THE PREVENTION OF CORRUPTION CASES, TOOLS FOR DIFFERENT MEANS OF INVESTIGATION

A TOOLKIT for practitioners

The prevention of corruption cases, tools for different means of investigation

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INTRODUCTION

The guide aims to assist practitioners in identifying and classifying corrupt behaviour on a day-to-day basis, and to provide general guidelines for investigating and prosecuting corruption. The criminal justice staff must have adequate resources, well-developed instructions, and continuous and specific skills as well as knowledge development are also essential.

Another important element is to raise citizens' awareness of corruption. With the right knowledge and information, citizens will be able to recognise certain corrupt practices, and not only detect them but also report them to the authorities. It is a significant task to develop additional methods to bring corrupt behaviour to the attention of the criminal justice system.

Along these lines, we summarise the options and tools that law enforcement has, in order to detect and investigate corruption effectively.

The first important question that should be measured whether the conduct that the representatives of the investigating authority may encounter falls within the scope of criminal or non-criminal corruption. The types of corruption that are prosecuted under criminal law in a given country vary from one Member State to another. If we look at the Netherlands, for example, trading in influence and buying influence are not criminalised, while in Finland it is economic bribery, which has not been prohibited by criminal law for a long time.

Any conduct is criminal if the legislator considers it dangerous to society to such a degree that it is expedient to combat it by means of criminal law; in other words, the legislator codifies a criminal offence for a particular form of conduct. In many cases, non-criminal behaviour may be deviant or even immoral, but is not subject to criminal sanctions, which does not necessarily mean that they do not contravene sectoral rules (e.g. tax legislation, non-competition regulations).

Forms of political corruption, such as nepotism (giving a relative an advantage or a public office), clientelism (giving a public office or a mandate to a clientele for political support), favouritism (appointing or giving a mandate to members of one's own party), or even the "winner takes it all" principle are very dangerous for the moral state of society; however, these often fall outside the scope of criminal corruption. (INZELT, 2015: 19)

The categorisation of corruption phenomena in a given society is illustrated in the figure below.

Source: (LIGETI, 2016: 729)

Conduct that is not legally describable or expressly considered lawful under the diagram is also considered corruption if it is intended to obtain or retain an improper advantage, i.e. one that cannot be obtained or retained in the absence of such conduct, or if it leads to such a result.

An example of the former is the phenomenon of gratuities,[1] which is controversial in criminal law but morally impermissible, or the case of public contracts that damage public property but do not constitute a criminal act, resulting in wasteful management. It also includes obstruction of access to information of public interest relating to the exercise of public power and any questionable use of public money. The latter, corruption manifested in formally legal action, is nothing more than the legalisation of corruption. (LIGETI, 2016: 729)

Taking these aspects into account, it can be argued that the prosecution of corrupt practices is also difficult because they are not exposed by due to the commonality of interests between the parties, and thus corruption is characterised by a high degree of latency. In this case, some of the acts will only come to the attention of the authority if the balance of interests between the parties is broken for some reason and one of the parties can be made interested in the investigation. For this reason, plea bargaining and the prospect of prosecutorial action (investigative bargaining) are of particular importance in criminal acts of corruption.

Another classification (JANCSICS, 2019: 523) is based on the *resource transfer-based concept*, which takes into account the different beneficiaries on the client side of corruption and covers the main forms of corruption. The typology outlined addresses important social and organisational aspects of the phenomenon. The approach discusses four main dimensions, indicating the resources transferred, the motivations of the perpetrators, the different forms and mechanisms of coordinating actions, the relationships between the actors, and the strategies to keep corruption secret. It is also important to identify the level (micro-mezzo-macro) at which each type of corruption is most visible and detectable.

[1] It is worth noting that, since the publication of this study, with the introduction of Act C of 2020 on the Healthcare Service Relationship, the perception of gratuities for doctors has also changed and has been included in the list of prohibited offences.

Taking these aspects into account, the following four types of corruption can be distinguished:

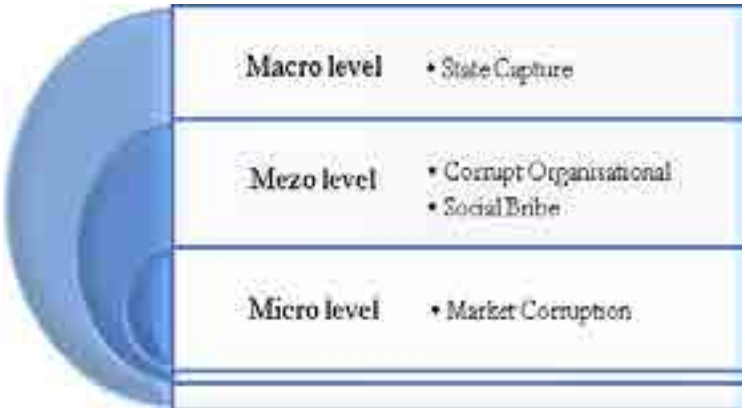
⇒ The first type is *Market Corruption*, which is a one-off transaction, typically at the street level, involving bureaucrats and micro-level social interactions.

⇒ The second form is *Social Bribe*, which is a recurring activity, typically involving the use of resources available to members of the middle level of an organisation to benefit family members, friends or even the local community. When analysing this type of corruption, it is necessary to take both the social and organisational context into account, in respect of the actors involved.

⇒ The third type is *Corrupt Organisations*, where multiple participants in corrupt transactions collude within the hierarchy of a larger organization. These actions are at the intermediate level, which requires an understanding and analysis of the dynamics within the organisation.

⇒ The fourth variant is *State Capture*, which is a systemic form of corruption. It includes acts of corruption by government elites, lawmakers and powerful economic actors, which redistribute significantly more resources than the first three types. In these cases, a macro-level approach is needed, as well as mapping political institutions and inter-organisational structures.

It is important to emphasise that anti-corruption strategies must be specific to the type of corruption (see the different dimensions related to the four types), distinguishing between the various types of corruption.



Source: Own editing

Three groups of causes can be distinguished as *motives* for corruption:

"[The] i*ntrinsic motivation* of active and passive bribery offenders, the perception of the behavioural flaws that led the offender to the criminal path (intrinsic causes), the *structural features* of the organisation that facilitate, tolerate or even attract corrupt acts (organisational causes), and the *dysfunctions* that are manifested in the relationships between the organisation (office, entity) and its customers." (FINSZTER, 2008: 44–47) The analysis of internal causes highlights the fact that poverty and vulnerability can be as much a criminological factor in corruption as economic and power dominance. Knowledge of these characteristics is important because it can be used to infer which organisations and individuals are at increased risk of corruption, which is important because it is along these lines that scarce law enforcement capacity can be focused and used effectively.

Corruption is one of the most difficult criminal acts to detect and prove, because there is no natural person victim of the acts; the possibilities of physical evidence are limited; the acts do not leave any physi-

cal traces; third parties do not have knowledge of the events; and the moral judgement of these behaviours is not clear. From the point of view of detectability, a distinction can be made between occasional-situational and institutionalised-structural forms of offending. Occasional-situational bribery refers to unexpected, contingent encounters between active and passive bribers: these acts are usually one-off, such as bribery during a traffic stop. In these cases, the most effective means of proof is to *catch the person in the act*. (FINSZTER, 2011: 77) *Institutionalised-structural type of offences* "are considered to be predictable and plannable, regularly recurring offences by active and passive actors, where the objective reasons for bribery are the result of the organisational culture and the procedural rules of the given office or economic area." (FINSZTER, 2011: 77). These are multi-pronged offences with complex networks of interests, which makes the use of *covert means* the most effective method of detection.

For a long time, the fight against corruption has focused primarily on sanctioning, which has led to a reactive, slow and cumbersome game of robbers and cops. (PALLAI, 2014: 185–186; quotes HOLLÁN, 2018: 18) This approach has been complemented by a proactive attitude, including an emphasis on integrity management, which requires the reinforcement of values and the creation of an organisational culture that promotes compliance with anti-corruption rules. (PALLAI, 2014: 187–189)

It has long been a basic assumption among corruption researchers that criminal law instruments do not play a primary role in the fight against corruption, but of course they cannot be ignored either. (MÁRKI, 2001: 37–38) It should be stressed, however, that *criminal law and integrity-centred approaches* are not mutually exclusive, but should be mutually reinforcing. (PALLAI, 2014: 191)

In addition to the retributive (repressive) effect of criminal law, let us not forget the general and specific preventive objectives. (BORBÍRÓ, 2016)

I.
GENERAL GUIDELINES FOR THE EFFECTIVE INVESTIGATION OF CRIMINAL ACTS OF CORRUPTION

Before analysing the investigative acts in detail, it is also useful to have a theoretical understanding of the criteria of an effective investigation. The following is a collection of the main features that should be taken into account and applied to the effective functioning of the institutional system for investigating corruption.[2]

1. Encouraging 'witnesses' of corruption incidents to report corruption. Part of this is to create rules which concern the protection of witnesses and persons who report corruption.
2. Integrating audit and control mechanisms into sectoral procedures that are capable of providing information and evidence of acts of corruption.
3. Developing strategies to encourage those involved in corruption (e.g. motivational targets and tools when unsuccessful participants in a corrupt tender for a public procurement contract report it).
4. Giving investigating authorities appropriate powers to collect data and information.
5. Ensuring that members of the criminal justice system have sufficient independence and autonomy to reduce the opportunities for corrupt officials to manipulate investigations.
6. Detecting a wide range of types of corruption requires special skills and abilities for investigators, which they can acquire through continuous training.

[2] Based on the guidelines of *United Nations Office on Drugs and Crime* (UNODC, 2004: 64., 415–439)

7. Providing adequate resources to work effectively.

8. Often, the strongest evidence of large-scale corruption can come from a long-term investigation and pattern of complaints of minor abuses. For example, it would be appropriate to collect and process data on all public procurement procedures.

9. The use of various covert means (e.g. telephone tapping, interception of electronic communications) within the limits of the law can provide sufficient evidence to detect corruption. In this context, the examination of open and closed databases – bank or financial records, company data, land registers, etc. – and other data, even if publicly available, should be highlighted. The authorisations required in corruption investigations should not only be obtained to examine the bank accounts of persons suspected of accepting 'bribes', but also to the persons suspected of having given the bribes; and the checks must be conducted on both the active and passive side - family members, friends, business associates and companies; in other words, as wide a circle as possible. The results of these investigations can be used not only in the initial stages of corruption investigations, but also for related criminal acts, such as concealing corruption offences or laundering the proceeds of the criminal act of corruption.

10. In some cases, covert means or other investigative methods used to detect other criminal acts may also reveal corruption, particularly in the area of organised crime.

11. In the investigation of corruption, for example, in the case of a corrupt civil servant, the dilemma often arises as to whether the (first) act of corruption committed by the official should be caught in the act, or it may be worth investing additional resources in the investigation in order to potentially uncover a wider network of corruption. This requires an individual assessment in each case.

12. The provision of adequate material, technical, infrastructural and human resources is essential in the investigation of criminal acts of corruption. In the latter context, it should be stressed that investigators need to be patient, flexible and adaptable. Strategy and tactics can often change as the investigation progresses, based on new data, information and experience.

13. Steps should also be taken to safeguard the security of investigations and investigators, not only to ensure the personal safety of investigators, but also to prevent the leakage of existing information and to protect physical evidence.

II.
SPECIFIC RECOMMENDATIONS AND STEPS TO CONSIDER FOR THE INVESTIGATION OF CRIMINAL ACTS OF CORRUPTION

It is important to note that there are no general rules for investigating corruption, but there are tools that can be used to improve the effectiveness of investigations.

Without being exhaustive, we will now summarise some aspects, stressing that the necessary steps should always be considered in the light of *all the circumstances of the case*; the information received must be used to determine whether a corruption act/series of acts has already taken place or is still ongoing.

Effective liaison and exchange of information between the authorities conducting the preparatory procedure, national security intelligence, crime prevention activities and the prosecution is of paramount importance for the detection of offences. *Both positive and negative jurisdictional rivalries between (co-)authorities work against cooperation.*

Evidence obtained through covert means is often lost due to a lack of cooperation from the authorities, for example because of late reporting or failure to report. As a result, further evidence may be 'lost'; for example, traces of corruption money may be lost over time.

The competent prosecutor's office and the police must be prepared to investigate an act of corruption even before the investigation. When preparatory procedures, intelligence gathering and national security procedures detect the likelihood of a criminal offence of corruption, a rapid response is often required; for example, when a transfer of corrupt money takes place within a few hours. In these cases, the discovery phase of the investigation may be skipped, and the preparatory procedure is almost immediately replaced by the investigation phase. If the authority investigating corruption only starts to get to know the players at this stage, it can easily lead to hasty, incomplete and misguided intervention.

1. What do we know and do when investigating corruption cases?

When information is received by the investigating authority, first of all the essential steps to be taken must be identified. It should be immediately detected whether the information concerns persons or institutions that are at increased risk of corruption. The first step is to obtain the data available under the provisions of the Act on Criminal Procedure[3] (hereinafter the Criminal Procedure Act) – such as telephone numbers, call lists, company lists, directors, scope of activities, job descriptions (what the person's job entails) – and use this to map out a possible network of contacts. The use of covert means is a later step, which will need to be substantiated by further data collection and data requests.

If the case concerns public procurement, it may be appropriate to examine the files of previously awarded public contracts, to ask the public procurement authority for previous tenders and to find out which tenders the company in question won.

If the facts of the case fall into the category of trading in influence – i.e. where the perpetrator refers to an official, a relationship or their own influence – it is essential to find out whether there is a real relationship between the perpetrator and the official; if so, what the relationship is between the two persons; and if, there is suspicion, whether there is an official who is being influenced. So we need to find out whether there is actually any potential 'rotten apple' in the system who can be bribed and whether there is a real link between them.

The first question to be clarified in the investigative phase of corruption investigations is what is the stage of the act: 1) an uncompleted act of corruption that is taking place in the present; 2) a presumably isolated act of corruption that has taken place in the past; 3) or whether it is a well-established or organized act of corruption. In the following, we go through the main steps according to these three types.

[3] The act in effect on criminal procedure, Act XC of 2017

1.1. Detecting an uncompleted act of corruption that is taking place in the present

In the initial situation, there is evidence that an act of corruption is taking place; for example, an advantage has been requested, offered and/or accepted, but the advantage itself has not yet been given or has not yet been provided.

The investigation of such an act is typically initiated in two ways: first, the corruption act is discovered during the *investigation of another criminal offence or during the preparatory procedure*, and, second, the authority receives a report from a whistleblower.

1.1.1. Investigations or preparatory proceedings *for another criminal offence reveal a still uncompleted act of corruption that is ongoing in the present*

The first step is to examine the admissibility of evidence from other procedures – which is essential for a warrantless instrument – and to make the evidence admissible (order an investigation).

The second step is to check whether the evidence can be used against all parties; if so, whether this in itself sufficient to establish reasonable suspicion. This step is significant because if the means of evidence can be used against both the active side (promise of undue advantage) and the passive side (acceptance of the promise of undue advantage), then, in essence, the act of corruption can be proved even without being caught in the act of transferring the undue advantage.

It is then worth considering whether

- there is sufficient time and manpower to catch them in the act;
- the measure taken to issue a summons to the suspect will jeopardize the effectiveness of other criminal procedures;

- there is a realistic possibility that, in the case of trading in influence, the alleged official is actually involved in the corruption.

In the event of negative answers to the above questions, catching them in the act is not required. However, it is necessary to organize

- the necessary investigations and seizures (including asset searches for promised benefits),
- seizure/recording during an inspection of telephones, computer media and documentary evidence,
- apprehending and interrogating suspects.

If further investigative acts are warranted before suspicion is aroused:

- specify the covert means that must be ordered without delay (covert surveillance, covert means subject to judicial authorisation);
- obtain as much data as possible on the perpetrators' background, financial situation and contacts from the available databases (business register, property register, register of offenders, RobotCop, etc.);
- OSINT[4] research must be conducted on the perpetrators involved, and their company and contact networks;
- to provide human resources for catching people in the act, to conduct searches and to set up a reserve in case further unforeseen procedural action is necessary;
- decide whether there is a way of tracing the money (possibly to the official) after the undue advantage has been given, or whether further covert surveillance is necessary or whether it is more appropriate to catch the person in the act.

[4] *Open-source intelligence*

1.1.2. Uncompleted act of corruption that is taking place in the present, reported by a whistleblower

Through example:
The whistleblower reports an ongoing act of corruption that has not yet been investigated by the authorities. Typically, the passive briber has asked for an undue advantage that he has not yet passed on.

Step 1 ➡ **It needs to be clarified whether or not the whistleblower themselves committed a criminal offence.**

Since, in criminal offences of corruption, it may in itself constitute a criminal offence if the whistleblower has already promised to deliver the requested benefit, it is necessary to clarify this issue at the outset. If the whistleblower has not specifically promised the undue advantage then, they are not criminal offenders, i.e. they can be questioned as a witness immediately after the report. If the criminal offence has already been committed (whether unknowingly or intentionally, only to change their mind later), due process requires that they are fully and clearly informed about the prohibition of self-incrimination and the consequences of self-incrimination.

In cases of misdirected corruption, the active perpetrator often feels they are a victim of fraud and is motivated by the desire to recover the money already paid.

If they are the perpetrator, it must be made clear whether they are aware of the self-incrimination and whether they are willing to report the crime, in which case the court may reduce the punishment without limitation.

If the whistleblower does not undertake to self-report, it must be examined whether the passive side's actions are so dangerous to society that the whistleblower can be advised to avoid criminal prosecution under Section 219 of the Criminal Procedure Act in the event that the corruption is discovered.

Step 2 → **If we have obtained a statement from the whistleblower that can be used as evidence, and the whistleblower states that there is a pending transfer of funds, we need to clarify whether the whistleblower can be involved as a confidential collaborator in the transfer of funds.**

Step 3 → **If the whistleblower does not agree to cooperate in secret, or if the investigating authority does not consider them suitable for secret cooperation, a longer period of investigation is likely to be required.**

At the version level, it must also be established whether the whistleblower has made an untruthful statement, for example, to get revenge on the official for not making a decision in their favour.

Thus

- the whistleblower must be questioned in detail as a witness (or suspect) and, where appropriate, offered the opportunity to give evidence by means of a polygraph;
- the necessary covert means to be put in place must be arranged;
- the necessary data must be obtained from the available records;
- OSINT activity must be conducted on the whistleblower and the person reported;
- if the testimony indicates systemic corruption, using an undercover investigator must be considered;
- once the covert means are in place, the investigative acts in the investigation/investigation plan that may corroborate or refute the whistleblowe's statement must be specified; and
- it is also expedient to perform investigative acts that come to the knowledge of the perpetrator and measure the impact of them through the concealed instrument.

1.2. Investigation of a suspected isolated act of corruption in the past

Detecting and proving this type of criminal offence is a difficult task, given that corruption is – for the most part – a secret and conspiratorial act.

Through example:
From the chain of circumstantial evidence, it can be partially established that parties discussed a meeting; one of them withdrew money from the bank before the meeting; after the meeting, the official made an unusual decision.

If there is evidence of at least one instance of abuse of authority against an official, suspicion is easier. In such cases, wiretapping alone is ineffective, because it is not common for the perpetrator to talk about their actions several months after the criminal offence was committed.

In such cases, the evidence needs to be more thoroughly investigated:

- the nature of the relationship between the perpetrators (for example, who introduced them);
- the benefits of the corruption, the proportion of the benefits (disproportionate gains may cause discord between the active and passive sides, especially if the passive side was not aware of how much the other side gained from the corruption);
- the option of cooperation;
- the personality of the perpetrators (some perpetrators have an accountant mentality and tend to keep a record of how much they have paid to whom, and who owes what).

Several covert means should be used in a coordinated way in order to get a perpetrator to talk about a past event (e.g. combining eavesdropping with disinformation and covert surveillance). This may also require the development of an application plan.

For such acts, it is recommended to investigate/exploit the willingness to cooperate of the reported persons further.

1.3. Detection of a well-established or organized act of corruption

This is the type of investigation that

- requires a lot of working time, energy and the cooperation of many people;
- criminal offences outside the competence of the investigating authority are usually discovered during the investigation and need to be dealt with; and
- requires complex thinking.

The principle of officiality often binds the process, making the investigation timeless and impartial; as new and newer side criminal offences are always emerging during the investigation, generating more and more new investigative work. At some point, the series of acts must be interrupted, even if this means that certain acts cannot be proved or are at the preparatory stage.

2. Use of an undercover investigator (Sections 222-225 of the Criminal Procedure Act)

Fundamental questions in this area are what the undercover investigator can do, what information can be obtained by the undercover investigator and how it can be used in criminal proceedings, and the important question of how to assess provocation by the authorities.

Pseudo-purchasing *(Sections 221 and 226 of the Criminal Procedure Act)*, the purchase of corruption services with the permission of the prosecutor) is the task of the undercover investigator as a matter of principle; their expertise is the most appropriate for this in all respects. Nevertheless, the use of undercover investigators as a covert means of investigation is, in the majority of corruption acts, difficult.

The reasons for this include:

- in an ongoing corruption act, the passive and active sides usually already know each other, the offer has already been made when the investigation is ordered, and a person known to the other side cannot be replaced by an undercover investigator;
- there is usually a short time (a few hours) between the transfer of the undue advantage – typically money – and the time it comes to the attention of the authorities, and there is insufficient time for the undercover investigator to prepare;
- perpetrators are characterized by caution and mistrust; if a cooperator sends an undercover investigator to deliver the money instead of themselves, it could lead to the failure of the operation.

2.1. Potential use of an undercover investigation

⇒ an undercover investigator can be used to accompany a cooperator, if we can build up the right byline; (for example, the undercover investigator is the cooperator's silent partner, but according to the byline, they are the boss);

- ⇒ in organized corruption, the use of undercover investigators can often lead to results;
- ⇒ the only solution is to infiltrate to organized criminal groups who commit corruption crimes if necessary in order to fulfill their regular profile in criminality (such as gun- or drug trade).

It is important to define the purpose of the undercover investigator clearly and to think in advance about what other covert tools to use in parallel (pseudo shopping, secret cooperation, covert surveillance, etc.).

3. Scope of suspect cooperation, prospect of prosecutorial measures (investigative bargaining), plea bargaining

3.1. Overview of the staff of the suspect's cooperation

The involvement of a cooperator helps to detect and prove an act of corruption effectively. It is important to monitor, in the preparatory procedure, who can become a good cooperator, a secret cooperator. The *best cooperator* is the one from whose cooperation the investigating authority expects more.

Through example:
We know from data collection-process that the person is an insider and, from other circumstances, we know or suspect that he or she could give valuable testimony or information. It's important to have an idea of what kind of cooperation we can expect from the person in question, in the light of the available evidence, and what kind of cooperation we should offer.

A cooperator who has something to lose that might lead them away from the perpetrators may also be an excellent cooperator, such as:

- raises a small child,
- cares for elderly parents,
- is anxious about the criminal offence,
- is an underpaid abettor employee who doesn't want to take the brunt of the blame instead of their bosses, such as a book-keeper, cash courier, driver or secretary.

Who in general is a bad cooperator candidate?

a) someone who has nothing to lose,
b) who is closely linked to the perpetrators,
c) who is in any case discredited by their record,
d) who is self-willed and uncontrollable,
e) whose motivations are dubious.

a) The question of loss

There are some professions where confessing to a criminal offence, even with impunity, leads to a loss of livelihood, such as a prosecutor or judge. There are perpetrators who are simply not afraid of the consequences of a minor criminal offence, and there are perpetrators who have committed crimes that the other side knows about and who are rightly afraid of retaliation if they cooperate.

b) Too close a connection with the perpetrators

There are perpetrators who are so emotionally, in family bounds or amicably connected to other perpetrators that they cannot be expected to cooperate, and there are perpetrators who are existentially dependent on other perpetrators and who expect greater benefit from silence than cooperation.

c) Criminal record

Multiple convictions are more likely to motivate perpetrators to cooperate and optimize punishment but, if the majority of multiple convictions are for criminal offences such as perjury, misleading the authorities and false accusations, cooperation may be legal but will not be effective.

d) Self-will, uncontrollability

A self-willed, uncontrollable cooperator can jeopardize the whole investigation and is unpredictable in court as a defendant or witness.

e) Dubious motivations

We must be aware that the motivation of a large part of the applicants/entrepreneurs choosing to cooperate is often doubtful:

- they expect cooperation to help them get rid of competitors and become the market leader;
- they expect cooperation to protect them from the consequences of other criminal proceedings;

- they want to get revenge on someone, even at the cost of provoking them to commit a criminal offence (for example, by getting them involved in corruption because they did not give them a building permit).

3.2. Investigative bargaining (Section 219 of the Criminal Procedure Act)

Investigative bargaining (Section 219 of the Criminal Procedure Act): the prospect of avoiding criminal liability, has two cases: 1) on the one hand, the offer not to launch criminal proceedings against the perpetrator, and 2) on the other hand, the offer by the investigating authority to terminate criminal proceedings.

1) In the first case, where the offer is not to launch criminal proceedings, it is important to consider the following:

- it is appropriate in the case of a person who is known or suspected of having committed a bribery offence, but against whom there is no reasonable suspicion, only a mere suspicion, and whose testimony, for example, against a corrupt official or a corrupt perpetrator, could contribute significantly to the evidence;
- against a person against whom there is reasonable suspicion but whose actions are less dangerous to society (such as an abettor secretary) if we need the evidence very quickly or if we want to prevent the person who is more dangerous to society from influencing the evidence in advance.

2) The second is that, if the termination of criminal proceedings is the subject of investigative bargaining, there must be a clear suspicion of corruption or another criminal offence, otherwise the suspicion must be made public. It is appropriate for a person who would not cooperate without being a suspect.

3.3. The prospect of a prosecution measure or decision conditional on cooperation in proving the act of corruption

It is appropriate to use it for perpetrators who have committed a minor criminal offence (e.g. an active briber with a record of petty crime).

It is not advisable to use it if the facts against the cooperator have not yet been sufficiently investigated, because it is possible that he or she will confess to a more serious crime, which will make it impossible to obtain a conviction or a conditional suspension. To avoid this, it is advisable to inform the defense counsel that they should only use the option offered if they are sure that no more serious acts will be discovered.

Hungarian law provides for the option for the prosecutor to make an offer of prospective release on the record after the suspicion has been raised. In some cases, this can be an advantage, as it can prevent a frightened suspect from putting forward some kind of unrealistic defense, which can be used in court to undermine the credibility of the other defendants. Its disadvantage is that the act might be revealed without it, which would be more credible evidence due to their volunteering.

The advantage of prosecution measure:

- *over investigative bargaining:* it is more credible, because the disclosing defendant is not completely free of the consequences of their acts.
- *over plea bargaining:* it is simpler, quicker and can be used to obtain revealing evidence more quickly and in a timely manner.

3.4. Plea bargaining

3.4.1. A plea bargain to admit one's own act of corruption and to disclose the acts of others

Proving an act of corruption is made much easier if someone on one side gives a revealing confession in exchange for a more lenient punishment. The dividing line is usually between suspended imprison-

ment and imprisonment to be served, so this must be sought primarily for those who would be eligible for a suspended prison sentence.

3.4.2. A plea bargain to admit one's own act of a non-*corruption case, or a not yet disclosed and to admit corruption at the level of mere suspicion*

This is a particularly effective tool in the fight against corruption. The corruption revealed may be assessed under a punishment scale, but it is also possible to use a combination of a plea bargaining and an investigative bargaining [Section 411 (3) b) or Section 411 (5) a) of the Criminal Procedure Act]. In other words, punishment in the basic case, impunity in the corruption case detected.

It is a requirement of fair procedure, and a good tactic, to make it clear that the investigation does not stop while the offer of cooperation is being considered; that is, the investigation may produce evidence that could reduce or even eliminate our need for law enforcement cooperation.

4. Covert means

An important question is under what constraints can covert means be applied and how the results can be used. The rules on covert means differ from country to country, but human rights and the presumption of innocence are common starting points, which means that all Member States face the same challenges in applying these means.

4.1. Covert means subject to judicial authorization

It is important to know that most communication today is no longer done over the phone, and the boundaries between the phone and IT have blurred. The smartphone is the target computer, on which internet-based communication also takes place, and the computer is also capable of telephone-like communication, so the request for interception is often not enough.

In corruption cases, it is vital to develop a close working relationship with the interceptor, not to see him or her as a postman for transmitting communications. The interceptor has a lot of information and intuition based on professional experience that would otherwise not reach the investigator or prosecutor. This is because the interceptor gets to know the target person well, because they also encounter communications that are not related to the crime. A good interceptor can even give a psychological profile of the intercepted person (what kind of person he is, what his fears are, what his feelings are towards other perpetrators). Of course, this cannot be used as evidence, but it can be a valuable aid in planning an investigation.

Through examples:
"They were joking by the tone of their voice; when asked what I owed, they replied »the usual«".
"The targets often meet as friends in real life, but when there are signs of a money transfer, one of them sounds very agitated, impatient."

4.2. Covert means not linked to authorisation

4.2.1. Covert surveillance [Section 215 (5) of the Criminal Procedure Act]

Covert surveillance can play an important role in the detection of acts of corruption, as an act of corruption often takes place in a conspiratorial meeting. In the case of organized corruption, before attempting to catch a person in the act, it is advisable to conduct several covert surveillance operations to identify the meeting participants:

- what kind of vehicle they typically arrive in,
- where it is typically carried out (in public? in the street? in a vehicle?)
- whether they conduct a self-check or counter-check before the meeting,
- if the money is transferred to the official through an intermediary, whether this happens immediately or later.

4.2.2. Disinformation [Section 215 (7) of the Criminal Procedure Act]

It can be useful for a past act of corruption that has the potential to move the perpetrators; for example, the authorities find out where the hidden money is, and the next day they search for it.

5. Catching in the act

In the fight against organized corruption, it is vital that the arresting units are involved in the discussion before the action is organized.

In many cases, the success of all the evidence can depend on whether the arrest can be made quickly enough to give the perpetrator no time to

- delete the contents of the phone,
- turn off the well-coded phone,
- delete the contents of the computer and destroy other documents.

In a coordinated operation, it is necessary to determine from whom will be the most important pieces of evidence and to arrest them in such a way that they cannot delete data. In such a case, action against the others must be adapted to their arrest.

CONCLUSIONS

In this guide, we have intended to provide guidance for the investigation of corruption cases and the effective management of corruption as a social and criminal phenomenon. At the level of principles, the following conclusions can be drawn.

⇒ Tackling corruption in the public sector and making the public sector more resilient can be promoted by clear regulation of the interactions between the public and private sectors through codes of ethics, integrity management and decision sharing.

⇒ Information gathered from inquiries and investigations must be capable of supporting the initiation of criminal proceedings or other procedures against the perpetrators.

⇒ The functioning of the criminal justice system and the effectiveness of investigations influence the 'market' for acts of corruption. Making the public and private sectors more resilient to corruption also depends on the results of investigations.

⇒ In contrast to traditional investigations of criminal offences, documentary evidence in acts of corruption is often insufficient, so it is necessary to increase the number of evidential means.

The key to investigating corruption cases is patience, persistence and the right degree of humility.

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The publication is based on the lessons we could learn from a nearly one and a half year project, entitled: *"Corruption risk, risk of corruption? Distinguishing criteria between petty and high-ranking corruption"*. It was developed with the aim of assisting domestic and foreign practitioners – investigators, prosecutors – in detecting and investigating corruption cases. In the Guide, after outlining a brief theoretical introduction, we have primarily aimed to answer practical questions, using the results of common thinking on international cooperation.

We would like to thank the domestic and foreign partners for their help in implementing the CRITCOR project. We hope that with this publication we can make the fight against corruption even more effective.

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