

# **The influence of external political and media pressure on the prosecution of high-level corruption cases**

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### **Introduction**

I'm a prosecutor of a small European country – I'm a prosecutor from Estonia. There are 1,3 million people in Estonia and we are keen on the internet. We are doing everything via the internet: we pay taxes, buy tickets, establish companies, get doctor's prescriptions, bring up our kids by monitoring their marks and behaviour through a school management environmenteKool is a school management tool - eKool.

According to Corruption Perceptions Index 2018 of Transparency International, Estonia ranks the 21st among the less corrupted countries in the world with score of 71 out of 100 (index value must be above score of 64). The total number of the countries in this index is 180. Over recent years, Estonia has been annually improving its score.

The Eurobarometer survey has shown that Estonian people assessed the state performance in preventing corruption as rising from 32% in 2012 to 34% in 2017, which means that more than one third of the Estonian population thinks the Government's efforts in fighting against corruption to be fruitful.

In 2016, more than 500 corruption cases were registered in Estonia while in 2017, there were almost 300. Anti-corruption activities are a state priority as agreed upon by and between the Ministry of Justice and Ministry of Internal Affairs.

Apart, we are keeping track of serious corruptions cases<sup>1</sup>, at that we distinguish between registered crimes, court cases and adjudicated cases. Among 170 prosecutors all over Estonia, there are 7 prosecutors specialized in corruption crimes.

So, on the one hand, "all is gas and gaiters". However, having myself first-hand

experience with criminal proceedings of such type, it should not go unspoken that there are some challenges to meet: conspiracy typical of such criminal activities both in deeds, transactions and property; a small number of parties motivated to detect a criminal offence (because everyone feels satisfied); a stronger pressure and high expectations for results of judicial proceedings after disclosure of cases.

The purpose of my today's presentation is to talk and to discuss with you the factors influencing the conduction of corruption crimes proceedings. Within the next twenty minutes, I'm going to dwell on an issue of corruption as a phenomenon and that of the media influence. In conclusion, I'm eager to discuss with you to what extent the media influences the fairness of judicial proceedings and presumption of innocence within the framework of corruption crimes proceedings in our today's society.

[1] Serious corruption is construed as crimes related to taking advantage by an official of his or her official position and in private sector, if such crimes have been committed by three or more persons or with their participation; if alleged income derived from corrupt practices of an official or a person acting in private sector exceeds significant damage (more than 4000 Euros); turnover of transactions involving the risk of corruption or alleged damage exceeds major damage specified in the Penal Code (more than 40 000 Euros); if an offender is an official, judge, prosecutor, senior investigating official (including officials of the same service rank in an investigative body or security authority as specified in Subsections 50 (1-4) of the Police and Border Guard Act), President of the Republic, member of the Parliament of Estonia, member of the Government of the Republic, head of a constitutional institution, a governmental authority, a legal person governed by public law, a company with state participation or a local government agency.

## **Corruption**

Surely, I do not have to explain in details what is corruption and why it must be fought against, yet to ensure a uniform information space I'd like to share with you some basics:

- Corruption is taking advantage by an official of his or her official position for the purpose of personal gain;
- Corruption may be committed both in public and in private sector;
- High-level corruption notions differ from state to state, nevertheless, it is generally perceived that a high-level corruption case must include corrupt practices of key actors in sensitive areas of state functioning.

Criminal proceedings are surely not the only and the most effective way to fight against corruption, since these are already the consequences that are dealt with therein. No matter how much it is invested in these proceedings, it is obvious that criminal proceedings alone cannot decrease corruption rate. It is necessary to invest in prevention activities, in establishment of transparent decision-making and internal audit procedures in order to break free of corruption in a sector, region, institution, company or state. Yet, we are aware that just prevention is again not enough. Every now and then, we are witnessing ineffective prevention or weak internal audit tools, as a result of which a crime has been committed and the legal system has to administer justice in keeping with the rule-of-law principle.

Corruption has a detrimental impact on people's trust, on fair and legal functioning of the state and on economic environment, i.e. on conditions of fair competition.

Therefore, the latter deserves regular and deliberate attention, which I want to illustrate via examples as hereunder. In the short-run, a bribe may offer an official an advantage, yet in the long-term, it will have a harmful effect on economy. Internal anti-corruption purification intensifies, if honest businesses understand that a competitive advantage gained by fraudulent means causes damage to fair market rules. In the long range, if the next bribe-giver agrees to pay more, he or she will suffer damage as a market player as well. For example, when distributing the monetary resources of the European Union structural funds by way of corruption, honest businesses playing by fair market rules suffer great damages, because one million Euros fraudulently goes to a misrepresentor, as a result of which the latter gets a competitive edge over other market players. Concerning the ethics and the values, the competitive advantage is primarily accompanied by economic damage, since the monetary resources gained by fraud are often circulated for own benefit, not in the interests of the state and fair economy.

Considering the media's attention on prosecution of corruption cases, it is necessary to constantly raise awareness of corruption and its hazards, by that educating the society and setting the scene for the next "corruption scandal".

### **Principles of anti-corruption efforts**

Corruption is a concealed type of crimes, parties of which are generally not interested to report about it. The number of registered corruption crimes is often correlated to the amount of resources allocated to fight this type of criminal activities. If resources are not invested, corruption crimes are unlikely to be detected or to be decently heard at court, which does not mean, of course, that corruption does not exist at all.

But how to measure the amount of resources (how many investigators or prosecutors) to be allocated and what are these resources precisely targeted at? A key word in case of anti-corruption efforts is a high-quality case analysis. Without giving specifics, such analysis includes working with people, databases and other sources of information.

The analysis shall offer the society a so-called bird's eye view of corruption issues. For the most part, there are sectors, regions, transactions or offices deserving more focused attention, if only the state has enough resources to deal with all this. What is a solution? By setting priorities. Each particular state has its own particular criteria, and they depend on the state's situation and background systems, however, in a broad sense, a criterion must be an impact on the society through reducing corruption. First of all, it is necessary to deal with cases the results of which shall inspire in the society a greater trust towards the state. Thus, if the case analysis refers to corrupt practices, for example, in medical procurements that are tied to political parties financing and more serious corruption in construction sector, the state shall direct its resources to proceedings of the first case, provided, of course, that the information is reliable. Whatsoever prioritization is unacceptable, but it needs to access through regular monitoring procedures a priority level of specific cases, sectors and regions involving the risk of corruption.

If in addition to the analysis, the priorities have been set too, it is just necessary to inspect a "tool box" to be used for proceedings of corruption cases, or, in other words, which corruption level the legal protection system has to influence. It is a discrete topic to discuss since, if to be quite honest about it, the efficiency of anti-corruption efforts depend on the frameworks and rules foreseen in a particular state

to fight against corruption and to detect such crimes.

And, however the EPPO (European Public Prosecutor's Office) will definitely provide in the future a possibility to fight corruption in cases related to misuse of the European Union's monetary resources, as of today we still have to somehow manage by means of national laws and international cooperation.

After disclosure of corruption cases, there are always in place highly-charged public discussions about the state capability to conduct proceedings in corruption crimes. Discussions are good, especially in terms of finding a balance point for the fundamental rights, freedoms and duties of suspects and the rights of persons who suffered damage as a result of corruption.

High-level corruption is tied to the power and the money. The power means, inter alia, the power of influence and the freedom to voice an opinion. The money means public relations services, offering and asking merits and often mutual guarantees. Therefore, it's not news for prosecutors specialized in corruption crimes to hear such statements as: "This case has been politically induced", "It's been unlawful interception of communication of innocent people whose fundamental rights have been violated by that", "There is no evidence to support the charges in this case".

That is exactly a sort of a test for the political power. If there is a trust towards the state's legal system, its fairness, professionalism, impartiality, then corruption receives a public censure and criminal proceedings are provided with more effective tools to fight against corruption. If there is no trust or there is a certain tolerance towards corruption for whatever reason, the success of anti-corruption efforts may not be guaranteed and possibilities of the "tool box" may be cut back under the aegis of protection of fundamental rights. It may lead to complication of regulations, imposition of an obligation to share information with broad audience, politization of certain judicial offices or validation of unreal conditions, forbidding, for example, surveillance activities in corruption crimes or setting time-limits for proceedings impossible to meet in case of high-level corruption cases.

Why all of the aforesaid is essential in the light of our today's topic? Because it is extremely difficult, if not impossible, to be engaged in a dialogue between the legal system and political forces or between the legal system and the media in the thick of a corruption scandal. Nevertheless, this dialogue has to be maintained within the society in so-called quiet times. Explaining and talking openly about functioning of the legal system, about inspiring therethrough a trust and building a bridge between people and systems interested in the existence of the fair and transparent society. It is possible to build networks through this dialogue "to catch" another corruption scandal.

So, these are four major anti-corruption challenges:

- High-quality analysis
- Prioritization
- Appropriate and effective tools stipulated by law
- Public and media pressure on the prosecution of corruption cases

I'd leave the first three ones for some later speeches to come and focus in details at the fourth challenge.

## **The public and media pressure on the prosecution of corruption cases**

Just in jest, we can say that in the prosecutors' perfect world, corruption cases shall be disclosed on the date of the validated court judgement of conviction. In the era of social media and PR, the reality is different.

The rules for obtaining, making public and sharing of information about criminal proceedings differ from state to state, yet, paradoxically, the media's interests in corruption cases and public expectations as to detection and prosecution of corruption crimes are similar. It is not unreasonable since the media and the public at large are not interested in criminal proceedings as a procedure but in a corruption case as an indecent and honourless deed. And then some certain expectations of the public clash. As prosecutors, we have to guarantee the conduction of proceedings in accordance with the rule-of-law principle, presumption of innocence, fair adjudication and a rule that justice is rendered by court only. Having got informed that leading statesmen have betrayed their trust, people wait for prompt answers and quick punishments.

If there is anybody sitting here who has never experienced such a clash of interests in proceedings of corruption cases, please, raise your hand!

How can we then work under such reasonably high pressure of the public interests and the media? I do not dare to say that my ideas and proposals are just the ticket for everywhere and everybody, but I would still like to continue. It should be mentioned meanwhile that in Estonia, a prosecutor leads pre-trial investigation and a prosecutor is responsible for disclosure of the information obtained during pre-trial investigation, which means that if a high-level corruption case has been disclosed, it is a prosecutor's duty to explain the case to the public and to guarantee the principles of fair prosecution and presumption of innocence. Through such system we try to keep balance between the principles of the open state and the justice, otherwise if we do not speak at all, the state will not be open to communication with people. On the other hand, if we talk too much, we will be not able to guarantee the principles of fair prosecution and presumption of innocence since from our perspective, it is just a prosecutor who is responsible for that, who represents public prosecution at court and who is supposed to have a strategic view of the case. The information offered for disclosure is typically of general kind with no evidence provided and with protection of all parties to proceedings, including witnesses, not to mention victims and suspects, in case of a high public interest that is measured through the principle of proportionality on a case-by-case basis. For example, a judge accepting a bribe is always a high public interest, because the fairness standards set for the legal system are very high. However, in case of a municipal department head and a capital city mayor, there is a high public interest in respect of the latter, at that the businesses giving a bribe may not be in focus at all.

Those cases when representatives of irrelevant legal persons ask to disclose the names of the suspects to restore reputation of a bona fide business are interesting as a matter of law. However, there are no right or wrong solutions. In Estonia, such decision is to be made by a prosecutor on a case-by-case basis. The decision may be, in turn, appealed both in civil and administrative courts.

Still some words about the public interests and the media pressure. The media

pressure suggests a number of challenges in pre-trial investigation – how to encourage witnesses to speak up when they may steal the limelight; how to guarantee the principles of fair prosecution and presumption of innocence in a situation when the social media already “knows” and “discusses” an issue; how to avoid the spread of false information and manipulations that are often successfully managed and navigated by recruited PR companies; how to defend ourselves against PR companies’ attacks, provided that our duty is to follow the rule-of-law principle. Nonetheless, the public interests and the media pressure have a positive effect for the society: it is possible to explain a negative impact of corruption through pro-active communication, i.e. by way of preventive and clarifying messages, and by that to activate axillary processes of criminal proceedings to reduce corruption.

Though some ideas have been already mentioned before, now I would like to summarize them all:

- The state’s legal system should explain the principles, choices and strategies of its functioning in a spirit of “open state”;
- It is necessary to make aware of the impact and significance of communication in high-level corruption cases;
- A dialogue between the media and the legal system must be always in place, first and foremost, in the times of no crisis, because then it is easier to handle a crisis when it comes;
- The legal system has to agree upon a communication strategy of criminal proceedings, i.e. when, to what extent, by whom and to whom the information has to be provided;
- It is necessary then to stick to this strategy and to spread the message about its background and nature;
- The state’s legal system has to guarantee the rule-of-law principle, fair prosecution and presumption of innocence.

I believe that the legal system should not speak much about corruption cases through the mass media, but every spoken bit of information must be true. All parties to proceedings must be protected and properly treated. In the era of the quick-response social media and freedom of speech, fair prosecution and unbiased justice must be guaranteed.

Now you are welcome to share your opinions about the pressure exerted by the media on corruption cases, about the fact that presumption of innocence in such cases is at risk more than ever before and about the assumption that whether a principle of fair prosecution and adjudication deserves being protected or not nowadays.

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