

Criminalization of the criminal acts "Giving a reward for unlawful influence" and "Receiving a reward for unlawful influence" in a criminal law of Republic of Macedonia

Ivana Ivcheska¹

Boban Shajkaroski²

¹MA in law, ivana.ivceska@hotmail.com

²MA in law, bobansajkarovski@gmail.com

Abstract: The criminal acts "Giving a reward for unlawful influence" and "Receiving a reward for unlawful influence" for first time are criminalized in Criminal Code of the Republic of Macedonia in 2011 year.

The aim of this study is to get the results about how much this criminal offenses are represented on the territory of the Republic of Macedonia, from the period from criminalization in 2011 year to 2017 year. Also another important aim of this study is to show how much citizens and public are informed about the detection and recognition of these crimes.

Keywords: Criminal offenses, "Giving a reward for unlawful influence" and "Receiving a reward for unlawful influence".

1. Introduction

Corruption causes significant damage to societies. It not only violates the efficiency and functioning of state organs and thus diminishes public confidence in their integrity, undermining the rule of law and democracy, but also distorts economic competition and undermines the foundations of economic development. Since the 1990s, growing awareness among states of the damage done by corruption has led many countries around the world to launch countermeasures, especially in the area of criminal law. The criminal responsibility for "Trade in influence" is a relatively new phenomenon in national criminal laws. The criminalization of corruption offenses has traditionally been limited to the passive or active form of bribery. Today only a limited number of countries predict the explicit incrimination of "Trade in influence". The scope and description of this crime are not identical, for example, certain codes criminalize only the request or acceptance of unnecessary profits, while other codes also penalize those offenders who give or promise unlawful gain. However, it should also be noted that in certain codes trade in influence is criminalized as a separate criminal offense, while in other criminal codes it is not criminalized as a separate criminal act, but as a form of bribe. The "Trade in influence" in the Republic of Macedonia is criminalized in the Criminal Code of the Republic of Macedonia with two criminal acts "Giving a reward for unlawful influence"-Article 358-a and "Receiving a reward for unlawful influence" - Article 359. On an international level "trade in influence" is covered by

United Nations Convention against Corruption – Article 18 and Criminal Law Convention on Corruption of the Council of Europe, from 1999 year – Article 12.

2. Criminal offenses "Giving a reward for unlawful influence" and "Receiving a reward for unlawful influence" in criminal law of Macedonia

Concerned about the seriousness of the problems caused by corruption and the threat it poses for stability and security, undermining institutions and democratic values, moral values and justice, and endangering the permanent development and the rule of law, the Republic of Macedonia, as a signatory state to the Criminal Law Convention on Corruption of the Council of Europe¹ ratified in the Republic of Macedonia on 20.05.1999 and the United Nations Convention against Corruption ratified on 31.10.2003 in the Republic of Macedonia are ties to comply with the provisions of these two conventions.²

Having in mind the adoption of the text of these two conventions, the Republic of Macedonia agreed in the Macedonian criminal legislation to criminalize for the first time the active and passive form of the criminal act "Trade in influence".

With the Law for changing and supplementing the Criminal Code of RM, Official Paper of the Republic of Macedonia, No. 51/11, active form of "Trade in

influence" and "Receiving a reward for unlawful influence" with special reference to the Republic of Macedonia", University st. Climent Ohridski Bitola, Faculty of Law Kichevo, DS Bitola ,2018 year, p.24.

¹ Criminal Law Convention on Corruption of the Council of Europe, Strasbourg, 27.I.1999.

² Shajkaroski B, Master's thesis "Comparative legal analysis of the criminal acts "Giving a reward for unlawful

influence" is predicted as criminal offence "Giving a reward for unlawful influence" in Article 358- a³. The passive form of "Trade in influence" is predicted as criminal offence "Receiving a reward for unlawful influence" in Article 359⁴. These two types of crimes are provided for in the group of criminal offenses against official duty.

Thus, in the criminal acts "Giving a reward for unlawful influence" from Article 358-a and "Receiving a reward for unlawful influence" from Article 359, the object of protection is the official duty ie the lawful execution of official duty. The object of the action in any crime, even in this criminal acts can't be considered isolated and separately, but it is necessary to consider it with the object of protection. So an object of action/attack in this criminal acts is the prize itself, the gift or other benefit.

The consequence of these crimes is precisely the illegal acquisition of a property benefit, that is, the illicit property gain (material and non-material profit). The purpose of criminalizing this criminal acts is to reduce corruption and protect the official duty as an inviolable service for the benefit of the citizens.

For these criminal offenses, is foreseen punishment from one to three years imprisonment for the easier forms of these criminal offenses and for harder forms of these offenses is foreseen punishment from one to five years imprisonment.⁵

So, we can establish that in Republic of Macedonia "Trade in influence" is criminalized in Criminal Code of this state. But, what we don't know is how many of these crimes are represented on the territory of the Republic of Macedonia in the period from 2011 to 2017? Also, we don't know does the citizens are familiar with this type of criminal offences?.

3. Materials and Methods

3.1 After criminalization of this criminal offenses, the responsible state institution, published statistical data about how much criminal offenses "Giving a reward for unlawful influence" and "Receiving a reward for unlawful influence" are represented on the territory of the Republic of Macedonia shown by periods, in the period form 2011 to 2017 year. Every year, State Statistical Office of the Republic of Macedonia publishes data

on reported, accused and convicted adult perpetrators of those two criminal offenses. Also, for perceiving the representation and recognizability of these criminal acts, we conducted a survey in which the citizens of the municipality of Prilep answered the questions contained in the survey.

4. Results

4.1 Results from State Statistical Office of the Republic of Macedonia

These data are a result of the regular annual statistical surveys and provide information about the perpetrators of crimes in all phases of the procedure, starting from the submission of the report until the final sentence.

First, we will show the data for the reported perpetrators of criminal offenses "Giving a reward for unlawful influence" and "Receiving a reward for unlawful influence" for every year in the period from 2011 to 2017 year.

For the period from 2011 to 2017 year for criminal act "Giving a reward for unlawful influence" there are no data on reported perpetrators of this criminal act. For the period from 2011 to 2017 year for criminal act "Receiving a reward for unlawful influence" has reported perpetrators of this criminal act only in 2016, only 4 (four) charges against 4(four) people for the criminal act "Receiving a reward for unlawful influence", while for the remaining years in the period from 2011 until 2017 there are no data.

In relation to the number of accused adults of the crime "Giving a reward for unlawful influence" in the period 2011-2017, there is no data on accused persons for this crime. According to the data contained in the state statistics of the State Statistical Office, we note that only in 2015 there are data on 7 (seven) accused persons for criminal offense "Receiving a reward for unlawful influence", while for the remaining years there are no data for other accused persons for this crime.

For the period from 2011 to 2017 year, for criminal act "Giving a reward for unlawful influence" about convicted adults for this criminal act we can establish that in the period 2011-2017 there are no data on convicted persons for this crime. For

³Law for changing and supplementing the Criminal Code of RM, Official Paper of the Republic of Macedonia, No. 51/11, Article 358-a.

⁴Law for changing and supplementing the Criminal Code of RM, Official Paper of the Republic of Macedonia, No. 51/11, Article 359.

⁵ <https://www.pravdiko.mk/trgovija-so-vlijanie-krivichno-delo-koe-teshko-se-otkriva/>

convicted persons for the criminal act "Receiving a reward for unlawful influence" there are data only in 2015 that 7 people have been convicted of this

crime, while for the remaining years there are no data for other convicted persons for this criminal act.⁴

Table 1 – Reported, accused and convicted adults persons for criminal act “Giving a reward for unlawful influence” in period from 2011 to 2017 year.

Year	2011	2012	2013	2014	2015	2016	2017
Reported adults persons	No data	No data	No data	No data	No data	No data	No data
Accused adults persons	No data	No data	No data	No data	No data	No data	No data
Convicted adults persons	No data	No data	No data	No data	No data	No data	No data

Criminal act “Giving a reward for unlawful influence”

Table 1 – Reported, accused and convicted adults persons for criminal act “Receiving a reward for unlawful influence” in period from 2011 to 2017 year.

Year	2011	2012	2013	2014	2015	2016	2017
Reported adults persons	No data	No data	No data	No data	No data	4	No data
Accused adults persons	No data	No data	No data	No data	7	No data	No data
Convicted adults persons	No data	No data	No data	No data	7	No data	No data

Criminal act “Receiving a reward for unlawful influence”

4.2 Results from the research of group of respondents about criminal offenses “Giving a reward for unlawful influence” and “Receiving a reward for unlawful influence”

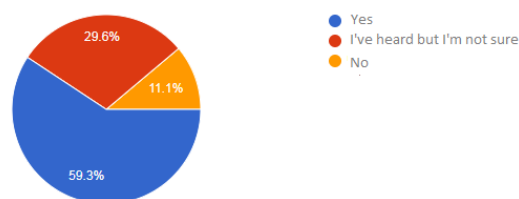
Besides statistic data of State Statistical Office of Republic of Macedonia, we made a research. First we established our target group. In the interest for this research we targeted the citizens of the municipality of Prilep. Then we made electronic questionnaires for these target groups with questions who had offered answers. The citizens of the municipality od Prilep had to answer the following questions:

1. “Have you heard about the criminal acts "Giving a reward for unlawful influence" and "Receiving a reward for unlawful influence"? ”,
2. “From where did you hear about this criminal acts?”,
3. “Have you participated in or know someone against whom criminal proceedings are conducted or is convicted of these crimes?”,
4. “Do you think that these criminal acts are easy to recognize and detect?”,
5. “Do you think that the public is sufficiently informed about the identification and detection of these crimes?”,
6. “How do you think it is more appropriate to inform the public about the recognition of these crimes?” and
7. “Do you think that the media and the civil society sector should be more involved in detecting these crimes?”.

We conducted these surveys throught an electronic survey in the random and unlimited selection of

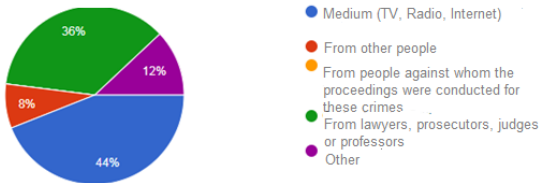
respondents. We received a response from 29 respondents and we will show received answers on this questions in numbers and in figures in which will be expressed in percentages.

On the first question, 16 of the 29 respondents answered that they had heard about the crimes “Giving a reward for unlawful influence” and “Receiving a reward for unlawful influence”, while 8 answered that they heard but aren’t sure, 3 people answered negatively with NO that they don’t have heard about this crimes, while 2 people didn’t answer the first question.



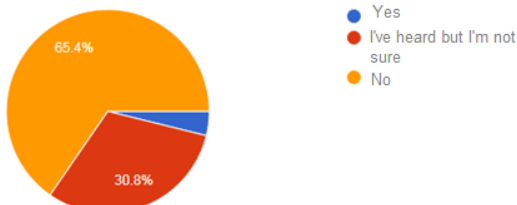
1. Figure 1- Results from respondents at first question

The second question about where they had heard about these criminal acts, most respondents 14 answered that they heard from the media (TV, internet), while 8 respondents answered that they heard from lawyers, prosecutors, judges or professors. From other people, heard two respondents. In response to this question, 3 respondents answered the "Other" as answer.



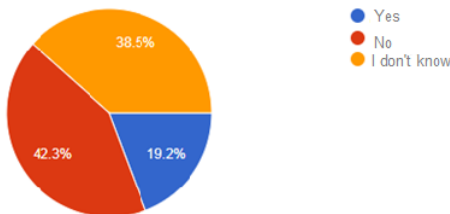
2. Figure 2- Results from respondents at second question

On the third question, only one person replied that he knew a person against whom criminal proceedings were conducted for these crimes or was himself a participant in the criminal procedure for these crimes. While 18 respondents don't know the person against whom the proceeding was conducted for these crimes, while 8 persons heard about other persons from whom criminal proceedings were conducted, but they are not sure who those persons are.



3. Figure 3- Results from respondents at third question

On the fourth question, 5 respondents consider that these crimes are easy to recognize and observe, 11 think they are not easy to observe and recognize, 10 answered that they did not know, and 3 respondents refrained from responding.

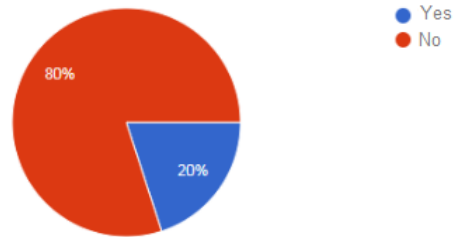


4. Figure 4- Results from respondents at fourth question

On the fifth question 20 people think that the public is not sufficiently informed about the detection and recognition of these criminal acts, while 5 consider the public is informed, 4 people didn't answer this question.

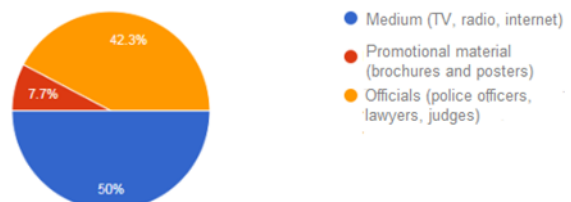
5. Discussion

When we analyzing the report of the State Statistical Office of Republic of Macedonia in period from first criminalization of the criminal acts "Giving a reward for unlawful influence" in Article 358- a and "Receiving a reward for unlawful influence" in Article 359 in Criminal Code of Macedonia in 2011



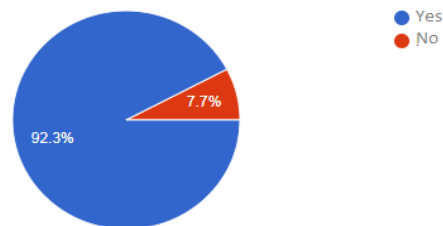
5. Figure 5- Results from respondents at fifth question

On the sixth question, most respondents even 16 answered that it is most appropriate for the public to be informed about these crimes through the media (TV or internet), 8 respondents think that it would be more favorable through officials (police officers, lawyers etc.), 2 respondents answered it is better to use promotional material, and 3 respondents did not answer this question.



6. Figure 6- Results from respondents at sixth question

On the seventh question, 24 respondents consider that the media and the civil society sector should be more and more involved in detecting and recognizing these crimes, 2 people believe that media and civil society should not be included at all, while 3 people didn't respond on this question.



7. Figure 7- Results from respondents at seventh question

year to 2017 year, we can conclude that this report are very poor. For the criminal offence "Giving a reward for unlawful influence" there are no data for reported, accused and convicted adults persons. Although for the criminal offence "Receiving a reward for the unlawful influence" there are data for accused and convicted, they are too few. When we analyzing the data from survey which we have implemented, we can see that most of the

people know about this criminal offenses and most of them point out that the medium (TV, Internet, much is the role of the medium in this case. Especially it is important that most of respondents think that these crimes are difficult for recognition and detection, so we can see that most of respondents are not familiar with the content of these criminal offenses and with the manner of recognition and detection. Also most of the respondents answered that is important to have a greater activity of the civil society sector as a whole and the media in particular, in investigating and imposing such cases and exerting pressure on the competent authorities to investigate, process and sanction such cases.

6. Conclusion

The results that we got with the statistic data and the research are of great value to the legal system. Criminal offenses "Giving a reward for unlawful influence" and "Receiving a reward for unlawful influence" are criminal acts that have been proposed by various international anti-corruption agreements, which are envisaged as a criminal act "Trade in influence". Although this type of corruption is incorporated into the criminal legislation of the Republic of Macedonia, there aren't enough known public cases of initiated procedures and court verdicts for "Trade in influence", especially those that would cause more interest due to the actors involved in such illegal actions.

From the reports of the State Statistical Office analyzed here it has been established that in the period from 2011 to 2017 there is little representation of known cases of these criminal acts. There may be several reasons for this. One of the reasons, may be the difficulty in detecting and recognizing this crime, because it is precisely the agreement between the person who makes the influence and the person who gives the order to impose it is very difficult to detect, and most often that relationship is not clear and it remains quite difficult to investigate and prove it in the region.

From the conducted survey, it can be concluded that the public is not sufficiently informed as to the existence of these crimes, as well as their

radio) are the places from where they have heard about this criminal offenses, so we can see how recognition and disclosure. Also there is the need for enhanced activity by the competent authorities for detecting cases of this criminal acts, as well as their processing in the competent bodies and their sanction, is imposed, in order to criminalize the criminal acts "Giving a reward for the illegal influence" and "Receiving a reward for the unlawful influence" not to remain only on paper.

This is a subject that it is very little researched and it is necessary to make more researches for this criminal offenses to see where is the problem for the recognizing this criminal offenses.

6. References

- Boban Shajkaroski, Comparative legal analysis of the criminal acts "Giving a reward for unlawful influence" and "Receiving a reward for unlawful influence" with special reference to the Republic of Macedonia, master thesis, 2018 year.
- Criminal Law Convention on Corruption of the Council of Europe, Strasbourg, 27.1.1999.
- Law for changing and supplementing the Criminal Code of RM, Official Paper of the Republic of Macedonia, No. 51/11.
- Republic of Macedonia, State Statistical Office, Perpetrators of criminal offences in 2017 - <http://www.stat.gov.mk/Publikacii/2.4.18.07.pdf>
- Republic of Macedonia, State Statistical Office, Perpetrators of criminal offences in 2016 - <http://www.stat.gov.mk/Publikacii/2.4.17.09.pdf>
- Republic of Macedonia, State Statistical Office, Perpetrators of criminal offences in 2015 - <http://www.stat.gov.mk/Publikacii/2.4.16.08Kor.pdf>
- Republic of Macedonia, State Statistical Office, Perpetrators of criminal offences in 2014 - <http://www.stat.gov.mk/PrikaziPublikacija.aspx?id=43&rbr=574>
- Republic of Macedonia, State Statistical Office, Perpetrators of criminal offences in 2013 - <http://www.stat.gov.mk/Publikacii/2.4.14.11.pdf>
- Republic of Macedonia, State Statistical Office, Perpetrators of criminal offences in 2012 - <http://www.stat.gov.mk/Publikacii/2.4.13.11.pdf>
- Republic of Macedonia, State Statistical Office, Perpetrators of criminal offences in 2011 - <http://www.stat.gov.mk/Publikacii/2.4.12.09.pdf>
- <https://www.pravdiko.mk/trgovija-so-vlijanie-krivichno-delo-koe-teshko-se-otkriva/>