

“European Integration and Anti-Corruption Studies in the Caucasus”

Stavropol winter school

26 February – 6 March 2017

COURSEBOOK

Responsible:

North Caucasus Federal University



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“European Integration and Anti-Corruption Studies in the Caucasus”

Syllabus of the course

Faculty/Department	Law Institute of North Caucasus Federal University
Amount of credits and working load	6
Course dates	26.02.2017-6.03.2017
Final assessment	Group works
Lecturers	<p>Thomas Krüßmann – Professor of Criminal Law, Academic Supervisor of the Winter School (Austria)</p> <p>Khachik Harutyunyan- Anti-corruption Expert, Transparency International Anti-corruption Center Public Organization (TI Armenia).</p> <p>Artur Sarukhanyan-Professor of Criminal Law</p> <p>Karen Kagramanov - Director of language and Multicultural School, PhD</p> <p>Anatoliy Kisilev --Professor of Administrative Law</p> <p>Victoria Savina - Professor of Civil Law, Coordinator of DESCNet project</p>
Language of instruction	English
Target group and/or preconditions for participation	It is targeted towards ambitious students of the wider Caucasus region and Europe who want to improve their knowledge on the subjects of this Winter School by learning and discussing in the beautiful, vibrant and multi-cultural context of the North Caucasus

DESCRIPTION OF THE COURSE

During this course, the students study the future of anti-corruption and civil society in Caucasian region. The lectures includes next topics:

1. Concept and types of corruption
2. The impact of corruption on the development of state and society
3. International legal norms on the fight against corruption (UN Convention, OECD, etc)
4. Historical overview of corruption in different countries of the world and the fight against it
5. Corruption as a criminal offense
6. Formation of civil society as a measure of prevention of corruption in the state
7. Measures to combat and prevent corruption in the modern European states

COURSE OBJECTIVES

The main objectives are to raise the level of knowledge in the sphere of understanding what civil society in the Caucasus is like, to make a comparative analysis of the corruption impact in Russia and European countries, to consider possible prospects for development of civil society and anti-corruption in Russia and the Caucasus region.

LEARNING OUTCOMES

Upon successful completion of the course, the student will: a) use an interdisciplinary introduction to the North Caucasus; b) attempt to assess the role of anti-corruption study in the region; c) be able to make comparison between different approaches between anti-corruption studies prevalent in the EU; d) apply analytical perspectives, using the approaches of law, political science, sociology and cultural studies.

ASSESSMENT OF THE LEARNING PROGRESS AND FINAL TASK

Please describe the criteria for assessing students' learning outcomes and describe the final assignment.

- Exemplary – Demonstrates all or most of the following:

Develops clear, manageable, and focused research questions or thesis statement.f Identifies the purpose and audience of potential resources, correctly selects

from popular and academic sources, primary and secondary sources for the given assignment. f Explores and retrieves information from a wide variety of both electronic and print sources, including full-text indexes or databases; displays an understanding that potential sources may have specific purposes and audiences. f Summarizes main ideas from information sources and can restate textual concepts in own words with appropriate citations.

- Satisfactory – Demonstrates all or most of the following:

Develops research questions or thesis statement, but may be somewhat too broad or specific for assignment scope. f Correctly distinguishes between popular and academic sources, primary and secondary sources. f Retrieves information from both electronic and print sources, but doesn't display an understanding that potential sources may have specific purposes and audiences. f Identifies verbatim material and appropriately quotes and cites it.

- Unsatisfactory – Demonstrates all or most of the following:

Research questions or thesis statement unclear. May be far too broad or specific for assignment scope. f Does not distinguish between types of potential sources or chooses inappropriate sources for the given assignment. Only retrieves information from either electronic or print sources, primarily relies on one or the other to the exclusion of other appropriate sources. Cannot summarize main ideas accurately and clearly. Does not cite sources appropriately.

STATEMENT OF ACCOMPLISHMENT

Students should be able to demonstrate an understanding of concept and types of corruption, the impact of corruption on the development of state and society, international legal norms on the fight against corruption, historical overview of corruption in different countries of the world and the fight against it, and also corruption as a criminal offense, formation of civil society as a measure of prevention of corruption in the state and finally measures to combat and prevent corruption in the modern European states

PROGRAMME/SCHEDULE OF THE COURSE

Sunday 26.02.2017	
12:00-23:00	Arrival of participants
Monday, 27.02.2017	
08:00 – 10:00	Arrival of participants
10:00 – 10:30	Transfer to University
11:00-11:45	Welcome meeting
11:45 – 12:00	Coffee break
12:00-13:00	Lecture 1: Concept and types of corruption Lecturer Khachik Harutyunyan Moderator Anna Avanesova
13:00-14:00	Dinner
14:00-16:00	Lecture 2: The impact of corruption on the development of state and society Lecturer Khachick Harutyunyan Moderator Anna Avanesova
16:30-18:00	Lecture 3: The impact of corruption on the development of state and society Lecturer Khachik Harutyunyan Moderator Anna Avanesova
18:30 – 19:00	Walking to the hotel
19:00 – 20:30	Welcoming party
20:30 – 21:30	Psychological training Meet the participants of the School
Tuesday 28.02.2017	
08:00 – 09:00	Breakfast
09:30	Transfer to University
10:00 – 11:30	Lecture 4: International legal norms on the fight against corruption (UN Convention, OECD, etc) Lecturer Thomas Kruessmann
11:30 – 11:45	Coffee-break
11:45-13:00	Group work Moderator Thomas Kruessmann
13:00-14:00	Dinner
14:00-16:00	Lecture 5: Historical overview of corruption in different countries of the world and the fight against it Lecturer Karen Kagramanov Moderator Victoria Savina
16:30- 18:00	Group work Moderator Thomas Kruessmann

18:30 – 19:30	Supper
19:30 – 21:00	Training. Business game.

Wednesday, 01.03.2017	
08:00 – 09:00	Breakfast
09:30 -10:00	Transfer to University
10:00 – 11:30	Lecture 6: Corruption as a criminal offense Lecturer Artur Sarukhanyan Moderator Anna Avanesova
11:30-11:45	Coffee-break
11:45-13:00	Lecture 7: Corruption as a criminal offense Lecturer Artur Sarukhanyan Moderator Anna Avanesova
13:00-14:00	Dinner
14:00-15:30	Group work (Moderator Thomas Kruessmann)
15:30-16:30	Presentation of results of group work
16:45-18:00	Visit to the Museum
18:00-19:00	Supper
19:30-21:30	Individual work

Thursday, 02.03.2017	
08:00-09:00	Breakfast
09:30-10:00	Transfer to University
10:00-11:30	Lecture 8: Formation of civil society as a measure of prevention of corruption in the state Lecturer Anatoly Kisilev Moderator Anna Avanesova
11:30-11:45	Coffee-break
11:45-13:00	Lecture 9: Formation of civil society as a measure of prevention of corruption in the state (II) Lecturer Anatoly Kisilev Moderator Anna Avanesova
13:00-14:00	Dinner
14:00-16:00	Group work (Moderator Thomas Kruessmann)
16:30- 20:00	Tour of historical sites of Stavropol (Roman Nutrihin)
20:00-21:00	Supper

Friday, 03.03.2016	
08:00 – 09:00	Breakfast
9:00- 9: 30	Transfer to University
9:30-11:30	Lecture 10: Measures to combat and prevent corruption in the modern European states.

	Lecturer Victoria Savina Moderator Anna Avanesova
11:30-11:45	Coffee-break
11:45-13:00	Lecture 11: Measures to combat and prevent corruption in the modern European states. Lecturer Victoria Savina Moderator Anna Avanesova
13:00-14:00	Dinner
14:00-16:00	Group work (Moderator Anna Avanesova)
16:30-18:00	Presentation of projects (Moderator Thomas Kruessmann)
18:00-20:00	Farewell party

<u>Saturday 04.03.2017</u>	
7:00	Departure to village Dombay Karachay-Cherkess Republic
12:00-13:00	Arrival in Dombay, lunch
14:00-18:00	Mountain walk,
19:00	Supper
21:00	Business Game

<u>Sunday 05.03.2017</u>	
8:00-9:00	Breakfast
10:00-12:00	Walking tour
12:00-13:00	Dinner
13:00-15:00	Free time
16:00	Departure to Stavropol
21:00	Arrival in Stavropol

<u>Monday 06.03.2017</u>	
8:00-9:00	Breakfast
10:00-12:00	Check-out

LECTURE 1.CONCEPT AND TYPES OF CORRUPTION

Khachik Harutyunyan- Anti-corruption Expert, Transparency International Anti-corruption Center Public Organization (TI Armenia).

Corruption-concept and types

Anti-corruption Expert-Khachik Harutyunyan

Content

- Etymology and history
- Definition (definitions)
- Concept of corruption
- Interrelated concepts
- Types of corruption

Epilogue

- Corruption is an outcome-a reflection of a country's legal, economic, cultural and political institutions.
- Jacob Svensson

Etymology and history

- Corruptere in Latin meaning decay, putrefaction
- Bo Rothstein and Aiysha Varraich (Quality of Governance Institute, University of Gottenburg)
- The underlying meaning of the concept that is understood universally, no matter what culture or society, is the one forwarded by religion – where morality and corruption are two sides of the same coin (two binary products).
- Mariiione Genaux (University of Trier)
- “corruption did not belong to the legal vocabulary of the Ancient Regime but to a politico-moral lexical field mainly drawn from the Bible... ‘Corruptio’ and ‘corruption’ are in effect biblical words whose function is central to the Holy Book”.
- Unjust power holder is corrupt, therefore corruption is injustice.

Etymology and history

- Machiavelli conceptualised corruption as the greatest ill in governance capable of bringing down an entire state.
- Heidenheimer and Johnston
- “Any attempt to analyse the concept of corruption must contend with the fact that in English and other languages the word corruption has a history of vastly different meanings and connotations.”
- In Urdu the word for corruption is “be-imaan”, literally translating to ‘without conscience
- ‘ All languages may not share the same or similar term for corruption, however the underlying concept and the general understanding is what has remained the ‘red thread’ within societies.

Etymology and history

- Gunnar Myrdal (Nobel prize laureate in Economics)- the term corruption was “...almost taboo as a research topic and is rarely mentioned in scholarly discussions of the problems of government and planning.” (Myrdal 1968,)
- Arnold Heidenheimer’s *Political Corruption: Readings in Comparative Analysis*
- The final straw that helped break the taboo was Heidenheimer’s application of this newly established framework in his analysis of the United States of America during the Watergate period.

Definition (s)

- Corruption is the abuse of entrusted power for private gain. (Transparency International)
- Corruption = Monopoly Power + Discretion – Accountability (Robert Klitgaard);
- Corruption= (Monopoly Power + Discretion) – (Accountability + Integrity + Transparency) - UNDP
- “no precise definition can be found which applies to all forms, types and degrees of corruption, or which would be acceptable universally as covering all acts which are considered in every jurisdiction as contributing to corruption.” –Pearson for Council of Europe

Concept of corruption

- Serious lack of conceptual precision (Fukuyama)
- Two theories of corruption
- Principal and Agent (Susanne Rose-Ackerman and Robert Klitgaard)
- Two key assumptions:
 - 1) that a goal conflict exists between so-called *principals* (who are typically assumed to embody the public interest) and *agents* (who are assumed to have a preference in favor of corrupt transactions insofar the benefits of such transactions outweigh the costs), and; 2) that agents have more information than the principals, which results in an *information asymmetry* between the two groups of actors (Klitgaard 1988; Williams 1999).

Concept of corruption

- Principal-Agent (contin.)
- Thus, in short, from the perspective of the principal-agent framework, corruption occurs when an agent betrays the principal's interest in the pursuit of his or her own self-interest. This betrayal is in turn made possible by the information asymmetry between the two groups of actors. (Persson, Rothstein and Teorell)
- How to deal with corruption in this model?
- Through control instruments that decrease the level of discretion among agents;
- limit the monopoly of agents, and;
- increase the level of accountability in the system (Klitgaard 1988).

Concept of corruption

- What is the problem with this theory?
- What if Agent is also not interested
- By implication, if the supposed principal(s) are also corrupt and do, as such, not act in the interest of the public good, the principal-agent framework becomes useless as an analytical tool since there will simply be no actors willing to monitor and punish corrupt behavior (Andvig & Fjeldstad 2001)

Concept of corruption

- Second theory: Collective Action
- Collective action theories do not necessarily question the potential relevance of effective monitoring and punishment regimes as means to curb corruption such as suggested by the principal-agent framework.
- Rather, they question the underlying assumption that every society holds at least one group of actors willing to act like “principals” and, as such, *enforce* such regimes.

Interrelated concepts

- Clientilism
- Patronage
- Patrimonialism
- State Capture
- Particularism

Clientilism

- *“political clientelism describes the distribution of selective benefits to individuals or clearly defined groups in exchange for political support”* (Hopkin 2006, 2)
- 4 characteristics
- Dyadic relationships-Patron-Client: The client typically gains access to these resources by showing political support – many a times in exchange for ones’ vote or otherwise such as helping improve the patron’s reputation.
- Contingency-Treciprocity – i.e. the quid pro quo nature (tit for tat) of the relationship (Roniger 2006, Hicken 2011, Kettering 2006).
- Hierarchy-Somebody with higher status (the patron) takes advantage of his authority and resources to protect and benefit somebody with an inferior status (the client) who reciprocates with support and services.
- Iteration-Iteration is the one aspect that sets clientelism apart from other exchange relationships that relates to corruption. The relationship between the client and patron is an on-going one. Effectively each party has the opportunity to establish its reliability. (Bo Rothstein and Aiysha Varaich)

Patronage

- patronage is a particularistic exchange that takes place between patron and client, where the object of exchange is that of public office, i.e. patron offers public office to the client in exchange for electoral support/political allegiance/etc. (Bo Rothstein and Aiysha Varaich)
- Distinction is the OBJECT

Patrimonialism

- ...the essential feature of patrimonial regimes [is]...the exchange of resources (jobs, promotions, titles, contracts, licenses, immunity from the law, etc.) between key figures in government and strategically located individuals: trade union leaders, businessmen, community leaders, and so forth. In return for these resources, the government or heads of state receive economic and political support. The emphasis is on the personal nature of the exchange: virtually all the analyses that have resorted to the term have been informed, either explicitly or implicitly, by the model of the patron-client relationship.
- Theobald 1982

State capture

- The state is captured through policy mechanisms being dictated by and in favour of the private actors (firms, local elites) at a significant social cost; effectively the private sphere dictates the public sphere.
- Privatization: "...powerful firms have been able to capture the state and collude with public officials to extract rents through the manipulation of state power" (Hellman et al. 2000,

Particularism

- "the ability of policymakers to further their careers by catering to narrow interests rather than to broader national platforms."
- *Alejandro Gaviria; Ugo Panizza; Ernesto Stein; Jessica Seddon*
- In a political system governed by particularism, sooner or later, the decisive factor of politics becomes religious and ethnic identity and the interests of the communities defined by these bonds.

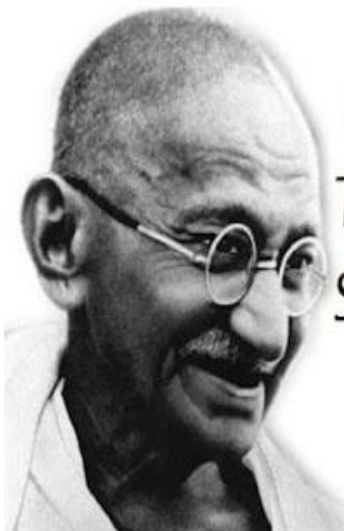
Types of corruption

- Grand corruption consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good.
- Petty corruption refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.
- Political corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.

Types of corruption

- **Systemic corruption** - occurs when corruption is an integrated and essential aspect of the economic, social, and political system.
- **Sporadic corruption** is the opposite of systemic corruption.

Thank you



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LECTURE 2-3. THE IMPACT OF CORRUPTION ON THE DEVELOPMENT OF STATE AND SOCIETY

Khachik Harutyunyan- Anti-corruption Expert, Transparency International Anti-corruption Center Public Organization (TI Armenia).



Impact of corruption

Anti-corruption Expert-Khachik Harutyunyan

TRANSPARENCY
INTERNATIONAL
anticorruption center



Content

- Impact on growth
- Impact on entrepreneurs
- Impact on inequality
- Impact on Rule of Law
- Democracy?

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Epilogue

- Poor countries are poor because those who have power make choices that create poverty. They get it wrong not by mistake or ignorance but on purpose.
- Daron Acemoglu and James Robinson (Why nations fail)

Impact on growth

- Two theories: Corruption is good
- Corruption may be economically justified as it provides opportunities to bypass inefficient regulations and red tape, and allows the private sector to correct government failures and inefficiency. (Leff, 1964; Huntington, 1968)
- Corruption is consistently detrimental in countries where institutions are effective, it can potentially increase productivity and entrepreneurship in highly regulated countries that do not have effective government institutions and governance systems (Houston 2007; Méon and Weill 2008)

Impact on growth

- Second theory: corruption is bad
- Economists have long identified a number of channels through which corruption may affect economic growth (Mauro 1995; Tanzi 1997; Gupta 2000; Gyimah-Brempong 2001, among others):
- Corruption distorts incentives and market forces, leading to misallocation of resources.
- Corruption diverts talent and resources, including human resources, towards "lucrative" rent-seeking activities, such as defence, rather than productive activities.
- Corruption acts as an inefficient tax on business, ultimately raising production costs and reducing the profitability of investments.
- Corruption may also decrease the productivity of investments by reducing the quality of resources. For example, by undermining the quality and quantity of health and education services, corruption decreases a country's human capital.
- Rent-seeking behaviour is also likely to create inefficiencies, fuelling waste of resources and undermining the efficiency of public expenditure.

Impact on growth

- cross-country data indicate that corruption is consistently correlated with lower growth rates, GDP per capita, economic equality, as well as lower levels of human development (Rothstein and Holmberg 2011).
- 2011 systematic review of available evidence of the effect of corruption on economic growth confirms that corruption has a direct and negative effect on growth in low income countries (Ugur and Dasgupta 2011).
- Corruption lowers capital productivity and constitutes an important element of investors' decision-making processes. According to Lambsdorff's findings, an increase in corruption by one point on a scale from 0 (highly corrupt) to 10 (highly clean) is found to lower productivity by 4 per cent of GDP and decrease net annual capital inflows by 0.5 per cent of GDP (Lambsdorff 2003).
- TAXES: World Bank found that countries with high levels of corruption tend to collect less tax revenues, suggesting that only relatively incorrupt governments can sustain high tax rates (as measured by the tax to GDP ratio) (Friedman et al. 1999).
- TAXES: Entrepreneurs tend to go underground and shadow economy is being enlarged

Impact on growth

- TAXES: Corruption not only lowers the tax to GDP ratio, but also causes long-term damage to the economy by increasing the size of the underground economy, distorting the tax structure and corroding the tax morality of taxpayers, which is likely to further reduce the tax revenue base of a country (Attila 2008; Nawaz 2010).
- INVESTMENT: Empirical evidence suggests that corruption reduces the ratio of investment to GDP, lowers investment and retards economic growth to a significant extent (Mauro 1995).

Impact on growth

- Corruption is also perceived to increase the costs of investment. A survey carried out by Control Risks and Simmons & Simmons in 2006 reveals that a quarter of its respondents claimed that corruption increased their costs of international investment by up to 5 per cent, and nearly 8 per cent of respondents claimed that it increased their costs by 50 per cent (Control Risks and Simmons & Simmons 2006).

Impact on entrepreneurs

- There is a strong business case for fighting corruption. At the company level, corruption raises costs, introduces uncertainties, reputational risks and vulnerability to extortion. It depresses a company's valuations, makes access to capital more expensive and undermines fair competition (Transparency International 2009). While facilitation payments typically consist of small amounts, they can add up to substantial amounts when aggregated at the company, national or global level.
- Companies also lose significant business opportunities because of corruption risks. A 2008 PricewaterhouseCoopers report, based on a survey of 390 senior executives in 14 countries, confirms the high costs that businesses pay for corruption in terms of market distortion, reputational damages, legal risks and deterioration of the company's internal structure. Almost 45 per cent of respondents said they had not entered a specific market or pursued a particular opportunity because of corruption risks,

Impact on Entrepreneurs

- A few studies have found that corruption increases the time spent by managers on dealing with red tape and hampers companies' growth, not least because companies that pay bribes are likely to spend more management time (and not less) negotiating regulations with bureaucrats, as corrupt officials tend to target their demands on companies that have paid bribes before (Kaufman and Wei 1999; Fisman and Svensson 2007).
- demand for facilitation payments is likely to grow in future as the culture of paying bribes spreads across the company, and the firm gains a reputation for paying bribes when solicited.

Impact on entrepreneurs

- Empirical evidence also indicates that corruption may have a negative, indirect impact on firms, through its effects on many factors affecting firms' growth and productivity through its effects on factors such as investment patterns, efficiency, and innovation:
- Corruption is likely to negatively affect a firm's growth. For example, using a dataset on bribe payment by Ugandan firms, a study finds that bribes are negatively correlated with company growth and that bribery has a much greater negative impact on growth than taxation (Fisman and Svenson 2007).
- Corruption can significantly affect a firm's investment patterns. According to a 2008 cross-regional study, corruption is the most important determinant for investment in transition countries. Among the variables included in the regressions are: firm size, firm ownership, trade orientation, industry, GDP growth, inflation and openness to trade (Asiedu and Freeman 2009).

Impact on Entrepreneurs

- Controlling corruption can also potentially have a positive impact on product innovation. Using World Bank data on Indian firms in 2005, a 2011 paper finds that corruption has an impact on company level resource allocation and diminishes the probability of new product introduction (Starosta de Waldemar 2010).
- Corruption may also have an impact on a firm's efficiency. A 2006 study exploring the impact of corruption on firms' efficiency in 13 Latin American countries shows that more-corrupt countries have less efficient firms that need more input (that is, more labour) to produce a given level of output (Rossi and Dal Bo 2006). The study suggests that corruption diverts managerial efforts away from the supervision and coordination of the productive process, compelling firms to employ more factors in order to make up for the poorer coordination and related inefficiency.

Impact on entrepreneurs

- Corruption is also likely to increase exit rates. Using panel data, a 2009 paper, testing (among other areas of the business climate) the importance of corruption and cronyism on firm exit in 27 Eastern Europe and Central Asian countries, indicates that in places with higher corruption exit rates are also higher, with bribes and red tape found to raise the probability of exit (Hallward-Driemeier 2009).

Patrimonialism

- dependent variables measuring human development are negatively affected by corruption, with more-corrupt countries tending to have lower levels of human development (Akçay 2006).
- *Corruption creates a biased tax system that affects income distribution*

Inequality

- International Monetary Fund (IMF) working paper in 1998 based on cross-country regression analysis for 1980-97, establishes the considerable impact of corruption on income inequality, with a one standard deviation point increase in corruption resulting in an income reduction for the poor of 7.8 percentage points a year (Gupta et al. 2002). The paper argues that corruption increases income inequality through lower economic growth, biased tax systems favouring the wealthy and well connected, lower levels and effectiveness of social spending, and unequal access to education and public services.
- corruption is a hindrance to sustainable development.
- Corruption is also positively correlated to income inequality as measured by the Gini coefficient. Using panel data from African countries, a study finds that a one point increase in the corruption index is associated with a seven point increase in the Gini coefficient of income inequality (Gyimah-Brempong 2001). This holds true for developed countries. A study looking at the effect of corruption on income inequality and growth using data from US states finds robust evidence that an increase in corruption increases the Gini coefficient of income inequality and decreases income growth (Dincer and Gunalp 2005). This can be explained by the fact that the benefits from corruption are likely to flow to better connected individuals and groups who typically belong to higher income groups. Better connected individuals are more likely to get the most profitable government projects, undermining the government's ability to ensure equitable distribution of resources.

Inequality

- The state is captured through policy mechanisms being dictated by and in favour of the private actors (firms, local elites) at a significant social cost; effectively the private sphere dictates the public sphere.
- Privatization: "...powerful firms have been able to capture the state and collude with public officials to extract rents through the manipulation of state power" (Hellman et al. 2000,

Inequality

- **POVERTY:** Corruption is not only bad for economic growth and business operations. It also hurts people, especially the poor. It reduces the resources available for other uses, including the financing of social spending, which primarily affects the poor. It can also result in poor targeting and undermine the redistributive potential of social programmes. As already mentioned, rent-seeking and corruption may affect the allocation of public resources by distorting decision-makers' incentives and diverting public spending towards lucrative projects and activities. Corruption in social programmes may also reduce the potential impact of social welfare programmes on poverty alleviation.

Inequality

- **PUBLIC SERVICES:** Corruption also has a negative impact on the quality and quantity of public services, in the education and health sectors in particular, by reducing the effectiveness of public spending. In the Philippines, research indicates that corruption affects education outcomes through reducing test scores, lowering school rankings and reducing satisfaction ratings. Corruption has also been shown to lower child immunisation rates and delay the vaccination of newborns. Related impacts from "corrupted" public health services include the delayed treatment of patients, discouraged use of clinics, reduced satisfaction of households with services received and increased waiting times for patients (Azfar and Gurgur 2005). A study conducted in Indonesia finds that public spending appears to have a negligible effect on school enrolment in highly corrupt regions, but a statistically significant, positive and relatively large effect in less corrupt regions. This indicates that investing more public funds into the education system without effectively and simultaneously addressing corruption is unlikely to bring about the intended results (Suryadarma 2012).

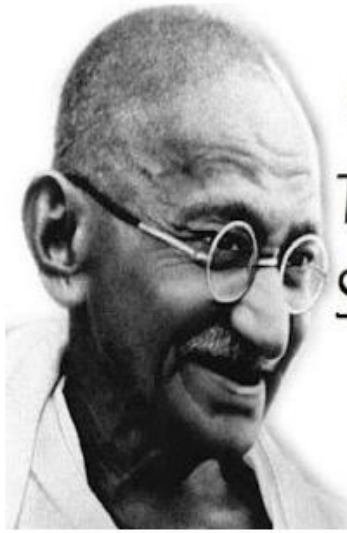
Rule of Law

- Broad consensus that perceptions and experience of corruption erode citizens' confidence in public institutions and political processes, undermine social trust and the legitimacy of state institutions, and ultimately have a corrosive impact on the rule of law and democratic processes (Andreev 2008).

Democracy

- Prior or after?
- Correlation or absence of it?

Thank you



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LECTURE 4. INTERNATIONAL LEGAL NORMS ON THE FIGHT AGAINST CORRUPTION
(UN CONVENTION, OECD, ETC)

Thomas Krüßmann — Professor of Criminal Law, Academic Supervisor of the Winter School (Austria)



EUROPEAN INTEGRATION AND ANTI-CORRUPTION STUDIES IN THE CAUCASUS

North Caucasus Federal
University

February / March 2017

Module 1

The UNCAC anti-corruption inventory

UNCAC Introduction

In substantive terms, UNCAC is currently the most important convention on anti-corruption. See https://www.unodc.org/documents/treaties/UNCAC/Status-Map/UNCAC_Status_Map_Current.pdf

- It builds upon many regional initiatives and puts into law some of the foremost thinking on anti-corruption.
- Central is its emphasis on **prevention**.
- The wide scope of obligations to criminalise (**repression**) is not unproblematic. It is criticised for representing a Western-type of thinking that presupposes a functioning rule of law and meaningful enforcement capacities.
- It overrides the fragmented nature of **international legal co-operation** and adopts, for the sake of fighting corruption, a binding framework that comes into effect by default. It gives special emphasis to international co-operation, in particular for **asset recovery**.

Recap: The way leading to UNCAC

1972 Watergate Scandal → 1975 FCPA → „level playing field“ argument → 1996 OAS Inter-American Convention against Corruption → 1999 OECD Anti-Bribery Convention

Council of Europe (CoE) 1999 Criminal Law Convention + Civil Law Convention on Corruption → EU action

OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) + ADB / OECD Anti-Corruption Initiative for Asia and the Pacific

Recap: The way leading to UNCAC (2)

1999 Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption + 2010 UK Anti-Bribery Act

2003 African Union Convention on Preventing and Combating Corruption

Principle 10 of the 2000 UN Global Compact + UN Millenium Development Goals → UN Sustainable Development Goals

== >> all leading to the 2003 UN Convention against Corruption (entered into force 14 December 2005)

UNCAC Overview

Please review the Ferguson textbook pp. I-53 – I-58.

For a specialised approach to studying UNCAC, please see the UNCAC Academic Course, available at
<http://www.track.unodc.org/Education/Pages/AcademicCourse.aspx>

In addition, please take time to acquaint yourself with the UNODC TRACK website in its entirety.
<http://www.track.unodc.org/Pages/home.aspx>

	<u>OAS Convention</u>	<u>CoE 20 Guiding Principles</u>	<u>OECD Convention</u>	<u>EU Joint Action</u>	<u>CoE Criminal / Civil Law Conventions</u>	<u>Commonwealth Framework</u>	<u>ABD / OECD Asia Initiative</u>	<u>UNCAC</u>	<u>African Union Convention</u>
CRIMINALIZATION									
<u>Bribing public domestic officials</u>	•	•			•	•	•	•	•
<u>Bribing public foreign officials</u>	•		•		•	•	•	•	
<u>Bribery in the private sector</u>				•	•	•	•	•	•
<u>Trading in influence</u>					•			•	
<u>Illicit enrichment</u>	•							•	•
<u>Criminality of legal persons</u>			•	•	•		•	•	
COMBATING CORRUPTION									
<u>Specialised Anti- Corruption Authority¹</u>					•			•	
<u>Inter-agency cooperation</u>					•		•	•	•
<u>International co- operation</u>			•		•	•	•	•	•
<u>Whistleblowing</u>		•			•	•	•	•	•
<u>Asset recovery and confiscation</u>							•	•	
<u>Piercing bank secrecy</u>	•				•		•	•	•
<u>Connections to organized crime</u>	•							See Art. 8 UNTOC	

	<u>OAS Convention</u>	<u>CoE 20 Guiding Principles</u>	<u>OECD Convention</u>	<u>EU Joint Action</u>	<u>CoE Criminal / Civil Law Conventions</u>	<u>Commonwealth Framework</u>	<u>ABD / OECD Asia Initiative</u>	<u>UNCAC</u>	<u>African Union Convention</u>
<u>In particular arms trade</u>						•			
<u>Laundering the proceeds of corruption</u>					•	•	•	•	•
LEGAL STEPS TOWARDS PREVENTION									
<u>Transparency in hiring</u>	•						•	•	•
<u>Transparency in procurement rules</u>	•					•	•	•	
<u>Auditing²</u>		•	•			•	•	•	
<u>Codes of conduct</u>						•	•		
<u>Declaration of assets and income</u>	•						•	•	
<u>Strengthening civil society</u>		•				•	•	•	•
POST- RATIFICATION MONITORING			•		•	•	•	?	?

UNCAC selected topics

Repression: The criminalisation of bribery

Criminalisation of bribery

Some fundamental distinctions:

active (offering a bribe) vs. passive (accepting a bribe)

- Which type of crime according to national law? In Germany: *abstraktes Gefährdungsdelikat*
- What relationship to the actual wrongdoing? Aiding and abetting by the bribe-giver? Abuse of office by the bribe-taker? Multiple criminal liability?

bribe in the public sector vs. bribe in the private sector

- Often treated separately in criminal codes: *ВЗЯТОЧНИЧЕСТВО* vs. *коммерческий подкуп*
- Different legal goods (*правовой интерес*) served. Which ones?

Criminalisation of bribery (2)

Benefit offered for the execution of office vs. benefit offered for a specific wrongdoing

- Why is this distinction important? How do you understand the term „facilitation payment“? In German „anfüttern“.
- Does it have relevance for bribery in the private sector?
- In the public sector there is a need to clarify the doctrinal relationship between the two situations. Your idea?

What is the connection between the benefit offered and the effect on the decision-maker?

- In German doctrinal thinking central role of *Unrechtsvereinbarung* (сговор). Mutuality or a contract-type agreement is not required. Common understanding why the benefit is offered is sufficient. But courts require some limitations for socially adequate benefits. This is the core problem!

Criminalisation of bribery via OECD Convention

Article 1: The Offence of Bribery of Foreign Public Officials

1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.
2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.

Criminalisation of bribery via OECD Convention (2)

Note:

- The Convention uses the phrase „in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.“ Does this address the problem of offering a benefit for the execution of office?
- The element of *сробоp* is expressed through the phrase „in order that“.

Criminalisation of bribery via OECD Convention (3)

In order to deepen your understanding of OECD approaches, please see the website of the **OECD Centre for Anti-Corruption Compliance**, available at www.oecd.org/daf/anti-bribery.

The **OECD Working Group on Bribery** is tasked with performing peer reviews. There are two types of peer-reviews performed:

- 1) Monitoring of the implementation of the Anti-Bribery Convention. No monitoring of Ukraine has yet been done.
- 2) Monitoring based on the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) Istanbul Action Plan against Corruption. There have been 3 rounds of monitoring so far plus a Progress Update from September 2016 (see Moodle).

Outside class, please take time to watch the video „Corruption hunters. Investigating and prosecuting financial crime“, available at the OECD website

Criminalisation of bribery via CoE Criminal Law Convention

Article 2 - Active bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

Article 3 - Passive bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Criminalisation of bribery via CoE Criminal Law Convention (2)

Article 7 - Active bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

Article 8 - Passive bribery in the private sector

(...)

Criminalisation of bribery via CoE Criminal Law Convention (3)

Note:

- The CoE Convention distinguishes between bribery in the public and the private sector. The words „exercise of functions“ vs. „breach of duties“ opens up the question which legal interests should be served. Where do you find additional clues for interpretation?
- By referring to „acting in the exercise of functions“ in the public sphere, the CoE is not clear about the line between the execution of office and specific wrongdoing.
- See the theme „Incriminations“ in the GRECO Third Round Evaluation Reports.

Criminalisation via UNCAC

Preliminary observations:

- Issues of criminalisation are treated in UNCAC only in chapter 3, while chapter 2 is devoted to preventive measures.
- UNCAC distinguishes between mandatory criminalisation („shall adopt“) and recommended criminalisation („shall consider adopting“). Sometimes further qualifications are added (e.g. Art. 20 Illicit enrichment: „Subject to its constitution and the fundamental principles of its legal system, ...“).
- UNCAC significantly widens the scope of criminalisation. It is not limited to bribery, but includes also other types of corruption.

Criminalisation via UNCAC (2)

- Art. 15: Bribery of national public officials
- Art. 16: Bribery of foreign public officials
- Art. 17: Embezzlement, misappropriation or other diversion of property by a public official
- Art. 18: Trading in influence
- Art. 19: Abuse of functions
- Art. 20: Illicit enrichment
- Art. 21: Bribery in the private sector
- Art. 22: Embezzlement of property in the private sector
- Art. 23: Laundering of proceeds of crime
- Art. 26: Liability of legal persons

Criminalisation via UNCAC (3)

Article 15. Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) 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;

(b) 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

Criminalisation via UNCAC (4)

Article 21. Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of 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;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by 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.

Criminalisation via UNCAC (5)

Note:

- UNCAC is „softer“ on bribery in the private sector. Why?
- In criminalising bribery, UNCAC basically mirrors the CoE approach (i.e. no bribery for mere execution of office). When it comes to bribes for specific wrongdoing, it uses a slightly different terminology: for public officials „exercise of functions“ vs. „exercise of official duties“. Relevant?
- Both conventions use the same terminology for the private sector: „in breach of duties“. Could this possibly have a legal relevance? Which legal interest could be served by describing the violation of internal company duties as the central wrongdoing? Which legal interests are protected?

Criminalisation via UNCAC (6)

Note:

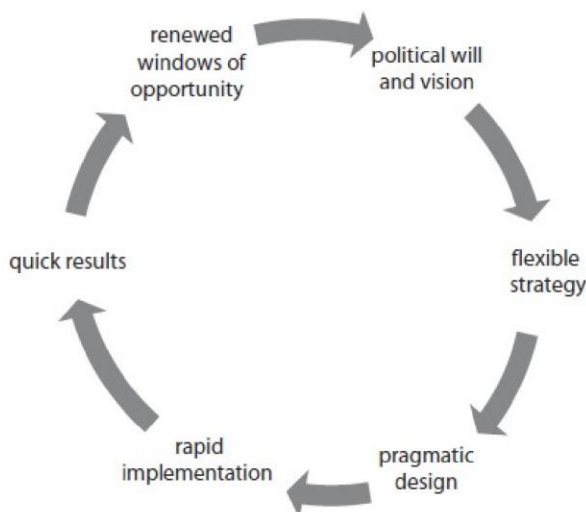
- Compared to the OECD Anti-Bribery Convention and the GRECO evaluations, the monitoring of UNCAC was slow to emerge. It was only in 2009 that the Conference of State Parties agreed on a peer-review mechanism.
- State parties make self-assessments which will then go into evaluation. Ukraine entered the first review cycle (2010-2015). In particular, implementation of chapter III obligations was assessed during the first year.

For the UNCAC self-assessment of Ukraine, see
<https://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=UKR> The Executive Summary and the full report are also available on Moodle.

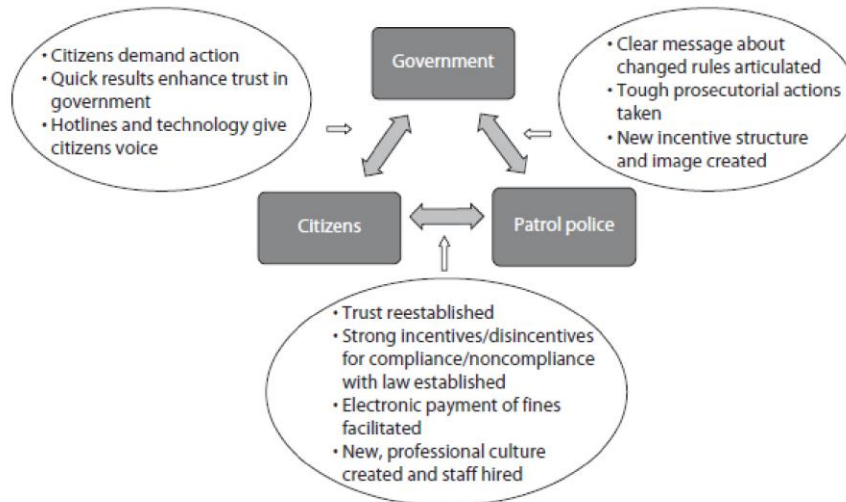
Module 2

UNCAC in context: Laboratories of innovation in the world

Innovative approaches: The Georgian strategy



The Georgian strategy (2)



The Georgian strategy (3)

MINISTRY OF
INTERNAL AFFAIRS

Please consider the interview with the then-
President Saakashvili:

<http://www.npr.org/templates/story/story.php?storyId=4849472>

According to the World Bank, 15 % of the new Georgian traffic police is made up of women. However, there was no explicit feminization strategy behind the Georgian reforms.

Innovative approaches: Feminization strategies

Meanwhile... a number of **Latin American countries** have resorted to full-blown feminization of their traffic police.

The leading case is Peru:

- Back in 1998 and based on World Bank studies, the Government of President Fujimori agreed that female police officers were „more honest, disciplined, hardworking, and trustworthy than their male counterparts.“
- By 2009, the feminization of the so-called transit police in Peru was completed.

Feminization strategies (2)

- Of the 2.500 Lima transit police officers, 93 % were female by 2009. This included both rank-and-file members and officials and administrators.
- Of the entire National Police of Peru (PNP), 11 % were female by 2009.



See Sabrina Karim in Americas Quarterly,
Summer 2011

(www.americasquarterly.org/node/2802)

Feminization strategies (3)

Another example is the so-called **Black Mambas Anti-Poaching Unit**.

Founded in 2013, this is a mostly-female unit of park rangers. Technically, the Black Mambas are no police unit, but an NGO. In 2015, they were awarded the UN Champions of the Earth Award.

See

<https://www.youtube.com/watch?v=ePwaOq0ZdZc>



Feminization strategies (4)

Anecdotal evidence suggests that women are less prone to corruption than men. Since approximately 1999, a large number of researchers are trying to test this hypothesis.

The **U4 Brief of May 2015** (<http://www.u4.no/publications/are-men-and-women-equally-corrupt/>) summarizes the findings in three categories:

1) Are there gender differences in attitudes towards corruption?

- Survey responses suggest a lower tolerance of women towards corrupt practices. True, survey responses may not reflect real life behaviour. However, field experiments seem to confirm this finding.

Feminization strategies (5)

2) Are there gender differences in accepting bribes?

- With some exceptions that seem to respond to contextual factors, there is no significant difference between men and women.
- Women behave more opportunistically: they may accept the bribe, but don't reciprocate with a corrupt favour.
- Women are less likely to accept bribes than men when there is a perceived risk of sanctions.

3) Are there gender differences in offering bribes?

- Men are more likely to offer bribes than women.
- The value of bribes offered by men tends to be higher.
- Both men and women offer higher bribes to men than to women.

Feminization strategies (6)

The U4 summary of findings boils down to two observations that seem particularly relevant from a programme development perspective.

1) **Risk sensitivity.** As women are more risk averse, the standard repressive approach may work better on women, as long as they hold low-level positions. Female managers, on the other hand, have been shown to be no more risk averse than male counterparts.

2) **Reciprocity.** Since men tend to reciprocate more than women, women may be a particularly good choice for positions like traffic police inspectors or auditors, where there is no pre-existing relationship. Men, on the other hand, may require particularly stringent internal gift policies, as they are more prone to reciprocate favours.

Feminization strategies (7)

For feminization strategies this means:

- Feminization of police forces may create only a short-term effect. As corruption happens mostly in insider networks, it will take a while until women become insiders.
- The supposedly higher degree of uncorruptability of women in police forces may be a result of their discrimination over a long period. Having reached a position of authority, they may develop a different moral ethos than men.

„We were hired to clean up the streets and we have done so. Drivers may insult us, but they don't offer bribes.“ (Karim, 2011)

Feminization strategies (8)

- Feminization of police forces can significantly reduce corruption on the rank-and-file level, but high-level corruption often persists.

„Maybe 1 percent of women take bribes, but when one female takes a bribe, we are all denounced as corrupt, when the real corrupt ones are our supervisors.“ (Karim 2011)

A **survey experiment of 600 Ugandan police officers** found that there was no measurable difference in attitudes to corruption between men and women. The officers had to comment on fictitious cases of police misconduct. See Wagner / Rieger / Bedi / Hout (January 2016) at https://www.iss.nl/library/library_news_detail/news/5209-are-women-better-police-officers-evidence-from-survey-experiments-in-uganda-by-n-wagner-m-rieger-a-bedi-w-hout/

LECTURE 5. HISTORICAL OVERVIEW OF CORRUPTION IN DIFFERENT COUNTRIES OF
THE WORLD AND THE FIGHT AGAINST IT

Karen Kagramanov - Director of language and Multicultural School, PhD

Historic overview of corruption in different countries and ways to fight it

Gifts for priests or chiefs

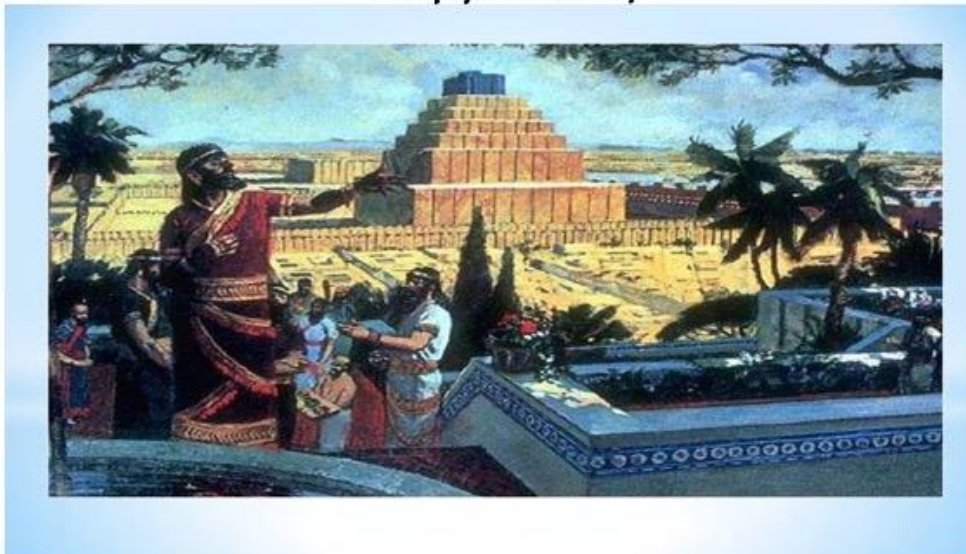
Подношения жрецам и вождям



The five books of Moses Пятикнижие Моисея



Sumerian King Urukagina (Шумерский царь Урукагина)



Some people lost their hand or nose for taking
bribes
(За взяточничество отрубали руку или нос)



Hammurabi (Хаммурапи)



In Hammurabi's time a corrupted judge had to pay
12 times the value of the issue in question
(Во времена Хаммурапи коррумпированный судья должен
был уплатить 12-кратную стоимость)



Watching and reporting on bribe-takers was the
most efficient way of fighting corruption in ancient
India



The Judgement of Cambyses (flaying of the corrupt Persian judge Sisympes)



Ivan IV the Terrible



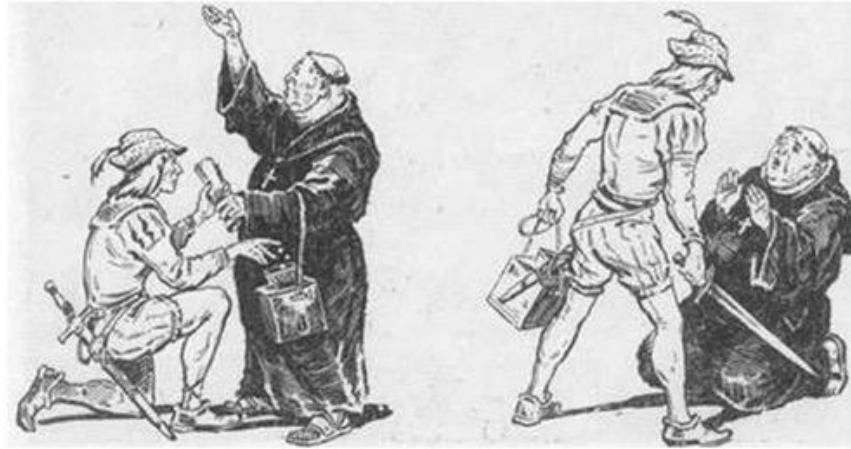
Ivan the Terrible's methods of fighting corruption



Peter the Great



Indulgence



Panama scandal



Presenting a gift



Big corruption



Grain supplies from Egypt



Famine in ancient Greece



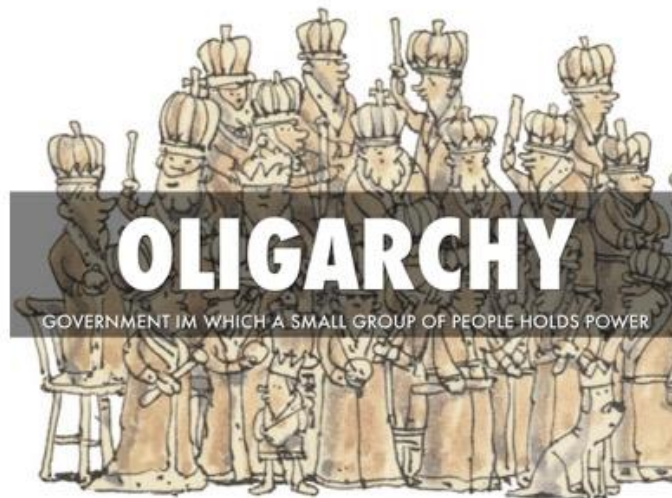
Trading metal in Sicily



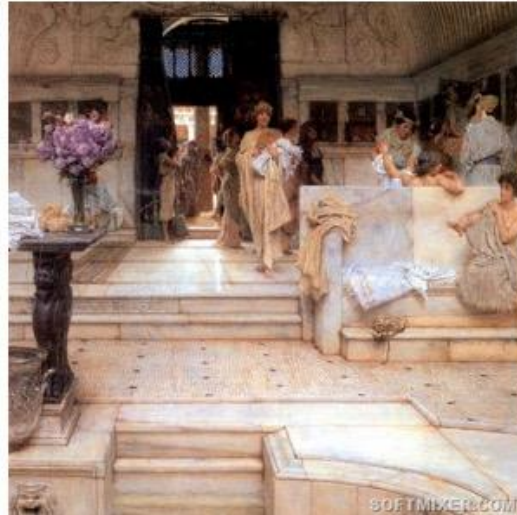
Ancient Carthage (Древний Карфаген)



Hannibal



Bath-houses for oligarchy in Carthage



Murder of Tiberius Gracchus

Убийство Тиберия Гракха



Murder of Julius Ceasar



Money for bribe-takers in India



Corruptour



Hong Kong



Execution of corrupt officials in China



VIP number on a garbage transporter



LECTURE 6-7. CORRUPTION AS A CRIMINAL OFFENSE

Artur Sarukhanyan-Professor of Criminal Law



The advantages of the new law

- Defining the organizational framework for the anti-corruption action
- Compiling a list of corruption prevention measures
- Defining principal focus areas for state authorities to improve the anti-corruption efficiency
- Law's introduction on the notion "conflict of interest of state and municipal service"

Deficiencies of the federal anti-corruption legislation

- The definition of corruption :
 - It's a selective list of official malfeasance (abuse of authority, giving and accepting bribes);
 - The other illegal use of official position by an individual
- The abuse of "authority" is detailed
- The legitimacy of such a list of constituent elements of commercial bribery and abuse of power not seen as official malfeasance is questionable
- Why the goal of committing corruption crimes essentially narrowed only to gain???

I wanna be popular



Likes, Comments &
FOLLOWERS

МЕЖДУНАРОДНЫЕ АКТЫ ПО ПРОТИВОДЕЙСТВИЮ КОРРУПЦИИ

- 1. Конвенция ООН против коррупции (Российская Федерация подписала Конвенцию 9 декабря 2003 г. (Распоряжение Президента РФ от 06.12.2003 г. № 581-рп), ратифицировала с заявлениями (Федеральный закон от 08.03.2006 г. № 40-ФЗ);
- 2. Конвенция об уголовной ответственности за коррупцию (заключена в г. Страсбурге 27.01.1999 г. Для Российской Федерации данный документ вступил в силу с 1 февраля 2007 года);
- 3. Конвенция по борьбе с подкупом должностных лиц иностранных государств при проведении международных деловых операций (Конвенция вступила в силу 15.02.1999 г. Российская Федерация присоединилась к Конвенции (Федеральный закон от 01.02.2012 г. № 3-ФЗ), которая вступила в силу для Российской Федерации 17.04.2012 г.);
- 4. Конвенция ООН против транснациональной организованной преступности (Российская Федерация подписала Конвенцию 12.12.2000 г. (Распоряжение Президента РФ от 09.12.2000 г. № 556-рп), ратифицировала с заявлениями (Федеральный закон от 26.04.2004 г. № 26-ФЗ). Конвенция вступила в силу для Российской Федерации 25.06.2004 г.);
- 5. Декларация ООН о борьбе с коррупцией и взяточничеством в международных коммерческих организациях (утверждена Резолюцией 51/19 Генеральной Ассамблеи от 16 декабря 1996 г.);
- 6. Резолюция Комитета министров Совета Европы «О двадцати принципах борьбы с коррупцией» (принята Комитетом министров 6 ноября 1997 г. на 101-й сессии);
- 7. Модельный закон «Основы законодательства об антикоррупционной политике» (принят в г. Санкт-Петербурге 15.11.2003 г. постановлением № 22-15 на 22-ом пленарном заседании Межпарламентской Ассамблеи государств-участников СНГ);
- 8. Конвенция по борьбе с подкупом иностранных должностных лиц при осуществлении международных коммерческих сделок.



Основания увольнения должностного лица

- Непредставление
либо
- Представление заведомо недостоверных сведений о доходах
- Однако «умолчание» (вообще не представление никаких сведений о доходах) не наказывается (о супруге и детях-18)
- Зеленый свет по оформлению преступно нажитого имущества на родителей, детей 18+, братьев и сестер

Почему сообщать о доходах нужно только при приеме на работу?!

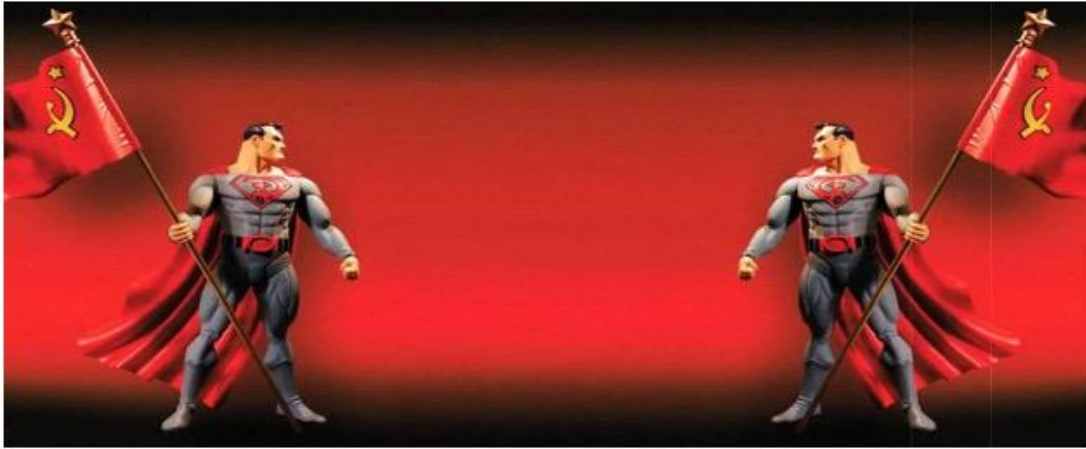


Vladimir Putin

- It's remarkable that the initiative of the annual public report on their property status comes from the President of Russia



Уживется ли в новом формате архаичная
(советская) практика доносов в нашей стране???



Anti-corruption amendments to the Criminal Code.

- First, the legislator eliminated the ambiguity of the legal grounds for property confiscation as an alternative criminal justice response
- However, the legislator's attention left out yet again the fact that confiscation does not apply to property and property income received as a result of "the most lucrative" crimes: theft and extortion.

The amount of corruption subjects was boosted by law

- +NGO
- ++foreign officials
- +++official of public international organizations

Amendments introducing tougher sanctions in articles on the abuse of power and commercial bribery should be highlighted

- According to Professor Anatoly Naumov -The main factor here is – Political will»



Bribery

Bribery is a collective term including receiving a bribe (Article 290 of the Criminal Code), bribery (Article 291 of the Criminal Code), mediation in bribery (Article 2911 of the Criminal Code) and petty bribery (Article 2912 of the Criminal Code). A mandatory prerequisite of bribery is the object of the crime - a **bribe**, which may be in the form of:

- 1- material values;
- 2- various property-related services provided to the bribe-taker for free if they are payable, or at a clearly underestimated cost;
- 3- other benefits in kind

Bribe-taking (Art. 290 of the Criminal Code).

- The *subject of bribe* (p. 1, Art. 290 of the Criminal Code) is an **official**, i.e. a person who permanently, temporarily or by special authority performs the following functions:
 - functions of a government official
 - organizational, regulatory and / or administrative functions in state bodies
- In itself, the official or another person appointed by them obtaining property benefits does not necessarily imply accepting a bribe. It is essential to prove the bribe *conditioning* by the officer's action: the briber transfers tangible assets or provides property benefits for the official to perform (or withhold) some action in the favor of the former

It's essential to prove the bribe conditioning
by the officer's action



Accepting bribes should be distinguished
from the receipt of a gift



Giving a bribe (Art. 291 of the Criminal Code).

- A bribe may be given by the briber in person or through an intermediary. The guilty party may give a bribe to the official or to another person or entity indicated by the latter
- Bribery should be deemed completed from the moment of its handover to the official, at least partially.
- The mere promise to pay a bribe, when the person expressing the intention to give a bribe but not taking any other action aimed at the implementation of this intention, can not be deemed a crime

Intermediation in bribery (Art. 291¹ of the Criminal Code).

- The mediator hands over a bribe on behalf of and at the expense of the briber's property, and unlike the briber, uses their own property or illegally acquired property as an object of bribery
- The *object* is a significant bribe, i.e. in an amount exceeding 25 thousand rubles
- The instructions to promote the bribe may be in the form of communicating to the intermediary information about the actions (inaction) the briber (bribe taker) is expecting, in any form (request, consent, instructions, etc.).

Petty bribery (Art. 291² CC).

- Petty bribery is distinguished from other types of bribery only by the amount of the bribe object, which does not exceed 10 thousand rubles.

Commercial bribery and related offenses

- 1) The objective and subjective sides of commercial bribery are congruent with giving and receiving bribes, yet it implies the involvement of a special subject - the person performing managerial functions in a commercial or other non-governmental organization.
- 2) It may be a director, a general manager, a member of the company board, the chairman of a producers' or consumers' cooperative, the head of a public association or a religious organization.
- 3) In accordance with the current version of par. 1 of the Comments to Art. 285 of the Criminal Code, persons performing administrative functions in state and municipal unitary enterprises or joint stock companies mainly owned by the Russian state, subjects of the Russian Federation or municipal entities, are referred to as officials (i.e., they are subjects of malfeasance).

Deficiencies in the judicial practice in terms of the qualification of corruption crimes

- 1 "General protection or connivance" always comes in the form of performing particular actions, rather than assumptions"
- 2 The proposal to determine the value of a bribe object in the form of providing property-related services taking into account the current prices of the illicit services market
- 3 Limitation of criminal liability of members of an organized group
- 4 The practice of qualifying the actions of a person representative the interests of an organization who has received a "bonus" after performing a transaction at clearly inflated prices
- 5 The criminalization of bribery meditation is inextricably linked to the significant value of the bribe object

Thank you that you guys came to my lecture

- **To sum up, it is important to ensure the fight against corruption crimes, despite good intentions, should be kept within the limits of the law.**

LECTURE 8-9. FORMATION OF CIVIL SOCIETY AS A MEASURE OF PREVENTION OF CORRUPTION IN THE STATE

Anatoliy Kisilev --Professor of Administrative Law

United Nations Convention against Corruption (UNCAC) provides the legal framework that countries use to fight corruption. It dates from 2003 and every two years there is a Conference of States Parties where the signatories — there are now 177 — meet to discuss UNCAC implementation. For the first time at this year's meeting in St. Petersburg, Russia (2-6 November) there was a plenary debate about the role of civil society.

There is disagreement over whether or not civil society has a part to play in monitoring how UNCAC is implemented' even though Article 13 specifically calls for civil society participation.

Although some countries spoke in favour of civil society (including Finland, Switzerland, UK, and US), and some pledged to support the UNCAC Coalition/Transparency International Transparency Pledge, a number of countries believe UNCAC relates only to governments and civil society should not be involved (including, Bolivia, China, Cuba, and Ecuador).

A representative of Russian civil society suggested that well-funded transparency NGOs had too strong a role in the debate.

The following is in an excerpt from the speech made (in Russian) by Elena Panfilova, vice-chair of Transparency International, during the plenary debate on why civil society is an important partner in the fight against corruption.

With all respect to the rules and procedure of the Convention and the Conference, it is now time to make a step forward in involving civil society into the Conference work. Civil society participation in the implementation review mechanism and the work of the Conference is not only a natural development, but also a way to increase the legitimacy and credibility of the implementation review results for citizens who are supposed to be the main beneficiaries of fight against corruption.

Contrary to what some states parties say, there are a lot of professional anti-corruption civil society organisations. Countries that resist involving civil society into the implementation review mechanism and the work of the Convention are very often those where the freedom of civil society organisations and human rights are undermined.

I urge these states to reconsider their position on the ability of NGOs to participate in anti- corruption activities and allow them to speak out freely on all UNCAC-related questions.

I would like to turn your special attention to the issue of grand corruption. It is exactly in those countries where the problem of grand corruption is most unsolved that anti-corruption work is stagnating.

In the Transparency International submission that we distributed among the participants of this Conference we call upon all states parties to consider the possibility of starting to develop legal instruments to deal with concealment of proceeds of corruption by high-level government officials, as well as develop a framework for international cooperation on this issue.

In the 104 countries where Transparency International chapters are based we see rich opportunities for active participation of civil society organisations, Transparency International national chapters and our partners in anti-corruption work on all levels.

For our part we pledge to develop expert recommendations and mechanisms on all issues mentioned above, and confirm our readiness and ability to participate on a professional level in the UNCAC work

In Russia, mainly formed and functioning legal and institutional framework for combating corruption. The National Anti-Corruption Plan and the Federal Law "On Combating Corruption" public control is defined as the preventive measures for the prevention of corruption. One of the main problems today - is that in the minds of most Russians, corruption has become commonplace. Fighting with her only prohibitive measures impossible. In many ways, the effectiveness of the fight against corruption depends on the efforts of not only the public authorities and local governments, but also civil society. Corruption and civil society - concepts incompatible. Corruption is, *н*ь hinders the development of civil society, causes problems related to the registration and operation of NGOs. Serious change requires the use of the mechanism of anti-corruption expertise. "Creating an independent examination is one of the most important factors that increase its quality. This work is necessary to involve independent experts, representatives of civil society, business and academia.

Cardinal decrease in the level of corruption - a strategic task that faces the whole country.

'decision is directly connected with the protection of property rights in the country and strengthen the legal and judicial system, expanding free enterprise - in fact, with the majority of the tasks that we set ourselves,

- Therefore, one of the main tasks - creation of a strong legal framework for the fight against corruption, issues to prevent it. "

Initially, the Federal Law number 94 of the procurement for state needs was planned as anti-corruption, but in fact turned out exactly the opposite. To win the competition you need to offer the lowest price. Therefore, "small companies that offer the lowest rates to be winning the competition, but they can not guarantee the quality of procurement. And it is absolutely unacceptable when it comes to drugs or food. In addition, the law has hit hard and social organizations, who are forced to participate in the competition for rental of premises on a par with

commercial organizations. Speaking about the role of civil society as a full subject of anti- corruption can be discussed such a measure as "withdrawal from the executive authorities of redundant functions" (such as, for example, licensing, accreditation of non-profit organizations) and transferring them to public organizations, professional associations, etc.

Corruption in various forms of expression in the modern world is gaining a stronger position not only in countries with low and medium level of development, but also in those that are positioned in the public mind with the bastions of democracy, world political and economic leaders. A clear illustration of the above is a scandal in the British Parliament in March 2010, four deputies who were forced to resign as a result of investigative journalism, in which they declared their readiness to tack on a fee address various issues, including the appointment of the British government.

Equally scandalous story about the corrupt activities of the German automaker "Daimler" is actively being discussed in the media in connection with allegations of his leadership the US Commission on the Securities and Exchange Commission, together with the Ministry of Justice of the United States of bribing officials in 22 states from 1998 to 2008. In particular, they argued that only the Russian official in charge of the purchase of cars for government agencies, has been paid more than three million euros.

Numerous manifestations of corruption in various spheres of public life have formed a different idea of what is meant by this concept. As a result of the analysis, we have identified:

- a) legal interpretation of corruption, in which the criminal law approaches prevail over administrative law, as evidenced taken in our country in the past two years, numerous laws and government programs aimed at combating corruption in the government;
- b) its determination as a result of deformation of the individual world view influenced by various factors that are social or subjective (exogenous and endogenous) nature;
- c) the historical conditionality of corruption, which many researchers explain the unwritten rules of law, manifested in social practice, adherence to traditions, even in spite of existing legal standards: protectionism in the descent, kinship principles, etc.

Among these definitions dominates the legal interpretation of corruption. This is no accident, for the offenses that fall under the article of the criminal or administrative codes, the most obvious and most easily evaluated. But, in our opinion, they are not fully reflect the essence of this phenomenon, if not to take into account the other two above mentioned approaches to defining the essence of corruption, as its legal interpretation largely reflects the consequence, not the essence of this social malaise.

For corruption offenses or offenses of the individual results in coincidence of certain circumstances: the relevant socio-economic and political conditions, criminal infection, professional deformation of the person, its low legal culture, poor intelligence, philosophy, psychological and physical condition of the person, as well as factors such as tradition, vnutriklanovye, clan, family, corporate obligations or interests, pushing it to corrupt practices. Do not forget about such human vices like lust for power, greed, addiction, perverse dependency (alcoholism, drug addiction, gambling, etc.).

Thus, corruption in our interpretation is an antisocial phenomenon in society caused by the strains in its socio-economic and political development, as a result of which individual and mass consciousness is transformed from the universal norms and values towards primitivism of spiritual and material needs, living standards that results in their respective world view, life strategies, social relations and behavior. If we treat the corruption in this context, we will get an opportunity to explain its nature, not only in terms of law, but also other factors which are in dialectical interdependence, which is higher than its present definition reflects a fairly full. In particular, claiming legitimate nature of many anti-social phenomena in society in the context of the thesis of a man, not only as an object of social processes, but also its subject, we are referring to and the corresponding human impact on corruption processes in a society where corruption under the influence of external and internal factors gradually into the organs of state power. In conjunction with other external and internal threats, corruption not only stimulates the crisis processes in the economic, social and political spheres of society, but also poses a real threat to the collapse of Russia, followed by the appearance on the world map of new puppet subjects of international law, for example, within the boundaries of today's federal districts .

There is no doubt that the leadership of our country is rather fully aware of the threats posed by corruption to the security and integrity of the state, and made with his hand trying to stop the progress of this phenomenon through the use of punitive-legal means is quite understandable. Undoubtedly, they are impediments to the

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criminalization of our society, and with them the corruption in the government: in the organs of supreme authority in the Federation, which until recently had virtually all the opportunities to use its capacity in its own interests. However, you must be fully aware that in order to reduce the degree of negative impact of corruption on society is not only the use of legal resources, although at present and their potential is far from exhausted.

Quite a lot of Russian researchers corruption believe that universal means of reducing the negative impact of corruption, especially at the level of the power structures, can become the basis of international experience, civil society and individual citizens' initiative, through partnerships among which with the state to create the most optimal conditions for success, progressive development of society in a democratic way, the prevention of acute social conflicts, as well as the return of Russian totalitarianism.

In our opinion, for the modern globalizing world equilibrium state between the state and civil society institutions in curbing not only corruption, but also other negative processes is determinant:

- Progressive development of all mankind and, above all, the union of the world community's efforts for a successful resolution of global problems;
- Formation of a world order that would minimize the negative consequences of the imbalances in the economic development of leaders and "outsiders", etc. Despite the fact that such an option of organization of the world order is a matter of the distant future, it is already at the UN and other international organizations during the summit of eight, twenty leading world powers, these topics are the subject of intense debate. Reflections on the relations between the state and civil society need to determine the most effective mechanisms of this relationship, which should represent the life support system of social, socio-cultural and spiritual spheres, their reproduction and transmission of values from generation to generation.

At the same time the progressive development of the country depends on the ability of civil society to promote democratic processes in it in the direction of balance the interests of the government and the people. In the case of his achievements create optimal conditions for the construction in Russia of the welfare state, many examples of which are on the European continent, although most of these factors does not guarantee the effective management of state and social life, as in the recent history of a lot of examples where the power elite, under the cover of democratic slogans, implements their clan interests at the expense of well being of the general population, which participated in the administration of the state is minimized to the extent that it ceases to have any relation to real democracy. In such a state of civil society institutions the authority delegated to, on the one hand, the declarative function, and on the other - service of its interests in the political and economic spheres, or in the best case - the Consultative expert or advisory functions, for example, under the names of non-governmental organizations that do not have any -or official authority, and hence the ability to influence public life through the examination, the legislative initiative and so on.

During reflection on the specifics of the relationship of civil society and government in modern Russia unwittingly come to the realization that their level of development is not sufficient for effective impact on the fight against corruption, especially at the power structures, as in our country, they are able to act as real entities corrupting Russian society, and not only because the institutions of civil society themselves are few and poorly organized or does not accept the authority of their aggressive, biting or sabotaging somehow their initiatives. On the contrary, far from being in every country on the presidential level are various community boards, including anti-corruption, in which Russia takes personally its president, and the course of their meetings, media coverage and QMS. Moreover, in the context of globalization of information and communication spheres to turn Russia into a closed social system or block the activities of civil society organizations and their contacts with non-governmental

organizations and other civil society institutions abroad is very difficult, if not impossible at all. So the question arises: to what extent civil society institutions or those who himself refers to them, are active and are sincere in their desire to improve our society, rather than pursue the more prosaic goals in their activities?

In search of an answer to this question should not be forgotten that for the formation of effective institutions of civil society from the depths of the totalitarian state, as well as for the creation of a democratic state, it takes time, you need not only for the genesis of the individual, for which the idea of democracy, humanism, civil society is an integral part of its philosophy and life strategy, stimulus to its self-organization. It is these circumstances, not only the sabotage on the part of the authorities, in our opinion, explain the low efficiency and the relative scarcity of civil society in our country. At the same time, one can hardly expect that the new institutions of civil society in Russia will function as effectively as in the societies of Western democracy. In this hard to believe as well as in the fact that in our country with its specific traditions and way of life in general can arise similar to the Western model of a democratic state. Based on the foregoing, we believe that, in the Russian society in the first place should form such a spiritual atmosphere, for which the level of corruption in the power structures would be as unacceptable as any other improper action. And it's not an Utopian idea, as it seems at first glance. This process should be developed on the initiative of three parties: the government, civil society and citizens of our country, which, though in varying degrees, but experience and understand the threat posed by corruption to their own security and their own future.

For the leaders of our country, declared the fight against corruption in the government and trying with the help of their available resources to deal with it, it is clear that further corrupting Russian society inevitably its transformation into a criminal state with its subsequent decay into criminal regimes. This prospect should realize the current leaders as a real threat not only of political but also the physical existence. Persons representing the civil society, in accordance with this scenario non-governmental organizations and other civil society institutions abroad is very difficult, if not impossible at all. So the question arises: to what extent civil society institutions or those who himself refers to them, are active and are sincere in their desire to improve our society, rather than pursue the more prosaic goals in their activities?

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ugotovlena new regime isolation or elimination of as enemies of their own people working on their foreign owners, or those institutions expect the prospect of transformations in the structure, the activity of which is aimed at servicing power interests which can make like with their help to the world public its real essence.

For the ordinary citizens of our country, this development will result in a powerless, miserable existence, and the outlook for them is not so vague, if already social stratification, the income gap between the wealthy citizens and the majority of the population has long been crossed a threshold that can not fail cause anxiety not only among professionals and managers of the state, but also the world community.

Thus, for all the above mentioned elements of Russian society the prospect of its further corrupting poses a real threat not only to the socio-economic, political, and physical existence of each of its members, because such changes in our country unlikely scenario "orange" revolutions, and They will be accompanied by coups, civil wars or political armed confrontation criminal groups, other social catastrophes. Power. Its leaders and their supporters must not only using the means available to them to impress all its holders the reality of political processes in our country according to the above scenario in the foreseeable future, and the futility of their introduction into the new "clip" in the changed historical conditions in which their place They will be determined by the other, but now take a set of measures aimed at easing the impact of corruption on the activities of public authorities. In this case, we will not be original if the offer international experience, the essence of which is to create a public servant such conditions that make them highly unprofitable committing acts of corruption, when the consequences of them will hit the interests of their families. Also, in addition to certain material benefits and privileges that accompany their profession, civil servants, regardless of their status, should not have any other sources of income, as well as to declare them publicly. In the case of violation of these rules, they must, first of all, to bear the economic responsibility for their acts of corruption, of course, through the decision

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of the judiciary. In addition, in the present circumstances, when corruption is recognized as a real threat to our society, the civil servant shall be deprived of the right for life classes of posts in any of the government agencies, and not three years, as is customary in the current legislation.

Especially we want to touch on the theme of law enforcement, from the effectiveness of which depends directly on the state of affairs on the fight against the criminalization of Russian society, including and his corrupt part. Of course, all of our proposals, which relate to civil servants, should be extended to them. The State should also align all law enforcement agencies, not only in their degree of responsibility for the committed offenses, are not compatible with the service in them, but also to align the employees of Justice, the Prosecutor's Office, Ministry of Internal Affairs in the payment of their working conditions, social protection from the state, because, we are deeply convinced that the state law enforcement system can not function effectively if it has itself violated the principle of social justice, when some of its structure is actually ranked as the state elite, and others - to outsiders. Instead of a balanced state law enforcement policy is one of the factors destabilizing the social order, including the provocative and corruption in society.

Civil society institutions. An analysis of their role in overcoming the corruption at the state level have led us to the following conclusions in modern Russia. Civil society institutions, finding themselves in new conditions, when they are instead of the active power of opposition to be included in productive activities to support its initiative to progressive transformation of society. At the same time they must take an active part in the anti-corruption expertise of state and government documents, be one of the tools to ensure transparency in the activities of the authorities, through the media and QMS lead an active propaganda dead-end prospects for the development of the Russian society of corruption scenario.

In the same case, when some power structures begin to demonstrate the inability or unwillingness to implement an anti-corruption policy of the state, civil society institutions should be used not only publicity tools, but also their potential opposition.

Individual civil initiative. The initiative of the state and civil society, aimed at combating corruption in public authorities should be focused not only on political and other state institutions and civil society, but also the civil activity of the population. A characteristic feature of modern Russian society is continuing in it the alienation between the state and citizens, as well as the lack of real cooperation between the latter and civil society institutions. As a result, in the relationship between citizens and these structures there is no real feedback when Russian citizens are the object of public policies, and their role as agents of political and social life is reduced to a symbolic minimum. Initiatives to promote democracy, transparency and accountability of the authorities come to the community in the first place, by the government itself, rather than from civil society or from the public. At the same time the social and political passivity of the past is one of the factors driving power from the closed

society, and as a result - her irresponsibility in front of him, the slow pace of development of civil society institutions, and hence the poor efficiency of the latter activity.

Known and actively cited numerous sources of sociological research conducted in recent years, the Institute of Sociology, as part of our social reality capture not only a consistently high level of distrust of the respondents to the government, law enforcement agencies, but also tolerant of their attitude to corruption in our society, especially solutions to the illegal practices of domestic or professional problems, bribery, protectionism, to conceal income from the taxes to the greed of officials who explained the most effective way of citizens' relations with the authorities, business entities. Also, they do not hide that they themselves were bribers or participants of corruption collusion. It should not be ruled out that some of these respondents in their professional activity itself comes in power structures, and therefore acts as a carrier of ideology or corruption manifests civic irresponsibility with regard to corruption, thus contributing to its preservation and development in society.

Research on corruption in Russian society leads to the involuntary conclusion that the least promising direction in overcoming this problem is to calculate on the citizens' initiative, which in the near future, there is little hope, and not only because the feature of our Russian international mentality is a voluntary delegation of citizens power multiple functions on a background of a nihilistic attitude to it is on their side, but the low level of legal culture of the population. In Russian society develops a unique situation where the representatives of the top echelons of the initiators of progressive changes, which do not always lead to positive results due to the fact that they not only did not find understanding and support at the level of performers and often sabotaged by them, but also because that part of society that is most interested in these changes - civil society and the citizens themselves - do not show the necessary in these cases, social activity.

To achieve positive results, particularly in the fight against corruption in the government representatives of the most progressive part of the population, to which primarily include the leaders of our country, we are left to initiate the activity of civil society institutions and the population. Encourage the introduction of its needs in the mass consciousness of the population the idea of the harmfulness of corruption for the future of Russia as an integral and economically prosperous democratic state, whose fate depends on each of us. And in this case, not only and not so much by the state, namely the civil society should take the initiative for the • formation of legal culture of the Russian citizens, on the approximation of the population and the authorities in the fight against corruption.

LECTURE 10-11. MEASURES TO COMBAT AND PREVENT CORRUPTION IN THE
MODERN EUROPEAN STATES.

Victoria Savina – Professor of Civil Law, Coordinator of DESCNet project



RUSSIAN STATE ACADEMY
OF INTELLECTUAL
PROPERTY



Measures to combat and prevent
corruption in the modern
European States

Victoria Savina
associate professor RSAIP



1. Types of methods of combating corruption in the modern European states
2. Anti-corruption legislation of European states
3. Confiscation as the most effective measure against corruption



1. Types of methods of combating corruption in the modern European States



Sociology: development of
methods of corruption
recognition

Law: development of measures
to combat specific
manifestations of corruption



Ways of combating corruption:

- 1) promotion of the legislation
(including through anti-
corruption expertise of drafts);
- 2) promotion of the
enforcement.



Great Britain:

- open Register of income the House of Commons members (available in the Internet), as well as income of local officials and councilors authorities;
- rules of parliamentary ethics.



France:

- expanded competence of the Chamber of Accounts to conduct internal audits
- Central Service for the fight against corruption.



Measures to combat corruption linked to employment:

- 1) prohibition on move to the company,
in the regulation of which a person
previously was engaged;
- 2) prohibition on move to any company
for a position, which involves contacts
with the former public body, in which
the person previously held position.



Criminal law and procedure:

the most extreme measures
(ultima ratio) by the government
to combat corruption.



European Convention “On
Combating Corruption”, 1999
Convention of Organisation for
European Economic Co-
operation, OEEC, 1997
Council of Europe Criminal Law
Convention on Corruption, 1999
UN Convention against
Corruption, 2003



2. Anti-corruption legislation of European States



GERMANY



Penal Code, 1871

German law on the fight against
corruption on August 13, 1997

Law of the European Union on
the fight against corruption on
September 27, 1996

German law on the bribery of
foreign officials by September
10, 1998



Council of Europe Convention of 27 January 1999 N 173 of the Criminal Law



SPAIN



Spanish Penal Code, 1995
Organic Law of 22 June 2010

Anti-corruption pact 2013

Law on transparency, access to
information and high-quality
administrative management
2013



ITALY



Penal Code, 1930

Criminal Procedure Code, 1988

Civil Code, 1942



Special laws against the mafia:

Preventive measures against
persons representing a danger
to the public, 1956

Provisions against mafia, 1965

Provisions on preventive
measures of material nature,
1982



Quasy-criminal legal persons responsibility Act, 2001

Law on the Prevention and
Combating Corruption and
lawlessness in the public
administration, 2012



SLOVENIA



Penal Code of Slovenia, 2008

Law on prevention of corruption, 2004

Resolution on the prevention of corruption in the Republic of Slovenia, 2004



Law on probity and Prevention of Corruption, 2011

Slovenian Law on the Prevention of Money Laundering and Terrorist Financing, 2006



Law on the Rules of Procedure of the Commission for Prevention of Corruption, 2012



FRANCE



French Penal Code, 1992

Law on the rights and
obligations government
employees, 1983

Law on financial transparency
of political life, 1988



Law on prevention of
corruption, transparency of
economic life and public
activities, 1993

The decree on the Central
Service for the Prevention of
Corruption, 1993



Act on combating
laundering and drug trafficking,
on international cooperation for
the arrest and confiscation of
products of crime, 1996

Act on Combating Corruption,
2007



Ordinance on prevention of the
use of financial system for the
purpose of money laundering
and the finance of terrorism,
2009

Act on the transparency of
public life, 2013



Act on the sporting ethics of
sport and sports rights,
containing a series of articles
aimed at combating corruption
in the sport, 2012

Act on the fight against financial
irregularities, economic and
financial crime, 2013



GREAT BRITAIN



The Financial Challenge to Crime and Terrorism, 2007

UK Foreign Bribery Strategy.
Presented to Parliament by the
Lord Chancellor and Secretary
of State for Justice by
Command of Her Majesty, 2010



3. Confiscation as the most effective measure against corruption



Great Britain:

- administrative confiscation
- confiscation of assets by
taxation procedures
- confiscation as penal
sanction
- confiscation out of penal
procedure



THANK YOU FOR ATTENTION