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FIGHT AGAINST CORRUPTION IN HUNGARY AND CROATIA

I. Basic remarks on the nature of corruption

“Corruption is evil. Powerful people become rich. Rich people become powerful. It creates the impression that everything is for sale. It destroys the sense of justice and trust in government. It takes away the hope of the poor and the helpless. Once established, it is placed among the structures hard to destroy.”¹

This quote describes the problem of corruption and the erosion that it causes to the society. But to start from scratch, we should start with the definition. Then already we have a problem, since till today, we have no universally accepted definition of corruption. Depending on the point of view, that can be social, legal, economic, moral, law, psychological...etc, and the area in which it occurs, we can get as many types/definitions of corruption. However, there are many authors that deal with this issue and they agree in its key determinants. For example, in a broader sense, corruption can be considered as any form of abuse of public authority for private gain of a person who performs a public service and in the narrow sense as a procedure in which at least two person use the inadmissible exchange to achieve their own interests, acting to the detriment of the public interest, breaking the moral and legal norms, violating the funds of democratic development, legal state and the rule of law². Transparency International defines it as the abuse of entrusted power for private gain. It is sufficient to say that everyone knows about the occurrence and extent of the corruption, and certainly are aware of the damage that it causes.

Crimes of corruption endanger the well-being of societies fundamentally. Corruption is an “evergreen” category, since it has retained its topicality over the decades and there are few problems in Hungary that could be attributed greater actual political significance.

The most comprehensive analysis of corruption in Hungarian academic literature was carried out by Mariann Kránitz³, who established as a result of her research that every society has to pay a “price for democracy”, into which one must “count” – among others – an increase in the extent of crime and a change in its quality as well as a peculiar situation concerning corruption.⁴ The democratic transformation of the political system alone did not – could not! – eliminate corruption, but rather transformed and changed its character and direction.

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¹ J. Kregar, "Korupcija je društveno zlo" [Corruption as a social evil] in *Izgradnja institucija: Etika i korupcija* [Building Institutions: Ethics and Corruption] (Zagreb 2010) p. 15.

² *Rječnik kaznenog prava* [Dictionary of Criminal Law] (Zagreb, Masmedia 2002) p. 199. D. Derenčinović in his book *Mit(o) korupciji* [The Myth of corruption] (Zagreb, Nocci 2001) p. 42., lists different types of corruption: individual, systemic, indirect, competitive, active and passive, street bargaining, political, transactional, nepotistic, investment...and others.

³ Kránitz, Mariann: A korrupció utolsó huszonöt éve Magyarországon [The Past Twenty-Five Years of Corruption in Hungary] (unpublished essay). p. 1.

⁴ Kránitz, Mariann: A korrupció utolsó huszonöt éve Magyarországon [The Past Twenty-Five Years of Corruption in Hungary] (posthumous essay). *Ügyészek Lapja* 2006. № 5. pp. 26-28.

This is explained by the fact that corruption is extremely closely linked to the economic, political and social milieu in which it is realized. Moreover: there are few social phenomena that follow changes going on in their medium of existence in such an “up-to-date” way, within such a short reaction time as corruption. The ability of quick accommodation can be shown both during the years of the democratic political transition and the post-transition era.

When discussing corruption I would like to emphasize it as a principle – and I consider this as the “poisoned apple” problematic of this phenomenon – that corruption has the characteristics of an extremely efficient means of problem-solving and interest-assertion, therefore the discreet charm of temptation hovers over people all the time. The existence of corruption-free civilization is unknown in the history of mankind stretching back a few millennia, but naturally one cannot give up the (dream) desire of achieving this idyllic state. On the other hand, there are convincing data at our disposal proving that where a community has taken the fight against corruption seriously, the intensity of corruption has decreased there significantly as a matter of fact. However, it must also be noted that corruption reacts to changes in the legal environment extremely sensitively – similarly to water or light – it finds a way and becomes activated immediately and is capable of triggering off a whole avalanche of corrupt acts. The problems are worsened by the fact that corruption has never particularly “respected” borders between countries and continents. This phenomenon was probably among the first – if not the first itself! – to become globalised.⁵ Fight against an undesirable phenomenon can be successful if one knows the characteristic features of the given phenomenon. The problem concerning corruption lies in the very fact that there is too much “fumbling in the dark”.

Numerous studies of perception of corruption show as a fact that today the corruption is a subject of a debate and discussion because it is recognized as a major, if not the biggest social problem. Usually one can hear how depression is leading illness today. Similarly, one can say that corruption is depression of society. There is no area in life in which it does not occur and there is no country where corruption is not a smaller or bigger problem. Because of that there is no state that is not trying to fight it in order to suppress it.

It can be suppressed only by effective educational, preventive and repressive mechanisms, but certainly with the awareness that is not possible to eradicate it but it is possible to reduce it in the optimal or acceptable level. It is already mentioned that the corruption is popular and exciting area. Today we have numerous international and national studies that deal with it in certain time intervals to see its perception, causes, to see the comparison of countries and ultimately to contribute to raising the awareness. Two types of methods tend to be used to help to get to know the phenomenon better and more thoroughly and to understand its functioning mechanism: data given from perception researches, and the other is represented by criminal statistical data.

One of the most popular is surely the research carried out by the Transparency International known as a Corruption perception Index⁶. This research creates ranking of

⁵ Kránitz: A korrupció utolsó... [The Past Twenty-Five Years of Corruption in Hungary] p. 5.

⁶ Hereinafter CPI. Otherwise, Transparency International is nongovernment organization dedicated to increasing government responsibility and combating international and national corruption. This is the only global, non-profit and politically non-partisan organization whose activities are aiming to combat corruption and its consequences. It has its headquarters in Berlin and was founded in 1993 initially to combat corruption in international business transaction. Later they created divisions in many countries, also in Croatia which is the subject of research since 1999. TI enjoys a great support in the world and it has a growing number of members. More on <www.transparency.org> (last accessed on 20. 12.2011)

countries according to assessment of corruption in them. Ranking score assigned to each state can be from 0 to 10, and is inversely proportional to the perception of corruption. Therefore the evaluation of 0 gets the state that is thought to be the most corrupt and the evaluation 10 gets the state with the least perception of corruption. Although this study suffers many complaints, mainly because it is problematic to measure perception of corruption, one cannot deny the great value it has in assessment the opinion of citizen about the level of corruption in the country which they live and how often they meet with it. Nevertheless, as the perception index is based on perception, it is subjective; therefore, it is capable “merely” of providing some orientation concerning the level of infectedness of the individual countries. At the same time, a subjective scale is not suitable for measuring such an objective phenomenon as corruption, which is so much connected with the fragments of economy, bureaucracy and power. On the other hand, the CPI triggers off a “labelling effect”, in other words, it sticks a positive or negative stamp on the given country. However, labelling, in its turn, also functions as a factor influencing corruption. This is how a country slightly or hardly concerned by corruption turns even purer, while a country infected by corruption becomes even more endangered. The CPI constitutes an internationally recognized standard, but it leads to strongly questionable results and consequences concerning the evaluation of the state of corruption in a given country.⁷

According the CPI, in 2010, Croatia got 4.1. and was 62nd place of total 178 countries in the research. In 2011, score was 4.0, and 66th place out of 183 countries.⁸ Hungary has occupied the 50th place with 4.7 points.

However, the key message on global level remains the fact that more than three quarters of the countries were rated below the 5 that indicates that corruption is a global and serious problem.⁹

Transparency International has created one other significant study entitled Global Corruption Barometer¹⁰. It is made for correction of results obtained in the CPI and measures the level and area of corruption risk¹¹. CPI is determined by comparison of the level of corruption in different countries, GCB distinguishes perception of social groups and areas of risk. According to GCB 2010 in Croatia, judiciary is perceived as the most corrupt¹². The same result was also

⁷ Kránitz: loc. cit. p. 6.

⁸ Otherwise, according to this research, the perception of corruption in Croatia has changed through the years: the best result we achieved in 1999, when it stood at 2.9. and the worst in 2008, when it stood at 4.4. Also, here is a comparison of Croatia not only with the countries in the world but also towards the countries in region in 2011: Slovenia got the 35th place, Slovakia and Montenegro have the same position as Croatia (66th), Italy is 79th, Serbia 86th and Bosnia and Herzegovina 91st.

⁹ The best results were achieved by the New Zealand (9.5) and Denmark (9.4) and the worst traditionally Somalia and North Korea (1.0 both).

¹⁰ Hereinafter GCB.

¹¹ J. Kregar, "Korupcija: Nezanje nije opravdanje" [Ignorance is not an excuse] in *Korupcija i povjerenje* [Corruption and trust] (Zagreb, Centar za demokraciju i pravo Miko Tripalo, 2010) p. 26.

¹² <www.transparency.org/policy_research/surveys_indices/gcb/2010/results> (last accessed on 20.12.2011) Croatia is here located alongside the countries such as Afghanistan, Bolivia, Cambodia, Peru, Ukraine. The question: "How much the situation in terms of corruption has changed over the last three years?" 57% of the respondents said that corruption has increased and 33% that it remained the same. What is also interesting to compare: in Singapore the most corrupted are media and in Denmark business area.

in 2007 and 2009¹³. Based on the criminal statistical data one would have to conclude that corruption crime may be considered a rare bird in Hungarian and Croatian criminality. It is an obviously mistaken diagnosis because of latency, since as a result of the community of interest between the provider and the recipient of the unlawful advantage, only an insignificant number of acts of corruption lead to criminal prosecutions.¹⁴

The small number of criminal proceedings¹⁵ may be explained by the fact that the overwhelming majority of criminal proceedings are instituted following the reports of crimes by citizens – as it was established by László Korinek during his researches into latency¹⁶: “the law sees with the eye of the citizen”– and in the case of corruption there is a low level of willingness to report it.¹⁷ It is not an exaggeration to claim that Hungarian indices relating to the extent of corruption crimes and their proportion to the total number of crimes are tragicomic.¹⁸ (In 2010, Hungarian criminal prosecution authorities registered 447 186 criminal offences and among them they recorded altogether 481 offences of corruption.) Even if we “add up” the information obtained from the perception index and criminal statistics, we still cannot claim to know the whole verticum of corruption. A principal problem of corruption in Hungary stems from the functioning disorder of the Hungarian economic system. While earlier in the era of socialism, corruption was caused by the lack of products and services, today the “cause to be blamed” is overproduction. The majority of market actors would like to sell services to the state and local government sector. In this case a small gift to the mayor or representative (e.g. bonus holiday) can alleviate the decision in favour of one or the other company. The two acts on public procurement adopted so far with the aim of purifying market relations have become deadlocked in practice, I would venture the remark that in the era of so-called “free-hand buying” applied earlier public funds were spent a lot more advantageously than today.

II. The criminal law regulation de lege lata relating to corruption in Hungary

¹³ In addition to these famous ones, there are other significant research on topic of corruption in Croatia, such as BEEPS (Business Environment and Enterprise Performance Survey), the research made by World Bank Institute, Freedom House, Gallup International ...etc, but we will not mention them here because of space limit.

¹⁴ It was a great success for the Hungarian police when they caught a parliamentary representative in the act of taking over a bribe of 20 million forints (= 69,000 EUR). The representative’s right to immunity was suspended by Parliament and he was validly sentenced to serve 6 years of imprisonment and fined 9 million forints (= 31,000. EUR) as ancillary punishment.

¹⁵ Korinek, László: A korrupció legfontosabb kriminológiai összefüggései. [The Main Criminological Bearings of Corruption. In: Politika és korrupció – A törvényesség és a törvénytelenység határai. [Politics and Corruption – Limits of Lawfulness and Unlawfulness] Konferencia kötet [Conference Volume] (eds.: Csefkó, Ferenc – Horváth, Csaba). Pécsi Tudományegyetem Állam-és Jogtudományi Kar, PTE ÁJK Politikatudományi és Társadalomelméleti Tanszék, Pécs-Baranyai Értelmiségi Egyesület, Pécs 2010. p. 270.

¹⁶ Korinek, László: A bűnözés visszatükröződése. Latens bűnözés, bűnözésábrázolás, félelem a bűnözéstől. [Reflections of Crime. Latency, Portrayal and Fear of Crime] In: (eds.) Gönczöl, Katalin – Kerezsi, Klára – Korinek, László – Lévay, Miklós: Kriminológia- Szakkriminológia. [Criminology – Specialized Criminology] Complex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft., Budapest 2006. p. 251.

¹⁷ Gál, István László: Gazdasági büntetőjog közgazdászoknak. [Economic Criminal Law for Economists.] Akadémiai Kiadó, Budapest 2007. p. 78.

¹⁸ Kránitz: loc. cit. p. 6.

Act 1978 on the Criminal Code of Hungary (hereinafter referred to as: Criminal Code) entered into force on 1 July 1979. The Hungarian legislator laid down offences of corruption in Chapter XV of the Criminal Code entitled “Crimes against the Purity of State Administration, the Administration of Justice and Public Life”.¹⁹

These offences deserve great attention, since it is a question of fundamental importance for every society that the officials, the actors of social-economic and political life, in other words, the legitimate leaders of the individual community perform their tasks without favour. This circumstance determines the extent of confidence citizens have in the various organs of state and local government and, in the final analysis, the opinion they form about the political-social system. In consideration of the high-level demoralizing effect caused by offences of corruption, 15 sections are devoted to crimes against the purity of public life.

Crimes against the purity of public life include:

- Bribery (Criminal Code, §§ 250-255/A)
- Failure to report bribery (Criminal Code, § 255/B)
- Trafficking in influence (Criminal Code, § 256)
- Persecution of a conveyor of an announcement of public concern (Criminal Code, §257)

Crimes against the propriety of international affairs include:

- Bribery in international relations (Criminal Code, §§ 258/B-258/D)
- Profiteering with influence in international relations (Criminal Code, §258/E)
- Failure to report bribery in international relations (Criminal Code, § 258/F)

The effective formulation relating to the two most typical crimes against the purity of public life – bribery and trafficking in influence - is as follows:

Bribery

Section 250

(1) Any public official who requests an unlawful advantage in connection with his actions in an official capacity, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the advantage, is guilty of a felony punishable by imprisonment between one to five years.

(2) The punishment shall be imprisonment between two to eight years if the crime is committed

a) by a public official in a high office, or by one entrusted to take measures in important affairs,

b) by another public official in an important matter of great importance.

Trafficking in Influence

Section 256

(1) Any person who - purporting to influence a public official - requests or accepts an unlawful advantage for himself or on behalf of another person is guilty of a felony punishable by imprisonment between one to five years.

(2) The punishment shall be imprisonment between two to eight years if the perpetrator

a) purports to or pretends that he is bribing a public official,

¹⁹ Erdős, Emil – Földvári, József – Tóth, Mihály: Magyar Büntetőjog Különös Rész. [Hungarian Criminal Law. Specific Cases] Osiris Kiadó, Budapest 2007 p. 293.

b) pretends to be a public official,

c) commits the crime in a pattern of criminal profiteering.

(3) Any person who commits the crime defined in Subsection (1)

a) in connection with an employee or member of an economic organization or non-governmental organization is guilty of misdemeanour and may be punished by imprisonment not to exceed two years,

b) in connection with an employee or member who is authorized to act in the name and on behalf of an economic organization or non-governmental organization is guilty of felony and may be punished by imprisonment not to exceed three years.

(4) Any person who commits the crime defined in Subsection (3) in a pattern of criminal profiteering is guilty of a felony punishable by imprisonment not to exceed three years, or between one to five years, as consistent with the categories specified therein.

In my view, the Criminal Code lays down rather serious sanctions (imprisonment of up to 10 years in the given case) to be applied against the perpetrators of corruption crimes and court sentencing is also characterized by the imposition of executable sentences of imprisonment – even upon the person accepting a bribe of some ten-thousand forints.

One may consider thought-provoking Mihály Tóth's argument that exaggerated prohibitions that are foreign to life may even have a contrary effect: if a part of legal norms cannot be complied with, law-abidance may also become questionable elsewhere.²⁰

1. The instruments of criminal law in the fight against corruption in Hungary

The fight against corruption is a rather delicate issue, because the persecutors and persecuted, the persons calling and called to account are often members of the same power elite. Those in possession of power punish those who abuse their power; therefore, the matter can easily become transformed into a “family affair”, which in turn has an impact on the effectiveness of the fight against corruption.

The ambivalent attitude manifested by people toward this criminal phenomenon complicates action against corruption: on the one hand, they regard corruption as an organic part of the political system, on the other hand, they protest against it with all their might.²¹

Corruption phenomena are not unambiguous, consequently, neither is their legal evaluation. If in the case of an investment of several thousand million forints, a parliamentary representative should favour the interests of his own constituency against those of the country, would he have criminal responsibility?

²⁰ Tóth, Mihály: Adalékok a kriminális korrupció megítélésének néhány újabb kérdéséhez. [On Some New Questions of the Evaluation of Criminal Corruption] In: Politika és korrupció – A törvényesség és a törvénytelenység határai. Konferencia kötet [Politics and Corruption – Limits of Lawfulness and Unlawfulness. Conference Volume.] (eds.: Csefkó, Ferenc – Horváth, Csaba). Pécsi Tudományegyetem Állam-és Jogtudományi Kar, PTE ÁJK Politikatudományi és Társadalomelméleti Tanszék, Pécs-Baranyai Értelmiségi Egyesület, Pécs 2010. p. 286.

²¹ Gulyás, Gyula: A politikai korrupcióról. [On Political Corruption] In: Politikai korrupció [Political Corruption] (ed. Gulyás, Gyula). AULA Kiadó, Budapest 2004. p. 40.

Fight against corruption is dependent on the context: it is determined by power relations within the elite and the relationship between the elite²² and civil society whether anti-corruption strategies will, in high probability, be merely illusory strategies aimed at tranquilizing public opinion or constructive measures.

Legislators (politicians) launching an anti-corruption fight need, besides the system of legal instruments, moral legitimacy as well so that their anti-corruption struggles can be crowned with success.²³ However, governments proclaiming zero corruption might easily become entangled in their promises and suffer a quick and irreversible loss of legitimacy.

Provided one regards moral weakness as a cause of the genesis of corruption, an anti-corruption strategy is to be implemented by combining penal policies with remuneration policies. This might justify, on the one hand, the introduction of an extremely harsh system of sanctions relating to acts of corruption and on the other hand, a rise in average wages.

However, it should be noted that in the fight against corruption there exists an economically rational optimum. If the state (e.g. Singapore) overpays its politicians, the state expenditure arising from this may exceed the damage caused to it by corruption, therefore, it is rather worth for the state – from an economical and not a moral aspect - assuming the damage resulting from corruption than the excess payment provided to politicians.

Concerning the reduction of corruption numerous ideas have been provided by scholars in various disciplines in relation to their fields of activity and professional knowledge. As a person working in the field of criminal sciences, I would like to formulate a few proposals and ideas as follows:

–First of all, a successful fight against corruption requires a simpler legal system. Outdated laws that have become obsolete need to be revised, bad laws must be sifted out. Legislation should be simplified and there should be no *lex imperfecta*. Legislation should not obstruct but rather assist both the actors of economic life and citizens.²⁴

–The *ultima ratio* role of criminal law. The role of criminal sanctions relating to corruption must not be either under- or overestimated. It is

²² Gál, István László: A gazdasági vesztegetés, mint a gazdasági büntetőjog része és a politikai korrupció egyik kísérőjelensége. [Economic Bribery as a Part of Economic Criminal Law and a Concomitant of Political Corruption] In: Politika és korrupció – A törvényesség és a törvénytelenység határai. Konferencia kötet [Politics and Corruption – Limits of Lawfulness and Unlawfulness. Conference Volume.] (eds.: Csefkó, Ferenc – Horváth, Csaba). Pécsi Tudományegyetem Állam-és Jogtudományi Kar, PTE ÁJK Politikatudományi és Társadalomelméleti Tanszék, Pécs-Baranyai Értelmiségi Egyesület, Pécs 2010. p. 307.

²³ Gulyás: op. cit. p. 41.

²⁴ Kóhalmi László: Büntetőjogi eszközök a politikai korrupció elleni küzdelemben. [Criminal Law Measure in the Fights against Political Corruption.] In: Politika és korrupció – A törvényesség és a törvénytelenység határai. Konferenciakötet [Politics and Corruption – Limits of Lawfulness and Unlawfulness. Conference Volume.] (eds.: Csefkó, Ferenc – Horváth, Csaba). Pécsi Tudományegyetem Állam-és Jogtudományi Kar, PTE ÁJK Politikatudományi és Társadalomelméleti Tanszék, Pécs-Baranyai Értelmiségi Egyesület, Pécs 2010. p. 302.

neither a role nor a task of criminal law to solve the problems of social and political life. In Hungary since the democratic political transition it has become habitual for the power of the day to attempt to cope with the functional disorders of society applying the instruments of criminal law. Matters in the field of corruption are not of a criminal law character primarily, but rather concern other branches of law.²⁵

–Making a better use of the possibilities relating to the protection of witnesses. In cases of corruption the main witnesses might often be persons (e.g. secretary, car-driver), who are in the possession of information about almost all affairs of the given leader (e.g. mayor, company manager), but whose existential possibilities are, at the same time, limited. In case the persons capable of supplying information about cases of corruption could be provided protection as witnesses, “willingness to testify” would presumably increase and the memory of witnesses might also improve. However, it is to be noted with regard to witness protection that the present regulatory system needs to be improved, since the level of income provided by the state to a witness issued with a new domicile and /or personal identity in a given case is not too attractive.

Witness protection often becomes intertwined with the application of plea-bargaining and the legislator’s attempt at breaking up the community of intention and interest between the parties concerned in the corruption by “self reporting” and the promise of exoneration from punishment [Criminal Code, §255/A].

–The world of corruption offences is often characterised by deep conspiracy, contact-keeping through a chain of intermediaries, exchanges of “encoded” (encrypted) oral and written messages (e.g. “lobby-money”, “lard money”, “cake”, “favoured entrepreneurs’ club”, “raisin” etc.). If detection results are to be improved, the application of undercover officers and means of intelligence cannot be avoided.

–From time to time both theoretical and practical experts mention the requirement that special rules of evidence should apply to perpetrators suspected of having committed corruption offences. The reversal of the burden of proof as a novelty in criminal procedure would mean that the accused would be obliged to prove the lawful origin of the corruption assets and in case he failed to do so – for example, there was no taxed or dutied income etc. behind the assets – it would constitute an incriminating circumstance (fact). In my opinion, the reversal of the

²⁵ Márki, Zoltán: Válasz a korrupciós kihívásokra. [Response to the Challenges of Corruption] In: Korrupció Magyarországon [Corruption in Hungary] (eds.: Csefkó, Ferenc –Horváth, Csaba). Pécs-Baranyai Értelmiségi Egyesület, Pécsi Tudományegyetem Állam-és Jogtudományi Kara, Pécs 2001. pp. 37-38.

burden of proof would provide opportunity for serious abuses of power among the state organs exercising penal power – e.g. the moral liquidation of political adversaries – and this innovation should be rejected.

–Governments in power tend to come up with the recommendation that an independent authority/office (e.g. Office for the Defence of Public Order, Anti-Corruption Office) should be set up for the fight against corruption. I consider this idea completely flawed and professionally unfounded, because it would merely lead to a duplication of prosecution authorities, conflicting spheres of authority, loss of information and prestige fights (rivalry) between official organs.
–Swift accession to international and European criminal (political) anti-corruption conventions and the adoption of rules against corruption, as well as the approximation (harmonization) to international standards²⁶ of Hungarian criminal substantive, procedural and enforcement laws.²⁷

Act LXXXIX of 2011 on the amendment of miscellaneous Acts relating to procedure and the administration of justice has entered into force recently and amended Act XIX of 1998 on Criminal Procedure.

This change in legal regulation lays down special criminal procedural rules with the aim of accelerating procedure in so-called high priority cases – including corruption offences. In the history of Hungarian criminal procedural law it can be considered almost unprecedented that in a high priority case the period of custody may last 120 hours instead of the 72 hours laid down by general rules and that contact between the accused and his lawyer may be prohibited by the prosecutor(!) during the first 48 hours of custody. This modification – combined with other ones included in the Act – caused so serious indignation in professional circles that the President of the Supreme Court of the Republic of Hungary motioned the Constitutional Court of the Republic of Hungary for the subsequent establishment of its unconstitutionality and its review from the aspect of conflict with international treaties.

III. Fight against corruption in Croatia

A significant breakthrough in anti-corruption measures and reaction was made in 2002., when Croatia entered into process of opening negotiations for accession to the European Union. Then the first National program to combat corruption was made. Determination to combat corruption became more intense in 2005, in the beginning of accession negotiation. It was then clear that in the fight against corruption we can no longer be satisfied with self-estimates of our own work on this area but that is now necessary to meet more higher and serious standards. The fulfillment of these will be monitored by someone else. It was also clear that Croatia did not have sufficient legal regulations and

²⁶ Végvári, Réka: Nemzetközi fellépés a korrupció ellen. [International Action against Corruption] *Állam- és Jogtudomány* [Science of State and Law] 2001. №1-2. pp. 99-100.

²⁷ Végvári, Réka: Vesztegetés. [Bribery] In: *Az Európai Büntetőjog Kézikönyve* [Handbook of European Criminal Law] (eds.: Kondorosi, Ferenc – Ligeti, Katalin). Magyar Közlöny Lap-és Könyvkiadó, Budapest 2008. pp. 468-469.

institutions to deal with this problem. This does not imply that by then there were no legal frameworks or institutions but only that they were not sufficient for effective combat against corruption and for new standards to achieve.²⁸ The new laws were made and various of specialized institutions were established for corruption in different segments. Today we have the information of about 34 domestic laws and by-laws and 14 international documents that are relevant in this area²⁹. Without a good institutional framework but also a complementary and coordinated work of the institutions inside it, there is no successful fight against corruption. For example: Commission for tracking the implementation measures against corruption³⁰, the Anti-corruption Division of Ministry of Justice³¹, National Police Office for Combating Corruption and Organized Crime (established within the Administration of the Crime Police)³², The Office for Combating Corruption and Organized Crime (specialized state attorney)³³, special departments in county courts in Zagreb, Split, Rijeka and Osijek, the National Council for monitoring the implementation of the Anti-Corruption strategy³⁴, State Audit Bureau, State Commission for Supervision of public procurement. The key documents in this fight against corruption are the state Anti-Corruption Strategy (hereinafter : Strategy), the Action plan , the revised Action plan and the Anti-corruption program for companies with majority state ownership for the period of 2010-2012. Anti-Corruption Strategy was adopted by Croatian parliament in 2008, and with it the previously applicable National plan for combating corruption from 2006 was determinate. It is

²⁸ In addition, Croatia has previously been a member of United Nations (UN), World Trade Organization (WTO), and Organization for Security and Cooperation as well as others, within Croatia has adopted a number of documents that promote the fight against corruption. Through them Croatia committed itself to active fight against corruption. For example, the United Nation's Convention against Corruption, Criminal law Convention on corruption within Council of Europe, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the UN Convention against Transactional Organized Crime... Croatia is also a member of GRECO-Group of states against corruption, and the membership came up from signing Criminal law Convention on corruption. All this implied a need to harmonize the national legislative field so the number of laws have been adopted and various institutions have been established.

²⁹ Data is taken from <www.antikorupcija.hr/Default.aspx?art=467&sec=475> (last accessed on 20. 12. 2011)

³⁰ "...is an executive body composed of the highest representatives of bodies responsible for implementing anti-corruption measures. The Commission's tasks are assessing the corruption risks and proposing and devising measures for its prevention, coordination of the implementation of the Anti-Corruption Strategy with associated Action Plan, strengthening inter-institutional cooperation in the implementation of the Action Plan." According to <www.antikorupcija.hr/Default.aspx?sec=492> (Last accessed on 20. 12. 2011)

³¹ Is the " indoor unit of the Ministry of Justice responsible for data collection and analysis, and also implementation of Anti-Corruption Strategy and Action Plan, supervision the objectives of Strategy , proposing strategic directions , cooperation and conduct coordination with other bodies responsible for implementing anti corruption measures and organization promotional activities and education..." More: *ibid.*

³² See : *ibid.*

³³ And plus the Office for Prevention of Money Laundering and the Committee for Prevention of Conflict of interest in Public Office. All three bodies and their work are regulated with special laws as follows: the Law on the Office for Combating Corruption and Organized Crime, Law on Prevention of Money Laundering and Terrorist financing and the Law of Preventing Conflict of Interest in Public Service.

³⁴ With the decision of establishing , Council is scheduled to supervise and monitor the implementation of Anti-Corruption Strategy and Action Plan, systematically oversees data of corruption and analyzes the reports of competent institutions , proposes measure for greater efficiency of Strategy and Action Plan...It has 12 members and is headed by the member of Parliament from the opposition. More: Z. Malenica, R. Jeknić, "Percepcija korupcije i borba protiv korupcije u Republici Hrvatskoj" [Perception of corruption and fight against corruption in Republic of Croatia] in *Izgradnja Institucija: Etika i korupcija* [Building Institutions: Ethics and Corruption] (Zagreb, 2010) p. 30.

anticipated that the Strategy will be carried through the Action plan that further defines the goals of fight against corruption. The principles of the Strategy are as follows: the rule of law, good practice, principle of responsibility, prevention, efficiency, cooperation, transparency, and cooperation with civil society. Nine general goals and priority are stated: improving the legal and institutional framework, the affirmation of zero-tolerance approach to corruption, strengthening integrity, responsibility and transparency in government bodies and strengthening public confidence in state institutions, creating the preconditions for preventing corruption, raising efficiency of detection and prosecution of corruption-related offences, public awareness, promoting cooperation between government bodies, international collaboration and cooperation with civil society³⁵. The fight against corruption must be kept parallel on three different fields: education, prevention and repression. Exclusively repression, which is commonly used as only anti-corruption strategy cannot provide long term results. In this context, the United Nations Convention against Corruption, signed by Croatia³⁶, is very important document because it is first one that promotes this triple approach globally. First we should say something about the first two components of this triple approach for Croatia.

Education is primarily in charge of Ministry of justice. It should work through media, roundtables and seminars to facilitate the discussion and thus raise the awareness related to corruption. All government bodies should be engaged in this and should cooperate with NGOs. We have the Government Office for Associations that monitors the work of individual organizations and pleads for financial support for their project that deal with corruption³⁷. The education of public service on the problem of corruption is provided by the State Office for Administration and for education of justice area we have Judicial Training Academy.

Prevention is the key in combating corruption. Critical areas which are recognized as most vulnerable and subjective to corruption are today proclaimed by the Strategy. I believe that a comparative analysis of the critical areas in Croatia will not much differ from critical areas of other countries that are also struggling with problem of corruption. These areas are: conflict of interests in public duties, political party financing, access to information, public administration and public procurement. As previously mentioned, research show us that the justice system in Croatia is considered most corrupted. Alongside we have health system, followed by public administration and private sector. It must be said that the work of NGO and civil society is of invaluable importance. Since a special problem lies in the reluctance of citizen to report corruption and here we can expect the most of their influence. It is necessary to create an environment where it would be more freedom in “pointing fingers” at corruption without fear of job loss, harassment, retaliation, revenge and similar things that are happening today. Now we draw the attention to “whistleblowers”.³⁸ Without their actions, corruption is very hard to detect because it is a clandestine activity that benefits both sides. The Strategy

³⁵ The full text of this Strategy is available on <www.antikorupcija.hr/Default.aspx?sec=502> (last accessed on 20. 12. 2011)

³⁶ Croatian parliament has adopted the Law on ratification of UN Convention against corruption on 4. 2. 2005. For full text see: *Narodne novine- međunarodni ugovori* [Official Gazette-International Contracts] 2/2005.

³⁷ When we talk about education, Strategy emphasizes the need to systematically educate students about damaging effects of corruption, also the need of organizing postgraduate specialist and doctoral studies that should deal with aspects of its prevention, and sensitize journalist to address the topics of corruption in their work.

³⁸ Whistleblower is a person who is an employee, former employee or member of organization and reports illegal conduct to competent authorities.

mentions the value of whistleblower`s actions in the part that regulates the protection of the victims and the people who report the corruption in good faith. Croatia is obliged to ensure their protection and the obligation is undertaken from being a party in Criminal Law Convention on Corruption. Today, this protection must be evaluated as inadequate. It is on the level of proclamations and there are no real mechanisms that would indicate more serious approach to the fight against corruption. Although with the amendments on Law of civil servants, whistleblowers have the right to be protected from unfair dismissal from civil service within the institution about they have “whistled”, that does not live in practice. If they do not get fired after public reveal of corruption and pointing on illegal action, they are leaving their jobs themselves, because of health problems, reduced wages and advancement disabled. The most famous Croatian whistleblowers are Ankica Lepej, Vesna Balenović, Krešimir Mišić and in world Jeffrey Wigand, Stanley Adams, Joe Darby , Richard Convertino and others.³⁹. As a special extra problem here occurs secondary victimization to which they are exposed.

1. Criminal Law repression in fighting corruption in Croatia

There is no effective fight against corruption without an anticipated criminal offences related to corruption. As is often said: the punishment should always (even in this area) be the “last resort “action, “ultima ratio”.

Before repression we must act preemptively and educational on recognized critical area. In Croatian Criminal Code⁴⁰, which was adopted on 19. September 1997, and came into force on 1. January 1998., many of corruption related offences are provided in Chapter XXV, called “Criminal offences against official duty” and the ratio legis most of these incrimination is combating corruption⁴¹.

However, corruption can be found in other chapters, such as head XXI “Criminal offences against the security of payment transactions and business operations and also in every other crime where corruption is used as a illegal means, such as pressure or other illegal way, where it is served as a appropriate vehicle in pursuit of perpetrator`s goal.

We can here mention several important criminal offences⁴²:

- Accepting a bribe (art. 347 of the Criminal Code),
- Offering a bribe (art. 348 of the Criminal Code),
- Receiving and taking bribe in economic transactions (art. 294b of the Criminal Code),
- Malpractice of bankruptcy proceedings (art. 283 of the Criminal Code),
- Abuse in performing governmental duties (art.338 of the Criminal Code),
- Illegal intercession (art. 343 of the Criminal Code),
- Unfair competition in foreign trade operations (art.289 of the Criminal Code) and

³⁹ More at: <www.poslovni.hr/vijesti/zvzdaci-su-najvece-zrtve-72121.aspx> , <www.dalje.com/hr-hrvatska/zvzdaci---hrabri-ljudi-ili-izdajice-zeljne-slave/126472>(last accessed on 20.12.2011)

⁴⁰ *Narodne novine* [Official Gazette] [110/1997](#), [27/1998](#), [50/2000](#), [129/2000](#), [84/2005](#), [51/2001](#), [111/2003](#), [190/2003](#), [105/2004](#), [71/2006](#), [110/2007](#), [152/2008](#), [57/2011](#), [77/2011](#).

⁴¹ See D. Derenčinović in P. Novoselec (ur) : *Posebni dio kaznenog prava*, [Special part of criminal law] (Zagreb, 2007) p. 398.

⁴² Similarly, the criminal offences are listed in publication M. Mrčela et.al, *Koruptivna kaznena djela od 2002-2007* [Corruptive criminal offences],with the exception of money laundering (art. 279 of Criminal Code), considering the primarily connection of this criminal offence with organized crime and specific problems here, and secondary with corruption, regardless the complicity between these two concepts.

- Abuse of office and official authority (art.337 of the Criminal Code).
Typicall croatian corruptive criminal offences, for comparison to hungarian, are the following:

Accepting a Bribe
Article 347

(1) An official or responsible person, who solicits or accepts a gift or some other , or who accepts a promise to be given a gift or some other gain in order to perform within the scope of his authority an official or other act which he should not perform, or to omit an official or other act which he should perform shall be punished for one to eight years.

(2) An official or responsible person, who solicits or accepts a gift or some other gain, or who accepts a promise to be given a gift or some other gain in order to perform within the scope of his authority an official or other act which he should perform, or to omit an official or other act which he should not perform, shall be punished by imprisonment for six months to five years.

(3) An official or responsible person, who after the performance or omission of an official or other act referred to in paragraphs 1 and 2 of this article solicits or accepts a gift or some other gain a result of such performance or omission, shall be punished by fine or imprisonment up to one year.

(4) The gift or other material gain received shall be forfeited.

Offering a Bribe

(1) Whoever gives or promises to give a gift or some other gain to an official or responsible person in order to perform, within the scope of his official authority, an official or other act which he should not perform, or to omit an official or other act which he should otherwise perform, or whoever mediates in bribing an official or responsible person in such a way shall be punished by imprisonment for six months to three years.

(2) Whoever gives or promises to give a gift or some other gain to an official or responsible person in order to perform, within the scope of his official authority, an official or other act which he should perform, or to omit an official or other act which he should not perform, or whoever mediates in bribing an official or responsible person in such a way, shall be punished by fine or imprisonment up to one year.

(3) The court shall remit the punishment of the perpetrator of the criminal offense referred to in paragraphs 1 and 2 of this article, provided that he gives the bribe on the request of an official person and reports the offense before it is discovered or before he learns that the offense has been discovered.

(4) The gift or the pecuniary gain given under the circumstances referred to in paragraph 3 of this article shall be restored to the person who gave a bribe.

Illegal Intercession

(1) Whoever demands or receives a gift or any other gain, or receives an offer or promise of a gift or any other gain for himself or for another natural or legal person so as to intercede by taking advantage of his official or social position or influence, whereby an official or other act be performed which should be performed, or that an official or other act not be performed which should not to be performed shall be punished by imprisonment for six months to three years.

(2) The punishment referred to in paragraph 1 of this Article shall be inflicted on whoever, by abusing his official or social position or influence, intercedes so that an official or other act be performed which should not be performed or so that an official or other act not be performed which should be performed.

(3) If, for the intercession referred to in paragraph 2 of this Article, the perpetrator has received a gift or some other gain, or if he has received an offer or accepted the promise of a gift or some other gain for himself or for another natural or legal person, while some other criminal offense is not committed for which a more severe punishment is prescribed, the perpetrator shall be punished by imprisonment for one to five years.

(4) Whoever offers, promises or gives a gift or some other gain to another, meant for that person or for another natural or legal person so that by abusing his official or social position or influence he intercedes so that an official or other act be performed that should be performed, or so that an official or other act not be performed that should not be performed shall be punished by imprisonment for six months to three years.

(5) Whoever offers, promises or gives a gift or some other gain to another, meant for that person or for another natural or legal person, so that by abusing his official or social position or influence he intercedes so that an official or other act be performed that otherwise should not be performed, or so that an official or other act not be performed which should be performed shall be punished by imprisonment for one to five years.

If we look at the prescribed punishment, they generally move to maximum of 5 years. When receiving a bribe in business transaction, imposed punishment can be up to 8 years and in case of abuse of office and authority when a substantial financial gain is made-up to 10 years in prison⁴³. New Croatian Criminal Code which will come into force in July 2013 changes the situation a little bit. It introduces new criminal offences, among them the abuse of trust, new one that summarizes (today prescribed) economic and business malpractice, abuse of authority in economic transactions, signing harmful contracts and abuse of office and authority.

The existing and planned criminal offences are sufficient for the repressive framework to fight corruption and also to comply international obligations that Croatia has taken in this area.

The primary reaction to corruption in Croatia should act in two directions: the first is to improve the level of reporting cases of corruption. Today we have developed a phenomenon, kind of “corruption tolerance –everyone does it”. One fact is ignored here: corruption is based and spread exactly on this kind of attitude, we can almost say “qui tacet consentire videtur”. The key is to work on creating an environment of more freely reporting, with less (one day maybe even without!) fear. Croatia, like many other countries, has not yet reached this level, and the obvious example is the attitude towards whistleblowers, the few individuals who refuse to be corruption tolerant. We need to move away from mere proclaiming protection and provide it in reality. Current legislation is not as problematic as implementation is.

Second direction indicates a problematic proving of corruption offences. We can see it in the proportion of reported and ultimately convicted persons⁴⁴. Here we have a large

⁴³ According to data from State Bureau of Statistic, published in the Statistical Yearbook, in 2010, from total 24430 convicted person, 529 of them (2.16%) were convicted for criminal offences against official duty and 166 of them for abuse of office and authority and 50 for giving bribe. Retrieved from: <www.dzs.hr/Hrv_Eng/ljetopis/2011/SLJH2011.pdf> (last accessed on 21.12.2011)

⁴⁴ From 2221 reports for criminal offences against official duty, only 529 persons have been convicted. There is a large discrepancy between perception of corruption and statistics of prosecution and

dark number. These criminal offences are committed secretly, without witnesses, both sides benefit from illegal trade and this corrupt agreement. They have no interest in reporting it because it is profitable for them, and on the other hand, they have the fear of self-incrimination. That leaves us with so called specific evident measures according to the Croatian Criminal Procedure Act (covert surveillance, wiretapping, agent provocateur...)⁴⁵. These actions impinge on basic human rights as they are conducted in secret, without warning, and to implement them the Criminal Procedure Act prescribes strict requirements (only if investigation is not possible or would be much harder without them) and gives a list of enumerated offences for which they can be implemented. Corruption offences belong here according to article 334. paragraph 2 of Criminal Procedure Act.

IV. Summary

Effective fight against corruption must be lead on three different levels: education, prevention and repression. Every country chooses the way to satisfy each one of these levels through her legislation and implementation. We should have in mind that the real attitude towards fighting corruption can be seen not only in the number of prescribed criminal offences and fight proclamations but moreover in the prosecution statistics which is quite poor. As a special problem that needs to be stressed out is the victimization of whistleblowers. Their protection can and must be stronger and at much higher level. We should not underestimate the role of civil society and NGOs because they can have big impact where the state cannot. In the overall system of fighting so durable enemy such as corruption, criminal law plays the irreplaceable role, although it appears at the end of the story. It sends (or should send) a message that corruption does not pay off long term. The fight against corruption seems an interminable war and one should be aware that (often) even the minimal success may only be seen after a long-long time; nevertheless, one must not give up the persecution of corruption, because that would be equal to a silent compromise with guilt.

convictions. That points to the great “dark number” on this area. Derenčinović sees the solution in improving the detection system and confiscation of material gain, and also giving up of the prosecution by the principle of opportunity in cases of cooperation of one who is giving bribe. See more in: D. Derenčinović "Prilog raspravi o rasvjetljavanju velike „tamne brojke“ kod korupcijskih kaznenih djela " in M. Benko et al., *Korupcija-pojavni oblici i mjere za suzbijanje*, [Corruption-manifestation and prevent measures] (Zagreb, Inženjerski biro d.d., 2008) p.p. 175-185.

⁴⁵ See Official Gazette 152/2008, 76/2009, 80/2011 and B. Pavišić, Commentary on Criminal Procedure Act (Rijeka, Dušević i Kršovnik d.o.o. 2011). They are elaborated in articles 332-340, and based on a) subsidiarity, b) proportionality, c) specified actions, d) list of criminal offences, e) judicial review, g) extraordinary right of state attorney to order them in short term with condition of subsequent judicial convalidation.