CORRUPTION CRIMES HANDLED IN ESTONIAN COURTS IN YEARS 2002-2008

The goal of this project was to analyse corruption cases handled in courts, in order to determine the areas that need more comprehensive attention independent from the authority of the state. The main question that this projects aims to answer is as follows: How have corruption crimes been handled in Estonian courts in a period where corruption as a phenomenon receives more and more domestic and international attention? The project analysed the ability of the judicial system to react in an adequate manner to the need to have more efficient control over corruption; it also tried to map the main shortcomings of this activity. The analysis is based on files of existing finished (archived) court cases of corruption crimes handled in Estonian courts in the period of years 2002-2008 and also on national statistics regarding crime.

According to the internationally accepted definition, corruption is misuse of authority in order to receive personal gain at the expense of public interests.[1] Corruption is based on monopoly over freedom of decision and on lack of obligation to report. For years, corruption was thought to be an unavoidable phenomenon accompanying only non-Western societies, but today the dangers of corruption and the need to have better control over it have been recognised by developed Western countries as well.

The phenomena related to corruption in post-communist countries are generally divided into three categories. Low level corruption is expressed in daily relations between officials and citizens (e.g. an official accepting bribe or gratuities, causing hindrances in the normal management of matters). The next level of corruption is reached when representatives of state (public) institutions are using public resources for personal purposes (e.g. "selling" job positions where salary is paid from state budget, receiving personal gains from performing state supervision). The highest level of corruption is subverting state institutions to corruption networks (this is also called taking the state into hostage, takeover of the state by corrupt people). The ease of identifying low-level corruption when compared to cases of high-level corruption has been pointed out repeatedly.

The Estonian criminal law uses mainly the so-called narrow definition of corruption and relates it to the definition of official position – corruption crimes are crimes committed by a person abusing his or her official position to receive personal gain. The wider definition of corruption relates it to misuse of public authority, i.e. the position of the person in the hierarchy of authority. Acquiring, possessing and exercising public authority is politics and this means that the wider definition of corruption considers not only people in official positions, but also people in political positions. Moreover, according to this definition, political corruption can be considered a primary phenomenon and corruption of officials rather a secondary phenomenon that depends on the primary form.

[1] This is also the general definition used by *Transparency International*.

In the present time it has become difficult and a specific effort to attain an overview of all corruption offences committed and registered. Nowadays there are more than 30 kinds of violations of law that can be qualified as corruption offences.

There were more than 2,700 corruption crimes registered in Estonia during the analysed period. The highest number of crimes among these (569 cases) was registered under section 291 of the Penal Code, i.e. as misuse of authority, making up 21% of all corruption crimes. The second highest number of crimes (466 cases) was registered under section 289 of the Penal Code, i.e. as misuse of official position, which classification became invalid in year 2007. The third and the fourth highest number of crimes were registered as falsification by officials (section 299 of the Penal Code – 379 cases) and embezzlement by officials (section 201 of the Penal Code – 374 cases), followed by giving a bribe (263 cases) and accepting a bribe (236 cases). A separate, specific kind of corruption crime is delivering prohibited items to prisoners; this is qualified as unlawful delivery of substance or object in custodial institution by an official (section 325 subsection 2 clause 2 of the Penal Code – a total of 39 cases). Political corruption is represented among registered crimes as two cases, the latest of which took place in year 2008.

Since year 2004, the adversary principle is used in the Estonian criminal proceedings; according to this principle, the best results are achieved if the accusing party (the state and a representative as a prosecutor) and the defending party (the accused and a representative as a defence counsel) are acting as adversaries of each other.

The conducted empirical study is a pilot study in order to attain an overview of the judicial practice regarding corruption crimes. The goal of the study was to analyse the judicial practice in order to characterise the persons under trial for corruption crimes, to highlight the crimes committed by them, and also to determine the areas of employment and fields of work where corruption crimes were committed the most frequently. The goal regarding criminal proceedings was to determine the grounds for initiating criminal proceedings, the initiating party, the type of proceedings, and also the investigative and procedural actions that were performed in the course of the proceedings. Regarding judicial procedures, the judgments made in courts of all three instances, appeals to these judgments and final results of judicial procedures were tried to be characterised.

The determining and analysing of the court cases related to corruption crimes took place as follows. First, a query was sent to the Ministry of Justice in order to attain an overview of all handled and archived corruption crimes in Estonian courts in the period of years 2003-2008.[2] The goal of this was to receive an exact list of all corruption crimes handled in Estonian courts in the specified time period, available and classified as criminal official misconduct. After that, archived court cases were requested from Estonian courts and were reviewed according to the methodology developed earlier. The following courts were visited in order to attain the materials: Harju County Court, Järva County Court, Lääne-Viru County Court, Narva City Court, Pärnu County Court, Tallinn City Court, Viru Circuit Court.

[2] The published court decisions entered into force until the date of December 31, 2005 are available in the Database of Court Statistics and Court Decisions (KOLA) (kola.just.ee). The published court decisions entered into force since the date of January 01, 2006 are available in the Courts Information System (KIS) (www.kohus.ee/kohtulahendid).

A total of 282 court cases were reviewed, detailing 978 different crimes that persons were charged with. The study included 417 persons (accused at trial), divided into 387 men (93%) and 30 women (7%). The age of these persons was relatively high (median value being 40.5 years of age), exceeding significantly the average age of criminals, the latter being in the early adulthood.

The persons were divided as follows, regarding the crimes committed by them. The most offenders were charged with accepting a bribe or gratuities (39%), followed by persons charged with giving a bribe or gratuities (31%), persons charged with committing a criminal official misconduct in the narrower sense (21%), and in the end the persons charged with falsification and violation of the order of conducting a public procurement (6%) and other crimes (2%).

TABLE 1. DISTRIBUTION OF PERSONS REGARDING CRIMES COMMITTED

Groups	Number of persons	Share in total (%)
1 - Sections 289, 290, 291 of the Penal Code	88	21.1
2 - Sections 293, 294 of the Penal Code	163	39.1
3 - Sections 295, 296, 297, 298 of the Penal Code	130	31.2
4 – Sections 299, 300 of the Penal Code	27	6.5
5- Other crimes (section 201 subsection 2 clause 3, section 325 subsection 2 clause 2 of the Penal Code)	9	2.1
Total	417	100.0

The majority of the persons charged with corruption crimes (90%) were citizens of Estonia. The second highest number of persons had no citizenship, making up 5% of the accused persons, and citizens of Russia (4%). The share of Estonian citizens among persons having committed corruption crimes is higher than such share among criminals in general, the latter being ca. 70% in the recent years. Among non-citizens charged with a corruption crime, more than 90% had given a bribe or gratuities.

TABLE 2. DISTRIBUTION OF PERSONS REGARDING CITIZENSHIP (NO DATA IS AVAILABLE FOR 46 CASES)

Citizenship	Number of persons	Share in total (%)

Estonia	333	89.8
Russia	16	4.3
Other citizenship	3	0.8
No citizenship	19	5.1
Total	371	100.0

Is corruption a "white-collar crime" according to the court cases? When looking at the education of the persons accused at trial, it turns out that the level of education of persons having committed criminal official misconduct (corruption crimes) is relatively high. Persons with secondary specialized education and higher education made up ca. 61% of all persons having committed corruption crimes, and this is not characteristic to criminals in general. When looking separately at the persons having accepted bribe or gratuities, the share of those with secondary specialized education and higher education was even higher – up to 85%.

TABLE 3. DISTRIBUTION OF PERSONS REGARDING LEVEL OF EDUCATION (NO DATA IS AVAILABLE FOR 73 CASES)

Level of education	Number of persons	Share in total (%)
Primary education	7	2.0
Basic education	9	2.6
Secondary education	117	34.0
Secondary specialized education	110	32.0
Higher education	101	29.4
Total	344	100.0

At the same time the analysis indicated that the number of persons with very high or high official position among persons accused at trial was 63, which makes up 15% of the total number of persons accused at trial. It can be said that like with registered crimes, the majority of the corruption cases handled in courts are crimes committed by low-level officials. The employment positions of a total of ca. 130 persons were related to the field of law enforcement. There were virtually no high officials among them; the positions of one judge, 3 leading inspectors and one customs office manager were registered. Overwhelming majority of the committed crimes were large cases of accepting bribes, where many officials were convicted in one and the same court case.

Most frequently the criminal proceedings were initiated by police prefectures and such proceedings made up 41% of all cases. The second most frequent initiator was the Security

Police – 24% of all criminal proceedings were initiated by them. The role of the Security Police has increased after the handling of corruption crimes of leaders of local governments was given into the competition of this institution. The third and the fourth most frequent initiator were other investigative institutions and the Prosecutor's Office, both having a share of 14%. The majority of other institutions were investigative offices of the Border Guard Administration and the Tax and Customs Board. The Central Criminal Police has initiated 6% of the analysed criminal cases.

TABLE 4. INSTITUTIONS HAVING INITIATED THE PROCEEDINGS (NO DATA IS AVAILABLE FOR 24 CASES)

Initiator of criminal proceedings	Number of cases	Share in total (%)
Police prefecture	162	41.2
Security Police	95	24.2
Prosecutor's Office	56	14.2
Central Criminal Police	23	5.9
Other institutions	57	14.5
Total	393	100.0

The main grounds for initiating criminal proceedings in the cases that had the relevant information stated in their files (less than half of the analysed files contained such information) were either prior surveillance, gathered information or received information (46% of cases). The institutions having received such information were primarily the Security Police and the Central Criminal Police. These were followed by statements and reports from citizens and officials, making up 27%. A large part of those were persons from whom a bribe or gratuities were demanded. The next less frequent grounds were separating a criminal case from an earlier criminal case and reports from law enforcement officials (19%), a large part of those being reports about bribes offered directly to them. The share of other notices about crimes was ca. 10% and these were e.g. a newspaper article, something heard at a Women's Day event, etc. This data suggests that in nearly half the cases, criminal proceedings are initiated on grounds of information gathered from prior surveillance.

TABLE 5. GROUNDS FOR INITIATING CRIMINAL PROCEEDINGS (NO DATA IS AVAILABLE FOR 262 CASES)

Grounds for initiating criminal proceedings	Number of cases	Share in total (%)
Prior information, surveillance information	71	45.8

Reports and statements	42	27.1
Separating a criminal case, reports from law enforcement officials	29	18.7
Other sources (e.g. a newspaper article)	13	8.4
Total	155	100.0

It was very important to determine what types of court procedures were used when handling corruption crimes. Cases of general procedure, i.e. adversarial procedure made up 40% of all proceedings and 60% was made up by cases of simplified procedure. This means that judgements regarding more than half of the persons were made as a result of simplified procedure. Absolute majority of the cases of simplified procedure were agreement processes (50% of all cases) and a small share was made up of shortened processes (2% of all cases). The share of agreement processes in total cases of corruption crimes was higher than the overall frequency of use of this type of procedure.

TABLE 6. PROCEDURE TYPES (NO DATA IS AVAILABLE FOR 19 CASES)

Procedure type	Frequency of use	Share in total (%)
General procedure	158	39.7
Agreement process	199	50.0
Simplified procedure (not specified)	33	8.3
Shortened procedure	8	2.0
Total	398	100.0

The following surveillance activities were conducted the most frequently in the course of pre-trial investigations: secret recording of audio / video (34% of cases), wire tapping (31% of cases), staging a criminal offence (24% of cases) and using call listings (13% of cases). Other surveillance activities were conducted significantly less often. The most frequent procedure activity was confrontation (35 cases), followed by queries to banks regarding account balance (12 cases) and recognition of a person among photographs (11 cases). The various expert assessments conducted were document analysis (8 cases), signature analysis (8 cases), fingerprint analysis (7 cases), DNA analysis (4 cases) and voice analysis (3 cases).

TABLE 7. SURVEILLANCE ACTIVITIES CONDUCTED

Surveillance activity	Conducted (number of cases and share in total (%))	Not conducted (number of cases and share in total (%))	No data available (number of cases)
Recording of audio / video	135 (34.4)	257 (65.6)	25
Wire tapping	122 (31.1)	270 (68.9)	25
Staging a criminal offence	95 (24.4)	295 (75.6)	27
Using call listings	50 (12.9)	336 (87.1)	31

Appeals on judgements made regarding 67 persons were submitted to circuit courts; this is 16% of all cases. Judgements of a court of first instance remained in force regarding 40 persons; they were amended in case of 27 persons. The share of amended court judgments in total number of corruption cases was high, making up 6% of all corruption cases and 40% of all appealed cases.

Cassation appeal[3] was submitted to the Criminal Chamber of the Supreme Court in 34 cases (12% of all judgments made by courts of first instance); 20 of these cases were dismissed; in 7 cases (2.2% of all corruption cases) the judgements of courts of lower instances remained in force; in 7 cases the judgements of courts of lower instances were fully or partially cancelled (2.2% of all corruption cases).

The distribution of final judgments made regarding persons under trial for corruption crimes was as follows. 11% of the persons were acquitted by the court and court proceedings were terminated by recommendation of the Prosecutor's Office in somewhat more than 3% of cases. The most frequently ordered punishment was conditional imprisonment which was ordered in 64% of cases. Pecuniary punishment was ordered in 11% of cases and actual imprisonment in 5% of cases. The share of shock imprisonment ordered together with conditional imprisonment was 3.2%. Somewhat less than 2.7% was made up by community service and other sanctions.

[3] There were no cases of reviewing a court judgment that has already entered into force.

TABLE 8. COURT JUDGMENTS MADE (NO DATA IS AVAILABLE FOR 10 CASES)

Court judgement	Number of cases	Share in total (%)
Conditional imprisonment	262	64.4
Pecuniary punishment	46	11.3
Actual imprisonment	21	5.2
Shock imprisonment together with conditional imprisonment	13	3.2
Community service and other sanctions	11	2.7
Acquitted	41	10.0
Court proceedings terminated	13	3.2
Total	407	100.0

Conditional imprisonment sentences were ordered for 4 months to 3 years; typical sentence duration was 1.5 years of imprisonment and the longest probationary period ordered was 3 years. The period of actual imprisonment within conditional imprisonment sentence (so-called shock imprisonment) ranged from two months to 7 months. Additional punishments often used when ordering conditional imprisonment were denying the right of employment in public services, police and/or state institutions for a certain period. Durations of actual imprisonment ranged from two months to four years; the average duration of imprisonment ordered was 2 years. Pecuniary punishments were dependent on whether they were ordered for natural or legal persons. In case of legal persons, the amount of pecuniary punishment ordered ranged from 80,000 to 170,000 EEK; in case of natural persons, the average amount was 23,000 EEK. Use of other measures by way of confiscating the object of the crime usually meant the amount of the bribe or gratuities and this amount was up to 85,000 EEK.

Conclusions

The official anti-corruption activity of Estonia until now considers primarily the simpler kind, i.e. low-level corruption. The Penal Code now includes more qualifications of crimes considered corruption crimes. That change has taken place in various chapters of the Penal Code and this makes it more difficult to attain an integral picture of the amount and dynamics of corruption crimes.

Adopting legal acts regarding the fighting of corruption has not brought about any large changes in the judicial practice – attention is still paid mainly to cases of bribe / gratuities. The criminal law of Estonia has defined corruption in a controversial manner and this does not facilitate legal clarity in this field. On one hand, corruption crimes are still narrowly related to misuse of official position only, but on the other hand the definition of corrupted

behaviour and corrupted actions is extended into fields where it is not easy to use the definitions of official position and official person.

The largest problem for the criminal justice system here is handling corruption cases of higher level. The theoretical and ideological priority is mostly set to corruption as criminal activity of people in positions of real authority, but judicial practice deals more with corruption cases of low-level officials.

High-level corruption cases, incl. corruption networks have not been handled sufficiently. Organised and (or) severe corruption (i.e. high-level corruption) has not been successfully differentiated and is unclearly defined, although this has immense practical importance. Here, too, the course should be towards ever wider definition of corruption, in order for the criminal law to also encompass possible corruption networks and their activities (e.g. taking the state into hostage).

Political corruption has been left without attention, because the understanding that the interests of a political fraction are also personal interests has not taken hold. Implementing the wider definition of corruption in the criminal law of Estonia would bring about a different view on political corruption.

Disclosure of all revenues and sponsors of a political fraction is the most important part of the system of inspecting the financing of the fraction and it must allow assessing possible relations between the donations and the decisions made on the level of the state or a local government. This would permit discovering cases of political decisions having been made not in public interest, but in interest of a specific sponsor.

The ongoing tolerance of corrupt behaviour is a problem, because even now the wider public considers corruption crimes to be significantly lesser offences than e.g. severe crimes against a person. The certain level of corporative culture dominant in the Estonian society, caused by the small scale of the society and the similarity of the social background of the people at the top of the hierarchy of authority, has no doubt facilitated the persistence of such views. The media should highlight more the nature of corruption in the sense used in modern Western democracies.

Two years ago, an amendment was made in the main tasks of the Security Police, and this change is a significant and positive one – now the tasks of the Security Police include fighting corruption among leaders of larger local governments. It is clear that the opportunities of the officers of the Security Police for handling corruption cases of such level are better and more compatible with the challenges present than the opportunities of the officers of the common police. Also, the involvement of specialised prosecutors and assistant prosecutors has been justified.

It is very difficult to determine the number of corruption crimes where the proceedings are terminated before the case reaches the court. The charges are not pressed because the Prosecutor’s Office has the opinion that it is not purposeful in view of some clause of the legislation. Especially in cases where the court has ordered a non-convicted person to make a payment into public revenues as an opportunity procedure, it is not clear to the wider public whether the accused person was actually guilty or not.

In case of adversary procedure, the goal is to reach judgments satisfactory for both parties and to do it as rationally as possible. There are too many agreement processes where a convicting judgment is made but the schemes used and the possible corruption networks remain unidentified. A large share of lines remain hidden and this is not good for shaping the opinion of the wider public and for preventing future crimes of similar manner.

Topics for discussing at the round table, i.e. in what direction should we continue the studies of this field?

1. Should law enforcement offices in future focus more on corruption crimes in the wider definition, encompassing also other corruption crimes besides criminal official misconduct? What makes a corruption case severe or minor, i.e. what are the problems of defining, limiting and determining severe corruption crimes?

2. Political corruption – is it a nonexistent or as yet unnoticed kind of corruption? Should there be more attention paid to the problems related to financing of political fractions, as it would be an important step in limiting political corruption in Estonia?

3. Would it be necessary to establish a system of monitoring corruption crimes, from the discovering of the fact of the crime until the serving of the punishment (mechanism)? How important would it be to attain an overview of the exact grounds for terminating or not initiating criminal proceedings of corruption crimes, and also of the opportunities for a corruption case to leave the criminal justice system?

4. Is it time to talk about implementing the institution of a jury in Estonia? How suitable are the principles of adversary procedure and simplified procedure for handling corruption crimes?

5. Should there be a special programme on the ETV channel, orientated towards the wider public and analysing specific corruption cases, their progress and final results?