THE LAW AND CRIMINOLOGY IN PERCEPTION OF CORRUPTION CRIME AREA

Rafał Wielki

Opole University, Faculty of Law and Administration
rwielki@uni.opole.pl

Abstract: The doctrinal approach to corruption is an example of interdisciplinary modeling, however it often leaves a lot of doubts due to discrepancies in the perception of corruption. The author attempts to review the literature and also analyzes the legal-comparative norms of international and Polish law in relation to forms of corruption. Due to the lack of universality of legal definitions, the isolation of criminological forms of corruption seems to be the solution, which may facilitate its perception and, as a result, lead to a more effective fight against corruption by the selection of appropriate technical and tactical methods.

Keywords: forms of corruption, law, anti-corruption, criminology

INTRODUCTION

In general, the definition of corruption is not difficult. However, corruption as a group of acts can be divided into many sub-categories, not always well-defined, which may cause complications for the police and special services.

The first part of the discussion constitutes a review aimed at identifying doctrinal issues related to corruption. Given the multidisciplinary nature of corruption and the fact that it is of interest to researchers from many areas of social, legal or economic sciences, it is necessary to analyze the definitions already developed. They allow for understanding of the essence of corruption considered in terms of crime.

The second part is a synthetic way of dealing with the subject by means of the legal-comparative approach in relation to international law norms and the Polish legal system. Many of the definitions of corrupt practices that appear to be inadequate for law enforcement purposes in the context of building an effective anti-corruption system can be found in the legislation under analysis.

The doctrinal and normative review should allow the formulation of the hypothesis that the most useful, from the viewpoint of forensic science, is to distinguish corrupt acts in terms of criminology. A criminological analysis enables the isolation of separate categories of corrupt acts, which should provide a basis for further consideration of technical and tactical ways of fighting corruption. The introduction to the paper is to explain the nature of the problem, previous works, the purpose and the contribution of the paper. The contents of each section are provided in such a way to understand easily the paper.
I. DEFINING CORRUPTION

Defining corruption seems to be an extremely complex task, if at all possible, due to its multidirectional nature and the fact that it may be of interest to many researchers and many services. Indeed, corruption acts carry the consequences of a legal nature, mainly focused on criminal law, because of the violation of legal norms in the criminal law area. Moreover, this is obviously related to the need for action by law enforcement authorities, which necessitates the use of a number of forensic activities and is of interest in this study. Successful combating corruption also requires appropriate legal and administrative actions and legislative changes.

It is undoubtedly worth noting that corruption is examined multidisciplinary, and from the point of view of sociology, it may be of interest to scholars because of its social determinants and the effects that it brings in this sphere. Psychologists will be interested in issues related to the behavior of an individual involved in a corrupt act. The intricacies of political life and political issues in particular are related to corruption issues of interest to political scientists. Corruption is also linked to the ethical doubts that are the subject of philosophical considerations, and its significant economic and financial implications can certainly provide the research material to economic thinkers. It should be assumed that corruption often involves diverse behaviors, social situations and interpersonal relations, so it is impossible to present its genesis, substance and ways of manifestation in collective life in the form of homogenous, consistent scientific statements, although the characteristics of selected aspects of broadly understood corruption are not simultaneously deprived of cognitive and practical utility [1].

From the point of view of forensics, the need to define corruption as a criminal activity does not seem to be a priority since law enforcement acts within the framework of the applicable law, and in criminal justice systems different penalties can differentiate criminal penalties. This does not change the fact that differences between particular legal regulations will not significantly affect the choice of methodology for forensic activities, thus the nature of the solutions proposed in this paper should be emphasized.

Depending on the legislative system applicable in the state, the legislator may differently define various elements of prohibited conduct. While the reader is able to conceive of the nature of the sale and perceives the universality of such a pejorative behavior, criminal acts may vary considerably in the same manner as the structure and the character of the offense, the subject, objective and subjective sides of the offense or the legal interest. Likewise, stadal forms or phenomena of crime will probably be distinguished, but the basis for undermining the universal character of forensic methodology is the same. Depending on statutory standards, law enforcement agencies may use similar methods based on the information analysis.

This claim seems to be based on other authors’ views of. It is pointed out that in the case of corruption offenses in economic transactions, combating them can be effective when adopting as broad and at the same time as straightforward definitions as possible, and corruption can be attributed to the abuse of a public office or a private sector functions for personal gain, which covers all forms of theft, falsification of reporting and corruption and bribery in the broadest sense of the words [2].
By introducing general definitions of corruption, it is worth noting that some doctrines point to existing problems with the definition of corruption due to its wide nature and concurrently legislative problems [3]. In addition, corruption is a term of the international legal language as it is commonly used in international conventions and criminal law in most countries [4][5]. On the other hand, the attempts to define corruption, often referred to by law enforcement and NGOs, cannot be ignored and one of the simpler explanations is that it constitutes the use of a public office for personal gain [6]. A slightly broader definition is quoted in another paper, which says that corruption is robbing the poor, striking efforts to promote economic growth that fosters social exclusion and builds common prosperity [7]. Definitions created by Transparency International, an international non-governmental research organization that reveals and counteracts corruption, primarily in public life, are frequently quoted. Although they have undergone minor modifications over the years, TI assumes corruption as abuse of power for private benefit, which can be classified as large, minor and political, depending on the amount of money lost and the sector in which it occurs [8]. In a similar tone, corruption is perceived by the OECD, where it is referred to as the abuse of a public or private office for personal gain [9]. Many other definitions based on the social context are found in the literature of the subject [10]. What is more, the model of corruption dynamics can be distinguished [11], which - however - has its critics [12], therefore it should be treated with some caution:

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C = M + D - A
\]

where:

\( C \) stands for corruption, \( M \) for monopoly, \( D \) for discretion and \( A \) for accountability

II. LEGAL ISSUES

A separate issue is the binding legal definitions that can be cognitive sources that allow for understanding the substance of the problem, which is important for the implementation of forensic anti-corruption tools. At this point it is worth pointing out that in general corruption is not a term of legal language, as it also includes behaviors that are not penalized and committing them can "only" violate the principles of ethics, morality or culture [13]. The United Nations Convention against Corruption constitutes the broadest and basic legal act with a number of definitions relating to the components of corruption [14]. Neither the Convention nor the Criminal Law Convention on Corruption contains a strict definition of corruption [15], however the first one takes into consideration a number of elements that are important from the point of view of combat against corruption. The fact remains that the Convention is rich in numerous scope definitions referring to individual actions such as:

a) bribery of national public officials (article 15);
b) bribery of foreign public officials and officials of public international organizations (article 16);
c) embezzlement, misappropriation or other diversion of property by a public official (article 17);
d) trading in influence (article 18);
e) abuse of functions (article 19);
Another legal act that defines the definition of corruption is the Civil Law Convention on Corruption [16], which in its article 2 stands that corruption means demanding, proposing, giving or accepting, directly or indirectly, a bribe or any other undue advantage or promise that distorts the proper performance of any obligation or behavior required of the person receiving the bribe, the undue advantage or its promise.

The Criminal Code in Poland does not cite any definitions of corruption, nor does it classify crimes, but it contains numerous references to criminal offenses. However, in the Polish legislation, a legal definition can be found in article 1(3a) of the Act of 9 June 2006 on the Central Anti-Corruption Bureau [17].

According to that legal definition, corruption is the act:
1) consisting in promising, proposing or giving by any person, directly or indirectly, any undue advantage to a public official for himself or herself, or for any other person, in return for acting or refusing to act in the performance of his or her duties,
2) committed during business activities involving the fulfillment of obligations towards a public authority (a public organization) consisting of promising, proposing or giving, directly or indirectly, a person in charge of an entity not in the public finance sector or working in any capacity on behalf of such entity benefits for themselves or for any other person in return for acting or refraining from doing so, thus violating his / her duties and socially detrimental reciprocity,
3) committed during business activities involving the fulfillment of obligations towards a public authority, consisting of demanding or accepting, directly or indirectly, a manager of an entity not affiliated to the public finance sector or working in any capacity for such entity, any undue advantage or promises of such benefits for himself / herself or for any other person, in return for the act or omission of the act, which violates his / her duties and constitutes socially detrimental reciprocation.

Nonetheless, it is worth noting that the quoted norm has its critics [18], and it has also been the subject of deliberations of the Constitutional Tribunal, which ruled on the unconstitutionality of given legal norms [19]. As regards the applicable legal norms, there are also critical voices pointing to the flaw in the logic, namely inadequacy due to the broad definitions of the concept [20].

III. CRIMINOLOGICAL FORMS OF CORRUPTION

From the point of view of forensic science, the approximation of the characteristics of corruption, which requires evaluation of the criminological aspects, particularly important in the context of the actions taken by the law enforcement authorities, seems to be more important than the definition of the phenomenon. Given the criminological characteristics of corruption forms, it is possible to distinguish its five basic categories:

a) bribery,
The Law and Criminology (...)

b) abuse of power,
c) favoritism,
d) conflict of interest,
e) corruption-like acts.

Bribery should be understood very widely and it undoubtedly brings a lot of associations in the context of consideration of corruption. Both concepts are frequently treated synonymically in common sense, which should not be equated with a true statement. It may take the form of offering, accepting or inducing something of value to influence the performance of a representative of a public authority or an economic entity in the performance of his or her public or legal obligations. Bribery is an act involving undue benefits, wrongly rotated to influence an action or decision, and - possibly - it is the most common form of corruption. It is worth emphasizing that there is always a perpetrator offering an undue advantage and a passive perpetrator taking this advantage. The bribe initiative may come from both sides of the procedure. The undue advantage of bribe can be both material and personal. Hence, the bribery can be: cash, a bank transfer, company shares, confidential information, sexual relationships, entertainment, personal employment or friends or family, and even a promise of future performance [21]. Given the variety of incentives or payments in return for goods and services, and because of the increase in other forms of crime, bribery rarely appears a simple phenomenon [22], it is better to avoid attempting to create a closed directory of bribery.

An abuse of power that may take the form of paid protection, trade in influence, overrun, misconduct or failure to fulfill obligations should be considered as another form of corruption. As in the case of corruption related to bribery, an initiative for prohibited conducts may come from both the active and passive perpetrator, although this form of corruption largely refers to passive perpetrators. In many cases, corruption involves the abuse of function or discretion, which is often associated with bureaucracy. Discretionary powers coupled with inadequate supervisory procedures may foster the development of this form of corruption. The complexity of decision-making can be amplified.

Favoritism is a form of corruption consisting in the preferential treatment of an entity or a set of entities, regardless of the cause of such a state of affairs. This term may refer to the tendency of distribution of public goods and, consequently, the favoring of subjects on the basis of family, social, professional, place of birth, race, sex, ethnic group or political affiliation [23]. It usually takes two forms:

a) nepotism,
b) cronyism.

Nepotism is the favoring of subjects due to the link between the two sides of the act of kinship, which is most often manifested by family protections in business matters. In turn, coteriement is deprived of family connections, social relations constitute the factor influencing the preferential treatment of the subject. What is more, the important issue of favoritism is the protection of unqualified persons ability. It should be noted that favoritism is a fundamental political mechanism in many authoritarian and partially democratic states [24]. Due to the fact that both nepotism and cronyism constitute very often non-punitive forms of corruption - also in the Polish legal system - the formulation of de lege ferenda in the area of substantive penal law, which creates legal norms for nepotism and cronyism, should be considered. By the same token, it cannot be deprived of the awareness that such
legal regimes will certainly encounter the resistance of many political factions, which will create additional obstacles to the fight against corruption.

Conflicts of interest may relate to a public official or members of his or her immediate family, a function or a private relationship that may affect the content of official conduct in a way that may raise doubts about their impartiality. Conflicts of interest occur, among others, in cases like [25]:

a) having financial, family, social and other connections with suppliers, customers and other entities working with the company,
b) links to competition, e.g. through employment or consultations,
c) engage in the production of goods or services competitive to the company,
d) work not for an enterprise but for its resources or working time,
e) providing services to companies other than those resulting from the employment relationship, e.g. sale of materials, rental of equipment,
f) access to confidential information the use of which may give rise to an undue advantage,
g) combining functions or relationships between persons performing functions between which a one-sided or reciprocal relationship exists, for example, of productive and control functions.

It cannot be hidden that in the case of various forms of corruption, the below mentioned acts occur parallelly:

a) money laundering,
b) fraud,
c) misappropriation,
d) extortion.

Some scientists do believe that these acts should be regarded as forms of corruption, especially fraud, but it is worth mentioning that a large group of scholars have recognized the fact that corruption is a criminological category of white-collar crime, understood as acts with economic effect, committed using a combination of corruption and economic crime [26].

CONCLUSION

This review allows to specify the hypothesis stated in the introduction as true. Good many considerations of corruption in numerous fields of science result in a number of doctrinal differences which can disturb the level of perception of the phenomenon. Undoubtedly, deliberations within social, legal or political sciences are extremely useful, nonetheless it should be noted that they are not always in line with legal definitions.

The normative coverage constitutes the basis for all law enforcement agencies, since it defines the procedures and the extent of competence of anti-corruption departments, however substantive issues are not always in line with current crime trends.

This requires the use of the criminological literature, which allows isolating forms of corruption of a universal nature, independently of the legal systems in force in the state. Such criminological forms of corruption make it easier to implement specific technical and tactical activities on the forensic side in order to increase the effectiveness of anti-corruption measures.
REFERENCES

Streszczenie: Doktrynalne ujęcie korupcji stanowi przykład modelowej interdyscyplinarności tematu, jednakże często pozostawia wiele wątpliwości z uwagi na rozbieżności w postrzeganiu zjawisk towarzyszących korupcji. Autor podejmuje próbę przeglądu literatury, a także dokonuje analizy prawno-porównawczej norm prawa międzynarodowego oraz polskiego w odniesieniu do form korupcji. Z uwagi na brak uniwersalnego charakteru definicji legalnych, rozwiązaniem wydaje się wyodrębnienie kryminologicznych form korupcji, które ułatwić mogą jej percepcję, a w rezultacie prowadzić do skuteczniejszej walki z korupcją poprzez dobór właściwych metod technicznych oraz taktycznych.

Słowa kluczowe: formy korupcji, prawo, działania antykorupcyjne, kryminologia