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Vukušić, Ivan; Mladinić, Nina; Vukota, Jelena

Source / Izvornik: **Economic and social development : 105th International Scientific Conference on Economic and Social Development - "Building Resilient Society" : Book of Proceedings, 2023, 133 - 142**

Conference paper / Rad u zborniku

Publication status / Verzija rada: **Published version / Objavljena verzija rada (izdavačev PDF)**

Permanent link / Trajna poveznica: <https://um.nsk.hr/um:nbn:hr:227:874588>

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Download date / Datum preuzimanja: **2024-12-23**

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REGULATION OF BRIBERY IN CROATIAN LEGAL SYSTEM

Ivan Vukusic

*Faculty of Law in Split, Croatia
ivan.vukusic@pravst.hr*

Nina Mladinic

*University Department of Forensic Sciences in Split, Croatia
nina.misic.radanovic@forenzika.unist.hr*

Jelena Vukota

*Croatia
jele.vukota22@gmail.com*

ABSTRACT

Accepting (Passive) and Offering (Active) Bribery, together with Accepting and Offering Bribes in Bankruptcy Proceedings, Accepting Bribes in Business Operations and Offering Bribes in Business Operations, and Trading in Influence, individually, represent corrupt criminal offenses in the Croatian Criminal Code (further: CCC). Although corruption and bribery are often used as synonyms in everyday communication, corruption conceptually encompasses a wider range of criminal acts. In all cultures and societies, the very exposure of the word bribe in public opinion represents a contradiction in the context of legality and morality. The word bribe in its meaning defines a monetary or another reward that is secretly given to the one who can use his official position in favor of the one who offers the reward. The destructiveness of the bribe is reflected in all branches that are necessary for the existence and successful functioning of the state, such as economy, politics, culture, sports, education, etc., which leads to consequences that primarily undermine citizens' trust in laws and government, encourage social and individual inequality, slow down economic development and prevent the establishment of the affirmation of the constitutional equality of all citizens in front of the law. There is an especially need for equality, fairness, objectivity, and most important principle of legality. The paper analyses criminal offenses against official duty that represent corruption in the narrow sense (hard core corruption).

Keywords: *Passive Bribery, Active Bribery, Criminal Code, Croatia*

1. INTRODUCTION

The Republic of Croatia to fight against corruption adopted many Acts like the Act on Office for Suppression of Corruption and Organised Crime, Act on Prevention of Conflict of Interest, Act on Responsibility of Legal Persons for Criminal Offences, Act on Prevention of Money Laundering, Act on Witness Protection, Act on the Right to Access to Information. Also, many Action Plans and Strategies are adopted to improve coordination and cooperation between many bodies in Croatia to realize anticorruption campaigns (Dragičević Prtenjača, 2009., p. 239). All these Acts and measures have the aim for easier discovery, proceedings, and punishment of perpetrators of criminal offenses of corruption. Corruption is necessary to distinguish from conflict of interests that doesn't need to present corruption. A person can commit Passive Bribery and not necessarily be in a position of conflict of interest. Also a person can be in a conflict of interest and not commit Passive Bribery. With criminal offenses against corruption, the state has the aim to protect and ensure efficient and legal work of official persons in the state, local administrative bodies, or legal persons with public authority.

2. ACCEPTING A BRIBE (PASSIVE BRIBERY)

Accepting a Bribe as a criminal offense is one of the most significant corruption offenses related to an official or responsible person. This is a corruption criminal offense. The ratio legis (<https://www.enciklopedija.hr/natuknica.aspx?id=51933>) of incriminating this criminal offense is the protection of the duties and powers that an official or responsible person receives based on the law because impunity for a committed criminal offense provides an incentive for illegal behavior (lat. *Imputitas continuum affectum tribuit deinquendi*) (Božić, 2015., p. 104). The demand for a bribe must be in connection with an action that an official or responsible person commits or doesn't commit (Juras, 2019., p. 230). In this way, the value and confidence in the rule of law decrease, because it simultaneously contributes to the increase of inequality among citizens. The corruption of individual civil servants means, accordingly, the corruption of individual state institutions (Božić, 2015., p. 104). The Republic of Croatia must raise the awareness of society and every individual citizen about the harm and consequences of corruption, as well as about the need for prevention and sanctions. This criminal offense shows lower efficiency of official persons (Juras, 2019., p. 230). Punishment of Passive Bribery ensures efficient, legal, and conscious action in official offices and legal persons with public authorities. The possibility of this criminal offense is also in the case of discretionary evaluation when deciding about official duty. This criminal offense can encompass future actions, as far as those future actions are in the jurisdiction of an official or responsible person (Pavlović, 2015., p. 1242). Completion of this criminal offense is established when a contract about the reward is achieved. GRECO insisted that in CCC must be prescribed that gift or benefit can be used by a third person and not only for a perpetrator of Passive Bribery (Kralj; Dragičević Prtenjača, 2010., p. 734). Also, GRECO referred to cases of Active and Passive Bribery of all acts or omissions of an official person or responsible person within or outside the jurisdiction (Kralj; Dragičević Prtenjača, 734). Also in older CCC, part of the criminal offense provision of Passive Bribery, was justifiably deleted, and refers to confiscation of gift or other gain, because it represents also *sui generis* measure in CCC of confiscation of pecuniary gain, that the court will apply if the perpetrator was culpable (Kralj; Dragičević Prtenjača, 2010., p. 738). In this criminal offense, it is difficult to abstract the definition of a public official. In CCC, that definition is given in the General Part of CCC, but we can conclude that it refers to a person that acts in a public function including a public agency. So all actions in the public interest should encompass those actions. It must include all levels of government (local, state, or national).

3. OFFERING A BRIBE (ACTIVE BRIBERY)

Criminal offenses that contain elements of corruption, to which the criminal offense of bribery belongs, represent basic obstacles to the establishment of top principles related to the creation of a legal state and the rule of law. This is why this criminal offense becomes the subject of numerous analyses, and the reason for this is the intensive normative activity of the International Community whose goal is to incriminate the most diverse forms of corruption, therefore the national community decided to place the fight against corruption among its priorities (Derenčinović, 2001., p. 252) both globally and regionally. In the case of Offering and Accepting Bribes, we are talking about necessary participation which the nature of the criminal offense requires, that is, it assumes the participation of several persons whose interests meet in the form of different roles so that in these corrupt criminal offenses we are talking about the so-called necessary parties to the crime (perpetrators of the criminal offense whose definition of a criminal offense (criminal being) assumes action of more persons) (Novoselec, 2016., p. 352). There is the possibility that a person refuses a bribe so the criminal offense of the necessary participation doesn't exist (Dragičević Prtenjača, 2009., p. 246).

In these situations, it is about necessary participation because one person is the perpetrator of the criminal offense of Accepting a Bribe (the person who receives the bribe), while the other person is the perpetrator of the criminal offense of Offering a Bribe (the person who gives the bribe) (Novoselec, 2016., p. 352). Offering exists if there is a person that is ready to provide bribe. Promising includes agreement and giving includes undue advantage transfer. The agreement isn't necessary at offering a bribe. It means that it isn't necessary for another person to accept the offer or gift (Cvitanović et al., 2018., p. 420).

4. COMPARATIVE LAW

The ratio legis of the legislator is to try to ensure a non-corrupt administration, by criminalizing those behaviors that come from outside that administration as well. It is precisely for this reason that bribery is included in criminal offenses against official duty, even though it is not an official criminal offense (Derenčinović, 2001., p. 253). Literature in Croatia refers to different types of corruption. Derenčinović recognizes individual, indirect, systemic, and competitive (Derenčinović, 2001., p. 20; Dragičević Prtenjača, 2009., p. 234). Bačić recognizes political corruption, party-political, economic, state, bureaucratic, and corruption as connection with the current government (Bačić, 2000., p. 828-830; Dragičević Prtenjača, 2009., p. 235). The Republic of Croatia signed and ratified Criminal Law Convention on Corruption of the Council of Europe and its Protocols. Countries that are the least corrupt can be found in Europe (Denmark, Finland, Sweden, Norway,...) (Anti-Bribery and Corruption Laws in EU, <http://www.squirepattonboggs.com>) There are differences between continental and Anglo-Saxon law but also some similarities. If countries of Western Europe are the least corrupt, then, probably their legislation should be a role model for other countries. It is necessary to mention that OECD adopted Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997. The lack of this Convention is that it encompasses only Active Bribery. That's why the Convention of the Council of Europe covers more offenses like Active and Passive Bribery, Bribery in the Private Sector, and Trading in Influence (OECD, 2008., p. 13). All mentioned criminal offenses apply to natural and legal persons (OECD, 2008., p. 16). Anti-corruption laws is hard to enforce because of transnational crime. The necessity of applying legislation on perpetrators in the continental legal system is achieved by applying principles of territoriality, active and passive personality, and universal principles. Also, penalties are different in different legal systems so the perpetrator can't be sure which sanction will be applied to him. For example, in the USA fines for corporations are 2 mil dollars, and in the UK fine is unlimited, and prison is prescribed for up to 10 years (Goldstein, 1979., p. 364). In Croatia, the punishment for Bribery is a maximum of 10 years for a natural person. UK Ministry of Justice issued Guidance to prevent bribery actions. It's up to provide six principles that refer to Top-level commitment, Risk assessment, Proportionate procedures, Due diligence, Communication and Monitoring, and review (Anti-Bribery and Corruption Laws in EU, <http://www.squirepattonboggs.com>). In France, legislation about bribery encompasses the public and private sectors (Kralj; Dragičević Prtenjača, 2010., p. 752-759). In France is prescribed imprisonment of up to 15 years, and fines up to 5 mil euros. At the level of the EU, the main aim of the legislator is to guarantee the public interest (Moukiou, 2016., p. 72). Public authorities dealing with favoritism must be prevented. In these cases, if the EU prescribed its aims with Directives, it is usually up to the Member States to transpond EU provisions in accordance with national law so there is no possibility of uniformization (Moukiou, 2016., p. 73). Even though there are many sources in international law on how national legislator needs to harmonize their legislation, it is necessary to see if national law criminalize some behavior that international documents demand, or criminalize it in a narrow sense. Because of many provisions on an international and national level, it can be hard to obey those provisions for natural or legal persons that should obey these provisions (OECD, 2008., p. 14).

All criminal offenses that Conventions criminalize, criminalize if committed with intent. It can be difficult to prove intention because direct evidence like confession is rare. It is important that intent, in absence of direct evidence, must be analyzed from objective factual circumstances.

5. SPECIAL CIRCUMSTANCES OF BRIBERY

Avoiding the direct incrimination of bribery and replacing it with a criminal offense representing the so-called delict of incitement was exposed to numerous well-founded and unfounded objections. The most basic one referred to the criminal law independence of Active Bribery because it is an accessory to Passive Bribery. According to GRECO, even though if an official person or responsible person isn't acting within its jurisdiction she fulfills also some other criminal offenses (exp. Fraud) or can be established its responsibility according to provisions of General Part of CCC (Kralj; Dragičević Prtenjača, 2010., p. 735). By legal nature, incitement as a form of participation is an accessory, therefore the attempt to incite was not punishable. The why we have the criminalization of Active Bribery as a criminal offense is the legal gap of the "accessory institute of incitement to the criminal offense of Accepting a Bribe" (Derenčinović, 2001., p. 253). Still, it is correct to conclude that the responsible person must accept a bribe for incitement as a criminal offense to be completed, because it was a "formal criminal offense that was considered completed by the act of incitement itself, and for which no consequences were required" (Derenčinović, 2001., p. 253). It was already punished due to the impartiality of the official person or responsible person in the performance of his/her duties, regardless of whether a violation occurred. When accepting and offering a bribe, it does not necessarily have to be an exchange, i.e., about giving and receiving objects, because the offense is already completed when the principle, that is, the basis of official responsibility and duty is violated. An official or responsible person at the time of accepting a benefit violates the principle of equality within the limits of his jurisdiction or exceeds the limits of his/her jurisdiction by giving priority to the initiator who promises a certain benefit. Perpetrators of the criminal offense of Passive Bribery within the meaning of the CCC can only be officials or responsible persons (According to the CCC, an official person is a state official or official, in a unit of local and regional government, holder of judicial duty, jury lay member, member of the State Judicial Council or the State Attorney's Council, arbitrator, notary public and professional worker who performs tasks in the field of social welfare, upbringing, and education. An official person is also a person who in the European Union, a foreign country, an international organization of which the Republic of Croatia is a member, an international court or arbitration, the jurisdiction of which is accepted by the Republic of Croatia, performs the duties entrusted to the persons from the previous sentence). CCC in Art. 87. defines a responsible person as a natural person who manages the affairs of a legal entity or is expressly or entrusted with the performance of affairs in the field of activity of a legal entity or state bodies or unit bodies of local and regional self-government (<https://www.zakon.hr/z/98/Kazneni-zakon>), which is why Passive Bribery is classified as a delictum proprium. If the perpetrator of Active Bribery promises an official or responsible person a gift or a reward, and the official or responsible person does not agree to it and submits a report, the perpetrator of Active Bribery will be liable even though the payment did not take place and the person to whom the offer referred did not agree to it. The promise to give a bribe would have to be taken seriously by the recipient of the bribe so that it could indicate his criminal liability. Namely, for both criminal offenses, it is significant that they were completed either at the time of the conclusion of an agreement, express or tacit, between the giver and recipient of the bribe or when the unilateral manifestation of the will of one of the parties in terms of demanding or promising a gift or some other benefit was completed. Under special circumstances, and in particular circumstances prescribed by law, the court can mitigate or remission the punishment.

This includes cases in which person reported the crime soon after it was committed, and before it was discovered, or before he found out that it had been discovered, if it was committed on demand of official or responsible person. We need to be aware that even without this provision in CCC there is possibility of applying provisions of judicial mitigation of sentence in case of special mitigating circumstances (Kralj; Dragičević Prtenjača, 2010., p. 741). In the case of the criminal offense of Active Bribery, all subsequent actions are irrelevant for the incrimination of the same, except in the case of sentencing, because the offense is completed at the moment of giving a gift or some other benefit, i.e. a promise to give a gift or some other benefit to an official or responsible person.

6. MEDIATION IN THE CRIMINAL OFFENSE OF ACTIVE BRIBERY

The corrupt criminal offense of Active Bribery (According to the CCC, a bribe is any non-property reward, gift, or other material or non-material benefit regardless of value, Article 87, Official Gazette 144/12, 101/17, 118/18, 126/19, 84/19, available at <https://www.zakon.hr/z/98/Kazneni-zakon>). A bribe can include money, the promise of promotion, sooner hospital treatment beyond the official list, etc. The bribe can be offered to the perpetrator or some other person (Juras, 2019., p. 232). It's irrelevant if the perpetrator asked for a bribe or if a bribe was offered to him. Bribery can be committed directly, tacitly, or with concluded actions (Juras, 2019., p. 232). It can be committed by anyone (*delictum communium*) to an official or responsible person. Real Active Bribery consists of the offering, giving, or promising a bribe to an official or responsible person or mediation in such bribery to an official or responsible person (Novoselec, 2007., p. 380). The legal description of the criminal part of bribery is covered by the intentional form of culpability, therefore mediation in that part is punishable only if it was committed with intent. In the case of indirect intent, there is the possibility of referring to a mistake in which the mediator does not know that a certain thing handed over to him by the bribe-giver to finally reach the recipient of the bribe is, in fact, a reward that does not belong to him (Derenčinović, 2001., p. 238). An actual mistake, that is, a mistake about the nature of the act (*error in objecto*), excludes intent, and therefore the criminal offense of Bribery. Following on from the above, the criminal offense of bribery through mediation is committed when mediating in the corruption chain.

7. CONFLICT OF INTEREST AND CRIMINALLY RELEVANT CORRUPTION

In contemporary constitutional democracies, the conflict of interest is at the very origin of the abuse of power by politicians and public officials to achieve private benefit (Bačić, 2012., p. 177). The criminal offense of bribery in its legal description states as the object of the action a gift or some other benefit, without specifying them, therefore it is necessary to use the standards of judicial practice of domestic and international courts and their comparison to determine the true content of these terms. A conflict of interest is a situation in which the private interest of the official person conflict with the fact that the public interest affects or may affect the performance of public duties and the impartiality of the official (Dragičević Prtenjača, 2009., p. 240) (<https://mpu.gov.hr/print.aspx?id=6174&url=print>). Conflict of interest doesn't mean corruption. Bribes, according to the CCC, are values in which the bribe-giver explicitly tries to obtain from the official or responsible person, the willingness to take action in his favor, but at the same time at the expense of the principles in the performance of official duties. Many different Conventions have a definition like undue pecuniary or another advantage, or undue advantage when describing bribe. Criminal law in other Member States of the European Union, as well as elsewhere in the world, contains provisions to combat active and passive corruption of national officials. Although the definitions of criminal offenses of corruption may differ from Member State to Member State, they have common elements that enable a common definition to be reached (<https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A51998XG1215>).

According to the actual legislation in Croatia, it is determined that an official in the public sector may not receive any gift or benefit for himself or another that affects or could affect the performance of his duties. Gifts of lesser value that represent small signs of attention are eliminated from the general prohibition (Derenčinović, 2001., p. 242). At Passive Bribery must exist corruptive intent (Dragičević Prtenjača, 2009., p. 250). This means that an official or responsible person must be ready to evaluate every situation of a possible potential conflict of interest. In case of doubt on the part of an official or a responsible person, the person is obliged to ask for advice in writing or contact superiors or authorities responsible for such treatment. Gifts of small value or small signs of attention such as invitations to lunch or drinks, calendars, pens, and agendas are not considered values that could affect the impartiality of officials, however, in situations of repeated gifts by the same person, their suitability for influence increases. According to the Law on Prevention of Conflicts of Interest in the Performance of Public Duties in Croatia (Official Gazette, 143/2021), officials may not, that is, they are prohibited from receiving gifts with a value higher than 66 euros from the same giver. The gift is money, or things no matter their value, rights, and services without a fee when the receiver is or can be in relation of dependency or create obligation towards a giver of a gift. On a comparative level, definition of gifts is different, so some states describe gifts up to some value that is allowed or forbidden (OECD, 2008., p. 36). For example, when analysing the conflict of interest, the EU in Directive 2014/24 in private law prescribes conflict of interests when someone finds him or herself trying to serve (or be loyal to) two or more people (or organizations) whose interests conflict with one another (Moukiou, 2016., p. 82).

8. UNCONCEIVED PAYING OF BRIBE

The dark crime figure includes all those behaviors that are punishable by law and are not subjected to criminal repression by competent authorities. Derenčinović correctly mentioned that many proceedings against corruption don't come to an end because of the process of „filtration“ during criminal proceedings (Derenčinović, 2001., p. 230; Dragičević Prtenjača, 2009., p. 236). This means that the perpetrator was denied a measure of criminal prosecution, while the victims were not provided with adequate help and protection (Getoš Kalac; Pribisalić, 2020., p. 639) The specificity of these crimes lies in the lack of material traces because they are crimes committed in secret and not in front of witnesses, and the exchange or transaction itself takes place remotely, which represents a major problem when proving. On the other hand, most often the bribe giver is presented with contractual elements in exchange for cooperation with the criminal law authorities to discover the concrete criminal offense of corruption (Derenčinović, 2001., p. 246). The main critic is that perpetrator is not punished in exchange for an interest that is more predominant and leads to a kind of immunity to the bribe giver under certain legal assumptions or conditions. In conclusion to the above, the legislator offers the bribe-giver exemption from punishment in exchange for his testimony against the bribe-taker (Brnetić; Ljubej, 2015., p. 12). The legal prerequisites for the mandatory remission of punishment of the bribe giver can be prescribed alternatively and cumulatively. In CCC, a possibility of remission of punishment is prescribed when the crime was committed at the initiative of the bribe-taker, and the bribe-giver reported the crime promptly. The second possibility refers to a voluntary, but not timely, report to the competent authority, i.e. reporting when the crime has already been discovered or after the perpetrator has learned that it has been discovered (Derenčinović, 2001., p. 248). The bribe giver was forced to commit the act because of the danger that threatened his life, body, safety, and personal freedom when institutes of the General Part of CCC can be applied. The mere fact that the bribe-giver voluntarily reported the act should not indicate his de facto immunity. The obligation of timely reporting as an additional criterion implies the possibility of reporting the perpetrator just because of the knowledge that he has been discovered.

This ultimately leads to favoring one party in the corruption chain of exchange, which is not and does not always have to be less culpable. It is almost impossible to expect someone to report their criminal offense of giving a bribe and the criminal offense of accepting a bribe related to another addressee because this exposes them to possible criminal prosecution and criminal records. The problem that most often occurs with unconceived bribery refers to the possibility that all voluntary and timely assumptions are fulfilled, but the bribe giver reports the crime because he did not receive what was promised to him or received nothing in return, and the release of such a defendant is not consistent with certainty with the intention of the legislator.

9. THE RELATIONSHIP BETWEEN THE CRIMINAL OFFENSE OF ABUSE OF OFFICE AND OFFICIAL AUTHORITY AND PASSIVE BRIBERY

The criminal offense of Abuse of Office and Official authority is covered by the legal description in Art. 291 of the CCC. An official or responsible person who takes advantage of his position or authority, exceeds the limits of his authority, or fails to perform his duty, thereby obtaining a benefit for himself or another person or causing damage to another, shall be punished by a prison sentence of six months to five years. It is a *delictum proprium*, because this act can only be committed by official or responsible persons. The basic form is contained in paragraph 1, in which the perpetrator achieves a benefit for himself or another or causes damage to another, while in paragraph 2, the punishment of imprisonment for the perpetrator is contained in the case of obtaining a substantial material benefit (Garačić, 2013., p. 573). It must be a matter of direct intent in which the perpetrator must act in a way to obtain property benefits for others or cause damage. There are different legal understandings of the relationship between the previously mentioned criminal offense and the criminal offense of Passive Bribery because there are similarities and differences between them. The criminal offense of Abuse of Office and Official Authority is completed when an official has performed some action with the intent and obtained some benefit for himself, and does not act by the duties of the office. It can only be carried out by the perpetrator at the place of work of official duties (Garačić, 2003., p. 7). In Croatian scientific literature can be found a proposal that the criminal offense of Abuse of Office and Official Authority should include only the official person and not the responsible person in legal person (For critic see: Kralj; Krstulović Dragičević, 2010., p. 751). In the case of the criminal offense of Passive Bribery, the offense is completed when the official receives a gift or the promise of a gift, regardless of the performance of the act that should have been performed as a counter service. The courts have decided that there is a concurrence between these two criminal offenses (lat. *Concursus plurium delictorum*). The existence of multiple criminal offenses by one perpetrator, for which, most often, they are tried at the same time. An ideal concurrence exists when the perpetrator commits several criminal offenses with one action. If they are committed at the same time crimes of the same type, there is a homogeneous ideal concurrence, and if various criminal offenses are committed, a heterogeneous ideal concurrence. A real concurrence exists when a perpetrator with multiple acts commits several criminal offenses for which he is tried at the same time. A real concurrence can also be homogeneous and heterogeneous (Horvatić, 2002., p. 553) if the unlawful property benefit was realized for some other person besides the perpetrator. Thus, the court states that "the defendant committed the criminal offense of Abuse of Office and Official Authority from Art. 337, paragraphs 3 and 1 of the „older“ CCC and Passive Bribery when it was established that as a police officer while controlling the vehicle and the driver, stopped an agricultural tractor and found that the driver was driving the tractor without the necessary documents and that the tractor was unregistered (thus the driver committed misdemeanors punishable under the Road Traffic Safety Act).

The police officer accepted the amount of 40 euros from the tractor driver as a reward for not reporting him for the offense committed, which at the same time enabled the tractor driver not to pay the fine for the misdemeanor in the total amount of 200 euro (County Court in Bjelovar Kž 37/01 of February 22, 2001). From this decision we can see that the court took as the reason for determining the existence of concurrence the fact that the perpetrator not only benefited for himself but also another because the tractor driver did not pay the misdemeanor fine. It is almost impossible to answer the question of whether there is always a concurrence of Abuse of Office and Official Authority and Passive Bribery, but also, this possibility should not be ruled out considering that both criminal acts are not mutually exclusive. In certain cases, when the abuse of position and authority is of greater intensity, there can be concurrence with the criminal offense of Passive Bribery (Dragičević Prtenjača, 2009., p. 252.). In other cases, the criminal offense of Abuse of Office and Official Authority would be covered by the criminal offense of Passive Bribery (Garačić, 2003., p. 9).

10. JURISPRUDENCE

In this chapter, we will show jurisprudence in comparative and national system. In 2012, the Supreme Court of the Federal Republic of Germany (Bundesgerichtshof, BGH) decided that rewarding doctors is not considered a bribe and that doctors do not commit the crime of bribery if they receive rewards from a drug factory for prescribing drugs from that factory list. In that proceeding, it was disputed whether doctors in private practice could be considered an official persons in cases where the drug factory paid a commission to the doctor for prescribing the drug in the amount of up to 5% of the sales price of the drug, in the sense of § 299 StGB which prescribes Active and Passive Bribery in commercial practice (Wienke, 2013, p. 21). The BGH considered that a doctor in private practice is neither an employee nor an executor of a public authority nor an official representative of an authorized health insurance company, and thus is not an official person either. A such reward cannot be evaluated exclusively in the categories of criminal law, but payments must also be evaluated from the point of view of valid regulations on professional and social rights, as well as competition rules and laws governing the advertising of medical products (Wienke, 2013, p. 22). The specificity of the position of health workers as persons who perform public activities outside the hospital system led in 2016 to the amendment of the German Criminal Code (§ 299a StGB Accepting Bribes in Healthcare Sector and § 299b StGB Offering Bribes in Healthcare Sector) by introducing this category of perpetrators as receivers and givers of bribes so that all doctors could be identified as possible perpetrators. The case of punishment for corruption between contract doctors of family medicine and the pharmaceutical factory Farmal (the Hippocrates Affair) attracted special attention in Croatia. In 2014, the Office for Suppression of Corruption and Organized Crime accused the pharmaceutical company Farmal and a total of 364 doctors of committing corrupt criminal acts of Active and Passive Bribery, Abuse of Office and Official Authority, incitement to Abuse of Office and Official Authority, as well as conspiracy to commit criminal offenses. The trading company Farmal, its chairman of the board, and 4 directors were accused of organizing and leading a continuous association of a large number of doctors and pharmacists in Croatia as recipients of bribes from Farmal from 2009 to 2012. They asked their employees to contact doctors and pharmacists on behalf of the Farmal company and offer and give them vouchers, money, pay for trips and professional training, equip surgeries, and other gifts worth five to ten percent of the value prescribed medicines as a counter service for prescribing and ordering medicines from their offer, at the expense of Farmal. Doctors were convicted by final judgments that, according to Art. 293, paragraph 2 of CCC/11, or according to Art. 347, paragraph 2, CCC/97, committed the criminal offense of Passive Bribery in such a way that, as responsible persons, they accepted a bribe to perform an official or other action within the limits of their authority that they would have had to perform anyway (namely, they would have had

to prescribe medicine to a sick patient, although in some cases it would be Farmal, while in another it could be a drug from another drug factory - Belupo, Krka, PharmaS, Lek Ljubljana, Alkaloid Skoplje, etc.). Most of the accused doctors in the negotiation process admitted to committing criminal acts and guilt in exchange for a lighter sentence and a promise that their work licenses would not be revoked (Božić, 2015, p. 103). About 60% of doctors were sentenced to prison (for a duration of three to eight months), which was replaced by community service, while the rest were given suspended sentences. Also, 90% of the convicted doctors had to pay a fine (most often in the amount of thirty daily incomes) as a secondary punishment, because Accepting a Bribe is a crime committed out of self-interest (Božić, 2015., p.133). It is necessary to mention that Supreme Court in Croatia (further SCC) in its decisions considers the position of the police officer in Passive Bribery as aggravating circumstance (Juras, 2019., p. 235) even though the police officer is also an official person. The question is if the position of the official person is taken two times when sentencing, because it is considered in the definition of Passive Bribery in CCC through special minimum and maximum of sentence for this criminal offense, and secondly as an aggravating circumstance when measuring punishment. The status of the police officer as the official person shouldn't be taken twice in sentencing because negative impact of the actions of the police officer is already considered through special minimum and maximum of the definition of the criminal offence of Passive Bribery when defining an official person. In another case, when the gift was given by other person through the defendant, than the defendant mediated in Active Bribery. It isn't relevant that the accused kept part of the gift for himself. Mediation for reward is an aggravating circumstance. (SCC, Kž-454/69, Bačić; Pavlović, 2004., p. 1219). From the decision of the SCC, Kž-1170/84 of June 19, 1985, the way how the defendant offered the policeman to spend the summer in his house on the island of K, while also exchanging their addresses, including the invitation to visit the house, along with the fact that the official report on the traffic accident was not even written, but everything else was on a note in the policeman's diary, are sufficient grounds for the proper conclusion of the court that the defendant committed the criminal offense of Active Bribery. At the same time, it is of no significance what the policeman thought about the defendant's offer, when it is obvious that this offer is related to the traffic accident and that it was followed precisely based on it, with a request for compensation for damages to which the defendant was not entitled (Garačić, 2009, p. 821).

11. CONCLUSION

Active and Passive Bribery is a form of corruption. Many different authors mention different types of corruption. With these criminal offenses, the functioning of official authorities and legal persons with public jurisdiction is questioned. No one in society should have the possibility to avoid legal regulations. It's up to the legislator to ensure the proper functioning of the legal system by stopping hidden activities and proper definition of a criminal offense in Criminal Codes. The need for ratification, transposition, implementation, and most important thing, enforcement of international norms presents difficulties in the fight against corruption in the EU. The main aim of the EU Commission is to confiscate the assets that must be a priority in the fight against corruption and organized crime, so from the EU level, there is a need for stronger control of criminal activities. Also, we should not forget that European Public Prosecutor has major jurisdiction in EU financial interests. In all these jurisdictions we must connect with sanctions and characteristics of sanctions that need to be effective, proportionate, and dissuasive criminal penalties (sanctions and measures). Definitely gravity of each offense must be criterion when prescribing and imposing sanctions.

LITERATURE:

1. *Anti-Bribery and Corruption Laws in EU*, Retrived 07.02.2023. from <http://www.squirepahtonboggs.com>
2. Bačić, A. (2012). *Sukob interesa i pitanje odgovornosti u ustavnoj demokraciji*. Rad HAZU.
3. Bačić, F. (2000). *Korupcija i antikorupcijsko kazneno pravo*, Hrvatski ljetopis za kazneno pravo i praksu, 7(2), pp. 825-843.
4. Bačić, F., Pavlović, Š. (2004). *Komentar Kaznenog zakona*. Organizator, Zagreb
5. Božić, V. (2015). *Kazneno djelo primanja mita kroz prizmu korupcije između ugovornih liječnika obiteljske medicine i tvornice lijekova*. Godišnjak Akademije pravnih znanosti Hrvatske, 6 (1), pp. 101-149.
6. Brnetić, D., Ljubej, A. (2015). *Zbornik sažetaka radova IV. Međunarodne znanstveno-stručne konferencije "Istraživački dani Visoke policijske škole u Zagrebu"*. MUP
7. Cvitanović, L., Derenčinović, D., Turković, K., Munivrana Vajda, M., Dragičević Prtenjača, M., Maršavelski A., Roksandić Vidlička, S. (2018). *Kazneno pravo, Posebni dio*. Pravni fakultet, Zagreb
8. Derenčinović, D. (2001). *Mit(o) korupciji*. NOCCI, Zagreb
9. Dragičević Prtenjača, M. (2009). *Poredbenopravna analiza pasivnog podmičivanja u kaznenim zakonodavstvima Hrvatske, Finske i Slovačke*. Hrvatski ljetopis za kazneno pravo i praksu, 16(1), pp. 233-280.
10. Garačić, A. (2009). *Kazneni zakon u sudskoj praksi*. Posebni dio. Organizator, Zagreb
11. Garačić, A. (2013). *Novi Kazneni zakon*. Organizator, Zagreb
12. Garačić, A. (2003). *Odnos zlouporabe položaja i ovlasti i primanja mita*. Hrvatska pravna revija, Zagreb, (1) pp. 1-9.
13. Horvatić, Ž. (2002). *Rječnik Kaznenog prava*. Masmedia, Zagreb
14. Getoš Kalac, A. – M., Pribisalić, D. (2020). *Tamna i svijetla strana tamne brojke kriminala: o izazovima istraživanja nepoznanica i blagoslovu neznanja*. Zbornik Pravnog fakulteta u Zagrebu, 70(5), pp. 637-673.
15. Goldstein, E.E. (1979)., *European Views of United States Anti-Bribery and Anti-Boycott Legislation*. Northwestern Journal of International Law and Business, 1(2), pp. 363-370.
16. Juras, D. (2019). *Pasivno podmičivanje policijskih službenika*. Policijska Sigurnost, 28(2), pp.230-236.
17. Kralj, T., Dragičević Prtenjača, M. (2010). *Korupcijska kaznena djela protiv službene dužnosti – s analizom prijedloga njihovih izmjena*. Hrvatski ljetopis za kazneno pravo i praksu, 17(2), pp. 729-767.
18. Moukiou, P. C. (2016). *The Principles of Transparency and Anti-Bribery in Public Procurement*. European Procurement and Public Private Partnership Law Review, 11(2), pp. 72-87.
19. Novoselec, P. (2007). *Aktualni problemi hrvatskog gospodarskog kaznenog prava*. Hrvatski ljetopis za kazneno pravo i praksu, 14 (2), pp. 371-434.
20. Novoselec, P. (2016). *Opći dio kaznenog prava*, Pravos, Osijek
21. OECD Glossary, *Corruption*, 2008.
22. Pavlović, Š. (2015). *Kazneni zakon*. Libertin naklada, Rijeka
23. Wienke, A. (2013). *Errors and pitfalls: Briefing and accusation of medical malpractice – the second victim, German Medical Science Current Topics in Otorhinolaryngology- Head and Neck Surgery*. 12. Retrived 18.2.2023. from <http://www.egms.de/static/pdf/journals/cto/2013-12/cto000102.pdf>