

Public Administration and Corruption

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Abstract

The presented contribution is concentrated on the corruptive behaviour and practices with which we can meet in the Slovak public administration, e.g., in many public administrative organizations the improper non-performance of administrator duties can occur which are quite often connected with the big corruptive affairs. All of them might have led to our political system deformation and the existence of the non-functional lawful democratic state. Even if the official legal system is relatively an extensive one as regards the elimination of the corruptive practices, on the other hand, we have to admit that its practical reflection is more or less a formal one, and consequently it is not very effective. Besides that, the content of the contribution deals with the tools that might help to improve the defects in the Slovak reality.

Keywords: Public Administration, Corruption, Law, Ethics, Slovak Reality

Introduction

The main aim of the presented contribution concentrates its attention predominantly at the intolerable and the inexcusable defects that are commonly appeared in our public administration everyday life marked by the abuse of power, the corruption mega scandals and the proliferating of the so-called petty corruption. The topic of the article has been inspired by the personal experience observation of the corruptive misuse of power by our dignitaries and the protracted scandals resonated not only in media but in the public environment as well. Furthermore, the investigation research provided together with the students studying public administration and law at the Faculty of Public Administration in Kosice helped to gather the practical data which were obtained by means of the research questionnaires provided in the localities and municipalities where our students have a permanent residence. The major failings and inadequacies were found in the formal respect of legislation. and in some cases, it can be even found the obsolete formal legislation contents that need their actualization to make laws and legislation closer to the present-day conditions. The spread of corruption is likewise evident in the petty corruption practices combined with the reluctance of our citizens actively participate to erase it from the public administration. Further on, the lack of ethical conscience and the public administration ethos are evident, and last of all, the unsystematic protection of whistleblowers is apparent. From the theoretical point of view the presented contribution has found its inspiration and the theoretical base initiated by the international

documents and in the renowned authors' professional works that dealt with the mentioned topic regarding corruption, public administration, law, and the professional ethical consciousness.

1. Corruption Concept and the Slovak Reality

The corruption concept is mostly comprehended as a kind of the set of informal collective images and traditions where the giving and accepting bribes is for a certain group of citizens a matter of course and the habitual legitimate behaviour. In societies with a culture of ritualized gift-giving, as it has been mostly common in the former East-Bloc countries, the line between the acceptable and unacceptable gifts is often hard to draw. The definition of corruption is not an easy one, and even the body of laws does not offer a complete and adequate one-sided definition. As it is mentioned by many authors and noticed by the common people, the corruption has various forms, but it appears predominantly in the ways of bribe-giving and bribe-taking or as the official patronage connected with the administration management abuse of power. When speaking about corruption, we mostly imagine a bureaucrat who accepts bribes or who abuses his power as regards the entrusted him property or abusing any other people's rights following just the purpose to obtain his own private advantages.

Besides bribery, its forms include blackmail, and the inside information misuse. Mostly the corruption is also defined as an improper and usually unlawful conduct intended to secure a benefit for oneself or another partaker. Heywood defines corruption as "a failure to carry out the proper or public responsibilities because of the pursuit of private gain, usually involving bribery or misappropriation" (Heywood, 2014, p. 386). Further on, he continues that "the level of corruption in an institutional system is conditioned by the effectiveness of external control, the level of country's economic development and the level of administrative discipline and order" supported by the strength of internal codes and norms (Heywood, 2014, p.386). D. Mistree and A. Dibley in their study present a revised definition of corruption concentrated more on acts rather than the actors. Their revised definition "targets those who intend to carry out an act which is unauthorized, whether they successfully carry out the act, or not, as well as those who cause damage to public institutions as consequences of their acts" (Mistree and Dibley 2018, p. 19).

Besides the above mentioning the acceptance of money or any other favours and benefits, the corruption practices indicate the privileges to attain the approval of contract or in any other ways fostering one personal interests into the front at the price of violation the official processes. More often than not, it is combined with the unlawful interference into the judiciary enforcement and infringing thus the rudimentary principles of law enforcement that is mostly concerned with the prevention of violating the democratic rules and norms. Moreover, the

proper functioning of the judiciary and the law enforcement safeguards the protection of the fundamental human rights having a direct impact on the quality of life of all individuals and society finally leading to the defect of public order and public trust.

The worst failures are those connected with the perversion of justice provided by some judges and procurators accused of the rough illegal performs and their crime behaviour. The big and small corruption, nepotism and clientelism favouring the specific individual groups or some dominant financial groups contribute largely to our political system deformation, especially when it has apprehended as the everyday phenomenon in all spheres of our public life; political, economic, public administration and the private sector as well. Therefore, as it is emphasized by Tholen, it is needed to make organizational and institutional decisions and actions clearly identifiable whether their realization or support are in accordance with the internal or social common good (Tholen, 2014). More insidious and harmful is the devastating effect that corruption has on governmental and public institutions. Once corruption has taken the roots, the public trust is damaged. A loss of public confidence in the integrity of government and public institutions impairs their ability to function well, which is sometimes not to be repairable. As it is declared by D. Mistree and A. Dibley "...if the public does not trust the state, it is often unwilling to allow its institutions to make decisions on the public behalf" (Mistree and Dibley 2018, p.17). Besides that, corruption is a fundamental threat to undermine the legitimacy of government authority and our constitutional democracy.

The actors involved in corruptive practices quite often cause that the public resources are diverted into the private hands away from benefiting the public, as it is put into forward by Benaissa and Caiden that "the illegal activities regarding the distribution of common resources and all abuses of the public role for private advantages are marked by the actions that deviate from the expected norms abusing the public position, business, influencing the official acts leading to a special category of the organized crime that causes deviation in the administrative conduct" (Benaissa, 1992; Caiden, 2001). The administrative corruptive practices in connection with the public properties and funds personalization are divided by Caiden into treason, smuggling, and the unclear non-transparent privatization of the public properties and funds. (Caiden, 2001, 432). (Benaissa, 1992; Caiden, 2001).

Besides bribery, another corruption forms are evident, such as the misuse of confidential data, the information and manipulation, the improper gifts giving and entertainment, the blackmail, cronyism, and the illegal surveillance are put to the front by Caiden and Benaissa. (Caiden, 2001, p. 432). All those mentioned forms can frequently appear in our public administration life. Moreover, the corruptive deformations having a negative impact on the public trust and the good administration caused by the corruptive acts in the areas of scarce commodities, the export concessions, privatization, the administration of trade licenses, the concluding of governmental contracts, and finally, they are evident in the

nominations into the state government or local administration posts. Many times, the unfair methods and the non-transparent backing, acts and practices are used, which are far away from the citizen right to good administration. Furthermore, as it is mentioned by Mistree and Dibley, the government officials are often reluctant to address corruption simply because admitting that corruption exists might undermine their own political standing. (Mistree and Dibley 2018, p.5)

By the Slovak Republic Strategic Plan against the corruption created in 2010, the corruption is defined as a kind of promise, offer, or bribery provided with the aim to influence somebody's action or decision. It can be as well the demand for inducement or its acceptance. As it is mentioned by the Strategic Plan, the bribe in our public administration cannot be necessary a financial one, it can have many other forms, e.g., giving an information, providing material gifts or any other advantages. It might occur in the form of a certain kind of services or having a form of favouring relatives or acquaintances. Further on, the corruption can have a form of an extraordinarily advantageous contract concluded by an entrepreneur or the next of kin administrator who has a power to decide. The activity which is generally known as nepotism or clientelism is quite common on all levels of our society. We can say that we can every so often meet with the mentioned practices accompanied by the dishonesty mainly as regards the misused of Euro funds, the abuse of political power in the form of mobbing, chicanery or even the torture. Moreover, in our localities we can quite often come across another characteristic administrative failures, such as the administrator duties improper non-performance and the lack of public servant professional virtuous proper behaviour. Another negative aspect of the public administration behaviour rests in the administrator decision powers, e. g., in services, concerning lowering or enhancing tax payments, obtaining building licenses, or when an early warning before the police encroachment is needed.

Within the state service, as it is commonly accentuated by many authors and perceived by public, we can meet with the various forms and methods of corruption, e.g., ministers "sell special rewards" for obtaining their independence and freedom in their decision-making. Some administrators take commissions for the public orders, and the entrepreneurs obtain orders in case of providing various special advantages for administrators, sometimes it is common that the executive power representatives accept bribes instead giving penalties to abusers.

The least that can be said is that corruption stands for the whole society's deformation and manipulation regarding the profit distribution when the legal and unethical standards follow just the benefits of wrongdoers (Blalock, 1992). As citizens, we are entitled to expect that the civil servants, politicians and businesses honour the principles of righteousness and the professional moral integrity. We are entitled that the provision of public services is without being asked to pay a bribe, and we are legally and morally obliged not to pay bribes if asked for them. We are also entitled to expect that government will provide services and goods fairly

and without personal favour. Nor should we expect to be favoured by friends or family in government in relation to the public procurement or employment.

Even if the international comparison shows that there is not a sufficient guarantee and satisfactory level of the fair standards in practice, mainly as regards the corruptive behaviour and corruption as such, it still seems to be one of the basic social problems especially in environments where the so-called corruptive climate dominates, “when an actor seeks an unauthorized benefit from an organization in a manner that could comprise the public trust in that organization” (Mistree and Dibley 2018, p. 20). After all, it can be said that corruption mainly exists where the community indifference exists accompanied by a lack of the transparent policies enforcement or when corruption relates to the weak state economy.

2. Effective Legal Environment in Slovakia

Corruption and mega scandals connected with it have become a widespread topic which thanks to our media constantly resonate in many areas of our society, e.g., they are common not only in the public administration but in the areas of sport, culture, public policy and in the private spheres. As it is given into attention by Jackson and Brown (1990), the putting in motion the public discussions calling for the more effective anti-corruptive measures corresponds to the contemporary course of events in many countries, and we have to say that it is actual for our country as well. In the first place the main aim of the anti-corruptive measures is to reach the better and more up-to-date legal environment in order to reduce the number of corruptive practices, the likelihood of crime and violence, and in this way to contribute to the enhancement of the public administration transparency which is closely interrelated to democratic values and respecting of the good governance principles. In addition to that, the United Nations emphasizes the orientation on the basic values of the consensus-oriented and participatory public administration following the rule of law based on the respect and esteem of all individual basic human rights and freedoms (Buchanan, 2000). In this essence, it is required to apply a new citizen-oriented management by the government institutions, the approach where the relationships and partnerships have become more important than as it was in the past, that means to divert from the stereotype generalist” know-it-all- model” emphasised by Vigoda (2002) towards the most active, open and the content-dependent approach. (Ondrova, D., Ethical public administration in democratic state, 2018, p.6).

Following the improvement of anti-corruptive measures, the European Union has worked out the so-called “Anti-Fraud Cycle” including prevention, detection, investigation, prosecution, recovery, and the sanction mechanism. In this way the European Union tries to apply a kind of” the holistic approach to fraud prevention” across the whole European Union (Brussels, 2016). As it is declared in document, the priority in the mentioned cycle is given to prevention, management, certifying and auditing in order to alleviate the risks of fraud and

malaise. Detection is a critical phase that 'should be handled with the due attentiveness and proactively by all participants, management, and control authorities, including audit authorities as well as the law enforcement services (Brussels, 2016). Investigations and prosecution are closely interlinked, their competence requires properly qualified staff, full cooperation of the management and the control authorities combined by a smooth collaboration among all authorities. The cooperation with other relevant actors on the level of the European Union and the national actors is of a high importance. The retrieval and sanctions have to be operative and strictly followed up by the relevant administrative and the law enforcement authorities (Brussels, 2016, p.8).

Even if the reality of the Slovak Republic is far from an ideal state of actions, it has an adequately elaborated formal legal system aimed at the elimination of corrosive and corruptive practices, e.g., the Criminal Law No. 300/2005 Coll.as amended, comprising the substantive provisions concerning corruption and the abuse of power. Anyway, we have to mention that the declared Act dated from 2005 is not fully compatible with the contemporary situation which has been considerably worsened in many areas of our life, e.g., in the area of health care, judiciary, education system, police and agriculture, and that`s why the innovation is wanted. The mentioned Act is connected with the Criminal Code No. 301/2005 Coll.as amended, regulating the wording of the criminal deed case substance. Equally as the Criminal Law, the Criminal Code should be amended in order to be in congruence with the present-day situation whose shadow aspects correspond with the contemporary reality of the Slovak Republic that holds one of the lowest places regarding the occurrence of corruptive practices number. At present, according to the Transparency International Global Corruption Barometer, Slovakia has to improve its ranking considerably.

3. Effective Anti-Corruption Institutions in Slovakia

At present, if we look at the Slovak Institutions dealing with the corruption prevention, there are the following ones: The Anti- Corruption Bureau of the Police Presidium Corps, The Public Procurement Office, The Public Defender of Rights, and the other relevant offices and institutions. Besides that, the Government Office has established the Anti-Corruption Service-Line for dealing with the special cases, and at the same time to give a chance to citizens to report their suspicions regarding the corruptive behaviour including the petty and grand forms of corruption. The Anti-Corruption Line is a part of the control program managed by the Division concerning the prevention of corruption in collaboration with the specific task bodies having been active in this area. This Division organizes and coordinates their activities and an important role rest in their participation in partnership projects aiming at the minimalizing or the entire elimination of corruption in the Slovak public life. At the same time, the aim is to eliminate space of the corruption in the public administration in cases where the public administration

institutions and organizations provide the public procurement or when they deal with the state property. One of the most used pillars of the mentioned programs is the usage of electronic tools. By means of the electronic appliances a chance is given to become more transparent and open as regards the state and public administration decisions, staff expenditure, contractual payments and their minutes giving the necessary information for public including elections and the public procurement.

Finally, we can say that it is without any doubt that the changing of law acts and regulations are needed, but at the same time the implementation of other necessary means must be put into the everyday actions provided by the public administration authorities. In the first place it wants the obligation to extend the scope of required information for citizens delivered by state, judiciary, and all public administration bodies, and in this way to enhance the public confidence towards their institutions and authorities. Recently, as it has been already mentioned, a lot of huge political causes and discrepancies have got into the surface, and they certainly call for the more transparent central evidence of incomes and expenses not only of the political parties but the political leaders and public dignitaries acting on all levels of public administration. Moreover, it is necessary to clearly define the use of state and municipal properties, services, and other means in cases when they are used for private purposes.

4. Active citizens participation model

Within the anti-corruption program and the principles of open governance, it is necessary to enable citizens to be actively involved in the creation of public policy on all levels, the local level, and the state level. Instilling the public control of public administration everyday activities, especially as regards their decision-making procedures, the participatory aspect of public administration is needed. Citizens have not only the right but also the obligation to demand the material accountability of their dignitaries who are responsible for dealing with the public resources and funds. In case of the public control absence, the threatening of politicians or administrators misuse of power is evident and the use of unclear and illegal practices might appear. According to the recent survey conducted by the Anti-Corruption line the following examples of the citizen active participation have been evident: in 2018/19 there were around 158 instigations put on by our citizens concerning the corruptive practices, around 50 citizens have used the anti-corruptive line, and 145 citizens have laid down instigations in a written form. From this evidence follows that citizens have an interest to control administrative acting and to help to do away with corruption. At the same time, the active citizens engagement and political involvement might become a kind of panacea curing the representative democracy crises in our country, and to overcome obstacles connected with the democratic advancement. The active public and political participation help to fill a vacuum between the state and citizens and thus strengthen the citizen trust in public institutions and organizations. The dependency-

pattern-public administration-model, which was used in the past during the totalitarian regime in our country characterized by the routinization and the rigid employment rules must be converted into the representative “active -participation-model” where a citizen is not dealt as a passive user but treated as an active self-conceited participant.

Besides that, the active -participation-model requires the public participation awareness and citizen new way of thinking combined by the revival of the public administrative professional ethos and ethical craftsmanship. At present taking seriously the public administration integrity and good governance is called by many authors finding its expression in their theoretical conceptions labelled as the “New Public Service “ (Denhardt, 2011; Haque, 2014; Adams and Balfour, 2008), or the “Public Virtue Approach” (Tholen, 2014; Garofalo, 2011; Frederickson, 2002) characterized by respecting the public administration values and the public servant professional virtues where an administrator is “a virtuous gentleman, knowledgeable, non-corruptive, respectful, honest, forgiving, compassionate, and trustworthy “(Frederickson, 2002,p. 616). By Berry Tholen “the Public Virtue Approach offers necessity to focus “on responsible individual, personal judgement and deliberation and not on individual rent seeking and calculation” (Tholen, 2014, p. 45). The non-corruptive good governance must apply in its administration the principles of the managerial qualities together with the transparent infrastructure which should become an inseparable part of politicians and the administrators work. Both politicians and administrator must be the advocates of the good governance respecting law, democracy, and the accountability mechanism regarding their deeds and decisions strictly following their administrative code of conduct. They have to become the real professionals with an adequate education and personal virtue qualities aimed at the actualization of the active civic society (Garofalo, 2011). As it is emphasized by Berry Tholen, Garofalo and Cooper, the real reorientation of the public administration rests not only in the changing of technical instruments and skills, but it has to be concentrated on cooperation and dialogues with citizens. The community communication and negotiations must be in the centre of their work carrying on common and communal goals, and thus making the public managerialism less corruptive and deformed. The encouraging of the traditional ethical standards like political neutrality, justice, accountability, equality, fairness, and human dignity leads the public administration management towards the more human oriented public administration where the final goal is the Aristotle`s and Kant`s teleos that is a human being. (Ondrova, D., 2018, p. 11).

5. Protection of Whistleblowers

Another important step in helping the improvement of the irritating deformations of the Slovak public administration rests in the elaboration of the effective system of whistleblowers protection. Whistleblowers called in Slovakia” the white crows”, by Judith A. Truelson there are

called “the indispensable agents of accountability” (Truelson, 2001, p. 407) considerably hamper the occurrence of many government and administrative misdeeds. They assist in “any disclose of information by an employee which the person reasonably believes evidence a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety (Truelson, 2001, p. 408). Besides that, she argues that the current scheme of whistleblower protection, e.g., in the USA needs “to be expanded and better enforced and to develop the extra-legal survival strategies for dealing with bureaucratic blockages to legal intent (Truelson, 2001, p. 407). The same is true about Slovakia, the mentioned legal modes might be an inspiration for our society to protect whistleblowers more consistently and efficiently and to put to the fore the legislative strategies over the simply relying on the executive branches, e.g., police themselves.

The approved Act No.307/2014 put in force 1st January 2015 is just the formal answer to meet the public requirements without any evident practical application. Its official form is in the versions of the internal provisions and regulations laying down the incitements in connection with the unlawful and antisocial activities. Formally, the Act has been accepted by all levels of the public administration authorities, but its implementation in everyday life is regularly deformed. Moreover, the possibility to announce anonymously the anti-social acts of public administration authorities or individual representatives, e. g., by means of using black boxes or any other anonymous procedures are limited and hardly used by our authorities as it was found by our research questionnaire and student`s personal experience. There are still many barriers and obstacles to overcome the fear connected with one`s own ethical and moral deeds. Anonymity, as it is mentioned by many authors, might certainly help to disclose the nature and credibility of whistleblower as they are often labelled as “persona non grata” “since they discover the lapses in public administration and the public officials” (Caiden, In: Cooper 2001, p. 431). Besides the above-mentioned Act, in our country the protection of whistleblowers is formally guaranteed by the following legal regulations: Labor Code No. 311/2001 Coll. as amended, State Service Act No. 400/2009 Coll. as amended, and Law on Complaints No.9/2010 Coll. as amended.

Labor Code emphasizes that nobody can be persecuted or in any other form punished in connection with the exercising labour relations. The State Service Act defines the employee`s right to lay down a complaint regarding the state service matters provided by the state authorities. Further on, the duty of the state employee is defined to announce the organizational or the law enforcement authority`s causations regarding damages or the misuse of property belonged to or managed by the state administration. The Law on Complaints is considered to be the general amendment regarding laying down complaints. The protection of complainant is assured by paragraphs 7 and 8. To lay a complaint gives no reason for making

any consequences for a complainant. Any information which is the part of the plaintiff documentation content must not be made accessible. The public administration authorities are obliged to keep secret of complainant identity in case he/she asks to do it. The public administration authority is allowed to do it only if it is within the interest of carrying out a definite complaint. When investigating such a complaint, its transcript or copy are proceeded on without assigning any data which would identify a complainant. Lastly, it can be said that in our society the protection of whistleblowers is more or less formally declared and only slowly it gets into our everyday reality. The reason might go back to the previous totalitarian regime when people were afraid to express their opinions and the criticism was strictly punished. This way of thinking still prevails among some groups of people missing the understanding that their participation in public matters is not only their right but personal accountability to improve the stated status quo. This way of thinking only gradually has been changing and it still needs to be accepted by the general public.

Conclusion

Summing up, we can say that in spite of many failures which have been done in the Slovak Republic public administration, there is still a huge number of the honest administrators, public administration representatives and citizens who want to be active in combating corruptive practices. All of them together with the experts, academics and the honest politicians try to unknit this Gordian knot searching to find out the most appropriate solutions to make democratization of the public administration more open and transparent. The most reliable prospect which might help rests in a closer consensus between the legal rules, laws, and the ethical integrity including the application of both commonly used models, the traditional one resting in the principal-agent unauthorized activities, and the model concentrated on the collective anti-corruption activities. Sometimes certain forms of corruption might be best addressed through the lens of the principal-agent model; at other times, corruption is better framed in collective undesirable actions focusing on anti-corruption efforts on both public-private and wholly- private forms putting attention on all unauthorized acts damaging the public institutions as consequences of their acts. (Mistree and Dibley 2018).

Besides that, the occurred incompetence of public administration and their staff can be improved by means of enhancing their personal professionalism putting into the fore their ethical and legal abilities and skills which should be accompanied by their constant regular education and training. The lack of the mentioned qualities and values usually leads not only to the deformation of law, but to the widespread corruption and distortion of our political system. To express it in words by Menzel, it means that without the public ethos, the public policies and public administration might fall into “an ethical vacuum which is likely to swallow up even the most well-conceived plans, policies, and day-today operations of governing” (Menzel, 2001, p. 357).

In spite of the fact that the fight against corruption is a long process, the earlier improvement might be reached by fostering all society moral integrity accomplishment and the faster and more effective communication and cooperation among all segments of our public administration.

Being responsive to the community needs, willing to listen and not only giving orders, accepting the general public participation in governance of public affairs at all levels will assure the people trust that they have responsible and accountable public servants and representatives who are ready to serve them and ready to improve the quality of their lives.

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