

## **DOCTRINAL CONSIDERATIONS REGARDING THE PHENOMENON OF CORRUPTION**

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*Abstract: Regarded as a social phenomenon, corruption is present in all societies without taking into account each country's level of development, adapting to the specific conditions of each country, it could jeopardize the very essence of the state through the consequences it may determine. Given the fact that human society, viewed as a whole, is in constant motion, operating modifications and changes at the structural and organizational level of the states by free markets, by allowing the movement of financial resources and continuous exchange of information between various sectors, the opportunities to gain power also include illegal methods. This "scourge" of corruption alters the normal development of economies, it violates fundamental rights, transferring financial resources towards sectors for which those involved have interests.<sup>1</sup>*

The term „corruption” comes from the Latin word „corruptio” which characterized a certain behavior of the public clerk that commercializes, sells the attributes of his function and the trust given by the society, in exchange of receiving certain amounts of money or other advantages.<sup>2</sup> Corruption, explained in a simple manner, represents the misuse of authority with a clear purpose of obtaining personal gains or in the advantage of a group to which the person is devoted.<sup>3</sup> Corruption bears as starting point the state and social level which the involved one wishes to keep or improve, motivated by the desire to keep or increase the authority or by the simple belief that this would guarantee a state of well-being.<sup>4</sup> Law, through its multiple disciplines, cannot study the concept of corruption starting from the empirical level.

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<sup>1</sup> Adriana Sandu, Mirela Nițu, article, Perception of the corruption in the public administration, published in the volume of the International Conference, 4th Edition , Law and Social Order, organized by the Faculty of Law and Public Administration, Constanța, University Spiru Haret, pp.93-98.

<sup>2</sup> Gheorghe Nistoreanu, Alexandru Boroii, Vasile Dobrinioiu, **Criminal Law, special part**, Editura Europa Nova, București, 1997, p.345, *apud* Claudia Florina Ușvat, **Corruption crimes in the context of the European regulations**, Editura Universul Juridic, București, 2010, p.7.

<sup>3</sup> The World Bank, **Corruption and fighting against it**, Editura Irecson, București, 2003, p.9.

<sup>4</sup>*Ibidem*

This phenomenon, in the doctrinaires' opinion, is much alike a prism with numerous facets, which can be regarded from several angles, respectively either from the political sciences angle or it can be viewed as a social phenomenon, from the economic sciences, criminal or civil law angles.<sup>5</sup>

It is difficult to define exactly the concept of corruption, as it might bear different understanding, depending on the social and economic reality from each state. In the national reports, presented by France and Hungary during the International Criminal Law Congress from Beijing in September 2004, the definition of corruption was a determined one, restricted to an exchange between an undue advantage, on one side and the fulfillment or non-fulfillment of an act that is a part of the work duties from the public or private sector.<sup>6</sup>

In the Criminal Convention regarding corruption adopted at Strasbourg on the 27th of January 1999<sup>7</sup>, corruption is defined, depending on the report it is based on, as follows:

active corruption is "when an intentional act of proposing, offering, giving, directly or indirectly, any undue advantage to one of the public agents for himself or for anyone else, in order for this one to fulfill or not fulfill an act while in the exercise of his functions" (art.2);

passive corruption is „when one of the public agents has intentionally requested or received directly or indirectly any undue benefit for himself or anyone else, or accepted the offer or promise to fulfill an act in the exercise of his functions" (art.3).

Corruption, as a social phenomenon, is imminent in all the societies, and the development level does not matter much. It is also true that its types are adapted to all the societies although, at a certain moment, it can put in jeopardy even the essence of the state through its consequences on the decisional levels.

In the context of the market and politics freedom and under the new conditions of free choices regarding the travel, movement of the financial resources and the information exchange between different sectors, the opportunities to gain power and welfare increase, including the illegal ways as well. The corruption makes the economic development difficult, violates the fundamental rights, stops the normal evolution and transfers the financial resources from the sectors that really need them.

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<sup>5</sup> Claudia Florina Ușvat, **Corruption crimes in the context of the European regulations**, Editura. Universul Juridic, București, 2010., p.7.

<sup>6</sup> D.Dolling, Rapport General, în „**Revue internationale de droit penal**”, no.1-2/2005, *apud* Claudia Florina Ușvat, *op.cit.*, p.8.

<sup>7</sup> Criminal convention regarding corruption adopted at Strasbourg on 27 January 1999, adopted through Law no.27/2002.

According to a single concept, corruption was defined as a failure of trust, which generally involved the public authority in order to obtain particular benefits.

Generally, if this phenomenon is analyzed from a global perspective, the harming consequences of corruption that spread out within the society are obvious and direct: when the political leaders and their business partners transfer national financial resources in their own bank accounts, a poor country becomes even poorer. When, for instance, the freedom of decision in criminal cases is „to rent”, the normal evolution of the society, the civil and fundamental rights are in jeopardy, and what should normally be an efficient reaction in a society becomes a mere imitation.

Presently, corruption means<sup>8</sup>:

- a) the systematic deviation from the impartiality and fairness principles which should stay on the basis on the public administration and which implies that the public goods be distributed universally, fairly and equally and
- b) their replacement with practices that lead to the assignment of a disproportionate part of the public goods to certain individuals that does not correspond to their contribution.

The corruption acts are these deeds that bring harm to this universal and fair distribution, in order to bring profit to certain persons or groups.

The tendency of the leading political forces to resort to non-democratic ways of undermining the opponents, attitude which could also be explained by the persistence of certain behavioral reminiscences specific to the „unique party” or „state-party”; we believe that also due to these reasons, the political forces from the opposition did not manage to reach a corresponding level of structuring and consolidation, at least in order to be able to fight against the discretionary manifestations while performing the government act.<sup>9</sup>

Discretionary inclinations in the exercise of the power result, in a certain measure, from the human nature itself; as leaders, people cannot resist the temptation of overpassing the limits of their prerogatives and this not only to better serve the public interest, but also to gain personal benefits<sup>10</sup>, as mentioned above as well. An important place is also occupied by the analysis of corruption as a causing fact and at the same time, as an effect of the power abuse and poverty; as proved by the detailed research, the degree of corruption is directly proportional with the poverty level, irrespective of the country where this phenomenon takes place; regarding Romania, the corruption rate grew constantly during the transition and unfortunately, instead of determining

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<sup>8</sup> National Anti-Corruption Strategy 2005-2007, adopted through the Government Decision no 231/30.03.2005.

<sup>9</sup> Dana Apostol Tofan, **Discretionary power and the public authorities' abuse of power**, Editura All Beck, București, 1999, pp. 35-60.

<sup>10</sup> Dana Apostol Tofan, **Discretionary power...**, *op.cit.*, pp. 35-60.

the leaders to take more concrete measures to fight against it, it became more of a political reckoning topic, being mainly exploited in order to obtain electoral capital. Even in the campaigns for the parliament, presidency or local elections, the politic speech is strongly spiced with corruption topics.

A special role in the stimulation of the power abuse is assigned to the external factors. Their role cannot be neglected because after 1990 the politic leaders from Bucharest took numerous decisions against the provisions of the Constitution or the political programs approved by the electing public, from their own initiative or under the pressure or request of the European Union or USA organs.

These decisions were made because the power abuse became more and more „used” by the majority of wealthy people and not only, and for each issue, no matter how important it is, the clerk expects to be „stimulated” in order to resolve it, even if the resolution is a part of his tasks.

There is a direct connection between corruption and the concrete aspects of the power abuse. With this in view, we must consider the fact that the Romanian society, in general and the political class, in particular, goes through a complicated learning process of the democratic exercise, context in which two sides intersect: the necessity to state the objective and independent character of the state institutions, through the activity of their clerks and the subjective aspect, given by the human side in resolving the work duties by the public clerks. The study made on the implications on the economy of the states in which corruption was detected showed the fact that this implies firstly a failure of trust, which generally involves the public authority to obtain some particular benefits.

Taking into account the numerous studies, a conclusion has been drawn, namely the fact that corruption is a phenomenon present in all the societies, which started once with the organization of the human society; it may be found in ideologically, economically and socially developed different countries. Given the different development levels, each society is more or less vulnerable, and suffers differently from the devastating effects of corruption, but a conclusion can be drawn – presently, there is no state where the corruption never existed or if corruption was detected, it was eradicated. All these mentioned, we can still not state that the phenomenon of corruption is more largely spread presently.

Corruption has existed, under one shape or another, from the period of social organization, and presently there are favorable conditions to make information regarding the corruption acts

available. Economic changes, both at the national and international level, determined a decrease in the corruption acceptance degree.<sup>11</sup>

According to Professor Silvio Wasibord's opinion, communication teacher at the Rutgers University, expressed in *Globe and Mail*, Toronto, on the 19th of December 1995 „the phenomenon of corruption is visible rather due to the new politic and media conditions, than to the fact that the governments from certain countries are more corrupted than the ones before them.”<sup>12</sup>

In the public life, corruption mainly appears in several sectors, not taking into account the politic structure or the level of social or economic development of a state.<sup>13</sup>

Law no.78/2000<sup>14</sup> establishes as a central element the usage of the public function as an income source, in order to obtain certain material benefits or personal ones, for oneself or for another. This approach tends to the definition given by the Global Program against corruption carried on by the United Nations: „the essence of the phenomenon of corruptions consists in the abuse of power performed in order to obtain a personal profit, direct or indirect, for oneself or for another, in the public or private sector”.

By analyzing the practice of governance in the democratic exercise period, through the rich conceptual literature offered by the politological doctrine, we have managed to identify, in the political reality of contemporary Romania, a series of factors with negative impact on the exercise of the politic power at all the levels of the social organization. Among these, we are to mention<sup>15</sup>:

- the persistence of the conservative mentalities both at the level of public authorities and the society viewed as a whole;
- the public authorities staff, who comes mostly from the ex-regime structures continued and still continues to act in a discretionary manner, specific to a dictatorship;
- at the social level we can still see the habit of waiting to receive directives from the organs of the state who, according to such mentality, has the task to resolve all the problems.

Regarding the case of Romania, the corruption found itself in a continuous development in the transition period, and the political parties that had the power did not work at searching and

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<sup>11</sup> The World Bank, *op.cit.*, p.12.

<sup>12</sup> S.Wasibord, **Globe and Mail**, Toronto, 19.dec.1995.

<sup>13</sup> The Word Bank, *op.cit.*, p.12 and next

<sup>14</sup> Law 78/2000 for the prevention, discovery and sanctioning of the corruption acts published in the Official Gazette of Romania, Part I, no.219 from 18.05.2009.

<sup>15</sup> Amititeloaie Alexandru, **The particularities of the abuse of power and the politic arbitrary in the process of democratization of the public life and the edification of the state institutions ( the case of Romania), monography**, Editura Candy, Iași, 2004, p. 125.

finding the most appropriate ways to fight against this phenomenon, but used this topic in order to obtain and „direct” the electoral capital.

Corruption is the expression of spiritual degradation emergence; it represents a complex social issue, whose manifestations, social consequences and resolution manners interest the public and the institutionalized level of the social control.

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