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EFFICIENCY AND EFFECTIVENESS OF THE STATE AUTHORITIES AND INSTITUTIONS IN THE SUPPRESSION OF CORRUPTION IN THE REPUBLIC OF NORTH MACEDONIA

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Abstract

Corruption is a phenomenon that seriously threatens the rule of law, because instead of the rule of law and its norms, it will be ruled by individuals guided by self-interested goals. Corruption is a criminal phenomenon with a wide spectrum of criminal acts that manifest from the lowest level of „petty“ but „widespread“ corruption to the highest level of „high“ corruption, which is a „cancerous wound“ for the development of democracy and human rights of citizens. It is direct attack on the constitutional order, above all on the constitutional principles and guarantees for human freedoms, rights and equality of citizens. The exercise of public powers very often takes on the character of performing certain services only for those citizens who can pay for them. However, the most serious forms of corruption are the abuse of public powers, power and their use by acquiring wealth to the detriment of the state budget and damage to citizens and entrepreneurship as entities that set aside from their incomes to fill the state budget. The rule of law should guarantee „the freedom of the market and entrepreneurship and ensure an equal position of all subjects in the market entities“ to guarantee the freedom and equality of citizens in all spheres of social life. Suppression of corruption is the responsibility of several state bodies and institutions, but how efficient and effective they are in their actions is the subject of this research for the period from 2018 to 2022 through the use of a normative analysis method, a comparison method and a statistical method.

Keywords: corruption, efficiency, effectiveness, public powers, abuse of public powers.

INTRODUCTION

Corruption is a social phenomenon that has a direct negative impact on the overall development of society, which directly threatens the democratic values of the state, which are constitutionally guaranteed. Corruption is associated with the abuse of the entrusted powers of a certain category of individuals and groups who are holders of power or are connected to the ruling elite, at the expense of other citizens who are unable to defend their rights and interests.

Corruption is also an economic category that is often the cause of an imbalance between supply and demand, influence trading is driven by business interests, and no comprehensive reform step can be taken without the support of the political and economic elite.¹

The state of efficiency is the effectiveness in the suppression of corruption by state authorities and institutions is shown in the European Union Report in October 2020 with the conclusion that „corruption is widespread in many areas and a more active approach should be ensured by all stakeholders dealing with by preventing and fighting corruption.“²

In the Republic of North Macedonia, since the beginning of the new millennium, new state bodies and institutions have been established with police powers and competences for detecting, elucidating and proving corrupt crimes, namely the Financial Police and the Customs Administration, while reforms have been made in the Ministry of the Interior and specialized departments in the criminal police for the suppression of corruption have been opened. Their competencies and powers derive from the Criminal Procedure Law³

In the direction of efficient action by all state authorities and, above all, their coordination and avoidance of overlapping responsibilities, in 2010 major changes were made to the Criminal Procedure Law, whereby the role of the Public Prosecutor's Office in pre-investigation and investigation procedures was strengthened, as well this is how the Basic Public Prosecutor's Office was formed for the prosecution of organized crime and corruption.⁴

The efficiency in suppressing the corruption of the state bodies and institutions is measured through the data on discovered and clarified cases for which, as competent state bodies, they provided relevant evidentiary material on the basis of which a degree of „grounds of suspicion“ was provided and criminal charges were filed against suspected persons, with status attributes of official and responsible persons and persons exercising public powers.

Obtaining indicators on the effectiveness of state authorities and institutions for the suppression of corruption in the past years is through the analysis of statistical data of the State Statistics Office for reported, accused and convicted persons for committed crimes. According to several researches, indicators were obtained on which are the most committed crimes and what is the degree of conviction of the perpetrators. In all research periods, the crime „Abuse of official position and authority“ according to Article 353 of the Criminal Code, regardless of whether it was investigated as part of economic-financial crime, where corrupt crimes dominate, or the grouping of crimes against official duty, is the most represented. The extent of representation is 64,1% in the period from 1997 -2006, 84, 9 % for the investigated period 2010 and 2011, in the same period the conviction rate ranges from 12,7 % to 15,4 %, which indicates a low degree of effectiveness.

¹ Lažetić, G., *Korupcijata među vladeenjeto na pravoto i političkrite biznis eliti*, Predizvici - spisanie za opštestveni prašanja, Borba protiv kriminalot i korupcijata, Fridrih Ebert Fondacija - Skopje, br. 9, 2021, str. 17.

² European Commission – North Macedonia 2020 Report, <https://library.fes.de/pdf-files/bueros/skopje/15369/09-2021-03.pdf>.

³ Article 145 of Law on Criminal Procedure, *Official Gazete of the Republic of Macedonia*, no. 15/05.

⁴ Article 47 of Law on Criminal Procedure, *Official Gazete of the Republic of Macedonia*, no. 150/10.

Previous researches are based on data on reported, accused and convicted persons from the State Statistics Office. This research uses data on reported, accused and convicted perpetrators of corrupt crimes from the Annual Reports of the Public Prosecutor's Office of the Republic of North Macedonia, with the aim of obtaining relevant indicators for the efficiency in the reporting and filing of charges and the effectiveness according to the degree of conviction. . The Public Prosecutor's Office is involved in accordance with the law in the overall procedure from the pre-investigation procedure (before and with the filing of criminal complaint) to the adoption of final degree of convicted.

1. CRIMINAL ACT OF CORRUPTION ACCORDING TO THE MACEDONIAN CRIMINAL LEGISLATION

Corruption crimes have the same or similar criminalistic and criminal law characteristics, the basic or starting characteristic is the status of the perpetrators – officials, foreign officials, responsible persons, foreign responsible persons and persons exercising public powers.⁵

Corrupt crimes according to the classification of the public prosecutor's office are the following:

- Corruption crimes against official duty from Chapter 30 are:
 1. Abuse of official position and authority Art. 353,
 2. Negligent performance of duty Art. 353 - v,
 3. Embezzlement in the service Art. 354,
 4. Fraud in the service of Art. 355,
 5. Serving of the service from Art. 356,
 6. Receiving a bribe Art. 357,
 7. Giving a bribe Art 358,
 8. Giving a reward for illegal influence from Art. 358 – a,
 9. Receiving a reward for illegal influence from Art. 359,
 10. Illegal acquisition and concealment of property from Art. 359 – a,
 11. Disclosing the official secret of Art. 360 st. 1 and 2,
 12. Abuse of a state, official or military secret from Art. 360 – a,
 13. Falsifying an official document Art. 361.
- Corruption crimes against elections and voting are:
 1. Violation of the electoral right from Art. 159,
 2. Violation of the freedom of determination of the voters from Art. 160,
 3. Bribery during elections and voting from Art. 162,
 4. Violation of the secrecy of voting from Art. 163,
 5. Destruction of election material from Art. 164 para. 1 and 2,
 6. Electoral fraud from Art. 165.

⁵ Член 122 ст. 4, 5, 6, 7, 8 и 9 од Кривичен законик на РМ бр. 37/96, 19/04, 114/09 2020 – пречистен текст.

- Corruption crimes against property are:
 1. Illegal construction from Art. 244 - a para. 4,
 2. Unauthorized receipt of gifts from Art. 253,
 3. Unauthorized giving of gifts from Art. 253 – a,
 4. Abuse of the bankruptcy procedure from Art. 256 para. 2 and 3,
- Corruption crimes against public finances, payment transactions and the economy are:
 1. Fraud in the operation of securities and shares from Art. 275 para. 1, 2 and 3,
 2. Negligent action of an authorized auditor from Art. 275 - b para. 1, 2 and 3,
 3. Abuse of the procedure for a public call, awarding a contract for public procurement or public-private partnership from Art. 275 – c,
 4. Illegal action of an authorized appraiser from Art. 275 – g,
 5. Abuse when concluding an agreement between interested parties from Art. 275 – d,
 6. Violation of equality in the performance of economic activity from Art. 282,
 7. Preventing, limiting or disrupting competition from Art. 283,
 8. Unfair competition in matters of foreign - trade turnover from Art. 284 para. 1 and 2,
 9. Abuse of authority in the economy from Art. 287.

In order to obtain indicators that will be comparable to previous research periods, research was conducted on the conduct of criminal-legal cases by all public prosecutors' offices and data on reported, accused and convicted persons for corrupt crimes was extracted from their annual reports of the researched period 2018 – 2022.

1. EFFICIENCY AND EFFECTIVENESS OF THE STATE BODIES AND INSTITUTIONS IN COMBATING CORRUPTION IN THE REPUBLIC OF NORTH MACEDONIA

An analysis was made of what corrupt crimes the Public Prosecutor's Office handled and the efficiency and effectiveness of the procedures. From the analyzed five Annual reports, it has been established that proceedings are mostly conducted for the criminal offense "Abuse of official position and authority" from Article 353, and the number is also small for other corrupt criminal offenses or there are three criminal offenses in all these years, and throughout the reports there are also data on other corrupt crimes for which procedures were conducted in some of the years.

The provided data is presented tabularly, and then, based on their analysis, indicators are extracted on the number of reported, accused and convicted perpetrators, what is the degree of conviction, in fact, this is an indicator of effectiveness, and the effectiveness is perceived from the submitted criminal cases. report. In order to file criminal charges, it is necessary to have relevant material evidentiary materials on the basis of which the „reasonableness of suspicion“ is based, as a prerequisite for criminal investigations and taking a system of legal measures and actions against the suspected persons, and for a good part of them even at the filing of criminal charges is a definite measure of detention.

Year	Art 353			Art 357			Art 361			Other			Total		
	RP	AP	CP	RP	AP	CP	RP	AP	CP	RP	AP	CP	RP	AP	CP
2018	1094	160	122	17	7	13	28	4	21	/	/	/	1139	171	156
2019	1674	271	80	12	7	7	29	2	4	/	/	/	1715	280	91
2020	1298	140	144	4	5	6	25	5	2	/	/	/	1327	150	152
2021	1391	200	133	17	5	6	27	11	3	295	50	66	1730	266	208
2022	1221	151	95	23	9	2	27	11	9	286	46	49	1557	217	155
Total	6678	922	574	73	33	34	136	33	39	581	96	115	7468	1084	762

Table no. 1 Volume, structure and dynamics of reported, accused and convicted perpetrators of corruption crimes in the Republic of North Macedonia

In the researched period 2018 - 2022, according to the analyzed five annual reports of the Public Prosecutor's Office, a total of 7468 perpetrators were reported for corrupt crimes with criminal charges due to the existence of „grounds of suspicion“ for three of which were continuously prosecuted, but also for other crimes that are placed in the column „other“ because there are criminal charges for them in separate years. Of the total of 7468 reported perpetrators, only 1084 or 14,5 % were charged, of the total number of defendants, 762 or 70,3 % were convicted. This indicates that in the process of the criminal procedure, for some cases, sufficient solid evidence was not presented. But when analyzed in relation to those reported to those convicted, the degree of conviction is only 10,2 %.

According to the structure of corrupt crimes, the crime „Abuse of official position and authority“ from Article 353 is the most represented, with 6678 reported perpetrators or that is 89,5 %, for „Receiving a bribe“ from Article 357, 73 perpetrators or about 1 % have been reported. For „Falsifying an official document“ from Article 361, 136 perpetrators or 1,8 % were reported, and the rest 581 or 7,8 %. In the first three years of the research period, according to the data for 2018, 2019 and 2020, the Public prosecutor's Office acted only for the mentioned three crimes. While in 2021 and 2022, other corruption crimes were also dealt with and they were put in the „other“ column. However, the criminal offense „Abuse of official position and authority“ under Article 353 prevails in the total representation.

According to the representation by years of the crime „Abuse of official position and authority“, in 2018 it is 96 %, in 97,6 % in 2019, in 2020, 97,8 %, in 2021, 80,4 % and in 2022 year is with 78,4 %. The high representation in the first three years is due to the fact that there were no proceedings for other corruption crimes. It is an encouraging situation when it comes to discovering, elucidating and, on the basis of relevant evidence, qualifying a crime appropriately. In the past, all criminal law cases, even though they had elements of a corresponding crime incriminated in the criminal code, were still handled with the qualification of „Abuse of official position and authority“

As an indicator of the effectiveness of state bodies and institutions, the dynamics of handling or discovering cases and filing criminal charges and reporting perpetrators due to the existence of „grounds of suspicion“ for a committed corruption crime. The reporting of perpetrators with a submitted criminal report is preceded by a procedure of the state authorities and institutions, that is, the criminal officers who, according to the law, coordinate with the competent Public Prosecutor

and inform him of all the relevant evidentiary materials received.⁶ The filing of a criminal complaint is the result of the overall work in the pre-investigation procedure when the operatives, especially when it comes to corruption crimes, have a serious job and take a series of measures and activities that are mostly due to the inspection of business documentation and the extraction of evidentiary material which contain data on illegal activity on the basis of which the „grounds of suspicion“ are based.

Effectiveness is measured by the final indicators, or whether and how many of the submitted criminal charges are processed by filing an indictment, and this is on average 14,5 %, which is a very low level of processing. And the degree of conviction on average in the investigated period 2018-2022 is 70,3 % of the defendants are convicted. And the degree of conviction among those reported is quite low and is 10, 2 %.

Analyzed from the point of view of the degree of indictment, i.e. the convicted, for the crime of „Abuse of official position and authority“ under Article 353, a total of 6678 perpetrators were reported, of which 922 or 13,8 % were accused, and 62,3 % of the accused were convicted, the conviction rate is 8,6 %. This is a strong indication that the perpetrators of this crime are not convicted, or it can be explained that the influence on the judicial authorities by the persons who are reported is strong directly, or indirectly, but the effect is „unconviction“ or impunity for corruption. While in the case of the crime „Accepting a bribe“ there are 73 reported perpetrators, 33 or 45,2 % have been charged, and all the accused have been convicted. In the case of this crime, the evidence is usually provided during the commission of the crime, which has previously been reported - a request for a bribe is reported and measures are taken for discovery, clarification and proof at the time of the commission itself, i.e. immediately during the „Giving of a bribe“, during receiving is „caught by the perpetrator“ with the means of bribery. If a request for a bribe has been previously reported, the bribe giver is not criminally liable, precisely because of this the crime of „Giving a bribe“ has not been recorded.

Compared to the previous research periods, this degree of conviction is much lower, and this may be the result of an inadequate methodology of data entry and their presentation in the annual reports, but the difference is not great, as the main indicator that for corrupt crimes conviction or punishment is quite low, which is due to several things, the most important of which is „Whether and how much“ there is an influence on the judicial authorities for sentencing perpetrators who have the status of officialdom or holders of public functions, works with public powers. It is confirmed what was highlighted in the Bribe Report that in the Republic of North Macedonia there is a strong influence on the judicial authorities in the conduct of court proceedings and the passing of final court judgments.

A comparison was made of two surveys of data from the State Statistics Office and the Public Prosecutor's Office for 2018 and 2019. Namely, according to the analysis of the data from the State Statistics Office for 2018, the degree of conviction for perpetrators of the crime „Abuse of official position and authority“ is 14,6 %, for 2019 it is 5,11 %. ⁷For the same years, according to the data of the Public Prosecutor's Office for 2018, the conviction rate is 11,6 %, and in 2019 it is 4,8 %. It

⁶ Člen 283 st. 4 od Zakonot za krivična postapka, Sl. vesnik na RM br. 150/10.

⁷ Nikoloska S., *Legal and criminalistics features of the crimes of „Abuse of position and authority“ and „Money laundering and other proceeds of crime“*, Security horizons, Volume II, Faculty of security, Skopje, pg. 46.

is a lower degree of conviction, as the data from the Public Prosecutor's Office are more relevant, because they manage the cases and their data is the most relevant.

CONCLUSIONS AND SUGGESTIONS

The efficiency and effectiveness of the state authorities and institutions in the suppression of corruption in the Republic of North Macedonia, analyzed through a comparison of data on reported, accused and convicted perpetrators of corrupt crimes, indicates a situation about which knowledge has already been obtained in several studies, and that although criminal charges are filed against perpetrators of corrupt crimes, the number of convicted persons is minimal. It is a strong indicator that there is systemic corruption that is reflected mostly in the judicial system, or that primary corruption is followed by secondary corruption or corruption in judicial authorities.

The most corrupt crime is „Abuse of official position and authority“ according to Article 353, but even for that crime the lowest degree of conviction is a strong indicator of influence on the judiciary when passing final verdicts for crimes committed by persons of certain official positions or perform official functions. Or an indicator that corrupt crimes are not judged, „trading in influence“ is an important factor for non-judgment, that is, an indicator of a „captured judiciary“.

In the Macedonian criminal code, about 30 corrupt crimes are systematized, but only a few of them are dealt with, the investigators and prosecutors classify almost all criminal behavior as „Abuse of official position and authority“, as if they are not „encouraged“ to do more extensive analyzes of the evidence and to „qualify“ another crime. Academician Kambovski, in several of his works, emphasizes that a large part of corrupt crimes seem to be „forgotten“ in the Criminal Code, they are not „revived“, whether there is still a certain „uncertainty“ among investigators and prosecutors is a question that deserves a more comprehensive investigation. But it is also a problem that needs to be worked on with appropriate thematic trainings and counseling, because it is not just to incriminate a crime, for the same thing it should be handled as in the part of discovery by collecting „general suspicions“, through a series of checks, measures and actions to illuminate and provide evidence for other corrupt crimes.

The problem of „non-conviction“ is serious and debates should be opened about it, whether the investigators are not expert enough to provide enough „relevant evidentiary material“ in the pre-investigation procedure on which the „grounds of suspicion“ will be based, or whether work should be done on strengthening the cooperation with the public prosecutor's office during the pre-investigation procedure in the direction of providing „relevant evidentiary material“ for further successful action.

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