

Chapter V

LEGAL SANCTIONS – SOME HISTORICAL ASPECTS

I. Elenkov

1. BACKGROUND

1.1. The Ottoman penalty code

The legal treatment of crimes and violations like corruption after the Liberation in Bulgaria is based on the Ottoman penalty code, which was in power in the country before 1896. As a comparatively early legal text, the Ottoman criminal code does not have abstract definitions regulating the nature of the phenomenon and providing blanket sanctions for all possible occasions connected with it. Instead, the law is descriptive and concrete; its articles and paragraphs cover cases from all social strata and levels of state government. This makes it extremely valuable as a paper reflecting a social reality of which Bulgarian society is an integral part.

1.1.1. Specific regulations

Texts concerned with corruption are the following:

Penalty code from 1857

Section III. On bribes

Article 67. A bribe is termed everything that is taken and given under any form and for the achievement of a given aim. Also, when material goods or property are bought or sold at a price higher than its real price at the time and place of buying; in such cases the differences between the selling price and the real price is termed a bribe.

Gifts, small or big, given on any occasion or excuse, are termed a bribe, except for the ordinary gifts given at weddings and celebrations to governmental servants by men or women. But fruits and other small foods and drinks given by poor people for begging, gifts between friends, gifts to the poor and needy as well as the official gifts given and received by governmental permission are not considered a bribe. The person who takes a bribe by himself or through his associates is called corrupt, the person who gives the bribe is called a corrupting person and the one who helps them is called a mediator.

...Article 77. If a person, in order to preserve his life, property or honour, in other words his rightful interests, is compelled to give a bribe and then reports the deed to the authorities, the amount of the bribe is returned to him and the person who took the bribe is punished as a corrupt person. If the person compelled to give a bribe does not report it after the pressure and fear are removed before the Ministry of Interior, if he is in the capital, or to the governors of local districts, if he is in the country, and the deed is discovered by other means, that person is punished as a corrupting person.

...Article 80. If clerks who are entitled to operate with governmental means take money from someone or for personal profit sell governmental means at a lower price to relatives, when there were other buyers as well, are termed thieves of governmental property and are punished by the punishment provided for in section IV, article 82...

...Article 84. If a governmental clerk asks for money in return for reducing a debt owed to the state; if he takes money etc., gifts from the creditors in order to pay them the dues, he is to return the money and gifts and is sentenced to imprisonment. If such a discount is made by relatives of the clerk in the office with him and with the agreement of the last, the accomplices are punished likewise.

Section V. On violations and abuse of office

...Article 100. Central, regional and district governors, financial clerks and judges are strongly prohibited from buying and selling wheat, foods and other things of unavoidable necessity for the population and their lives and to trade in the districts, regions, etc. places where they rule. Hence, whoever of the above mentioned clerks does personally, through associates or relatives, openly or secretly such prohibited trades, he is immediately fired and fined between 25 and 1 000 Turkish liras. The only exception is when the above mentioned clerks trade with goods, property or lands they own at the place they are (i.e. with the goods they produce from their own property).

1.1.2. Amendments

It seems that the Ottoman penalty code was adopted as Bulgarian legal practice, if not in whole at least in part, because after 1894 on the proposition of the Bourgas MP Yovy Vodenicharov from the majority (the National Party), parliament made an amendment in some of the articles of the law about the issues we are concerned with here. The proposition of the MP was not debated at all, and it did not follow normal procedure, but it is apparently intended to make a distinction in the punishment between those offering a bribe and the mediators on the one hand, and those accepting the bribe on the other.

Issued on the basis of the proposition, the law for amendments to section III (on bribes) of the Ottoman penalty code we find:

Article 1. The people offering a bribe and their mediators, described in articles 67, 68,69, 70, 73, 75, 76 and 77 of the Ottoman penalty code, are released from responsibility and punishment, if no prosecution is started, or if upon the launching of a trial sincerely confess and retell in detail the occasion and conditions of the bribe offering and thus help the investigation of the crime. But the amount of the bribe offered is not to be returned to them; it is confiscated in favour of the state treasury.

Article 2. A person who unjustly accuses another person of accepting a bribe before the authorities is sentenced from 3 months to 3 years of imprisonment.

2. THE PERIOD UNTIL THE END OF WORLD WAR II

2.1. The penalty code of 1896 and other laws

The penalty code adopted in 1896 was the basis for regulating deeds like corruption until the end of World War II. The evident connections with Ottoman law should be noted, especially article 429, but in many respects the penalty code reflects another level of legal practice and proves the

changing and changed structures of Bulgarian society. The law covers the social status of the state official, makes distinction in the punishment of crimes on different levels of power, severely treats the crimes committed within the legal system, and established Bulgarian legal terminology. Chapter 33, section I is entitled Crimes of Office and Advocate State where we find:

Art. 428. A state employee accepting a gift or reward which is not owed to him, or does not reject a promise of a gift, in order to do or not to do such an action that he is obliged by his post to do, he is punished for bribery by imprisonment. If together with this the action done or not done is also in violation of his official duties, then the punishment is imprisonment up to five years. The employee is punished by the same punishment also in the cases when by his consent are given or promised gifts to another person.

Art. 429. Article 428 does not cover such gifts and rewards given to the employee under an individual's free will and with the consent of his immediate superiors for extra work, as well as social gifts and rewards given to the employee not on his request and especially when this is not prohibited by any professional instruction and rules.

Art. 430. Bribery is punished by imprisonment from 2 to 10 years if the employee is:

- 1. A judge or a member of the jury that judges or decides in violation of the law or is bribed for a civil trial.*
- 2. A prosecutor or court investigator who violates in any way his duties regarding a capital crime for which he is bribed.*

The legal treatment of incidents defined as corruption are found also in the law for employees in all its revisions through the years before the end of the World War II.

Outside the general legislation, actions termed as corruption are the subject of treatment in special laws. Their existence is a definite sign that the phenomenon had spread beyond ordinary dimensions and sharpened the sensitiveness of the society towards it. The first such law was voted immediately after the fall of Stambolov at the end of 1894 and was titled Act For Prosecution Of The Illegally Enriched Clerks. Apart from the law sponsored by the Brezovo MP S.S. Bobchev, the VIII Parliament on the proposition of G. Gubidelnikov imposed another measure – it assigned an “investigative committee to account for the abuse of office and violations of power, the Constitution, and the state and public funds during the time of the cabinet that has fallen this year”.

In this law we find:

Art.1. Every clerk and employee, state or municipal, under suspicion is obliged, if requested by the authorities, to justify his behaviour of profiteering, offering an exact account of detailed description of the means for his enrichment.

Art.5. All amounts and properties of the illegally enriched employee or clerk are confiscated in favour of the state treasury.

Art.6. Property transferred by the illegally enriched clerk or employee to any third person is confiscated on general grounds, proven that it was transferred in order to be concealed.

2.2. Practices after the Stambolov regime

2.2.1. The period before 1934

The committee for investigating the Stambolov regime started a practice that was to be implemented often in the forthcoming decades. After the rule of the Radoslavov party (1899-1900), and the second regime of Stambolov, and the cabinets of Radoslavov (1913-1918) and Stamboliysky (1919-1923), there inevitably were investigative committees finding surprising facts about “violations of the Constitution and damaging the state interest in favour of private profits”. (The definitions were slightly changed, but the meanings stayed the same.)

In 1920, the Council of Ministers issued Decree No 4 on “Application for an unspecified period of time of the Act on Prosecuting the Illegally Enriched State Employees”. Apparently the situation after the wars (the 1912-13 Balkan Wars and World War I) suggested the necessity of resurrecting this obscure law to be put back into power.

2.2.2. The period after the Second World War

Only a month after the coup d’etat of June 19, 1934, the regime issued “An Act on Mercenary Abuse of Office” followed by a huge propaganda campaign aimed at “*removing the corruption ulcers from the state body*”. This decree was unanimously acclaimed by certain lawyers as being based on the Penalty Code and drastically augmenting the punishments for such crimes stipulated in it. Article 1 of the decree, supplementing article 421 of the Penalty Code, corrects the provided 5 years of imprisonment to 5-15 years of imprisonment; if the amount of the embezzlement exceeds 1 million levs the punishment is a life sentence. In a similar way the decree corrects the punishments under articles 422, 428, 430 and 431 from the Penalty Code and provides punishment for accomplices to financial abuse of office, “regardless of whether these are state or municipal employees themselves”. The decree also includes four articles supplementing the Penalty Code, and apparently reflecting the changed social situation in the time between the wars, their gist was to increase control over state employees by their immediate superiors and make the former directly responsible for the acts of the latter:

Art.3 The one who offers or gives a gift or rewards to a municipal or state employee in order to receive a contract on a tender, to contract a deal for materials with the municipality or the state, or to start a company or portion of a company run by him, harming the interest of the state or the municipality is punished, likewise the state employee that accepted this offer.

Together with that, he is responsible for the damage incurred to the state or the municipality, and is deprived of the right to ever join public activities.

Art.4 The superior employee who, being in charge of the accounts of his subordinate employee, consciously abstains from exerting control over the latter, is punished by imprisonment up to 6 months, provided his subordinate is proved guilty of such a crime.

The former is considered an accomplice and is jointly responsible for the damage incurred to the state for the amount of the embezzlement.

Art. 5 A superior who knows or suspects that his subordinate abuses his office and does not take the necessary measures for starting an investigation, is sentenced, apart from the punishment under art. 437 of the Penalty Code, to jointly pay for the damage to state interests in the amount that is not paid by the agent of the crime.

Art. 6 A state official who, upon checking the accounts of another state employee, consciously conceals the irregularities in the state property assigned to the latter, is punished by strict imprisonment of up to 5 years in case the amount of the embezzlement is below 100 000 levs, and by strict imprisonment of up to 15 years beyond that amount.

Moreover, the guilty is sentenced to pay back the stolen property in the amount that is not paid by the agent of the crime.”

In the autumn of the same year (1934), again in connection with the fight against corruption, the Ministry of Finance issued directive No 7050, which was added to and promulgated in 1935 as an “Act on Assignments of Members of One Family In State, Municipal and Autonomous Institutions”. The act concludes the attempts at control over corruption through legislation at the end of the 19th and the first half of the 20th century.

Judging by the legal texts, we may say that the intensity of the promulgation of special acts and the tenseness of public debate on the topic of corruption coincide with three critical periods:

- The regime of Stambolov and the period immediately after his fall from power;
- The wars of 1912-13 and 1914-18 and the immediate conditions of the post-war period, as well as the great economic crisis of 1929-1934;
- The situation after the coup of May 19, 1934.

However trivial it may sound to a political scientist or a sociologist, however unsatisfactory it may seem to someone thinking in cultural terms, the incidence of corruption rises and falls together with the collisions between social forces and the effect on common values. It is a changing aspect of the social history of Bulgarian society, and thus its possible explanations as “innate” to Bulgarians and “chronic” in the country must be rejected.