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DEFENDING THE RIGHTS OF THE VICTIMS OF CORRUPTION IN THE REPUBLIC OF KOSOVO: WITH A SPECIAL FOCUS TO THE PANDEMIC COVID-19

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ABSTRACT

Justice is not only about punishing the perpetrators but also protecting the rights of their victims. Corruption is not a victimless crime! Therefore, the main intention of this paper is to enlighten that protecting the rights of the victims of corruption is one of the crucial battles in the war against corruption. Winning this battle during the pandemic Covid-19 is grinding but of vital importance at the same time!

Corruption has already been a remaining concern in the Republic of Kosovo. Notwithstanding, the situation with the pandemic Covid-19 has made the justice system, and not only, more fragile. Consequently, we are currently living in a perfect environment for corruption acts where the victims of corruption are not acknowledged and sometimes even “garbled” with the victims of Covid-19!

It is important more than ever to ensure effective remedies for persons who have suffered from corruption acts including the possibility of compensation for their damage. Indeed,

the Republic of Kosovo is not a state party of the Civil Law Convention on Corruption. Yet this convention shall be the guide for establishing such legal avenues while the good practices of the United Kingdom and the French Republic shall be the aim and motivation for this.

Key words: Corruption, Victims, Republic of Kosovo, Covid-19.

INTRODUCTION

According to the United Nations, every year \$1 trillion US Dollars is paid in bribes while an estimated \$2.6 trillion are stolen annually through corruption! This sum is equivalent to more than 5% of the global GDP (United Nations, 2019).

Nevertheless, corruption today is not just about money! Corruption is a consistent threat to the fundamental human rights and freedoms. Its consequences are revealed particularly in developing countries. For instance, Transparency International has reported that *“Corruption could costs lives in Latin America’s response to the Coronavirus”* (Transparency International, 2020). Reducing corruption while facing with Covid-19 could be just enough to ensure a proper mobility of relevant institutional stakeholders there. *Vice versa* (otherwise), the consequences could be even more devastating than they already are! Under these circumstances, costs of corruption might have to be paid also with lives of innocents, who because of corruption had no proper protection from their government. From this point of view, corruption could costs lives also in Western Balkans or elsewhere during the combat against Covid-19! After all, eventually a medicine will be invented against the pandemic Covid-19 but no antivirus is going to be invented soon against corruption!

Where ever corruption will be, there will also be poverty, unemployment, nepotism, poor health and education system, no rule of law and yes, people might have to pay also with their lives because someone in the health system or elsewhere is corrupted! On the other hand, it seems that the situation with the pandemic Covid-19 has changed our lives forever. This pandemic is not simply about the Covid-19 affecting our health system only. It is also about our economy and welfare, our justice system, our education, our lifestyle and much more that is harmed because of Covid-19! In other words, this new challenging situation has become the perfect environment for corrupt dark hands. Covid-19 will end

soon hopefully and no more victims shall be because of it. Nevertheless, what is the difference between the victims who have died because of Covid-19 despite their medical treatment and the victims who have died because they had no medical treatment at all because someone was corrupted in the hospital during the pandemic? Indeed, at the end of the day both of them are just victims and cannot be distinguished but on their victimization factors. Both of these victims need to be recognized. Both of them need to be protected.

Corruption acts and corruption victims are very important issues to pay attention on even during Covid-19 and not only! This article is focused on protecting the rights of the victims of corruption in the Republic of Kosovo. On the following is to be found a thorough comparative analysis between the Civil Law Convention on Corruption (hereinafter “CLCC”) and the legal framework in the Republic of Kosovo. If we ensure the rights of the corruption victims, we will win another battle not only in the war against corruption but also in the war against Covid-19, social inequality, unemployment, poverty and much more.

It is indisputable that corruption does encourage social inequality, which leads us to major consequences especially during Covid-19. But who benefits from corruption today and what are the exact costs? This question cannot be answered straight yet through accurate numbers or graphs! After all, there is no measuring unit for corruption but only perception and no one really knows the exact dark number of corruption today. Therefore, this paper intends to raise awareness that no one should benefit from corruption, because the costs of corruption that victims are paying today, are simply unjust and inhuman! This is what we shall stand for all together, during the pandemic Covid-19 and after it.

CORRUPTION AS A REMAINING CONCERN FOR THE REPUBLIC OF KOSOVO EVEN DURING THE COVID-19

One of the conclusions in the Kosovo Progress Report for 2019 from the European Commission is that “*corruption is widespread and remains an issue of concern*” (European Commission, 2019, p. 19). Unfortunately, this conclusion is confirmed also from Transparency International. Due to the Corruption Perceptions Index (CPI) of 2019, Kosovo is ranked no. 101/180 with a 36/100 score or eight (8) positions and one (1) score

worse than in 2018 when Kosovo was ranked no. 93/180 with a 37/100 score (Transparency International, 2019).

One area in focus because of corruption is the procurement system in Kosovo. Even before the pandemic Covid-19, the procurement procedures in Kosovo have been under the loupe for eventual corruption affairs! For instance one of the recommendations repeated over again is to *“increase competitiveness and fairness of public procurement tenders by widening access to more companies and limiting the influence of political connections on bidder success”* (Fazekas, 2017). Of course, this recommendation shall be a priority for Kosovo especially during the pandemic Covid-19. Otherwise, it will be more than enough room for corruption acts that will result with many innocent corruption victims! One thing in common between Corruption and Covid-19 is that “they do not discriminate”! Corruption much like the Covid-19 does not select victims but does also not hesitate to take lives of innocents.

From 24 March 2020 when the first cases of Covid-19 have been confirmed in Kosovo, all procurement procedures of the Ministry of Health have been based on negotiation only! This means that no calls for offers are published and contractors are selected with no real competitiveness! The media in Kosovo has reported that only during March, April and May, the Ministry of Health in Kosovo has purchased over 30 of these procurement procedures concluded with million euro contracts (Insajderi, 2020). Media has also reported that some contracted companies such “Agani ltd” and “Lego shpk” are closely connected to Arben Vitia former minister of health in Kosovo (Insajderi, 2020). Similar suspicions for corruption during Covid-19 are not only for the Ministry of Health but for the municipalities as well. The official web pages of these institutions provide only deficient information on these matters. Therefore, the media are the only available source currently since the police and the prosecutors have no answers on this yet!

Among 12.683 infections currently registered, 488 persons have died (Ministry of Health of the Republic of Kosovo, 2020). These dark statistics are just getting worse every single day. Adding corruption affairs to it, could be just too much to handle with for the people in Kosovo. Preventing the perpetrators and Protecting the corruption victims, these two ‘P’ need to be ensured in Kosovo immediately during Covid-19 and not only!

Nevertheless, this paper on the following is focused only on the second ‘P’ like protection for the victims of corruption.

Everyone knows that corruption is a global concern since the very existence of human society. Indeed, Kosovo is not an exception but nor are the roots of corruption in or from Kosovo! Yet, we need to be committed for successful combat of corruption in all forms and shapes. An essential part of this commitment shall be ensuring effective remedies for corruption victims, including the possibility of obtaining compensation for damage. It is indubitable that Kosovo is responsible to ensure the protection of the rights of corruption victims. The situation with Covid-19 makes this aim more gridding but also more imported than ever.

THE CIVIL LAW CONVENTION ON CORRUPTION AND ITS ROLE IN THE FIGHT AGAINST CORRUPTION

The possibility to tackle corruption phenomenon through civil law measures is an outstanding feature of the Council of Europe (hereinafter “CoE”) approach to the fight against corruption (Council of Europe, 1999, Strasbourg, p. 2). The Committee of Ministers of CoE on 6th November 1997 adopted Resolution (97) 24 on the 20 Guiding Principles for the fight against Corruption. Principle 17 specifically indicates that States should “*ensure that civil law takes into account the need to fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption*” (Council of Europe, 1997). Indeed, when fighting corruption civil law is directly linked to criminal law. If an offence such as corruption is prohibited under criminal law, a claim for damages can be made which is based on the commission of the criminal act. Victims might find it much easier to safeguard their interests under civil law than to use criminal law (Council of Europe, 1999, Strasbourg). Consequently, on 1st November 2003 entered into force the Civil Law Convention on Corruption (CLCC) as the first attempt to define common international rules in the field of civil law and corruption (Council of Europe, Treaty Office).

The purpose of CLCC is for state parties “to provide in their internal law for effective remedies for persons who have suffered damage as a result of corruption acts, to enable them to defend their rights and interests, including the possibility of obtaining

compensation for damage" (Council of Europe, 1999, Strasbourg, p. art. 1). The emphasis is on the responsibility of each state party to provide in its internal law appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State (Council of Europe, 1999, Strasbourg, p. art. 5). In order for the damage to be compensated, the following conditions are to be fulfilled: **a) *the defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption***; **b) *the plaintiff has suffered damage***; and **c) *there is a causal link between the act of corruption and the damage*** (Council of Europe, 1999, Strasbourg, p. art. 4 par. 1). If several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable (Council of Europe, 1999, Strasbourg, p. art. 4 par. 2). In order to obtain compensation, the plaintiff has to prove the occurrence of the damage, whether the defendant acted with intent or negligently and the causal link between the corrupt behaviour and the damage. This provision does not give a right to compensation to any person who merely claims that any act of corruption has affected, in one way or another, his rights or interests or might do so in the future. As far as the elements of claims for damages are concerned, the following should be indicated: **1. Unlawful and culpable behaviour on the part of the defendant**, **2. Damages** and **3. Causal link** (Council of Europe, 1999, Strasbourg, p. 6). If those prerequisites of a claim for damages are met, such compensation may cover: **1. Material damage**, **2. Loss of profits** and **3. Non-pecuniary loss** (Council of Europe, 1999, Strasbourg, p. art. 3 par. 2).

Worth noting is that CLCC provides accurate provisions on measures to be taken at national level from contracting state parties. For instance, the ***contributory negligence*** of the plaintiff to the damage or aggravation is foreseen through article 6 of CLCC. The ***limitation period*** less than three years to claim the recovery of the damage is foreseen through article 7 of CLCC. The ***acquisition of evidence*** in civil proceedings arising from an act of corruption is foreseen through article 11 of CLCC, etc.

The provisions of CLCC are not only precisely but also essential and compatible with the currently needed reflections on the combat against corruption. CLCC has been open for signature on 4th November 1999 to enter into force on 1st November 2003. There are thirty-five (35) ratifications/accessions and seven (7) signatures not followed from ratifications. Interesting to note is that among ratification countries are also all the neighbour countries of

the Republic of Kosovo (Council of Europe, Treaty Office). Republic of Kosovo has not been able to sign and ratify this convention yet! Nor has the Parliament of Kosovo approved yet any law compatible with the Civil Law Convention on Corruption.

THE RELATION OF THE CIVIL LAW CONVENTION ON CORRUPTION TO OTHER INTERNATIONAL INSTRUMENTS

Art. 19 par. 1 of CLCC regulates the relationship with other instruments or agreements dealing with same matters. CLCC does not affect the rights and undertakings derived from international multilateral instruments concerning special matters. However, state parties may not conclude agreements, which derogate from the Convention (Council of Europe, 1999, Strasbourg, p. 13).

Tab. 1 – International legal instruments dealing with similar matters as CLCC

Title	Article	Reference	Depositary	Entry in force	Ratification
UN Convention against Corruption	35 53 (b) 57 (3c)	Res. 58/4	UN	14/12/2005	187
Universal Declaration of Human Rights	8	Res. 217 A	UN	10/12/1948	-
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	par. 19	Res. 40/34	UN	29/11/1985	-
Charter of Fundamental Rights of the European Union	47	2012/C 326/02	EU	26/10/2012	-
Council Framework Decision on the standing of victims in criminal proceedings	9 pars. 1 & 2	2001/220/ JHA	EU	22/03/2001	-
Council Directive relating to compensation to crime victims	1, 2, 3, et. al	2004/80/EC	EU	29/04/2004	-
Convention on preventing and combating violence against women and domestic violence	30	CETS No. 210	CoE	01/08/2014	34
European Convention on the Compensation of Victims of Violent Crimes	1, 2, 3, et. al.	ETS No. 116	CoE	24/11/1983	26
Resolution on the Twenty Guiding Principles for the fight against Corruption	par. 17	Res. (97) 24	CoE	06/11/1997	-
Convention for the Protection of Human Rights and Fundamental Freedoms	13	ETS No. 005	CoE	03/09/1953	47

There are a few important international legal instruments dealing with corruption. Some of them provide provisions related to similar matters as CLCC. Nevertheless, these instruments refer to the right of victims on effective remedies within the right on compensation for damages

caused from criminal offences in general without distinguishing corruption. Only the UN Convention against Corruption does acknowledge the fight against corruption also from the civil point of view. For instance, the **UN Convention against Corruption** (hereinafter “UNCAC”) through article 35 refers that each state party shall “*ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation*” (UN Office on Drugs and Crime, 2004).

As a conclusion, CLCC is in accordance with all instruments listed on tab. 1 and has no contradiction but rather is in lieu with them and especially with UNCAC.

The right on effective remedies for damages from criminal offences is listed as a fundamental human right since 1950 thanks to article 13 of the **European Convention on Human Rights** - “*everyone whose rights and freedoms as set forth in the European Convention on Human Rights are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*” (Council of Europe, 1950, Rome). Actually, the right on effective remedies has been set since 1948 in article 8 of the **Universal Declaration of Human Right** “*everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law*” (United Nations, 1948, Paris).

However, corruption today is a very specific and complex concern with global dimensions! The victims of corruption are also exceptional in sense of the challenges that need to be overcome for the identification of them as well as prerequisites to be confirmed in order to claim compensation. This is why today particular regulations are necessary not only for effective counter of corruption but also protection of corruption victims. The UN Convention against Corruption as well as the Universal Declaration of Human Rights rather encourage for international mobility on this issue. Such explication may be supported also from other international instruments as listed above on tab. 1. Still, CLCC remains the crucial legal instrument on international level which is specifically focused on effective remedies within the right of compensation for persons who have suffered damage from corruption acts.

THE RELATION OF THE CIVIL LAW CONVENTION ON CORRUPTION TO THE LEGAL FRAMEWORK IN THE REPUBLIC OF KOSOVO

Kosovo is not a party to the CLCC. Therefore, this convention is not legally binding for Kosovo. On the other hand the Kosovo constitution through art. 16 par. 3 demands that, *“Republic of Kosovo shall respect international law”* (Official Gazette of Republic of Kosovo, 2008). This means that legal framework in Kosovo shall be in accordance also with CLCC. Of course, eventual collision between CLCC and the constitution cannot be interpreted as constitutional violations. Nevertheless, constitution as well as the laws and other legal acts of Republic of Kosovo shall respect international law within the CLCC.

Corruption in Kosovo is incriminated through art. 414, 415 *et. al* of the Criminal Code of Republic of Kosovo (hereinafter “CCRK”) meanwhile the procedural provisions can be found in the Criminal Procedural Code of Republic of Kosovo (hereinafter “CPCRK”). Based on art. 62 of the CPCRK *“the injured party has the right to a reasonable, court-ordered restitution from a defendant or defendants who have admitted to or been adjudged to be guilty for the financial, physical and emotional harm caused by the commission of a criminal offence”* (Official Gazette of Republic of Kosovo no 37/2012, 2012). The right of the injured party can be claimed through the property claim no later than the end of the main trial before the Basic Court (first instance Court of Republic of Kosovo). The claim shall be settled in the criminal proceeding if this would not considerably prolong this proceeding. Otherwise, the party will be instructed to initiate a civil dispute.

Compensation for corruption victims is not explicitly regulated through the CPCRK. In fact, the CPCRK provides only that **each victim of crime has right to claim compensation for the damage occurred from any criminal offence** within corruption acts. The procedure and conditions for these forms of compensation should be (but are not) in the Law on Crime Victim Compensation (hereinafter “CVCK”) of Republic of Kosovo (Official Gazette of Republic of Kosovo no 17/2015, 2015, p. art. 2).

Compensation for the victims of corruption is a very specific matter and requires a specific legal treatment. Indeed, such general provisions of the CPCRK and the CVCK may not restrict claims for compensation from corruption victims but definitely do not encourage them to do so and even less ensure these rights of them. As it will be further enlighten on this paper, this

regulation of the CPCRK and the CVCK without specifying compensation for corruption victims, do not even nearly concur the provisions of the CLCC or the UNCAC.

Compensation as a legal institute remains a civil matter even when it may be subject of court orders in criminal proceedings related to property claims of injured parties through so-called *procedure of adhesion*. This way material norms regarding compensation of corruption victims shall be of civil nature! In Kosovo this aspect is only partly regulated through the Law on Obligational Relationships of the RKS (hereinafter “LOR”). According to article 359 of LOR, “*if the damage was inflicted by an act of corruption, the claim shall become statute-barred five (5) years after the injured party learnt of the damage and of the person that inflicted it. In any case it shall become statute-barred fifteen (15) years after the act was committed*” (Official Gazette of Republic of Kosovo No. 16/2012, 2012).

Even though article 359 of the LOR is titled “*Compensation claims for reason of corruption*”, it regulates only the limitation period for the recovery of damages through the relative and absolute barred status. If we consider the provisions of the CLCC, then article 359 of the LOR is deficient since it is lacking on providing very important regulations such as:

- Compensation for damage (what compensation is to be claimed);
- What prerequisites are to be proven for compensation;
- Liability (including State liability for acts of corruption committed by public officials);
- Contributory negligence (reduction or disallowance of compensation, depending on the circumstances);
- Validity of contracts;
- Protection of employees who report corruption;
- Clarity and accuracy of accounts and audits;
- Acquisition of evidence, and
- Court orders (to preserve the assets necessary for the execution of the final judgment and for the maintenance of the *status quo* pending resolution of the points at issue).

We have to bear in mind that corruption remains a concerning issue for the Republic of Kosovo. Yet, the current legal framework does not include a proper law, which would be compatible to the CLCC with the purpose to ensure effective remedies for persons who have suffered damage because of corruption acts. LOR within article 359 is definitely deficient from this point of view and attempting to implement this article from relevant stakeholders could easily lead to complications and even unjust or irreparable damages! The CPCRK and the CVCK do not fill this legal gap because they provide the opportunity to claim compensation from victims of

crimes in general but do not pay proper attention on compensation for victims of corruption. In fact, the words corruption or corruption victims or similar words are not even mentioned in the CVCK!

It is a long way to go in order to establish a proper legal framework with purpose to ensure effective remedies for corruption victims within the possibility for obtaining compensation! This shall not be just another responsibility of relevant institutions in Kosovo but an issue to focus truly on!

COMPENSATING AGAINST CORRUPTION: WHY DOES IT MATTER?

Corruption is one form of abusing public power for private gain (Transparency International, What is corruption?). Referring to Transparency International, the costs of corruption can be divided into four main categories: *political, economic, social* and *environmental*. On the political front, corruption is a major obstacle to democracy and the rule of law. Economically, corruption depletes national wealth. It corrodes also the social fabric of society through undermining peoples trust into the system. Least but not less important, environmental degradation is another consequence of corrupt systems since companies around the globe continue to pay bribes in return for unrestricted destruction (Transparency International, What is corruption?).

However, it is one thing to identify the costs of corruption or even divide them into particular categories! The main question remains the burden of who are these consequences and does anyone really care about those damages of corruption?! Unfortunately, the answer is to be found by the poorest stratum of society, unveiled from the hand of their government and ignored from the hammer of justice!

“*Corruption is not a victimless crime*” - this mantra is used frequently by anti-corruption NGOs, government officials and even judges from around the world. Yet victims of corruption are rarely represented in court proceedings, rarely consulted about corruption investigations, and even more rarely compensated (Hawley, 2016). Indeed, corruption cannot be rooted out in one big sweep. Rather fighting it is a step-by-step process, especially in countries where corruption is percept as endemic such as Kosovo. This way, ensuring effective remedies within

the right on compensation for corruption victims may reveal advantages such as but not limited to:

- Decrease the corruption dark figure through increasing the willingness of victims to report corruption;
- Establishing financial penalties that are commensurate with corruption;
- Circumvention of the possibility for reusing benefits from corruption, and
- Increasing the responsibility of the state on corruption issues.

Throughout this research, it shall be enlighten that justly attention on the victims of corruption is equal with “striking corruption by its roots”.

FACES OF CORRUPTION VICTIMS: HOW TO IDENTIFY THEM?

There is still no globally accepted definition of the victims of corruption or corruption itself. Probably because both definitions are commensurate with complex phenomena available in different forms and shapes in different places and times! Consequently, compensation of corruption victims implies the need to explore various dimensions of the issue in order to focus on the right approach of the state of how victims of corruption are defined and identified. The available legal avenues for victims of corruption, shall also determine the compensation terms as well as the parameters for assessing the suffered damage.

State parties of the UN Convention against Corruption have been able to develop some good practices in identifying the victims of corruption and parameters for their compensation. This way, they have been able to categorize the victims of corruption as following (State Parties to the UNCAC, 2017, p. 6):

1. A company as a victim
2. A shareholder as a victim
3. An unsuccessful bidder as a victim
4. A foreign state as a victim
5. Society as a victim

Corruption may have a direct or an indirect negative effect on people and it may also negatively affect a whole society. Consequently, some groups of persons may not be readily considered victims and their legal standing may be denied when they do not have a direct and specific interest. In that context, the concept of *social damage* should be mentioned, which exists in some jurisdictions and allows for compensation for damages to the public interest. It could

include damage to the environment, to the credibility of institutions or to collective rights such as health, security, peace, education or good governance (State Parties to the UNCAC, 2017, p. 5).

Each victim of corruption is unique and has its own story to tell! It may be a natural person or a legal person, a state or even a whole society! Important is to recognize all of them as victims of corruption if they have suffered damage from a corruption act and if there is a causal link between this act and the damage. The basic principle is to place the victim as closely as possible in the position that he or she or it would have been in if the corruption act had not taken place (State Parties to the UNCAC, 2017, p. 10). However, identifying the victims of corruption will be even more challenging if we consider it as an independent procedure from common efforts against the corruption phenomena! It will be much easier to identify corruption victims if we previously specify the causes of corruption, the forms of corruption, the possible consequences as well as the legal avenues to overcome successfully this concern. Deciding on the parameters of compensation for corruption victims would be also much easier this way.

FRENCH REPUBLIC - COMPARATIVE ASPECTS

Compensating the victims of corruption is a civil law matter although within the criminal suit because only through criminal procedure can be enlighten if the defendant is guilty for corruption or not! Compensation on other hand remains a civil law matter, which has to comply with civil law rules. In order to address this complex situation properly and in compliance with CLCC, various legal systems have adapted various solutions.

French civil law does not address *per se* (as such) compensation for victims of corruption, since the civil law remedy depends on the decision arrived at under criminal law. Pursuant to art. 2 Code de Procédure Pénale (Criminal Procedure Code of France, hereinafter “CPCF”), a victim can obtain civil compensation from a criminal law court under certain conditions (Criminal Procedure Code of the French Republic, 2006, p. art. 2). This is called the “*action publique*” which is subordinate to the criminal law decision: only once a criminal offence is acknowledged, civil damages can be awarded (Jaluzot & Michaela, 2017, pp. 227-228). Of course, such civil claims can only succeed when the plaintiff is able to prove “personal and direct” damage resulting from the corruption act. Consequently, secondary victims are excluded from the scope of this rule (Jaluzot & Michaela, 2017, p. 233).

France ratified the CLCC in 2008. Therefore, it can be supposed that legal avenues in France for addressing compensation for corruption victims are compatible with the provisions of the CLCC. Probably this compliance has existed even before the ratification of the CLCC since no significant adaptations have been noticed after the ratification. Moreover, there have been at least three debates among French professionals related to significant matters of this topic.

The first issue debated on is whether a person involved in corruption could be eligible to sue for damages! In a case handled in 1978, both parties had been involved in active and passive corruption, before a conflict arose between them. One party (who allegedly committed active corruption), first sued for payment of the agreed commissions and then claimed for compensation in relation to his loss. The Court did reject the claim while insisting that civil compensation required a personal loss (Jaluzot & Michaela, 2017, p. 234). Relying on this case, in 1992 the French criminal court ruled that even though the offence of passive corruption had been enacted mainly in order to protect the general interest, it also served to protect private persons, who may have suffered a loss as a result of having been induced to offer gifts and presents, exception in the event when the claimant has provoked the offence himself. This way the Court implied that a person involved in corruption even one who had committed some reprehensible acts, could sue for damages. Yet it did not really clarify the *locus standi*! As a result, this debate is continuing since it is still unclear who's eligible to claim compensation for a loss in France (Jaluzot & Michaela, 2017, p. 234)!

The second debate relates to vicarious liability such as employer's liability. In 2003 a bribed banker had made payments through two promissory notes when the bank should have frozen the assets of the bankrupt. The trustee in bankruptcy sued the bank for damages, on the basis of employer's liability. The *Cour d'appel* (French Court of Appeals) held that as the agent who had received a bribe, was aware of the illegality of his act, this act had been performed outside the course of his employment, without any authorization and without him carrying out any of his legal duties as an employee of the bank. This decision was subsequently approved by the *Cour de cassation* (Court of Cassation of France) as conforming to case law on employer's liability (Jaluzot & Michaela, 2017, p. 235).

The third debate relates to the nature of injuries that qualify as damage resulting from corruption. In 2007 the town of Cannes (France) sued for damages after their mayor had been convicted of corruption. The facts of this case are as follows: the mayor had allocated a gambling license to a company without complying with legal requirements, after receiving a

bribe. Consequently, the Minister of Interior revoked the authorization and refused to allocate it to any company until the legal proceedings, involving the public service delegation, had concluded. As a result, the town of Cannes could not benefit from taxes, such as the tax levied to pay an annual contribution supporting artistic effort and those taxes imposed on gambling, for the period of two years. In this case, the town acting in the capacity of a legal person, sued the bribers. The judges held that this damage was not direct damage, consequent to the corruption, but was instead the consequence of the Minister's decision to revoke and refuse a license before the legal proceedings were finalized. Therefore, this could not be considered a loss directly resulting from the infringement. On the other hand, the judges did recognize that loss of reputation qualifies as damage. This is interesting in so far as the party suffering the said loss of reputation is in fact a legal person (in this case, the town of Cannes). The town alleged that they had suffered a loss of reputation worldwide, in the context of their role as host of the prestigious film festival. The mayor of the town was the main person involved but corruption resulted from the behaviour of the defendant who had paid the bribe. In this case, damages were quantified at 100.000 Euro (Jaluzot & Michaela, 2017, p. 235).

In order to ensure effective remedies for victims of corruption within the possibility on compensation for damages, it is imperative for Republic of Kosovo, among others to address properly: a) *eligibility to sue for damages from corruption*; b) *vicarious (imputed) liability* and c) *qualification of the damages resulting from corruption*. Despite the sustainable legal system, these three topics remain challenging even for France! Republic of Kosovo shall reflect high responsibility in addressing these issues accurately.

UNITED KINGDOM - COMPARATIVE ASPECTS

United Kingdom has signed the CLCC on 8 June 2000 but not ratified it yet. Nevertheless, UK is one of the state parties to the UN Convention against Corruption (ratified in 2006). Moreover, UK has taken a proactive role in pushing further the issue of compensation as a mean for helping victims of corruption, in lieu with arts. 35, 53 (b) and 57 (3c) of UNCAC. On 1st June 2018, the UK's Serious Fraud Office (SFO), Crown Prosecution Service (CPS) and National Crime Agency (NCA), hereinafter as the agencies, published the **“General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases”** (Serious Fraud Office, United Kingdom, 2018). Through these general principles, UK's SFO, CPS and NCA have established a common framework to identify cases

where compensation is appropriate and act swiftly in those cases to return funds to the affected countries, companies or people (Serious Fraud Office, United Kingdom, 2018). These principles commit the agencies to:

1. Considering compensation in all relevant cases;
2. Using whatever legal means to achieve it;
3. Working cross-government to identify victims, assess the case and obtain evidence for compensation, and identifying a means by which compensation can be repaid in a transparent, accountable and fair way that avoids risk of further corruption;
4. Proactively engage where possible with law enforcement in affected states;
5. Publish information on concluded cases.

Beyond the UNCAC, these principles are available under two (2) crucial UK legal acts: **1)** The Proceeds of Crime Act 2002 for confiscation (UK Public General Acts c. 29, 2002) and **2)** The Powers of Criminal Courts (Sentencing) Act 2000 for compensation (UK Public General Acts c.6 Part VI, 2000).

The *general principles* provide that the agencies will work with other government ministries including the Department for International Development, the Foreign Commonwealth Office, the Home Office and Her Majesty's Treasury to identify potential victims overseas, assess the case for whether compensation is appropriate and, if so, create a transparent compensation plan (Latham & Watkins LLP, 2018).

Only in cases during 2014-2018, the UK's SFO and NCA, working with the CPS, have secured **£49.2 million total compensation** for overseas victims (Serious Fraud Office, United Kingdom, 2018):

1. **£28.7m** of assets have been recovered by the CPS following the conviction of Mr. Ao Man Long, former Secretary of Transport and Public Works in the Macao Special Administrative Region, for corruption offences. The CPS ensured that Mr. Ao's UK-based assets – part of the US\$ 100m hidden in offshore companies and over 100 bank accounts – were successfully returned to the Region's authorities.
2. **£349,000** have been paid to the Government of Kenya following SFO prosecution of senior executives at printing firm Smith & Ouzman. The funds paid for 11 new ambulances to service hospitals across the country. On 22 December 2014 Smith and Ouzman Ltd, a company specializing in printing security documents, together with its chairman, Christopher Smith and its sales and marketing manager, Nicholas Smith, were convicted at Southwark Crown Court of corruptly agreeing to make payments totalling nearly half a million pounds. These payments were used to influence the award of business contracts in Kenya and Mauritania (Serious Fraud Office, Smith and Ouzman Ltd, 2018).

3. **£4.9m** (US\$ 7m) compensation has been paid to the Government of Tanzania from the Standard Bank. Standard Bank (now known as ICBC Standard Bank PLC), was the subject of an indictment alleging failure to prevent bribery contrary to section 7 of the UK Bribery Act 2010 (Serious Fraud Office, Standard Bank PLC, 2019).
4. **£4.4m** have been recovered by the SFO from corrupt oil deals in Chad which has now been transferred to the UK Department for International Development to identify key projects for investment to benefit the poorest in that country. Securing exclusive contracts with corrupt deals, Griffiths Energy bribed Chadian diplomats in the United States and Canada with discounted shares deals and 'consultancy fees' using a front company 'Chad Oil' – which was set up just five days before agreements were signed. "Chad Oil" was a vehicle used by senior diplomats at the Chadian Embassy to the United States to facilitate a deal which saw the wife of the former Deputy Chief, Mrs. Ikram Saleh purchase 800,000 shares at less than 0.001\$CAD each, later selling them for significant profit (Serious Fraud Office, 'Chad Oil' share deal, 2018).
5. **£10.9m** have been paid in form of compensation in a fourth SFO case which currently is not published for legal reasons.

The picture that emerges is that compensation for corruption victims is not straightforward, even when UK government commits to pursuing whatever legal means to achieve it. In some corruption cases made public in UK (including one involving Rolls Royce), no compensation was provided for the victims, for two main related reasons: First, the cases were "too complex" involving bribes paid across multiple jurisdictions, and, second, it was not obvious who the victims were (Stephenson, 2018). This way it can be concluded that UK has established some good practices related to the compensation of the victims of corruption (countries, companies or people). Nevertheless, at least two challenges remain to be overcome:

1. Cases involving corruption activities across multiple jurisdictions (transnational corruption) and
2. Identification of the victims of corruption as well as qualification and quantification of the damage occurred.

The second challenge reveals issues on which every day better practices are being recorded from UN, CoE and even UK itself. The first challenge on other hand (transnational corruption), unleashes an everyday growing concern. This prototype of corruption is attached with globalization so it is an inevitable issue to deal with. Moreover, transnational corruption can happen in public or private sector, including countries, companies, people, civil society, international organizations and more!

As about the Kosovo, it is indisputable that important lessons can be learned from the UK's commitment towards corruptions victims and the good practices during 2014-2018. However, just as many lessons shall be learned from the UK's current challenges on these matters such as transnational corruption.

CONCLUSION

During the pandemic situation, citizens were unjustified by state authorities in various ways. State bodies have repeatedly appealed to citizens that only behavior imposed by the government through coercive measures can save their lives. However, this doesn't mean that the state had to give up its positive obligations and accountability for the reasonableness and appropriateness of the measures it has adopted towards ensuring the protection of public health. Government protection measures had to respond to general threats, as well as real and immediate risks to the life, integrity and socio-economic situation of citizens.

To minimize the possibility of a negative effect on marginalized groups in society, a comprehensive approach was required, which would include planning, implementing, monitoring, evaluating and concluding measures related to the restriction of free movement and human rights. Continuous monitoring of the measures was necessary to draw conclusions as to whether the measures taken by the government had resulted in expectations, or should have been changed, as the maintenance of measures that were not needed couldn't be considered a justification under the ECHR.

What had sparked public debate were the delayed (not timely) measures to financially support businesses and affected citizens, when the state of emergency was already coming to an end and the country was on the verge of parliamentary elections. The continuation of the state of emergency by the President of the state in certain cases was assessed as a political game of the executive power and that his decisions were not within the framework of public health protection. This was evident in the last declaration of the state of emergency, when the President declared in front of the media that the need for a state of emergency had ended, although the number of people infected with Covid19 on a daily basis was much higher compared to previous periods when he had declared other emergencies. This had sparked criticism from opposition parties against him and he was seen as a tool in the hands of the government used to lead the country to early parliamentary elections at the request of the government, forgetting to safeguard the public health of citizens. One day after this statement, the President changed his mind and said that the state of emergency should continue for another 8 days, a decision influenced by the Political Agreement between the leaders of the major political parties (Zaev-LSMD and Mickovski-VMRO-DPMNE) for setting the date of the elections on July 15, 2020, elections which should have been held 10 days earlier.

However, the elections were held, and now the number of infected people continued to increase every day (reaches the daily figure of about 200 infected), so the RNM is estimated to be high in the top list of mortality per capita from COVID19 at European level, in situations when the state of emergency has already legally ended. Thus, now public health care is limited to the instructions of the Ministry of Health to maintain physical distance and use masks in public places. This raises dilemmas in the sincerity of the government for the protection of the public health of citizens, as well as raises doubts in the management of antiCOVID19 measures, in situations where citizens had stayed for 3 months under strict measures of restriction of their freedom and rights, but unfortunately without any result in protecting their health. Therefore, it will not be a surprise if in the near future, there will be cases when the citizens of the RNM will initiate lawsuits against their state before the Court in Strasbourg.

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