

WHEN DOES A GIFT BECOME A BRIBE? INSIGHTS FOR COMBATTING PETTY CORRUPTION

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RESUMEN: El artículo analiza los argumentos que explican los intercambios sociales informales paralelos a las normas jurídicas en la sociedad. En primer lugar, examina los orígenes del intercambio informal de bienes y servicios en la sociedad, para lo cual, en primer lugar, revela y ofrece ejemplos de las diferencias entre las normas jurídicas y sociales que regulan los regalos y otros intercambios informales; en segundo lugar, ofrece una explicación de estas diferencias y, en tercer lugar, explica las causas que conducen a tales diferencias. El artículo se basa en el supuesto de que las normas jurídicas y sociales deben ser conformes, sólo así es posible esperar la eficacia de la regulación jurídica sobre el comportamiento de los miembros de la sociedad.

A través de las discrepancias existentes, el trabajo aporta reflexiones junto con propuestas que inciden en los criterios que nos ayudarán a distinguir un soborno de una donación o regalo legítimos, así como las medidas que deben adoptarse para reducir la frecuencia de los sobornos, junto con las medidas que deben adoptarse para reducir la presencia de la corrupción mas leve.

Palabras claves: corrupción, regalo, soborno, recompensas ilegales, pequeños sobornos.

Abstract: The article analyses arguments explaining social informal exchanges in parallel with legal norms in society. First, it examines the origins of informal exchange of goods and services in the society whereby first, discloses and provides examples of differences of legal and social norms regulating gifts and other informal exchange; second, provides an explanation of these differences, and third, provides explanation of causes which lead to such differences. The article is based on the assumption that legal and social norms should be conforming, only in such way it is possible to expect efficiency of legal regulation on the behavior of members of the society. By analyzing the existing discrepancies, the work provides insights together with proposed criteria to distinguish a bribe from a justifiable gift, what action should be taken to reduce the prevalence of minor corruption.

Keywords: corruption, gift, bribe, illegal rewards, petty bribery.

SUMMARY: I. INTRODUCTION. II. ORIGINS OF INFORMAL EXCHANGE OF GOODS AND SERVICES. III. INFORMAL EXCHANGE RELATIONS VS. LEGAL REGULATION. IV. LEGAL PERSPECTIVE: WHEN GIFTS SHOULD NOT BE TOLERATED? V. DIFFERENCES BETWEEN GIFTS AND BRIBES. VI. CRIMINALIZATION OF (PETTY) BRIBERY AT GLOBAL AND EUROPEAN LEVEL. VII. HOW EUROPEAN COUNTRIES TREAT THE DIFFERENCE BETWEEN A BRIBE AND A GIFT? VIII. DISCUSSION: HOW SHOULD PETTY CORRUPTION BE TACKLED? IX. BIBLIOGRAPHY.

I. INTRODUCTION

State governance is linked to the implementation of the public policy and to the exercise of the discretion of civil servants and officials in its implementation. In the absence of appropriate rules, civil servants may derogate from the proper implementation of policies in the public interest and the pursuit of personal objectives when exercising that discretion. Therefore, clear rules have been established for civil servants prohibiting soliciting and taking gifts, as this might be a form of corruption (receiving of undue benefit for misuse of powers). Theoretically, it is more or less clear. However, when a person acts not in professional but in personal scope, what are limitations regarding gifts in this case? And in general, where is the limit between personal and public life?

Corruption is usually linked to illegal acts. However, in a broader sense, corruption can be understood not only in the descriptive (i.e. strictly in accordance with what the legislation is set for), but also in prescriptive way. Descriptively corruption is understood as a violation of certain rules, for example, bribery is prohibited and, therefore, violation of the rule might result in sanctions. However, such an approach is very narrow. On the one hand, it does not assess cases where systemic deficiencies exist, and certain behavior is criminalized although it is neither harmful nor dangerous. Thus, 'corruption' can be seen and criminalized where society sees no need or does not understand the expediency of such a rule. This approach allows us to look at situations where the legal regulation of corruption is inadequate¹. The aim of this study is to contrast these two approaches by assessing aspects of small bribery in order to find a distinction between a gift and a bribe.

In this article the definition of 'corruption', which emphasize the illegality of informal exchanges or rewards, were deliberately avoided. By analyzing the social nature of this relationship, it was sought to detect the possible reasons why petty corruption is so hardly manageable using legal instruments. Thus, the purpose of this work is not to justify petty bribery, but to explain its nature.

In public discourse, gift and bribe are in completely different categories. In principle, the public opinion on donating and giving gifts is positive. Social relations are characterized by the constant exchange of gifts of people, gifts cause good emotions, reveal the generosity of individuals. And at the same time, perhaps unanimously, everyone condemns bribes, which they regard as undesirable and harmful. Bribes are considered to be given in order to influence political, administrative, business or sector decisions. At first glance, it would seem clear that gifts are legal and bribes are illegal. Bribery and corruption are usually associated with immoral and mistreatment, while donations are about

¹ Prevention of Corruption in the Public Sector in Eastern Europe and Central Asia, OECD Anti-Corruption Network for Eastern Europe and Central Asia, Access For Internet: <<http://www.oecd.org/corruption/acn/ACN-Prevention-Corruption-Report.pdf>>.

goodness and ² sacrifice. However, everything is not so simple, especially when it comes to specific cases of petty bribery and other manifestations of petty corruption. Is it a gift or a bribe in situations where a student gives a gift to a teacher on Teacher's Day expecting to receive better grades? What about cases where a patient wants to thank a doctor after a treatment and brings a gift to him/her? Can parties in proceedings offer a gift to a judge as they consider that the judge was very fair? Can a civil servant bring his wife to her job by a car which he possesses due to his functions in public service?

The answers to these questions are different – usually in smaller communities, people living in regions tend to regard informal relationships as “elementary humanity”, while residents of larger cities claim not to tolerate such behavior³. In most cases, the conversation deviates from the existence of “certain boundaries”, where there is bribery and unfair activity and where there is “elementary humanity”. However, as can be seen, these boundaries are often perceived differently.

The purpose of this article is to analyze the arguments explaining the acquisition of informal exchanges contrary to legal norms in society and to provide insights, to propose criteria for distinguishing the bribe from the justifiable gift, what action should be taken to reduce the prevalence of minor corruption.

There is not much research in the world about the links between bribes and gifts. Adam Graycar and David Jancsics, who have analyzed the methodology for determining the criteria for separating bribes and gifts, can be mentioned among the most prominent scholars in the field and have proposed and justified their criteria for distinction of a “bribe” and a “gift”, Timothy L. Fort⁴, who analyzed the need to establish consistent legal regulation for the separation of bribes and gifts and presented a vision of how this should be done, Johann Graf Lambsdorff and Bjorn Frank⁵, who empirically researched the ethical effect of separating bribes and gifts through individual choices in various marginal situations, Susan Rose-Ackerman explored the corrupt manifestations of presenting gifts. A number of arguments about the regulation of gifts and bribes were also presented in anthropologic studies – e.g., Emilia Ferraro analyzed the origin of the relationship between the lender and the borrower⁶, Larissa Adler Lomnitz explored the informal exchanges⁷, Marshall David Sahlins⁸ wrote about the exchange of primitive communities, Davide Torseello and Bertrand Venard explored the anthropology of corruption⁹, Peikai Li and others

- 2 ROSE-ACKERMAN, S. Bribes and gifts. In: BEN-NER A. & PUTTERMAN L. (Eds.) *Economics, values, and organization*, Cambridge, UK: Cambridge University Press, 1998, pp. 296–328.
- 3 Observations of the author in the context of the project training “Improving the qualifications of public sector bodies in the fields of anti-corruption and anti-corruption measures” (No. 10.1.2-ESFA-V-916-01-0003) and “Corruption Prevention Increasing Health Protection Sector” (No. 10.1.2-ESFA-V-916-01-0013).
- 4 FORT, T. L., NOONE, J. L. “Gifts, Bribes, and Exchange: Relationships in Non Market Economies and Lessons for Pax E-Commercia”, *Cornell International Law Journal*, 2000, No 3(33), pp. 515–546.
- 5 LAMBSDORFF, J. G., FRANK B. “Bribing versus gift-giving”, *Journal of Economic Psychology*, 2010, Flight. 31(3), pp. 349–353.
- 6 FERRARO, E. “Owing and being in debt. A contribution from the Northern Andes of Ecuador”, *Social Anthropology*, 2004, No 12, pp. 77–94.
- 7 LOMNITZ, L. A. “Informal exchange networks in formal systems: A theoretical model”, *American Anthropologist*, 1998, No 90, pp. 42–55.
- 8 SAHLINS, D. On the sociology of primitive exchange, in: BANTON M. (ed.) *The relevance of models for social anthropology*, New York, NY: Praeger, 1965, pp. 139–236.
- 9 TORSELLO, D., VENARD, B. “The Anthropology of Corruption”, *Journal of Management Inquiry*, SAGE Publications (UK and US), 2015, No 25(1), pp. 34–54.

analysed *guanxi* relations (illegal gifts in Chinese tradition)¹⁰, Mehmet Bac devoted his work to gift policies in public sector¹¹, Agne Vasiliauskaite investigated the cases of gifts and bribery in healthcare sector¹², Tao Zhang analysed utility function in gift giving¹³, Keyi Liu wrote about gifting in big corporations¹⁴, etc.

The article consists of seven chapters. The first analyses the origins of informal exchanges between members of society and communities, the second explores similarities and differences of social and legal norms relating gifts, raising the hypotheses as to why legal regulation makes it difficult to manage the rules established in society. Here we also look at socially negative aspects of the rules created by society, which reveal that public norms in some cases not only conflict with formal rules of law, but as well do not allow the legal prescriptive establishment of a perfect society to be pursued, but also begin to restrict the rights and freedoms of individuals. The fourth part is dedicated to differences between gifts and bribes, in accordance with social and legal rules. The fifth part discusses regulation of bribes at global and European level – it is examined whether the broader, non-local regulation is clear and detailed, or countries have discretion on determining the line between bribes and gifts. The sixth chapter reviews how European countries explain the difference between a bribe and a gift in their national legal systems. Finally, the last part provides insights into the prospects for regulating minor corruption through legal instruments.

II. ORIGINS OF INFORMAL EXCHANGE OF GOODS AND SERVICES

There is ongoing debate in research literature on the criteria to distinguish a gift from illegal bribe. Seeking to answer this question some authors, such as Torsello and Venard, offer referring to the assessment of these categories from the perspective of local people on a case-by-case basis¹⁵. According to Werner, Torsello and Venard, gift and bribe in essence is what the local population defines using these categories¹⁶. Going more deeply, some anthropologists acknowledge that the origins of donation and bribery and possible explanation of difference between them should be sought in primitive societies. According to researchers, both gifts and bribes are informal exchange processes¹⁷. In addition to

10 LI, P., SUN, J. M., TARIS, T. W. "Differentiating between gift giving and bribing in China: a guanxi perspective", *Ethics & Behavior*, 2022, 32:4, pp. 307-325.

11 BAC, M. "Gift policy, bribes and corruption". *European Journal of Law and Economics*, 2019, No 47, pp. 255–275.

12 VASILIAUSKAITĖ, A. "Does Acknowledgement of a Small Value Gratuity Gift for a Medic as a Bribe Not Infringe Ultima Ratio Principle?" *Law Review*, 2019, 1(19), pp. 69–88.

13 ZHANG, T. "Measuring following behaviour in gift giving by utility function: statistical model and empirical evidence from China", *Humanit Soc Sci Commun*, 2022, No 9, p. 190.

14 LIU, K. „Study on ethical gift-giving practice in corporates. *Academic Journal of Business & Management*”, 2020, Vol.2, Issue 2, pp. 14-19.

15 TORSELLO, D. VENARD, B., 2015.

16 WERNER, C. "Gifts, bribes, and development in post-soviet Kazakstan", *Human Organization*, 2000, No 59, pp. 11–22; ANDERS, G., NUIJTEN, M. *Corruption and the secret of law: An introduction*, in: NUIJTEN, M., ANDERS, G. (eds.) *Corruption and the secret of law: A legal anthropological perspective*, Abingdon, UK: Ashgate Publishing Group, 2008, pp. 1–26.

17 ANDERS, G., NUIJTEN, M., 2008, GRAYCAR, A., JANCSICS, D., 2017, p. 4.

instrumental advantages, both of these institutes perform an important social function that strengthens the links between social groups at different levels of society. It is argued that bribes and gifts are similar in the way that there is reciprocity in both cases, i.e., individuals communicate with each other, and each has her/his own role in the process, and the fact that in both cases the actions relate to the exchange process. In addition, normative similarity leads to the fact that the taking/receiving of a bribe and a gift is the same type of social behavior¹⁸.

According to some authors, the strongest impetus for exchange of gifts is reciprocity – a universal norm found in almost all cultures¹⁹. However, despite the alternative provisions discussed in later times, such understanding also prevails in present societies. E.g., the British Encyclopedia states that ‘the exchange of gifts is a transfer of items or services which, although considered voluntary in society, is indeed a welcomed social behavior’²⁰. Thus, donations are generally understood as a process of exchange, where people share resources. In other words, an exchange means that something is given in return of something else²¹.

A gift is not necessarily a material value or an object with physical characteristics – it can be a work of all kinds, e.g., cooking. Peer services (e.g., sexual intercourse) can also be considered as a gift²². Intangible gifts may not necessarily be provided by individuals, it may as well be collective recognition, honor, prestige, etc.²³.

Although anthropologists have mostly studied gifts in ancient cultures, they also claim that donation is one of the main informal institutes of present societies²⁴. For example, when one family works a long time, the neighboring family takes their children from kindergarten, and the other, in return, takes out their dog. Gifts solve those imperfections of life for which there are no formal rules. What could be done in normal market conditions at a much more expensive time, informal relationships help to resolve with much lower costs. Moreover, unlike the concept of bureaucratic governance discussed in detail below or in the context of economic relations, where individuals (civil servants) are anonymized, trust in specific individuals is essential in informal communal relations²⁵. As will be seen from further analysis, the element of trust in social exchange culture is particularly important.

18 SHORE, C., HALLER, D. Introduction - Sharp practice: Anthropology and the study of corruption, in: HALLER, D., SHORE, C. (eds.). *Corruption: Anthropological perspectives*. London, UK: Pluto Press, 2005, pp. 1–26; SMART, A., HSU, C. L. Corruption or social capital? Tact and the performance of guanxi in market socialist China, in: NUIJTEN, M., ANDERS, G. (eds.). *Corruption and the secret of law: A legal anthropological perspective*. Abingdon, UK: Ashgate Publishing Group, 2008, pp. 167–191, GRAYCAR, A., JANCSICS, D., 2017, p. 4.

19 MAUSS, M. The gift: The form and reason for exchange in archaic societies. London, UK: Routledge, 2002, GRAYCAR, A., JANCSICS, D., 2017, p. 4.

20 GRAYCAR, A., JANCSICS, D., 2017, p. 4.

21 MACNEIL, I. R. “Exchange revisited”, *Ethics*, 1986, No 96, p. 567.

22 GRAYCAR, A., JANCSICS, D., 2017, p. 4, LARSEN, D., WATSON, J. J., “A guide map to the terrain of gift value”, *Psychology & Marketing*, 1982, 18, pp. 889–906; CARRIER, J. “Gifts, commodities, and social relations: A Maussian view of exchange”, *Sociological Forum*, 1991, No 6, p. 7.

23 BOURDIEU, P. Marginalia - Some additional notes of the gift, in: FONT A. D. (ed.), *The Logic of the Gift*. New York, NY: Routledge, 1997, pp. 231–241.

24 LEMMERGAARD, J., MUHR, S.L. “Regarding gifts - On Christmas gift exchange and asymmetrical business Relations”, *Organization*, 2011, No 18, pp. 763–777.

25 GRAYCAR, A., JANCSICS, D., 2017, p. 4.

Thus, donations often have symbolic meaning in relation to the identity of individuals in a social group²⁶. A gift also determines the expectations and behavior of the people involved in this relationship²⁷. A gift and a bribe perform an important communication function²⁸. Gifts can be used as signals to establish relationships and reduce social distance²⁹. For example, visits to newly established neighbors to bring them a cake, thus accepting them into the established neighborhood community, is a widespread tradition in many societies. Looking even deeper – greeting with neighbors, wishing a good day is also a manifest of confidence in someone. It is a traditional act with no material expression but expressing friendliness and favoring another person.

Looking even more deep, in a social structure where a person's identity is closely related to the identities of others, reciprocity is not so much “doing for others” but “doing for yourself”. Moreover, even transaction-related terms can have a completely different meaning in individual communities, which proves the collectivity of the relationship. For example, some primitive communities still use the same word to describe buying and selling, lending, and borrowing³⁰.

According to some authors (e.g., Fort, Malinowski), donation is not possible without an element of selfishness. Anthropologists point to an important moment – the person who received the gift feels inferior and has a feeling of indebtedness and seeks to get rid of this feeling by fulfilling the duty to pay off³¹. It cannot be said that a donation is not possible without the expectation of reciprocity. As Fort and Noone point out, open altruism, generosity is always about a person's social status. The fact that a person has more than others in society can be shown by sharing, thus revealing the supremacy of this person vis-à-vis others. On the other hand, there is a moral pressure in communities that those who have more should share with those who have less. In close communities wealth is shown not through boast, but through generosity. So open generosity usually testifies your social status³². This implies that true unilateral unconditional generosity is possible only when donations are made anonymously. Otherwise, the receiver of a gift feels either committed to the provider of the gift or feels socially disadvantaged. Indeed, when looking at the practice of patronizing various social projects and events, it is clear that such activities help achieving fame in society. In this context, the phenomenon of Santa Claus can be mentioned, as although children do not understand that gifts are received from parents, the relationship often manifests the elements of manipulation, because “Santa brings

26 BETTERIDGE, A. H. “Gift exchange in Iran: The locus of self-identity in social interaction”, *Anthropological Quarterly*, 1985, No 58, pp. 190–202; SHERRY JR. J. F. “Gift giving in anthropological perspective”, *Journal of Consumer Research*, 1983, No 10, pp. 157–168.

27 KOMTER, A. “Gifts and social relations: The mechanisms of reciprocity”, *International Sociology*, 2007, No 22, pp. 93–107.

28 SCHIEFFELIN, E. L. “Reciprocity and the construction of reality”, *Man*, 1980, No 15, pp. 502–517.

29 CAMERER, C. “Gifts as economic signals and social symbols”, *The American Journal of Sociology*, 1988, No 94 (Suppl), pp. S180–S214; OTNES, C., BELTRAMINI R. F. Gift giving: An overview, in: OTNES, C., BELTRAMINI, R. F. (eds.) *Gift giving: A research anthology*, Bowling Green, OH: Bowling Green State University Popular Press, 1996, SAHLINS, M. D., 1965, p. 142.

30 FORT, T. L., NOONE, J., L. 2000, p. 535–536.

31 FERRARO, E., 2004, pp. 90–94; MALINOWSKI, B. *Argonauts of the Western Pacific: An account of native enterprise and adventure in the archipelagoes of Melanesian New Guinea*. New York, NY: Dutton, 1961; MAUSS, M., 2002; STRATHERN, M. “Gifts money cannot buy”, *Social Anthropology*, 2012, No 20, pp. 397–410; GRAYCAR, A., JANCSICS, D., 2017, p. 4.

32 FORT, T. L., NOONE, J., L., 2000, p. 536.

gifts to good children” and “Santa always observe you and know how well you behave”. Thus, and in this case, it cannot be said that this is merely a unilateral act of generosity by the parents.

III. INFORMAL EXCHANGE RELATIONS VS. LEGAL REGULATION

As already mentioned in the introduction, legal regulation does not necessarily correspond to the self-regulatory rules of society.

For example, based on the idea of Max Weber’s rational legal system, all civil servants are anonymized and their roles in the civil service are completely separated from social roles – personal interests, family or friendship relationships. They should treat each client impartially and on an equal basis, ignoring social and personal contacts³³. As Marcus Felson points out³⁴, all civil service systems aim to disclose and distinguish personal interests from the duties of civil servants in order to carry out their official duties properly and impartially. The risk of corruption arises precisely when the private interests are not clear, and the public is unaware that the civil servant enjoys his discretion in making decisions specifically for his own benefit rather than for public good.

The concept of bureaucratic management of Weber focuses on the public service in the system of public administration. Civil servants receive remuneration for the functions performed and should not receive more than the fixed remuneration for the performance of the same duties. From a legal point of view, in practice, in case when the civil servant’s salary is very low compared to the competence of the civil servant, education, importance of duties, etc., there is a risk that the civil servant will be paid bribes. In other words, if the established public sector pay system does not correspond to the public realities of which the system is used, the principles of remuneration for work start operating, which are generally based on informal additional payments for the services provided. The initiation of the non-formal payments may stem from both the civil servant’s side (e.g., if the civil servant controls limited resources or issues permits, licenses, etc., and the recipient of the service is clearly more well-off than the civil servant), or from the side of a receiver of a service (e.g., when the receiver expect “a better” or “a quicker” service). Sometimes the public administration system is tried to conform with the social reality (e.g., limited resources and a higher demand, or lack of time to quickly provide a service). For example, in Lithuania some payments have been legalized to obtain the service more quickly – both in the areas of migration documents, permits, certificates, even in the areas of personal health care. The difference is that the legalization of such payments does not change the wage system for civil servants (the additional money paid usually goes to the co-financing of the system) and makes it clear to the recipient that in some cases these ‘acceleration fees’ are legal, in other cases not, although the subjective objectives of the payer are identical in both situations – a wish to obtain the service more quickly. Thus, unfair pursuit of benefits becomes a standard, which can lead to significant weaknesses

33 GRAYCAR, A., JANCSICS, D., 2017, p. 2.

34 FELSON, M. Corruption in the broad sweep of history, in: GRAYCAR A., SMITH R. G. (eds.) Handbook of global research and practice in corruption, Cheltenham, UK: Edward Elgar, 2011, pp. 12–17.

in the system, discrimination on the ground of social status, as well as to reduce public confidence in public authorities³⁵.

Going back to previous considerations in the perspective of social self-regulation, both bribery and donations in addition to formal rules are regulated by universal informal norms. As already mentioned, the informality of legal and illegal relations makes a bribe in certain cases justified. Given that a ‘gift’ is primarily defined as a social category, a part of social behavior, and social behavior varies in each society, universal legal tools are powerless to define the principles of social behavior in each society.

Indeed, in societies where close communal relations based on trust in each other prevail, life without donation and barter exchange is hard to imagine. The closer society is, the more important is trust in one another, the greater is the importance of social relations³⁶. In real life there is no bureaucratic legal framework in which all actors are anonymized, and their private interests are clearly separated from the public. A strict separation between society and private life to prevent the birth of public and private conflicts of interest is hardly possible in practice. As already mentioned, such a separation would require not to say hello to a neighbor who is a policeman, doctor, or judge – because the greeting can be understood as a connection, a search for favor in future decision-making.

Thus, gifts and bribes play an important social function, they help to strengthen social groups by reducing risks and non-conforming to social relations arising from improperly organized institutional structures of the state. The gift, as well as the bribe, goes beyond the formal rules of the state and relates to the social and personal ties of individuals³⁷.

In Lithuania, despite considerable efforts³⁸ to reduce petty corruption in health care facilities, there is a strong public opinion that a doctor needs a payoff, even if he does not provide any additional services to those which must be provided. As described earlier, social relations are characterised by the fact that gifts increase mutual trust, build social connection, and improve a person’s emotional state. According to some doctors, a certain proportion of patients imagine that if a doctor does not take a bribe, “gift” or “gratitude”, the patient’s condition is so severe that the doctor does not see an opportunity to help him. Neurologists indicate that in case of the disease there are three participants – the doctor, the patient, and the disease. In order to overcome the disease, an emotional state of the patient is very important, i.e., he must trust the doctor and believe in his own strength to be healed³⁹. In other words, there must be a close social connection and mutual trust between the doctor and the patient. And in the case when an honest doctor refuses to accept a gift or bribe, social connection, and trust in each other decreases.

As for the provision of services in Lithuania, it can be noted that the negative aspect of gifts is perceived differently. As mentioned above, no gifts in the health sector are intolerable – chocolate, candy, cake, eggs, apples, etc. are considered as bribes. For

35 KLITGAARD, R. *Controlling corruption*, Berkeley, CA: University of California Press, 1988.

36 MAUSS, M., 2002, pp. 3–4.

37 ALEXANDER, C. “Legal and binding: Time, change and long-term transactions”, *Journal of the Royal Anthropological Institute*, 2001, No 7, pp. 467–485; CARRIER, J., 1991, pp. 119–136.

38 E.g. see Health Protection Ministry Corruption Prevention Projects. Access For Internet: <<https://sam.lrv.lt/lt/korupcijos-prevencija/korupcijos-prevencijos-projektai>>.

39 The author’s observations on the discussion in the context of project training “Corruption Prevention Increasing Health Protection Sector” No. 10.1.2-ESFA-V-916-01-0013.

example, a patient's spouse was punished by a criminal order for bringing cake and candies to a doctor⁴⁰. On the other side, gifts to teachers are not considered as bribes – it is common practice that teachers are given cakes, chocolates, and gifts during traditional and personal holidays and at the end of the school year. The internet is full of suggestions on what to donate to teachers on various occasions, and prices for such “gifts to teachers” sometime reach €700⁴¹.

IV. LEGAL PERSPECTIVE: WHEN GIFTS SHOULD NOT BE TOLERATED?

The fact that the social environment creates rules that are alternative and different to those acceptable in the legal system is an explanation of the relationships and attitudes that exists, but not an excuse. Such an explanation is necessary to make it possible to imagine the reasons for the existing unacceptable situation to be solved to bring the social system closer to a legal framework based on prescriptive rules. This section specifically deals with the situations where the public tolerates petty corruption in provision of gifts, threatening fundamental principles of law.

The first aspect of non-legality of bribes, as already mentioned in the previous part of the article, concerns the use of common good in exchange for personal benefits. This is precisely the primary argument on which anti-corruption rules are based. What is important here is that a private individual (e.g., a civil servant) benefits to himself or to those close to him in exchange for benefits that do not belong to him or her. In other words, it harms society or a certain group of individuals. By returning to the discretion of civil servants, it is important that that discretion does not allow the public's good to be wasted for private gain, to make decisions which are beneficial to themselves or to the private persons with whom exchanges are made, to the detriment of others. However, if damage was not made, why should it be prohibited to accept or provide gifts? For example, if a person voluntarily thanks the doctor giving eggs, home-baked cake or chocolate, is the harm made to anyone?

Secondly, researchers recognize that the functional aspect of the relationship between bribe and gift is often problematic. As has been mentioned, what external observers consider to be socially harmful behavior may seem to practitioners to be a normal gift practice with important social and symbolic functions⁴². Trust-based informal exchange systems, often referred to by external observers as corruption, tend to compensate the discrepancies between social reality and institutional structures. Such informal rules exist in a number of countries. For example, in many socialist states there was aphorism that

40 Kaunas Regional court criminal order of 29-12-2017 No. 1-3025-813/2017.

41 For example, see A gift to the teacher. Internet access: <<https://dovanumeistrai.lt/2018/09/29/dovana-mokytojui/>>; Gift Teachers. Internet access: <<https://www.laisvalaikiodovanos.lt/dovana-mokytojai/>>; Teachers Day Gifts. Access For Internet: <https://www.dovanusala.lt/lt/289-mokytoju-dienos-dovanos?gclid=Cj0KCQjw2IrmBRCJARIsAJZDdxDI2xwMXqyeDY6rTK4zYTP2ZkwrjICdVMeS9O0ddM1Hg7Nj32Z-nqwaAtZSEALw_wcB><https://www.dovanusala.lt/lt/289-mokytoju-dienos-dovanos?gclid=Cj0KCQjw2IrmBRCJARIsAJZDdxDI2xwMXqyeDY6rTK4zYTP2ZkwrjICdVMeS9O0ddM1Hg7Nj32Z-nqwaAtZSEALw_wcB>.

42 SMITH, D. J. A culture of corruption: Everyday deception and popular discontent in Nigeria, Princeton, NJ: Princeton University Press, 2007.

“those who do not steal from the system, are stealing from their families.” The understanding that it is normal to steal from the authorities is still justified in some post-Soviet states⁴³. However, the differences between the traditions of bribery vary from one country to another. Researchers point out that in some countries, such as Russia or Hungary, although illegal, additional payments to doctors are generally mandatory to obtain a quality service⁴⁴. And, for example, in Kazakhstan civil servants and officials as a rule take bribes from acquaintances – usually an envelope with money is given saying that “it’s for your children”⁴⁵.

Among the best-known practices of institutionalized corruption researchers mention *compadrazgo* in Latin America, *blat* in Russia and *guanxi* in China⁴⁶. All these norms are based on deferred reciprocity. Researchers see those practices differently – some consider it to be manifestations of corruption, while others stress the positive role of these rules in pointing out that they compensate for the imperfections of the government and other formal institutions. In Latin America, *compadrazgo* relationships enable social groups to physically exist and allow middle and upper classes in society to maintain their status and privileges⁴⁷. For example, through *compadrazgo* connections, Chilean middle-class people support each other in politics, schools, work and even banks⁴⁸. *Blat* was an informal tool in Russia and other Soviet countries, helping to compensate for the deprivation during the communist regime. People used the *blat* as a special form of non-monetary exchange, because in the socialist planned economy money was not a necessary element for economic transactions⁴⁹. In China, the deferred exchange system *guanxi* is used, based on gifts and “friendship” to obtain permits, inexpensive loans, purchase real estate or invite new customers. Similar systems work in other cultures. Informal payments exist in provision of public services in Lithuania as well. According to the 2018 Map of Corruption in Lithuania, 12% of the Lithuanian population said they had given bribes in the last 12 months, and even 70% of cases were related to reception of personal healthcare services⁵⁰.

Thirdly, the rules and obligation to comply with community pose challenges both for a particular person and for the state itself. Fort and Noone begin one of the most prominent their work with a quote from historical novel of James A. Michner: “Oro [, the High

43 MISANGYI, V. F., WEAVER, G. R., ELMS, H. “Ending corruption: The interplay among institutional logics, resources, and institutional entrepreneurs”, *Academy of Management Review*, 2008, No 33, p. 753; JANCSICS, D. “Imperatives in informal organizational resource exchange in Central Europe”, *Journal of Eurasian Studies*, 2015, No 6, pp. 59–68.

44 GAAL, P. Gift, fee or bribe? Informal payments in Hungary, in: KOTALIK, J., RODRIGUEZ, D. (eds.) *Global Corruption Report 2006*, Berlin, Germany: Transparency International, 2006, pp. 71–74; RIVKIN-FISH D. Bribes, gifts and unofficial payments: Rethinking corruption in post-Soviet Russian health care, in: HALLER, D., SHORE, C. (eds.) *Corruption: Anthropological perspectives*, London, UK: Pluto Press, 2005, p. 47–64; GRAYCAR, A., JANCSICS, D., 2017, p. 4.

45 WERNER, C. “Gifts, bribes, and development in post-soviet Kazakstan”, *Human Organization*, 2000, No 59, pp. 11–22.

46 LOMNITZ, L. A., 1998, pp. 45–50.

47 LOMNITZ, L. A., 1998, p. 52.

48 LOMNITZ, L. A., SHEINBAUM, D. “Trust, social networks and the informal economy: A comparative analysis”, *Review of Sociology*, 2004, No 10, pp. 5–26.

49 LEDENEVA, A. V. *Russia’s economy of favours: Blat, networking and informal exchange*, Cambridge, UK: Cambridge University Press, 1998.

50 Map of Corruption in Lithuania, 2018. Access For Internet: <https://www.stt.lt/documents/tyrimai_ir_analizes/LKZ_atask_2018_stt_04-08.ppt>.

Priest thought,] was a powerful god. He had accomplished what no other god before him had attained: the consolidation of all the islands ... a master god like Oro merited supreme sacrifices like sharks and men.... King Tamatoa's thoughts were different ... he felt ... considerable uneasiness over the fact that the total of sacrifices for any given convocation had now been established as nine (men), plus more perhaps according to the chances of the day. The king wondered: "Is this sudden conversion to Oro a device by the wise men of Haviki whereby they can depopulate my island and thus accomplish by guile what they have always been unable to do by battle?" ... Then, for the first time he expressed in words his real perplexity: "It is very difficult to be king when the gods are changing"⁵¹.

Every person living in the community faces the need to comply with community rules. Conformists can adapt quickly, but critical thinking can lead to challenges in adapting to existing rules. For example, as already mentioned, in the education system it is a common practice to give teachers expensive gifts at the end of the school year, and the entire class is forced to participate in donating – non-contribution would very likely mean discontent from the class community. If there is a tradition in the healthcare system to pay extra for the healthcare provided, it is not surprising that doctors have a expectation to receive additional informal payment, which leads to the emergence of bribery and demotivation to increase the wages of medical personnel.

It is also important that, in the context of globalization, local rules of different societies hamper cross-border economies and cooperation. This has led to the need for joint efforts in states to find a common denominator when informal exchange relationships become unacceptable. To this end, international anti-corruption standards⁵² are adopted, the most important of which is the E-Organisation Convention on Cooperation and Development against bribery of foreign officials. Under this Convention, if a person of one State is employed by an official of another State (e.g., seeking to set up a business in that State), he may be tried in his own state for corrupt activities. This enables corruption to be interpreted equally in different countries.

In a social context, Thomas Donaldson and Thomas Dunfee present hyper-norms, i.e., provisions that take precedence over the legal rules defining and regulating corruption. Hyper-norm is a transcultural moral dimension that must be met to make the norms of different cultures compatible. One such hyper-norm is "necessary social efficiency". It is an act or policy which contributes to the provision of general social services or goods which are necessary to support at least the well-off members of society in relation to freedom, health, food resources, accommodation. To benefit from these goods, society should allocate existing resources efficiently. Society should therefore be structured, and resources should be allocated in such a way that individuals could perform their roles adequately and be effectively rewarded⁵³. Returning to the idea mentioned above, when the system does not properly allocate the public resources, informal rules are emerging to correct such inequalities. Donaldson and Dunfee do not call this bribery, they rather call

51 FORT, T. L., NOONE, J. L., 2000, p. 517.

52 United Nations Convention against Corruption, State Knowledge, 2006, No 136-5145; Criminal Law Convention on Corruption, State Gazette, 2002, No 23-853; Convention on combating bribery of foreign officials in cross-border business transactions, I. k. 2017-11183.

53 DONALDSON, T., DUNFEE, T. W. Ties that Bind: A Social Contracts Approach to business Ethics, Havevard Business Review Press, 1999; FORT, T. L., NOONE, J., L., 2000, p. 521.

it a necessity. However, authors consider corruption such cases where informal rules are used to abuse powers to benefit oneself, but without correcting the imperfections of the structure of society. In this case bribery violates the hyper-norm of necessary social efficiency because it is not linked to an efficient redistribution of resources. According to the analysis carried out by the authors, the allocation of resources as a result of bribery can, and usually does, aggravate the situation of the poor part of the society. While specific bribes may be relatively small in relation to country's GDP, the reallocation of finances and goods can have a significant negative impact on the economy⁵⁴.

V. DIFFERENCES BETWEEN GIFTS AND BRIBES

One of the features to distinguish a bribe from a gift is another person's expected behavior. As a general rule, if a person providing a gift or other benefit awaits a specific and usually immediate, informal result from another party to the relationship, this is considered to be a bribe. The provision of the bribe therefore is directly or indirectly related to a specific award. For example, a bribe is given to a road traffic officer, a person supervising parking arrangements, to an inspector, customs officer or similar for not fixing an offence committed. Usually this happens at the scene of the accident, and the officer or other person is not personally familiar and there is a very small chance that these people will still meet in future⁵⁵. These are usually monetary payments when parties have very specific different economic and social interests⁵⁶.

In case of gifts, although there is a certain relationship between parties and a commitment to pay back in the future, this commitment is far less specific. However, as mentioned above, usually gifts are not a manifestation of altruism – just the commitment to repay is less transparent⁵⁷.

Secondly, the effect of a bribe when one party illegally and socially unjustifiably benefits at the expense of the other party, is against the nature of gifts.

Finally, the character describing the outcome of a bribe is a real or potential damage. However, in legal terms, the attribution of (potential) damage to the concept of a bribe raises some considerations. As a general principle, an act which causes or threatens to cause damage should be not allowed. However, it is hardly justifiable to punish for an act which brings only benefit and does not pose a threat to anyone. Traditionally, bribery involves „abuse of entrusted power for private gain“⁵⁸. However, it is usually omitted that a particular offence should cause harm or damages. In other words, the gain received as a result of abuse of entrusted power is at somebody's expense – somebody's who suffers damages or harm. As already stated, in corruption-related offenses, it is usually the state which suffers harm

54 DONALDSON, T., DUNFEE, T. W., 1999; FORT, T. L., NOONE, J., L., 2000, p. 522.

55 JANCICS, D. "Petty corruption in Central and Eastern Europe: The client's perspective", *Crime, Law and Social Change*, 2013, No 60, pp. 319–341.

56 GREGORY, C. A. *Gifts and commodities*, London and New York, NY: Academic Press, 1982; SAHLINS, M. D., 1965, p. 230.

57 ROSE-ACKERMAN, S. *Corruption and government. Causes, consequences and reform*. Cambridge university press, 1999, p. 92.

58 E.g. see Transparency International. What is Corruption? Access For Internet: <https://www.transparency.org/what-is-corruption>.

(e.g., state resources are illegally diverted), however, this is not necessarily the case. In fact, harm or damages is the prerequisite to specify an activity as corruption, because if it does not bring any adverse consequences, it would not raise any concerns for society. For example, if a person pays to a doctor to receive treatment outside the hospital's working hours. From the first sight it might appear that harm is not done to anybody – the patient receives the needed treatment, the doctor – additional remuneration for additional work. However, this case should be seen in a broader perspective, as damage is made not to particular addressees, but to society in general⁵⁹. Thus, the damage can be of different nature and size and not necessarily is of financial nature in all cases. E.g., one study described an act of bribery where the money paid to the New York officials was very small, but there was a significant loss of trust, reputation and threat to the proper management of the city⁶⁰.

VI. CRIMINALIZATION OF (PETTY) BRIBERY AT GLOBAL AND EUROPEAN LEVEL

As already mentioned, the concept of petty corruption and definition of what is a legal gift, and a bribe comes from local contexts. However, it was mentioned as well that the process of globalisation fosters the establishment of general understanding and rules to be applicable and to be expected in different countries. Therefore, global and regional initiatives to curb corruption were introduced.

At European level, the main and the first regional document prohibiting bribery is the Council of Europe Criminal Law Convention against Corruption of 1999⁶¹. At global level, one of the first initiatives to this aim was the UN Convention against corruption of 2003⁶². It can't be noticed that both these documents describe bribery in a very similar way. In both of them bribery is defined as “the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties”⁶³; and “the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties”⁶⁴. Similarly, both Conventions encourage its member states to criminalise bribery of foreign public officials and officials of public international organizations⁶⁵. Besides, the Criminal Law Convention on Corruption encourages criminalising

59 AMBRAZEVIČIŪTĖ, K., KAVOLIŪNAITĖ-RAGAUSKIENĖ, E., RAGAUSKAS, P. Korupcija privačiame sektoriuje: Normatyvinė samprata ir paplitimas tam tikrose srityse, Teisės instituto mokslo leidiniai, 2014, pp. 26-27, Access For Internet: http://teise.org/wp-content/uploads/2016/07/Korupcija_priv_sektoriuje.pdf.

60 GRAYCAR A., VILLA D. “The loss of governance capacity through corruption”, Governance, 2011, No 24, pp. 419–438.

61 Council of Europe Criminal Law Convention against Corruption. Access For Internet: <https://rm.coe.int/168007f3f5>

62 United Nations Convention against Corruption. Access For Internet: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

63 Article 15 of the UN Convention against Corruption and Article 2 of the Council of Europe Criminal Law Convention against Corruption.

64 Article 15 of the UN Convention against Corruption and Article 3 of the Council of Europe Criminal Law Convention against Corruption.

65 Article 16 of the UN Convention against Corruption and Articles 5 and 9 of the Council of Europe Criminal Law Convention against Corruption.

bribery of members of international parliamentary assemblies and judges and officials of international courts⁶⁶ It can be noticed that bribery is described very broadly. However, it is important, that 1) it is encouraged to criminalise a bilateral relation (active and passive bribery/trading in influence – i.e. the giving/intending to give and the receiving/soliciting party); 2) the advantage given or taken should be “undue” – this means, that such advantage should not be justified as a normal legitimate practice, and 3) the relation between the parties is administrative, i.e. one party has public powers to act and the other gives him/her certain advantage for a particular way of using it. Besides, it must be noted, that both Conventions encourage countries criminalising bribery in private sector, however, here the bribe is described as “an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting”⁶⁷. The difference from bribery in public sector is that a person should act “in breach of his or her duties”, and not only in “exercising his or her duties”.

Although it is rather clear that both at global and regional level it is established that in case of bribery in public sector the undue payment might not be proposed/given or solicited/taken for any actions to be taken relating the public function, and in case of bribery in private sector – only relating breach of duties. But the idea of creation of a “hypernorm” was still not fully realised, as it is still open what is “undue advantage”, as it might be different legal or social interpretation.

VII. HOW EUROPEAN COUNTRIES TREAT THE DIFFERENCE BETWEEN A BRIBE AND A GIFT?

Looking at national regulation and case law of the European countries it can be seen, that even if there are certain rules or criteria for the separation of gifts and bribes, such rules or criteria are rather vague. For example, Austrian criminal law only allows gifts or hospitality if it is not granted to unduly influence the public official. In order to determine if a hospitality expense could be considered as a sign of corruption on the part of a public official, three criteria are used. First, it is assessed whether the public official demands actively a certain hospitality expense, it is punishable as such any time. Second, recently the exception rule of “hospitality expenses of low value and in accordance with local customs” has been introduced. Expenses are not construed as an improper or not-insignificant benefit if they are below a certain value (case law considers benefits of a value of up to EUR 100 to be insignificant for public officials) and in accordance with local customs. Examples of such expenses could be Christmas presents, flowers for birthdays and meals after lectures. This rule is never applicable to money, because of its value. (c) Third, a further limitation on hospitality expenses is applicable to benefits that are granted within the scope of a professional event, where there is an official and objective justifiable interest for the participation⁶⁸. Whether an official and objec-

66 Articles 10 and 11 of the Council of Europe Criminal Law Convention on Corruption.

67 Article 21 of the UN Convention against Corruption and Articles 7 and 8 of the Council of Europe Criminal Law Convention against Corruption.

68 Section 305 Paragraph 4(1) of the Austrian Criminal Code, Access For Internet: <https://www.jusline.at/gesetz/stgb>.

tive interest can be justified will be assessed on a case-by-case examination. Case law on the matter is non-existent so far. For instance, an invitation to a white collar crime symposium – even if the ticket price is EUR 500 – including lunch and dinner may be justifiable for a public official working at the Department of Criminal Law at the Ministry of Justice. In practice, a key point of distinction is whether personal interest might outweigh professional interest, which can be the case if entertainment or accommodation is excessive or luxurious⁶⁹. In Lithuania the Law on Reconciliation of Private and Public Interests provides that a person in public sector can accept a gift received in relation to his or her office only if it is below EUR 150 and is given in accordance with a tradition or international protocol, or for the purpose of representation (e.g. small gifts with symbols or trademarks or a particular entity)⁷⁰. The case-law of Lithuania is very brief in explaining the difference between a bribe and a gift, and usually use it as synonyms in court decisions⁷¹. However, in a number of cases the Supreme Court of Lithuania has mentioned that the defining factor in such cases should be the motive of offering or giving a bribe⁷². As in already provided example, in Lithuania there was a case where a patient to a doctor was convicted for giving a box of sweets and a box of cookies, however, it was proved that by this her intention was to have impact on the doctor's decision. Very similar, however, a bit less detailed regulation has been introduced in Italy providing that a public employee shall not accept, for himself or herself or for others, gifts or other advantages. However, an exception exists for public officials where two conditions are met: first, the gift does not exceed the value of EUR 150, and second, such gifts present no inducement and are given only for courtesy purposes⁷³.

Other countries have even less clarity in their regulation. For example, Germany does not have extensive rules on the relation between gifts and bribes. The German Criminal Code does not establish quantitative or qualitative limitations on hospitality expenses. However, German courts consider “small” favours permissible and use a very strict approach in determining what is or is not legal. Even inexpensive presents, such as pens or promotional free gifts, may be (but are not necessarily) considered impermissible. Whether a hospitality expense could be considered bribery needs to be assessed on a case-by-case basis, taking into account all available facts. Some public bodies have issued guidelines that provide for a threshold of EUR 25. This threshold may serve as a guideline for companies. However, in general, it is advisable not to provide any benefits to public officials⁷⁴.

The French Criminal Code⁷⁵ does not establish quantitative or qualitative limitations on hospitality expenses and there are neither minimal amounts nor official interpre-

69 KRAKOW, G., GÖTZ, E. Anti-Corruption in Austria, Access For Internet: <https://www.globalcompliancenews.com/anti-corruption/handbook/anti-corruption-in-austria/>.

70 Law of the Republic of Lithuania on Reconciliation of Private and Public Interests, Official Gazette, 1997, No 67-1659

71 E.g., see Klaipėda Regional Court decision of 11 April 2018 in a criminal case No 1-24-651/2018.

72 E.g., see Supreme Court Decision of the Republic of Lithuania of 14 March 2006 in a criminal case No 2K-195/2006.

73 Presidential Decree of the Republic of Italy No. 62 of 16 April 2013.

74 LOHNER, A., BEHR, N. Anti-Corruption in Germany, Access For Internet: <https://www.globalcompliancenews.com/anti-corruption/handbook/anti-corruption-in-germany/>.

75 French Criminal Code, Access For Internet: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719/.

tations with a view to establish when or under which circumstances an act of hospitality might be deemed a bribe. Thus, any advantage given with a corrupt intent is considered a bribe under French law. Theoretically, even small payments may be considered bribes if circumstances reveal improper intent. Also, the repeated offering of gifts of small value may indicate a corrupt intent⁷⁶.

Similarly, Polish law does not establish quantitative or qualitative limitations on hospitality expenses. The line between a permissible gift and an impermissible bribe is neither precise nor easy to determine, and it should be assessed on a case-by-case basis. However, to some extent, case law has established some guidance. A judgment of the Polish Supreme Court states that, “offering items that only symbolically express gratefulness of the benefactor and have money value not exceeding such symbolic level is not a financial benefit.”⁷⁷.

It may be seen that legal acts in European countries provide the basic principles to separate a gift from a bribe, but every case needs to be analysed separately taking into account the individual situation. It is not unexpected, as the line between a gift and a bribe is very fragile, usually involving ethical field rather than usual legal understanding, therefore, seeking to determine all possible cases the legal regulation might be too much cumbersome and inflexible.

VIII. DISCUSSION: HOW SHOULD PETTY CORRUPTION BE TACKLED?

The rules of legal and social life in certain cases prescribe different behaviour – on the one hand, the right prescriptively establishes the foundations of an ideal system of society and obliges them to pursue them, on the other hand, embedded social norms are difficult to change, especially where their need and purpose of application are clearly understood. As far as the distinction between gifts and bribes is concerned, as can be seen that legal and social rules are quite different.

Corruption may be both a cause and a consequence of inappropriate regulatory framework, public policy, economic dysfunctions and (or) inadequate market rules. Therefore, to select the proper means to reduce corruption, it is necessary to know precisely the factors that determine the situation, and not just are its symptoms.

According to the theories discussed, two main hypotheses about the ingraining of petty corruption in society can be raised. Firstly, the potentially existing regulation of public relations does not correspond to the adequate allocation of resources in certain areas (e.g. health care), and this failure or inadequacy (e. g. excessive workload of doctors, underpayment, inadequate organisation of healthcare, etc.) is compensated by the society with informal payments (this might also bring the effect that the salaries of employees in health care facilities are not increased precisely because they are payed off by informal payments). Secondly, it is possible that the desire of society to pay off is of social and psy-

76 LASRY, E., KOSKI, S., GUYOT-RECHARD, C. Anti-Corruption in France, Access For Internet: <https://www.globalcompliance.com/anti-corruption/handbook/anti-corruption-in-france/>

77 NOZYKOWSKI, R., KRZYMOWSKI, W. Anti-Corruption in Poland, Access For Internet: <https://www.globalcompliance.com/anti-corruption/anti-corruption-in-poland/>.

chological origin – individuals feel bad when they receive a service from a person who has a special status in society and feel that the state does not adequately guarantee him the right remuneration for the work done. As a result, a person may feel personally indebted, even if the service is provided in the scope and manner of the statutory obligations.

Despite of which of the mentioned reasons is decisive, only legal prohibition to take and give bribes and prosecution for such acts without taking into account into the social causes of such behavior will not achieve an effective result.

Anti-corruption legislation is only effective when the public trusts the legislator and understands the need of such rules. The application of excessively strict rules, especially in relation to culturally established community relations, where informal exchanges are relevant both for the consolidation of status and for strengthening contacts between members of the community, can lead to alienation of members of the community or members of society. When there is no legal space for “elementary humanity”, people are likely to experience poor well-being and psychological problems due to the interruption of social ties and loneliness.

Public “treatment” with inappropriate “anti-corruption medicals” can bring more harm than good. Even without the use of prosecution, legal and educational instruments to reduce diminishing can not only be ineffective, but even detrimental to the society and the state (e.g., by undercutting public confidence in public authorities or state policies). For example, if the main reason for small bribery is not the psychological desire to thank, but the perception that there are structural factors that determine the need to pay off additionally, public education alone (without the necessary reforms) will only be the use of resources unnecessarily without any result.

Social rules are analysed to assess why legal measures are ineffective, why the legal rules do not work. Although in some cases social rules reveal shortcomings in the reasoning of legal norms (e.g., why is corruption considered to be an act which does not cause harm or threat?), social rules in certain cases constitute the preconditions for violating the fundamental principles of law of the state. For example, historically established rules can lead to unjustified restrictions on individual freedoms through social pressure (e.g., bribery or “gift” solicitation) or, in some cases, to justify inappropriate practices of state administration (e.g., to justify the argument that employees in a particular sector do not have to be paid higher wages because they are receiving informal payments).

The analysis of social provisions relating to gifts and bribes shows the following differences between the two: first, the specificity of the expected conduct (in the case of a bribe a quick result, in the case of a gift – undefined positive conduct is expected); second – damage or the ownership of the good used for (a bribe either results in losses to other persons (e.g. a delay in receiving a service), or is a public good itself), finally an additional criterion is that if informal exchanges are justified in society and carried out openly, they can be considered as a gift, but if they are unjustifiable in public life, it is probably a bribe.

In order to tackle petty corruption successfully, it is necessary to address the causes and not the symptoms. Thus, before takings strict regulatory measures, the decision-maker should answer a number of questions: whether in separate areas of economic activity there are the same rules and practices for regulating minor corruption? If not, what are the

reasons for this? Is it justified to prohibit informal exchanges that do not harm anyone? How should the “damage” and its threat be assessed in order to avoid a negative effect in society (legal nihilism, distrust of power, etc.)? For each area of activity, questions should be asked: is the regulatory framework adequate and in line with resources (human, financial, organisational)? Is it not the case that structural reforms are not carried out because there are informal self-regulatory rules there? And only if these are answered negatively, other questions are raised: – is the public awareness of the financing of services sufficient? Is the provision of anti-corruption education adequate?

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