



ORIGINAL PAPER

Consequences of corruption in the proper exercise of human rights and fundamental freedoms

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Abstract:

This paper aims to highlight some perspectives on the interference of corruption in the protection of human rights and fundamental freedoms, perspectives that are often consequences of the communist regime. Corruption affects a multitude of human rights and thus it reduces the ability of a state to fulfill its positive obligations under international conventions and treaties. Corruption affects not only the individual as a holder of rights and obligations but also the state as a subject of international law. More fundamentally, the relationship between human rights and corruption refers to the substantial depletion of public resources. The bid rigging in public procurement or the fraudulent management of public money by enticing resources in favor of state representatives, consistently contributes to reducing the financial capacity of the state which would naturally have been focused on guaranteeing fundamental rights and freedoms. Obviously, corruption affects human rights when it is imminent and may facilitate actions that are restricted or even prohibited by law. Apparently, this hypothesis would only have some negative impact on the legal relations between the parties directly concerned, but the maintenance and supply of a human trafficking network by certain officials, for example, could be qualified as a crime against humanity. In the same context, we can frame the violation of the political rights of citizens by buying votes or bribing electoral officials to facilitate an electoral fraud. We, humanity, shall exist free of corruption so that we can talk about guaranteeing the protection of fundamental rights. This is a principle that needs to be set and promoted by major international legal actors.

Keywords: *Corruption offenses; fundamental rights and freedoms; human rights protection; European Court of Human Rights; European Convention on Human Rights.*

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1. Corruption and human rights – general considerations

Fundamental human rights and freedoms have been explored in recent decades mainly in terms of protecting the interests of the individual after an imminent violation. Practitioners have given preference to certain approaches to the compensation of the subject whose rights have been violated and to the guarantee of rights in criminal proceedings. National and international legislation regulates the protection of human rights and freedoms, establishing both constitutional principles that provide a high degree of protection and regulating offences that punish subjects liable to criminal liability who have infringed the rights of another person. National case law establishes certain rules designed to provide additional protection for the guarantee and respect of individual rights, but also to anticipate certain practices that threaten to undermine them. The case-law rules developed by the European Court of Human Rights have been designed to make certain mechanisms for the protection of fundamental freedoms more rigid and to create new rules in line with the development of communities and the emancipation of democratic processes.

The study of human rights needs to be complemented by a comprehensive analysis of the root causes that generate systemic processes designed to undermine both human rights protection mechanisms and human rights in general. We conclude that one of the main causes, investigated in most contexts as a separate notion, relates to corruption. Corruption is examined as one of the most dangerous crimes against state order, against democracy and the rule of law but also against citizens within the circumscription of a constitution, we will see in the course that some acts of corruption may even have international implications. An intrinsic effect of the commission of offences covered by the general term of corruption concerns the impact of this phenomenon on the respect and guarantee of human rights.

The configuration of the intersection between corruption and human rights could be characterized by two legal-practical directions: in the first instance, these two notions could coexist when speaking of the negative effects of corruption on the violation of human rights; and the second perspective would present some instances of interference of these notions through the analysis of the aspects concerning the restriction of the rights of the person who is accused in corruption cases. Although they represent two diametrically opposed directions in terms of their legal essence, they should, at times, be analyzed cumulatively. The jurisprudential tendencies of most states in the fight against corruption are determined by putting the interests of the state before the interests of the individual, but we will conclude later that such an approach cannot take place in a state governed by the rule of law.

The commission of any corruption offence will first and foremost have implications for human rights and freedoms. The problem of a legal approach is primarily related to the factor that the commission of a corruption offence does not only affect the rights of the actors who have directly participated in the commission of these offences, but rather the effects of these offences are felt by society in general, affecting relations between the state and the citizen and even between states in certain international contexts. By studying both national and international jurisprudence, we will underline that the courts have not given enough space to explain the implications of corruption on human rights, devoting only certain procedural approaches to the subject when it comes to respect for the right to a fair trial. These motivations are primarily in the nature of prevention of procedural violations which should concern all criminal trials

Consequences of corruption in the proper exercise of human rights and fundamental freedoms

not necessarily those related to corruption cases. In a society based on the principles of the rule of law, with corruption representing an imminent danger to these principles, the motivation of court decisions, including the interference of corruption offences with fundamental rights and freedoms, should be a priority.

Another side of the intersection of these two notions will describe a perspective that can highlight the ways in which the rights of subjects who are indicted in corruption cases are restricted. We will conclude that in the case of investigation of corruption offences, given the social danger but also the increased pressure from the community, some of the subjects' rights may be infringed already in the first phase of investigation. The disproportionality of some restrictive measures implemented by prosecution bodies creates more and more premises to emphasize the putting of general interests above individual interests. Abusive searches, the interception of telephone conversations without due process of law, some abuses committed by undercover investigators, including in terms of instigating the commission of a corruption offence, reinforce the idea that the fight against corruption is a basic objective of states, but this objective is in very many cases put before the positive obligation of the state.

The aim of this research is to highlight the main legal aspects that are sometimes related to each other and that are guided by the case law of the ECtHR in the field of human rights and freedoms by analyzing their interference with the effects and implications of corruption. Distinguishing some novel elements in the matter will strengthen the link between the two dimensions of the law that seem to encompass distinct branches, but at the same time present an accumulation of effects that are primarily based on the obligation to respect and guarantee the fundamental rights and freedoms of the subjects of law.

Human rights and freedoms are governed by a number of principles laid down in international conventions, which have also been transposed into the national legislation of the States which have ratified these conventions. We will see that the phenomenon of corruption is above all an attack on the principles of human rights: the principles of universality, indivisibility, non-discrimination and transparency. These principles can become fragile when, through certain corruptible practices, some subjects of the law are placed higher before the law than others, so that the consequences of these actions will be felt not only by certain subjects but by all citizens, who are above all equal before the law.

The European Court of Human Rights tangentially described in its judgments what would be the interference of corruption offences and human rights violations. Analyzing the case law of the Court, we can affirm the existence of several areas in which the violation of human rights regulated by European law can be linked to the commission of certain corruption offences. The offences of bribery, taking bribes and influence peddling in most contexts affect the right to an impartial and independent tribunal (referred to in Article 6 ECHR) or the right to be brought promptly before a judge or magistrate empowered by law to exercise judicial power (Article 5(3) ECHR).

Judicial independence is an imminent requirement to guarantee the dispensation of justice in terms of fairness, impartiality and non-involvement of political and economic factors in the process of adopting a decision. In most cases, the vulnerability of some decision-makers, including as a result of corruption offences, can have a harmful influence on the issuing of a decision which should be based on the rules in force and on the guarantee of human rights and freedoms.

Mihail GORINCIOI

The right to a fair trial confers on the individual certain guarantees which are essential to the administration of justice. Any attempt to undermine a judge, prosecutor or official in the course of criminal proceedings by committing certain corruption offences is a serious offence with devastating consequences (on the one hand, a punishable offence is committed and, on the other, fundamental human rights, in particular the right to a fair trial, are infringed).

An impartial court can also be influenced by certain practices, often found in underdeveloped countries, which involve the transfer of money or other benefits through intermediaries who also work in certain legal professions. These practices contradict the basic notions that characterize a legal system.

Analyzing the role of the courts in the meaning of Art. 5 paragraph 3 ECHR, we conclude that any corrupt action that diminishes the authenticity of the notion of a magistrate is a violation of human rights, and the judge - although he/she has been given judicial powers by law - cannot be influenced by any manifestation of corruption. On the other hand, another equally important aspect concerns the delay of certain procedural actions which, being fueled by certain corruptible elements, lead to the restriction of human rights and freedoms, and the Convention has provided in Article 5 for the immediate presentation of the right holder before a court.

In a state governed by the rule of law, corruption resulting in the violation of human rights, committed by a judge who has been given special law enforcement powers to enforce human rights, could be classified as a crime against humanity.

While combating corruption is a priority for European states, it should be consistent with respect for human rights and freedoms. All mechanisms and policies to combat and prevent corruption must be based as a matter of priority on the need to protect the subject of the law, as the consequences of violating human rights in relation to combating corruption are exceptionally serious.

The practice of some countries that have started the fight against corruption has shown that often preventive detention measures as well as convictions for certain corruption offences have been accompanied by several violations of human rights: the right to life, the right to a fair trial, the right to liberty and security, etc.

Human rights and freedoms have been explored over time from legal, social, administrative and economic perspectives. We would point out that respect for human rights and freedoms is an obligation of the state which is constitutionally regulated and provides all subjects with a minimum of guarantees regardless of nationality, race, ethnicity, religion, political affiliation, gender, etc. The detailed study of fundamental freedoms has led to quite diligent practices and approaches on the part of states to guarantee and respect them and to prevent legal phenomena which attempt to restrict rights. The causes that generate destructive effects on fundamental rights and freedoms may be predominantly legal, but the effects of these causes certainly spill over into all social and economic areas, etc.

Human rights and freedoms can be seen as privileges enjoyed by the subject of law, privileges which are indispensable to human nature and without which man cannot enjoy the characteristics of his life. The incorporation of these rights in constitutional texts and other special laws gives them the status of fundamental rights (Bîrsan, 2005: 14). This reveals an imperative obligation for all authorities overseeing legislative processes to bring all legislative objectives into line with respect for fundamental rights and freedoms. The same obligation, in a society based on the rule of law, should also be incumbent on the actors who contribute directly to the implementation of the law. Any

Consequences of corruption in the proper exercise of human rights and fundamental freedoms

substantial derogation, without reasons guided by certain exceptional situations restricting rights, should be prohibited.

At the international level, an important catalyst for the recognition and establishment of a common multilateral objective among United Nations states to respect human rights can be seen as World War II. On 26 June 1945, the United Nations States, in the preamble to the UN Charter, committed themselves to the absolute will of the subjects of international law to reaffirm "confidence in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and in the creation of conditions necessary for the maintenance of justice and respect for the obligations arising from treaties and other instruments of international law". While this document aimed at a firm commitment by states to guarantee human rights, in 1948, on 10 December, the UN General Assembly adopted the Universal Declaration of Human Rights, this time with the individual as the main beneficiary and the holder of an exhaustive list of rights. This document was treated and appreciated by international subjects as a resolution of the UN Assembly without any legislative power imposing a certain conduct on states. Although it does not have the force of a treaty or convention, the Universal Declaration of Human Rights is still an important landmark in national and international law-making. At the global level, the Declaration inspired the development of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. At the European level, the Declaration was a substantial prerequisite for the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, and has had sufficient repercussions on the construction of certain international documents on other continents: the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights.

With regard to the interference of corruption and respect for fundamental freedoms, we conclude that it is virtually impossible to identify any right enshrined in national or international law that cannot be directly or indirectly affected by corruption. Given that this phenomenon has such a considerable impact on all human rights and that the study of all the implications would require endless analysis, we will describe only a few legal aspects that define the interference of these two subjects.

2. Corruption - conceptual delimitations

Corruption has never been strictly defined by doctrine or by the jurisprudence of national and international institutions. The trends of the last decades are based on the idea that several legal acts, both foreseen and unforeseen in the legislation, some of them having the status of an offence under criminal law or a special law, others not generally regulated, are included in the general term of corruption.

Analyzing the intentions of the legislator on the one hand and the general perception of the community on the other, we can conclude that this term can describe certain acts which are characterized by bribery of officials in exchange for consideration or services. Some practitioners refer to corruption when only actions committed by some public officials or representatives of state institutions are imminent, while the same legal frameworks, which concern the private domain, are sometimes considered to be of a lower degree of danger (Bacio-Terracino, 2008:5).

Both national criminal law and international criminal law do not directly criminalize corruption as a separate offence. In this respect, criminal laws establish an exhaustive list of offences that fall within the category of corruption offences, leaving

the term to the legal and practical interpretation of the masses. One of the first fairly concise definitions of the term corruption was presented and outlined by Transparency International, which defines corruption as an abuse of entrusted power for personal gain. Another definition, this time much more circumstantial, is provided by Article I of the South African Joint Development Protocol against Corruption which states that: the term corruption means "*any act referred to in Article III and includes bribery or any other behavior in relation to persons entrusted with responsibilities in the public and private sectors which violates their duties as public officials, private employees, independent agents or other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others*" (SADC, 2001:2).

The United Nations Convention against Corruption, but also other international documents, gives states quite wide latitude in criminalizing certain actions that may fall under the notion of corruption without providing an exhaustive list of these offences. Article 5(3) of The United Nations Convention against Corruption merely provides States with a recommendation that "*each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption*" (UNODC, 2004:9).

The most common forms of corruption are prescribed in the giving and receiving of bribes, influence peddling, abuse of power, embezzlement of public resources, illicit enrichment, etc.

Bribery takes the form of promising, offering or giving money or other benefits, conditional on the existence of a link with the performance, non-performance, urgency or delay in the performance of an act falling within the official's official duties or in connection with the performance of an act contrary to those duties.

Abuse of authority is also an extremely dangerous form of corruption and takes the form of the performance or non-performance of acts by an official, contrary to the law, with the clearly defined aim of obtaining advantages for oneself or for third parties.

The misappropriation of public resources contributes to a considerable extent to the inability of states to ensure the implementation of the positive obligation to guarantee fundamental rights and freedoms. While bribery, influence peddling or abuse of power directly concern a narrow set of limitations on human rights, depending on the sphere of activity of the official or representative of the legal person, the misappropriation of public resources can affect all human rights and freedoms.

A final aspect, not regulated by Romanian legislation but quite present in the legislation of many countries, refers to illicit enrichment, which also represents a factual situation that can be easily classified as a corruption offence. Some authors have provided a factual description of these types of offences, which have been described as follows: "*harmful act expressed in the act of holding property where the value of the property substantially exceeds the means acquired and it has been established, on the basis of the evidence, that the property could not have been obtained lawfully*" (Brinza&Mares, 2020).

We will initially consider that all freedoms could be affected by corruption in different proportions. Below we will review just a few forms of corruption's impact on fundamental rights and freedoms.

3. The direct consequences of corruption on human rights

The most common legal scenario in which corruption directly affects human rights is characterized by the power of an official to demand certain improper benefits in

Consequences of corruption in the proper exercise of human rights and fundamental freedoms

order to give the individual access to his or her rights and freedoms. In this context, the individual is required to "purchase" possible access to his or her own rights enshrined in both national and international law. Such situations can be characterized by actions whereby officials demand a bribe for the granting of a procedural right or for the guarantee of a right which should naturally be guaranteed in a state governed by the rule of law (e.g. the provision of a translator, the provision of a court-appointed lawyer, etc.). Very common in developing countries is the practice of representatives of medical institutions demanding certain goods, including money, in order to facilitate access to medical services for individuals. The most serious, by virtue of the parallel described above, may be considered the experience of teachers who demand certain benefits in order to offer privileges to their students or to offer additional courses to cover curricular material deliberately omitted from seminars. Remarkably, these situations not only strike at the direction of an expressly envisaged right (the right to education, the right to healthcare, the right to a fair trial), but have negative consequences on the rights of the community in general, thus attacking the principle of equality and non-discrimination. The intertwining of the multitude of rights affected by corruption has features that are likely to reduce a state's ability to fulfil its positive obligations under international conventions and treaties. Thus, corruption affects not only the individual as a holder of rights and obligations but also the state as a subject of international law.

Another conjuncture that illustrates the relationship between human rights and corruption concerns the substantial depletion of public resources. The manipulation of public procurement processes or the fraudulent management of public money by luring resources in favor of state representatives, contributes consistently to the reduction of the state's financial possibilities which would naturally have been concentrated in the direction of guaranteeing fundamental rights and freedoms. These rather superficial forms of corruption, which are dealt with in legislation and by the judicial authorities, especially in developing countries, are extremely dangerous when we consider the importance of measures to protect human rights.

Human rights can also be affected by corruption when corruption becomes imminent in order to facilitate actions that are restricted or even prohibited by law. These forms substantially reinforce the curtailment of fundamental rights and freedoms because they imply certain prospects of restricting human rights in exchange for money. Apparently, this hypothesis would only affect the legal relations between the parties directly concerned, but *de facto*, the maintenance and feeding of a human trafficking network by certain officials to promote slavery could be qualified as a crime against humanity. In the same context, we can also include the violation of citizens' political rights by buying votes or bribing electoral officials to facilitate electoral fraud.

Corruption can also threaten judicial independence in several ways. In the process of selecting, appointing and promoting magistrates, corruption can influence the fairness and transparency of these processes from the outset. The interference of political factors in the work of the judiciary, in situations where certain interests are promoted through discussion platforms by directly influencing magistrates, is also a visible way in which the two areas under investigation interfere. Political interference also occurs when all aspects directly linked to the exercise of the judicial profession, issues relating to salaries, working conditions, bonuses, social aspects, are used by decision-makers to put substantial pressure on judges. An important lever of interference by political factors in the work of the judiciary, with direct implications for the phenomenon of corruption,

refers in particular to the promotion of laws that offer exaggerated immunities to corrupt judges and, on the contrary, disfavor transparent and fair behavior.

A very important consequence of corruption on the impartiality and transparency of the judiciary is, in addition to the above, a component that is rather complicated to quantify. This component relates to the quality of the act of justice. Justice must be able to provide the subjects of law with optimum guarantees of respect for their rights and freedoms. The ability of the judicial system to respond to all social relations and to provide balanced and fair decisions depends on several factors. In addition to the traditions and customs in this area, the ongoing process of improving the legislative framework, the electronic methods of ensuring impartiality through random selection of cases, and the tools for training future judges, aspects relating to the removal of corruption from the procedures for promoting and selecting judges must also be taken into account. Corruption could have negative consequences on the quality of the judicial process if certain actors are promoted according to non-transparent criteria. The quality of justice can be compromised in the medium and long term by the immediate consequences of corruption, and ultimately the right to a fair trial becomes very difficult to ensure.

Research on the interference of corruption and the field of human rights becomes very important when we consider the importance of the positive obligation of states to respect the fundamental rights and freedoms of all individuals. An extremely important means of guaranteeing respect for the rights of all subjects in a state concerns the adoption of a legislative framework that is consistent with the principles of the rule of law but also with the principles governing the field of fundamental rights and freedoms. The analysis of a law-making option from the perspective of anticipating some of the consequences of corruption on human rights could influence public attitudes towards the phenomenon of corruption on the one hand and the importance of fighting corruption on the other. The most difficult approach to this option relates to the legislator's will and intention to demonstrate that by committing corruption offences, fundamental rights and freedoms are primarily violated. In order to be able to demonstrate this hypothesis, we will insist on some basic directions that argue the importance of analyzing the impact of corruption on human rights in the stages of building the legislative framework.

A human rights approach focuses attention on people at particular risk, providing a gender perspective and certain measures, including legislative measures aimed at designing and implementing effective anti-corruption policies. If corruption offences are shown to violate human rights, this will influence public attitudes. When subjects become more aware of the damage that corruption does to the public, individual interests and the damage that even minor corruption can cause, they become more likely to support prevention campaigns and programs. This is particularly important because, despite strong rhetoric, the political impact of most anti-corruption programs has been low. Identifying specific links between corruption and human rights can persuade certain decision-makers - public officials, parliamentarians, judges, prosecutors, lawyers, businessmen, bankers, accountants, the media and the general public - to take a stronger stand against corruption.

Other costs of corruption include more intangible effects, such as loss of trust in public institutions (Gathii, 2009:147). Corruption can also undermine the rule of law, tax compliance, contract enforcement, civil order and security, and ultimately the legitimacy of the state itself. In this vein, we can add other costs, such as the degradation of public

Consequences of corruption in the proper exercise of human rights and fundamental freedoms

life, the misallocation of public resources, distorted state priorities and the undermining of democracy (Johnson, 2004:139).

Recent empirical studies have shown that corruption is responsible for low economic growth, less foreign and domestic investment, high inflation, currency depreciation, low spending on education and health, high military spending, high income inequality and poverty, lower tax revenues and high infant mortality rates (Akçay, 2006: 46).

It is no exaggeration to say that corruption is one of the most complex problems in legal research today. Cutting across almost all the comfortable regimes of specialization of law, corruption is a problem for private as well as public law, civil law, criminal and international law, and administrative law. Moreover, the study of corruption involves economic, social and cultural dimensions in addition to legal implications. Until the 1990s, most studies of corruption were economic, political, social or cultural. Questions about how behavior affected productivity, why some regimes were more corrupt than others, how corruption at one level of society affected corruption at other levels, or how views of corruption vary across cultures are typical of these earlier studies of corruption.

Political scientists see corruption in the abuse of state power resulting from the absence of controls. Economists see corruption when assets are sold for personal gain or when public officials have a monopoly on the exploitation of economic resources. Sociologists will sometimes see corruption as an absence of socially accepted norms, occurring in countries where historical and socio-cultural conflict or certain conflicting values within social groups have resulted. When looking for an appropriate legal definition, it must first be made clear that the focus must be on the noun 'corruption' and not 'corrupt'; this has proven to be much more than a grammatical distinction (Spalding, 2014:1387).

Corruption was examined as an undesirable phenomenon for most - the costs were societal, while the benefits were individual. In the 1990s, the few legal studies of corruption that were conducted were usually examinations of the criminal legal aspects of corruption, attempts to analyze the problems of defining the crime of corruption for legislative purposes, enforcing legality, identifying evidence for prosecution or tracing stolen goods. Corruption has been examined as a technical legal issue, individualized to a particular case or legal instrument. In fact, the relationship between corruption and fundamental political rights has been seen as so close that the term 'control of corruption' has become one of the six 'dimensions' of a government's responsibility to the needs and rights of its citizens in the Worldwide Governance Indicators project's framework (Scheffer, 2010:399).

4. Conclusion

Research on the interference of corruption and the field of human rights becomes very important when we consider the importance of the positive obligation of states to respect the fundamental rights and freedoms of all individuals. An extremely important means of guaranteeing respect for the rights of all subjects in a state concerns the adoption of a legislative framework that is consistent with the principles of the rule of law but also with the principles governing the field of fundamental rights and freedoms.

Despite the economic and political interest in the corruption-human rights relationship, academic legal research on the impact of corruption on human rights is

fairly recent. Today, human rights scholars around the world conduct comprehensive examinations not only of the impact of corruption on human rights, but also of the effects of anti-corruption campaigns on the rights of individuals and society.

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