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TRANSBORDER POLICIES FOR DAILY LIFE

TITOLO DELLA TESI
“MEASURES AGAINST CORRUPTION IN ALBANIA”
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<td>Penal Code</td>
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<tr>
<td>CPP</td>
<td>Code of Penal Procedure</td>
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<td>CCP</td>
<td>Code of Civil Procedure</td>
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<td>CAP</td>
<td>Code of administrative procedure</td>
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ABSTRACT

Herewith this theme is done an attempt to present the concept of corruption phenomenon and its social and legal aspects, putting into evidence the negative demonstrations and deficiencies, and recommending the ways of growing of effectively in preventing and fighting it. The corruption is a social phenomenon and as such, cannot be viewed separately from the respective society. In Albania after the unemployment, the corruption is the biggest problem and scourge of our society.

For the actual conjuncture of Albania who for realizing the major objective of integration into EU, must reach the determined standards, amongst which the fight against corruption is in the top of the list.

Corruption in Albania up to the independence, has operated mainly in the administration of the invador, had a development in the administration of the kingdom, but after the year 1944 was controlled strictly, up to the end of years “70, for interests of the dictatorial state. But later again took a development, with the economic and political weaknesses of the state. With the establishment of democratic state, initially had a development for many objective and subjective factors of period of transition, to be put later under control, with the growth of economic and political stability, growth of effectiveness of state apparatus especially in the field of transparency, documentation, simplifying of administrative structures and procedures, and increasing of control, certainly in the context of economic growth and incomes of citizens.

Corruption in private juristic persons as phenomenon is recognized since the allowing of private activity at the beginning of years ‘90’s, but penally was predicted as criminal
offense to the article 194/a, active corruption and article 194/b passive corruption, additions made in September of 2004.

Corruption is punished by the PC with the provisions that are found in some chapters, by grouping the provisions in three groups: Provisions that punish the corruption with that denomination, provisions that punish corruption, but not with that denomination, corrupting benefit as qualifying element of other acts.

Corruption is grouped by various criteria, such as:
- by the field of activity where it operates – public and private corruption,
- the way of corruption action - direct corruption, and indirect corruption,
- the position of subjects - beneficiary - active corruption, and the provider of benefits there is passive corruption
- by the fields of life, economic, state, political and social, where it acts we have:
  - Economic and Administrative Corruption
  - Corruption in private juristic persons
  - Political Corruption

The factors and circumstances that cause the corruption are affect to private individual or official employee and in the bodies and structural private and public levels, for emerging of the embryos of the corruptive opinions and practices, knowledgement of which has essential and determining importance, especially in the lives of individuals and juristic persons, and generally of state and society.

The main factorst that affect in the emerging and development of corruption in our country are:

- The economic situation
- Level of living and relatively low wages of administration
- Lack of political stability
- Legislative reform.
- The effectiveness of the state mechanisms
- Intervention of state in the economy
- The process of property restitution, privatization and legalization
To come up with an opinion for the level, exactness and all-inclusion of provisions in our criminal law in the field of corruption, we made a comparison with the penal codes of Italy, Germany and New York. The comparison is made with these three codes, because they are well-drafted, all-inclusion of the corruption offenses, the provisions in the field of corruption is the detailing of the forms of offense with separate figures, each one formulated rigorously and strictly, to not letting place for an abusive judicial practice, and also facilitate the individualization of type and measure of punishment.

We have made at the end some recommendations regarding the fight against corruption, in between which we can mention: There shuld be a greater and more effective collaboration between the Supreme Council of Justice, Ministry of Justice and Ministry of Education, for a more extensive and qualitative treatment of corruption in subjects of university, public and privat, and for a scientific treating with a higher and deeper level, and closely related to the reality, prevention and fight against corruption in Albania. And regarding to the corruption in justicial system: it is necesary a perfection of procedural aspects, especially in terms of deadlines, individual approval of a judge in several actions before and during the penal investigation, as surveillance, controls, sequestrations, etc., through approval with undersigning of request, instead of decision with the judicial sessions and through bureaucracy of judicial administration, reviewing of mechanism of procedural actions with abroad, etc.
THE CORRUPTION

A SOCIAL AND LEGAL OVERVIEW

Preface

Herewith this theme is done an attempt to present the concept of corruption phenomenon and its social and legal aspects, putting into evidence the negative demonstrations and deficiencies, and recommending the ways of growing of effectively in preventing and fighting it. In any case without pretending in full termination of this theme, nor the perfect and definitive solution of the problems.

The difficulty in the treatment of this theme consists in one part (and mainly) in the lack of enough personal experience in this field, as in the aspect of scientific commentary as well as professional experience. From the other part I find myself not only in front of a poorness of titles and commentaries in our juridical literature, but also many deficiencies, especially formalization in the treatment of the problem, where dominates (with only any exception) the formal – juridical exposition, especially without putting forward concretely the negative and positive aspects, without a social and juridical analyzing of the problem for prevention, discovering and punishment of phenomenon and corruptive manifestations.

In particular we have a gap in the field of our jurisprudence, in the treatment of such aspects as investigation and judgment of corruptive actions, camouflage methods of corruptive actions, and the ways of discovering the acts of abuse and misuse of power assignment or formal violation of rules, etc.

It is true that in the international law, there are a large number of acts, conventions, agreements, resolutions, etc., as they are also the scientific commentaries, mainly articles in juridical magazines or other materials of different activities, but which in general are
characterized by a theoretic treatment with a poor practical value for the reality of the problems of our society in the field of struggling against corruption.

The wideness and the diversity of the problems that are related to corruption, are the factors that commentaries in this theme will be in such gauge and in such way as the nature and destination of it enables.

Realization of the theme was possible by acknowledgement of:
- dialectics of corruption phenomenon, historically within and outside the country
- legal aspects of it, historically within and outside the country
- theoretical and scientific treatment of it within and outside the country
- our judicial practice
- statistical data for the activity of institutions of state control and justice
- archives of Ministry of Justice for the materials of inspections in the prosecution and tribunal institutions
- data from internet, media, etc.

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The mention of facts, documents or citation of literature, regarding to the source of information, is signed with number in the respective part of the text and it is explained at the end of respective page. The exception is done for the ranking of sources at the end of the paper, or to the annex of extracts of acts or materials like:
- the acts that represent the initial situation of Penal Code and dynamics of Penal dispositions until now, which are related to corruption
- the last bill approved by the Council of Ministers for the changes in the PC, mainly for the dispositions that are related to corruption
- the translated text of all the dispositions for the corruption in the Italian Penal Code
- the translated text of all the dispositions for the corruption in the German Penal Code
- the translated text of all the dispositions for the corruption in the Penal Code of state of New York in US.
Preamble

Starting from two approaches, the theme of corruption and the fight against it is the order of the day in Albania.

Firstly as a general phenomenon and aspect in every democratic state, actually it is more prominent in the countries of ex Socialist Camp which have just emerged from the monist system, and especially in Albania as a country with the most severe dictatorship, with the least developed economy, with the lowest level of living and with the least democratic traditions.

Secondly, for the actual conjuncture of Albania who for realizing the major objective of integration into EU, must reach the determined standards, amongst which the fight against corruption is in the top of the list.

It must be avowed that Albania in the curriculum of the earliest and latest dictatorships, has poor traditions in the field of corruption in the narrow meaning of the word, for the simple fact that its sovereign classes realized their enrichment interests directly and “legally”.

Here we can distinguish that thing who many authors nominate it “ideological corruption”, for which dreadlessness can be said that Albania occupied the first place.

In the argument of this, it is the prevalent platform “the politic in the foreground” and expressly domination in everything of “Marxism-Leninism ideology and party line”, from the constitution, legal acts and in every aspect of life of society, from the education, literature, art, sciences, sports, etc. It was a ideological “bombardment” with the aim of corrupting the citizens for “donating” continuity of sovereign to party in power.
But this was a corruption in the general meaning of it, because it was materialized in corruptive actions, with the author not the functionary employer in the aspect of active corrupter but the state, more exactly the party in power. It is true that it was the clerk who used to realize the corruptive act, but it was only in appearance and formally, because it was the legal and sublegal rule which determined the priorities in everything with the criterion of bias and ideological and politic support to the party in power. We can mention here the party monopolization of the policy of staff and class criterion of nominations, absolute partiality of candidatures with only one electoral subject, the preferences in granting the rights to study, for housing, inhabitation permittance, absolute discrimination of the kulak’s class, the family and relatives of the politic condemned, etc., up to extremes such as normative of fixation to the card of defendant if he/she was member of the party, or ranging in the PC of year 1981, article 32, as a new circumstance of mitigation of punishment under legal limits even “personality” of guilty, criterion that was not known by PC of year 1952, article 44 etc.

In fact there was any demonstration of the classic corruption, in the reverse side where the actor of passive corruption was the simple clerk, and the active one was the citizen. But these were limited cases, not only because it was not allowed by the party in power (as her prevalence could be harmed indirectly), but also for the simple fact that the citizen had not economic possibilities to give, and also the beneficiary clerk could not send things anywhere because could be self denounced because of low level of income from the only source - his/her salary.

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With the advent of democracy, such situation was overturned naturally in the aspect of “ideological” corruption, vanishing every demonstration and trace of it, in the life of society, in the legal dispositions, in the structure and activity of the state mechanisms. Now we have classic corruption, where the passive corrupter is the clerk and active corrupter is the simple citizen.

To be realistic it must be said that there are still demonstrations of “ideological corruption” in between particular leaders of state organisms, physically but even mentally, as argument
of old remnant of mentalities of the overthrown regime. For example we can mention here the period during the electoral campaigns, by hiring or firing people into public institutions, especially immediately after the rotation of the nomocracy etc. Phenomena those are denounced and combated especially due to separation of powers, property declaration of officials, or particular links such as ombudsman, the commission of Civil Service etc., without underestimating the activity of nongovernmental organization, and especially the role of media.

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We have mentioned to the part of Preface, the not treatment of corruptive actions in the juridical literature before and after years “90 in Albania. So, till the end of years “80 to the juridical magazine “Popular Justice”, there can not be found any material or work that analyzes the act of corruption in the juridical and scientific meaning, meanwhile the corruptive actions are mentioned passingly and generally in the articles or works related with the duty crimes. It is obvious that here are not included the commentaries about the articles with the propagandistic nature, or in mentioning in passing of materials for analyzes of work or other different activities like seminars, conferences etc.

Unfortunately until now, even after the years “90, we have more or less the same situation. Suffice to look through with the content of the magazine “Juridic tribune” almost the only one that has had a stability in time.

It is true that in all the editions of commentaries of PC, special part, to find the treatment of the dispositions for corruption, but in such editions not only they have a lecture nature with the main destination the students, and generally have commentary expound character of data, but also they are limited the area and possibilities of detailed description, of scientific analyzing of the respective penal acts. So in the text of Prof. Dr. Ismet Elezi: “Penal Right”, the special part, Commentary of year 1999, article 244, ex “Proposal for reward” nowadays the active corruption, the comment is only 40 lines (page 58), meanwhile “Giving the reward”, the article 245 (pg 60) has only 30 lines, including there the reproduction of the articles. The same thing is seen even to the revised edition of the year
2007 in which “The active corruption”, article 244 has a comment with 50 lines, from which the reproduction of the article with 8 lines.

The actuality in general in worldwide level and especially in Albania, and the vacuum in our juridicial literature were two factors which influenced in selection of the theme and handling of this paper.
CHAPTER I
HISTORICAL OVERVIEW OF CORRUPTION

1.1 Historical generally

The corruption, as it is accepted in general is born parallelly with the creation of the state. In between the myths of ancient Greece there are ranked some early aspects of corruption like the myth of Academus – hero of Attica, which told the Dioscuri the place when Theseus kept hidden Helena, their sister, after they had abducted her. In exchange he took the promise that his road Academy, would not be affected by the destructions of war\(^1\).

The existence of corruption in antiquity, come out firstly from the chronicles of the time, for as they have arrived in nowadays. Another source of story are the work of philosophers and thinkers of antiquity, in the framework of treatment of state organizing. Historically are known and described popular revolts, rebellions, till the insurgency as reaction of this phenomenon also.

From the approach of active corruption, in between main functions of state in antiquity, it was the regulation and control of the activity of citizens through restrictions or bans of certain actions or behaviors. “In these conditions, one of the forms of social deviation expressed in reaction towards this regulation of state, it is also the appearance of corruption which was converted into a usual phenomenon”\(^2\).

From the approach of passive corruption, it is fact that is proved historically that the power of state has been a instrument and source of providing of corruptive incomes, throughout

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\(^1\) Barbara Kolona “Mythological dictionary”, Toena Editions, Tirane 2005 Pg. 29
\(^2\) Prof. Dr. Luan Gjonça “Corruption, Constituent Penal acts”, Organized Crime“, Tirane 2004 Pg. 16
which the state officials have made numerous ownerships and richness, reality which led to the postulate “every man invested with power is apt to abuse it.”

In ancient Egypt, meanwhile the unlimited power of Pharaoh, de jure used to bring the maximum benefits, the people of his administration and others around him and they could not stay without being attracted by corruptive benefits, with the abuse of attributes because of their position into state pyramid. The Pharaoh, used to get out with the flag of “fighting corruption”, not for fighting the phenomenon itself, but in those directions and towards those dependants who with their extreme acts could gamble not only to discredit his system, but also for preventing the hazard that could came because of their overenoeachment, strategy thus very characteristic of dictatorial systems.

In other countries such as Mesopotamia in Middle East, in Asia, Japan and in ancient China, in which regardless of emphasized centralization of state, they had not had pharaonic extremities of dictatorship, and corruption was allowed almost openly, making it a way of living for all the people in state, and for that it could not be classified a immoral act, and much less a criminal act Such a conjuncture was encouraged by the high officials of state, strategy which aimed in one part to take into curb the administration of state with the technique of “corrupting” through allowing the corruption, and in other part relieving of paying them from the state incomes, causing for the sovereigns the increasing of profit from these incomes, and at the same time cultivating in this way the myth of uncorrupted sovereign.

In ancient Assyria, has existed a special administrative evidence in which were found 150 messages, where were registered the employees and functionary who accepted grafts

The meaning and the forms of corruption and its consequences for the state and society, we can find them to the thinkers of antiquity. Aristotle in his work for the state “Politics”, sees

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3 Prof. Dr. Luan Gjonça “Corruption, Constituent Penal acts”, Organized Crime, Tirane 2004 Pg. 17
4 Jeremy Pope “Confronting Corruption” – Tirane, 2002 Pg. 26
it a result of stepping into the law, phenomenon which can lead even to the destruction of state when it reaches high levels of corruption, as it has happened in such regimes which he calls them “Tyrannical regimes”.

In the codification of laws in Rome, the corruption is conceived as personification of evil. The treatment of corruptive manifestations in “Senatus Consulta” (advices of Senate), in “Orationes principum” (Speeches of Senate) or in edicts of magistrates and its fixation into the Roman law, tells the problems that the Roman society has had because of bad use of power. There are famous in this contest the oratories of Cicero. We can mention here his work “On the State”.

In the Roman Right it was a particular law for corruption, where we encounter with the term of corruption originated from Latin.

In the word “Corruptire” we have a word-formation, destroy, break, damage, falsify, give and receive graft, corrupt. A consequence of conjunction of Latin words “Correi”, which has the meaning of some participants, and the word “Rumpere” which has the meaning to break, destroy, trample. And the conjunction of these words brought out the term which defines the action of at least two persons, which aims to break or obstruct the normal evolution of a judgment, governance activity or public works.

In Rome, the corruption concept has been wide, in which were included such acts as: buying or blackmail of judges or deponent, arson, disappearance of richness, rape, falsification of results, braking of state boards of public notices or falsification of their text, breach of the peace and public order, degeneration of youth, etc. But over the time, especially in Middle Ages, the meaning of corruption began to be limited, expressing by it only the abusive acts of official persons.

In ancient Greece, the synonym of Roman “Corruptire” was the term “Katalysis”, which also had the meaning destroy, dissolve, etc.

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5 “Roman Law” - Dr. Arta Mandro, Tirane 1998, Pg. 33
Phd Rozario Rica  MEASURES AGAINST CORRUPTION IN ALBANIA

In Middle Ages, initially in the evolution of corruption has significantly affected the fragmentation of the territory and power in the hands of feudals who created a situation of extraterritoriality, lack of stability in all the spheres of life, and especially in missing of a unique justice power, meanwhile later on with the centralization of the government, such the philosopher Nikola Makiaveli determines in his work “The Sovran”: “the corruption is the exploitation of public opportunities for private interests”, determination which even today is the core of definitions that are given for corruption.

Even in medieval religious cults, the corruption was expanded by being based as an authority of cult of faith, and also in the absence or inability of controlling because of territorial expansion, in particular because of extraterritoriality towards respective government power where was operating the unit of cult, especially in the field of justice. The creation of indulgence system (forgiveness of sins through a paid Papal certificate) or Simony (selling and buying of church offices\(^6\)), etc., are demonstrations of cultivation of corruption, that really were not the monopoly of Catholic Church, but also of other faith cults of that time too, including those in our country, “where they didn’t have a good effect in the believer masses of Orthodoxy the different manifestation of corruption, such as giving bribes to buy high ecclesiastical positions. This negative occurrence was noticed both in Ecumenical Patriarchy of Constantinople, and in the Archbishopric of Ohrid.”

“..On the other hand, were not rare the cases where the metropolitans and other leaders of church administration, were collecting money to believers in the form of taxes in greater amounts that were recognized officially. While in the border areas of jurisdiction of the Catholic Diocese in northern Albania, bishops and other church authorities of Patriarchate of Peja, they used to pressure the Catholic believers and clergy to pay different taxes on their behalf”\(^7\).

\(^6\) Aleksandër Paradhisis - “Pirate becomes Pope”, Tiranë 1969, Pg. 66
\(^7\) History of Albanian people, First part, Pg. 605
In medieval time, the definition of corruption and particularly the range of corruptive actions began to be narrowed comparing with the Roman Right, by being limited only in some elements or elementary forms such as bribe or buying of state offices. This meaning for corruption arrived up to early modern era, remaining still the follower of this mentality for corruption.

Anti democratic nature of society and state, the individual power in local range in middle ages, used to cultivate the tendency for limiting the cases and the scale of responsibility of kings, feudals and their servants, because with just a few exceptions in the central power, in feuds the administration was absent in the true meaning of the word, which would have been the social base of corruption phenomenon.

With the first bourgeois revolutions at the beginning, more as a governing program and in theory, it was extended the concept of corruption, but in practice remained narrowed only with graft. Tendency this which tends in one hand with the eagerness of new bourgeoisie for an economic reinforcement and obtaining of supplementary incomes for investments (passive corruption), or for evading from fiscal obligations or finding the sources for supplying with raw materials for selling the production (active corruption). At the other part this goal gets place in initial stage of organization and stability of capitalist state and economy, especially in terms of financial control.

Only the last decades of 19-th century, and at the beginning of 20 century, with the reinforcement of economy and the stability of state, it is noticed a tendency in extending the meaning of corruption, signing the return in the initial meaning of it in the Roman society and right. The capitalist society and state passed the phase of growing and consolidation, and for that the rule of law was needed.

The base of democratic society is the legal state of rule of law, which was extended with structures in dimensions and types, operative, regulatory and inspective, with the justice
authorities, which regulate the relations between state and commercial entities, with NGOs and citizens, with respective juridical regulations for competences and operation procedures. In these conditions the expansion and bureaucratization of the apparatus of state administration, would follow the growth of illegal exercise of powers authority competencies for purposes of personal profits.

In theoretical thought and literature, we encounter the most varied points of view and theories in which, a part of people blame the dictatorships or extreme systems for nascence and development of corruption, some others blame the liberal attitudes of governments, someone else lean the strengthening of laws, others for moral, another for the development of organized crime or to instability and anarchy, and other approaches for which we will talk by order in continue.

Denoting here the theory of linear development of corruption, by which is explained the tendency of development of corruption by comparing it with previous periods of history, which not only has no sound basis because of the distinctive features of each period, but also because it doesn’t explain the reality of modern times where the corruption has spreading and expanding in new forms, or with the massive corruption within the countries and crossing national borders, taking this way international dimensions.

The corruption is a social phenomenon and as such, cannot be viewed separately from the respective society. In closed societies it is characteristic the localized corruption, meanwhile in the integrated societies and in the conditions of a globalization of economy, the corruption has an international character too.

The progressive historical thesis of corruption does not stand on criticism, because here is not the question of the strengthening of the positions of corruption in itself, which does not exist independently from the life of society, but it is reflection of actual changes of conditions of life and contemporary mentality, especially in countries emerging from monist system, and developing countries with unstable economy and state.
In legal and criminological aspects, unlike from the previous periods where predominated the passive corruption of bureaucracy of state, now already along with it we have the development of active corruption of bureaucracy and organized crime as one of the means of surviving, crime activity in general and organized crime in particular.

Active corruption crime, especially organized crime, yet takes route in four main directions and objectives:

Firstly: To create the conditions for realizing of criminal activity.
Secondly: For money laundering and other incomes which are fruit of crimes.
The third: For avoiding the control, or to escape from legal responsibilities in administrative aspects and penal aspects.
The fourth: In the internationalization of business, a natural expression in the frame, and parallely with the phenomena of globalization, mainly in economic field.

Expansion of the object of corruption is reaction towards its diffusion with new forms and directions. The main factor of contemporary tendency of this phenomenon, which does not represent simply and only the abuse of official position from the public clerk, but also by anyone who abuses with the private or public position, their relationships and interests every time that they have the opportunities for obtaining easily different stuff in criminal ways, or for realizing of different acts other than moral, enrichment and political objects.

In this regard we can mention here what has undersigned, or for what our country adheres:
- Law No 8635, date July 6, 2000 – “For ratification of civil convention for corruption”
- Law No 8646, date July 20, 2000 – “For ratification of European Convention for capture and confiscation of crime products”
- Law No 8778, April 24, 2001 - "For ratification of the Penal Convention for Corruption"

- Law No 9245, June 6, 2004 - “For ratification of additional Protocol of Penal Convention for corruption”.

- Law No 9369, April 14, 2005 - “For changing in the law No 8778, April 26, 2001 “For ratification of the Penal Convention for Corruption”


Characteristic is that generally these international agreements, besides of being applied directly in the fight against corruption, have also been the basis and the cause of changing of internal legislation, to effect in a perfect reconciliation, as it has happened with the changes made to the PC in recent years in the provisions related directly or indirectly with corruption.

We can mention here the changes of year 2008, of article 7 related to the penal responsibilities of foreign citizens for corruption or laundering of products of crime. In year 2003, amendment to Article 36 for the confiscation of instruments and products of crime, in addition to Article 170/a for illegal employment, the addition of Article 181/a for non-performing of duties by the tax authorities.

The Articles 197.a and 197/b for the acts that carry the corruption in the field of sports, especially formulation or addition of new provisions that have directly relations with the active or passive corruption such as the Articles: 244, 245, 245/1, emphasizing here the addition of Article 245/2 by which was recognized reduction or exemption from sentence of active corrupter when he denounces the act before proceeding, or contributes in penal investigation.
1.2 Historical aspects of corruption in Albania

The point of view that the evolution of Slave-owning system in Illyrian Albania, around the V-th century before Christ, we see it “in the provinces more populated than others, especially those coastal regions”, and “the same development in the historical level had also the subsequent creation of antique colonial cities and states such as Dyrrachium, Apollony, Ambrakia, and as a result was born the corruption of officials who ruled over these places”\(^8\), is a view partially correct regarding to the expansion, mainly in coastal zones.

This is because the Illyrians had 3 characteristic forms of organization of state: the form City – state carried out or copied from Greeks and Romans, the territorial Slave-owning state which substantially was a hybrid between the state city (mostly a castle) in coexistence with tribal communities, and thirdly the independent tribal communities which were greater in number, expanded in territory and in population in the northern highlands and in Laberi (Southern Highlands in Albania). The evidence of this reality has importance especially for the history of corruption in early Albania. This is because slavery was recognized and developed only in the form of the first state in city – state, where penetrated and was followed the contemporary economic and governmental, especially Roman organization, feature of which was in one part the trade and the beginning of handicraft, production and circulation based mainly in exploitation of slaves, and on the other hand the beginning and the development of state administration – classical terrain of corruption.

In two other forms, the slavery was not recognized, but the traditional economic life continued. Meanwhile in the second form of economic aspect was born and developed the source of incomes from piracy, while in governor aspect was recognized only the military bureaucracy which had no reason and need for corruptive revenues, because was operating the principle of separation of spoils of war or piracy. Finally in the third form - the tribal societies, when not only were missing the slavery and economic regime of trade, because the natural economy existed, but also the administrative bureaucracy was missing, because

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\(^8\) Prof. Dr. Luan Gjonça - “Corruption, constituent Penal acts - The organized crime” - Tiranë 2004, Pg. 27
there was not the state “executive” apparatus, but only “legislative”. The role of “executive” power, was performed directly by Assembly, or people charged by Assembly for concrete issues. Foremost is that the administration and direction of society was not realized by people with the “office clerk status”, and the most important they were not paid. Characteristic is the Presbytery, the chain of self-government of justice, if it can be called administrate in the bureaucratic meaning the organizing of trials with Presbyteri, only for the fact that it was recognized the reward of “benefit of job by the parties in conflict. (Canon of Leke Dukagjini, Pg. 127. “Canons made in Kastrat and Bajze – 1892” No 17).

For that reason it must be admitted that the economic and social base of corruption was missing.

“...In the highlands where there is no government and public authority has no power, and many cases are judged and decided by the Presbytery..”

Missing of corruption is confirmed directly in the Canon of Leke Dukagjini, or in the Canon of Laberia, which have a very early origin, but are used in modern times too, since in them there are not provisions that specifically punish corruption as a penal act separately. To be emphasized is that even in the linguistic aspect, in Albanian language the words “corruption” or “bribe” does not exist, meanwhile the researchers mention instead, the word with origin from Turkish “bakshish”, which means “gift”.

This is confirmed even from the fact that in the Canons, are not mentioned at all such names, and taking an unfair reward from the elderly for resolving the conflicts was identified in arithmetic or symbolic way: “we will not take for shoes (elderly) over .....”a certain sum” or “we will not take with broken wings for underhand”

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9 At Zef Valentini “Law of Albanian mountains” – Relations of the walker missions of Jesuits in albania – Institute of Albanian Studies, University of Roma, Pg. 154
10 Gustav Meyer “Etymologic dictionary of Albanian language” Çabej Editions, Tirane 2007 Pg. 61 -Bakçish – bakshish: From Turkish “gift”
11 Shtjefën Gjeçov - “Canon of Lekë Dukagjini”, Edition of publishing house “Kuvendi “ 2001 Pg. 127 Canons made in Kastrat and Bajzë 1892 – Paragraph 17. – Elderly can not take over 10 grosh (kind of coin of that time), and common people 5 grosh, for the elderly judgement.
In the Statutes of Shkodra, according to models of many statutes of European city-states, known to have acted from the beginning of the fourteenth century, the corruption is known as phenomenon: “In this real legal monument has other dispositions that have as object the issues of Administrative Law, Penal Law, Civil Law, Family Law, for organization and functioning of the judicial system, special norms and articles on the prevention and punishment of corruption in the courts and judicial officer\textsuperscript{13}...”

In the statutes, the corruption was punished specifically, as it emerges from the circle of penal acts in them determined, by Prof. Ismet Elezi\textsuperscript{14}. So based on chapter (article) 156:

“-If a judge takes the money for a trial and if it is proved such thing, he is forced to pay fines 8 hyperpere’ which is half divided with Earl and Com unes. On the other hand it is obliged to pay the damage for those who has lost the trial because of this judge. At the end he losses forever the right to exercise his profession in our municipality. The same thing is applicable for the notary and for every officer of our municipality”\textsuperscript{15}

Likewise, though indirectly, is punished even the corruption of prosecutors, in chapter 276. Only in the Canon of Leke Dukagjini, of Ismet Elezi, we face the term “rryshfet” with the source from Turkish, argument of later entry of this phenomenon. This should be added the reservation that while in the Codification of Gjeçovi, we have a greater precocity and storage of originality in the formulations of dispositions indicating their literal reproduction of the source. While in that of Laberia have a higher scale of processing of the provisions and intervention in the codification terminology, which clearly emerges from the provisions establishing of Canon, of terms with modern juristic character, as in material aspect and even procedural, which in Albania are encountered only in Century 20, that tell that we have an adaptation of the source data\textsuperscript{16}.

\textsuperscript{12} Pg.124 VIII - Canon of Elderly – 1907 - The tribes elderslies :“The Elders that Judge with “broken wings” for underhands, which are investigated from second elderlies, besides of dishonor they also are fined according to the case and can not be taken anymore for elderly judgement.
\textsuperscript{13} Statuti di Scutari”, Corpus statutario della Venezie, to “The right and Law in Arbëri”, at the end of the centuries XII–XIV –Statute of Shkodra, Pg.140, Dudaj editions, Tiranë 2008
\textsuperscript{14} The National reconciliation Committee “Statutes of Shkodra” December 2003 Pg. 2
\textsuperscript{15} Being there Pg. 36
\textsuperscript{16} As terms “prescription”, “Juristic ability”, “Ability to act”, “Adaption” etc.
In fact the corruption is encountered even in the early times, but outside of tribal life, in relations with the outsiders the administrations of city-states, and especially after the Ottoman conquest, with the Ottoman administration, aspect that was not subject to the customary law, that had the role of the regulation of internal life of the tribe.  

The corruption in our Customary Right of Leke Dukajjini Canon is faced in four features:

Firsty: **Corruption as penal act is a late phenomenon**

The Canon of Leke Dukajjini although is “a code of customs norms and legal and ethical concepts to different historical epochs” the corruption is out of early dispositions of this Code, in later amendments of assemblies held by the end of 19 century or beginning of 20 century.

Secondly: **It is a isolated phenomenon.** Another characteristic in the customary law is that, even in this law the corruption is faced only in the activity of the elderly members, the only link with the elements of “administration” in the field of giving justice, what is clearly shown not only from the dispositions mentioned to the Canon of Leke Dukajjini (examples 9, 10) but also in the Canon of Laberia, article 773 – “The elders who judge with partiality”, “The elders who judge an issue and maintain a bias for one party or another, or when take bribes, are condemned with “black face (dishonor)” and are not called again in judging of issues” as pointed out even by father Zef Valentini” … It happens that one of the parties provides the support of a powerful person who can be member of the elders, sometimes to be safe from a maltreatment, and sometimes for providing the partiality of

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17 “.. The habitants of Tivari were so angry by illegal perversities, the arbitrary drudgery obligations, and in general bad behaviors of Venetian podestase Giacomo Delfi, as they made custom to call him Nero” (History of Albanian People – First part, pg. 265)

18 Izet Hoxha “ E Drejta civile në Kanunin e Lekë Dukagjinit “ Tirane 1999 Pg.4

19 Shtjefën Gjëço “Canon of Lekë Dukagjini” – Edition of publishing house “Kuvëndi “ 2001 Pg. 127 Canons made in Kastrat and Bajzë 1892 – Paragraph 17. – Elderly can not take over 10 gros (kind of coin of that time), and common people 5 gros, for the elderly judgement.

20 Pg.124 VIII - Canon of Elderly – 1907 - The tribes elderslies: “The Elders that Judge with “broken wings” for underhands, which are investigated from second elderlies, besides of dishonor they also are fined according to the case and can not be taken anymore for elderly judgement.

21 Ismet Elezi “Canon of Labëria”, 1946
judging without having right. The gifts that are given in this case for making for itself a chairman or a person in power, is called “rryshfet” (bribes)...  

Thirdly: **It was a sporadic demonstration that does not represent a problem while in general in the Canons for any particular case is reacted with the declarative condemn “black face”, exclusion from participation in elderly in the future, and with the optional fine.**

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The corruption in Albania in the period of Ottoman domination, it was a phenomenon that operated in areas where this domination was extended, mainly brought and cultivated by the administration of the invaders in its relations with the population, aspect of corruption is nominated “public corruption”. It was also the private corruption with two directions: passive corruptive acts of major land owners with the inhabitants of the territory of their properties, farmers, raja, and active corruptive acts of private subjects for realizing the protection of economic activity, firstly commercial activity and later manufacturing activity. In all the directions predominated the elementary corruption, in paying cash, in value or in nature, bribery, etc..

In moral aspects it was not obstacle the fact that the religion did not support the corruption in principle:

- “There were many complaints about grafter Bajraktarevos, but neither the tribal law nor the Turkish government did not deal with these abuses”

- If the Bajraktar in the position of judge or arbiter, taking bribes, the only remedy was that the respective individual to freely choose a new legislative the next time. If Bajraktari accepted a gift in exchange for a favor, there was no other solution. His

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22 At Zef Valentini “Law of Albanian mountains”, Pg. 154
victim could only be able to comfort themselves by praying that: God or Allah condemns the gluttony.  

Among the main principles of Sharia, where is talked for the rights of the others, is said that: -Sharia has strictly forbidden (has made haram) even the graft.

But along with Sharia, in our country acted even the Ottoman penal law, from the inside of which evidenced the presence of corruption in the form of bribery.

The request for the above legal regulation, shows even the diffusion of these phenomena in our society. We stress that the ottoman penal law, *authentical codes, since 1878*, in Albania have functioned even after the Proclamation of Independence, until the emerging of the Albanian PC of year 1928.

The penal acts for corruption are foreseen in the third part, which are entitled Mita, the article 67 till 81, which have undergone a reformulation in Turkey in 1922, by abrogating the articles 70 till 75, with the reformulation of the articles 67, 68, 69 and 76 and by letting in power the articles 77 till 81. This means that for the Mite (bribe) in 1924 had a total of 9 articles.

Essentially, the Code was not organized with articles, with the criterion that each article to define a penal act by itself, but in totality of the dispositions that are included in a label of a penal act had provisions defining the figure of penal act article 67, punishment of bribe taker article 68, punishment of bribe giver article 69, exemption from punishment and return of the given sum of bribe from the great need. Punishment even for the person who does not denounce the bribe article 77, punishment for bribe for the legal act article 78, exemption from responsibility of bribe taker who denounce the proposal or reward given within two months, article 79. Nonconsideration bribe but thief, when an officer person

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23 Margaret Haslluk “The unwritten law in Albania”, Cambridge 1954 - “Albanian Canon” bleu 1, Albanian editions, Tiranë 2005 Pg. 133
24 Prof. Dr. Ismet Elezi - “The hystorical evolution of Albanian Penal Legislation”, Tiranë 1997 Pg. 15.
makes payments less than reflected, article 80, and the responsibility of giving reward to a person with the aim of committing a penal act, by punishing for pushing or intermediary person for that act and not for bribe, article 81. etc 25.

In fact, neither Sheria, nor the penal punishment had not or could not have effects, because the control of real situation in execution of law, was in hand of Ottoman administration and major owners who were not interested in such a thing. This was the reason that the corruption begins to be demonstrated in various forms, and took large dimensions, especially in the cities, who naturally brought in:

“... Displaying social contradictions in the cities, such were the complaints in court of workers against masters in relation with their salaries; the protests of guilds against looting of the entrepreneurs, who collaborated and arranged for such actions with other government officials, mainly with kadilers; the protests of representatives of different strata of the city population sent to the High Port, against the arbitrary action of local rulers, who aimed to disclose illegal profits at the expense of citizens manufacturers; manifestations of hungry childhood against rulers, who used to bring in market the crops from their granary during the months of winter or spring, when the production in market were reduced and sold it with the higher prices.” 26

This situation can not let without bringing reactions, especially new crafters and guilds that opposed the arbitrary acts in cities and market, reaction which very often took the organized forms of resistance, organized with weapon.” 27

There was no other situation in the countryside where the “complaints” were affecting various aspects of oppression, they were directed against “harvesters” of state obligations, that used to demand more things that what it was predicted in defter, against taking of the

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25 Penal Ottoman law – Translation with authorization Ministry of Justice -Tirane 1924 in power in Turkey before 1912 and adapted in the new Albanian State e. Until 1924 was used directly in Turkish.
26 History of Albanian People, first part, pg. 559 - Tirane 2002
27 In the same place 559
money more than planed, sweatshops illegal works, etc. The more often were the complaints and protests against looting by the feudal lords and the state tax pickers..  

Extension and dimensions of corruption were made problematic for turkey state, not so much for corruption for itself than for danger that could come from reaction of population, and for that so it was passed in extreme measurements. The first punishment with death for corruption, is faced to the Pashallek of Shkodra in year 1770, were was condemned with death Khareman Pashe Begolli of Peja, in between the others for financial abuse too.  

With foundation of Albanian state in year 1912, the corruption will continue to appear also in new-come formed Albanian administrate and this was aftermath of inherent of corruption of ottoman state administrate, which in last years of ruin of empire has taken big dimensions. For inertia continued to grow this phenomena also in new-come formed Albanian state, not only because that a part of employers have “ottoman experience” but also for cause of lack of stability of new come state, international complicated situation in eve and during Balkan war and also world war.  

Only in the year 1924 begun the first actions for simplifying of administration and the first actions of fight toward the bureucracy in it. However yet evidently continued the influence of Ottoman administration, into the administration of newborn state of Albania.  

In the year 1928 was approved the PC which substituted that of Ottoman code of year 1878. The second book of this Code was dedicated for crimes (special part), where was talked for the bribe and for the abuse of authority, abuse of clerics in exercise of their functions, administration of justice and other respective abuses. This is first legal regulation in Albanian penal legislation, for the problems of corruption.

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28 In the same place, page 556- 577  
30 Law Decree, dated July, 22, 1924 “For the proposal of Ministry of Finances, we decree the forming of Commission for simplifying of bureaucracy and reduction of employers”  
31 Law decree, dated September 10, 1924 “For the acceptance of Albanians, experts of turkey in employments of State”.  

- 30 -
1.3 The corruption in the period 1944-1990

With the placement of communist system in our country, by letting apppart the propagandistic aspect “in the framework of anti-bourgeois reforms”, it was declared the fight towards the corruption phenomenon, departing by certain politic aims and interests:

- With the aim of creation of the image of a new state, different and morally incomparable with the “bourgeois” state, administration and office clerk.
- The state monopoly of income of officials and state administration, by bounding tightly with the wage as the only source of living.
- Don’t accepting into the administration of people who instead of the line of party in power have in first plan they personal interests.
- Limitation of private property by giving the possibility of employment mainly in state, or cooperatives, which substantially were pre-state organisms. So it was the pressure of letting people jobless, sending them in hinterlands or in mines.

In these anti corruptive policies the new formed state was based firstly in the state repression through disciplinary, administrative and specially penal measurements, and secondly with the propaganda of fight against the “remainings” of the past and the foreign customs, in which was included the corruption as well.

In the fight against corruption, still during the war and immediately after the liberation of country, were noticed the extremistas in the beating of phenomenon that have corruptive aspects, as towards the cases totally symbolic, and also in the severity of kinds of punishing measurements, till the extremities such as capital punishment. A such strategy brought as result that even the ordinary penal actst of the job of officials, for example careless attitudes on duty or incompetency, were “dressed with political dyeing” by treating them as serious offenses that “sabotage the political system”. This severity was mirrored even in the other normative acts and the immediate legislation of post – war, for example: the law no. 373 dated December 12, 1996, “Over the tracking of prohibited commerce, of speculation and economic sabotage”. 
At the beginning, the corruption came down, comparing with the past. However, there were benefited illegal profits in the “ridge” of state, especially during the executing of the nationalization of the private property, or agrarian reform, where were used the bribery and compromise of officers or other people charged for various operations. In the same way, was intended to avoid or reduce the high taxes that the state applied as a manner of indirect expropriation.

Temporary regeneration of property and the public and private services, the production of handicraft products, small trade, etc., were some of the directions where in the period of post-war had appearance of acts for compromising the officials, as for example in the sphere of giving permits or licenses, fiscal categorizations, calculations of incomes and till to the giving of the residential permits, housing, giving the permit of studies, and in following years, till in such things as by supplying with the TV, washing machine, etc.

In the legislation were predicted severe measures, for penal acts in the sphere of exercising of state duty. Theoretically, the corruption was considered as inheritance of the past, or influence of the way of living or propaganda of bourgeois revisionist, and for that could not be accepted the objective possibility of birth and development of corruption in the socialist system. So the corruption was considered a phenomenon which emerges and grows up only in the society of “Capitalist or revisionist state”, in the conditions of private property, over the means of production, by avoiding their treatment as objective manifestation, and as social phenomena that are bounded with the reality of activity of public administration in every governance.

Corruption was not known legally in its general conception, by not defining it as social phenomena, and also penally was not known as nomination of any penal act, but there were punished only the special corruptive aspects in tightly meaning of this word, and as the world concept it. There were known only the bribe and raking off, and bribe taking and bribe receiving were divided from the abuse of official position, the careless attitude in duty, and so on.
Growth of corruption in the last decade of socialist system is an argument that the corruption is totally a product of public administration in general. This because the state was limited only with the fight in the ideological level, and not in administrative punishing and taking the necessary measurements for fighting the real and objective causes of this phenomenon.

This is proved with the fact that with the dropping of state repression towards criminality and effectivenes of propaganda in the fight against these phenomenon, the last years, and especially the fail of socialist economy and the objective impossibility of raising the standard of living, brought the emersion increasingly often of corruptive acts and the adaption of public opinion with this situation. Yet every time more and more from one part was abased the level of control, detection and punishment of corruption, and in the other hand the fight against these manifestation from the part of the high officials of party and state, actually was oriented in the attack of the others, prefering their rivals, for providing moral and material benefits, for themselves or for their clan.

The corruption relatively low in the period of monist state, is not an argument the fight against corruption, has effectively only in the states that give priority to violence, characteristic thus of dictatorships of whatever hand are them, left or right hands.

It is the democratic society and legal state who have more possibility to diagnose and fight in time, but especially for preventing it by increasing the economic level of living, increasing of cultural level of citizens not with the method of injection of ideological and political dogma, but with transparency in all the fields of economic and politic life, the increasing the controll of state, especially in the field of finances, taxation, customs and money circulation, the controlling of incomes and the ownership of officials, etc., without excluding the detection and attacking of crime.

That corruption is not inevitable or is not a uresolvable problem in the modern democratic societies, is argued significantly and convincingly with the reality of the lowest or the
minimal corruption, generally in the developed democratic and economic societies, and especially in those societies with the highest levels of living and with democratic standards like Scandinavian countries such as Norway, Denmark, Sweden and Finland.

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In Penal Codes of period 1944 -1990, the punishment of corruptive acts we find in:

PC, Law No 1470, date May 23, 1952, with the changes of years 1952, 1958 and 1959, for the act of corruption we have these acts treated in judicial practice and juridical literature.

**Bribe**

**Article 204**, without changes

According to the first paragraph “taking bribe from official person for an act that is related to his duty, is condemned up to 5 years with imprisonment”.

From the content of this prevision, as it was accepted in the judicial practice, there emerge these elements of penal act:

- Realization in the form of reward in money, or with any other material reward, in the legal aspect was not considered bribe if through a monetary or material reward would be provided for example the right to study or passportization in Tirana.

- To perform or not to perform, or after he has performed or has not performed the act, (PC Decision of High Court no. 237 date 6.11.1961) the moment of giving bribe “after performing or not performing”, is a moment that misses in the formulations of passive and active corruption in the PC in power as it emerges for example from the formulations of articles 164 and 244.

32 Directive and decisions of High Court 1958, 1965, 1972, 1982 and after this year in journal “Popular Democracy”.

33 Ismet Elezi: Commentary of penal Code General Part Tirana 1964
- It has no importance the promise or commitment of illegal actions, with the argument that by them he competes and is responsible even for abuse of power. Decision of Plenum of High Court date 30.07.1975, the moment of giving bribe even without promise or commitment of illegal acts, is a moment that misses in the formulations of passive and active corruption in the PC in power as it emerges for example from the formulations of articles 164 and 244. This means that when the judge gives the right decision and based in evidences, he can take reward without fear for a penal responsibility, aspects that (we will treat them in the respective part) cultivate the spirit of chantage from to the passive corrupter.

According to the secon paragraph, taking bribe:

- With pressure
- More than one time
- From a person who has the duty of a special importance

is condemned up to 10 years with imprisonment

**Article 205 – Giving bribe** (without changes)

First paragraph - giving bribe:

- Promise, giving or intermediating for giving bribe
- To perform
- Or to not perform
- Or after he has performed
- Or has not performed

is condemned up to 3 years with imprisonment.

Second paragraph recognizes the exemption from penal responsibility in two cases:
- When is taken with pressure,
- When has willingly denounced the act before the penal proceeding starts

**Penal Code with law 5591 date 15.06.1977** with changes of 1981
Has unification of bribe in one article, as for giving and also for taking with the article 109 in two paragraphs that have no changes.

According to the first paragraph: taking because position, up to 10 years imprisonment.

According to the second paragraph: giving bribe is condemned with reeducation through hard work or up to 3 years imprisonment.

There is no definition of elements of figure of penal act, by letting space to the practice to make interpretations and definitions.

### 1.4 Aspects of corruption in nowadays Albania

With changes of social systems at the beggining of 90’s, the corruption took off not as an expression of democratic society that was being constructed, but because of some objective and subjective factors, amongst which we can mention:

- Cultivation of material resources through corruption, in one part by the employees of old administration who naturally felt that the day of their dismissal was not far away, and in the other hand the new employees of administration because of pressure of the difficult economic situation and uncertainty in prospect at that position.

- Both parties had a temporarily secure “bed” because they were having advantage of the situation of the new state, still in structuring, with the invalidity or reversing of old legislation meanwhile the replacement of it was impossible to be done immediately, and because of numerous legal deficiencies in the areas of new economic and financial life, previously unknown, situation thus dealt with deficient structures in their forming, of edivences and control of state.

- The corruption in that period had a “healthy bed” even because of circulation of cash money, thing that hinders the process of detection and evidencin of penal act, differently
from other countries where the Di Pietro’s succeed not only because of a high professional level, but also because of circulation of money through banking.

By being situated in this transitional conjuncture, there were done the necessary corrections for stopping the corruption in the public administration. There started to accelerate the operations for the reform of state administration, legal regulation of all the fields of life, mainly those connected with the ownership of property and legal evidences of properties, related to the legal regulation of activity of the structure of public administration, especially for conflicts of interests, for the publication of legislation and the unification of official documentations, especially in the financial field, with the encouragement of the private banking system. There also started the establishment and modernization of links of state control, from an independent control from the Executive power, the High State Control Audit and till to links of internal control in the financial field, or services of internal control for violation of law within the institutions, especially to the customs, taxation, the prison system, etc.

While in the PC besides the improvement of the direct dispositions which have to do with corruption, there were added a number of dispositions for acts that indirectly cultivate or hide the corruption, or corruptive activity in the fields that didn’t exist previously, or activity which is considered inadmissible in a democratic state, in between them we can mention the extention for “Political Corruption”. In the respective extention this corruption was characterized: “Taking or accepting to receive, for themselves or for other persons, the reward in money or other things for performing actions in contradiction with the national interests, that are condemned with imprisonment not less than 10 years or with death (old PC article 60/a, already abrogated).

But these were emergency measurements, because the fight against the corruption would not have had meaning and succeeded without taking a complex series of socio-economic, administrative and legal measurements, especially in the directions of:
- **In the social-economic field**: For the economic development and the growth of living standards, improvement of payroll system, in increasing them generally and also mitigation of differentiations between low salaries and higher, an encouraging wages policy in the “vulnerable” sectors in the field of corruption, such as in the systems of Justice, Police, Customs, Taxes, etc., or in the placement of the right criteria for compensation regarding to the level of professional preparation, scientific level and work performance.

- **In the administrative field**: in terms of simplifying the structures and their functions, by eliminating and simplifying the links, documentations and methods of their activities that cause delays, lack of transparency, and as a result stimulating the corruption, in the way that in one part for citizens to realize their legal rights and to resolve their problems quickly and in accordance with the law, and in the other part in terms of cutting the corruptive ways for the office employees.

We can mention in this aspect the legal liabilities in the field of transparency through the publishing of acts, the presence of public participation in the activities of elected bodies and in giving justice, the various forms of informing for the violations of law, methods of drawing in the allocation of works or in courts, the presence and encouragement of medi, and particularly in legal discipline of conflicts of interest in the appointment and exercise of public functions, the declaring and controlling of incomes of senior officials and high officials or in positions that carry the risk of corruption and illegal earnings, etc.

- **In the field of Law**: There were done a series of reforms in the vital sectors, starting from the justice system, in terms of strengthening its independence, increasing the level of control within the judicial power, and organizational and functional strengthening of Prosecution. In the financial system, the increasing of effectiveness of High State Control, especially in the building of structures of internal financial control for respecting of law by the services of internal control, such as in the prisons system, police, customs, etc., in building the structures of task forces in the field of corruption, with a more efficient combination of police – informative service – prosecution, etc.
In particular it was improved the penal law, with the reformulating of provisions related to corruption, with clear and complete figures of penal acts, and with the setting of new dispositions by extending and all-inclusion of punitive force.

In all these areas was kept in mind the global experience of fight against corruption, especially was followed the way of approximation with the structures, economic and social policy, and the legislation of the EU.

Taking of these measurements and precursory results up to the end of 90’s, created a spirit of self-satisfaction thing that effected negatively, by creating the false opinion that the corruption is “a normal phenomenon of capitalist system”, thing that softened the fight against corruption for a period up to the year 2005, where the corruption took dangerous dimensions, thing that effected directly to the rotation of power in that year.

In the latter years, especially after the year 1998, the fight against corruption become institutionalized, especially in the perspective of European integration, with the governmental initiatives and plans of anti-corruption fight, in the years 2000 and following with the changes of legislation done for the implementing the long-term for a strategy and all-inclusion concept of fight against it. It was also done the approximation of legislation with that of EU such as the changes and adjustments done in the PC of years 2001, 2003, 2007 and who recently was materialized even with the project of changes in the PC approved this year (2011).

Starting from the data published in the national and foreign media, theoretical literature, the mutual accusations for concrete corruptive facts of corruption between the opponent parties, and the parliamentary replies for involvement in corruptive acts of persons or groups of public administration, and also the relatively high index of indicators of corruption in Albania, meanwhile should be recognized even the strengthening in progressive growth, efectively yet has fluctuation as it can easily deduced from the following statistical overview:
1.4.1. **Data of TI** – International Organization of Transparency

“Corruption Perceptions Index” - CPI

Publication of Transparency International, date 17.11.2009

Classification over the years for 180 countries of the world where it clearly emerges the fluctuation, in declining position in the years 2005 – 2006, with increase in the years 2007 – 2008 and still in declining in 2009:

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</tbody>
</table>

The data of TI show an unstable situation with the increasing – decreasing of corruption, as specify the “grades” that our country has taken every year, based on them is defined even our position in the world rankings. The level of year 2004 has found a large increase, obviously in the context of the rotation of power of that year, a high indicator that endured a decreasing by 30% from the year 2006 to year 2008, but began rising again in the year 2009. Maybe a sign of self-satisfaction in the fight against it. Meanwhile from the year 2010 was noticed the “serious concern” in approximately 75% of respondents of public opinion, as the Gallup poll shows:

1.4.2. **Poll of Gallup Balkan Monitor**

Brussels, November 17, 2010

**Corruption:**

<table>
<thead>
<tr>
<th>Grade of problem</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very serious problem</td>
<td>38.8 %</td>
</tr>
<tr>
<td>Serious problem</td>
<td>35.6 %</td>
</tr>
<tr>
<td>Sufficient serious problem</td>
<td>16.2 %</td>
</tr>
</tbody>
</table>
Not a serious problem........................................5.8% 34

The pull of Gallup confirms that even in 2010 the public opinion is concerned about the level of corruption, as approximately 75% has the conviction that the corruption is a serious or very serious problem, and only about 6% of them do not see it a worrying problem.

1.4.3. Reports from High State Control

<table>
<thead>
<tr>
<th>Year</th>
<th>Total inspections</th>
<th>No persons inspected</th>
<th>Denounced for Abuse of office</th>
<th>Denounced for equality in tenders</th>
<th>Damages in ALL millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>32</td>
<td>81</td>
<td>28</td>
<td>4</td>
<td>1,793,382</td>
</tr>
<tr>
<td>2009</td>
<td>9</td>
<td>27</td>
<td>8</td>
<td>1</td>
<td>1,912,434</td>
</tr>
<tr>
<td>First half of 2010</td>
<td>4</td>
<td>8</td>
<td>7</td>
<td>1</td>
<td>59,007</td>
</tr>
</tbody>
</table>

The above data indicates that even though they are many controls done, millions and hundreds of millions of ALL infringements ascertained, the level of detection and reporting of criminality in the financial field for the years 2008 and 2009 is very poor, while it is the field where logically the corruption acts largely.

In the activity of the High State Control, can be noticed a significantly decrease of results in this direction, with the decreasing up to about three times, as in number of controls, persons found in violation of law, and also in number of penal denounces. Thing that conflicts even with the fact that there has increasing of dimensions of confirmed damages 35.

34 www.org/wiki/The-Gallup-organization
35 www.Klsh.org.al/
1.4.4. Ministry of Finances - Report for the year 2009

Total audits.........................................................................................................................2294
(In year 2008 - 2010)

From them controls:
Fully controlled..................................................................................................................927
Thematic...............................................................................................................................206
Violation cases in total.................................................................................................35,555
Penal denouncings............................................................................................................8

Damages in millions ALL
Financial disciplinary violations.........................................................................................616
Fiscal evasion.....................................................................................................................290
Deficit and damages (mil. All)..........................................................................................125
Indemnifications (mil. All)...............................................................................................1,030

In the data of Ministry of Finances, as in those of High State Control it can be noted that
while there is a high number of cases found with violations, there is a very limited number
of of violations, so with a report that is disputant.

The penal denounces constitute 1/4000 of ascertained violations, or 1/300 of audits
performed. In this regard the lack of statistics doesn’t allow to bring out a conclusion that if
in the limited number of denounces has influenced the subjective attitude. Because the
statistics do not provide grouping of violations found by the criterion of limit with the value
of penal act of abuse of office, or with cases of infraction with elements of offense that do
not require damage such as falsification, violation of equality in tenders, etc. While in
these minimal results, it’s impossible to not have influenced objectively even the fact that
most infractions have formal damage, not real one. So more exactly, have only the
possibility of bringing the damage, thing that has avoided the penal responsibility for abuse

of power, because according to the article 248, the consequence must be a real damage. Moment that we think it is one of the most negative factors in the penal beating of abusive acts, that in most of the cases carry in itself the corruption.

1.4.5. Tribunal

<table>
<thead>
<tr>
<th>Kind of corruption</th>
<th>Cases</th>
<th>Offenders</th>
<th>Cases</th>
<th>Offenders</th>
<th>Cases</th>
<th>Offenders</th>
<th>Cases</th>
<th>Offenders</th>
<th>Cases</th>
<th>Offenders</th>
<th>Cases</th>
<th>Offenders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passive corruption - article 258</td>
<td>3</td>
<td>4</td>
<td>13</td>
<td>18</td>
<td>9</td>
<td>9</td>
<td>13</td>
<td>22</td>
<td>15</td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passive corruption - article 259</td>
<td>-</td>
<td>-</td>
<td>4</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Active corruption - article 244</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>6</td>
<td>4</td>
<td>8</td>
<td>1</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Active corruption - article 245</td>
<td>1</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal influence - article 245/1</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>4</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abuse of office - article 248</td>
<td>71</td>
<td>57</td>
<td>74</td>
<td>69</td>
<td>79</td>
<td>61</td>
<td>97</td>
<td>81</td>
<td>105</td>
<td>99</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equality in public tenders - article 258</td>
<td>2</td>
<td>10</td>
<td>2</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>26</td>
<td>9</td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>77</td>
<td>73</td>
<td>96</td>
<td>101</td>
<td>96</td>
<td>83</td>
<td>119</td>
<td>141</td>
<td>138</td>
<td>141</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

With the above mentioned data, firstly it draws the attention the fact that the acts which are related directly or indirectly with the corruption, occupy a very small place in the total number of cases reviewed, data that actually have been increased by nearly 1% in 2005 to 2% in 2009. But still leave much to be desired the real dimensions of proceedings of corruptive acts in overall criminality, by having into account only the findings of the High State Control and Ministry of Finances for the high number of cases of offenses and considerable damages.

Even the data of criminal trials, though at first sight have an increasing from one year to the other, their analysis shows that the largest weight, at over 75% is occupied by the cases for

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abuse of office, meanwhile the acts that are related directly with the corruption are in a limited and symbolic number, especially for the cases of passive and active corruption with the high officials.

The symbolic volume of trials for cases of corruption, we must add even the minimal and symbolic condemns simbolike. From the data of year 1998 arises that:

<table>
<thead>
<tr>
<th>Article</th>
<th>Fine</th>
<th>Up to 2 years imprisonment</th>
<th>Up to 2.5</th>
<th>Up to 5</th>
<th>Up to 5 - 10</th>
<th>10 - 25</th>
<th>Eternal</th>
</tr>
</thead>
<tbody>
<tr>
<td>244</td>
<td>3</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>259</td>
<td>6</td>
<td>11</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>248</td>
<td>23</td>
<td>55</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Comparison with the crime of Illegal Border Crossing Article 143

2 31 18 2

Comparison with the total of penal acts

1128 3166 512 320 210 13

From the above data it arises that meanwhile in entirety the ratio of condemns with fine is 1 to 3.5, in above crimes that are related to corruption, the ratio is nearly 1 to 2.

In the investigation and criminal trial of these acts, there are encountered concerns in 2010 as it emerges from the annual analysis (December of this year) of police of Tirana, Korca, Vlora, Shkodra and Fieri, analysis in which is drawn the attention:

- The Judicial police officers have to “dig” for identifying of criminal acts of corruption and economic – financial crime. Integral part of Task Force Units that are not part of the
prosecution authority, should work to identify these criminal acts in order to evidence and beat it in time.

These have been the requests of Chief of prosecution during a meeting with prosecutors and investigators of common investigative units... In this aspect a special emphasis was given to rising the role of judicial police officers in these units in providing of informations on criminal offenses of corruption and financial crime, which enables increasing of efficiency of a more professional analysis of materials that are available and initiation of criminal proceedings for these cases...

“... the fight against the criminal acts of corruption, organized crime and money laundering, remain a priority for prosecution authorities and the success towards them can be achieved through a full and rigorous execution of law, and also in increasing of collaboration between state institutions. The fight against corruption and organized crime is a sensitive issue in public opinion, so the specialized units should be more active in their work...”

**1.4.6. Data of INSTAT for corruption in Albania**

It remains to be emphasized that in Albania, one of the biggest problems after the problem of unemployment, is the corruption. And this can be seen clearly in the perception of people, by the below mentioned data.

In this research is attempted to bring out the perception of people about the nature of bribe and the areas where it operates and its impact in the daily life of the people with the public administration, which is designed to provide services to citizens and therefore the contact of people with them is frequent during all the year. For example for a medical check, for a school registration, for issuing a new passport or for a new driving license, on the average of 28.3 % of Albanian citizens of the ages 18 – 64, directly or either by a family member have been exposed to a bribe experience with an public official during a 12 month of a survey. But when focusing on really paid bribes, the percentage of Albanian citizens who paid at least one bribe at the same period, amongst those who have contacts with public administration, was 19.3%. Bribery in Albania is more prevalent in rural areas than in
urban areas (20.9% versus 17.7%), and unexpectedly there are more women who pay more bribe than men in Albania (21.3% vs 17%). Gifts or bribes are given almost all of them in money, and that is approximately 43€ for a person, payments these relatively large considering the income per person in Albania.

About 30% of paid bribes are offered by citizens themselves, nearly 50% of paid cases are requested indirectly by public official to facilitate the bureaucratic procedures, and almost 15% of them refer to a direct request by the public official or third party. And definitely the better paid by the bribes of the citizens in Albania, are the doctors. So 73% of citizens pay for doctors, and a large percentage of bribes paid goes even for nurses, and then 14% of paid bribes goes for police officers.

The corruption does not affect only the services offered by the public administration, but also the sector of employment, being that in public administration are made the biggest part of the employment of people, and based on the data of INSTAT only 15% of people that apply for a job position, believe that the employment is done based on the merits of persons. The other part hade to confront with gifts, payments in money (about 9%), or have been relative with the officials.

The perception of corruption in Albania, even though is very negative, there is a part of people (about 26%) who believe that this phenomenon is declining, while 41% believe that the corruption continues with the same rhythms.
1.4.7. Figures of Instat about corruption in Albania

- Percentage distribution of bribes paid, by purpose of payment (2010)

Note: Data refer to the last bribe paid by each bribe-payer in the 12 months prior to the survey.

- Percentage distribution of bribe-payers who paid to selected types of public officials (2010)
Note: The sum is higher than 100% since bribe-payers could have made payments to more than one public official in the 12 months prior to the survey.

Note: Prevalence of bribery in Albania, by age groups and sex (2010)

Note: Prevalence of bribery is calculated as the number of adult citizens (aged 18 – 64) who gave a public official some money, a gift or counter favour on at least one occasion in the 12 months prior to the survey, as a percentage of adult citizens who had at least one contact with a public official in the same period.
CHAPTER II

THE CONCEPT AND THE DEFINITION OF CORRUPTION

2.1 Terminology aspects

The term “Corruption” although was born and is used in the world since the Roman period, in Albania it is known and used late, in the meaning of social phenomenon of corrupting of officials generally, and penal act of today. Because from the roman concept of corruption “Corrumpire”, as we have said, we have a word formation: ruin, destroy, damage, falsify, give and take bribes, corrupt... a result of Latin word “Correi” which means: some participants, and “rumpere” with the meaning: break, destroy, violate, union that brought the term that defines the action of at least two persons who intend to destroy or to obstruct the normal development of a trial, government activities or public works. So we have a narrow interpretation and use.

Although before the Independence in Albania (1912), this term was not known almost nix, and even after that, until 1939 we don’t find it as term in legislation. 38

But the concept of corruption in the narrow meaning and in its basic forms, was known after the Ottoman occupation, as we already mentioned it from our customary law, and from the fact that the terms are used etymologically from the Turkish language.

The elementary term for corruption (if we can call it this way), was “bakshish”, as it is named and is used even today, when not only is not consedered a corruptive act, but in a wrong way is taken as a sign of culture, especially in the sphere of trade and services.

To the dictionary of Gustav Mayer we don’t find the word corruption, bribe or rake off, thing that can not be argued for the fact that he could not have had included it, as it has a foreign etymology. Because in that dictionary are found terms visibly foreign, such as:

- Bakçish – bakshish, from Turkish “tip” 39

Professor Eqerem Çabej, who also recognizes the term “bakshish” from the Turkish language, gives us another characteristic of this word that puts it away from the concept of corruption, because he says that: “is a small gift”:

-Bakshish - “Small gift in cash, that is given to a person against a service that he makes” 40

Only after the year 1944, began to be used the term corruption, and other nominations of corruptive aspects:

- Bakshish - Tip - Money that is given to someone for small services, for the value of work that he completes”
- Korruptoj - Corrupt – Impair someone morally and make him take a bad way for certain purposes; to push through gifts, bribe, etc., in order to act contrary to the duty that he has, to infringe the law etc., to make services.

-Mitë – Bribe – Money or something else that is given under the hand to an official person, against the moral, in order to finish a service in an illegally way. 41

In all above cases, is given the same concept for the tip, such as: a. Gift, b. Small, c. After a service completed, d. Over the value of price or over the normal payment.

In the formulations of dictionary of Albanian Language of 1980, can be noted that in all terms, the corruptive act consists in illegal acts of official person, which means that giving and taking of property benefits, is not considered corruption if it is given without aiming illegal acts, for example: for doing it faster. But the most important is that, with a such conception, legally were not punished the gravest and most flagrant aspects of corruption, such as promise by the officer, or giving of monetary or material values, or other benefits, to prevent a lawful act of the officer, a corruptive practice known for such benefits. The

40 Prof Eqerem Çabej “Etymological studies in the field of Albanian”, editions of Academy of Sciences of Albania, Tirane 1976, Pg. 137
41 “Dictionary of today's Albanian Language” Tiranë 1980 editions of Academy of Sciences of Albania, respectively Pg. 85, 873, 1150
argument that it was condemned in that time with the offense of chantage, does not stand because the chantage was an offense committed by the private person for a private issue.

Although belonging to another field of science, and has no importance directly in the criminal – legal field, we stopped in formulation of dictionary not without purpose, but having into account four moments:

Firstly: The concept of corruption according to that dictionary responds to the figure of offense of bribery, according to the code of that time, which also determined the bribe only for illegal actions, which was in fact a opened mitigation of the fight towards the most serious corruption offenses.

Secondly: In the Code of 1995 such defect is eliminated by removing in all the corruptive actions the conditioning of “performing of illegal acts for the aim of profiting”, by increasing the all-embracing and effectiveness of attack and fight against the phenomenon of corruption.

The third: In the PC of year 1952 is not recognized the term “Corruption” as in today’s classic meaning of illegal profits because of the duty. It was known in penal offenses with other objects of private life, where expressed element of figure of criminal act was the corruptive act as it was the case of article 163 of the Code in the function of sexual pleasures with minors, offense that the Code of year 1977 has it as new formulation, in which disappears the only case of use of term “Corruption”, even though it was with another function.

The fourth: In the actual PC, has happened the contrary. Initially the acts that are related to corruption, even though with different formulation and without the terms of previous Code, effectively had not any significant change regarding this penal act and its terminology, by staying this way still close to the concept of corruption. So instead of term “bribe” were used the words “reward, richness profit” etc.

But with the subsequent changes, especially after the year 2004, as we will treat below separately, not only was done renaming expressly of the corruptive acts and their provisions that contain most important and direct cases of this nature, not only was
reformulated their content, but also were added the new provisions with the aim of creation of a most completed possible and comprehensive panel, of penal beating of corruptive acts, that the reality effectively had, by responding this way even to the concept of contemporary requests of fight against the corruption as an obligation in the framework of European integration.

Strengthening of fight against corruption in Albania, has attracted also the attention of international media and opinion, considering the fact that “For fighting the corruption in Albania, there operate a variety of structures in the central and local level, where the police have a primary role” 42

In particular, are appreciated the measures taken in Albania, in the framework of Stabilisation and Association Agreement, in the execution of it was drafted a special national plan, in which between the others were predicted and were implemented concrete measures related to the fight against corruption in some directions:

Extracts from

The national plan of approximation of legislation:

MSA/Article 78
Albania must:
...
Strengthen the rule of law,
To ensure the independence and effectiveness of functioning of judicial system,
To develop appropriate trainings,
To fight the corruption and organized crime.

MSA/Article 84
Albania should cooperate with the Community to prevent criminal activities, and illegal activities of: Smuggling and trafficking of human beings,
Illegal economic activity,

42 Deutsche Welle, 27.7.2008
Corruption.
Illegal drug trafficking.
Smuggling.
Arm trafficking.
Falsification of documents.
Trafficking of cars.

2.2 Contemporary concept of Corruption

We have mentioned that the Roman etymology of term corruption was not simply a theoretical or declarative expression, but a result of broad concept that the Roman society and law had for it as a phenomenon that is not closely linked only with the bribe as enriching profit, but it was a term through which was named every kind of benefit due to a service or official position, by starting with bribe, theft of state property, the benefits through fraud or forgery, of profit by avoiding the state obligations with property character in the fiscal field, and up to the contractual obligations.

We have also mentioned that the narrowing of the circle of corruptive acts in the Middle Ages did not resist the time, because after the bourgeois revolutions, especially after the reinforcement and stabilization of the economy of capitalist state, at the end of centuries XIX – XX, clearly came out the tendency and necessity of widening of corruptive acts. Widening that was not simply a transplant of Roman classical concept, but an adaption in fitting and perfecting in the light of the circumstances, conditions and requirements of market economy, especially in the second half of XX century under the influence of standards and requirements of democratic society and state of law.

It is worth pointing out that even in Albania of after the years ‘90, we have the same picture: the narrow concept of corruption in the monist state, resisted the time only temporarily, because gradually with the strengthening and stabilizing of state and economy, with the struggle for the establishment of democratic standards, and especially in the context of European integration, it had and still has an expansion of the concept of
corruption as a social and moral aspect, as in theoretical and scientific aspects, and so even in the legal aspect in all the fields of law, especially in criminal law.

In contemporary concept of corruption, we can distinguish two aspects as its approaches:

**Theoretical – sociological aspect** which responds to the Roman concept and etymology of term corruption in the meaning of: “break, destroy, violate”. Term that defines the act of at least two persons **who intend to destroy or interrupt the normal development of a trial, governance activity or public works**.

It emerges that in the theoretical and sociological point of view, the corruption has a comprehensive of objectives, forms and types of attitude and actions that violate or conflict with the legal or constitutional obligations for respecting and protecting of property interests, rights and interests of state, private, public or juridical persons, for the benefit of official or private entity which holds that position or performs those actions.

The trend of expanding of object of corruption is a reflection of the reality of spreading of corruption everywhere in the world, not only in the narrow meaning of it, but also as a problem of society in which it is existent. The trend of expanding of the object of corruption has come because of the fact that the corruption is widespreaded and is found everywhere, and what characterizes the modern trend of treating of this phenomenon is that, it does not represents simply the abuse of official position by public official, but such a criminal activity can be performed by anyone who abuses his position wherever the opportunity is presented to him, to easily obtain monetary and material goods in contradiction of law.

So in literature, in the broad concept of corruption are included:

- Foreign illegal transaction;
- Rebelimi;
- Rebellion;
- Smuggling;
- Kleptocracy, privatization of public funds;
Abuse, falsification and theft;
- Fulfillment of accounts;
- Abuse of Funds;
- Abuse of duty, maltreatment, torture, undeserved amnesty and discharge, dishonesty and charlatanism
- Misinterpretation;
- Corrupting and dishonesty;
- Misapplication of justice;
- Criminal activities
- False evidences;
- Illegal arrests;
- Defamation;
- Unfulfilling of duties;
- Neglecting;
- Parasitism;
- Bribes and gifts;
- Forced obligation;
- Illegal taxes;
- Robbery;
- Corrupted elections;
- Stolen votes;
- Abuse with the confidential information;
- Falsification of materials;
- Unauthorized saling of public offices, public property and public licenses;
- Manipulation of rules, of material goods, contracts and loans;
- Tax evasion, extreme benefits;
- Influence from advertising;
- Favours by agents;
- Conflicts of interests;
- Acceptance of gifts, money, money in circulation;
- Connection with the organized crime;
- Relations with the black market;
- Illebal surveillance;
- Abuse with telecommunications and correspondences;
- Misuse of official stamps;
- Abuse of Real estate;
- Abuse of residence and privileges …. Etc. 

In the first view, the lawyers would oppose such a picture of corruption, with the argument of object and elements of objective part of some acts of the above list, as they are for example: rebellion, robbery, parasitism, etc., contradiction that formally stands to criticism. But, from some acts of our PC, as we will treat separately below, it emerges that in many cases we have penal acts with the objects that initially have not had connection with corruption, but later without changing their object, were added special paragraphs to them, as qualifying circumstances, which effectively punish the corruption, when are in relation with it. So to the offense: “Help for illegal border crossing” (essentially trafficking of human beings) article 298, is added the last paragraph which in accordance with the second paragraph, effectively punishes the corruption of the official person. The same frame we have even with the exploitation of prostitution in aggravating circumstances, article 114/a, trafficking of women – article 114/b, trafficking of minors – article 128/b, etc., whose articles have also been added at the same time the last paragraph with the same content.

We’re dealing with a broad reflection of the concept of corruption that we mentioned above, essentially a fair reflection, but in our opinion realized in a wrong way in the view of legislative technique in the field of Codificatio and also wrong by the legal part, as we will try to argue on the section of the treatment of juristic aspects of corruption.

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The above concept of corruption, that see it in a extended way in the light of volume, of kinds and forms of manifestation. In the Kosovo legal literature it can be noticed that is done a quality generalization of corruption that gives the general meaning of it, for all the kinds and forms that it appears:

“Corruption is not a category that describes a specific act but is a general marker. Corruption is not just an act but... a social condition”\(^44\)

In literature, the short and reached definition of it we can find to Jeremy Pope – former head of Transparency International, which represents approximately the opinion of this organization, where is said: “. Corruption is abuse of entrusted power for personal benefits” \(^45\)

This is the approach that is generally accepted, a narrow concept and closer to the penal-juristic concept. Here we are giving some formulations:

**Juristic corrupting** represents violation of the constitutional order, because it hits the constitutional guarantees for liberties and human rights and therefore, the exercies of public services, gets a character of committing them only for those citizens who are able or can afford to pay those services.

**Economic corrupting** leads to the creation of the privileged position of individuals and their groups due to their monopolistic position in orders, deliveries and public works, by replacing the healthing legitimacy of trade economy and opened competition. \(^46\)

“Corruption is an act that violates a certain legal or moral norm through which the individual profits something in a way that does not belong to him.” \(^47\)


\(^{45}\) Jeremy Pope, “Confronting Corruption, the elements of a National integrity system” – Albanian edition of Transparency International - Tirane, July 2000 Pg. 26

\(^{46}\) From \Wikipedia, the free encyclopedia

“Corruption or alienation is a phenomenon in which an element or attributes of an element of a community are alienated for another community.

“Corruption – means every breach of the duty of official persons or legal entities, and every activity of initiators or beneficiaries of such conduct, committed in response to a reward that directly or indirectly is promised, offered, given, requested, accepted or is expected to be taken for himself or for other persons.”

In determinations of corruption, there don’t miss the moral or religious outlooks for this phenomenon. So according to the 19-th Islamic conference, held on July 31, 1990 in Cairo – Egypt: “The authority is faith, and abuse or bad exploitation of it is absolutely prohibited, with the aim of the fundamental human rights to be guaranteed.”. Meanwhile according to the Dutch Minister of Justice in the European ministerial conference, held in Malta in July 1994: “Corruption is considered an unfair behaviour in the process of decision-making”.

In this regard it should be said that the phenomenon of corruption in one part is the violation of rule, which is identified and treated by the law, and is precisely a determined aspect, and in the other part is the moral and ethical violation, an aspect with an unspecified character, not simply because it is unwritten, but mainly because of the ethical norms of moral are characterized by the relativity and variability. Classical in this regard is the earliest and mos elementary form of corruption – “Bakshish – Tip”, which in large amounts even today still is considered a penal act, meanwhile in amounts relatively small, not only is not punished penally, but also is considered as a sign of civilized behavior, toward the waiter, in hotel, to the barber, till towards the cashiers of public services, but there is not and can not be settled a limit neither in value nor in subjects. This evolution has taken such a dimensions that even the today’s law itself, by not putting an explicit limit of allowances, prohibition or subjects, it exceeds the human aspect of relationships between the public and

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48 From \Wikipedia, the free encyclopedia
49 “Types of corruption and ways of tackling it. Administrative, civil and penal aspect, including the role of the judiciary, the fight against corruption.” - CoE publishing 1995, Pg. 41.
the official person. And as result the law itself cultivates and protects relationships and actions which substantially are corruptive.

In proff of this we can give the corresponding provision of the law No. 9131, dated 8 September, 2003 – “For the rules of ethics in public administration”:

Article 10

Gifts and Favors

1. An employee of the public administration should not ask for or accept gifts, favors, receptions or any other benefit, or avoidance of possible losses, or promises of them, for himself, his family, relatives or friends, persons or organizations with which he has relationships, which affect or seem to affect the impartiality of the performance of duty, or are or seem to be a compensation for the manner of performance of his official duty.

2. Point 1 of this article is not applicable to the occasion of ordinary invitations, traditional hospitality, gifts of a symbolic or traditional value, of politeness, which do not raise suspicions about the impartiality of the employee.

3. In a case of doubt about the impartiality of benefits, the employee consults the personnel unit of the institution.

It is true that even in other countries are legally recognized “donations” for the officials related to their duty, but in this regard our law has some negative moments that contradict the fight against corruption:

- According to point 2 of the abovementioned law, prohibition of taking gifts, is not applied in some directions, amongs which, even for small and symbolic gifts, or traditional gifts or other that do not raise doubts about the impartiality of employee. Meanwhile is not given defining criteria of symbolic character, traditional, or not suspicious of the gift, which paves the way for “extensive interpretation” of the provision with consequences that are understandable.
- In point 1, is not prohibited only the acceptance of gifts, but also asking gifts, while according to point 2 this prohibition is not applied among other for symbolic gifts, without restrictions in the way of taking them, by falling the prohibition of “request” that the point 1 contains, which comes in conflict with the aim of this legal act, for the grateful character of donation, and the fight against the corruption.

- In this law is not settled prohibition for benefits with repetition, deficiency that effectively makes ineffective the allowance of only the symbolic gifts under paragraph 2. Because receiving repeatedly without limit if it is the same gift, is the same thing in balance with only donation of a great value.

- This law operates in all public administration bodies, in which the meaning of articles 2 and 3 of the CAP, are included also the links and administrative activities of legislative bodies, judicial, prosecution, etc., paving the way these favors even in the judicial administration, prosecution, etc. Think that comes in conflict with the functions and high requirements of these organs, contradiction that is not allowed in the Constitutional approach. Because organic laws of these bodies have superiority, because they are approved by a qualified majority, differently from the above law that is approved by a simple majority.

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In the acts of international law, generally up later we encounter the tendency of narrow viewpoint of corruption.

General Assembly of the UN, with the subject against corruption in 1990, defines: “..As abuse of office to achieve personal or group benefits, and benefits of state officers, consequence of their official position that they have...”. From this determination is evidenced the fact that it is about only for material benefits, that are characteristic for the penal act of bribery.

In Session 8 of UN, still in year 1990, the corruption is treated in the narrow sense, but also are given distinctive characteristic elements of it, and also the difference between
corruption and other criminal acts of state officials. And also the meaning of corruptive acts, and the forms that appear to state employees, as we can give below in summary:

- Unlawful character of actions in exploitation of duty.
- Grouping of corruptive acts with criminal, administrative and disciplinary offenses.
- Passive subjects of crime of corruption only to the state officials.
- Two most dangerous corruptive actions:
  
  1. Theft of state and social wealth through corruption.
  2. Abusiveness of official position by the state employee with the aim of profit.

In the declaration of UN “for the fight against corruption and bribery” – January 1996, the corruption is defined as misuse of state power for having personal profits (resolution No 51/191),

In Rezolutio of 1998 of economic council of the UN, dated July 1998, and in the recommendation of conference of group of experts of UN for the problems of corruption and financial channels, assembled in Paris from March 30 till April 1 1999, is continued that the meaning of corruption to be treated somewhat incomplete, without including the private sector.

The most complete formulation for the meanig and definition of corruption, we think is that of the interdisciplinary team for the problems of corruption, team that of CoE assembled in Strasbourg in 1990, by calling it: “corrupting of official person, and any other act from the omnipotence charged persons in the state or private sectors, who violate the obligations deriving from this status as official person (in state sector), he that works in the private sector or independent agents, and all relations of this nature which aim to benefit privileges for themselves or for others”.
Later we have expanded on more important elements of corruption, which created conditions for a common concept of the international community. Among the most important international documents in the definition of corruption in its broader sense, we can list:

- In the CoE Convention on “Penal responsibility”, dated 27 January 1999,
- CoE Convention on “Civil responsibility”, dated 4 November 1999,
- Resolution 97 (24) that contains 20 principles of anti-corruption, dated 6 November 1997, that emerged in the implementation of recommendations of the meeting of the European Ministers of Justice in Malta, 1994,
- Convention of EU on “the fight against corruption between officials of EU, or citizens that represent it”, 26 May 1997,
- The agreement of the EU for the fight against corruption in the private sector, dated 31 December 1998,
- Meeting of session 10 of UN on the fight against crime, and the relevant statement of Vienna, dated 17 April 2001,

We can mention the convention “On penal responsibility”, of CoE:
- In articles 2, 3, 4, it comes about graft with the passive and active character, from the part of local and state officials, and also for the judges of the justice system,
- Articles 5 and 6 treat the corruption for the foreign officials, and of the international structures,
- Articles 7 and 8, talk about corruption in private entrepreneurships, by treating active graft as well as the passive one, treated for the first time in an international document.
- Articles 9 – 11, talk about corruption in international organizations, members of parliamentary bodies, official persons and judges of international courts,
- While the article 12 is predicted the corruption in the form of trading, of influence and further actions to conceal the crime, collaboration, money laundering, etc.
In this convention have been reflected and almost treated all the penal acts that constitute corruption in the extended meaning of it.

It should be mentioned here that essays in this Convention have found or sooner will find other reflections in our PC, with the changes approved recently as a draft law, especially the corruptive acts in private legal persons, with foreign entities, private or institutional, or foreign international organizations.

But in the treatment of corruption, not only in the legal literature and after the above convention, but also in the last international acts, has a return of the concept of Roman law for corruption. The Organization of the UN, in the convention “against the international organized crime” in year 2000 for the problem of corruption states that:

“..Each state party to this convention, takes these legal measures or others, which will serve for defining as punishable criminal offenses, the following activities, when it is committed deliberately:

a – Promise, the proposal or giving for an official person, personally or with the intermediation, for every unlawful favor for himself or for other persons, physical or legal person, with the aim that the official person to perform or not perform actions during the fulfillment of official duties.

b – Blackmail, or acceptance by official persons, personally or with the intermediation, of unlawful privileges for themselves or for other physical or legal persons, with the purpose to fulfill or not to fulfil his official duties...”

(Un convention “against international organized crime” dated 15 November 2000)

In our juristic literature avoids the formulation of concept of corruption as phenomenon by being limiting only with the meaning of content of figure of respective penal act, especially regarding the object and elements of the objective part. Attitude that we think it is wrong, because is not done the distinguish between the meaning and treatment of corruption as a social phenomenon, that is wider and oriented, because in it are included the orientations,
forms, methods, reasons, and especially because through it is done criticism of the structure of state administration or or organizational defects, as well as gaps, inexactness or contradictions in the law. Moment that is used for realization of penal acts, for simulation with other lighter acts, and avoiding from responsibility for corruptive acts, etc., while the concept and meaning of corruption as figure of respective penal act that is narrower and rigorously defined, inability that limits the horizon and prospect of discovery in criminal investigation and penal judgement of these acts, especially in building of versions and ways providing evidences.  

This because, “..the term –corruption- until now is not transcripted into a tangible reality, but has been only a word throug which is expressed today’s political language”

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In official duty, public or private, the person is obliged to work, to perform actions or non actions, to take or to implement decisions based on legal acts or regulations. The corruption begins when these rules are not executed, or are applied contrary to legal rules, to profit illegally.

Basically the corruption consists in criminal misuse of power or official position with the aim of profiting. Substantial differences of corruption with the abuse of office, as penal offenses separately we think are:

Firstly: For corruption is the intention and realization of material profits or every kind of illegal privilege, for themselves, for others or together, element to which misses the abuse of office as criminal offense.

Secondly: Corruption is generally accomplished by means of abuse of office, and for that competes as criminal offense separately, unless when the criminal law expressly includes in the same provision.

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50 Look for exap, I. Elezi – Penal Law, special part - Tirane 2007, Pg. 428, 429, 460, 462 etc.
51 Gerti Shella: “Media and anticorruption agenda”, Pg. 3, Dudaj editions.
Thirdly: Abuse, as penal act can be performed by one single person, differently from the corruption, which has distinct feature pairing of acting subject or subjects, active, proposers or providers of corruptive benefit, and passive subject or subjects receiver of corruptive benefit, regardless it is punished with special provisions.

This because essentially the corruptive benefit is object and fruit of a donation, civil legal action in this case unlawful and absolutely void. Legal actions are characterized by the interaction of two parties, while the abuse consists of an action or an administrative – juristic act that generally is performed unilaterally.

This is important because when the employee or official in violation of legal rules or regulation, they take or benefit materially, or profit favors without knowledge, the abuse penally is not considered as corruption, but can be a penal act itself when has no pecuniary benefit. The articles 97, 98, 99, 122/1, for example when has a separated penal act, such as theft with misuse of duty (article 135) or qualifying elements of other penal acts as 122/2, etc.

The second distinction has special importance because from what mentioned above, differently from the broad contemporary concept of corruption in the social and theoretical aspect, in legal terms in our Penal Law, as generally in all other countries, they are excluded such acts as for example: rebellion, terrorist acts by itself when it is not realized with corrupting of employees or officials public or private, etc. But are considered corruption only a narrow range of illegal activities, which have as a special purpose only the illegal profits, giving or taking from another person, while if there have not giving from the others, they are considered as separate acts, or qualifying elements of acts, with object and main purpose another thing.
2.3 Forms of manifestation and realizing of corruption

The corruption is encountered when an employee or official performs acts in the framework and implementation of his duties with the intent of prior benefit or subsequent benefit, in monetary or materially form, as mobile or immobile property, or other favors of every kind. This is the most frequent and most obvious form of corruptive action, where the office person performs certain actions which generally are illegal, but we also will treat separately following that in some cases can be legitimate.

Another form of corruption is when the employee or official, is obliged according to the law, to take decisions or to complete acts in favor of certain persons physical or legal, on behalf of authority, institution or private legal entity where he works or by which is charged, and he doesn't do it with nonexistent or illegal arguments, or create artificial barriers to hinder the completing of an action or service, in order to force the interested person to be subjec of the corruption.

As the third form of corruptive activity, not the concrete activity in the active or passive meaning, not implemented of law materially, avoidance, delaying or manipulation of procedures, provided for legitimate activities but with competitive selection between subjects with the same data, to injustice differentiating one party and to prefer another one instead with the corruptive benefit, as for example judicial or administrative drawings, tenders or auctions in the financial-economic field, various competitions especially in the nomination of employees and specialists, and til to the election procedures.

When the act is not in individual competency but in the competency of an institutional body, we have a special form of corruptive activity, buying of vote of members in such scale as it is obtained the majority by which is guaranteed any decision according to the interest of the corrupter. In the electoral activity this form is encountered in two directions: with corrupting of the members of commissions that determine the results of voting, and this is the corruption in the narrow meaning of it, or “buying” of votes of electorate, and in
the other part is the aspect of political corruption. Corruption that, with just any exclusion, is not performed with the concrete profit, direct and individual, but with the massive compromising of electorate with promises that are known that will not be completed or can not be realized objectively.

It is understandable that the corruption often is realized with other criminal acts such as falsifying of data of pretender (ex. certificate of votes), or respective act (ex. act of testing, or report of competition), through which we will have competition of special act of corruption for example article 244, and articles 186, 189 with the act of falsifying, etc.

Another form of corruptive activity is the exploitation of discretion power, which is determined by the Code of Administrative procedures:

Article 7

**Discretionary power**

With the discretionary power of public administration means the right of the public administration to exercise the public authority to achieve a legitimate purpose, even without explicit authorization by law.

Cases of discretionary power are many. In rare cases the law expressly permits discretionary powers by authorizing the body or official subject, that in the absence of a concrete and determined relugation of law or sublegal, to generally act with initiative “till the emerging of respective act” or “in analogy with other cases of this nature”. But more frequently the discretionary power is given indirectly with the formulation of dispositions with non taxative determinations, without giving fixed but general criteria qualifying with the relative terms such as: “mainly”, “especially”, “when considered reasonable”, “when necessary”, “according to the case”, “where possible”, “in inability”, etc. It is this conjuncture that not only let the way opened to corruption by abusing in the optional or relative character of disposition, but also facilitates the avoidance from the responsibility.
Such formulations of law, have drawn the attention to preventing them, in drafting of new laws or amendments, by including in principles of law drafting technique among others that: “the law should be concrete, not hypothetical”, and that: “Legal concepts must be expressed in terms which are as much defined as possible, in order not to have place for alternative interpretations”, or that “is particularly important that disposition to be drafted according to the principles of legal certainty and predictability” 52. Such are the principles that make it necessary that: “prediction of a general rule should not be charged with the exceptions, restrictions or deviation.... the expression “as a rule” should not be used, exclusion or criteria for exclusion must be specified. 53.”

We dwell on principles and aspects of legislative technique, to highlight the necessity of their recognition by the financial control bodies, police, prosecutor and courts, to determine the violations or exploitation of gaps, inexactness or contradictions within the legal or sublegal act, or with other acts as a prerequisite condition for detection, investigation and adjudication of corruptive acts.

To illustrate these principles and criteria of construction of the disposition and their effects related to corruption, we are giving two aspects of legal dispositions in the field of justice:

According to the article 21 of CCP: “where the law allows, and the circumstances of the case dictate the taking of a decision despite of the knowledgement of a party...”. In this case the non definition of any determining criteria of “dictating”, let pathway for abuse from judging panel, abuse that may also be under the impetus of corruption.

According to the article 72, the judge is obliged to renounce from the examination of a case when are taxative the cases of that article, in between which in the point 6 is even when are confirmed the “serious” reasons, a unspecified and relative category, cause for obliged resignation and we find it even to the last letter of point 1 of article 17 of the CPP, already not with the qualification “serious” but “important”, also unspecified but relative category.

52 Council of Europe, Eurfalius, Ministry of Justice, May 2006 - “Handbook of drafting of laws in Albania”, Pg. 46
53 Still there, Pg. 47
Such examples are numerous, and can be used for motivating decisions or procedural actions under the ipetus or intention of corrupting benefit.

In the system of Justice, as we mentioned above, are encountered some other forms and ways for realizing the benefit of corruption, as they are by:

- Deficiency in judicial investigation

- A non fair and not exact presentation of data

- Exploitation of deficient or contradictory spaces in legal dispositions, material and procedural

- Intentional delays of actions, or inappropriate postponement for passing of legal terms

- Argumentation of decisions with extended interpretes, while the law has them taxative, baseless in law or in conflict with it, especially without supporting evidences or in conflict with them, etc.

2.4 Data from investigative and judicial practice

We are listing examples from the investigative Judicial practice, in which we just mentioned above, has even other forms and “technologies” that carry the risk of corruption:

Decision No. 402, Date 24.10.2008 of Court of Shkodra District.
The charge: “Falsification of ID documents, passports or visas”, provided by the article 189/1 of PC.

The case is dismissed, between other things with the argument that the prosecution by non performing till the end the appropriate investigative actions, receiving of responses from

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54 Based on the acts of control in prosecution and courts, archives of the Ministry of Justice
the requests of relevant bodies within and outside the country, could not prove the accuse. This conclusion is unlawful, because the argument provided by the article 328, letter dh of CPP, has value only when are committed effectively all the possible procedural acts, and consequence in terms of article 377 of CPP, the prosecutor should have requested the withdrawal of the case, otherwise the court should have ordered mainly passing the documents to the prosecution.

Basically it is wrong the reasoning that is done the sequestration of documents incorrectly, because it is true that the sequestration is presented as evidence in court without having a procedural value. But this is neither an argument nor an obstacle, that in judgement to be requested an ordinary administration of this evidence, and since the expertises are done in conditions of sequestration, it must have been ordered a new expertise.

The argument that the innate suspicions for demonstrativeness of accuse, that constitute a motive for the presumption of innocence, and therefore the case must be dismissed, is a wrong interpretation of this principle. Because such a presumption is not an obstacle for continuing of the investigations, till the full clarification of the case, as the investigative actions have been left unfinished.

These aspects are not taken into account from the body of accuse, as in investigation and judgement, as in no reacting toward the decision of court.

- Prosecution of Shkodra 2009

Penal denounce No 485 date 21.05.2009
Is pretended for attempt of homicide toward the accuser...
Non starting of the case is done with the justification that there is a decision of court for such event in year 2006, by considering it as a consumed case, contrary to the denouncing material according to which comes to the repeated attempt for killing since 2008 and later.
In this case is also the decision of Shkodra District Court No 136 of year 2008, in which as it is not approved the accuse for murder for the four defendants, the case is dismissed in entirety, although it is accepted that there is completed a criminal offense. This comes in contradiction with the article 377 of CPP, because the dismissal of the cases in court is done only when there is no place for criminal prosecution, so when the penal act does not exist or has legal impediment for proceedings. In the meaning of this article, even when is not requested by the prosecutor the withdrawal of the case, this is done mainly from the court based on the last phrase of that article.

**Penal denounce No 184 datd 20.02.2008.**

Denounce that has to do with the missing and moving away from the residence of a citizen, not initiated on 22.02.2008.

It is a decision of non initiating, related to the disappearing without trace, leaving for Yougoslavia in 1990, and missing of information since that time. Since in this denounce there are not elements of a penal act, the police authority should not have forwarded it to the district prosecutor, echoing the case (furthermore a police authority) in the meaning of article 283 of CPP, should not even keep certified record of the denounce, since is verified that “denouncer” has not have willingness to denounce, but is driven by a private television.

- **Appeals Court of Tirane - 2003 (the documentation)**

There are deletion of words or specific numbers, and in some cases even deletion of whole rows with chemicals, and rewriting of another text. In this way are corrected for example in directory of civil decisions 2003, decisions with No: 80, 108, 71O, 763, 1073, 1079, 1080, etc.
Corrections of this nature, represent a risk because through them can be manipulated the chronological order to hide the reality of the date of giving of decisions, or to “legalize” a not taken decision, or not declared effectively in that date.

- **From the control in the Prosecution Tirana - 2005**

One denounce of High State Control for findings across all the Republic, was sent to prosecution of Tirana, with the orientation that with the territorial criterion the denounced episodes to be passed to the Prosecution of the respective districts. From the control group, was asked to the Prosecution of Tirana District, the investigative file of case of vehicles that were not cleared to customs, the data or documents for episodes which because of territorial competence, should be held and investigated by it.

As it emerges from the documents of the prosecution No 10449 date 30.12.2005 is not taken for investigation none episode that belongs to the prosecution of Tirana, on the basis of territorial jurisdiction, which means that these cases are closed because according to the law and the order of the General Prosecutor, the districts will investigate the cases of their own territory.

To valuate the damage from this serious violation of procedural rules, in the absence of definings for the concrete cases of uncleared vehicles, can be done an average estimation. There are 30 thousand of uncleared episodes, with an average valu of ALL 0.25 million each.

These belong to an import for a period for a total of approximately 293 thousand customs entry, which means that in between 9.5, one is left without being cleared. Since the district of Tirana meantime has imported nearly 74 thousand vehicles, it emerges that to Tirana belong an average of 7 thousand uncleared vehicles, that make 7 thousand of penal cases closed, with a 17.5 billion ALL. (link 13)
**Court of Tirana - 2004**

**Act No 87**
Re-establishment in term of the pair in absence, the decision is not communicated according to the rules, because it was handled to the Guard Officer of Military Department, as accused pair, while it should have been handled to the protocol office of that Department.!!!

In fact, the procedural law explicitly mentions the guard of juristic person as receiver of the communications, without talking about the duties of guard according to the internal rules of institution (link 20).

**Act No 111**
Reinstated in term the appeal against a decision of the year 2000, (so, four years ago) while it is accepted that they are aware of the trial, because they had representatives with proxy.

a. They are aware of the trial, and as a result the re-establishment cannot be done after a period of 1 year, look at 445 CCP c.,

b. Is accepted that the representative has been sick and hadn’t been able to make an appeal, because has been moving Italy – Albania. While the parties themselves didn’t have the possibility to appeal because they have been immigrants.

**Act No 122**
Re-establishment in term for the right of requesting the salary for the period of before January 2001 (so, four years and some months ago), with the argument that has been sick and hospitalized for the period from 2002 and continue. The right for request had arisen since January 9, 2001, and there is no reason why he didn’t exercise it until 2002.

The request for salary is a right that can be exercised for a period within 3 years, article 203 of Labour Code. This is a term of material law, not procedural law.
Is a preclusive term, because it has to do with request not for appeal or accuse. Reestablishment in term, can be done only when the material law recognizes such a thing, and this is clearly said to the article 151 CCP c.

**Act No. 191/ Year 2004**

Reestablishment with term for the appeal of decision No 3179 dated 21.6.2004, with the argument that: “the applicant has been objectively unable because of his health conditions”, therefore to guarantee to him the constitutional right for a judgement in all levels, is restored in term.

From the verification it resulted that: the applicant is obliged to pay $26 thousand dollars. In trial he has been present, but has taken even advocate with declaring in the session.

The request for reset in term is done by advocate, with this argument: “I could not assure neither de jure nor de facto the decision of court, because it was not proclaimed, with the content of which will be based for the appeal”. These arguments are invalid, because the complaint can and should be done in term, and then when the decision will be given, the reasons for complaint to be presented. This is a known practice, since both parties were present in the announcement.

There is no pretense for bad health conditions.

The argument of reset in term because of illness is added by the court as it seems, because it is understood that the argument of the applicant has no value for reinstatement.

Under the example of the court, in the text of appeal request is stated that: “we did request, and because of my bad health conditions we reset in term”.

The reset has been required for other reasons. Who is in bad condition, the accuser or the advocate? If it was the accuser, what impeded the advocate to make the appeal, because in
fact he made all the things. Likewise, if it was the advocate, it doesn’t emerge what impeded the accuser.

**Case No 244/Act of year 2004**

The court accepts that:

The complainer did not agree with the decision given in presence, and wanted to claim but could not do it immediately but only after 5 months, because:

“He has been far. The decision is the Tirana’s Court, but he lives in Burrel. And the defender, at the end of trial refused to continue defending him. He has continuously been sick with heart problems, but not hospitalized.”!

- **Vlorë 2004**

Registers and acts. Contradictory dates in report, acting NO with progressive date.

In the link 12, we can give about 20 cases with date of actings that exclude in performing of actions on them, among which typical examples are:

- Decision No 675 is dated 11 February, decision No 86 - 14 February, and decision No 97 is dated 11 February.

- Decisions No116 and 117 have the date 25 February, while the middle decision No 118 has the date 9 February, and is followed by decision No 119 with the date 23 February.

- Decision No 221 has the date 4 May, decision No 223 has the date 6 May, and meantime the middle decision No 222 had the date 27 May.
- Decisions No 588 till 589 are given on 16 November, meanwhile the decisions No 494 and 405 are signed as decisions given one week before, November 11, etc. There are contradictions between the court decision and the charge sheet of the session regarding to the participants in the process.

- **Court of Appeals Durres – 2008**

**Civil case of MD**

We’re reproducing without comments the infringements and irregularities:

1. According to the charge sheet, the secretary of session has been XY, while the decision in manuscript has not secretary.

2. The decision has as representative of Customs the person BD. The charge sheet has two representatives, person BD and KJ, and also in the folder are the proxy for both of them.

3. According to the charge sheet of the session, have given their opinions both of two representatives, while according to the decision only one representative.

4. According to the decision, the state attorney has been I.P, while according to the charge sheet of session has been M.N.

5. Is confirmed that L.P in 2007 has not been working in Durres but in Tirana. He is turned to Durres after July 2008.

6. L.P declares that has participated only in civil trials for this person before 2006.

7. The decision in “manuscript” was signed at the end by three judges, but only one of them has signed the other 6 pages of manuscript. He was S.G, which was also the relator.
8. The decision has not manuscript, but is done with computer with italic letters. The secretary of Court of Appeals Durres declares that the computers of “manuscript” and announced decision, are not theirs but are computers of Tirana Court.

9. The charge sheet has signs of correction in the last line of it. Has been written “civil lawsuit in penal process”, but is added after the word “in”, the word “this” that has the decision in manuscript, but which is in linguistic contradiction with the word “the process”.

10. There are signs of correction even to the word “Penal”.

11. Calligraphy and the writing tool of the word “this”, and the inscription “penal” look different from the text of charge sheet.

12. The computer text in manuscript, is typed with computer without manual sign the numbers of case and decision, and also the date of receipt and declaration of decision is typed with computer, without additions.

13. This fact comes in contradiction with the legal procedure of decision making and its annunciation, that in any case precede the numbering, which is done after the annunciation. Consequently the numbering in manuscript of decision is done with another tool, so it can not be a unique computer made.

14. This contradiction and other contradictory data mentioned above, let you raise the version that the computer text of the order and numbering have been done not only prior to the examination of the issue and taking the decision (in the secretive room in December 17, and coming ready from Tirana) but also prior to the session of November 19.

15. This is confirmed even from the fact that the computer machine is Tirana’s computer, which means that the decision has came ready-made in Durres, before the session of 17 December, when it was taken and announced.
16. Representing of persons who have not been present in process, and nonrepresenting of persons that have been present in the process tell that the decision is formulated before the session of November 19. So without starting the trial.

17. Concurring of the charge sheet of the session at the end with the text of decision in manuscript, is another argument that the decision in manuscript is formulated before completion of the charge sheet of the session.

18. The absence in decision of the secretary of the session, that is reported regularly even in the charge sheet of first session of November 19, with the same judgement panel, is argumented that the decision is formulated without starting of reviewing of the case in the second stage. So at the phase of studying the case from relator, when the participants in the process were not known.

19. The computer unity of the ordering part of decision in manuscript tells that it might have been formulated previously not only the opening and reasoning parts, but also the ordering part, what constitutes a serious violation, because the way of resolving the issue can be determined only in the decision room, so after the trial session.

20. The unity of text of decision in “manuscript”, with the number of decision and case, raises the version that the numbering is done before the starting of the session.

21. The version of a decision in manuscript, completely ready made, can be rejected if it is accepted that at the beginning the decision in manuscript is printed by having only the opening and reasoning part, while the ordering part and numbering have been empty, but is filled after the decision and numbering, so after the announcement of the decision.
This justifying version falls, with the fact that in these cases the ordering and numbering parts must be in manuscript and not computer typing. But this is excluded because in fact all the decision is unique computer made.

22. We have in consideration also the version that initially the decision is prepared and printed only with the opening and reasoning parts, without orderings and numberings, but after taking the decision is completed the ordering by signing it regularly and after declaring it, is numbered.

This version can happen only if it is accepted that by having a unique computer text, even with numbering and ordering but with the original signatures. Effectively we would have two decisions in manuscript. So the same decision with two manuscripts and undersigned two times, thing that would be a dangerous precedent, and absolutely worthless.

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Serious crimes, and especially the organized one, already a reality in Albania has identified new forms of corruptive activity with some important features.

Firstly: Corrupting in the function of creating of opportunities, conditions and means for realizing of criminal offenses or its products, by transforming the employee or official person in an external collaborator, or member of criminal group or organization.

Secondly: Providing of connectivity and submissiveness of employee or officer, by knowing previously the criminal circumstances, disciplinary or administrative violation, or discriminatory facts in moral terms that are used as chantage to ensure corruptive collaboration.

Thirdly: Corrupting of persons because of power, impedes the detection of criminal activity, or can signal for the risk of its discovery.
Fourthly: Related to the employees or control officials, police, prosecutors, judges, legal experts or legal translators, etc, the organized crime uses the corrupting in the function of unlawful qualification of facts, by presenting the act not as a serious crime, or organized crime, but as a simple infringement of law, as an administrative offense, or as an ordinary act committed with negligence, etc, as well as application of favorable legal clauses, in determining the type and amount of punishment, the way of suffering of punishment, etc. Precautions or accompanying measures of punishment, as confiscation of wealth created because of criminal activity, etc.

### 2.5 Ethics of behaviour as an external sign of corruptive relations

This aspect is especially present in the studies of criminologists and sociologists, which mark as visible the corruption in the light of infringement of moral and ethical rules of society. This approach, though in itself generally does not have proving importance for corruptive activity, effectively it has or can take a special importance mainly in two directions:

- Social relations, the association in places, time and circumstances unmotivated, and the behaviours that come in contradiction with the rules and norms of morality and human dignity in unjustified places, time and circumstances, from persons who can be for these conjunctures the subject of passive corruption. They are the basis in the researching and discovery activity of the Inforrnative Services, Internal Audit Services, Criminal Police or Prosecution, for building of versions and planning of investigative activity.

- In exceptional circumstances, for exmpl. when the suspected person for active corruption, denies the knowledgement or the contacts, or pretends previous deterioration or breaking of relations, authentication of these behaviors takes full probative value.
We’re giving some example where such behaviours, provide data for the possibility of corruption:

- Appearance in public with people that are known in public opinion as persons connected with the crime.
- Form of attitude, way of speaking and expression, gestures, exaggerated salutation.
- To participate in activities without motivation, participating of employee or official in private or official activities or celebrations of institution where has relations or certain interests.
- For people of justice, bodies of tracing or police, we will mention their attitude in public with the participants or parties of judicial process, with people who they are or have had pursued, with whom they have interests that are related to actions, inactions or their decisions, or when they are publicly recognized as people of crime, etc.
- Residence or luxurious living, or the use of cars or other means of travel which are too expensive and out of their financial possibilities.
- Use of hotels, villas, cars or clubs of the people who are convicted or are being prosecuted for criminal activity, or who have a bad reputation in society and public opinion.
- Emersion in electoral campaigns with people without a good personality, with criminal activity, or with people that possess wealth with unknown origin or suspected origin, etc.

Although in these cases, often there is not a violation of a norm of law, but there is a violation of moral and ethical norms that are equally important, for the office person and his function.

In this regard it should be taken into account even the conjunction with such factors as the mentality, habits, customs and traditions of law and ethical-moral norms of the country in general, or to a certain area. Respecting of them are strictly followed by the respective environment, so even the disregard or violation of them is significant among other things even in regard of corruption.
2.6 Factors that cause or favour the corruption

At rising, realizing, types and sizes of corruption are the cause or have influence many factors:

- Objective and subjective,
- Individual or social,
- Private or public,
- Economic or political,
- Casual and transitive, or frequent and prolonged,
- Socio economic and political problems that a country passes,
- Tradition and heritage of corruptive actions,
- Educational and cultural level, etc.

There are such factors and circumstances that affect to private individual or official employee and in the bodies and structural private and public levels, for emerging of the embryos of the corruptive opinions and practices, knowledge of which has essential and determining importance, especially in the lives of individuals and juristic persons, and generally of state and society.

This because among the major defects like in many directions, even in the fight against corruption in the world and especially in Albania, the ratio of fight of the cause aligned with consequence is not fair, by giving priority to the second instead of first one, when it should happen the opposite, like in medicine with the prophylaxis for prevention of disease. Not only the prevention of causes but also the fast discovering of them from the embryonic phase has crucial importance in the fight against crime, because if it is not noticed and fight in that stage, can be returned into a ground where the corruption arises. A such conjuncture in the fight against crime without going to the extreme of complete denial of preventive aspect, we see it in some directions, among which we can mention:

- The data for tendency of completing of corruptive act, generally is used for organization of surveillance or catching in flagrancy with the aim of providing with evidences for
penal punishment of the person, and almost never is used for warning or advising, especially with young people, people who don’t repeat it or with good personality, method of prevention that is known and applied to various fields such as medicine, the fight against erosion, etc.

- In the practice of last 20 years, when competent authorities became aware of the problems that are caused for realization of the rights and legitimate demands by the bureaucratic difficulties, delays or arbitrary obstacles that can push the person in the act of corruption. There are almost unheard the cases when the competent bodies are notified or have intervened for taking the measures, but even it is their competency, their common and proverbial response was the “slogan”: “go to the court”. way that in the most of the cases is avoided because of procedures, delays, financial inability of many people, the urge for solving the problem or before the possibility of irritation of relations and violent conflicts, etc., so this way being forced to choose as “most effective and practical” the corruptive act.

- The low cultural level in particular individuals, and the deficient legal culture in general, especially during the education, is a reality that can not stay without influencing not only in the aspect of personality formation but also in the training of citizens for their rights and the ways of their realization, with recognition of organization and activity of state administration and justice, as regards of competencies and as well as procedures, without letting away even the recognition and penal punishment, etc.

- Difficulties for establishment and functioning of mechanisms that regulate the new-born relations of market economy, as between the employees and public official and also private employees, created the wrong mentality of unfair risking of property of individuals and lack of prespective what leads it in use of means, even illegal means, among others even corrupting means, in order that their interests to not be affected. We can mention here for example the reactions to expropriations for public interests that very often were confounded with the expropriations of before 1990, in objective limitations in the process of restitution of properties, etc.

- Immediately after the victory of democratic movement, because of the lack of experience and degradation of the state administration, the democratic principle of free movement was
deformed. Though it was legally conditioned the freedom of choosing of residence with the finding housing, effectively was not prevented the occupation of private or public property in the surroundings of cities, by creating this way not only conflicts but also corruption, especially with the providing of construction permits, or involving in their legalization, etc.

We are giving concretely the main factors that affect in the emerging and development of corruption in our country:

- **The economic situation**

Economic situation as factor of corruption, must be taken into consideration as in the all-local aspect as well as the individual aspect.

In all-local aspect, the corruption is generally more diffused in the countries with a low economic level, because this is reflected directly in the structures and activity of state apparatus, in wages level, in number of necessary employees and their quality, in services and state control, scale of development of democracy and rule of law, etc., thing that could be said even for juristic private persons in approximate directions.

The strongest argument in this regard are the Nordic countries with a high level of democratic and economic development, that have the lowest levels of corruption in the world, and on the opposite side the African or latin American countries that have low economic levels and low democratic development.

In the individual aspect it is true that people with good economic conditions, who commit corrupt acts, even though they have not economic reasons. But it should be said only in terms of passive corruption, because the good economic situation and property, initially can be result of passive corruption, but later has the tendency to pass in active corruption to increase or protect his property.
The first phase we illustrate with the famous public pronouncement in electoral campaigns of Berlusconi in Italy: “Do not ask me how I provided the first billion, for the other part I’ll give you an account one by one”

Regarding to the second phase, we can mention the famous processes of “Clean hands” in Italy, and again Berlusconi for the judicial processes where he has been and still is accused for active corruption.

In individual aspect among the persons with the low level or with poor economic conditions, generally is encountered the activ corruption, for providing of job position, realizing the requests and the rights, restitution and documentation of property, permits of constructions or legalization, etc.

Among the juristic private persons, generally is encountered the active corruption, for fiscal lowering or evading, for providing orders and bids for raw material within the country, or exports or imports for sale markets of products. And with the method of active corruption, especially in the fields of finances, customs, control bodies and up to justice authorities, for favorable resolution of civil conflicts, or for avoidance and softening of penal responsibility.

- Level of living and relatively low wages of administration

Result of weak economic situation is the low level of living generally, and the wages particularly as the only lawful source of major part of the employees of state or officials of public links or the juristic private persons.

Generally this is an objective factor, because it depends on the development of economy, and is fact that parallel with the strengthening of its growth after 1990, are increased even the incomes from the salaries, by following a encouraging policy not only in the vital sectors, but also in the sectors where are records of a more evidenced corruption and with
serious consequences, as it has happened with the raising of wages in education, health, justice, customs system, etc.

Is fact that very often in the state administration, the salaries of the employees does not go half as the salaries of their colleagues of private institutions. With this, is understandable the massive “flow” of talented specialists and administrators that dig for the fortune to these private firms, within or outside the country. While the others that can not realize the emigration of labour force or “brain emigration”, very often fall prey to corruptive thought or action.

Regarding to the salaries besides their level, in terms of prevention of corruption, it represents a special importance also the system of salaries in terms of a right, effective and encouraging differentiation of salaries, according to the profession, job position, seniority in profession, level of education, specialization, work results, etc. In this regard is should be said that there are done wage reforms time after time, but the real situation leaves much to be desired, what can not stay without creating a dissatisfaction, which in particular persons cultivates the searching of “supplementary” incomes.

- **Lack of political stability**

Lack of political stability is one of the main and important factors that create and encourage the corruption.

Lack of political stability creates a state of economic uncertainty, in entirety and particularly to the employees and officials of public institutions, which do not see any kind of guarantee for the prospect of being in their workplace, by inspiring illegal corrupt profits for as time as they have that status.

In the context of political instability, is difficult (if not impossible) to follow long term policy of economic development, and even less for those anti-corruption.
With the changes of social systems in our country, at the beginning of ‘90’s, naturally had lack of experience, organization and legal regulation.

The objective abrogation of the old legislation in most cases inappropriately for the new economic and political system, and the impossibility of immediate replacement with the new legislation, necessity of the simultaneous adjustment of the directions and new aspects, as for example the status of the persecuted persons, return of property to former owners, treatment of agricultural land, documentation and registration of immovable properties, private economic activity, system of taxes, customs system or activity of the notary’s and lawyers, etc. All of these, objectively would have a temporary and transitional nature, and therefore would create gaps, inexactness and contradictions which were changed and improved time after time, until the creation of a legislation more or less final, a process that continues even today.

Without getting into the political factors and causes, effectively a such conjuncture of extendening of transition in the building of administrative structures and links, legislative reform and frequent unmotivated movement of employees and officials in the time of rotation of power, not only affect negatively in the economic development and stability, but also create favourable situation and routes for illegal actions or inactions, with the aim of providing of corruptive incomes and benefits.

• **Discretionary power**

We have mentioned in the article 7 of CAP, by which the law can formally recognize the officials in certain cases the right to exercise the powers with the initiative and with the price of official, without any attribute and specific legal definition. Although not frequent, such conjunctures may not be incentive for corruptive profits.

• **Legislative reform**

In terms of changing of social and economic systems as happened to our country, it is natural that these changes are associated with the abrogation and changes of normative acts.
from the constitution, codes and laws and up to bylaw acts. Legislative reform in Albania had features that it had to be deepened, more complete and versatile for the fact that to the previous legislation didn’t exist acts of legal regulations of a society of the trade economy, of legal state of law.

The difficulty stayed in the fact that in one part should be abolished immediately most of acts and legal provisions, and in the other part objectively could not be done the immediate replacement, by creating this way a period of several years of transition where predominated the temporary legal regulation, with the technique of “patching” of dispositions, what opened the road to arbitrariness through abusive interpretations. This was till the beginning of the years 2000 when the Constitution was approved. Most of codes and new law covered almost all the areas, already undergoing in a new phase with two objectives: perfection of acts and dispositions under the light of deficiencies that were noticed in the practice and their implementation with the aim of approving of acts completely new and stable, and the overall review of dispositions of after ‘90’s in the approach of approximation with the European legislation under the perspective of European Integration.

It is understandable that in these situations to be manifested the tendencies of corruptive benefits by exploiting the gaps and inexactnesses, periods of vacuums and legal regulations, the circulation of cash money, etc.

- The effectiveness of the state mechanisms

The central and local government for realizing their functions have each the respective mechanisms. But in their activities are many factors and moments, the underestimating or not fighting of them affect directly or indirectly in the development of corruption, and among which we mention:

- Initially in the context of changes of social systems, the state apparatus incurred a significant reduction of its effectiveness, not only as natural reaction of centralized and potent power of communist regime, not only because of the transitional periods of
construction of new structures, but also for a confusion of important functions in itself, and generally the authority of state apparatus with the democratic nature of society.

- Later on a series of other factors and circumstances influenced negatively, such as the nomination and movements of officials, often with unfair criteria but from the position and political interests, inappropriate additions of organics and non-functional or unnecessary structures. Or as well as shortening of bodies and structures as a way of removing of unwanted effects, or to take other people, and especially for overloading with documentation of inappropriate administrative actions, factors that cultivated the active corruption for avoiding the delays, inappropriate movements of employees or other obstacles that cause such bureaucracy.

- Hiring or nomination of officials without needed characteristics or without following the respective procedures of competition, can not stay without affecting in the lowering of level of quality of work in the administrative apparatus in all levels, but especially to the local government, associated with the increased passive corruption.

- Emersion of “realtors” next to public administration bodies, was turned to the main link of corruptive relations, especially in the field of implementation of legislation, property, or giving the justice.

- Entering in public administration of persons that represent entrepreneurial structures and have material interests, gave them the opportunity to exploit the given position for their interests of benefiting, influencing the weakening of the effectiveness of government institutions, increasing of corruption, etc.

- **Intervention of state in the economy**

With the changes that happened in the years ’90, especially at the begining of these changes, the state and society itself were found unprepared to face new forms of social development and especially in the economic field, and construction and functioning of legal state of law and democratic nature of creating of functions of organs of state
administration. There emerged institutions and new functioning ways, with unknown structures and functions, and the rapid changes in the practice of public administration, for which was missing even the minimal experience. Typical in this regard is the separation of powers, mainly the new relation between the bodies of central and legal power independent from each other, a thing that was inconceivable before. Independence of judiciary organs, new relations between investigation and judgement, control of activity of prosecution and court only through the higher links of them, only with the procedural ways and only for concrete cases, resetting in function of advocacy, etc. All of these things need time, not simply for knowing them, but mainly for awareness related to the democratic nature and importance of them, for creating this way a new tradition, things that require time.

It is even this between others the reason of development of corruption, comparing with the past, the consequences of which continue to suffer even today, but gradually in this approach losses the negative affect under the pressure of concepting and new democratic education in growing.

While the conditions of state ownership for the means of production, non-separation of powers, lack of private property, production and trade that existed in the socialist system, now the state intervention in the economy was its way of leaving, with the quality of the only criterion, the property. Starting from the fact that yet the state is not the only owner, furthermore it has a limited right for public ownership from the autonomy and relative self-action of many administrative entities of public property. And for that the intervention of state in economy often becomes a prohibitive force and carrying of corruptive opportunities, because of competencies and attributes given for the administration of economy, such as the obligations and distribution of budgetary funds, permits for building, licensing etc. while the public officials become waster of these powers, often materialized in corruptive profits.
• **The process of property restitution, privatization and legalization**

Restitution of properties is an event only for the former socialist countries, among which Albania occupies a special place because of the severity of expropriation and total restriction of private activity. Another difficulty was the fact that while in Western countries (with a few exceptions) was known only the nationalization of private property conditioned with payment in full value, and consequently the return of property was not recognized, but only the privatization of it. In Albania the nationalization was made against a minimal payment, almost symbolic payment, while the expropriation was without any reward. To that thing should be added that even for reasons of war or administrative irregularities, there was an emphasized damage of documents of properties, while at the time of Zog kingdom and even later until 1994, the registering of immovable properties did not exist as inventory, but only the part of properties registered for juristic activities. Which means that the vast majority of properties (mainly agricultural lands) and all the properties for which were not done juristic activities, were not documented to the former offices of mortgage.

Therefore, the restitution process was more difficult, as in terms of documenting and procedures of decision-making, and also in terms of implementation of forms of restitution, as regarding to the missing of objects for compensation in nature and also as the financial difficulty of state for compensation in value.

These things create the possibility for corruptive activity through the restitution without fulfilling the legal requirements, or avoiding of restitution in nature for providing opportunities of investments or commerce for the third parties (non owners), so from fictitious owners. This because, while the broad area for corruption was created mainly in courts, where about 400 thousand judicial processes were done for authentication of legal fact of properties, process that were done without adversary pairs, and mainly with evidence of witnesses.

Albania was also particular related to the legalizations, because while in traditional capitalist countries this phenomenon was almost unknown, when in the former socialist
countries the constructioning was controlled, and those without permission were limited, in Albania had a massive influx from the countryside to the around the cities. Thing that led to massive illegal constructions without permissions, the demolition of which was impossible because of deep social problems and conflicts, besides of material damage. Even in this direction regarding to the documentation of construction, respecting of technical requirements, providing of legalization for irregular buildings, or in impermissible places, etc., had a broad area for corruptive acts.

In all the countries of the world during the processes of privatization of state assets, have been noticed emersions of corruption phenomenon, and not only in the countries with the economic and political backwardness, or with undeveloped democracy, but even for the states economically developed and with prosperous democracy. Privatization of state property itself, stimulates and creates opportunities for corruption for the simple fact that public administration privatizes objects of all but no concrete people as direct pretender of right of that property, and as such is an essential action without conflicts.

In our country this process took route at the beginning of ‘90’s, in conditions of an economy in the verge of bankruptcy, weak state, fragile democracy and political instability.

Corruptive acts during the privatization are done mainly in the form of illegal benefits from members of public administration that realize privatizations, selling of objects under their real value, simulated purchases related to subjects for hiding those who were in conflict of interests, privatization of objects that have been former privately-owned without consideration of case for effect of property restitution, etc.

- **Public budgetary means and the funds of nonpublic entities**

Respecting of legal criteria for planning and allocation of budgetary means and generally administration of local or central budget, and management of private entities funds, is a special area where the active corruption acts and is obtained by the officer, mainly for:

- Inappropriate distribution, with deficiencies or non fulfillment of legal conditions,
- Non respecting of equality principle under the same conditions, by not applying or respecting the rules or criteria of drawing or tender,
- Not approval in time of budgetary funds,
- Begining of economic activity without approval of relevant projects and funds,
- Changing of destination of funds without cause or without following the legal rules,
- Giving of state loans without criteria,
- Additional funds without verifying its usage and the reason of requesting the addition, etc.

Other areas that carry the risk of corruption, in directions and activities that have relations with the budget can be:

- Licensing or franchise concessions,
- Non respecting of rules and criteria for categorization of commercial entities for purposes of taxation,
- Differentiations in taxes and duties in the form of unilateral exceptions,
- Forgiveness of interests on arrears or fines

**2.7 About the effectiveness of competent authorities in the fight against corruption of immune subjects**

The issue of immunity has long been raised by many people, by being presented as an obstacle for detection, investigation and adjudication of criminal activity, generally of officials with immunity, and for corruption in particular.

Since the removal of immunity is not only wrong in principle because endangers de jure the officials figure, or of a special and important function, by erasing the distinction between criminal elements and the correct elements in most cases, but also because in practice it is almost impossible, as the most of the cases it requires constitutional changes. This is the
reason that is not insisted on the removal of immunity, but in resignation from immunity by the person who holds it.

However the Constitution and all legal acts specify that the immunity of certain categories is removed, and in none of them is not recognized “letting” as form of termination of immunity. Apparently this is something formal but essentially reflects an important feature of immunity. The immunity is recognized by law not simply because of official position, but also from the interests of the electorate that his representatives in the central or local authorities, and the judges, to not be apriori under the pressure of penal prosecution, basic condition that to effectively exercise their functions. Having read the Constitution it emerges that one of the cases of termination of the mandate of the deputy is also resignation. This means that the Constitution does not recognize the finishing of immunity with resignation, otherwise would explicitly define even for the termination of immunity, as well as for the mandate.

Deputy is not simply the representative of the people, but also carrier of its sovereignty. This should be an attribute that Constitution considers, by giving the monopoly to the Assembly for the issue of immunity, in inability for people as transducer, to remove the mandate of immunity for the deputy, for concrete issues. This is done by Assembly, the only body carrier of its sovereignty. This because the resignation may be a result of a blackmail against him, and he can give in, can become prey to the psychological pressures of traps, can be a sentimental, etc., so all of this one person not the whole Assembly.

But most important is that the constitution can not allow the issue of immunity to be treated unilaterally by the deputy, because he is not simply and individual. He is a representative of people and with such quality should not be allowed to become sentimental, to cause subjectivity or political “war”. To open the way to such a practice impinges indirectly the authority, independence and selfaction of all the representatives of the people. This way must be reasoned even for the judges who are also even more prey of revenge, and in this context even pray of biased and baseless accusations.

Lets take the “curriculum” of parliamentary immunity from 1991 and onwards: For how many deputies is requested the removal of immunity, and for how may is unfairly refused
it?. It is true that there have been requests and refusals, but in most of the cases they have been related to private accusations.

The problem is for the cases of conflicts of deputy with the state and his property, or in the fields that concern the state and all the society, as it is corruption, trafficking, organized crime, without speaking even for terrorism.

Where lays the worst and why it remains as solution the resignation or removal completely of immunity?

The deputy has immunity consequently with exception of flagrancy, field that for serious crimes, when emerge the data for possible implication of him in a criminal offense, the operations are suspended and the material passes to the prosecutor. This way is interpreted today by all the taboo of immunity.

A such conception leads to the conclusion that the prosecutor can come or may face during an investigation, an important clue that creates full basis for requesting the authorization for prosecution and arrest. But it comes also a material or is faced with data that have minimal value, through which can not be convinced even him that it has place or not for making proposals to the highest organs of state for penal prosecution.

Objectively the vast majority of findings are with elementary or insufficient data. In the cases with people without immunity, the prosecutor gives back the material to the denouncer for completing the data, or makes personally preliminary verifications. But for deputy and judge can not be done neither one nor the other, as for individual persons without immunity. Return of material would be senseless, because the denouncer has no right to make verifications. On the one hand can not and should not be done the request for removal of immunity, because the data is incomplete, and in the other hand in the absence of authorization of Assembly, nobody can investigate thoroughly in that denounciation with additional verifications.

On the contrary will be required and will be removed the immunity without sufficient basis, what in principle generally lead to a failure of the process with harmful consequences in all
directions, or the prosecutor will archive the denounce because he can neither do a request and nor take additional verifications.

A such situation leads to the conclusion that the competent bodies of financial control, criminal police or prosecution, have not the professional ability that through verifications, prosecution or investigation of the subjects without immunity, to provide evidences or data for those with immunity, without harming the last one in their status. So, if in a control of house, control of communications, banking operations, of a subject without immunity there appear data for the immune person, it is wrong and illegal the concept of non fixing the data, instead of legal approach the non-continuatio of respective action and the proceedings for removal of immunity.

Of course such a thing is difficult, so it is also a reality that affect negatively for the immune subjects to not be afraid of “risk” of penal prosecution for corruptive activities.

In numerous discussions that have been made in media, or even in literature, probably are more effective some moment that would open the road also to an effective fight against corruption:

- Review of material and procedural law for specifying the differences and limits between the pre-investigative actions or “verifying” investigations in penal cases in general, and investigative actions in the function of the penal prosecution and acusse against a particular person.

- Concentration of competence of removal of immunity to the head of competent authority, with prior approval of the special commission at that body.

- Approval of intercepting operations, sequestrations and controls by the judge with the undersigned act of investigative body, without being necessary for judiciary session and decision and without protocol.
2.8 Types of corruption

Corruption is grouped by various criteria:

- **From the field of activity where it operates** - there is public corruption and private corruption.

  The corruption is named public when the passive subject in corruption is always an employee of a public function which puts them (these functions) in action and in favor of the active subject, which generally is a private entity, but can also be a public employee, as we have mentioned above.

  The corruption is named private, for the first time with the addings of year 2004, when the passive subject is employee of a private juristic person, and the active subject can be from both sides (private or public).

- **From the way of corruption action** - there is direct corruption, as for example the articles 244 and 245, and indirect corruption, articles 257 and 258 of PC.

- **From the position of subjects** - in the act of corruption there is the beneficiary - active corruption, articles 244 and 245, etc., and the provider of benefits there is passive corruption, articles 259, 260 etc.

  From the fields of life, economic, state, political and social, where it acts we have:

2.8.1 Economic and Administrative Corruption

  Economic and Administrative Corruption is that which operates during the activity of institutions and juristic public and economic persons, from officials or their employees,
because of and in the exercise of administrative and economic functions or duties, dictated by illegal profits and private interests.

Generally this type of corruption is characterized by the illegal activity of the official or employee of public institution, for interests of another official or private person, with action in exchange of which to acquire material goods or profits and favors of any kind.

The actions in the function of corrupting benefit may be even legitimate when the benefit is given and taken for other factors, like the velocity within the legal deadlines for fulfilment of lawful rights and interests of active corrupter, but in urgency to complete them, or giving the favors that the law has left for them in the price of public officer, or in the exercise of discretionary power.

Corruption is distinguished from the opportunistic behaviour, acting or non-acting to avoid or to not applying the obligations settled by the state, but without having as aim and without realizing material benefits or other favors, driven by private relations of public officer, in gratitude, friendship, etc. But this does not constitutes corrupt action but opportunistic behavior, actions that may be subject to administrative responsibility, disciplinary, but even penal, as abuse of duty, etc., but not for corruption offenses.

### 2.8.2 Corruption in private juristic persons

Corruption in private juristic persons as phenomenon is recognized since the allowing of private activity at the beginning of years ‘90’s, but penally was predicted as criminal offense to the article 194/a, active corruption and article 194/b passive corruption, additions made in September of 2004.

These acts besides the fact that they are penal offenses, basically they do not differ from the acts that are related to the public subjects, by having as substantial element the material benefit or other favors due to and in the exercise of functions or duties in the private entity.
We can mention here, from the covering of infringements of rules or damages from the employees of institution, or third parties outside it and up to providing of supplies of raw materials or selling of products, by emphasizing that the corrupt acts with external persons is punished with these provisions, when the external person is also private entity. Because when the corruption is done with public officers or employees related to their duty and functions, as such, they are punished according to the provisions of corruption of public entities.

While with these articles is punished the corruption of public officers or employees of commercial companies, or any position in the private sector, in the last draft-law for additions and changes of PC for approval to Parliament, expressly is specified the corruption in the associations, in sport, for foreign entities, etc.  

2.8.3 Political Corruption

Political corruption is related not only with the activity of people who are in charge of the party apparatus, but also their participation in the central or local government, as representatives of relevant political forces. This kind of corruption consists in the informal exchange and out of control of democratic transparency of favors that political parties can do through the elite in power with other structures of society, or with their followers in the electorate.

In distinction with the economic-administrative corruption, the political corruption does not consist in the narrow benefits of material things, but in creation of clan relations, tutelage for different persons, specialists or intellectuals with perspective or their relatives, for having them as support or for collaboration in future situations, for ensuring the continuity of power, functions, or common interests.

55 Look draft-law to annex, articles 1, 2 etc.
Another aspect of political corruption is related to the electoral right, phenomenon that is spreaded to much recently in the world, and of course it constitutes also a distinctive feature, in core of which is the buying of vote of electors, action that fulfills all the distinctive conditions to be characterized as corrupt activity.

The elector and candidate do the agreement, and as a result of which the elector gives the vote in exchange of receiving money or material benefits immediately or later, because of winning the elections. While the candidate by violating the law of elections, promises immediate reward or promises that after obtaining of function for which is voted, would put in place their interests and purposes.

Electoral corruption there are also the cases with same promises and rewards but for the members of electoral commissions, now for manipulation of voting process and the results, or for creation of irregularities when they feel a unwanted result.

2.8.4 The corruption connected with the world of crime

To create the conditions for operation, circulation of fruits, evading the state control and legal responsibility, the crime generally and in particular the organized crime, confronts a particular cost, corrupting benefit towards public officials and employees or private entities.

The simple or serious crime generally use the casual or transitory corruption, while the organized crime uses the permanent corruption, especially among the employees of secretaries, guards, postal service and communications and up to the persons with stable functions of control and giving orders, by effectively alienating them in collaborators in crime. While for the activity of decision making organs, assigned by drawing, can be organized the special corruption for the concrete case, by putting in action the realtors.
2.8.5 International corruption

Is the corruption that even though it is known since the ancient times, has run-up especially after the second World War, as an accompanying of globalization trends, in international political organizations, social, cultural and sports, and also the international economic collaboration.

In our code, there are not punitive provisions in this regard, but in the mentioned draft law that is in approval process, is provided the punishment in many directions in these aspects.

56 Look at the annex sections: 6, 9, 11 and 12, of the draft law
CHAPTER III

CORRUPTION OFFENSES

3.1 Nomination of corruption offenses

In the PC, as was approved in 1995, is not used the nomination “corruption”, but:

- Related to the active corruption there is the “proposal for reward” in the article 244, and “giving of reward” in article 245,

- Related to the active corruption there is the “request for giving bribe” in the article 259, and “taking bribe” in the article 260,

In the above mentioned formulations, we distinguish the contradiction where the active aspect is called “reward”, while the passive aspect is called “bribe”. This change in one side is not logical in principle, and on the other hand is wrong, because practically raises discussions in both cases, as the term “reward” in our case corrupt, is equivalent in form with the legal reward. In the other part the bribe is interpreted even with the narrow meaning as taking in monetary values, while the corrupt “reward” can be even in nature.

These are the reasons that in this direction in 2004, were done the necessary changes by unifying the giving and receiving of the profit, with the term “corruption”, that expresses the criminal function and aspect of giving and receiving, by leaving in second plan the material aspect, which as we will see has no importance and distinction in itself.

3.2 Other contradictions of the new nomination

Firstly: Is terminological contradiction with other dispositions that effectively punish the corruption, and however are not called that way by allowing an unfair differentiation, and with underestimating results for the last. So at the same time with the implementation of the term “Corruption” in nominations of articles 224, 245, etc., in 2004
were added even some other articles, among which for example the article 245/1 which expressly punishs the act of corruption. However is not nominated as corruption, as it happens with the article 328, etc.

Secondly: Such a contradiction is created even with many provisions that don’t have as main object the corruption, but in 2007 were added qualifying paragraphs that punish the corruption, but are not named as such as it happens with the article 308/2.

Thirdly: In compounding of the term corruption in active and passive, is closely based in the physical aspect of the action, where the giver is active and the receiver is passive.

A such division has led to two negative consequences:

- Division with a “knife” of giving and receiving of the corrupting benefit, where the active is the citizen, because the active corruption is at the top of acts committed by citizens, while the passive is always the public employee, because the passive corruption is at the top of acts committed by public employees and officers, while the giver and receiver may be both parts public employees, as happens that the active is public employee and the passive is the private individual, as happens in electoral campaigns, etc. As a classical example are the cases of the employees of a public entity that give corrupt reward to the public employee that organizes the tenders and auctions.

- But the mechanic separation with monopolizing of the subjects related to the term active and passive has another negative consequence that we don’t face to the PC at the initial condition. This because in many cases which are the gravest in corruption, is the public employee the initiator and who makes the request, so effectively it is active, while the citizen or the giver is only mechanically active. Aspect that often degenerates in blackmail from “passive”, so public employee. Form that becomes even more serious because in these cases generally the corruption does not consist in violation of law, but in blackmail for denial of the right of citizen, or in unfair aggravating of his position.

The code at the initial form of it when was approved, had not this defect, because along with taking of bribe in former article 260 (todays passive corruption) had also the active
aspect of receiver – public employee, with the penal act of “asking bribe” in former article 259.

Fourthly: Differentiation in denominations has led to a very serious consequence in the fight against corruption. A typical example among dozens, is that of article 308 – “False translation”, in the second paragraph of which is punished the false translation with the aim of profit or every other interest, given or promised. An authentic corruption as penal act, because the translators are procedural subjects which are licensed, and as such are considered to have public functions. But however the corruption offense committed by them is punished with a maximum of three years imprisonment, while generally the passive corruption of persons exercising public functions, and among them the teachers, doctors, employees of municipalities, notaries, etc., according to the article 259 are punished with imprisonment of 8 years.

The above contradictions of nomination active – passive, there are also connected with the private corruption in articles 164 /a and 164/b.

There must be such considerations that in the codes of Italy, Germany, and the state of New York in US are not recognized the dividing terms, active and passive.  

These are the reasons that there should be made changes to the code for eliminating them.

### 3.3. Grouping of acts

Corruption is punished by the PC with the provisions that are found in some chapters, for the fact that we have three groups of provisions:

**First group:** *Provisions that punish the corruption with that denomination*

- Articles 244 and 245 for the active corruption that belong to the Chapter VIII – “Crimes against state authority” – Section I – “Penal acts against state activity committed by citizens”

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57 Prof Ismet Elezi, “Penal Law” 2007, pg. 30  
58 Look at the above mentioned Codes at the parts VII, VIII and IX of Annex
- With articles 259 and 260 for passive corruption committed by persons who perform public functions in the second Section of above chapter “Criminal acts against state activity committed by employees of state and public services.

- With articles 164/a and 164/b for active and passive corruption in private sector, that belong to the chapter III – Section IV “Penal acts in Commercial entities”

- With articles 312, 319, 319/a related to the active and passive corruption in the field of justice that are included to the chapter IX

Second group: Provisions that punish corruption, but not with that denomination

Such provisions are many, but those that draw the attention are especially:

- Article 124 – “Request for taking reward for Adoptions” – Chapter II, Section IX, Penal Acts against children, marriage and family.

- Article 217 - “Taking of rewards for actions in favor of a foreign power, against the independence and integrity” – chapter V, Crimes against independence and constitutional order.

- Article 245 /1 - “Illegal influence towards public officials”, chapter VII, Section of Criminal Acts against state activity from citizens.

- Article 253 - “Violation of equality of citizens”, ibidem, Section II, committed by employees of state or public services.

- Article 257 - “Illegal profit of interests”, ibidem, Chapter X.

- Article 328 - “Giving of rewards, promises” in electoral campaigns
Third group: **Corrupting benefit as qualifying element of other acts**

- In chapter II “Offenses against the person”, to the following acts was added the last qualifying paragraph, when the relevant acts are performed in exploitation of state function or public service. Section VII, article 110/a, Section VIII articles 114/a, 114/b, Section IX article 128/b. Also in chapter VIII Section IV “Acts against the confidentiality and state borders”, article 298 chapter III, Section X, article 197/a & 2 “Predetermination of sports results”, article 320/a & 2 “Non execution without reasons of judicial decision”

Fourth group: **Acts that in form have no relation with corruption, but generally are committed for that purpose**

- Articles 165, 168, and 170/a, respectively for falsifying documents, false informations, illegal employment in commercial entities.

- Articles 175, 181/a respectively, smuggling in cooperation of the employees of customs, or non-fulfilment of duties by employees of taxes.

- Article 189/3, 190/3 falsification of identification cards, seals, etc.

- Article 248, 251, actions and inactions in the misuse of duty.

- Article 258, violation of parity in auctions and tenders.

- Article 313/b, the revelation of information in violation of law.

- Article 324, providing help to prisoners for leaving.

- Articles 325, 326, 327, 331, chapter X for the electoral right.
3.4 Elements of the offense of corruption figure

For elements of the offense of corruption can be spoken only related to the acts of first group, for the acts explicitly nominated as such, while for three other groups that with the main object separated from corruption are equivalent to the elements of first group, but in addition to the relevant elements of this offense.

Thus in the case of article 124/a, the main object are the rights and legal safeguards for children, marriage and family, but this act has second object separated and outside to this chapter. Therefore related to taking reward that has to do with the entirety of the legal rules of activity of public institutions that belong to another chapter of Code, so to the elements of act of mani object of article 124/a, generally go parallel to the elements of the first group.

For the acts of third group has no place for paralleling, because in all the cases where the corrupting benefit is qualifying element related to the reason of that act, therefore the main object does not change and the corrupting benefit in these cases is punished parallely with that act in competition. Therefore the data of objective part, the subject and subjective part of first group are taken only for analogy, for qualified act with the reason of corruption. So in the act provided by article 320/a, obstruction of execution of court decision, the profit is only motive and is defined in analogy with the criminal actions of first and second group, but in this case the corruption, where the relevant elements are completed is punished separately in competition with them.

It is this the reason that related to the elements of the figure of penal act, we will dwell on with the acts of first group, explicitly nominated as corruption offenses. ..
3.4.1 The object of offense of corruption figure

The object of corruption offenses is doubled:

- Main object is protection of the activity and legitimate functions of public institutions or private juristic persons.

- The second object is the protection of the rights and legitimate interests of the citizens or other institutions public or private.

Related to the object, the penal acts of corruption have not incurred changes in the situation of the provisions, from the time of approval of Code.

3.4.2 The objective side of the figure of corruption offense

Besides what we mentioned for the contradiction related to the denominations active – passive that are related directly with the objective part of the figure of offense on the subject of the act as initiative, as putting in motion and also the role of subjects in committing of act regarding to the objective part we have:

About the form of corruption action

At the initial condition of the Code in force, related to the objective part we have division of separate acts in regard to the phase of committing of offense

a. In the active corruption with “proposing” in article 244 and realizing of corruption by giving, in article 245,

b. In passive corruption with “asking” in article 259, and “receiving” in article 260,

This separation is rightly eliminated with the changes of year 2004, because the phases in both as in active and passive corruption are unified in respective articles with the phrases “promise, proposal or giving”, and “request, receiving”.
- The above change has also a right completion, because initially had only “proposal” that is related to the direct giving of corruption benefit for the active, while now we have even the “promise” for corruption benefits in the future, so conditioned by the results of acting of passive, as usually happens in corruption in Justice or in electoral campaigns. Also in passive corruption already besides the “request and taking”, directly we have even “admission of offer or promise”.

**About the meaning of benefit**

Even the concept of benefit has evolved. In former article 244, the corrupting benefit was three types:

- Reward, understanding with this giving monetary values
- Gifts, understanding with this giving material things
- Other profits

In this regard there was not a unique attitude, because in former article 245, we had only giving of rewards and other profits, lacking “donation” of material things.

Inconsequence there was even in passive corruption, because while in the former article 260, in giving bribe there were included rewards, gifts and other profits, in article 259 – requesting bribe, is done only with reward, by having different concepts for bribe.

These contradictions were eliminated with the changes of the code in 2004, because in all provisions the corrupting benefit was determined in a general way with the phrase “any kind of benefit”. Avoidance of rigorous definition removed the obstacle that came from literal meaning of terms of benefits, by paving the road to the punishment of every kind of benefit that can be proved in practice, without being in the literal sense “reward, gift or other benefit”, as it is for example avoidance of punishment or of a material loss, etc.

**Beneficiary from the action of passive**

From the formulation of dispositions that punish the corruption, it emerges that the “active” subject is not always the person in interest of which is committed the act of passive subject.
Because for example according to articles 244 and 245, the intervention, request or acceptance is made for himself or for other persons.

When the favor is for other persons, the active subject can be the person who is not interested for benefit, by performing the intervention for social or family relations, or to liquidate an obligation toward the beneficiary person.

_Taking of benefit from the passive person_

_In the report on time_ between the action of active as requesting, and the act of passive in fulfilment of this request, the profit can be given and taken in advance but even after, depending on the agreement, because it can be preferable even the earnest to be completed after fulfilling of acts by the passive person.

_In physical report_ the material beneficiary by the part of passive, may not be the person to whom is requested the favor, because in cases where is undertaken the intervention to third parties who have in hand giving of favor, beneficiary may be the third, may be both of them or only the subject that accepted to intervene.

_In the form of mediation_ appears on the scene the said character of “realtor”, which in the field of Justice often is taken over by the special advocates, remembering that often have even fraudulent simulations of these realtors.

Regarding the _mechanism of giving_ and taking of corrupting benefit we have:

- Regarding to “giving”, we have direct giving when the benefit is given to passive person, as amount of money, gifts, etc., but there can be also giving of benefit in camouflaged way, as for example is given for another motive simulated as debt return, as payment of an obligation that has no relation with the corrupting action, etc.

- From the viewpoint of factual beneficiary, such may be the passive subject personally but can be also relatives or third parties. In this direction has no essential importance the factual beneficiary person, but the fact that it is a benefit because of and as reward of a favor that derives from the actions of the passive person in the exercise of his functions.
Meaning of corruption favor

Functionary, in the position of the passive corrupted, receives from the active person “the benefit” for his favorable actions, as reward and in exchange of his favorable actions. In order to distinguish these two benefits, we will label the act of passive as “benefit” and the act of active “favor”.

In the formal aspect, according to the articles 244 and 245, corruptive favor consists in “performing or not performin” of an act by the passive subject related to his function.

It should be noted that in articles 244 and 245, are punished the cases when the action will not be performed directly by passive subject, but with his influence are committed by another functionary. And in these cases the act is punished by the article 245/1, nominated “unlawful influence”.

In this regard it should be specified that in this case the favor is related with the action in exercise of the function of the passive, without being defined what is meant with the word “action”, so it remains to the legal literature and judicial practice to determine:

- What is included in the term action, this because according to the article 2 of CAP, public official realizes his functions with administrative acts, contracts and real acts. With any difference in terms and features, we have the same thing even in the function of Justice and activity of juristic private persons. Related to this, it should be recognized that with the term “Action”, the PC means all forms of exercise of functions.

- For the nature of actions in the aspect of their legality, the Code is not expressed for the nature of “action” of the person who exercises the public function, which means:

  a. The action may be illegal, thing that happens in most of cases

  b. The action can be legal but the corrupting benefit is given to prevent an illegal act at the detriment of the passive, so unintended by him, practices of a corruption based on blackmail by the passive subject, that is the gravest and the most dangerous form of corruption.
3.4.3 The subjects

- **The subject in public corruption:**

  We have mentioned that the **active** subjects, can be any private person or even an employee with public functions, in exercise of his functions. Thus a public employee interested in creating a better professional image, or for realizing at any cost the objectives of the job, commits corrupt acts, towards the other employees within the institution or outside it. For example tenders or auctions in favor of the institution where he works. In this regard the Code has a consequent attitude from the time of approval.

Regarding to the **passive subject** there was always a tendency for removal of any restriction in the circle of the subjects that have common qualities, that are employees in public institutions.

In this regard we have:

a. Instead of a doubled distinction: employee with state duties and employee in public service to the former article 244, today we have only the category of the person who exercises public functions.

b. It should be noted that it order to be categorized passive subject of corruption, it is sufficient to be employee of a public institution regardless of the duty, because to them are included even public employees that are low-ranking functionaries, what clearly emerges by the fact that only the high officials are punished by the special provisions as the article 245.

c. In the article 245 the high state functionaries are parallelized with the local elected persons, thing that is right, by noting that:

   - Categorization of functionaries is done by certain acts, among others even in those of wages system

   - In the acts of categorization of functionaries, amongst them are included even the acts for some local government functionaries, such as mayors, etc.
- From 2004 onwards, there is a tendency of creating special provisions for the corruption of the passive subjects, essentially without having deficiencies and inabilities of their punishment for these offenses. Such additions of 2004 would have place in terms of criteria of Codification of laws if there would be intended the coarsened of penal hitting towards them, as it must be admitted that this is aimed. But the differences of conviction are such that don’t motivate the overloading of the Code, furthermore there are not problems in punishing the acts, but in discovering and penal proceeding of them.

- **Subjects in private Corruption**

Even in private subject there is the same criteria for active subjects, because such can be every privat person and public employee, as it is even for passive subjects, for whom it suffices the fact of being employees of a private juristic entity.

In this regard there are inaccuracies and lack of consistency in the articles 164/a and 165/b, because while in them is accepted that the passive subjects may be employees of any position, there is not a parallel ranking. So there is not done any differentiation in the rank of position, neither in the type and amount of punishment.

### 3.4.4 Subjective side

All the subjects, passive and active, commit the act with direct intentionally, and it should be said also, it is done with the special aim. This because thye not only commit intentionally the proposal for favoring acts, not only accept and commit intentionally the favoring act, but also both pairs depart not from the action itself, but with the specific intent and purpose of both pairs, one to profit materially in a irregular way from the action that the other part has completed, to be favored by the action for which he pays.
IV

A VIEW IN THE COMPARATIVE LAW

Characteristics and features of corruption provisions in the Penal Codes of Italy, Germany and state of New York - US

To come up with an opinion for the level, exactness and all-inclusion of provisions in our criminal law in the field of corruption, we think that it is appropriate a general overview of the foreign penal law, and for that we dwell on to the Italian criminal law, to the German criminal law and to the criminal law of state of New York in US.

First common characteristic in all three of these rights is the complexity of provisions, as regards of a very wide concept of corruption by having provisions for both, active and passive corruption in public bodies, and also as regards of the corruption of private bodies, mainly in commercial entities, particularly in the field of advertising, public information, betts and sport activities, without leaving aside NGO’s.

Second feature of the provisions in the field of corruption is the detailing of the forms of offense with separate figures, each one formulated rigorously and strictly, to not letting place for an abusive judicial practice. The PC of New York really has only two articles that specifically treat the corruption, articles 180 and 200. But the first article (180) has fully 57 paragraphs, with specific figures of offenses, while the second has fully 59 such paragraphs, besides of some other separate paragraphs for kinds and measures of punishment. Because that Code has categorized the offenses with the measures of punishment for each category and in previsions of every offense is not given the punishment, but it is defined only the category of offense.

The third feature is that to the Codes of Germany and New York, all the offenses of corruption are grouped in one place, regardless of other objects of them. A technique that identifies better corrupting acts, facilitates the qualifications in concrete issues, such as facilitation and individualization of type of measure of punishment.
The fourth feature is that, in those codes have more corruption offenses, which are not found in our Code, defect that is trying to be fixet by the draft law for changes and additions in PC, that is sent to Assembly for approval, and its text is fully given to the part III of annex.

In the parts VII, VIII and IX of Annex are given extracts of all acts of corruption in the codes of Italy, Germany and state of New York in US.
Conclusions and recommendations

By the treatments that we tried to do, always with the reserve that we don’t pretend to have fully exhausted all the problems, and also in a very high quality of treatment, we can draw some conclusions and to hope in giving some valuable recommendation:

1. Corruption is a phenomenon that interfere in the activity of public institutions and juristic private persons for favors towards the persons outside the institution, through acting or non-acting of the employees of these institutions, which for this realize irregular benefits.

2. Corruption in Albania up to the independence, has operated mainly in the administration of the invador, had a development in the administration of the kingdom, but after the year 1944 was controlled strictly, up to the end of years “70, for interests of the dictatorial state. But later again took a development, with the economic and political failure of it. With the establishment of democratic state, initially had a development for many objective and subjective factors of period of transition, to be put later under control, with the growth of economic and political stability, growth of effectiveness of state apparatus especially in the field of transparency, documentation, simplifying of administrative structures and procedures, and increasing of control, certainly in the context of economic growth and incomes of citizens.

3. The fact that the data for corruption behaviours have oscillations, with increasing and decreasing in years, shows the missing of a systematic fight of society and state, coordinated and versatile against this phenomenon.
4. In the fight against corruption are noticed unjust relations between the preventive and punitive aspects of corruption, by giving priority the second one, instead of the opposite.

5. Penal beating of corruption, leaves much to be desired, as in regard of detection and scarce punishments, differentiation of corruption by the acts in duty, which is tented to be covered, and also as regard of the kind and measures of punishment, while the data of bodies of financial control and of control according to the law of the investigation of judgement, draw the attention for worrying situation.

6. Serious crime and the organized, and the tendencies for internationalization, new types of crimes in the fields of banking and means of communication, new technologies for concealment of the incomes and properties, growth of bank turnover within and outside the country, are circumstances that require a full modernization review of techniques and tactics of investigation and trial.

7. It is required a perfection of procedural aspects, especially in terms of deadlines, individual approval of a judge in several actions before and during the penal investigation, as surveillance, controls, sequestrations, etc., through approval with undersigning of request, instead of decision with the judicial sessions and through bureaucracy of judicial administration, reviewing of mechanism of procedural actions with abroad, etc.

8. There shuld be a greater and more effective collaboration between the Supreme Council of Justice, Ministry of Justice and Ministry of Education, for a more extensive and qualitative treatment of corruption in subjects of university, public and privat, and for a scientific treating with a higher and deeper level, and closely related to the reality, prevention and fight against corruption in Albania.
Annex 1

AN 1.1A Penal Code before 1995

Extract of Law No 1470 Date 23.05.1952
With changes of years 1957, 1958 and 1959

Bribe

Article 204 (without changes)

First paragraph: - “Taking bribe by the official person for an action related to his duty, is punished with up to 5 years imprisonment”.

- In every form
- To perform
- Or not perform
- Or claim to have performed
- Or has not performed

Second paragraph: - “Taking bribe is punished with up to 10 years imprisonment”

- With pressure
- More than one time
- From a person who has a special important task

Article 205 (without changes)

First paragraph, giving bribe is punished with up to 3 years imprisonment

- Intercession
- To perform
- Or to not perform
- Or claim, has performed
- Or has not performed
Second paragraph, exclusion from responsibility

- **When is taken with pressure**
- **When has told voluntary the act before stating the penal proceeding**

AN 1.1B Penal Code with Law 5591 Date 15.6.1977
with changes in 1981

**Article 109** in two paragraphs (has not had changes)

**first** “receiving” thanks to his duty, up to 10 years imprisonment,

**second** giving bribe, reeducation through labor, or up to 3 years imprisonment without any definition of elements of figure of offense

AN 1.1C Draft – Law for some addings and changes in the PC
November 2010
for approval in Assembly

DRAFT LAW

FOR

SOME ADDINGS AND CHANGES IN LAW NO 7895, DATE 27.1.1995, PENAL CODE OF REPUBLIC OF ALBANIA, CHANGED

In support of article 81 point 1 and 2 character “d” and 83 point 1 of constitute with purpose of Council of Minister, Parliament of Republic of Albania
DECIDE:
In Law no 7895 date 21.01.1995 (Penal Code of Republic of Albania) made these additional and amendments:

**Article 1**

In the second paragraph of article 6, is added the sentence with this content:
“The condition for simultaneous punishment in the territory of another state is not applied in cases of crimes of corruption in public or private sector, as well as the exercise of illegal influence.”

**Article 2**

In the second paragraph of article 7, character “i” is reformulated as following:
“i) the crimes of corruption in the public or private sector, and also the exercise of illegal influence.”

**Article 3**

After the article 149 are added the articles 149/a, 149/b, 149/c, 149/ç, 149/d, and 149/dh, with this content:

**Article 149/a**

**Violation of patent rights for the inventions**

1. Production, use, possession for commercial purposes, selling, offering for sale, supply, distribution, exporting or importing for these purposes, of the product or process protected by a patent, without the owner’s consent, committed intentionally, constitutes penal contravention and is punishable by fine or imprisonment up to one year.

2. But when this offense is committed in collaboration or more than once, constitutes penal contravention and is punishable by fine or imprisonment up to two years.

**Article 149/b**

**Violation of rights of the topography of semiconductors circuit**

1. Production, use, possession for commercial purposes, selling, offering for sale, supply, distribution, exporting or importing for these purposes, of the rights of the registered topography of the semiconductors circuit, without the consent of the owner of the
Phd Rozario Rica  MEASURES AGAINST CORRUPTION IN ALBANIA

topography, committed intentionally, constitutes penal contravention and is punishable by
the fine or with imprisonment up to one year.
2. But when this offense is committed in collaboration or more than once, constitutes penal
contravention and is punishable by fine or imprisonment up to two years.

Article 149/c
Violation of rights of industrial design
1. Production, use, possession for commercial purposes, selling, offering for sale, supply,
distribution, exporting or importing for these purposes, of the rights that derive from an
industrial design, without the consent of the owner of the industrial design, committed
intentionally, constitutes penal contravention and is punishable by fine or imprisonment up
to one year.
2. But when this offense is committed in collaboration or more than once, constitutes penal
contravention and is punishable by fine or imprisonment up to two years.

Article 149/ç
Violation of trademark rights
1. Production, use, possession for commercial purposes, selling, offering for sale, supply,
distribution, exporting or importing for these purposes, of the rights deriving from a
trademark without the consent of the owner of the trademark, committed intentionally,
constitutes penal contravention and is punishable by fine or imprisonment up to one year.
2. But when this offense is committed in collaboration or more than once, constitutes penal
contravention and is punishable by fine or imprisonment up to two years.

Article 149/d
Violation of rights of geographical indicator
1. Production, use, possession for commercial purposes, selling, offering for sale, supply,
distribution, exporting or importing for these purposes, of the rights deriving from a
geographical indicator, without consent of the owner of geographical indicator, committed
intentionally, constitutes penal contravention and is punishable by fine or imprisonment up
to one year.
2. But when this offense is committed in collaboration or more than once, constitutes penal contravention and is punishable by fine or imprisonment up to two years.

**Article 149/dh**

**Exercising of the profession of accounting expert and audit company without being registered**

Appropriation of professional title of certified public accounting expert, exercising of the profession of accounting expert, or the use of labels as auditing companies, without being previously registered in public registry of accounting experts, and the use of any title which aims to create a similarity or a confusion with these professional titles or labels, when is given before administrative measure, constitute a penal contravention and are punishable by fine or imprisonment up to two years.”.

**Article 4**

In article 164/a the words “..two years” and with “fine of two hundred thousand up to a million ALL...” are replaced with “... three years and fine from two hundred thousands, up to three million ALL...”.

**Article 5**

In the article 164/b the words “... three years ...” are replaced with “... five years...”.

**Article 6**

After the article 244, is added the article 244/a, with this content:

**Article 244/a**

**Active corruption of foreign public officials/employees**

Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons, to a foreign public official, employee of a public international organisation, member of a foreign public assembly, or member of an international parliamentary assembly to perform or not to perform an action related to his duty or function is punishable by imprisonment of from six months to three years and with a fine of from three hundred thousand to three million ALL.”.
Article 7
In the first paragraph of article 245/1, are done these changes:

a) Words “... constitute penal offense and ...” are removed.
b) Words “... two years ...” are replaced with “... three years ...”.

Article 8
In the title and text of article 257/a, after the words “... public officials ...” are added “... or any other person who has a legal obligation to declare ...”.

Article 9
After the article 259, is added the article 259/a, with this content:

Article 259/a
Passive corruption of foreign public officials/employees
Asking for or receiving, directly or indirectly, any kind of irregular benefit or such a promise, for oneself or other persons, or accepting an offer or promise arising from the irregular benefit, by a foreign public employee, employee of a public international organisation, member of a foreign public assembly, or member of an international parliamentary assembly to perform or not to perform an action related to his duty or function is punishable with imprisonment of from two to eight years and a fine from five hundred thousand to three million ALL.”.

Article 10
Article 319/a “Passive corruption of judges, prosecutors and other officials of justice bodies” is numbered the article 319/ç.

Article 11
After the article 319, are added the articles 319/a, 319/b, 319/c, with this content:

“Article 319/a
Active corruption of a judge or official of international courts
“Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons, to a judge or official of international courts, to perform or not to perform an action related to his duty or function is punishable by imprisonment of from one year to four years and a fine of from four hundred thousand to two million ALL”.

Article 319/b

Passive corruption of a judge or official of international courts

“Asking for or receiving, directly or indirectly, any kind of irregular benefit or such a promise, for oneself or other persons, or accepting an offer or promise arising from the irregular benefit by a judge or official of an international court to perform or not to perform an action related to his duty or function is punishable by imprisonment of from three to ten years and by a fine from eight hundred thousand to four million ALL.”

Article 319/c

Active corruption of a local and foreign arbitrator

“Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons to a local or foreign arbitrator to perform or not to perform an action related to his duty or function is punishable by imprisonment of from one year to four years and by a fine of from four hundred thousand to two million ALL.”

Article 12

After the article 319/c are added the articles 319/d, 319/dh and 319/e, with this content:

Article 319/d

Passive corruption of the official of the international tribunals

“Asking for or receiving, directly or indirectly, any kind of irregular benefit or such promise, for oneself or other persons, or acceptance of an offer or promise arising from the irregular benefit, by the judge or official of an international tribunal, to perform or not to perform and action related to his duty or function, is punishable by imprisonment of from three to ten years, and by a fine of from eight hundred thousand to four million ALL”.

Article 319/dh

Passive corruption of a local and foreign arbitrator
“Asking for or receiving, directly or indirectly, any kind of irregular benefit or such promise, for oneself or other persons, or acceptance of an offer or promise arising from the irregular benefit, by a local or foreign arbitrator to perform or not to perform an action related to his duty or function is punishable by imprisonment of from three to ten years and by a fine of from eight hundred thousand to four million ALL.”

**Article 319/e**

**Passive corruption of a member of a foreign jury**

“Asking for or receiving, directly or indirectly, any kind of irregular benefit or such promise, for oneself or other persons, or accepting an offer or promise arising from the irregular benefit by a member of a foreign jury to perform or not to perform an action related to his duty or function is punishable by imprisonment of from three to ten years by a fine of from eight hundred thousand to four million ALL”.

**Article 13**

In the last paragraph of article 86, in article 295/a, the paragraphs: first, second, third, fifth and sixth, and in first paragraph of article 298, in article 311, and in first paragraph of article 313/b, are removed the words “... constitute a penal offense...”.  

**Article 14**

This law enters into force 15 days after publication in the “Official bulletin”

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**AN 1.2 Extracts of Penal Code of 1995 and amending laws for provisions that are related to corruption, years 1998–2007**

**AN 1.2A - LAW No. 7895, date 27.1.1995**

**PENAL CODE OF REPUBLIC OF ALBANIA**

In support of article 16 of law No 7491, date 29.4.1991 “For main constitutional
provisions”, with the proposal of Council of Ministers,

PARLIAMENT
OF REPUBLIC OF ALBANIA

DECIDED:

SPECIAL PART

Mashtrimi në subvencione

Fraud on documents presented, thus fraudulently obtaining subsidies from the state, is punishable by a fine or up to four years of imprisonment.

Article 145
Fraud on insurance

Presenting false circumstances [or false information] related to the object to be insured, or fabricating false circumstances and presenting them into documents thus fraudulently obtaining insurance, is punishable by a fine or up to five years of imprisonment.

Article 146
Fraud on credit

Fraud on presented documents, thus fraudulently obtaining credit through fictitious registration in property registration offices of objects which do not exist, or over estimated, or which belong to somebody else’s property, committed with the intent of not paying back the credit, is punishable by a fine or up to seven years of imprisonment.
SECTION IV
PENAL ACTS COMMITTED IN TRADE SOCIETIES

Article 163
Drafting false statements

Drafting false statements, about the increase of capital of a company, related to the
distribution of shares of initial capital to the shareholders its repayment or the deposit of
funds, constitutes criminal contravention and is punishable by a fine.

Article 164
Abuse of powers

Abuse of powers by members of the executive board or by managers of the
company with the intent of embezzlement or favoring another company where they have
interests, is punishable by a fine or up to five years of imprisonment.

Article 167
Unfairly holding two capacities at the same time

Simultaneously holding the capacities of shareholder and certified accountant
constitutes criminal contravention and is punishable by a fine or up to six months of
imprisonment.

Article 168
Giving false information

Giving false information on the situation of a society by the certified accountant of
a corporation, or non-reporting to the competent agency on an offence committed, when
cases of exclusion from criminal responsibility provided in Article 300 of this Code do not
exist, is punishable by a fine or up to five years of imprisonment.

**Article 169**

**Revealing secrets of a company**

Revealing the secrets of a company by its certified accountant, except in the case when he is compelled to do so by law, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

**Article 170**

**Refusing to write mandatory notes**

Refusing to write mandatory notes by the manager or the liquidator of the company constitutes criminal contravention and is punishable by a fine.

**Article 175**

**Smuggling done by employees of customs**

Smuggling by employees that are related with customs activities, even by collaborating with other persons, is condemned by imprisonment from three to ten years.

**Article 179**

**Storing smuggled goods**

Storing, accumulating, keeping or processing goods that are known to be smuggled, is punishable by a fine or up to three years of imprisonment.

**Article 186**

**Falsification of Documents**
The falsification or use of falsified documents is punished with imprisonment of up to three years or with a fine of from two hundred thousand to six hundred thousand ALL.

When the falsification is done by a person who has the duty of issuing the document, it is punished with imprisonment of from one year to seven years or with a fine of from five hundred thousand to two million ALL.

Article 187
Falsifying school documents

Falsifying or use of falsified school documents is punishable by a fine or up to three years of imprisonment.

When the person who has the duty of issuing the document makes the falsification, it is punishable by a fine or up to five years of imprisonment.

Article 188
Falsifying health-related documents

Falsifying or use of falsified health-related documents is punishable by a fine or up to three years of imprisonment. When the person having the capacity to issue the document makes the falsification, it is punishable by a fine or up to five years of imprisonment.

Article 189
Falsification of Identity Documents, Passports or Visas

The falsification or use of falsified identity documents, passports or visas is punished with imprisonment of from six months to five years or with a fine of from four hundred thousand to one million ALL.

When the falsification is done by a person who has the duty of issuing the identity document, passport or visa, it is punished with imprisonment of from three to seven years or with a fine of from one million to three million ALL.
Article 190
Falsification of Seals, Stamps or Forms

The falsification or use of falsified seals, stamps or forms, or the presentation of false circumstances in the latter that are directed to state organs, is punished with imprisonment of from six months to four years or with a fine of from four hundred thousand to one million ALL.

When the falsification is done by a person who has the duty of compiling them, it is punished with imprisonment of from three to seven years or with a fine of from one million to three million ALL.

Article 191
Falsification of Civil Status Documents

The falsification or use of falsified civil status documents is punished with imprisonment of from three months to two years or with a fine of from three hundred thousand to six hundred thousand ALL.

When the falsification is done by a person who has the duty of issuing the document, it is punished with imprisonment of from one to five years or with a fine of from one million to three million ALL.

Article 192
Production of devices to falsify documents

Production of, or conserving, devices to falsify documents constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.
Article 198
Providing the premises for unlawful gambling

Providing the premises for organizing or playing a lottery or gambling in breach of the legal provisions constitutes criminal contravention and is punishable by a fine or up to six months of imprisonment.

OFFENCES AGAINST INDEPENDENCE AND INTEGRITY

Article 208
Handover of territory

Handover totally or partially of territory to foreign state or power, with the intent of violating the independence and integrity of the country, is punishable by no less than fifteen years of imprisonment or to life imprisonment.

Article 209
Surrendering the army

Total or partial surrendering of the army or handing over defense materials or supplying weapons and ammunition to a foreign state or power, with the intent of violating the independence and integrity of the country, is punishable by no less than fifteen years of imprisonment or to life imprisonment.

Article 210
Agreement for transferring territory

Agreement with foreign powers or states for the total or partial transferring of territory or handing over of the army and defense materials, with the intent of violating the integrity of the country, is punishable by five to ten years of imprisonment.
Article 211
Provocation of war

Committing acts with the intent to provoke a war or make the Republic of Albania face the danger of an intervention by foreign powers, is punishable by no less than fifteen years of imprisonment.

Article 212
Agreement for armed intervention

Agreements entered into with foreign powers or states to cause armed intervention against the territory of the Republic of Albania, is punishable by ten to fifteen years of imprisonment.

Article 213
Handing over classified information

Handing over classified information of military or other character to a foreign power with the intent of encroaching on the independence of the country, is punishable by ten to twenty years of imprisonment.

Article 214
Providing information

Providing classified information of military or other character, with the intention to hand over to foreign power in order to encroach the independence of the country, is punishable by three to ten years of imprisonment.
Article 215
Damaging defense objects

Destroying or damaging means, equipment, appliances, weapons, military technique or objects for military defense, with the intent of reducing the country’s defensive capacity, is punishable by five to fifteen years of imprisonment.

Article 216
Providing means for destroying military technique

Production or keeping means for destroying or damaging equipment, appliances, weapons, means of military technique or objects for military defense, with the intent of reducing the country’s defense capacity, is sentenced up to ten years of imprisonment.

Article 217
Receiving of rewards

Receiving or the agreement to get paid or to receive other material benefits, in order to commit in favor of foreign states or powers one of the crimes provided for in this section, is punishable by five to ten years of imprisonment.

Article 244
Proposal for reward that is done to the employees exercising public functions

The direct or indirect proposal, offer, or giving, to a person, who exercises functions, of any irregular benefit for himself or a third person in order to act or not act, that is related to his duty, is punished with a prison term of 6 months up to three years and a fine from 300,000 to one million ALL.
Article 245
Giving rewards to the employees that are in state duty

The direct or indirect proposal, offer, or giving, to high state officials or to a locally elected person, of any irregular benefit for himself or a third person in order to act or not act, regarding his duty, is punished with a prison term of 1 year to five years and with a fine from 500,000 to two million ALL.

Article 246
Appropriating a public title or office

Appropriating a public title or office accompanied with the actions pertinent to the holder of the title or office, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

If the act is committed for embezzlement purposes or has encroached the freedom, dignity or other fundamental rights of the citizen, it is punishable by a fine or up to five years of imprisonment.

Article 247
Unlawfully wearing a uniform

Unlawfully wearing a uniform, holding a document or a distinctive sign, which shows the capacity of an official working in a state duty or public service, accompanied with illegal acts, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

When the act is committed for embezzlement purposes or has encroached the freedom, dignity or other fundamental rights of the citizen, it is punishable by a fine or up to five years of imprisonment.
SECTION II
CRIMINAL ACTS AGAINST THE ACTIVITY OF THE STATE COMMITTED BY PUBLIC OFFICIALS

Article 248
Abuse of duty

Deliberate accomplishment or non-accomplishment of actions or of failures to act, in violation to the law and constituting the failure of a person, who carries out public functions, to do his duties regularly, in cases when it has led to bringing him or to other persons unjust material or non material benefits or who have brought damages to the legitimate interests of the state, citizens, and other judicial entities, when it does not constitute another criminal offence, is punished with imprisonment of 6 months up to five years and with a fine of 300,000 Leke to one Million ALL.

Article 249
Acting in a capacity after its termination

Continuing to act in a capacity in either the state administration or public service by a person who has been informed of a decision or circumstance terminating its exercise, constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment.

Article 250
Committing arbitrary acts

Committing acts or giving orders that are arbitrary, by an official acting in a state function or public service while exercising his duty, which affect the freedom of citizens, is punishable by a fine or up to seven years of imprisonment.
Article 251
Refusing to take measures to stop unlawful situation

Refusing to take measures, or refusing to a request from a competent person to stop an unlawful situation resulting from an arbitrary act, which has affected the freedom of citizens, by the person in charge of a state function or public service, who learns of the situation because of the function or service, is punishable by a fine or up to three years of imprisonment.

Article 253
Denying equality of the citizens

Discrimination by a worker holding a state function or public service conducted because of his capacity or during its exercise, when the discrimination is based upon origin, sex, health situation, religious or political beliefs, trade-union activity or because of belonging to a particular ethnic group, nation, race or religion, which consists in creating unfair privileges or in refusing a right or benefit deriving from law, is punishable by a fine or up to five years of imprisonment.

Article 255
Hindering and violating the secrecy of correspondence

Giving orders or committing actions for destroying, reading and disseminating postal correspondence, or which breaks, makes it more difficult, puts under control or eavesdrops phone correspondence or any other means of communication, committed by a person holding a state function or public service during the exercise of his duty, except the cases when it is permitted by law, is punishable by a fine or up to three years of imprisonment.
Article 256

Misusing state contributions

Misusing contributions, subsidies or financing given by the state or state institutions to be used in works and activities of public interest, is punishable by a fine or up to three years of imprisonment.

Article 257

Illegal benefiting from interests

Direct or indirect holding, retaining or benefiting from any sort of interest by a person holding state functions or public service in an enterprise or operation in which, at the time of conducting the act, he was holding the capacity of supervisor, administrator or liquidator, is punishable by a fine or up to four years of imprisonment.

Article 258

Breaching the equality of participants in public bids or auctions

Committing actions in breach of the laws which regulate the freedom of participants and the equality of citizens in bids and public auctions, by a person holding state functions or public service in order to create illegal advantage or benefits for third parties, is punishable by a fine or up to three years of imprisonment.

Article 259

Request for giving bribe

Soliciting or taking, directly or indirectly, by a person who exercises public functions, of any irregular benefit or of any such promise for himself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act
in the exercise of his duty, is punished with a prison term of two to eight years and a fine from 500,000 to three million ALL.

**Article 260**  
**Taking bribe**

Soliciting or taking, directly or indirectly, by a high state official or a local elected official, of any irregular benefit or of any such promise for himself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act in the exercise of his duty, is punished with a prison term of four years up to 12 years and a fine from one to five million ALL.

**Article 294**  
**Divulging of state secrets by a person entrusted with them**

Divulging, spreading, or informing facts, figures, contents of documents or materials which, according to a publicly known law, constitute state secrets, by the person entrusted with them or who became informed of them because of his capacity, is punishable by a fine or up to five years of imprisonment.

When the same act is committed publicly, it is punishable by a fine or up to ten years of imprisonment.

**Article 295**  
**Divulging of state secrets by citizens**

Divulging, spreading, or informing facts, figures, contents of documents or materials that, according to a publicly known law, constitute state secrets, by any person who becomes informed of them, is punishable by a fine or up to three years of imprisonment.

When the same act is committed publicly, it is punishable by a fine or up to five years of imprisonment.
Article 298

Assistance for Illegal Crossing of the Border

Sheltering, accompanying, putting at the disposition or use of means of sea transport, air transport or other means of transport, with the purpose of assisting in the unlawful crossing of the border, is punished with imprisonment of from one to four years or with a fine of from three million to six million ALL.

When the assistance is given for purposes of profit, it is punished with imprisonment of from three to seven years or with a fine of from three million to six million ALL.

Article 301

Acts that obstruct the discovery of the truth

Committing actions to change the scene where a criminal act was committed by destroying, changing or removing traces or by moving, hiding, annihilating, stealing, falsifying an item or document with the intent of increasing the difficulty on preventing the discovery of a criminal act and its perpetrator, is punishable by a fine or up to three years of imprisonment.

Article 302

Supporting of the author of crime

Supplying the perpetrator of a crime with food, other means of living, or providing him housing, lodging or with any other assistance with the intent of preventing his discovery from search, apprehension or arrest, is punishable by a fine or up to five years of imprisonment.
Linear ascendants and offspring, brothers and sisters, spouses, adoptive parents and adopted children are excluded from criminal responsibility.

**Article 308**

**False translation**

Intentional distortion of the content of a document or writing offered for translation by the organs of criminal prosecution or by the court or false translation committed before them, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

When refusal to testify is made for embezzlement or any other interest given or promised, it is punishable by a fine or up to three years of imprisonment.

**Article 309**

**False expertise**

Intentional provision of false results in reports by an expert, conducted in writing or verbally before organs of criminal prosecution or before the court is punishable by a fine or up to three years of imprisonment.

When false expertise is provided for embezzlement or any other interest given or promised, it is punishable by a fine or up to five years of imprisonment.

**Article 312**

**The threat to do false statements or testimonies, expertise of interpretation**

Blackmail or other violent acts to a person to secure false declarations or testimony, expertise or translation or to reject carrying out their obligation to the criminal prosecution bodies and the court is punished with a fine or a prison term of up to three years.
Article 313
Unlawful criminal prosecution

Conducting unlawful criminal prosecution by the prosecutor against a person who is known to be innocent is punishable by a fine or up to five years of imprisonment.

Article 315
Unfair sentencing

Giving a conclusive court sentence that is known to be unfair is punishable by three to ten years of imprisonment.

Article 319
Active corruption of the judge, prosecutor and of other justice official

The direct or indirect proposal, offer, or giving, a judge, prosecutor, or other employees of the judicial bodies, any irregular benefit for himself or a third person in order to act or not act, regarding his duty, is punished with a prison term of one to four years or a fine from 400,000 to two million ALL.

Article 320
Obstacles for execution of court decisions

Hiding, altering, using, damaging or destroying the things which have been the subject of a court decision, or carrying out other acts with the intent of preventing the enforcement of the court’s decision, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.
Article 321
Acts opposing court’s decision

Committing acts that oppose a court’s decision about obligations arising from additional punishment ordered by it, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

Article 324
Helping a prisoner for escaping

Giving advice, information, [or] assistance, to a person who is under arrest, held in custody, or convicted to imprisonment, with the intention of permitting escape from the place of mandatory detention is punishable by a fine or up to five years of imprisonment.

When the assistance is given by a person in charge of guarding, supervising or transporting, or who, because of his capacity has the right to enter in penitentiary institutions or to make contact with persons who are under arrest, held in custody, or convicted to imprisonment, it is punishable by a fine or up to ten years imprisonment.

Article 325
Obstaclng of subjects for elections in representative bodies

The prevention either violently or through any other means electoral entities to conduct regularly their activity in conformity with the law during an election campaign, is punishable by a fine or up to three years of imprisonment.

Article 326
Falsifying documents and election results

Presenting to the election documents of data, circumstances, figures, which are known to be incorrect, drafting false documents and replacement of the originals with
forged copies, committed by persons in charge of drafting, assessing, providing the results or storing the documents, is punishable by a fine or up to five years of imprisonment.

**Article 327**

**Violating voting secrecy**

Violating voting secrecy by persons in charge of elections constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment.

**Article 328**

**Remuneration and promises**

Offering or giving money, making promises for jobs or other favors in any form, with the intent of getting signatures for presenting a candidate, for voting in favor or against a candidate or for taking part in or abstaining from taking part in elections, constitutes criminal contravention and is punishable by a fine or up to six months of imprisonment.

Accepting money, promises or other favors in order to conduct the above-mentioned actions, constitutes criminal contravention and is punishable by a fine.

**Article 331**

**Violation of election rights**

Intentional failure to register on election lists people who enjoy election rights or intentional registration thereon of persons, who do not enjoy these rights, constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment.

**Article 332**

**Abuse of military authority**
Abuse of military authority by a military official of any rank in order to influence the voting of the other military under his orders, through commands, advice or any other propaganda, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

AN 1.2B – Law No 8279, date 15.1.1998

FOR SOME CHANGES AND ADDINGS IN LAW NO 7895, DATE 27.1.1995
“FOR PENAL CODE OF REPUBLIC OF ALBANIA”

c) After the article 170, is added the article 170/a with this content:

Illegal employment

Employment without registration with the competent authorities or without guaranteeing employee’s insurance according the regulations, when an administrative measure has been rendered first constitutes a criminal contravention and is sentenced with a fine up to 10 thousand leks for any case or with imprisonment of up to 1 year.

Moskryerja me dashje ose mbulimi i shkeljeve lidhur me punësimin dhe sigurimin social nga persona të ngarkuar me zbatimin dhe kontrollin e dispozitave përkatëse, dënohet me gjobë deri në 100 mijë lekë ose me burgim deri në 2 vje Deliberate omission or camouflage of the infringements connected with the employment or the social security from people obliged with the application and the control of the relevant dispositions constitutes a criminal contravention and is punished with a fine of up to 100 thousand lekë or imprisonment of up to 2 yearst.

ç) After the article 181, is added the article 181/a with this content:

Non performance of duties from taxing authorities
Non performance of the duties related with collecting of the taxes and duties within the defined legal term from the employees of the tax organs and other official persons assigned with these duties, when it is done because of their fault and has brought a damage to the state with a value of less then 1 million leks, is punished by fine of up to 2 million ALL;

when the value is higher then 1 million leks it is punished by 3 to up to 10 years imprisonment.

d) In the article 278 after the word “mines”, in the first and second paragraphs, is added the word “explosive materials”.

dh) After the article 283, is added the article 283/a with this content:

**Traffic of narcotics**

Import, export, transit, and trade of narcotic and psychotropic substances and of seeds of narcotic plants, in violation of law, is punished by seven to fifteen years of imprisonment.

The same offense, if committed in collusion with others, or repeatedly, is punished by ten to twenty years of imprisonment

Organizing, leading, or financing of this activity is punished by not less than fifteen years of imprisonment.

e) After the article 284 is added the article 284/a with this content:

**Organizing and leading criminal organizations**

Organizing, leading and financing criminal organizations with the goal of cultivating, producing, fabricating or illegal trafficking of the narcotics is punishable by imprisonment of 10 up to 20 years.

Creation of conditions or facilities for such activities by persons with state functions is punishable by imprisonment from 5 to 15 years.
AN 1.2C – LAW NO 8733, date 24.1.2001

FOR SOME CHANGES AND ADDINGS TO THE LAW NO 7895, DATE 27.1.1995, “PENAL CODE OF REPUBLIC OF ALBANIA”

Article 128/a

Intentional hiding or exchange of a child

Intentional hiding or exchange of a child with another one performed by medical personnel is punished by three to eight years of imprisonment.

In the article 170/a, in the first and second paragraph, before the word “punished”, are added the words “consists a penal contravention”.

Article 48

Article 175 is changed as following:

Contraband from employees related to customs activity

Commission of contraband by customs employees, or by employees who are related to a customs activity, or in collusion with others, is punished by three to ten years of imprisonment.

Article 184

Falsifying securities

Falsification or distribution of checks, bills, credit cards, travel checks or securities, which have a falsified value, is punished up to five years of imprisonments.

The same offense, if committed in collusion with others, or repeatedly, or if it has
caused serious consequences, is punished from three to ten years of imprisonment.

**Article 192/a**

**Disappearance and theft of documents**

Destruction by any manner of archive or library documents, as well as disappearance of documents that are of particular importance, in violation of legal requirements, is punished by fine or up to three years of imprisonment.

Theft of archive or library documents, that are of particular importance, or their export in violation of legal requirements, is punished by fine or up to five years of imprisonment.

**Article 192/b**

**Interference in computerized transmissions**

Interference in any form in computerized transmissions and programs constitutes criminal contravention and is punished by fine or up to three years of imprisonment.

The same offense, if it has caused serious consequences, is punished up to seven years of imprisonment.

Article 248 is changed as following:

**Abuse of office**

Intentional commission or nonperformance of actions or omission of actions in violation of law, which constitutes adequate nonperformance of duty by a person in charge of a state function or public service, when serious consequences to the lawful interests of citizens and state are caused, is punished by fine or up to seven years of imprisonment.
Article 283/b

Creation of facilities for delivering and using of drugs

Creation of facilities for the delivery and use of narcotic or psychotropic substances in violation of relevant legal provisions from persons who administer such substances because of their duty, is punished by three to seven years of imprisonment.

Article 76

In the article 312, before the word “testimony” is added the word “declaration”.

Article 313/a

Disappearance or loss of file

Disappearance or loss, by any manner, of an investigation or court examination file, as well as omission of documents, letters, or other data that are attached to them, if it causes serious consequences to the detriment of interests of citizens or state, is punished by a fine or up to five years of imprisonment.

Article 78

After the article 320 is added the article 320/a with this content:

Article 320/a

Failure to enforce court decision absent legal grounds
Failure to enforce criminal or civil court decisions absent legal grounds, by a person in charge of enforcing decisions, constitutes a criminal contravention and is punished by fine or up to two years of imprisonment.

If this offense is committed for the purpose of profit or any other interest given or promised, or made as a favor to persons who are interested in the failure to enforce a decision, is punished by fine or up to three years of imprisonment.

AN 1.2D – LAW NO 9686, date 26.2.2007

FOR SOME ADDINGS AND CHANGES TO THE LAW NO 7895, DATE 27.1.1995
“PENAL CODE OF REPUBLIC OF ALBANIA”, CHANGED

Article 2
In the first paragraph of article 192/b “Interference in computerized transmissions” are removed the words “consists a penal contravention”.

Article 21
In the article 248 the words “from six months up to five years” are replaced with words “up to seven years”.

Article 22
In the article 257/a, the second paragraph is changed as following:
“Direct or indirect holding, retaining or benefiting from any sort of interest by a person holding state functions or public service in an enterprise or operation in which, at the time of conducting the act, he was holding the capacity of supervisor, administrator or liquidator, is punishable by a fine or up to four years of imprisonment.”.

Article 295/a
The disclosure of secret acts and information

Reveling of secrets acts or data contained in secret acts by other persons, that are aware of the penal proceeding and have been warned by the prosecutor or the officer of judicial police not to disclose them, is subject up to three years of imprisonment.

AN 1.2E - Law NO 9086 date 19.6.2003

FOR SOME ADDINGS AND CHANGES TO LAW NO 7895, DATE 27.1.1995
"PENAL CODE OF REPUBLIC OF ALBANIA"

Article 4

Article 36 is changed as following:

Article 36

Confiscation of means for committing the criminal offence and criminal offence proceeds

1. Confiscation is given necessarily by the court and has to do with reception and release in the state’s favor:
   a) to the objects that have served or are specified as means for committing the criminal offence;
   b) of criminal offence proceeds, where is included any kind of asset, as well as legal documents or instruments verifying other titles or interests in the asset waiting upon or gained directly or indirectly form the criminal offence committal;
   c) of the promised or given remuneration for committing the criminal offence;
   ç) of any other asset, whose value corresponds to the criminal offence proceeds;
d) of objects, whose production, use, holding or their alienation make a criminal offence, and when the sentence decision is not given.

2. If the criminal offence’s proceeds are transformed or partly or fully converted into other assets, the latter is subject to confiscation.

3. If criminal offence’s proceeds are joined with assets gained legally, the latter are confiscated up to the value of the criminal offence proceeds.

4. Subject to confiscation are also other income or profits from the crime proceeds, from assets that are transformed or altered to criminal offence proceeds, or from assets with which these proceeds are involved, in the same amount and manner as the criminal offence proceeds”

AN 1.2F - LAW NO 9275, date 16.9.2004

FOR SOME CHANGES AND ADDINGS TO LAW NO 7895, DATE 27.1.1995, “PENAL CODE OF REPUBLIC OF ALBANIA”, CHANGED

Article 1

In article 7, after the letter “h” is added the letter “i” with this content: “i) crimes of passive and active corruption, committed by the persons that exercise the functions in the public or private sector”.

Article 5

Article 35 is reformulated as following:

Article 35

Deprivation of the right to work in the public service
“Deprivation of the right to work in the state administration or in the public service is applied to persons who abuse these offices and have committed an offence for which the court has decided a sentence of no shorter than ten years and deems that such a right should be banned forever.

Deprivation of the right to work in the state administration or in the public service may also be imposed for a period of one to five years, when the court has ruled for up to ten years of imprisonment.”

Article 6

At the end of article 40 is added a paragraph with this content:

“When the sentence given by the court is not less than five years imprisonment, this right can be removed for a period from five up to ten years”.

Article 7

After the article 44 is added the article 45 with this content:

Article 45

The Application of the criminal law on legal persons/entities

The legal persons, with the exception of the state, are criminally responsible for crimes performed by their agencies or representatives on behalf of or for the benefit of them.

The bodies of local government are criminally responsible only for the actions performed during the exercise of their activity that may be exercised by the delegation of public services.
The criminal responsibility of the legal persons does not exclude that of the physical persons that have committed crimes or are collaborators for the commission of the same crimes.

The criminal offences and the sanctioning measures taken against the judicial entities, as well as the procedures for the approval and application of these measures are regulated by a special law.”

**Article 13**

After the article 164 are added the articles 164/a and 164/b with this content:

**Article 164/a**

**Active corruption in the private sector**

The direct or indirect promise, offer, or giving to a person, who exercises a management function in a commercial company or who works in any other position in the private sector, of any irregular benefit for himself or a third person, in order to act or in order to fail to act, contrary to his duty, is a criminal contravention and is punished with a prison term of three months up to two years and a fine from 200,000 to one million ALL.

**Article 164/b**

**Passive corruption in the private sector**

Direct or indirect soliciting or taking of any irregular benefit or of any such promise, for himself or a third person, or accepting an offer or a promise that follows from the irregular benefit, of the person that exercises a management function or works, with whatever position in the private sector, with the purpose to act to not to act contrary to his duty, is sentenced with imprisonment term of six months up to three years (up to five years - abolished) and a fine from 300,000 to three million ALL.”
Article 230/c
Giving information from persons that carry public functions
or persons on duty or in exercise of the profession

Getting acquainted identified persons or of other persons with data regarding the verification or the investigation of funds and other goods towards which are applied measures against terrorism financing, from persons exercising public functions or in exercise of their duty or profession, is sentenced with imprisonment from 5 to 10 years and with a fine from one million to five million ALL.

Article 230/ç
The performance of the services and actions with identified persons

The giving of funds and of other wealth the performance of financial services as well as of other transactions with identified persons towards whom are applied measures against terrorism financing, is sentenced with imprisonment from four to 10 years and with a fine from 400,000 to five million ALL.”

Article 244
Active corruption of persons exercising public functions

“The direct or indirect proposal, offer, or giving, to a person, who exercises public functions, of any irregular benefit for himself or a third person in order to act or not act, that is related to his duty, is punished with a prison term of 6 months up to three years and a fine from 300,000 to one million ALL.”

Article 245 is changed as following:
Article 245
Active corruption of the high state official and of the local elected/representatives

“The direct or indirect proposal, offer, or giving, to high state officials or to a locally elected person, of any irregular benefit for himself or a third person in order to act or not act, regarding his duty, is punished with a prison term of 1 year to five years and with a fine from 500,000 to two million ALL.”

Article 20

After the article 245 are added the articles 245/1 and 245/2 with this content:

Article 245/1
The exercising of unlawful influence on public officials

“The direct or indirect proposal, offer, or giving an irregular benefit, for himself or a third person, to the person who promises and guarantees that he is able to exercise illegal influence on the accomplishment of the duties and on taking of decisions by the Albanian or foreign public functionaries, no matter whether the influence has been actually exercised or not and no matter whether the desirable consequences have occurred or not, is punished with a prison term from 6 months up to two years and a fine from 300,000 to one million ALL.
The direct or indirect soliciting, receiving, or accepting whatever irregular benefit for oneself or a third person, by promising and confirming the ability to exercise illegal influence on the accomplishment of the duties and on adoption of decisions by the Albanian or foreign public functionaries, no matter whether the influence has been actually exercised or not and no matter whether the desirable consequences have occurred or not, is punished with a prison term of 6 months up to four years and a fine from 500,000 to two million ALL.
Article 245/2
The exemption from suffering the sentence

“The person, who has promised or given reward or other benefits, in accordance with Articles 164/1, 244, 245, 312, 319 and 328 of this Code, may benefit from exemption from the sentence or the reduction of it in compliance provision of Article 28 of this Code, if they do denounciation and give a contribution in the criminal proceeding of these crimes.”

Article 21

Article 248 is changed as following:

Article 248
Abuse of duty

“Deliberate accomplishment or non-accomplishment of actions or of failures to act, in violation to the law and constituting the failure of a person, who carries out public functions, to do his duties regularly, in cases when it has led to bringing him or to other persons unjust material or non material benefits or who have brought damages to the legitimate interests of the state, citizens, and other judicial entities, when it does not constitute another criminal offence, is punished with imprisonment of 6 months up to five years and with a fine of 300,000 Leke to one million ALL.”

Article 22

Article 259 is changed as following:

Article 259
Passive corruption by public officials

“Soliciting or taking, directly or indirectly, by a person who exercises public functions, of any irregular benefit or of any such promise for himself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act in the exercise of his duty, is punished with a prison term of two to eight years and a fine from 500,000 to three million ALL.”

Article 23

Article 260 is changed as following:

Article 260

Passive corruption by High State Officials or local elected officials

“Soliciting or taking, directly or indirectly, by a high state official or a local elected official, of any irregular benefit or of any such promise for himself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act in the exercise of his duty, is punished with a prison term of four years up to 12 years and a fine from one to five million ALL.”

Article 27

Article 312 is changed as following:

Article 312

Active corruption of the witness, expert or interpreter

“Direct or indirect proposal, offer, or giving to a witness, expert or translator any irregular benefit for himself or a third party in order to secure false declarations or testimony,
expertise or translation or to reject carrying out their obligation to the criminal prosecution bodies and the court is punished with a prison term of up to four yers and a fine of 500,000 to two million ALL.”

Article 29

After the article 313/a is added the article 313/b with this content:

Article 313/b

**Prohibition on providing and publishing data contrary to the law**

“1. Making public, in media as well, information of a classified and confidential nature to the information means, contrary to law, endangering the life, physical integration or the liberty of persons protected by law no. 9205 dated 15.03.2004 “On Protection of witnesses and justice collaborators” constitutes a crime, and is punished with a fine or with imprisonment of up to two years of time, and when there have come serious consequences for the their health with imprisonment for a term of up to 6 months up to three years.

2. When this offence is committed by one of the persons who is under the liability to maintain the classified and confidential nature of the information, is punished with fine or imprisonment for a term of up to tree years and, if there are serious effects on their health as a consequence, with imprisonment from 2 year to five years.

3. When the offence has caused the death as a consequence, it is punished with imprisonment from three to ten years.”

Article 30

Article 319 is changed as following:

**Article 319**

**Active corruption of the judge, prosecutor and of other justice official**
“The direct or indirect proposal, offer, or giving, a judge, prosecutor, or other employees of the judicial bodies, any irregular benefit for himself or a third person in order to act or not act, regarding his duty, is punished with a prison term of one to four years and a fine from 400,000 to two million ALL.”

Article 31

After the article 319 is added the article 319/a with this content:

Article 319/a
The passive corruption of the judges, prosecutors and other officials of the justice bodies/system

“Direct or indirect soliciting or taking, being a judge, prosecutor, or other employees of the judicial bodies, of any irregular benefit or any such offer for himself or a third person, or accepting an offer or promise deriving from an irregular benefit in order to act or not act, regarding their duty, is punished with a prison term of three up to 10 years and a fine from 800,000 Leke to four million ALL.
ON THE RULES OF ETHICS IN THE PUBLIC ADMINISTRATION

In reliance on articles 78 and 83, point 1, of the Constitution, on the proposal of the Council of Ministers,

THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I
GENERAL PROVISIONS

Article 1
Purpose

The purpose of this law is to set rules of conduct of employees of the public administration, according to the required standards, to help them achieve these standards and to make the public aware of the conduct that an employee of the public administration should have.

Article 2
Field of Action

1. The provisions of this law are obligatory for all employees of the public administration so long as it is not contemplated otherwise in other legal provisions.

2. The provisions of this law do not constitute an obligation for elected persons, members of the Council of Ministers and judges.

3. The provisions of this law constitute an obligation for persons employed by private organizations that perform public services.

4. Within the meaning of this law, "Employees of the Public Administration" are all persons employed at an institution of the public administration.

Article 3
General Principles of Ethics

1. “In the performance of functions, an employee of the public administration should respect the following principles:

a) to perform duties in conformity with the legislation in force;
b) to act in a manner independent from his political viewpoint and not to impede the implementation of policies, decisions or legal actions of authorities of the public administration;

c) in the performance of duties he should be honest, impartial, efficient, taking account only of the public interest;

ç) to be polite in relations with citizens whom he serves and with superiors, colleagues and subordinates;

d) he should not act arbitrarily to the harm of a person or organization and should show appropriate respect for the personal interests and rights of third parties;

dh) he should not permit his private interests to conflict with his public position and should avoid conflicts of interest and never use his position for his private interest;

e) always to behave in such a manner that the trust of the public in the honesty, impartiality and efficiency of public service be kept and increased;

ë) to preserve the confidentiality of the information that he possesses, but without violating the implementation of the obligations that come from law nr. 8503 dated 30 June 1999 "On the right to get information about official documents."

2. The Council of Ministers issues rules in implementation of the principles indicated in point 1 of this article.

CHAPTER II
CONFLICTS OF INTERESTS

Article 4
Conflict of Interests

1. A conflict of interests is a situation in which an employee of the public administration has a personal interest such that it affects or might affect the impartiality or objectivity of the performance of his official duty.

2. Personal interests of the employee include every priority for himself, his family, his relatives up to the second degree, persons or organizations with which the employee has
or has had business relations or political ties. A conflict of interest also includes every kind of financial or civil obligation of the employee.

3. When an employee has knowledge that such a situation exists, he is obligated:
   a) to verify whether he has a current possible conflict of interests;
   b) to undertake measures necessary to avoid such a conflict;
   c) to make his direct superior and the personnel unit aware immediately, on his own initiative, about the actual or possible conflict of interests;
   ç) in case of doubt about being in a situation of conflict of interest, to consult with his direct superior and/or with the personnel unit of the institution;
   d) to obey every final decision not to take part in the process of decision-making or to resign from the priorities that the conflict causes.

4. Possible conflicts of interest of a candidate for employment in the public administration should be resolved before his appointment.

**Article 5**

**Avoidance of a Conflict of Interests**

1. The direct superior, with the support of the personnel unit, on the basis of the data that he has, takes the measures necessary to avoid the appointment of an employee to a position in which he has a conflict of interests or where they might arise or that the employee shall not be assigned duties that might lead to the appearance of a possible conflict of interests.

2. The avoidance of a conflict of interests is done in conformity with the Code of Administrative Procedures.

3. An employee who has such interests that continuing to have them would constitute a real danger that a conflict of interests would arise and would bring the continuing exclusion from his official activity or the inability to exercise his official duties should give the interests up or transfer them, so that the possibility of a conflict of interests is avoided.
CHAPTER III
OUTSIDE ACTIVITY OF AN EMPLOYEE OF THE PUBLIC ADMINISTRATION

Article 6
Outside Activities
Outside activities of an employee mean every kind of activity, whether regular or occasional, that requires the commitment of the employee of the public administration, whether for purposes of profit or not, that the employee exercises outside of official duty.

Article 7
Prohibition of Outside Activities
1. A public employee should not be engaged in an outside activity that impedes the performance of his official duty or asks for his commitment, mental or physical, so as to make difficult the performance of his duties, or is a continuation of this duty, that infringes in any manner the image of the employee of the public administration.

2. In case of doubt about the qualification of an activity as permissible or not, the employee consults with the personnel unit of the institution.

3. The Council of Ministers specifies the rules of classification of an outside activity as permissible or not.

Article 8
Permission of Outside Activities
1. The performance of outside activities should be made known in advance to the direct superior of the employee of the public administration and the personnel unit.

2. Activities in the sphere of labor union activities or the representation of employees or teaching activities are permissible when they do not hinder the performance of duty.

Article 9
Compensation for Outside Activities
An employee may not be compensated for outside activities when they have to do with the duties that he has performed in the exercise of his functions or are a direct continuation of them, except for cases when it is otherwise provided in other legal or substatutory acts.

CHAPTER IV
BENEFITS

Article 10
Gifts and Favors
1. An employee of the public administration should not ask for or accept gifts, favors, receptions or any other benefit, or avoidance of possible losses, or promises of them, for himself, his family, relatives or friends, persons or organizations with which he has relationships, which affect or seem to affect the impartiality of the performance of duty, or are or seem to be a compensation for the manner of performance of his official duty.

2. Point 1 of this article is not applicable to the occasion of ordinary invitations, traditional hospitality, gifts of a symbolic or traditional value, of politeness, which do not raise suspicions about the impartiality of the employee.

3. In a case of doubt about the impartiality of benefits, the employee consults the personnel unit of the institution.

Article 11
Reaction to Offers
1. If an employee is offered an unfair advantage, he should:
   a) refuse without having the need to accept it to use it as evidence;
   b) try to identify the person who is making the offer;
   c) avoid long contacts with the person who made the offer, but knowledge of the reason for which the offer was made may serve as evidence;
   d) if the gift cannot be refused to be returned to the sender, it should be kept, used as little as possible and reported immediately to the direct superior;
   e) to have as witnesses, if possible, colleagues who work with him;
dh) to report the attempt as quickly as possible to his superior or to the personnel unit;
e) to continue work normally, especially about the problem for which the unfair advantage was offered.

2. The Council of Ministers determines the value of gifts that may be accepted by the employee and the manner of dealing with gifts that cannot be returned.

CHAPTER V
OTHER OBLIGATIONS DURING THE PERIOD OF EMPLOYMENT IN THE PUBLIC ADMINISTRATION

Article 12
Obligations of employee of public administration

An employee of the public administration should not use his official duty or permit it to be used in such a way as to encourage or oblige any other person, including his subordinates, to have any financial benefit or any other kind of benefit of a personal interest.

Article 13
State Property

1. Employees should protect and guard property of the institution, including official documentation. An employee should not use property that the institution owns or uses, or permit it to be used, for any other purpose, except for the performance of approved activities in conformity with the legal and substatutory acts in force.

2. An employee should use the means that his work position offers only for the accomplishment of his duties and not for personal purposes.

Article 14
Time of Work

An employee should use the time of work in an effective manner for the realization of official duties. This time is not used for any other purpose, except in cases when its use for other purposes is officially authorized, in conformity with the legislation in force.
Article 15

Appearance of the Employee

The clothing and appearance of the employee should be serious, in order to represent the public administration in the most worthy way. Detailed rules about dress and the appearance of employees in the institutions of the public administration are specified by the internal rules of the institutions.

CHAPTER VI

PERIOD AFTER EMPLOYMENT

Article 16

Use of Information

After leaving office, an employee of the public administration should not use confidential information received during the performance of duty for a personal interest.

Article 17

Prohibition of Representation in Conflicts with the Public Administration

For a two-year period of time after leaving office, the former employee should not represent any person or organization in a conflict or commercial relationship with the Albanian public administration for the duty that he performed or in continuation of it.

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS

Article 18

Implementing Provisions

1. The personnel unit is obligated to make known to the employee at the moment of his employment the obligations that come from this law and which should be respected by the employee.
2. The employee has the duty of behaving in conformity with this law and, for this reason, is informed of its provisions and of every amendment or addition.

3. The employee should ask for advice from the personnel unit of the institution when he is uncertain about acting. The personnel unit of the institution also consults with the Department of Public Administration for particular cases.

4. The provisions of this law are part of the conditions of employment of the employee. A violation of them becomes a reason for taking disciplinary measures.

5. The direct superior of the employee of the public administration has responsibility to check whether they are applying the rules indicated in this law and to undertake or propose the appropriate disciplinary measures for violations of it.

**Article 19**

**Disciplinary measures**

Employees who violate the principles of ethics specified in this law, when their actions do not constitute a criminal offense, are punished with disciplinary measures according to the procedure specified in the legislation on the status of the civil servant.

**Article 20**

**Recording Measures**

1. Every institution of the public administration should communicate to the Department of Public Administration every disciplinary measure taken against an employee within 10 days from the taking of the measure.

2. Every institution of the public administration should communicate to the Department of Public Administration every disciplinary measure taken against an employee within 10 days from the taking of the measure.

**Article 21**

**Final Provisions**

The Council of Ministers is charged with issuing substatutory acts in implementation of articles 3, 7 and 11 of this law.

**Article 22**

**Entry into Force**
This law is effective 15 days after publication in the Official Journal. Promulgated with decree nr. 3969 dated 29 September 2003 of the President of the Republic of Albania, Alfred Moisiu.

Annex 2 Canon of Laberia

Chapter 46

Other faults (penal acts)

Article 768

Opposing of local self-government bodies

1. Nobody has the right to oppose the bodies of local self-governance.

2. Opposing of local self-government bodies, of the council of elders, of assembly of men or court of elders, is punished by fine or expulsion.

3. When someone from the community members has committed serious faults, is expelled together with the entire family, or is sentenced to death (murder) by the community of village.

4. If the communion of relatives obstructs the communion of village to punish the guilty person for a serious fault, the fraternitie, neighbourhood or relatives are boycotted by the entire village.

Article 769

Non-execution of decisions

Non-execution of decisions of court of elders and assembly of men, is punished by fine, or is boycotted by village, or punished with death by the communion of village.

Article 770
Opposing of appraiser, threatener

Opposing of appraiser, threatener is punished by fine.

**Article 771**

**Infringement of faith**

Who opposes to bound in faith, or breaches the faith, or unfaithfulness of friend, or hiding of guilty person, normally is punishable with expulsion from the village or with death, by the community.

**Article 772**

**Flare of gun in the assembly**

Flare of gun in the assembly against any of its members, is punished by expulsion or boycott, or with death, by the community of village.

**Article 773**

**The elders that judge with bias**

The elders that judge an issue and keep the bias of one or another party or take bribe, are punished with “black cheek” (dishonored), and are not called anymore in judging of any issue.

**Article 774**

**Non preservation of behests**

Non preservation of behests submitted in good faith by the community, is punished with expulsion for a fixet term or forever, alone or with family, or is punished with the black labe of dishonor, or with boycott.

**Article 775**
Faults (penal acts) against clergyman of religious institutions

Penal acts as swearing, beating, humiliating or any other action against clergy (priests, imam, fathers of tekke) or religious institutions (church, mosque, Tekke), during the exercise of religious rites, normally is punished by fines, or boycott, or expulsion for a period specified by the community of local unit.

**Article 776**

**False oath**

1. False oath is punished with “blacke cheek” (dishonor), with fines in sum set by the court of elders.

2. False oath with jury (24 men), is punished by fine with 10 rams or 1 ox.

**Article 777**

**False testimony**

1. False testimony by the denouncer or other persons, is punished by the court of elders with black cheek, and in case if by the false testimony is injured one party in the conflict, he is forced to repair even the damage besides of black cheek.

2. In case if by the false testimony is caused the death of a person, the witnesses is punished with a heavy fines, or expulsion from the village for a period defined by the court of elders.
Annex 3 – Extracts of Penal codes of Italy, Germany and New York

AN 3.1 - Italian Penal Code

Extract

SECOND BOOK

SPECIFIC CRIMES

TITLE I

Crimes Against the Personality of the State

Chapter I

Crimes Against the International Personality of the State.

Article 246

Corruption of citizen by a foreigner

A citizen who, even indirectly, for himself or for others, receives from aliens or obtains from them the promise of money or any thing of value, or merely accepts a promise thereof, with the object of committing acts contrary to the national interest, shall be punished, if his act does not constitute a more serious offense, by imprisonment for from three to ten years and by a fine of from €516.- deri € 2.065.

The foreigner who gave or promised the money or thing of value shall be subject to the same punishment.

The punishment shall be increased:

1) if the act was committed in time of war;
2) if the money or thing of value was given or promised for propaganda by means of the press.

TITLE II

Crimes against Public Administration

Chapter I

For the crimes of public officials against public administration.
Article 314

Embezzlement
A public official, or any individual in charge of a public service, that having because of duty or service the possession or at least the availability of money or other movable objects, embezzles them, is punished by imprisonment from 3 to 10 years.
It will be applied the punishment with imprisonment from 6 months to 3 years, when the guilty person has acted solely for instant use, and this after the instant use, is returned immediately.

Article 316

Unlawful appropriation because of mistake of others
The public official or the person in charge with a public service, which is in exercise of functions or duty, taking advantage of the error of others, takes or holds unjustly, for himself or for a third parti, money or other material things, is punished with imprisonment from 6 months up to 3 years.

Article 316-bis

Embezzlements to the detriment of State
Whoever, not member of public administration that has benefited from the state or other public entity or by EU, contributions, subsidies or funds intended to promote the initiatives aimed for realizing of works and activities of public interests, and don’t use them for the mentioned aims, is punished with imprisonment from 6 months up to 4 years.

Article 316-ter

Misappropriation of funds to the detriment of the State
If the fact consists in the crime prescribed by the article 640-bis, he who from the use or presentation of false statements or documents or evidence not real, or by not providing the required information, takes unjustly, for himself or for others, contributions, fundings, soft loans or other grants of the same type, but in currency issued by the state, by other public entities or by EU, is punished with imprisonment from 6 months up to 3 years. When the
amount of misused, is perceived to be equal to or lower than €3,999.96, it is applied only the administrative sanction of payment of a sum from €5,164.- up to €25,822.-
The sanctioned part can not exceed the triple of amount of benefit.

**Article 317**

**Extortion**
The public officer or the person in charge of a public duty, which by abusing with the his quality or power, forces or obliges someone to give or promise unfairly, to him or a third party, money or other material goods, is punished with imprisonment from 4 years up to 12 years.

**Article 318**

**Corruption for an official act**
The public official who for performing of his official act, takes for himself or for third party, money or material goods, a reward that shouldn’t take, or accepts a promise, is punished with imprisonment from 6 months up to 3 years. If the public official receives takes a reward for an official act already performed, the punishment shall be imprisonment of up to 1 year.

**Article 319**

**Corruption for an act in contradiction with the official duties**
Public official that for not performing or delaying of his official duty, or for his act in contradiction with official duty that has committed or will commit, takes for himself or for a third party, money or other material goods, or accepts a promise, is punished with imprisonment from 2 up to 5 years.

**Article 319-bis**

**Aggravating circumstances**
The punishment will be increased in case when the fact that the article 319 has as object the giving of public works or salaries or pensions or conditions of contracts in which the administration when the public official is part of is interested.

**Article 319-ter**

**Corruption with legal acts**
If the facts provided in the articles 318 and 319 are committed to favor or to damage a part of a civil, penal or administrative process, it will be applied the punishment with imprisonment from 3 to 8 years.
If the fact comes due to someone’s unjust conviction with imprisonment up to 5 years, the punishment shall be imprisonment from 4 up to 12 years, and if it comes as result of an unjust conviction with imprisonment over 5 years or life imprisonment, the punishment will be from 6 up to 20 years.

**Article 320**

**The corruption of the person charged with a public service**
The provisions of articles 319/ bis / ter, will be applied even for the persons who are charged with a public service; those of article 318 are applied even for the persons who are charged with public services, if he is in the quality of public employee.
In any case, the sentences were reduced to no more than a third.

**Article 321**

**Punishments for corruptor**
The punishments prescribed in the first paragraph of article 318, in articles 319 / bis / ter and in the article 320 regarding to the hypothesis of articles 318 and 319, is applied even for him who gives or promises to the public official or to the person in change of a public service, money or other material goods.

**Article 322**

**Stimulation for corruption**
Anyone who offers or promises money or other material goods, that should not do, to a public official or to a person in charge of a public service with the quality of public employee, to cause performing an official act, when the offer or promise is not accepted, is subject to punishment as provided in the first paragraph of article 318, reduced by one third.

If the offer or the promise is made to cause the performing, not performing or delaying of the official duty to the public official, or for committing an act contrary to his duty, when the offer or promise is not accepted, the guilty is the subject of a punishment provided in article 319, reduced by one third.

The punishment in the first paragraph is applied for the public official or the person in charge of a public duty with the quality of the public employee, that requires a promise or giving of money or other material goods by the part of a private person, for the purpose prescribed in the article 318.

The punishment which is applied in the second paragraph for the public official or for the person who is in charge of a public service that requires a promise or giving of money or other material goods by the part of private person, for the purpose prescribed in the article 319.

**Article 322-bis.**

Embezzlement, extortion, corruption and incitement to corruption of members of the bodies of European Community, foreign countries and their officials.

The provisions of articles 314, 316, from 317 up to 320 and 322, paragraph 3 and 4, is applied even:

1) For the members of the Commission of the European Community, European Parliament, Court of Justice and Court of Auditors of European Community;
2) For the officials and for the contract agents recruited under the statute of European Community or according to the regime applied for the agents of European Community.

3) For the persons commanded by the Member States or by any public or private institution in the European Community, that exercise functions that correspond to those of officials or agents of the European Community;

4) For members and employees of the entities created under the Tractates that institutionalize the European Community.

5) For those that within the other states of EU, perform functions or activities that correspond with those of public officials.

The provisions of articles 321 and 322 paragraph 1 and 2, is applied even if the money or other material goods are given or offered to:

1) The persons prescribed in the paragraph 1 of this article;

2) Persons exercising functions or activities that correspond with those of public officials withing the other foreign countries or international organizations, where the fact is committed to provide for himself or for others an unfair advantage in international economic operations, or for obtaining and maintaining of a financial and economic activity. The entities listed in the paragraph 1 will be treated as public officials, if they exercise corresponding functions, and for the people charged with a public duty in other cases.
AN 3.2 - Penal code of Germany

Extract

CHAPTER FOUR
Offences against constitutional organs and
in the context of elections and ballots

Article 108b
Bribing voters

(1) Whosoever offers, promises or furnishes to another gifts or other benefits for not voting or for voting in a particular manner, shall be liable to imprisonment not exceeding five years or a fine.

(2) Whosoever requests, is promised or accepts gifts or other benefits in exchange for not voting or voting in a particular manner, shall incur the same penalty.

Article 108e
Bribing delegates

(1) Whosoever undertakes to buy or sell a vote for an election or ballot in the European Parliament or in a parliament of the Federation, the member states, municipalities or municipal associations, shall be liable to imprisonment not exceeding five years or a fine.

(2) In addition to a sentence of imprisonment of at least six months for an offence pursuant to subsection (1) above the court may order the loss of the ability to hold public office, to vote and be elected in public elections (section 45(2) and (5)).

Chapter twentyone
Assistance after the fact and handling stolen goods
Article 261
Money laundering; hiding unlawfully obtained financial benefits

(1) Whosoever hides an object which is a proceed of an unlawful act listed in the 2nd sentence below, conceals its origin or obstructs or endangers the investigation of its origin, its being found, its confiscation, its deprivation or its being officially secured shall be liable to imprisonment from three months to five years.

Unlawful acts within the meaning of the 1st sentence shall be:
1. Serious crimes;
2. Misdemeanours under
   a. Section 332 (1), also in conjunction with subsection (3), and section 334;
   b. Section 29 (1) 1st sentence No 1 of the Drugs Act and section 19 (1) No 1 of the Drug Precursors (Control) Act
3. Misdemeanours under section 373 and under section 374 (2) of the Fiscal Code, and also in conjunction with section 12 (1) of the Common Market Organisations and Direct Payments (Implementation) Act;

Chapter twenty six
Restrictive practices offences

Article 298
Restricting competition through agreements in the context of public bids

(1) Whosoever upon an invitation to tender in relation to goods or commercial services makes an offer based on an unlawful agreement whose purpose is to cause the organiser to accept a particular offer shall be liable to imprisonment not exceeding five years or a fine.
(2) The private award of a contract after previous participation in a competition shall be equivalent to an invitation to tender within the meaning of subsection (1) above.
(3) Whosoever voluntarily prevents the organiser from accepting the offer or from providing his service shall not be liable under subsection (1), also in conjunction with subsection (2) above. If the offer is not accepted or the service of the organiser not provided regardless of the contribution of the offender he shall be exempt from liability if he voluntarily and earnestly makes efforts to prevent the acceptance of the offer or the provision of the service.

Article 299
Taking and giving bribes in commercial practice

1. Whosoever as an employee or agent of a business, demands, allows himself to be promised or accepts a benefit for himself or another in a business transaction as consideration for according an unfair preference to another in the competitive purchase of goods or commercial services shall be liable to imprisonment not exceeding three years or a fine.

2. Whosoever for competitive purposes offers, promises or grants an employee or agent of a business a benefit for himself or for a third person in a business transaction as consideration for such employee’s or agent’s according him or another an unfair preference in the purchase of goods or commercial services shall incur the same penalty.

3. Subsections (1) and (2) above shall also apply to acts in competition abroad.

Article 300
Aggravated cases of taking and giving bribes in commercial practice

In especially serious cases an offender under section 299 shall be liable to imprisonment from three months to five years. An especially serious case typically occurs if:

1. the offence relates to a major benefit or

2. the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.
Article 301

Request to prosecute

(1) The offence of taking and giving bribes in commercial practice under section 299 may only be prosecuted upon request unless the prosecuting authority considers proprio motu that prosecution is required because of special public interest.

(2) The right to file the request under subsection (1) above belongs, in addition to the victim, to all of the business persons, associations and chambers indicated in section 8(3) Nos 1, 2, and 4 of the Restrictive Practices Act.

Article 302

Confiscatory expropriation order and extended confiscation

(1) In cases under section 299(1), section 73d shall apply if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(2) In cases under section 299(2), section 43a and section 73d shall apply, if the offender acts as a member of a gang whose purpose is the continued commission of such offences. Section 73d shall also apply if the offender acts on a commercial basis.

Chapter thirty

Offenses committed in public office

Article 331

Taking bribes

(1) A public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third
person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine.

(2) A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine. The attempt shall be punishable.

(3) The offence shall not be punishable under subsection (1) above if the offender allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorises the acceptance or the offender promptly makes a report to it and it authorises the acceptance.

**Article 332**

**Taking bribes meant as an incentive to violating one’s official duties**

(1) A public official or person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from six months to five years. In less serious cases the penalty shall be imprisonment not exceeding three years or a fine. The attempt shall be punishable.

(2) A judge or an arbitrator, who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform a judicial act and thereby violated or will violate his judicial duties shall be liable to imprisonment from one to ten years. In less serious cases the penalty shall be imprisonment from six months to five years.

(3) If the offender demands, allows himself to be promised or accepts a benefit in return for a future act, subsections (1) and (2) above shall apply even if he has merely indicated to the other his willingness to:

1. violate his duties by the act; or
2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.
Article 333
Giving bribes
(1) Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier in the Armed Forces for that person or a third person for the discharge of a duty shall be liable to imprisonment not exceeding three years or a fine.
(2) Whosoever offers promises or grants a benefit to a judge or an arbitrator for that person or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine.
(3) The offence shall not be punishable under subsection (1) above if the competent public authority, within the scope of its powers, either previously authorises the acceptance of the benefit by the recipient or authorises it upon prompt report by the recipient.

Article 334
Giving bribes as an incentive to the recipient’s violating his official duties
(1) Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier of the Armed Forces for that person or a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from three months to five years. In less serious cases the penalty shall be imprisonment not exceeding two years or a fine.
(2) Whosoever offers, promises or grants a benefit to a judge or an arbitrator for that person or a third person, in return for the fact that he:
1. performed a judicial act and thereby violated his judicial duties; or
2. will in the future perform a judicial act and will thereby violate his judicial duties shall be liable in cases under No 1 above to imprisonment from three months to five years, in cases under No 2 above to imprisonment from six months to five years. The attempt shall be punishable.
(3) If the offender offers, promises or grants the benefit in return for a future act, then subsections (1) and (2) above shall apply even if he merely attempts to induce the other to
1. violate his duties by the act; or
2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

Article 335

Aggravated cases
(1) In especially serious cases:
1. of an offence under
   a. Article 332 (1) 1st sentence, also in conjunction with (3); and
   b. Article 334 (1) 1st sentence and (2), each also in conjunction with (3), the penalty shall be imprisonment from one to ten years and

2. of an offence under section 332(2), also in conjunction with (3), the penalty shall be imprisonment of not less than two years.

(2) An especially serious case within the meaning of subsection (1) above typically occurs when:
1. the offence relates to a major benefit;
2. the offender continuously accepts benefits demanded in return for the fact that he will perform an official act in the future; or
3. the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

Article 336

Omission of an official act
The omission to act shall be equivalent to the performance of an official act or a judicial act within the meaning of articles 331 to 335.
The fees of an arbitrator shall only be a benefit within the meaning of sections 331 to 335 if the arbitrator demands them, allows them to be promised him or accepts them from one party unbeknown to the other or if one party offers, promises or grants them to him unbeknown to the other.

**Article 338**

**Confiscatory expropriation order and extended confiscation**

1) In cases under section 332, also in conjunction with section 336 and section 337, section 73d shall apply if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(2) In cases under section 334, also in conjunction with section 336 and section 337, section 43a and section 73d shall apply if the offender acts as a member of a gang whose purpose is the continued commission of such offences. Section 73d shall also apply if the offender acts on a commercial basis.

**Article 339**

**Perverting the course of justice**

A judge, another public official or an arbitrator who in conducting or deciding a legal matter perverts the course of justice for the benefit or to the detriment of a party shall be liable to imprisonment from one to five years.

**Article 340**

**Causing bodily harm while exercising a public office**

(1) A public official who in the exercise of his duties causes bodily harm or allows it to be caused shall be liable to imprisonment from three months to five years. In less serious cases the penalty shall be imprisonment of not more than five years or a fine.

(2) The attempt shall be punishable.

(3) Sections 224 to 229 shall apply mutatis mutandis to offences under subsection (1) 1st sentence above.
Articles 341 and 342

(repealed)

Article 343

Forcing someone to make a statement

(1) Whosoever as a public official involved in:
1. a criminal proceeding, a proceeding for the purpose of detention by a public authority;
2. a proceeding to impose a summary fine; or
3. a disciplinary proceeding, disciplinary court or professional disciplinary court proceeding
physically abuses another, otherwise uses force against him, threatens him with force or
abuses him mentally in order to force him to testify to or declare something in the
proceeding or to fail to do so shall be liable to imprisonment from one to ten years.
(2) In less serious cases the penalty shall be imprisonment from six months to five years.

Article 344

Intentionally or knowingly prosecuting innocent persons

(1) Whosoever as a public official involved in a criminal proceeding other than a
proceeding to order a noncustodial measure (section 11(1) No 8) intentionally or
knowingly criminally prosecutes an innocent person or someone who otherwise may not by
law be criminally prosecuted or makes efforts to bring about such a
prosecution shall be liable to imprisonment from one to ten years, in less serious cases to
imprisonment from three months to five years. The 1st sentence above shall apply mutatis
mutandis to a public official involved in a proceeding for the purpose of detention by a
public authority.

(2) Whosoever as a public official involved in a proceeding to order a non-custodial
measure (section 11(1) No 8) intentionally or knowingly criminally prosecutes someone
who may not by law be prosecuted or makes efforts to bring about such a prosecution shall
be liable to imprisonment from three months to five years. The 1st sentence above shall apply mutatis mutandis to a public official involved in:
1. a proceeding to impose a summary fine; or
2. a disciplinary proceeding, disciplinary court or professional disciplinary court proceeding.
The attempt shall be punishable.

AN 3.3 - Penal Code of New York
Extract

ARTICLE 180

Bribery not involving public servants, and related offenses

Section 180.00
Commercial bribing in the second degree
A person is guilty of commercial bribing in the second degree when he confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter’s employer or principal, with intent to influence his conduct in relation to his employer’s or principal’s affairs.
Commercial bribing in the second degree is a class A misdemeanor.

Section 180.03
Commercial bribing in the first degree
A person is guilty of commercial bribing in the first degree when he confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter’s employer or principal, with intent to influence his conduct in relation to his employer’s or principal’s affairs, and when the value of the benefit conferred or offered or agreed to be conferred exceeds one thousand dollars and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars.
Commercial bribing in the first degree is a class E felony.
Section 180.05

Commercial bribe receiving in the second degree
An employee, agent or fiduciary is guilty of commercial bribe receiving in the second degree when, without the consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer’s or principal’s affairs.
Commercial bribe receiving in the second degree is a class A misdemeanor.

Section 180.08

Commercial bribe receiving in the first degree
An employee, agent or fiduciary is guilty of commercial bribe receiving in the first degree when, without the consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer’s or principal’s affairs, and when the value of the benefit solicited, accepted or agreed to be accepted exceeds one thousand dollars and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars.
Commercial bribe receiving in the first degree is a class E felony.

Section 180.10

Bribery of labor official; definition of term
As used in this article, "labor official" means any duly appointed representative of a labor organization or any duly appointed trustee or representative of an employee welfare trust fund.

Section 180.15

Bribing a labor official
A person is guilty of bribing a labor official when, with intent to influence a labor official in respect to any of his acts, decisions or duties as such labor official, he confers, or offers or agrees to confer, any benefit upon him.
Bribing a labor official is a class D felony.

Section 180.20  
Bribing a labor official; defense

In any prosecution for bribing a labor official, it is a defense that the defendant conferred or agreed to confer the benefit involved upon the labor official as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion.

Section 180.25  
Bribe receiving by a labor official

A labor official is guilty of bribe receiving by a labor official when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence him in respect to any of his acts, decisions, or duties as such labor official.

Bribe receiving by a labor official is a class D felony.

Section 180.30  
Bribe receiving by a labor official; no defense

The crimes of (a) bribe receiving by a labor official, and (b) larceny committed by means of extortion, attempt to commit the same, coercion or attempt to commit coercion, are not mutually exclusive, and it is no defense to a prosecution for bribe receiving by a labor official that, by reason of the same conduct, the defendant also committed one of such other specified crimes.

Section 180.35  
Sports bribery and tampering; definitions of terms

As used in this article:
1. "Sports contest" means any professional or amateur sport or athletic game or contest viewed by the public.

2. "Sports participant" means any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team.

3. "Sports official" means any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest.

4. "Pari-mutuel betting" is such betting as is authorized under the provisions of the pari-mutuel revenue law as set forth in chapter 254 of the laws of 1940 with amendments.

5. "Pari-mutuel horse race" means any horse race upon which betting is conducted under the provisions of the pari-mutuel revenue law as set forth in chapter 254 of the laws of 1940.

Section 180.40

Sports bribing

A person is guilty of sports bribe receiving when:

1. Being a sports participant, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he will thereby be influenced not to give his best efforts in a sports contest; or

2. Being a sports official, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he will perform his duties improperly.

Sports bribing is a class D felony.

Section 180.45

Sports bribe receiving

A person is guilty of sports bribe receiving when:
1. Being a sports participant, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he will thereby be influenced not to give his best efforts in a sports contest; or

2. Being a sports official, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he will perform his duties improperly.

Sports bribe receiving is a class E felony

Section 180.50
Tampering with a sports contest in the second degree

A person is guilty of tampering with a sports contest when, with intent to influence the outcome of a sports contest, he tampers with any sports participant, sports official or with any animal or equipment or other thing involved in the conduct or operation of a sports contest in a manner contrary to the rules and usages purporting to govern such a contest.

Tampering with a sports contest in the second degree is a class A misdemeanor.

Section 180.51
Tampering with a sports contest in the first degree

A person is guilty of tampering with a sports contest in the first degree when, with intent to influence the outcome of a pari-mutuel horse race:

1. He affects any equine animal involved in the conduct or operation of a pari-mutuel horse race by administering to the animal in any manner whatsoever any controlled substance listed in section thirty-three hundred six of the public health law; or

2. He knowingly enters or furnishes to another person for entry or brings into this state for entry into a pari-mutuel horse race, or rides or drives in any pari-mutuel horse race any running, trotting or pacing horse, mare, gelding, colt or filly under an assumed name, or deceptively out of its proper class, or that has been painted or
disguised or represented to be any other or different horse, mare, gelding, colt or filly from that which it actually is; or

3. He knowingly and falsely registers with the jockey club, United States trotting association, American quarterhorse association or national steeplechase and hunt association a horse, mare, gelding, colt or filly previously registered under a different name; or

4. He agrees with one or more persons to enter such misrepresented or drugged animal in a pari-mutuel horse race. A person shall not be convicted of a violation of this subdivision unless an overt act is alleged and proved to have been committed by one of said persons in furtherance of said agreement.

Tampering with a sports contest in the first degree is a class E felony.

Section 180.52
Impairing the integrity of a pari-mutuel betting system in the second degree
A person is guilty of impairing the integrity of a pari-mutuel betting system in the second degree when, with the intent to obtain either any payment for himself or for a third person or with the intent to defraud any person he:

1. Alters, changes or interferes with any equipment or device used in connection with pari-mutuel betting; or

2. Causes any false, inaccurate, delayed or unauthorized data, impulse or signal to be fed into, or transmitted over, or registered in or displayed upon any equipment or device used in connection with pari-mutuel betting.

Impairing the integrity of a pari-mutuel betting system in the second degree is a class E felony.

Section 180.53
Impairing the integrity of a pari-mutuel betting system in the first degree
A person is guilty of impairing the integrity of a pari-mutuel betting system in the first degree when, with the intent to obtain either any payment for himself or for a third person
or with the intent to defraud any person, and when the value of the payment exceeds one thousand five hundred dollars he:

1. Alters, changes or interferes with any equipment or device used in connection with pari-mutuel betting; or

2. Causes any false, inaccurate, delayed or unauthorized data, impulse or signal to be fed into, or transmitted over, or registered in or displayed upon any equipment or device used in connection with pari-mutuel betting.

Impairing the integrity of a pari-mutuel betting system in the first degree is a class D felony.

ARTICLE 200

Bribery involving public servants and related offenses

Section 200.00

Bribery in the third degree

A person is guilty of bribery in the third degree when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery in the third degree is a class D felony.

Section 200.03

Bribery in the second degree

A person is guilty of bribery in the second degree when he confers, or offers or agrees to confer, any benefit valued in excess of ten thousand dollars upon a public servant upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery in the second degree is a class C felony.
Section 200.04
Bribery in the first degree
A person is guilty of bribery in the first degree when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or an attempt to commit any such class A felony.
Bribery in the first degree is a class B felony.

Section 200.10
Bribe receiving in the third degree
A public servant is guilty of bribe receiving in the third degree when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.
Bribe receiving in the third degree is a class D felony.

Section 200.11
Bribe receiving in the second degree
A public servant is guilty of bribe receiving in the second degree when he solicits, accepts or agrees to accept any benefit valued in excess of ten thousand dollars from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.
Bribe receiving in the second degree is a class C felony.

Section 200.12
Bribe receiving in the first degree
A public servant is guilty of bribe receiving in the first degree when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or an attempt to commit any such class A felony.

Bribe receiving in the first degree is a class B felony

Section 200.20

Rewarding official misconduct in the second degree

A person is guilty of rewarding official misconduct in the second degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant.

Rewarding official misconduct in the second degree is a class E felony.

Section 200.22

Rewarding official misconduct in the first degree

A person is guilty of rewarding official misconduct in the first degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony.

Rewarding official misconduct in the first degree is a class C felony.
Section 200.25
Receiving reward for official misconduct in the second degree
A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.
Receiving reward for official misconduct in the second degree is a class E felony.

Section 200.27
Receiving reward for official misconduct in the first degree
A public servant is guilty of receiving reward for official misconduct in the first degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony.
Receiving reward for official misconduct in the first degree is a class C felony.

Section 200.30
Giving unlawful gratuities
A person is guilty of giving unlawful gratuities when he knowingly confers, offers or agrees to confer, any benefit upon a public servant for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.
Giving unlawful gratuities is a class A misdemeanor.

Section 200.35
Receiving unlawful gratuities
A public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required
or authorized to perform, and for which he was not entitled to any special or additional compensation.

Receiving unlawful gratuities is a class A misdemeanor.

Section 200.40
Bribe giving and bribe receiving for public office; definition of term

As used in sections 200.45 and 200.50, "party officer" means a person who holds any position or office in a political party, whether by election, appointment or otherwise.

Section 200.45
Bribe giving for public office

A person is guilty of bribe giving for public office when he confers, or offers or agrees to confer, any money or other property upon a public servant or a party officer upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe giving for public office is a class D felony.

Section 200.50
Bribe receiving for public office

A public servant or a party officer is guilty of bribe receiving for public office when he solicits, accepts or agrees to accept any money or other property from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe receiving for public office is a class D felony.
Penal acts

Punishments

1. **Crimes:** Is punished with imprisonment from 1 year up to life imprisonment.
   
   a) A felony – punishment with life imprisonment.
      - Class A-I Felonies
      - Class A-II Felonies
   b) B Felony – are punished with 15 up to 25 years imprisonment
   c) C Felony - are punished with 7 up to 15 years imprisonment.
   d) D Felony - are punished with 4 up to 7 years imprisonment.
   e) E Felony - are punished with 1 up to 4 years imprisonment.

2. **Misdemeanors:** Are punished with imprisonment from 15 days up to 1 year.
   
   a) Class A Misdemeanors - 3 months up to 1 year imprisonment (illegal possession of firearms, serious misdemeanors up to the limit of minor crimes)
   b) Class B Misdemeanors – up to 3 months imprisonment (minor misdemeanors)
   c) Unclarisied Misdemeanors- this kind of misdemeanors can be according to the case, one from the first two misdemeanors, or can be clasified as a felony.

3. **Violations:** Are punished up to 15 days of imprisonment or with fine.

4. **Traffic violations:** are punished by fine.
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