US-China Law Review, May 2022, Vol. 19, No. 5, 199-208
doi:10.17265/1548-6605/2022.05.001

Evaluate the Procedures for Dealing With Financial Crime and Corruption

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This paper deals with an especially important and topical issue: tackling financial crime and corruption. It is important to record and evaluate the legislative framework, which appears to be multilevel, as there are a variety of provisions, which seek to cover all the issues raised. The research is of particular interest in comparatively assessing the changes that have taken place with the new Penal Code, which in general has resolved multiple interpretative issues, leaving some intact. The work is structured in three main sections: (1) in the protection of the Greek state from external intrusions by analyzing the provisions on fraud against public property, (2) in the protection of the Greek state from internal intrusions by analyzing the provisions for infidelity and embezzlement at the expense of public property, and (3) in the fight against corruption in the public sector by analyzing the provisions of bribery in the public sector and the influence of trade. At the end, some structural conclusions for the overall legislative framework are recorded.

Keywords: financial crime, corruption, evaluation, Greek law

Introduction

In the modern social reality, the phenomena of financial crime and corruption to the detriment of the State have become gigantic. The emergence of these criminal types is not only an unequivocal phenomenon that plagues the economy and the purity of public services, but also acquires significant implications for democratic life, altering the very existence of the political and social system.

As for economic crimes, they are a special form of crime, which has various implications both nationally and internationally, creating a rift in the economy of a state. On the other hand, corruption, being a timeless and at the same time topical issue, is directly related to the seizure of power in every public sector, proving the weak foundations of the Greek reality, with the actors themselves operating against the state itself. These important consequences raise two key issues: firstly, the need to formulate a strong institutional framework, which will act in a targeted way to deal with such phenomena, and secondly, the need to eliminate important issues of proportionality and vagueness, which were and still are presented by the relevant provisions.

The paper will seek to present the current legal framework and to evaluate the changes brought about by the Penal Code of 2019, by recording respective proposals for its improvement and reform.

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Criminal Protection of Greek Public Property From External Insults—Fraud Against Public Property

The Crime of Fraud (Article 386 of the Penal Code) and Computer Fraud (Article 386A of the Penal Code)

The legal framework for dealing with infringements of public property through the act of fraud is shaped in the same way that private property is protected. The established legal forms cover a wide range of insults compared to those that appear in practice, while the criminal sanctions present a gradual stratification, up to the higher one, which is the sentence of temporary imprisonment of up to 10 years cumulatively with a fine. Therefore, the legislative framework seems adequate and effective (Kazanas, 2014, p. 367).

In particular, the objective nature of fraud consists of the following elements: First, an act of deception, and in particular the representation of false facts as true or false concealment of true facts or false concealment of true facts, covering the whole range of possible facts; Second, a causal provocation by the above act of error to the person making the disposition of the property; Third, property disposal by the above person; Fourth, property damage to foreign property, either of the deceived disposer himself, or of a third party (case of "triangular fraud") (Kazanas, 2014, pp. 329-330; Mylonopoulos, 2006, pp. 440 ff., Papadamakis, 2000, pp. 93 ff.).

Subjectively, deceit of any degree (at least possible) is required for all the elements of the objective being, except for the act of deception, for which at least direct deceit of the second degree is required. At the same time, first degree deceit is required for the purpose of obtaining illegal property benefit, with it being a crime of superficial subjective existence, without the need for the objective realization of the above purpose (Kazanas, 2014, p. 330; Mylonopoulos, 2006, pp. 438 ff.; Papadamakis, 2000, pp. 89 ff.).

Regarding the foreseen criminal sanctions, there is a graded configuration. Specifically, the basic act is punishable by imprisonment (10 days to five years) and if it is an act of particularly high value with imprisonment of at least three months (three months to five years). In case the damage caused exceeds the amount of 120,000 Euros, then a temporary imprisonment of up to 10 years (five years to 10 years) and a fine is imposed.

One case that has raised the question of whether he is involved in the crime of fraud is that of the cartel in view of a public tender for the award of a project, supplies, or services. Specifically, the members of the cartel falsify the free competition, each time choosing a "favored" for each competition. At the same time, the other members of the cartel decide not to participate in the competition, or to participate with a higher and non-competitive offer (Kazanas, 2014, p. 338). In this case, for fraud to occur, in addition to the existence of an act of fraud, misrepresentation and misappropriation, it appears to consist of, the evidence of property damage (Androulakis, 2008, pp. 102-103; Tetokas, 2001, p. 1802). This is because the attempt to establish the property damage on the basis of the criterion of finding the most economically advantageous tender overlooks a crucial fact: that it is very likely that the price resulting from the falsified tender will not exceed that of a fully competitive (Androulakis, 2008, pp. 83-84, 102-103; Kazanas, 2014, pp. 338-339; Tetokas, 2001, pp. 1796-1777, 1802). Such a determination is difficult and inconclusive.

Furthermore, the substantiation of property damage can occur if a specific and real profit expectation is thwarted. This can happen only in the case that in the competition there are offers of non-card candidates and if they themselves are competitive of the "favored" by the cartel (Androulakis, 2008, pp. 84 ff.; Mylonopoulos, 1997, pp. 165 ff.; Papadamakis, 2000, p. 16; Tetokas, 2001, pp. 1796-1797).

For all these reasons, the case of encroachment on public property through cartel conspiracy in view of a public tender is dealt with more correctly in the context of criminal provisions for distortion of free competition (Article 44 (1) of Law 3959/2011), but without protecting public property (Androulakis, 2012, pp. 321 ff.; Kazanas, 2014, pp. 339, 367).

Another crucial issue, which was raised in theory as a point of expression of diametrically opposed views under the previous Penal Code, was the question of what act of unlawful use of computer property by an unauthorized person, who gains access through a stolen or lost ATM card or through internet banking (Kostaras, 2014, pp. 1277-1278; Papadamakis, 2000, pp. 189-191; Kaiafa-Gkmpanti, 2007, pp. 1081-1082; Manoledakis & Bitzilekis, 2013, pp. 45 ff.). Another view argued that there is an effect of computer data when there is a deviation from the result of data processing, i.e. when it leads to a result different from what is expected with legal use. Therefore, he considers that this was the crime of computer fraud (Vasilakis, 1993, p. 213; Kioupis, 1999, p. 116; Mylonopoulos, 1991, p. 67). A third view argued that this criminal behavior is not criminal (Vathiotis, 2012, pp. 390 ff.; Namias, 2003, pp. 487 ff.; Samios, 2010, pp. 183 ff.).

With the new Penal Code, this issue was resolved, with the addition of two main cases, namely, case (d) the "unauthorized entry, alteration, deletion or deletion of computer data, in particular identity data", and case (e) the "unauthorized use of software intended for the transfer of money", explicitly including the above behaviors in Article 386A of the Penal Code.

One issue that remains is where the case of unjustly causing damage to foreign property by affecting the computer components will be covered in case it is not accompanied by the further purpose of providing illegal property gain. This case cannot be subject to computer fraud (Article 386A of the Penal Code), as it necessarily includes the above purpose in its legal form, but neither to the fraudulent cause of harm (Article 389 of the Penal Code), as it presupposes the deception of a natural person ("convincing another"), so that its application inadmissibly extended the crime of the act, worsening the position of the accused (Mylonopoulos, 2006, p. 604).

Finally, in relation to the distinguished cases of law 1608/1950 for embezzlers of public money, not only for the crimes of fraud and computer fraud, but for several other crimes that we will study, a significant cut has occurred. Specifically, this law, which had received a number of criticisms from most of the Greek theory as the object of the principle of proportionality between an act and a criminal penalty (among others Margaritis, 2000, pp. 147-148) was repealed by Article 462 of the new Penal Code.

In this place, distinct forms of crimes were formed when they are directed against the property of the State, legal persons under public law or local self-government organizations and the value of their object exceeds the total amount of 120,000 Euros, which requires imprisonment for at least daily units. This legislative choice is considered absolutely correct.

Criminal Protection of the Property of the Greek State From Internal Insults—Crimes About the Service

Infidelity to the Detriment of the Property of the State and the Legal Entities of the Public Sector (Article 390 of the Penal Code)

The Penal Code has formed an independent chapter (the 12th) related to the crimes committed by an employee in violation of his official duties through the abuse of his official capacity. At the center of the

reflection are the so-called "management crimes" with the term management being used in a broader sense than the exercise of managerial power (Spinellis, 1988, pp. 17, 103). Specifically, it includes the existence of decisive competence with the possibility of developing initiative, including all employees, who due to their duties acquire a certain relationship of service proximity with public property (Bitzilekis, 2001, pp. 522-523; Kazanas, 2014, p. 375). These employees, from guarantors of public property, are transformed into infringers of it (Kazanas, 2014, p. 451).

Under the previous legislation, the biggest issue was the dipole of service infidelity (Article 256 of the Penal Code) and common infidelity (Article 390 of the Penal Code) with the theory trying to formulate multiple proposals to remove the interpretive issues that arose from the formalities of the legislator. The issues raised in this summary were as follows.

First, the legislator, despite the fact that he referred to public property in Article 256 of the Penal Code, excluded a large part of it by formulating the cases of Law 1608/1950 for the abusers of public money (Kazanas, 2014, p. 452).

Second, the reference of Article 256 of the Penal Code to a reduction of public property in the determination, collection, and management of public revenue was misleading, as the reduction of property in the execution of expenditures in the most correct view (Anagnostopoulos, 2003, p. 97; Margaritis & Dimitrainas, 1999, p. 741; Bitzilekis, 2001, p. 568) fell within the common infidelity of Article 390 of the Penal Code (Kazanas, 2014, p. 452-453). After all, the distinction between costs and expenses was not clear, widening the interpretive gap (Kazanas, 2014, p. 453).

Thirdly, a significant antinomy was observed in the different evaluation of the two provisions. In particular, the standardization of a distinguished criminal infidelity in the context of common infidelity with the sole condition of the particularly high value of the property damage, differed from the corresponding distinguished criminal case of service infidelity, which required the perpetrator to commit special tricks (Kazanas, 2014, p. 453).

Fourth, the wording of Article 256 of the Penal Code stating that the perpetrator is accredited in the management of the public property that is affected excludes from its scope the status of perpetrator by employees who have only executive duties, without the possibility of exercising discretion and taking initiative. Nevertheless, it is much more decisive than the simple "validation" of the result of the work of these employees by their "boss" (Kazanas, 2014, p. 453).

All the above was considered by the legislator, who in order to deal with the problems deleted the case of Article 256 of the Penal Code, namely infidelity in the service. Now, the provision of Article 375 of the Penal Code also covers cases where the said acts are directed against the legal entity of the Greek state, legal entities of public law, or local self-government organizations. Consequently, the maintenance of infidelity in the service now becomes unnecessary (Explanatory Memorandum of Law 4619/2019, p. 73).

Embezzlement Against the Property of the State and the Legal Entities of the Public Sector (Article 375 of the Penal Code)

The crime of embezzlement followed in the new PK a corresponding course in relation to infidelity. More specifically, he repealed the provision of Article 258 of the previous Penal Code, which provided for the crime of

embezzlement in the service. The justification for this abolition is moving in a direction corresponding to the crime of infidelity. In particular, these articles describe acts which primarily affect property and not the operation of the service itself, or acts which infringe certain obligations on civil servants, without the fact that the infringement of the service is so serious as to require the threat of criminal sanctions (Bitzilekis, 2001, pp. 304 ff., pp. 465 ff.).

The inclusion of all cases in joint embezzlement was accompanied by the treatment of an equally serious issue, the abolition of the distinct (criminal) case of embezzlement with the use of special tricks. To be more specific, the view, which was completely prevalent in the jurisprudence, interpreted the tricks, subjecting to them acts of a criminal nature, as well as non-criminal acts (Anagnostopoulos, 2003, p. 127; Kaiafa-Gkmpanti, 1991, p. 910; Bitzilekis, 2001, pp. 549 ff.). The jurisprudence interpreted the tricks with particular breadth, focusing on their obscure content. Thus, he was subject to such cases as the alteration of documents in books with corrective liquid, the opening of a letter and its re-attachment, the intentional cumulative errors, etc. (Kazanas, 2014, p. 445). With such a wide view and provided that the required amount of 30,000 Euros was met and it was subject to it in all cases, ignoring the basic misdemeanor.

On the contrary, the theory stood emphatically against this conception of jurisprudence, adopting interpretations, which gave weight to the "special" of the tricks, distinguishing these cases from the corresponding misdemeanors, which is not required (Anagnostopoulos, 2003, p. 123; Katsantonis, 1986, p. 621; Bitzilekis, 2001, pp. 560-561; Symeonidou-Kastanidou, 1996, p. 286). The main points for their interpretation are gathered in the following three conditions: (a) the particular tricks are distinguished from the commons insofar as the commons are widespread and accessible to the average perpetrator of bribery, (b) the plural requires a combination of several methods, (c) they should have the service as a point of reference, namely the very mechanism of management and control of public money, or (d) they should be used to facilitate embezzlement and not just operate covertly (Anagnostopoulos, 2003, p. 123; Katsantonis, 1986, p. 621; Bitzilekis, 2001, pp. 561-562; Symeonidou-Kastanidou, 1996, p. 286).

Now the cases of embezzlement are formed on a classified basis, with the criminal circumstances including cases where the value of the object exceeds 120,000 Euros and when it is directed directly against the legal entity of the Greek state, legal entities under public law or local government organizations and the value of the object exceeds a total of 120,000 Euros.

Fight Against Corruption in the Greek Public Sector Through Criminal Law

Bribery in the Public Sector (Articles 235 Par. 1-3, 236 Par. 1-2, 237 Par. 1-2, 159, 159A)

An important category of corruption crimes is criminal forms of bribery in the public sector. More specifically, the legal framework of the following crimes will be evaluated: bribery of an employee (Article 235 Par. 1-3 of the Penal Code), bribery of an employee (Article 236 Par. 1-2 of the Penal Code), bribery and bribery of court officials (Article 237 Par. 1- 2 Penal Code), and bribery and bribery of political officials (Articles 159, 159A Par. 1 Penal Code).

A key feature of bribery crimes is an illegal transaction between a civil servant and another person. The object of this acquisition is an action or omission of the employee, future or finished, legal or illegal (Chatzikostas,

2014, p. 587). A necessary condition is the specific action or omission of an employee to be related to his service activity, which is either related to his duties, or reduced to them, or is opposed to them (Chatzikostas, 2014, p. 587). The crimes of bribery and corruption in all relevant cases are opposite to each other, with the perpetrator of one being a necessary participant in the act of the other (Chatzikostas, 2014, p. 588).

In an overview of the current protection framework, it is worth mentioning Law 4254/2014, which brought about substantial changes in the legal forms of the reported crimes, which were largely kept intact by the new Penal Code. Prior to this law, only the illegal transaction that had as its object a specific official action of a civil servant was punished. In this way, the cases were left uncovered that the provision of benefits to a civil servant was not directly related to a specific service action but aimed at his association to serve future desires (Chatzikostas, 2014, p. 646). It is not unknown the tactic of gradual cultivation in an employee of the feeling of bribery through the provision or promise of gifts, making him addicted to their enjoyment, with the gradual formation of a climate of corruption (Manoledakis, 2005, p. 305; Chatzikostas, 2014, p. 646). For this reason, the legislator has extended the objective aspects of bribery crimes and in cases that have as their object an action of the employee on the performance of his duties. At the same time, the treatment of bribery crimes of judicial officials and Members of Parliament as distinct bribery crimes is evaluated with a positive sign, as well as the standardization of the crime of bribery of political officials with Article 159A of the Penal Code (Chatzikostas, 2014, p. 648).

An equally serious regulation is the punishment of acts of bribery in cases of redemption and legal actions of the employees that fall within the scope of his duties or even related to them. Although it may have a reduced weight in relation to the case of an illegal act, however, it does not stop altering the social and service-determined relationship between citizen and service (Bitzilekis, 2006, p. 165; Chatzikostas, 2014, p. 649). The intervention of the legislator is necessary in order to provide, respecting the principle of proportionality, a separate penalty in the case of bribery with the object of an illegal act and bribery with the object of a legal act (Chatzikostas, 2014, p. 649).

Influence Trading—Intermediaries

The legislator in the context of tackling corruption, wanting to strengthen the existing legal framework, has chosen to criminalize behaviors that are at the top of the relevant phenomenon. These behaviors concern the intermediaries who request or receive a consideration, in order to mediate, using their acquaintances and influence, to enter into a contract with the State or to provoke a legal or illegal service action (passive influence trading). It also covers, however, the cases in which third parties offer consideration to the intermediary for the achievement of the above result (active trading of influence) (Chatzikostas, 2014, pp. 653-654).

Punishment of this behavior by the legislator is important, as intermediaries, often retaining a position of supervisor, can more easily maneuver in achieving their goals. Because of this they can know the person or persons in order to achieve their client's goal. So instead of corrupting people in critical positions, the principal entrusts this task to the intermediary, who can carry out the task with less risk than their principal. In addition, mediation creates a significant advantage. Specifically, it makes the dependence between the parts of the transaction more relaxed, if there is the mediation of a third party, with the risks from the illegal transaction appearing reduced (Argyroiliopoulos, 2006, p. 43; Chatzikostas, 2014, p. 654).

The legal form secures an illegal transaction with the object of exercising an unlawful influence on a civil servant in the future. In Par. 1, the behavior of requesting or receiving any kind of benefit is standardized in exchange for unfair influence (passive influence trading), while in Par. 2 the behavior of promising or providing any kind of benefit (active influence trading). As in the respective crimes of bribery and extortion, so here one behavior necessarily presupposes the other to be established (Chatzikostas, 2014, p. 658). It is worth noting that the illegal transaction between the parties is not required. At the same time, if the object of influence is not an official act of an official, whether legal or illegal, but the influence on him, in order to then perform the official action, the influence trade is rightly considered a prelude to acts of corruption in the public sector, the legal property at risk (Chatzikostas, 2014, p. 658).

In an evaluation of the legislative framework of the influence trade, we would first point out that the formed provision of article 237A of the Penal Code, managed to solve to a large extent the problems of interpretation, created by the corresponding provision of Law 3213/2003 (Article 5) and Law 5227/1931 (Article 11). In this context, the crime was limited to a legitimate context by the legislator's reference to the exercise of "unfair" influence over a civil servant, in direct relation to the reference to the Council of Europe Convention (Article 12) to the exercise of "inappropriate" influence (Chatzikostas, 2014, p. 665).

One point, however, that gathers a negative assessment is the criminalization of the demand for compensation for the influence of a person who is not able to exercise that influence, but also the offer of compensation to that person. Such an option seems to exaggerate the crime, by punishing behaviors that do not offend the public service without creating a real danger to it. It is not possible in case of inability to exercise influence to influence the civil servant who makes decisions (Kaiafa-Gkpmanti, 2010, p. 179; Chatzikostas, 2014, p. 665). Even if it is considered that the public service is offended only to the extent that the illegal transaction would shake the perception of third parties about the purity of the operation of the public service, the core of the legal property protected by the provision of the public service remains intact (Bitzilekis, 2006, p. 3; Chatzikostas, 2014, p. 666).

Apart from these, the crime seems to have expanded to another point. This is the punishment for certain behaviors that are at the stage of exerting influence, such as claiming or simply offering consideration. As noted above, the provisions on the marketing of influence punish behaviors which are at the stage of insulting the public service, which will occur later with the exercise of influence. Therefore, it is more appropriate for both parties to commit a crime that requires a real agreement. Besides, these acts will already be punished at the stage of the attempt (Chatzikostas, 2014, p. 666). The reduction of the attempt to a finished crime seems to create an unjustifiably severe criminal treatment of the perpetrator.

It is also striking that, although the act of influence trading is a prelude to the act of bribing a civil servant in connection with a lawful official act, the legislature chooses to punish them uniformly, with a prison sentence of at least three months and a fine. This choice seems to conflict with the principle of proportionality of Article 25 of the Constitution (Chatzikostas, 2014, p. 667).

In conclusion, in an extension of the above conclusion it would be more consistent in cases where the acts of influence trading are intended to provoke a lawful official action to have a distinct and milder provision than in cases where these acts are intended to provoke an illegal official energy in a manner like the crimes of bribery (Chatzikostas, 2014, p. 667).

Conclusions

In an overall assessment of all the above we would say that the legislative framework is considered sufficient with the new Penal Code to resolve important interpretative issues that had arisen in the past. Below are key conclusions from each section. Regarding the cases of protection of the property of the Greek state from external insults, the crime of basic fraud and computer fraud is specifically secured. The legal forms of the above crimes seem to meet the requirements of protection, with an emphasis on the graded criminal sanctions.

The positive remarks are the resolution of the dispute with the new Penal Code, which will include the conduct of harmful property use of a computer by an unauthorized person, who gains access through an ATM card that was stolen or lost, or through e-banking codes that he was informed of. These acts are explicitly subject to Article 386A of the Penal Code, of computer fraud in cases d' and e'.

At the same time, important for all the crimes of fraud, but also for all the crimes, which are mentioned in the present work, is the repeal of law 1608/1950 for the embezzlers of public money and the inclusion of the respective cases where the crimes are directed against his property. State, legal entities under public law, and local government organizations and the value of the object exceeds the amount of 120,000 Euros in the relevant provisions of the Penal Code with the required adjustment of the sometimes disproportionate and objects in the principle of proportionality of penalties.

The question of the position of the cartel act in view of a public tender for the award of a project, supplies, or services remains open, with the rather correct view being directed towards its liberation from fraud and its position in the provisions of the distortion of free competition. Furthermore, the question arises as to where the case of unlawful damage to a foreign property will be subject to by influencing the computer data in case it is not accompanied by the further purpose of the provision of illegal property benefit, with the provisions of fraud cannot be applied here.

Regarding cases of criminal protection of public property from internal infringements, the observations on the crimes of infidelity and embezzlement follow a common direction. More specifically, in both cases of crimes there was a configuration of corresponding special crimes, which could be committed only by an employee. The parallel existence of two provisions with different content, i.e. the common and the particular crime with different legal forms, resulted in many cases in the interpretive involvement. A typical example was the misleading reference of Article 256 of the Penal Code to a reduction of public property in the determination, collection, and management of public revenue, in which case it falls under the common crime, confusing the comparison of the provisions.

The different evaluative structure of the pair of provisions did not go unnoticed, in the sense of special tricks being misused by the jurisprudence to include misdemeanor cases of performing the act with simple tricks in the distinguished, with the serious objections of the theory that cannot stop this phenomenon. The third section of the work concerns the other pole, corruption in the Greek state. In this section, the provisions on bribery in the public sector claim a significant part of implementation with the legal forms being adequate and the criminal sanctions justified in relation to the contested legal property. In particular, the couple sheds light on bribery and extortion, pointing out that one criminal act presupposes the other to be implemented. In this context, therefore, the treatment of the crimes of bribery of court officials and MPs as distinct crimes is welcomed, as well as the securing of the act of bribery of political officials.

Two more important changes have upgraded the provisions on bribery and extortion. Firstly, the inclusion of cases involving an action of an employee performed on the occasion of the performance of his duties, and secondly the punishment of acts of bribery, when legal actions of the employee are redeemed in connection with his duties.

Finally, as far as the crime of influence trading is concerned, there are indeed several interpretive issues. First of all, it should be noted that the standardization of this criminal type in Article 237A of the Penal Code has largely solved the problems of interpretation of the previous legislative regime, creating a basic network of protection. However, in this network of protection, there are mainly issues of legislative evaluation, which seem to greatly expand the established crime. In particular, these could be summarized as follows: (i) the criminalization of the compensation requirement for the exercise of influence by a person who is unable to exercise it, (ii) the introduction of a uniform punishment for the crime of bribery, although it is a stage—and therefore somewhat less—of it, and (iii) the non-differentiation in the level of assessment of the case of lawful and illegal service energy.

Based on the above, it is obvious that the immediate intervention of the legislator to improve the provisions under investigation in the course we have set would highlight a brave step in tackling financial crime and corruption. It should be guided not by the occasional over-criminalization of behaviors to send the message of severe punishment, but by the reform of the provisions, so that they are in line with the criminal and constitutional rules. Such an intervention might pave the way for a real solution to the above structural problem for the public economy and the purity of public services.

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