

CORRUPTION - A REALITY OF OUR DAYS

*Amelia Mihaela DIACONESCU**

Abstract

The phenomenon of corruption characterizes mainly the societies in transition, which are more vulnerable and go through a state of disorganization, therefore not being representative for the Romanian society only. Corruption has a direct impact on the economic and social development and destroys the benefits of the free market economy. The rules of the market economy are distorted, and the companies “bid based on commission” in order to obtain a profitable economic contract. Corruption involves an illegal agreement, based on a criminal negotiation process, in order to fulfill certain interests of economic nature in the benefit of the involved parties, among which one is a public clerk. The criminal activity usually takes place under conditions of unlawfulness and confidentiality. The capacity of the state bodies which have attributions in preventing and fighting against this phenomenon is diminished, under the aspect of the possibility to acquire certain information with an operative value, by the hidden, insidious character of the criminal negotiation. In order to ensure an effective frame of operative monitoring of the areas and sectors with criminal potential from the corruption point of view, we must start from identifying the sources of information and checking attentively their truthfulness, in order to trigger the criminal investigation

Keywords: *corruption; criminal activities; Romanian society; vulnerable points.*

JEL Classification: [K40]

1. Introduction

Corruption represents the phenomenon which monopolized easily all the domains of social life, becoming a scourge of the contemporary society currently. Without having a favorite domain of activity, corruption makes its presence felt in all fields: from services, economy/finances, sanitary system, until the educational system, sales.

Corruption is actually a deviation from normality, from duty and means the abusive use of the intermediary position by a person or of the decision function fulfilled by a person, in order to grant the briber or the community of interest he represents an economic or administrative advantage, in exchange for an amount of money, gifts, travels, trips, vacations or amenities or some properties.

For the first time in 1975, the General Assembly of the United Nations, through resolution 3514, approached the issue of corrupt practices in the international commercial transactions and subsequent to this a series of other

* PhD, „Spiru Haret” University, Romania, Faculty of Juridical, Economical and Administrative Sciences, Craiova.

measures were adopted by the international institutions in relation to this topic. For instance: the action program against corruption realized by the multidisciplinary corruption studies group and submitted for approval to the Committee of Ministries of the European Council in 1996, program which includes 4 chapters, the first 3 being focused on aspects of civil, criminal, administrative and constitutional law.

In Romania, corruption is not a new product of the social and economic relationships which appeared after 1989, it also existed during the communist regime, aspect which gave it a continuity in its evolution.

2. Forms of corruption

According to a study performed by the researchers of the United Nations generally speaking, the field of corruption has certain specific terms. These terms are: major corruption, minor corruption, active corruption and passive corruption, scam, blackmail, usury, bribery, embezzlement, robbery and fraud, abuse of power, favoritism, nepotism, clientelism, exploitation of the conflict of interests, inappropriate funding of the political parties per the current legal framework, etc. (Rizea & Dobre, 2005: 5).

Major corruption represents the corruption which penetrates even the highest spheres of the executive, legislative and judiciary power, leading to a general lack of trust of the population in the honesty of the government act, with harmful consequences on the fundamental principles of the rule of law and the economic stability.

Minor corruption implies offering small amounts of money or similar favors by the ones who aim to receive a differentiated treatment from the clerks or to get hired in a minor position, their or another person's. The difference between minor and major corruption is that while the first form implies a distortion of the public authority, the second form develops and exists in the context of a social system and a consolidated government (Banciu & Rădulescu, 2005:25).

Scam, blackmail and usury are actions which constrain a person to pay money or offer valuable goods or other personal favors in exchange of some actions or in order to prevent them from happening. The constraint may take place under threat of physical harm or even through acts of violence (Pavel, 2005: 40).

When referring to *bribery*, we mean offering a benefit with the purpose to illegally influence a decision. The bribe can be initiated by a person that seeks or asks for bribe or by a person who gives or offers an illegal benefit. The list of benefits is extremely vast and may include: articles with monetary value, shares of some companies, confidential information, sexual favors or of any other nature, discussions, a job, etc. The benefit may come from the briber to the bribed directly or indirectly or from a third person (friend, relative, associated,

political party, private company), and the bribe can be paid individually for each separate case or as a part of a relationship based on continuity.

Embezzlement, robbery and fraud, regarded from the point of view of corruption, implies taking in private possession or exchange of money or other goods by an individual who is not rightfully their owner and who has access to them while performing the work duties. Regarding robbery and embezzlement, they refer to goods which are taken by someone to whom they were entrusted.

Fraud consists of using fake information or which determine a fake orientation in order to determine the owner of the good to offer it willingly. As an example, we can mention a situation when a public clerk takes into possession, without having the right to do so, or sells in personal interest a part of a donation or medicines or food transportation, and therefore performs a *robbery* or *embezzlement*. Another situation would be the one in which a clerk determines a charity agency to supplement the funds they intend to offer, by using some fake information regarding the number of people that need help, and in this situation a fraud is committed (Rizea & Dobre, 2005: 4).

By *abuse of power* we distinguish another method than the ones presented above, the purpose being the same: personal gain. A situation of this nature takes place in the moment when a clerk responsible for auctioning governmental contracts for instance, may abuse of the attributions given by his position, in order to favor a company of which he has a personal interest.

Regarding *favoritism, nepotism and clientelism*, they also imply an abuse of power, the difference being that the target is no longer the personal interest of the clerk, but the interest of certain close persons through relations of kinship, political, religious, etc. Favoring and at the same time, discriminating some persons may be based on a large area of characteristics of the group: ethnicity, religion, geographical factors, political beliefs or other type of beliefs, personal or institutional relationships, such as friendship or the quality of member of a club or organization (Johnston, 2007: 45).

The notion of *conflict of interests*, in the same area of the corruption phenomenon, refers to the conflicting relationship between the obligations triggered by the public function and personal interests. For instance, a public clerk which owns shares in a company which aims to obtain governmental contracts and whose auctioning enters under his decision.

As mentioned in the Manual of the United Nations for the Anti-corruption Strategy, most of the corruption forms imply the creation and exploitation of the conflicting relationships between a public clerk's professional responsibilities and his personal interests.

The last form of corruption which will be treated in the next lines refers to the *inappropriate funding of the political parties as per the current legal framework*. A major challenge in establishing and implementing anti-corruption strategies is to make the distinction between legal contributions made to the political parties and the commissions meant to illegally influence

the present or future activities of a party or of its members, once they get to power. A donation made in order to support the party and raise its chances to get to power is not corruption. But a donation that implies certain expectation that once the party gets to power, its representatives have to grant a preferential treatment to the donor is one of the most serious forms of corruption (Rizea & Dobre, 2005:8).

As a conclusion regarding the above classification (regarding the forms of corruption), it is interesting to highlight the fact that this so debated phenomenon does not disappear in the developed societies and with ancient democratic traditions, but rather takes new shapes, much more evil and sophisticated (Pavel, 2005: 24).

What is important is the fact that the statistic and criminological studies showed that, unlike the crimes and offences with classic character (robbery, burglary, murders, crimes against the property and person in general), the ones that involve the „white collars” including especially the *fraud and corruption* are much more serious and costly from the point of view of economic and social consequences.

Recent estimations show that this last category of crimes costs three times more than the entire area of crimes and offences against property, being the least known by the population (Banciu & Rădulescu, 2005:30)

However, even if the destroying effect of this largely spread phenomenon is known, there is no collaboration of the public in order to detect this type of crimes or the ties and „relationships” that the corrupt persons or persons involved in these fraud acts have with the factors of power or the social control agencies (Dobrinioiu, 1995: 44).

3. Evolution and causes of corruption in Romania

After 1989, Romanian corruption benefited from a series of favorable conditions for that period, conditions which contributed to its development. Thus, the national corruption evolved rapidly, aggressively, taking new shapes, unknown in the past.

One of the causes of corruption of the reformation of the state under the shape of transition from communism to capitalism, started in 1990 and prolonged for an unjustified long period of time.

It is known that the periods of transition, especially in the poorly managed ones, lead to the appearance of political, economic, social crisis, poverty, weak state authority, disconnections between the government and the people, massive corruption in economy and administration.

The disappearance of communist regime was followed by the repeal of the old regime regulations, by the modification of the state institutions and adopting new principles or organization. Until the new institutions and regulations were enforced, the Romanians continued to stagnate for a long period of time between confusion and chaos, situation which helped extend the social bad habits.

The repeal of the previous regulations which controlled corruption and theft, the emergence of a legislative void, the lack of organization of economy and ceasing the state control on the economic and administrative activities made Romania become a victim of corruption (Banciu & Radulescu, 2005:66). Under these conditions, corruption became considerably large.

The second element which favored the apparition of corruption was the economic reform, whose essence was represented by privatization. After 1989, the discussions started on passing the national patrimony under private property. This process (privatization) proved to be a very complex one, difficult and hard to control from all points of view.

Another cause which favored corruption was the Romanian people's strong desire to have, to own, desire caused by the hardness of the totalitarian regime which controlled the actions taken by the population even in the slightest detail. The leveling policy and the general poverty of the Romanian people, promoted by communists, brought the population in a high degree of despair, traditionally prone to gather, have, acquire, own. Under the conditions of a wrong meaning given to the freedom after 1989, the desire of the citizens to become owners, to practice activities on their own and to become reach was felt. Part of them tries to do all these things appropriately, under the limit of the law, but there were also persons who aimed at being higher than the law. Subsequent to this phenomenon, during a decade, the most serious social bad habits developed in Romania, especially corruption and theft.

Another condition favoring the development of post-Revolution corruption was the Romanians' indulgent mentality towards these bad habits. It has been found that throughout history, gift and tipping have deep roots in the Romanian society. Gift, tip, bribe, represent methods of adapting to the different situations encountered by Romanians throughout history, these methods succeeding in gaining the attribute of situations accepted by society as something ordinary and absolutely normal, those who managed to raise certain funds in a way fraudulently being appreciated by others around for skill and cleverness (clever, sharp, capable, etc.).

However, among all the reasons that helped to bring about a significant evolution of this phenomenon, perhaps the most important is represented by the attitude of the political class in power after 1989. Thus, they are guilty of lack of action in terms of decision making from the legal standpoint, self-sufficiency in the situation in which they were, tolerance of corruption acts, attitudes that determined the expansion of the phenomenon, laws insufficiently adapted to the respective situations, helping to widen its horizons.

The aforementioned causes represent the main internal premises which favored the expansive development of the post-revolution corruption, the most violent and destroying from the entire Romanian history.

Currently, we may talk about a series of multiple laws, institutions and non-governmental associations and institutions which have the purpose of

supervising the state organs and the citizens in order to ensure a smooth running of all activities carried out at the national level.

Before 1989 there were no special laws for the fight against corruption, the provisions of the Criminal Code being considered enough to punish accidentally discovered corruption acts. There were two laws referring to the control of the fortune: one which was issued during the Antonescu regime, called also “law of the illicit” (Law no. 18 from 24 June 1968) and the other one issued during the communist regime (Cernea & Molcut, 2006:40). But, in spite of the existence of these laws, their effects were not significant.

After 1989, in the context of the abrupt increase of corruption, the need to have a legal and institutional reaction was raised. Initially, special anti-corruption laws were adopted when it was ruled out that these laws did not have the expected result, the next step was to establish special institutions and organs to fight against corruption.

The first normative act with helping character after 1989 was the Law for the modification of the Criminal Code provisions in the domain of corruption acts, adopted on the 8th of July 1992 (Law no. 65 from 8 July 1992). This law increased the punishments for corruption acts and provided that the dispositions of the Criminal Code in corruption matters are applicable to other employees as well, not only public clerks.

This first Law was followed by law 83 from 21 July 1992 (Law no. 83 from 21 July 1992) regarding the implementation of an emergency procedure to follow and judge the corruption acts. This law established short terms for the investigation and judging of the corruption acts. But even so, the results of these laws were weak. Two years later, Law no. 87 from 1994 was adopted in order to fight against tax evasion which combated, with little success, the tax evasion generated by the lack of regulations and corruption (Law no. 87 from 18 October 1994).

After another two years, Law number 15 from 1996 was adopted, ruling out the declaration and control of the fortune of dignitaries, magistrates, clerks and certain persons with management positions (Law no. 115 from 16 October 1996). Still, the first example of anti-corruption policy was created in 1997 by the president Emil Constantinescu, through the National Council of Action against Corruption and Organized Crime, council which represented the consequence of his victory through an anti-corruption platform (CNACCO). Law no. 78 from 2000 for the prevention, discovery and punishing the acts of corruption was conceived as a special anti-corruption law and generated results where it was applied accordingly (Law no. 78 from 8 May 2000). Along all these normative acts, there were numerous legal initiatives inspired from the international acts referring to the fight against corruption, organized crime, money laundering, drug traffic and criminality.

What can be seen in regards to the Romanian post-Revolution period is the fact that there was a relatively high flow of anti-corruption laws. In spite of

these laws, corruption has experienced a particularly dangerous, continuous expansion. The political class, completely contaminated by corruption, prevented the adoption of drastic anti-corruption laws and did not organize strict enforcement of existing regulations.

Conclusions

Starting from an undeniable negative fact, highlighted by numerous sources, respectively that the level of corruption in Romania is so high that the expression „generalized corruption” can be used, a single conclusion imposes itself, namely that the phenomenon of corruption produces very serious harming effects.

Firstly, corruption generates both poverty and grave social issues. Most of the Romanians consider that the actual political system is an inefficient and corrupt one, because it wastes the resources of the society and is therefore directly responsible for the level of poverty in Romania.

The corruption has as effect, paradoxically, not only the poverty of people with a low level of living but also the enrichment of the ones with a high standard level of living. The more persons become rich through corruption, the more the other citizens will have a lower level of living.

Corruption is a phenomenon which keeps away serious investors, making opportunities disappear and lowering the trust in the state institutions and public authorities, in the context in which the activities of the respective organs, to prevent and fight against the phenomenon do not have a visible success.

Manifesting itself as a true scourge that tends to erode the foundations of the fundamental institutions of the rule of law, corruption is a phenomenon that presently makes both governments and worldwide public opinion worried. Through its effects, the phenomenon of corruption triggers especially negative consequences.

Bibliography

1. Banciu D.I., Rădulescu D. Sorin M. (2005) *Corupția în România*, Bucharest: Lumina Lex.
2. Cernea E., Molcuț E. (2006) *Istoria Statului și Dreptului Românesc*, Bucharest: Universul Juridic.
3. Dobrinou V. (1995) *Corupția în dreptul penal român*, Bucharest: Atlas Lex.
4. Johnston M. (coord.), Chirilă S. (translator) (2007) *Corupția și formele sale- bogăție, putere, democrație*, Iași: Polirom.
5. Pavel A. (2005) *Corupția*, Bucharest: Detectiv.
6. Rizea M., Dobre M. (2005) *Corupția: amenințare la adresa securității naționale*, Bucharest: A.N.I

Legislation

1. Law no. 18/1968 regarding the control of the provenance of certain goods belonging to public officials, published in the Official Journal no. 81 from June 24, 1968.
2. Law no. 65/1992 regarding the amendment of the Criminal Code regarding to certain acts of corruption, published in the Official Journal no. 166 from July 7, 1992.
3. Law no. 83/1992 regarding the procedures to follow and judgment of the acts of corruption, published in the Official Journal no. 173 from July 22, 1992.
4. Law no. 87/1994 regarding tax evasion, published in the Official Journal no. 299 from October 24, 1994, republished in the Official Journal no. 307 from August 24, 1998, republished again in the Official Journal no. 545 from July 29, 2003.
5. Law no. 115/1996 regarding the control of the dignitaries' fortunes, published in the Official Journal no. 263 from October 28, 1996.
6. Law no. 78/2000 regarding the prevention, discovery and punishing of the acts of corruption, published in the Official Journal no. 219 from May 18, 2000.