

- **In Spain** "corruption" (including bribery) is punishable by 2 to 6 years in prison

- **In the Netherlands** there are two types of bribery offenses, one involving the civil servant has a penalty of up to 4 years imprisonment.

- **In Hungary** bribery is punishable in imprisonment just like in the Netherlands with two types of indictment, one for the economic sector and one for acts involving the civil servant. In the second case, the incrimination of the deed is punishable by imprisonment from 1 to 5 years.

- **In Germany** corruption has been regulated in detail, with German criminal law distinguishing between active and passive corruption, but also between public and private sector corruption. The worst offender is the one implicated in active corruption in the public sector, namely bribery of the civil servant (for example). This is considered having "*particularly serious consequences*" (thus constituting an aggravating form of crime) and is punishable by imprisonment from 1 to 10 years. The other forms of corruption are punishable by imprisonment from 6 months to 5 years.

- **The USA** cannot be considered as a valid model for this study as it presents a whole series of obvious differences from the countries mentioned above, the main one being the legal cumulation of sentences (for example: 3 sentences of 3 years imprisonment = 9 years) to the various incriminations

that each state carries out in its anti-corruption policy. However, at the national level, there is an incrimination regarding the crimes committed by federal officials, which can lead to up to 15 years in prison for those who are guilty of bribery.

- **In Italy** the act of corruption of the administrative official is punishable by imprisonment from 3 to 8 years.

With regards to those mentioned above, in the category of countries with the type of corruption called the “market of influence” type, we can include Finland, Sweden, the Netherlands and Germany. However, in the case of Germany, it should be mentioned that it is the “newest” among the states with a phenomenon of corruption of this type, because of its Eastern Germany socialistic past, it was part of the category of states whose corruption is "elite cartel" type. In the category of "elite cartel corruption" countries we therefore include Romania, Hungary, Spain and even Italy, although the last case, it is a special case, in which there are also "oligarchs and clans" corruption influences.

7. Conclusions

Bribery and influence peddling have been the main criminal offences stipulated by the Romanian Criminal Code, as corruption activities. However, corruption is a wide concept which also includes offences such as abuse of power or other activities that see the misuse or mismanagement of public power and state assets for personal gain. This leads to a series of crimes that can result to active and passive corruption, and when generalized gets widespread through an entire public system can lead to failure of an entire public system. Thus, not only the public system can be subject to forms of corruption, as the private sector might be even more opened to criminal activities of such. Romania remains a place where manifestations of corruption have taken most of the public assets of this country, and is a clear example of how a country can lose its own natural resources as a result of corruption.

8. References

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