

CORRUPTION, ITS CAUSES AND CONSEQUENCES IN THE REPUBLIC OF KOSOVO

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Abstract

Corruption is a major problem everywhere, not only in developing countries. It impedes economic growth, weakens the rule of law and undermines the legitimacy of institutions. Corruption in Kosovo has been researched from a variety of perspectives with different methodologies and policy goals in mind. The paper stresses the need to keep the issue of corruption squarely in view in the development agenda. Lack of transparency, lack of accountability and consistency, as well as institutional weaknesses such as in the legislative and judicial systems, provides fertile ground for corruption to take place. The major concern for the country with the weakest economy in Europe and the youngest population is the fact of not punishing corrupted people who belong to state and political high profile. Evident concerns are noticed also regarding the punishment of medium profile officials, which when accused minimum punishments are imposed to them. Corruption in Kosovo is manifested in many different forms, but it dominates bribe accepting and abusing official position or authority. While acknowledging that corruption is a complicated issue that likely has many root causes, is hypothesized that relatively low salaries and poor working conditions are among the chief reasons why corruption has persisted in Kosovo. The aim of the paper is to create greater awareness of the subject and to highlight the desirability to keep it in view in thinking about development issues, especially in the context of a least developed country. Some of the results that are expected to come to light through this paper are: a) raising awareness of readers about the phenomenon of corruption, b) the tendency to toughen criminal sanctions related to criminal offenses of a corrupt nature and c) Highlighting the role of civil society in combating this phenomenon.

Keywords: Influence, consequences, rule of law, prevention

1. Introduction

Corruption exists, since there is humanity. Today, corruption thrives in the darkness of totalitarian, dictatorial and authoritarian regimes, but it is present although to a lesser extent in environments of democracy, pluralism, freedom expression of individual security. Today, in the world, all states are, or strive to be, democratic states. This particularity or form of self-government has its negative side, so except new benefits and new possibilities for society, brings different problems in society. This paper will outline some of the main sources of institutional weakness that are the roots of Kosovo's current problems, such as its history of conflicts, its underdeveloped and largely informal economy (including criminal economy) that was adopted by United Nations Interim Administration Mission to Kosovo (UNMIK). The word corruption is derived from the Latin word "*corruptus*", which means "*corrupted*" and in legal terms, the abuse of a trusted position in one of the branches of power (executive, legislative and judicial), or in political or other organizations with the intention of obtaining material benefit which is not legally justified for itself or for others. Corruption is defined as the use of public office for private gain, or in other words, use of official position, rank or status by an office bearer for his own personal benefit. Following from this definition, examples of corrupt behavior would include: (a) bribery, (b) extortion, (c) fraud, (d) embezzlement, (e) nepotism, (f) cronyism, (g) appropriation of public

assets and property for private use, and(h) influence peddling. Corruption means the realization of a right or interest for which a certain person or group has no legal basis or the realization of rights and interests for which there is a legal basis, but in a way which creates a privileged position in relation to the rights and the interests of others who have the same legal basis for their Corruption scandals do not just happen in one place development where corruption is often seen as a norm or a tax, but it is acceptable and in developed countries. Sale of parliamentary seats in Great Britain before the Reform Act of 1832¹¹and - Political machines in the US in 19th and 20th¹² centuries, are two of the most well-known stories of corruption. Corruption means the realization of a right or interest for which a certain person or group has no legal basis or the realization of rights and interests for which there is a legal basis, but in a way which creates a privileged position in relation to the rights and the interests of others who have the same legal basis for their realization.¹³Cicero, the great Roman philosopher and orator, noted the escalation of the spread of corruption and looked at the nature of corruption in the human being and consciousness as well as in the presence of human vices, that is, it gives a psychological explanation.¹⁴ Besides that, this paper also claims the types of corruption that caused state fragility, and addresses the large gap of weak economic and judicial development which made it possible for numerous criminal offenses of a corrupt nature to take place, which led to their impunity by the judicial system itself. The corruption patterns found today in Kosovo are a strongly related to its recent history. Following the conflict in 1999, Kosovo was administered by the United Nations until it declared independence in 2008. Kosovo provides a third variant on the theme of corruption in post-conflict situations. Large-scale fighting ended in 1999, and since then Kosovo has been largely self-governing under a United Nations Protectorate backed by NATO security forces.¹⁵The United Nations Mission in Kosovo was responsible for Rule of Law until 2004, when the Ministry of Justice in the Provisional Institutions of Self-Government was formed. Firstly, the war created new interest groups which entered the political and business scene; and secondly, the immediate period after the conflict was a legal and rule of law vacuum while the UN administration sought to establish itself on the ground. The current existing context of corruption in general may be characterized as a result of the political and social system before the collapse of former Yugoslavia, especially under the circumstances of pre - 1999 war period and general trends that occurred after the establishment of the international administration in Kosovo. Corruption undermines the reform agenda, and it may be the crutch on which existing leaders rely to maintain power in a chaotic environment. In the longer term, if corruption is not limited, it may delegitimize the state, leading to further outbreaks of violence and extra-legal protest.¹⁶Being subject to unequal treatment unlike other nations in the former Yugoslavia, the Kosovo population to a great extent was forced to realize the rights through corrupting public officials at all levels. Such an

¹¹Pearce.R and Stearn. R., (2000), Access to History, Government and Reform Britain Second Edition Hodder& Stoughton, pp.1815-1918.

¹² Clifford P. Th., (1975), The political Machine an American institution vantage press.

¹³Gojani. S., (2013), Fjalori i Terminologjisë Juridike, Prishtinë, pp.137

¹⁴Aliu, E. Ligji penal romak në fjalimet gjyqësore të Ciceronit, Tribuna Juridike, n.55/ 2005, pp.121-126.

¹⁵S.C. Res. 1244, 1 5, U.N. Doc. S/RES/1244 (June 10, 1999). The Special Representative of the UN Secretary General heads the international civil administration, called the United Nations Mission in Kosovo (UNMIK). The cooperating institutions are the UN, the Organization for Security and Cooperation in Europe and the European Union. Two UNMIK resolutions, No. 2001/9 and No. 2002/9 provide the constitutional framework and incorporate several international human rights treaties. See ABA RULE OF LAW INITIATIVE, THE LEGAL PROFESSION REFORM INDEX FOR Kosovo, VOLUME II (2007).

¹⁶ See Richard. Sannerholm., 2007, Legal, Judicial and Administrative Reforms in Post-Conflict Situations: Beyond the Rule of Law Template, 12 J. CoNFIucr&SfC. L. 65, 83. Sannerholm argues for a focus on legal, judicial and administrative reform in post-conflict states, including the control of corruption. Id. at 66. He claims that past law reform efforts have too often focused on high profile human rights areas while ignoring basic issue of state organization. Id. at 87.

“understanding” for the purpose of realizing the civic rights results in the continuation of “employment” of such practices after the 1999 war as well. In February 2000, for the first time, the United Nations inserted international judges and prosecutors (“IJP”) into the Kosovo criminal justice system to work alongside existing jurists. Development of a fair and impartial local selection of judges and prosecutors is essential to the long-term credibility of judicial institutions. When UNMIK took control of the province there were an insufficient number of local jurists qualified to serve as judges and prosecutors. The paper will also address how to prevent this negative phenomenon, referring to various international laws and conventions which states sign with the sole purpose of combating such a phenomenon in order to maintain a better and safer society.

2. Methodology

The methods I have used in this paper are: Descriptive method with which I described the negative phenomenon of corruption, its forms in the Republic of Kosovo and the way to fight this negative phenomenon, the historical method - through which I have presented the origins of the beginning of corruption and its evolution over the years, normative method through which I have expressed the internal legal regulation and sanctioning of corruptive criminal offenses and the statistical method through which I have presented the punitive policy of corruption cases and the reasons for postponing corruption cases.

3. Types of Corruption

Corruption can be manifested in many ways, but all ways of its presentation are expressed through two types, which are:

- *Active corruption*
- *Passive corruption*

2.1. Active corruption means the criminal offense committed by promising, proposing or giving directly or indirectly any kind of benefit, public or private official to perform or not an act contrary to his duty or function.¹⁷ Active corruption is otherwise known as crime committed by influential people. This type of crime is also called white collar crime and is a special form of professional crime. It is about individuals and groups that have strong positions and influence in the economic, political and state flows of the country. These connections they exploit for criminal purposes. According to Sutherland, these criminals go through double life:

- in one side they present themselves as authoritative people, representatives of highly respected circles and people with important posts
- on the other hand, they are connected to the criminal underworld, collaborating and helping various criminals and delinquents to achieve the goal. They protect criminal groups and individuals; they provide them with various information and data that are relevant to their criminal activity.

The most common criminal acts of these people are: active and passive corruption, counterfeiting in financial exchanges, manipulations in the market, taking and giving bribes, giving facilitations and enabling the purchase of various shares. In the contemporary world there are many cases and phenomena that concretely and practically show interference in the criminal activities of prominent personalities in power. They are popular scandals, resignations, arrests which are present in some countries such as in America the "Watergate" affair, which influenced the dismissal of President Nixon, the "Leinski" case in the investigation of President

¹⁷Gojani.S., pp.137.

Clinton, in Italy the case of Julio Andreotti, etc. Such was the case of Augusta, which the Belgians called the "trial of the century", or the illegal collection of donations and funds by former Chancellor Kohl for his party, which shocked the whole Germany. At the anti-corruption conference held in Lima, Peru, in 1997, its participants tackled corruption as well as terrorism and organized crime, as the extent of its spread and its consequences are manifold in all contemporary countries.¹⁸

White collar crime is an antisocial punishment in the thesis of enrichment, practiced by persons in high positions of social prestige, and within their professions, taking advantage of the public trust which is necessarily conditioned by their category, and at the same time presupposing a respectful conduct of law on the part of everyone else. As the typological designation of white-collar criminality itself suggests, it stands in contrast to "blue-collar criminality" which are crimes committed by what are considered "prominent persons" belonging to the "upper socio-economic classes". Active corruption of persons exercising functions includes the promise, proposal or provision, directly or indirectly, of any improper benefit to a person holding public office.¹⁹ Subjectively, this form of corruption is committed with direct intent and for the benefit of the person who exercises public functions. Objectively it is performed even when the bribe-giver gives the money or irregular benefit directly but also indirectly, e.g. of gives the judge or prosecutor's driver money or other material benefits to give the judge or prosecutor to perform or not to perform an action related to his or her duty or function (eg to dismiss the case or change the setting criminal offense in favor of the defendant).

2.2. Passive corruption means the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties. Passive corruption also means the criminal offense committed by seeking, receiving any kind of irregular benefit or accepting an offer or promise from a public or private official to perform or not, an act contrary to his duty or function.²⁰ The crime of passive corruption of judges, prosecutors or other justice officials has as its object the morality, conscience and security of the regular and honest activity of judges, prosecutors and other justice officials as well as the rights and legitimate economic interests of citizens, specially protected by criminal legislation from criminal acts or omissions. Actions, which formalize the objective side of the criminal offense of passive corruption, can be carried out directly by the person himself, exercising a public function or through a third person. Using this way to secure illicit benefits in the exercise of a certain public function camouflages corrupt practices by superficially maintaining the "purity" of the official and making it difficult to obtain evidence to prosecute them.

4. Forms of Corruption

4.1. Bribery

Based on the Anti-Corruption Law of Kosovo, corruption means any breach of the duty of official or responsible persons in legal entities and any activity of the initiators or beneficiaries

¹⁸Duk V. Tang., (1994), *Korrupsioni dhe demokracia*, Tiranë, pp. 23-30.

¹⁹"Public servant" is: any person holding a legislative, executive, administrative or judicial position, appointed / elected, permanent/ temporary, paid / unpaid, regardless of the length of service of the person; any other person exercising a public function, including a public agency / public enterprise, or performing a public service, as defined by domestic law.

²⁰Gojani.S., pp.137.

of this behavior, directed in response to a reward that has been directly or indirectly promised, offered, given, requested, accepted or expected to be taken for oneself or for another person.²¹ Bribery means giving or receiving an unearned reward to influence someone's behavior. One common form of bribery is a "kickback" - an unearned reward following favorable treatment. Both are corrupt. There are many equivalent terms to bribery, like kickbacks, gratuities, "commercial arrangements", baksheesh, sweeteners, pay-offs, speed- or grease money, which are all notions of corruption in terms of the money or favors paid to employees in private enterprises, public officials, and politicians. A bribe is a fixed sum, a certain percentage of a contract, or any other favor in money of kind, usually paid to a state official who can make contracts on behalf of the state or otherwise distribute benefits to companies or individuals, businessmen and clients. Public and private bribery are twin forms of corruption, with public officials and private persons, respectively, abusing entrusted power for personal gain by accepting bribes.²² While public and private bribery "are two variants of the same censurable conduct,"²³ stakeholders respond to the two bribery forms in radically dissimilar ways. Conversely, governments largely ignore the same corrupt activity when it transpires within the business community but without the presence of a government official. Citizens often remain unaware of the private bribery phenomenon and its criminalization or lack thereof.²⁴ Some governments leave their anti private bribery legislation outside of their penal codes, instead placing the legislation in labor or commercial codes, where such legislation lies ignored.²⁵ Referring to the Criminal Code of Kosovo, bribery is considered when the official person or official foreign person or foreign public official, directly or indirectly, requests or accepts any gift or other benefit for himself or another person, or that accepts the offer or promise for such gift or benefit, so that the official person or official foreign person or foreign public official acts or does not act in accordance with his official duty.²⁶ Corruption in Kosovo, also favored by a lack of trust in public institutions, a culture of mistrust and a private spirit, fosters higher rates of corruption than those that occur in communities where overall trust and civic engagement are strong. Legislatures, courts, and international organizations acknowledge the significant role that corruption plays in bribery agreements, but despite this plethora of voices, some continue to justify bribery as an economically efficient way "to get things done."²⁷

²¹Ligjin.2004/34 kundërkorrupsionit, GAZETA ZYRTARE E INSTITUCIONEVE TË PËRKOHSHME TË VETËQEVERISJES NË KOSOVË / PRISHTINË: VITI II / NR.10 / 01 MARS 2007, neni 2.

²² See ORG. FOR ECON. CO-OPERATION & DEV. [OECD], CORRUPTION: A GLOSSARY OF INTERNATIONAL STANDARDS IN CRIMINAL LAW 22 (2008), available at <http://www.oecd.org/daf/anti-bribery/41194428.pdf> [hereinafter OECD CORRUPTION] (defining corruption as the "abuse of public or private office for personal gain").

²³ Antonio Argandoña, The 1996 ICC Report on Extortion and Bribery in International Business Transactions, 6 BUS. ETHICS: A EUR. REV. 134, 142 (1997).

²⁴ See Edmund S., Domestic Commercial Bribery: An Often Overlooked Issue, BUS. CRIMES BULL., Aug. 1, 2012, at 3 (discussing public unawareness of private bribery).

²⁵ See, e.g., Bonifassi, supra note 17, at 91 (describing the decision of the French government to move its private bribery legislation from its Criminal Code to its Labor Code, where it effectively has been "thrust aside" and ignored); Saito, supra note 17, at 195-96 (explaining that Japan's private bribery prohibitions are located in its Code of Commerce, not its Penal Code).

²⁶Kodi nr.06/L-074 i Republikës së Kosovës, GAZETA ZYRTARE E REPUBLIKËS SË KOSOVËS / Nr. 2 / 14 JANAR 2019, PRISHTINË, neni 421

²⁷Jac C. H., & Benjamin P., Corruption and the Institutional Environment for Growth 1 (Suffolk Univ. Research Working Paper No. 2008-6, 2008). Researchers Kaufmann and Wei coined the term "efficient grease hypothesis" to describe the notion that bribery yields lower amounts of red tape, and this hypothesis posits that bribery can boost economic efficiency and thus regulating bribery would be counter-productive. Daniel Kaufmann & Shang-Jin Wei, does "Grease Money" Speed Up the Wheels of Commerce? 2 (Nat'l Bureau of Econ. Research, Working Paper No. w7093, 1999).

4.2. Embezzlement

Embezzlement is one of the many forms of corruption besides bribing and extortion. It corresponds to an intentional dishonest act, committed by individuals who misappropriate assets that were entrusted to them in order to monopolize or to steal them.²⁸ Embezzlement is theft of resources by people who are put to administer it. Embezzlement is regarded as theft because it does not involve the “civilian” side directly. This is a serious offence when public officials are misappropriating public resources, when state official steals from the public institution in which he or she is employed and from resources he is supposed to administer on behalf of the public. From the official’s point of view, these two methods of self-enrichment—bribery and embezzlement—are substitutes. Embezzlement usually is a premeditated crime, performed methodically, with precautions that conceal the criminal conversion of the property, which occurs without the knowledge or consent of the affected person. Often it involves the trusted individual embezzling only a small proportion of the total of the funds or resources they receive or control, in an attempt to minimize the risk of the detection of the misallocation of the funds or resources.

The Criminal Code of Kosovo sanctions the embezzlement in article 418 which states, the official person, who in order to illegally obtain property benefit for himself or for another person, misappropriates the property entrusted to him due to the duty or position of shall be punished by a fine and imprisonment of six (6) months to five (5) years.²⁹ According to the Criminal Code, if the criminal offense results in material gain or loss in value exceeding fifty thousand (50,000) Euros, the perpetrator shall be punished by a fine and by imprisonment of three (3) to twelve (12) years.³⁰

4.3. Fraud

Bishop, T. and Hydoski, F. empirically examined fraud considering it as the tip of the iceberg.

Fraud is the crime of intentionally and unlawfully making misrepresentation to the actual or potential prejudice of another person. Also, fraud is the crime of deliberately misleading or deceiving someone to cause that person financial loss or other harm. Bishop, T. and Hydoski, F. empirically examined fraud considering it as the tip of the iceberg. ‘Fraud’ is an economic crime that involves some kind of trickery, swindle or deceit. Fraud involves a manipulation or distortion of information, facts and expertise, by public officials positioned between politicians and citizens, who seek to draw a private profit. Fraud is when a public official (agent), who irresponsible for carrying out the orders or tasks assigned by his superiors (principal), manipulates the flow of information to his private profit; hence the widely used principal-agent or incentive theory employed by economists to study this phenomenon. The doctrine of criminal law³¹ has given this definition: “*Fraud is the taking or misappropriation by lying or misuse of the trust, property or property rights of a natural person, legal person or state, committed intentionally and for the purpose of material gain, for oneself or for others.*” Fraud is also a broader legal and popular term that covers more than bribery and embezzlement. This criminal offense is committed when the official or responsible person during the exercise of

²⁸ Embezzlement can use several techniques such as falsification of records, emission of false bills, and declaration of ghost employees or stealing money in cash. In political science, Green (1993) defines embezzlement as a “theft after-trust offense”.

²⁹ Kodi nr.06/L-074 i Republikës së Kosovës, GAZETA ZYRTARE E REPUBLIKËS SË KOSOVËS / Nr. 2 / 14 JANAR 2019, PRISHTINË, neni 418.

³⁰ Ibid.

³¹ Elezi, I., (2013), E drejta penale, pjesa e posacme, Prishtinë, pp. 178.

duty in connection with the exercise of official duty, in order to bring them to themselves or to another unlawful property gain, by presenting false accounts or bringing in any another way of misleading the person authorized to make an illegal payment. It is fraud, for instance, when state agencies and state representatives are engaged in illegal trade networks, counterfeit and racketing, and when forgery, smuggling and other organized economic crime are propped up by “official” sanction and/or involvement. It is fraud when politicians’ and state agents take a share for closing their eyes on economic crimes, and it is serious fraud when they have an active role in it.

4.4. Extortion

Extortion is sometimes called the "protection racket" since the racketeers often phrase their demands as payment for "protection" from (real or hypothetical) threats from unspecified other parties; though often, and almost always, such "protection" is simply abstinence of harm from the same party, and such is implied in the "protection" offer. Extortion is commonly practiced by organized crime. In some jurisdictions, actually obtaining the benefit is not required to commit the offense, and making a threat of violence which refers to a requirement of a payment of money or property to halt future violence is sufficient to commit the offense. “Protection” or “security” money can be extorted in the classical, well-known mafia style, where organised criminals use insecurity, harassment and intimidation to extort money from individual citizens, private businesses and public officials. Extortion was originally the complement of bribery, both crimes involving interference with or by public officials. But extortion and, to a limited extent, bribery have been expanded to include actions by private citizens as well. Corruption in the form of extortion is usually understood as a form of extraction from below, by mafias and criminals. A *modus operandi*³² that has been revealed during several criminal investigations, and which was illustrated in the former paragraph, can be described as follows: a problem is created with a victim by one or multiple perpetrators, or an existing situation (with a third party) is turned into a problem as a result of misleading information or deceit. Then a solution is offered to the victim in terms of a negotiation or an offer that will solve the problem. Whenever that deal is accepted, mainly under misleading or intimidating circumstances, the victim is psychologically bound to the perpetrators. The situation is then used to keep a tight grip on the victim, and the extortion is an established fact. The “*ideal extortion*” turns out to be difficult to prove in court. Extortion consists of obtaining property from another through the wrongful use of actual or threatened force, violence or fear. The fear the victim experiences therefore seems to lack any objective grounds, it is not the result of threats and use of violence. Second, since the preparation and the execution of the crime has been divided between multiple actors with varying behaviors, the underlying organization with its sole intention to extort the victim is far from evident. What I have seen during several criminal investigations, is a lack of understanding from the side of law enforcement on how the extortion is prepared and executed and then as a result the fail to qualify the fear of the victim in a proper way.

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4.5. Favoritism and Nepotism

³² “*Modus Operandi*” is a Latin term used in English-speaking circles to describe an individual's or group's habitual way of operating, which forms a discernible pattern. The term is primarily used when discussing criminal behavior, but it is not exclusively uttered in this context. *Modus operandi* can also be defined as a specific method of operation.

Favoritism from the Latin word “favor” means mercy or unfair and prejudicial patronage of minions in office to the prejudice of common cause. Favoritism is the second form of preferential treatment. The word ‘favoritism’ has two somewhat different meanings: (i) the general inclination to favor one person or group over others, and (ii) concrete preferential treatment of those to whom one has personal connections, such as relatives, friends, neighbors³³ or other acquaintances. Nepotism and favoritism pose a particular challenge to the development of democracy in the Republic of Kosovo as well as the main constraint on the path to EU membership. While nepotism is practice of showing preferential treatment toward one's relatives (by blood or marriage), favoritism is shown towards friends and acquaintances. In nepotism, which is briefly known as relative favoritism, the subject of preferential treatment is blood relation and emotionality is the major element as required by primary relations. Although the phenomenon of preferential treatment is considered a “form of corruption” that appears in the political decision-making process³⁴ it is at the same time one of the major problems of the public bureaucracy. Bestowing privilege to some individuals in the organization may not always be for direct pecuniary interests. It may arise from certain commitments and obligation. That is to say, rather than an economic power, such as money or property, the likelihood of the use of a non-pecuniary power, i.e. kinship ties, as the means of influencing is highly probable.³⁵ The word nepotism is from the Latin word ‘nepos’, meaning “nephew”.³⁶ The concept of nepotism refers to the misuse of office in favor of family members.³⁷ Nepotism has negative effects on human resource management recruitment and selection practices because candidates are chosen for their friendships and blood relationships. In small states such as Kosovo, improving performance and credibility requires comprehensive but well-orchestrated institutional reform that combats corruption and frees up the latent potential of these organizations, redirecting their practices to serve developmental ends. Nepotism is one of the types of favoritism which will effect on employee’s performance. In Kosovo, due to nepotism in many organizations people or employees leave or fired from organizations. It is believed that relatives who are good at positions in organizations or family business, their dedication towards organization are very beneficial and it also avoids conflict between owners and managers. When it comes to fighting corruption, which includes all of the forms, the Republic of Kosovo still faces problems and lacks of a coherent policy to confront these negative issues.

6. Causes and consequences of corruption

Some of the causes that affect Kosovo are a) **personal greed** that leads to an unfettered desire for money or power; with no regard whatsoever to moral boundaries. **The underlying anthropological cause is the innate human impulse to own external goods, when it is not subject to personal integrity,** b) **decline of personal ethical sensitivity**, either due to lack of education or negative learning experiences, developed by downplaying perverse conduct in the past, c) **low awareness or lack of courage to denounce corrupt behavior** and situations conducive to corruption. That is the case of someone who is aware of corruption and stays quiet. They simply cover for the corrupt individuals, perhaps thinking that it is not their

³³Loewe. M., Blume.Jonas- S., Verena.Se., Stella. S., Johanna. Ch., Voss 2007, the Impact of Favoritism on the Business Climate: A Study on Wasta in Jordan, s. 216, Bonn 2007, pp 19-20.

³⁴Kayabaşı.Y., (2005), PolitikYozlaşmayaÇözümOlarakAnayasalDkti-sat, ÇukurovaÜniversitesiSosyalBilimlerEnstitüsü, YayınlanmamışYüksekLisansTezi, Adana, pp 56.

³⁵Berkman. Ü., A. (1983), AzgelişmişÜlkelerdeKamuYönetimindeYolsu-zlukveRüşvet, TODAİE Yayın No: 203, Ankara, pp 25-26.

³⁶Kiechel, W., (1984), How to Relate to Nepotism, Fortune, pp. 143-144.

³⁷ Ford, R., and McLaughlin, F., (1985), Nepotism, Personnel Journal, Vol. 64, No: 9, pp. 57–60.

problem, or perhaps out of cowardice, so as not to make their lives more complicated, d) **lack of transparency, especially at the institutional level**, but also in less formal organizations, e) **slow judicial processes**. In some other countries, we would have to add “and unreliable” to that statement. Swift processes can have a greater exemplifying effect than those that, by the time the sentence comes, the crime already is nearly forgotten. Justice requires appealing processes and warranties, but not if it means slowing down the administration of justice. Consequences of corruption in society are major; they can be even coated on top of each other, aggravating more and more their effect on the society and system in function. Therefore, we had so many warnings and evaluations by international institutions about danger and consequences this negative phenomenon could bring along, phenomenon that is too harmful. Starting from this, legislations have been drafted, mechanisms established, either international or local, with aim of preventing and combating this phenomenon, harmful and socially destructive. Consequences of corruption affect political, social, economic and psychological power. Political consequences of corruption are really major. It can directly damage the purpose (goal) of democratization of the society; it is also a serious threat to entire political class. The corruption especially affects countries which are on their way of transition and those who face nonexistent political stability.³⁸ Economic consequences of corruption in such cases could be major. High level of corruption can affect a withdrawal of foreign investments, which every country has a great need for. Experience shows that people from the political milieu avoid investing in countries where the level of corruption and economical crime is high, because right at the beginning they would have to confront corrupted officers (officials), who for their personal gain are able to make it difficult for accommodating the foreign businesses, causing intentional delay of administrative procedures which very often look so complicated, and all for the sake of fulfilling their corrupted goals.³⁹

7. Legal and strategic infrastructure for the treatment of corruption in Kosovo

It is without a doubt that the state, through its own mechanisms, has the possibility to prevent spreading of corruption. In Kosovo, the role of media in reporting or showing cases and corruptive practice is increasing more by each day. The role of public institutions, especially in the transition countries, is very mild, not to say that the beginning and the cultivation of corruption begins in these very institutions. Policies and initiatives against corruption were in the focus of legal and institutional efforts, which have been carried out in recent years in Kosovo. In this string, one improvement was noticed by the stakeholders while treating challenges of the corruption, especially at the beginning of addressing the corruption cases, as well as improvement of the framework of current legislative structures for treating the corruption such as Law on Declaration, Origin and Control of the High Official's Property in Public Institutions, Law on Anti-corruption Agency, Criminal Code of Kosovo and Anti-Corruption Strategy and Action Plan. The role of civil society in prevention of corruption is without a doubt very influential. A way to gauge political commitment against corruption could be to measure “anti-corruption investments” made by governments. This might involve not only developing an anti-corruption strategy but also setting up related policies, task forces and sufficient funding for anti-corruption agencies as implementing bodies. The lack of political commitment over time also can be a challenge for the sustainability of anti-corruption strategies. Political events after the adoption of the anti-corruption strategy might affect its implementation. The civil society includes those societies, structures that are separated from legislative, administrative and legal self-government authority, but have mutual interaction in many ways and many areas. In most cases, when strivings to combat corruption have failed,

³⁸Krasniqi, A., (2013), Corruption, Forms of Appearance and Suppression, Pristina, pp.60.

³⁹Halili, R., (2011), Criminology, Pristina, pp 201.

that is happening because this, so important element – civil society, was left out. The role of independent media, viewed from the point as an element to prevent crime in general, and especially corruption, is commendable, as irreplaceable. Media kicks on cases of corruption phenomena that are seen will create a climate of belief and positive optimism in public, it would compel state entities to respond positively to embedding or improving the state of legality in the mentioned administration, it would give real effect of relevance of so-called civil society. Subsequently, an attempt to change some things from down to upwards becomes more difficult and complex, because the beam of authorities, breaking furiously and mercilessly the media membrane and the membrane of society, damages to a large extent and prevents those who want to do something good and reviving for their own place.⁴⁰

8. Results

Corruption cases in the courts of the Republic of Kosovo is accompanied by major procedural delays, which comes as a result of the absence of judges in court hearings, the absence of defendants, the absence of prosecutors, witnesses or other reasons.

Table 1

Reasons for postponing the court hearings of corruption cases in 2019⁴¹

Absence of defendants	Lack of prosecutor	Lack of judges	Lack of witnesses	Other reasons
81 sessions	61 sessions	34 sessions	17 sessions	131 sessions

Judges should take all legal action in order to avoid unreasonable adjournment of court hearings. Given the fact that corruption cases fall into the group of cases with priority of treatment by the justice system, prosecutors and judges in these cases to respect at least the legal deadlines set by the Code of Criminal Procedure.

Table 2

Profile of persons accused in corruption cases⁴²

Low profile individuals	Middle profile individuals	High profile individuals
471 cases	387 cases	61 cases

In the face of the large number of high-profile indictments that have failed in the Courts, the State Prosecutor should make an analysis of these cases and identify what were the causes of the failure of these cases, and in relation to this analysis, reflect in subsequent investigative actions.

⁴⁰Latifi, V., (2012), Politics of the Fight against Crime, Pristina, pp. 196.

⁴¹ Kosovo Law Institute, (2020), Pristina, pp. 26 See file:///C:/Users/DATACenter/Downloads/1.-RAPORTI-VJETOR-I-KORRUPSIONIT-2019-IKD-1%20(2).pdf.

⁴² Kosovo Law Institute, (2020), Pristina, pp. 26. See file:///C:/Users/DATACenter/Downloads/1.-RAPORTI-VJETOR-I-KORRUPSIONIT-2019-IKD-1%20(2).pdf.

Table 3. Judgments announced by the Basic Courts for corruption cases during 2019⁴³

Imprisonment	Probation	Penalty with fine	Acquittal	Rejection judgment	Dismissal of the indictment
41 individuals	56 individuals	36 individuals	91 individuals	14 individuals	2

The courts of the Republic of Kosovo must strictly implement the Guideline of the Supreme Court on Punitive Policy. After a proper assessment of the principles of punishment, mitigating and aggravating circumstances and the purposes of punishment, the sentences should be imposed in accordance with the limits set out in the appendix to this guide. The courts of the Republic of Kosovo, in addition to the main sentences, should also apply additional sentences, in order for this negative phenomenon to be reduced and the crime rate not to be as high as predicted in the table.

9. Conclusion

Corruption issue is that corruption is a symptom of deep-seated and fundamental economic, political and institutional weaknesses and shortcomings in a country. To be effective, measures against corruption must therefore address these underlying causes and not the symptoms. Emphasis must thus be placed on preventing corruption by tackling the root causes that give rise to it through undertaking economic, political and institutional reforms. Another observation that may be useful to bear in mind is that corruption is most prevalent where there are other forms of institutional weaknesses, such as political instability, bureaucratic red tape, and weak legislative and judicial systems. Moreover, if the state institutions, non-governmental organizations and ordinary civil society mean to persistently and with great determination carry out the prevention of corruption, then the treatment of corruption in Kosovo will be easier, having in mind that despite of great efforts, the first phase of prevention was unsuccessful. This happened because a lot of stakeholders and participants were identified in the first phase of presenting and development of corruption. So, getting rid of corruption helps a country to overcome other institutional weaknesses, just as reducing other institutional weaknesses helps to curb corruption. Practical elements contributing to the reduction of corruption, in some hand a hope is created that the concerned phenomenon will not happen again, because it is historically known that those who have committed criminal acts, sooner or later were discovered, and then prosecuted. I've come to the conclusion that some of these elements that have preventive characteristics are: transparency - which is actually preventive element in order for phenomena to reduce rhythm or disappear in one institution. A part of these are; Publication of precise data for budget of the state, as well as publications related to the budget, drafting practical conditions and full respect of the rights to public information, public debate in cases where it is discussed about wealth or declaring it based on previous aspirations combat corruption in Kosovo, the enactment of specific measures to combat, detect and investigate corruption. Ratification of international conventions in the area of criminal law, to this regard also the enactment of the human and professional capacities of the Prosecutor's Office including the necessary level of security and adequate material compensation and enhancing the role of the Anti-corruption Agency and preserving its impartiality. We will have success in

⁴³ Kosovo Law Institute, pp. 27.

fighting corruption only if we are ready to make the proper decisions on concrete cases and bring to light all weaknesses of the state institutions.

References

- [37]. Aliu, E. Ligji penal romaknëfjalimetgjyqësoretëCiceronit, TribunaJuridike, n.55/ 2005;
- [38]. Antonio Argandoña, The 1996 ICC Report on Extortion and Bribery in International Business Transactions, 6 BUS. ETHICS: A EUR. REV. 134, 142 (1997);
- [39]. Berkman. U., A. 1983, AzgelişmişÜlkelerdeKamuYönetimindeYolsu-zlukveRüşvet, TODADE Yayın No: 203, Ankara.
- [40]. Bonifassi, supra note 17, at 91 (describing the decision of the French government to move its private bribery legislation from its Criminal Code to its Labor Code);
- [41]. Clifford T.P. 1975, The political Machine an American institution vantage press.
- [42]. Duk V. Tang., 1994, Korrupsionidhedemokracia, Tiranë;
- [43]. Edmund. S., Domestic Commercial Bribery: An Often Overlooked Issue, BUS. CRIMES BULL., Aug. 1, 2012, at 3 (discussing public unawareness of private bribery);
- [44]. Elezi.I., 2013, E drejtapenale, pjesa eposaçme, Prishtinë;
- [45]. Ford, R. - McLaughlin, F. 1985, Nepotism, Personnel Journal, Vol. 64, No: 9;
- [46]. Gojani. S., 2013, Fjalori i TerminologjisëJuridike, Prishtinë;
- [47]. Halili. R., 2011, Criminology, Pristina;
- [48]. Jac C. Heckelman& Benjamin. P., Corruption and the Institutional Environment for Growth 1 (Suffolk Univ. Research Working Paper No. 2008-6, 2008;
- [49]. Kayabaşı. Y., 2005, PolitikYozlaşmayaÇözümOlarakAnayasaİdktı-sat, ÇukurovaÜniversitesiSosyalBilimlerEnstitüsü, YayınlanmamışYüksekLisansTezi, Adana;
- [50]. Kiechel, W. 1984, How to Relate to Nepotism, Fortune;
- [51]. Kodi nr.06/L-074 i Republikës së Kosovës, GAZETA ZYRTARE E REPUBLIKËS SË KOSOVËS / Nr. 2 / 14 JANAR 2019, PRISHTINË;
- [52]. Kosovo Law Institute, (2020), Pristina, See file:///C:/Users/DATACenter/Downloads/1.-RAPORTI-VJETOR-I-KORRUPSIONIT-2019-IKD-1%20(2).pdf.
- [53]. Krasniqi, A., 2013, Corruption, Forms of Appearance and Suppression, Pristina;
- [54]. Latifi, V., 2012, Politics of the Fight against Crime, Pristina;
- [55]. Ligji nr.2004/34 kundërkorrupsionit, GAZETA ZYRTARE E INSTITUCIONEVE TË PËRKOHSHME TË VETËQEVERISJES NË KOSOVË / PRISHTINË: VITI II / NR.10 / 01 MARS 2007;
- [56]. Loewe, Markus- Blume, Jonas- Schönleber, Verena- Seibert, Stella- Speer, Johanna- Christian, Voss 2007, The Impact of Favouritism on the Business Climate: A Study on Wasta in Jordan, s. 216, Bonn 2007;
- [57]. ORG. FOR ECON. CO-OPERATION & DEV. [OECD], CORRUPTION: A GLOSSARY OF INTERNATIONAL STANDARDS IN CRIMINAL LAW 22 (2008), available at <http://www.oecd.org/daf/anti-bribery/41194428.pdf> [hereinafter OECD CORRUPTION];
- [58]. Pearce, R., and Stearn, R., 2000, Access to History, Government and Reform Britain Second Edition Hodder& Stoughton.