

CRIMINAL OFFENCES RELATED TO CORRUPTION IN THE SLOVAK REPUBLIC AND THE UNITED STATES OF AMERICA – COMPARISON STUDY

^aJOZEF ČENTĚŠ, ^bNATÁLIA HANGÁČOVÁ

Comenius University in Bratislava, Šafárikovo nám. č. 6,
P.O.BOX 313, 810 00 Bratislava, Slovakia
email: ^ajozef.centesh@flaw.uniba.sk,
^bhangacova.natalia@gmail.com

The present research was supported by the Slovak Research and Development Agency under contract no. APVV-19-0102 Efektívnosť prípravného konania - skúmanie, hodnotenie, kritériá a vplyv legislatívnych zmien/ The efficiency of pre-trial proceedings – research, evaluation, criteria and influence of legislative changes. The present research was supported also by the Grant for PhD. students and young scientists of the Comenius University no. UK/406/2020 Carousel fraud II.

Abstract: Corruption is a phenomenon which influences functioning of state, government, economy, society as a whole, including the private sector. Therefore, authors decided to focus on criminal offences related to corruption defined in criminal codes of the Slovak Republic and the United States of America. The aim of this article is to underline similarities and differences between these two jurisdictions. The Slovak Republic and the United States of America differ in many aspects, starting with history, economy and at last but not least both countries have different legal systems. The United States of America is a common law country, whereas the Slovak Republic is a continental law country. The United States of America is democratic country for over 100 years, on the other hand communism was present in the Slovak Republic until 1989.

Keywords: corruption, criminal responsibility

1 Introduction

Based on ideas incorporated in international documents regarding corruption, it is necessary to point out the negative social aspects of corruption. Corruption threatens the rule of law, democracy and human rights; undermines good governance, decency and social justice. It distorts competition; prevents economic development; threatens stability of democratic institutions and moral foundations of society. Corruption is able to undermine trust in government and breed public distrust. Corruption is not anymore, a national issue, but rather a transnational phenomenon that affects every civilized society and every economy. Corruption also leads to inequality where rich and powerful people have advantage over the rest of the population. Therefore, its prevention and control require international cooperation. In fact, rapid exchange of information and movement of funds are inherent at the global level. The European community is even more influenced by the dynamic and free movement of people, goods, capital and services. The Stockholm programme – an open and secure Europe serving and protecting citizens 2010/C115/01 (“Stockholm programme”) in section 4.4.5. states: “*The Union must reduce the number of opportunities available to organised crime as a result of a globalised economy, in particular during a crisis that is exacerbating the vulnerability of the financial system, and allocate appropriate resources to meet these challenges effectively.*”

For these reasons, an effective fight against corruption is not possible without a comprehensive and multidisciplinary approach. Corruption is often associated with other forms of crime, such as organized crime, which is linked to serious economic crime, including misappropriation of the European Union financial interests. It is also a well-known fact that bribery is a phenomenon widespread in international business operations, including trade and investment, and therefore raises serious moral and political concerns, undermines effective corporate governance, and distorts international competition conditions. Effective tool of combating corruption is undoubtedly the efficient national criminal law. National criminal law can broadly sanction corruption in its entirety, while responding to conventions that take into account international legal aspect of corruption. Leading international conventions regarding corruption are United Nations Convention against Corruption, The United Nations Declaration Against Corruption and Bribery in International Commercial

Organized Crime and the Protocols, Inter-American Convention Against Corruption, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and many others.

Anti-corruption efforts may be also observed from Transparency International activities. Transparency International ranks countries using corruption perception index. Corruption perception index is leading global indicator of public sector corruption. Index closely to 100 represents very clean country regarding corruption. Index near 0 means highly corrupted country. Transparency International ranked the United States of America (“USA” or “United States”) 22nd among 180 countries in 2018 with 71/100 index. In 2017 was index of the United States 75/100, in 2016 74/100 and in 2015 was the index 76/100. It seems that level of corruption in the USA fluctuate. The Slovak Republic is 57th out of 180 countries in the ranking. In 2018 was level of corruption in Slovakia 50/100, index was the same in 2017. During 2016 and 2015 data shows that Slovakia was less corrupted, when index of the Slovak Republic reached 51/100.

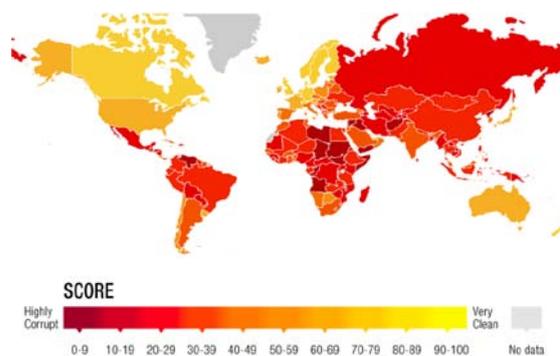


Table 1. Overview of Corruption Perception Index in 180 Countries Monitored by Transparency International in 2018 (Transparency International, 2019)

2 Legislation of the United States of America

Due to the fact that the United States of America is a common law country, we will refer to common law criminal offences at first. In general, common law recognized different criminal offences related to corruption. Firstly, *Official Misconduct in Office* is a corrupt behavior by government official while executing duties in his/her official responsibilities. The government official has to act in execution of his/her official responsibilities and with purposeful intent to violate his/her legal obligation. There are three main types of *Official Misconduct in Office*. *Malfeasance* which refers to a wrongful act, *Misfeasance* represents lawful act made in unlawful manner and *Nonfeasance* refers to failure to fulfil a duty to act. (Lippman, 2014) Criminal offence of *Official Misconduct in Office* is regulated by federal or/and state statutes. The objective behind this criminal offence is to prevent government officials from being influenced. Public officials may be influenced by gifts or money they receive not to perform their duties in public interest. Public officials shall follow law and set example for citizens.

Secondly, common law recognized crime of *Bribery*. Originally, was crime of bribery limited only to offering money or any item of value to judges for exchange of taking an official action. Later, the criminal offence was stretched to any individual offering a bribe to a judge and with time, to offering the bribe to judge or public official (Lippman, 2014). Nowadays, crime of bribery is described more broadly, in comparison to authentic common law. Crime of bribery will be elaborated further in detail below.

Thirdly, by the time, several states adopted laws criminalizing crime of commercial bribery. Illinois enacted criminal offence of *Commercial Bribery* in section 29A of the 720 Illinois criminal statute (“Illinois Criminal Code” or “720 ILCS 5”). Concept of commercial bribery rest in a fact that employee accepts money or thing of value from person other than his/her employer and uses his/her position in a way that outside individual benefits from it. The employee betrays trust of his/her employer.

Number of states adopted laws criminalizing bribery in sport. Crime of bribery in sport is also prosecuted under federal law in section 224 *Bribery in sporting contests* of the Title 18, United States Code (“U.S. Code”). New York criminalizes bribery in sport. Crime of *Sports bribing* is regulated in section 180.40 and *Sports bribe receiving* in section 180.45 of N.Y. Penal Law. Likewise, state of Illinois prosecutes bribery in sport in section 29 *Bribery in contests* of the 720 ILCS 5. Several states even prosecute, failure to report bribe in sport, e.g. state of Illinois recognizes the crime of *Failure to report offer of bribe* in section 29 (3) of the 720 ILCS 5.

Furthermore, the Foreign Corrupt Practices Act (“FCPA”) addresses the issue of *Bribery of Foreign Official*. According to the United States Department of Justice: “*The anti-bribery provisions of the FCPA prohibit the willful use of the mails or any means of instrumentality of interstate commerce corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person.*” (The United States Department of Justice, 2017) For better understanding, general awareness and knowledge of law is Foreign Corrupt Practices Act translated to 50 languages, including the Slovak language. There are ongoing debates if FCPA discourages US companies from investing abroad. (Graham & Stroup, 2015) Some people oppose FCPA because it puts American businesses at a comparative disadvantage or permits unethical forms of payment equivalent to bribery. (Seitzinger, 2016)

Also, the Constitution of the United States (“U.S. Constitution”) refers to the corruption in article II, section 4: “*The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, Treason, Bribery, or other high crimes and misdemeanors*”. Officials shall act in public interest rather than in interest of individual for receiving unlawful benefit. On the other hand, individual shall not benefit from using officials for his/her own benefit. We find the respective provision of the U.S. Constitution appropriate. Sanction of removal from office is adequate for the highest-ranking public officials when impeached for and convicted of bribery and other crimes, due to the functions they represent. Namely, the President of the United States holds executive powers. Conviction of enumerated crimes, mainly bribery, hampers democratic values and undermine trust in justice. This provision aims at preventing this from occurring. In the U.S. Constitution there is much more similar provisions, e.g. article 1 section 9 cl. 8.

Article 107 of the Constitution of the Slovak Republic (“Slovak Constitution”) reads that the President of the Slovak Republic shall be criminally liable only for intentional violation of the constitution or for treason. The Slovak Constitution does not refer to crime of bribery and consequently to removal from the office. Article 107 of the Slovak constitution further states the process of filing an indictment against the President. The National Council of the Slovak Republic decide on the filing of the indictment against the President by a three-fifths majority of the votes of all members of the Parliament. The indictment is filed by the National Council of the Slovak Republic at the Constitutional Court of the Slovak Republic, which will decide

in plenary session. The condemning decision of the Constitutional Court of the Slovak Republic means the loss of the office of the President and disqualification to hold the office in the future. Similarly, Article 136 of the Slovak constitution states: “*The judge of the Constitutional Court cannot be prosecuted for decision-making in the performance of his/her office, even after his/her removal from the office.*” Article 148 (4) of the Slovak constitution further reads: “*Judges and lay judges cannot be prosecuted for decision-making, even after his/her removal from the office.*” Article 78 (1) of the Slovak constitution enacts similar framework for restriction of responsibility: “*The Member of the Parliament cannot be prosecuted for voting in the National Council of the Slovak Republic or in its committees, even after the expiry of his/her mandate.*” Likewise, article 78 (2) of the Slovak constitution states: “*The Member of the Parliament cannot be prosecuted for statements made in the National Council of the Slovak Republic or in its body in the performance of the office of the Member of the Parliament, even after the expiry of his/her mandate. The Member of the Parliament is subject to the disciplinary authority of the National Council of the Slovak Republic.*” It is clear, that the President of the Slovak Republic cannot be prosecuted for other crimes than intentional violation of the constitution or for treason. However, the judges of the Constitutional Court, judges and lay judges as well as the Members of the Parliament cannot be prosecuted for decision-making, voting in respective body or for statements made in the respective body. The above-mentioned provision of the Slovak constitution refers to substantial immunity, because these persons cannot be prosecuted for decision-making, voting or for statements made in the respective bodies, even after removal from the office. Such protection of Members of the Parliament, given the nature of the National Council as the supreme representative body of the Slovak Republic, Constitutional Court and courts being representative bodies of judicial branch of the Slovak Republic, can be considered appropriate and desirable for the proper government functioning. However, also procedural immunity from prosecution is granted to certain persons, e.g. the Members of the Parliament according to article 78 (4) of the Slovak constitution. If the Member of the Parliament was caught and detained in a criminal offence, the competent authority shall immediately notify the chairman of the National Council of the Slovak Republic and the chairman of the Mandate and Immunity Committee of the National Council of the Slovak Republic. If the Mandate and Immunity Committee of the National Council of the Slovak Republic does not give the subsequent consent to detention, the Member of the Parliament must be released immediately. Mandate of the Members of the Parliament according to section 81a (f) of the Slovak constitution ceases to exist on the date of validity of the judgement when he or she was sentenced for an intentional criminal offence; or was sentenced for a criminal offence and the court has not ruled the conditional suspension of imprisonment. Procedural immunity means that it is not possible to prosecute person while he or she holds an office, either at all or only with the consent of the competent authority. Nevertheless, the person may be prosecuted after removal from the office. Immunities are further regulated in section 8 (1) in connection with section 9 (1)b of the act no. 301/2005 Coll. (“Slovak criminal procedure code”).

Constitution has the role of the supreme law. Laws shall not contradict with provisions of constitution and rights and freedoms set in the constitution. The U.S. Constitution, as well as the Slovak Constitution, is source of all government powers, being divided into legislative, executive, and a judicial branch, with a system of checks and balances among the three branches. The U.S. Constitution provides important limitations on the government that protect the fundamental rights of U.S. citizens. Having provision regarding removal from office of certain high representatives on impeachment for, and conviction of bribery in constitution highlights the values of society, importance of eliminating bribery in public sector and strengthens the democracy principles. Constitutional system of USA is unique

and none of other advanced democratic countries¹ has inspired from it. (Robert A. Dahl, 2001, p 43) It is different in many aspects, starting from unequal representation to presidential system. Nevertheless, from our point of view, the Slovak Republic could get inspired at least by the article II, section 4 of the U.S. Constitution.

In the next chapter we will discuss illegal corrupt practices. However, in the United States of America there are many legal ways of exchanging money for favors in politics. Therefore, in 2011 Trevor Potter in consultation with political strategists, democracy reform leaders and constitutional attorneys drafted American Anti-Corruption Act which serves as a model legislation. This model legislation encourages fight against political bribery and aims at ending secret donors who fund political advertisements. It is a very brief statute which captures the essence of the matter. First city which approved this anti-corruption act was Tallahassee, Florida in 2014. In the United States of America there is also Modal Penal Code. It is worth consideration whether this approach of drafting model statutes would be applicable on the European Union level.

U.S. CODE

Generally, criminal offences of corruption are integrated among criminal offences against public administration and administration of justice. Criminal offences associated with corruption are regulated in chapter 11 *'Bribery, Graft, and Conflicts of Interest'* of the 18 United States Code, but not only in this chapter. Also, chapter 31, section 666 *Theft or bribery concerning programs receiving Federal funds* fall within corruption criminal offences. The list of criminal offences related to corruption is extensive in comparison to criminal offences enshrined in the act no. 300/2005 Coll. Criminal code of the Slovak Republic ("Slovak criminal code"). The U.S. Code describes great number of criminal offences related to corruption. For purpose of this article, we have selected only three criminal offences to make the comparison more detailed. Criminal offences regulated in section 201 and section 203 of the U.S. Code refer to corruption of public officials. The U.S. Code contains more criminal offences related to corruption of public officials, e.g. section 205 or section 210 of the U.S. Code. Further, we will focus on section 224 of the U.S. Code regarding sports bribery.

Regarding corruption of the highest-ranking public officials, we would like to draw attention to the case of the United States of America v. Rod Blagojevich and John Harris. Rod Blagojevich was politician, who served as 40th Governor of Illinois until his impeachment, conviction and removal from office in 2009. Rod Blagojevich convictions included seeking cash in exchange for an appointment to the U.S. Senate seat vacated by Barack Obama when he was elected president in 2008. On January 9, 2009 the Illinois House of Representatives voted to impeach Rod Blagojevich (votes: 114-1). On January 29, 2009 the Illinois Senate votes unanimously to remove Rod Blagojevich and to bar him from holding political office in Illinois again. He is now serving 14 years in federal prison, since in April 2018 the U.S. Supreme Court decided not to hear Rod Blagojevich appeal.

Rod Blagojevich and John Harris were convicted of violating sections 1341,1343, 1346 and 1349 of Title 18, United States Code. Count two rested in violation of sections 666(a)(1)(B) and (2) of Title 18, United States Code.

According to 720 ILCS 5 section 33-3(c) "*A public officer or employee or special government agent convicted of violating any provision of this Section forfeits his or her office or employment or position as a special government agent. In addition, he or she commits a Class 3 felony.*" Pursuant to criminal laws of the State of Illinois 720 ILCS 5 section 33-1(d) "*A person commits bribery when: he or she receives, retains or agrees to accept any*

property or personal advantage which he or she is not authorized by law to accept knowing that the property or personal advantage was promised or tendered with intent to cause him or her to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness." The court in its decision also stated that pursuant to Article VIII, Section 1(a) of the Constitution of the State of Illinois, public funds, property and credit shall be used only for public purposes.

During analysis of provision of both criminal codes we have noticed that sanctions set in the U.S. Code are significantly different to those set in the Slovak criminal code. The concept of sanctions also varies within the U.S. Code. In certain sections of the U.S. Code sanctions vary based on form of fault. Sanctions depends on whether criminal offences are concluded willfully or not. Willful engagement in criminal offence of *Compensation to Members of Congress, officers, and others in matters affecting the Government* would be sanctioned by imprisonment not exceeding 5 years or fine or combination of both, otherwise the perpetrator would be punished by imprisonment not exceeding one year or fine or combination of both. Besides, according to section 216 of the U.S. Code, person engaging in conduct constituting the offence under sections 203, 204, 205, 207, 208, or 209 shall be subject to civil penalty not exceeding \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. In addition, district court may issue an order prohibiting person from engaging in such conduct (criminal offences set in sections 203, 204, 205, 207, 208, or 209). Section 203 of the U.S. Code refers to sanctions set in section 216. However, some provisions of the U.S. Code contain sanctions directly in its text. Conduct prohibited under section 201 (b) of the U.S. Code shall be punished by fine or imprisonment not exceeding fifteen years, or both. Additionally, person may be disqualified from holding any office of honor, trust, or profit under the United States. Perpetrator committing an offence under section 201 (c) of the U.S. Code shall be punished by fine or imprisoned for not more than two years, or both.

The Slovak criminal code recognizes wide range of sanctions. It offers sanctions such as imprisonment, fine, home imprisonment, compulsory work, forfeiture of thing, forfeiture of property, prohibition of certain activity, prohibition of residence, prohibition to participate in public undertakings, expulsion, loss of honorary titles and honors, loss of military and other rank. The Slovak criminal law does not recognize penalty of removal from office or discrimination from holding an office in future. Only two of the above-mentioned are applicable to the criminal offences of corruption. Corruption criminal offences are prosecuted by the most severe penalty, penalty of imprisonment or alternatively, by forfeiture of property. The penalty of forfeiture of property is only applicable to selected criminal offences. When sentencing perpetrator for committing crime of Receiving a bribe under section 328 (2) of the Slovak criminal code the court may order forfeiture of property according to section 58 (2) of the Slovak criminal code. The only condition is that the offender has acquired assets at least to a significant extent (exceeding EUR 26,600) by criminal activity or from proceeds originating in crime. Also, when sentencing the perpetrator for criminal offence of Receiving a bribe under section 328 (3) or 329 (3) or criminal offence of Bribery under section 334 (2) of the Slovak criminal code, the court may order punishment of forfeiture of property according to 58 (3) of the Slovak criminal code, hence, without limitation to origin of money.

In the Slovak Republic, it is possible to put to use the institute of *Effective regret*. Effective regret may be used only in connection to corruption criminal offences regulated under section 332 or 333 and 336 (2) of the Slovak criminal code. The perpetrator will not be prosecuted for these criminal offences (crime of Bribery and Indirect corruption) if the perpetrator gave or promised the bribe only because he or she was asked to do so and he or she voluntarily without delay notified the law enforcement authority or police corps; the soldier may make this

¹ Advanced democratic countries are countries steadily democratic at least since 1950 (e.g. United Kingdom, Switzerland, Sweden, Norway, Finland, Germany, Israel, Austria, Belgium, Australia, France, Italy, Japan and 8 other countries).

announcement also to his superior or service body; the person serving a custodial sentence or in pretrial detention may notify the member of the Prison and Judicial Corps. Effective regret promotes *ultima ratio* principle of criminal law. The content of the notification must be specific and complete. In particular, it has to include circumstances describing the act of giving or promising a bribe. (Čentěš et al., 2006) The term “voluntary” was precisely determined by law practice. Voluntary means that the action was taken based on perpetrator’s own will and free choice, not under pressure of impending prosecution, or knowing that the offence committed has been revealed (R 56/1999). In another case, it was decided that term voluntary refers to action of perpetrator when he or she acts on his/her own initiative, before his/her crime has been discovered or announced (R 2/1965). Therefore, “voluntarily” means that the perpetrator was not forced to announce his/her illegal action, did not announce it because he or she was afraid of being uncovered, but announced illegal action freely based on his/her belief, without constraints. Problematic, in connection to effective regret is the term “without delay”. There is no jurisprudence defining the exact time interval, usually it is referred to as immediate action. The aim of effective regret is to prevent or inhibit the harmful effect of criminal behavior on society. If bribery was announced, law enforcement authorities may take action and held person asking for a bribe criminally responsible.

Another fact observed is that the U.S. Code is very strict in defining terms. For illustration, title 1, chapter 1, section 8a reads: “[...] the words “person”, “human being”, “child”, and “individual”, shall include every infant member of the species *homo sapiens* who is born alive at any stage of development.” Title 1, chapter 1, section 8b further explains term “born alive”. For proper understanding of the code and realization of legality principle, it is necessary to define key terms in the statute. Nevertheless, we think that not defining certain terms would not hamper the principle of legality. There is a lot of topics which are widely debated in the United States of America and not in the Slovak Republic. One of them is gender identity and correct reference to singular and plural. Therefore, title 1, chapter 1, section 1 of the U.S. Code reads: „words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular; words importing the masculine gender include the feminine as well“. Statutes have to reflect on history and up-to-date topics in the respective countries. Yet, we consider some terms not necessary to be defined. The Slovak criminal code lacks definition clarifying gender identification or reference to singular or plural. From our point of view, it is not necessary to incorporate similar definition into the Slovak criminal code.

It is essential to point out that title 1, chapter 1, section 1 states that the U.S. Code is also applicable to legal persons as well as individuals. Title 1, chapter 1, section 1 of U.S. Code reads: “[...] the words “person” and “whoever” include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals”. On the contrary, in the Slovak Republic, there is separate law regulating criminal responsibility of legal entities. Act no. 91/2016 Coll. (“Act on criminal liability of legal persons”) contains, in its section 3, exhaustive list of criminal offences for which legal entity may be held criminally liable. Section 3 of the Act on criminal liability of legal persons refers to the Slovak criminal code. Only the Slovak criminal code describes criminal offences. The Slovak criminal code and the Slovak criminal procedural code act supplementary to the Act on criminal liability of legal persons. In connection to corruption, legal entities may be prosecuted for crimes regulated in sections 328 – 330 and 332 – 334 as well as indirect corruption under section 336 of the Slovak criminal code. Legal entities cannot be prosecuted for crimes which are not listed in section 3 of the Act on criminal liability of legal persons.

Section 201 of the U.S. Code

Section 201 (b)(1) of the U.S. Code *Bribery of public officials and witnesses* describes direct and indirect active corruption,

whereas section 201 (b)(2) of the U.S. Code describes direct and indirect passive corruption. Section 201 (b)(1) of the U.S. Code describe action when person directly or indirectly corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity. This conduct must be accompanied with intend to either influence any official act, or to influence such public official or any person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce such public official or any person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person.

Section 201 (b)(2) of the U.S. Code refers to directly or indirectly corruptly demanding, seeking, receiving, accepting, or agreeing to receive or accepting anything of value personally or for any other person or entity. This section has a specific subject. Subject to this offence can be only the public official or person selected to be a public official who fulfil the *actus reus*. Perpetrator has to fulfil *actus reus* in return for either being influenced in the performance of any official act, or being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or being induced to do or omit to do any act in violation of the official duty of such official or person. Terms used in this section are explained in detail in section 201 (a) of the U.S. Code.

Section 201 (b)(3) of the U.S. Code refers to direct and indirect active corruption with intent to influence the testimony under oath or affirmation of such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom. This section protects the administration of justice and provides protection against non-occurrence of witness and false statement which obstruct the justice. Object of protection under section 201 (b)(3) of the U.S. Code is the witness. In the Slovak criminal code there is no special provision related to influencing witnesses by bribery. However, such *actus reus* could be subsumed under the criminal offence of *Receiving a bribe* under section 328 (1) of the Slovak criminal code or criminal offence of *Bribery* under section 332 (1) of the Slovak criminal code. Section 332 (1) of the Slovak criminal code concern active corruption and section 328 (1) of the Slovak criminal code describes passive corruption. We hold this opinion based on the fact that above-mentioned sections of the Slovak criminal code are based on giving or receiving a bribe in order to influence the person to act or omit to act in breach of duties arising from his/her status. Obligations arising from status are not only obligations imposed by law, but also those that are based on law, or employment contract. Thus, violations of obligations also include violation of obligation of witness to give true statement. (Čentěš et al., 2013) Additionally, both jurisdictions, the United States of America and the Slovak Republic, recognize the crime of *Perjury*. According to section 127 (1) of the Slovak criminal procedure code everyone is obliged to appear at the summons of law enforcement agencies and court, and to testify as witnesses about what is known to him/her about the criminal offense, perpetrator, or circumstances relevant to the criminal proceedings. Additionally, according to 131 (1) of the Slovak criminal procedure code the witness must always be instructed that he or she is obliged to tell the truth, not to conceal anything, and about the criminal consequences of false testimony. The exceptions from this obligation are set in section 129 and 130 of the Slovak criminal procedure code.

Section 201 (b)(4) of the U.S. Code regulates comparable situations as section 201 (b)(3) of the U.S. Code, except for a fact that this section refers to passive corruption. Therefore,

actus reus rest in directly or indirectly, corruptly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value personally or for any other person or entity. The thing of value is exchanged for the fact that witness is influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceedings, or for absenting there from.

Sections 201 (b) (1 - 4) of the U.S. Code are subject to uniform sentence range. Perpetrator may be sentenced to not more than fifteen years in prison, or fine, or both. Perpetrator may be also disqualified from holding any office of honor, trust, or profit under the United States. In terms of fine the value of thing given is determining. Person may be sentenced to fine in an amount not exceeding three times the monetary equivalent of value of thing given or received.

Section 201 (c)(1)(A) of the U.S. Code refers to anyone (i.e. any individual as well as corporations, companies, associations, firms, partnerships, societies, and joint stock companies) who directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty.

Section 201 (c)(1)(B) of the U.S. Code refers to specific subject. Only public official, former public official, or person selected to be a public official may be held criminally responsible under section 201 (c)(1)(B). This subject, otherwise than as provided by law, for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person.

Section 201 (d) of the U.S. Code refers to remuneration of witnesses for time lost in attendance of trial, hearing, or any other proceeding, including reasonable cost of travel, and witness fees provided by law. At the same time, this section regulates remuneration of experts for time spend in the preparation of expert opinion, and in appearing and testifying. These payments cannot be considered as giving or receiving thing of value according to section 201 (b)(3) and (4) and 201 (c)(2) and (3) of the U.S. Code.

Section 203 of the U.S. Code

Section 203 of the U.S. Code describes the crime of *Compensation to Members of Congress, officers, and others in matters affecting the Government*. This criminal offence contains specification that perpetrator is criminally liable when described behavior occurs otherwise than as provided by law for the proper discharge of his/her official duties. Section 203 of the U.S. Code prosecutes both, direct and indirect, active and passive corruption. In the Slovak criminal code active and passive corruption are regulated in separate sections. This makes the orientation in criminal offences of corruption more complicated. Corruption criminal offences incorporated in the Slovak criminal code are written in complicated and unclear manner which causes confusion. On April 17. 2019 the Slovak government introduced new amendment to the Slovak criminal code and the Slovak criminal procedural code. However, it does not address the problematics of corruption criminal offences. It rather introduces new criminal offence of *Falsifying and making false medical documentation* which is a very up-to-date topic in Slovakia. More than 60 doctors and medical personnel were suspected of fraud connected to falsifying the medical evidence and prescribing medications which patients never received. In total, police officers summoned more than 1 500 persons in this case. New amendment also intends to broaden already existing criminal offence of *Unauthorized production of alcohol*. The amendment broadens criminal liability and proposes to criminalize unauthorized production of tobacco and tobacco

products too, introducing the criminal offence of *Unauthorized production of alcohol, tobacco and tobacco products*. The amendment did not pass yet. All interested parties will comment on it, submit remarks. It will take time until all parties reach a consensus on the text of new criminal offences and other proposed changes.

Section 203 of the U.S. Code refers to the highest-ranking public officials and representatives of the federal government. Section 203 of the U.S. Code is more concrete than section 201 and refers to different subjects in comparison to section 201 of the U.S. Code. Under section 203 (a)(1) is criminally liable perpetrator who directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another. Section 203 (a)(1) describes passive corruption practices.

Section 203 (a)(1)(A) of the U.S. Code apply to Member of Congress, Member of Congress Elect, Delegate, Delegate Elect, Resident Commissioner, or Resident Commissioner Elect. Criminally liable may be only persons holding exhaustively enumerated positions.

Section 203 (a)(1)(B) of the U.S. Code refers to officer or employee or Federal judge of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States. Section 203 (a)(1)(A) and (B) of the U.S. Code furthermore contains clarification of actions. The compensation must be demanded, sought, received, accepted, or agreed to accept for the purpose stated in section 203 (a)(1) of the U.S. Code in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission. We find this enumeration too broad. We do not understand reason of such a broad definition. By the same token, making distinction between section 203 (a)(1)(A) and 203 (a)(1)(B) of the U.S. Code does not make a difference when these actions are sanctioned in a same way. The aim could be to make clear difference between subjects of this criminal offence.

Section 203 (a)(2) of the U.S. Code sanctions direct and indirect active corruption and imposes higher standard for the form of fault. *Actus reus* must be committed "knowingly". Knowingly means that the person is aware that the nature of his/her conduct or the attendant circumstances set in elements of crime exist or that his/her conduct is of that nature and he or she is aware that it is practically certain that his/her conduct will cause a result described in elements of crime. Secondly, criminally liable shall be any person, not only e.g. Member of Congress or Delegate, as stated in section 203 (a)(1) of the U.S. Code. Thirdly, this section restricts to whom it is illegal to give, promise or offer any compensation for any representational services rendered or to be rendered. The person shall be criminally liable under section 203 (a)(2) of the U.S. Code if he or she gave, promised, or offered compensation to person who is or at the time when the compensation was given, promised, or offered was Member Elect, Delegate, Delegate Elect, Commissioner, Commissioner Elect, Federal judge, officer, or employee. According to section 202 (c) of the U.S. Code the term "employee" shall not include Member of Congress, the President, the Vice President, or a Federal judge.

Section 203 (b)(1) of the U.S. Code describes direct and indirect passive corruption. Criminal responsibility for this offence is restricted to officers or employees of the District of Columbia who demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the District of Columbia is a party or has a direct

and substantial interest, before any department, agency, court, officer, or commission. Whereas section 203 (b)(2) of the U.S. Code describes direct and indirect active corruption of giving, promising, or offering any compensation for any representational services rendered or to be rendered to the specific person at a time when such person is or was an officer or employee of the District of Columbia. For perpetrator to be criminally liable, it is required that he or she committed crime described in section 203 (b)(2) of the U.S. Code knowingly. From the distinction it is clear that the District of Columbia has a special status.

Section 203 (c) of the U.S. Code contains restrictions of criminal liability of special Government employee under section 203 (a) and (b) of the U.S. Code. The special Government employee is defined in section 202 (a) of the U.S. Code. Moreover, section 203 (d) and (e) of the U.S. Code enumerates exceptions from criminal responsibility for above-mentioned criminal behaviors applicable to officer or employee, and special Government employee. Section 203 (f) of the U.S. Code reads that nothing in section 203 shall prevent an individual from giving testimony under oath or from making statements required to be made under penalty of perjury.

Section 224 of the U.S. Code

Section 224 (a) of the U.S. Code describes *actus reus* resting in carrying into effect, attempting to carry into effect, or conspiring with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest. Person is criminally liable when *actus reus* is fulfilled with knowledge that the purpose of such scheme is to influence the contest by bribery.

When we compare the criminal offence of Bribery of public officials and witnesses and criminal offence of Compensation to Members of Congress, officers, and others in matters affecting the Government and criminal offence of Bribery in sporting contests, each of them uses different terms. Bribery in sporting contests refers to term “*bribe*”, whereas Bribery of public officials and witnesses refers to “*anything of value*” and Compensation to Members of Congress, officers, and others in matters affecting the Government uses term “*compensation*”. Also, the FCPA refers to term “*anything of value*”. Each of these crimes belongs to group of criminal offences related to corruption. Single term used throughout the criminal offences of corruption would be more consistent. Using different terms may cause confusion in orientation in the U.S. Code. Eventually, it may hamper principle of legality.

The term “*sporting contest*” refers to contest in any sport which must be publicly announced before its occurrence. It is not determining if the contest takes place between individuals or teams of contestants, nor if they are professionals or amateurs. From this definition it is clear that the aim is to prevent persons from profiting on in advance agreed deals.

The Slovak criminal code does not contain definition of contest in connection to criminal offence of *Sports corruption*. Commentaries refer to special law, section 3 g) of the act no. 440/2015 Coll. on sports. The criminal offence of Sports corruption is newly established criminal offence in the Slovak criminal code.

Section 224 (b) of the U.S. Code underlines the fact that perpetrator may be held criminally liable for criminal offence regulated in federal statute and state statute at the same time. The section reads: “*This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, territory, Commonwealth, or possession of the United States, and no law of any State, territory, Commonwealth, or possession of the United States, which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.*” In the United States of America there

exists concept of *Dual sovereignty*. States governments and federal government are separate sovereigns. Person can be prosecuted for the same criminal offence according to federal law and state law. The federal and state governments may both prosecute offender for the same criminal conduct, if the behavior constitutes criminal offence under federal as well as states laws. Concept of dual sovereignty allows prosecution on both levels, without violating the constitutional protection. Double jeopardy is a basic principle of the criminal proceedings, also incorporated in the Fifth Amendment to the United States Constitution. In December 2018 liberal and conservative judges of the U.S. Supreme Court appeared to discuss the concept of dual sovereignty. After the debate *status quo* was maintained. Principle of dual sovereignty may be demonstrated on case of Roberto Miramontes Roman, who was convicted of murder of on-duty county sheriff’s deputy. Roberto Miramontes Roman was acquitted in proceedings before state court of Utah. However, the U.S. government charged Roman for the same crime, since the murder constitute criminal offence under state as well as federal law.

3 Legislation of the Slovak Republic

Provisions on corruption, were incorporated into the Slovak criminal code in order to fulfill obligations of the Slovak Republic under international treaties and documents. In particular, obligations arising from European union membership (e.g. 1997 Convention on fighting corruption involving officials of the European union or officials of Member States and the 2003 Framework Decision on combating corruption in the private sector), membership in Council of Europe (e.g. Council of Europe Criminal Law Convention on Corruption) including United Nations and OECD. The Treaty on the Functioning of the European Union (“TFEU”) establishes limits of the European Union in the area of corruption. Article 83 (1) TFEU states “*The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime*”.

According to European Commission public opinion, 60% of European Union businesses agree with the statement that bribery and the use of connections is often the easiest way to obtain certain public services. Moreover 74% of businesses agree that favoritism and corruption hamper business competition. We observe a slight increase from 2015 when 68% of businesses agreed with this statement. (European Commission, Businesses’ attitudes towards corruption in the EU, 2017).

In the Slovak Republic, criminal offences associated with corruption are incorporated in chapter 8 ‘*Criminal Offences Against Public Order*’ of the third part named ‘*Corruption*’ of the act no. 300/2005 Coll. Criminal code of the Slovak Republic. This part of the Slovak criminal code contains 5 criminal offences described in sections 328 to 336b of the Slovak criminal code. Criminal offence of *Receiving a bribe* is regulated in sections 328 – 330 of the Slovak criminal code. Criminal offence of *Bribery* is regulated in sections 332 – 334 of the Slovak criminal code. Section 336 regulates *Indirect corruption*; section 336a regulates *Election corruption* and section 336b of the Slovak criminal code governs *Sports corruption*.

Bribe is essential term when it comes to corruption legislation in the Slovak Republic. Bribe is defined in section 131 (3) of the Slovak criminal code as thing or any other performance of material or non-material nature to which there is no legal claim. Judicial practice further specifies bribe as an unjustified advantage that bribed or with his/her consent other person receives. Unjustified advantage rests in direct property benefit.

e.g. financial or material. Bribe may be also an advantage of another kind, e.g. reciprocal service. According to provisions of the Slovak criminal code, the amount of bribe is not determining. Law does not set any value limit for bribe. The amount of bribe needs to be assessed in relation to imposing heavier penalties. In principle, no bribes, even of negligible value, can be tolerated in the area of state governance and administration. Contrary, the value of thing acquired by criminal activity is crucial in connection to number of criminal offences regulated in the Slovak criminal code, such as larceny, embezzlement, fraud, etc. In case of larceny, taking and carrying away a thing with intent to permanently deprive someone of the property which is less than EUR 266 in value, does not constitute a criminal offence. Section 212 of the Slovak criminal code regulating the crime of larceny states that only the act of taking and carrying away a thing and causing damage of more than EUR 266 is a criminal offence. Taking and carrying away a thing of lesser value will qualify as administrative wrongdoing. The perpetrator will be held liable according to administrative laws, but not criminal statutes. However, bribery does not occur in connection to operation of certain services, in particular restaurant services, as expression of customer's satisfaction. (Čentéš et al., 2006)

Criminal offence of *Receiving a bribe* is regulated in section 328 (1) of the Slovak criminal code. This crime refers to behavior when perpetrator directly or using third person (indirectly) accepts, asks for or agrees to receive bribe for himself or for another person, in order to act or omit action in a way that he or she violates his/her duties arising from his/her employment, occupation, status or function. The perpetrator may be sentenced to 2 - 5 years in prison for this type of behavior. Criminal offence described in section 328 (1) of the Slovak criminal code is minor crime². Sections 328 (2) and (3) of the Slovak criminal code are felonies³ and they represent qualified facts of criminal offence of *Receiving a bribe* which are punished with heavier penalty. Qualified fact of section 328 (2) is committing a crime in more serious manner⁴ and qualified fact of section 328 (3) is committing a crime in greater amount⁵. Under section 328 (2) the perpetrator may be sentenced to 3 - 8 years in prison and under section 328 (3) of the Slovak criminal code to 7 - 12 years in prison.

Section 329 (1) of the Slovak criminal code refers to procurement of things of general interest. According to section 131 (1) of the Slovak criminal code, the term "*thing of general interest*" refers to interest which goes beyond personal rights and interests of an individual. It is an interest which is important for the entire society. Procurement of things of general interest represents activities which are related to accomplishment of all kinds of tasks regarding matters of general interest. Procurement of things of general interest includes not only decision-making process, but also other activities which satisfy material, social, health, cultural and other needs of individuals and legal entities. It represents proper and impartial fulfilment of all necessary tasks which are demanded by entire society or particular social group. Criminal offence of *Receiving a bribe* according to section 329 (1) of the Slovak criminal code does not cover activities of citizens who are acting exclusively within their personal rights and interests. In order to establish criminal liability, there has to be *nexus* between bribe and procurement of things of general interest. Only person who is in charge of

procurement of things of general interest, regardless if the bribe or other unjustified advantage flows to him or her; or by his/her involvement to the third party, may be criminally liable under section 329 (1) of the Slovak criminal code. (Čentéš et al., 2013) Under section 329 (1) of the Slovak criminal code criminally liable is perpetrator who in connection to procurement of things of general interest directly or using another person accepts, asks for or agrees to receive bribe for himself or for another person. This criminal offence is a felony. Facts which activate heavier penalties are committing a crime as public official⁶ (section 329 (2) of the Slovak criminal code) or committing a crime in greater amount (section 329 (3) of the Slovak criminal code). Section 329 (2) of the Slovak criminal code is a felony and section 329 (3) of the Slovak criminal code qualifies as particularly serious felony⁷. Sanctions imposed on this type of behavior reflect that elimination of corruption in connection to public procurement is a high priority. Sanctions also demonstrate values of society and importance of their protection.

Definition of thing of general interest set in the Slovak criminal code is rather broader, which gives criminal law power to prosecute wide range of behaviors connected to procurement of things of general interest. It seems that society represented by state consider public procurement a vulnerable area and therefore want to have tools to prosecute wider range of behaviors. Also, the Stockholm programme in its section 4.4.5. refers to public procurement as vulnerable area in the European Union: "*The European Council calls upon the Member States and, where appropriate, the Commission to: develop indicators, on the basis of existing systems and common criteria, to measure efforts in the fight against corruption, in particular in the areas of the acquis (public procurement, financial control, etc.) and to develop a comprehensive anti-corruption policy, in close cooperation with the Council of Europe Group of States against Corruption (GRECO).*"

Section 330 (1) of the Slovak criminal code refers to *Receiving a bribe* by foreign public official⁸. Foreign public official directly or using another person accepts, asks for or agrees to receive bribe for himself or for another person in connection to execution of his/her official duties or in connection to execution of his/her function with intent to gain or maintain unlawful benefit. Section 330 (1) of the Slovak criminal code is a felony. Section 330 (2) of the Slovak criminal code imposes heavier penalty of 10 - 15 years in prison if such an act is committed in greater amount. Therefore, this criminal offence qualifies as particularly serious felony.

All criminal offences enshrined in chapter 8, part three of the Slovak criminal code are intentional criminal offences. Intentional form of fault is required. The intent itself is not sufficient to establish criminal responsibility for criminal offence of *Receiving a bribe* by foreign public official according to section 330 (1) (2) of the Slovak criminal code. The criminal motive⁹ is also required. The criminal motive is expressed with words "*with intent to*". The offender has to have a special intent. He commits a crime with intent to (criminal motive) gain or maintain unlawful benefit for himself or another person. The same applies to criminal offence of *Bribery* according to section

² The definition of minor crime (also known as misdemeanour) is set out in section 10 of the Slovak criminal code. Misdemeanour is any criminal offence committed from negligence or intentional criminal offence, for which the Slovak criminal code provides, in its special part, penalty of imprisonment with upper threshold not exceeding five years. Offences committed from negligence are not subject to a limitation in terms of the penalty threshold.

³ The definition of felony is set out in § 11 of the Slovak criminal code. Felony is an intentional criminal offence, for which the Slovak criminal code provides, in its special part, penalty of imprisonment with upper threshold exceeding five years. Felony also occurs if basic qualified fact of criminal offence is a misdemeanour, but special qualified fact of this criminal offence – misdemeanour – committed intentionally has upper threshold of penalty of imprisonment exceeding five years.

⁴ Committing crime in more serious manner means e.g. committing a crime with a gun, for longer period of time or by organized group, according to section 138 of the Slovak criminal code.

⁵ Greater amount is amount exceeding EUR 133,000 according to section 125 (1) of the Slovak criminal code.

⁶ Public official is a legal term defined in section 128 (1) of the Slovak criminal code. Section 128 (1) of the Slovak criminal code state exhaustive list of public officials, e.g. President of the Slovak Republic, Member of the European Parliament, Member of the Government, Judge of the Constitutional Court of the Slovak Republic, Judge, Prosecutor or other person holding office in the public authority, member of the armed forces, mayor and many others.

⁷ The category of felony also includes a particularly serious felony, for which the Slovak criminal code, in its special part, provides penalty of imprisonment with lower threshold of at least ten years.

⁸ Public foreign official is a legal term defined in section 128 (2) of the Slovak criminal code. Section 128 (2) of the Slovak criminal code state exhaustive list of public foreign officials, e.g. person acting in a legislative body, executive body, judicial authority or arbitration body, or in another public authority of a foreign state, including the head of state, or person acting, employed or working in an international organization or transnational organization established by states or other bodies of public international law, in its body or institution, or empowered to act on their behalf, etc.

⁹ The criminal motive is, in general, an optional feature of the subjective aspect of the offence (i.e. form of fault), but when it is directly expressed in the qualified fact of criminal offence it becomes a compulsory feature of the offence.

334 (1) (2) of the Slovak criminal code. The offender has to have a special intent to gain or maintain unlawful benefit for himself or another person. Criminal motive has its special importance in the Slovak criminal code.

The Slovak criminal code refer to criminal motive. Concept of law in the United States refers to special intent. Some commentators refer to criminal offences which require special intent as crimes of cause and result, because person possesses specific intent to accomplish specific result. Also, concept of law in the United States differentiates between intent and motive. Motive underlines the reason why person committed the act. Motive may be considered by judge when sentencing the perpetrator. However, motive is not considered in determining whether person possessed criminal intent or not. (Lippman, 2014)

Criminal offence of Receiving a bribe according to section 328 (1) of the Slovak criminal code may be committed by any person who violates his/her duties arising from his/her employment, occupation, status or function. This crime is not directly focused on public officials. This criminal offence may be committed also by employee of private business. On the other hand, section 329 (2) of the Slovak criminal code imposes heavier penalties when the crime was committed by public official. Moreover, section 330 (1) of the Slovak criminal code refers to specific subject. Therefore, this criminal offence may be committed only by foreign public official. Sanctions under section 330 (1) and (2) of the Slovak criminal code are heavy. Perpetrator may face sentence from 5 to 15 years in prison.

Another criminal offence is crime of *Bribery* regulated in section 332 (1) of the Slovak criminal code. Criminally liable is perpetrator who directly or using another person (indirectly) promises, offers or gives bribe to another person to act or omit action in a way that he or she violates his/her duties arising from his/her employment, occupation, status or function or for this reason directly of using another person promises, offers or gives bribe to the third person. This behavior constitutes a minor crime. Minor crime is committed also when perpetrator fulfil facts stated in section 332 (1) of the Slovak criminal code in more serious manner (section 332 (2) of the Slovak criminal code). Felony occurs when perpetrator commits this crime in greater amount (section 332 (3) of the Slovak criminal code).

Also, criminal offence of *Bribery* has its special provision related to procurement of things of general interest. According to section 333 (1) of the Slovak criminal code, perpetrator is criminally liable if in connection to procurement of things of general interest he or she directly or using another person promises, offers or gives bribe to another person, or for this reason promises, offers or gives bribe to another person. Committing crime in more serious manner, or promising, offering or giving bribe to the public official represent qualified facts of section 333 (2) of the Slovak criminal code which trigger heavier penalties. Both behaviors still qualify as minor offences. Felony occurs when perpetrator commits such a crime in greater amount (section 333 (3) of the Slovak criminal code).

Naturally, section 334 (1) of the Slovak criminal code refers to the foreign public official. If perpetrator directly or using another person promises, offers or gives bribe to the foreign public official or another person in connection to execution of official duties or execution of function of foreign public official with intent to gain or maintain unlawful benefit, he would be prosecuted under section 334 (1) of the Slovak criminal code. This crime represents a minor offence. Felony occurs when this crime is committed in greater amount (section 334 (2) of the Slovak criminal code).

According to systematics of the Slovak criminal code criminal offence of *Indirect corruption* follows. In both sections 336 (1) and (2) of the Slovak criminal code is the behavior qualified as minor offence. Section 336 (1) of the Slovak criminal code prosecutes everyone who directly or using another person accepts, asks for or agrees to receive bribe for himself or for

another person for having an influence on the execution of authority of the person referred in sections 328, 329 or 330, or that he or she already did so. Section 336 (2) of the Slovak criminal code punishes everyone who directly or using another person promises, offers or gives bribe to another person for having an influence on the execution of authority of the person referred in sections 332, 333, 334 or that he or she already did so, or for this reason promises, offers or gives bribe to another person. Sections 328, 329 or 330 of the Slovak criminal code refer to accepting, asking for or agreeing to receive bribe. Sections 332, 333, 334 of the Slovak criminal code refer to promising, offering or giving bribe. Sections 328 and 332 describe active and passive corruption. The aim of corrupted behavior is to induce person to act or omit action in a way that this person violates his/her duties arising from his/her employment, occupation, status or function. Sections 329 and 333 apply to corruption in connection to procurement of things of general interest. Sections 330 and 334 apply to special subject, the foreign public official.

All criminal offences qualified as *Election corruption* are minor offences. Section 336a (1) of the Slovak criminal code refers to conduct when person directly or using another person promises, offers or gives bribe to another person who has the right to vote, participate in a referendum or a popular vote on the removal of the President of the Slovak Republic in order to (a) vote in a certain way, (b) do not vote in a certain way or (c) do not vote at all or (d) do not participate in elections, referendum, or on a popular vote on the removal of the President of the Slovak Republic, or for this purpose directly or using another person gives, offers or promises bribe to another person. Criminally liable is also person who in relation to execution of right to vote, participate in a referendum or on a popular vote on the removal of the President of the Slovak Republic directly or using another person accepts, asks for or agrees to receive bribe for himself or for another person in order to (a) vote in a certain way, (b) do not vote in a certain way or (c) do not vote at all or (d) do not participate in elections, referendum, or on a popular vote on the removal of the President of the Slovak Republic. Heavier penalties are imposed if offence described in section 336a (1) of the Slovak criminal code is committed in more serious manner, by public official, on protected person¹⁰ or publicly¹¹.

Sports corruption under section 336b (1) of the Slovak criminal code occurs when person directly or using another person promises, offers or gives bribe to another person to act or to omit to act in a way that it will affect the course of the contest or the result of the contest. The term "contest" is explained in section 3 g) of the act no. 440/2015 Coll. on sports as "organized performing of sports, in accordance with rules laid down by sports organization, aimed at achieving a sporting result or comparing sports performances".

Section 336b (2) of the Slovak criminal code refers to conduct when person directly or using another person accepts, asks for or agrees to receive bribe for himself or another person to act or to omit to act in a way that it will affect the course of the contest or the result of the contest. Section 336b (3) of the Slovak criminal code imposes heavier penalty for behaviors described in paragraph 1 or 2 if the crime is committed in more serious manner, or in larger amount¹², or if the person was sentenced for such criminal act in the previous twenty-four months or was inflicted¹³ of a similar act in the previous twenty-four months. Section 336b (4) SCC refers to situations when crime described in paragraph 1 or 2 was committed by coach, delegate of a sports

¹⁰ Protected person is e.g. a child, pregnant woman, close person, dependent person, elderly, sick person a person enjoying protection under international law, according to section 139 (1) of the Slovak criminal code.

¹¹ The crime is committed publicly when e.g. it is committed by dissemination of the file, film, radio, television, computer network or other similarly effective means, or in front of more than two people present at the same time, according to section 122 (2) of the Slovak criminal code.

¹² Larger amount is amount exceeding EUR 2,660 according to section 125 (1) of the Slovak criminal code.

¹³ Person inflicted of a similar act shall mean a person who has been sanctioned for a similar act or an administrative offence or other similar offence, according to section 128 (5) of the Slovak criminal code.

association or sports organization official, or in contest organized by an international sports organization, or in significant amount¹⁴. Section 336b (5) of the Slovak criminal code punishes offender for committing crime described in paragraph 1 or 2 in greater amount. Section 336b (1) (2) are minor offences, whereas section 336b (3) (4) (5) qualify as felonies.

Criminal offence of *Sports corruption* was incorporated into the Slovak criminal code with effective date on 1. January 2016. Therefore, it is relatively new criminal offence. It is important to underline that adding new criminal offences to the Slovak criminal code and broadening criminal liability is a recent trend in the Slovak Republic. Until today no one has ever been found guilty of criminal offence of Sports corruption. By the same token, no one in the Slovak Republic has ever been sentenced for the crime of *Terrorism*. This fact demonstrates different trends in criminality in the Slovak Republic and the United States of America. There was one case brought before the court on crime of terrorism, but it was reclassified to criminal offence of *General threat* under section 284 of the Slovak criminal code. Society and alongside with it criminal law is developing differently in each country.

In the Slovak Republic distinguishing between minor offence and felony is crucial. If certain conduct qualifies as minor crime, material corrective may be used. Material corrective is regulated in section 10 (2) of the Slovak criminal code, which reads: "It is not a minor offence if, in view of the way of committing the offence and its consequences, the circumstances in which the act was committed, the degree of fault and the motive of the offender is its gravity negligible." Section 10 (2) of the Slovak criminal code is a manifest of *ultima ratio* principle applicable in criminal law. The judge has discretion to decide if the person will be criminally liable or the gravity of minor offence will be considered negligible and person will not be prosecuted. Material corrective is present in the Slovak criminal code to eliminate prosecuting persons for crimes which are not seriously harming society values, in order to remove the burden from law enforcement authorities.

However, according to section 34 (6) of the Slovak criminal code, if upper threshold of penalty of imprisonment provided in special part of the Slovak criminal code exceeds five years, the court has to impose a custodial sentence.

The Slovak criminal code contains more criminal offences which are related to corruption. The Slovak criminal code contains also crime of *Machinations in connection with bankruptcy and settlement proceedings* regulated in section 141 and crime of *Machinations in public procurement and public auction* described in section 266 of the Slovak criminal code.

The fight against corruption was reinforced when the Government office of the Slovak Republic set up an internet domain in order to spread awareness of corruption. This webpage invokes article 5 of the United Nations Convention against Corruption which states that "Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. Each State Party shall endeavor to establish and promote effective practices aimed at the prevention of corruption." Citizens may find all laws related to anticorruption policy, priorities of anticorruption agenda, risk assessment tools as well as information where they can notify corruption practices, including protection of notifier in one place. Aim is to bring attention to corruption and make fight against corruption more accessible to citizens. Nowadays internet is the most powerful source of information, therefore we support the idea.

¹⁴ Significant amount is amount exceeding EUR 26,600 according to section 125 (1) of the Slovak criminal code.

4 Conclusion

Legal systems of the Slovak Republic and the United States of America are significantly different. This is caused mainly by the fact that the United States of America is a common law country and the Slovak Republic is a continental law country. There are issues which are widely debated in one country and not in the other one. Still, we are able to find areas where the Slovak Republic would benefit by adopting practices of the United States and vice versa. We also detected few similarities.

First, we believe it is appropriate to incorporate provisions in the Slovak Constitution that enable the removal of the highest-ranking public officials from office when impeached for and convicted of bribery. This idea is enshrined in article II, section 4 of the U.S. Constitution. Incorporation of this provision into the Slovak Constitution would strengthen democratic values and belief in justice in the Slovak Republic. At the same time, the possibility of impeachment would limit the willfulness of the highest-ranking public officials and prevent misuse of power. Second, we find it very useful that some definitions which are applicable only to certain sections of the U.S. Code are incorporated in the respective section. Namely, section 224 (c) of the U.S. Code. This makes orientation in criminal code more comprehensive to persons charged with specific crime, but it does not promote overall understanding of the code. Good orientation in legal statute would be promoted if terms would be explained only in one part of the criminal code, the best on its beginning. We think it would support general preventive function of criminal law and improve legality principle. In the Slovak criminal code, the most essential terms are defined in one place, in the fifth chapter of the Slovak criminal code, section 122. However, some criminal offences refer to special laws. Terms associated with these criminal offences are explained in special laws, e.g. section 336b of the Slovak criminal code regulating the crime of *Sports corruption* makes references to act no. 440/2015 Coll. on sports.

Third, section 201 of the U.S. Code refers to bribe as "anything of value". Section 203 of the U.S. Code uses term "compensation". Section 666 (a)(1)(B) and (2) of the U.S. Code also uses term "anything of value". However, according to section 666 (a)(1)(B) and (2) of the U.S. Code the value of thing must exceed USD 5,000 to qualify described *actus reus* as criminal offence. Due to these differences in terminology, we would suggest unifying terms related to corruption criminal offences in Title 18, United States Code. We hold an opinion that unification of terms would help to make the orientation of the U.S. Code easier, more understandable and therefore would reinforce the legality principle.

Fourth, the Slovak criminal code mainly regulates promising or giving bribe to persons who in exchange for bribe i) violate duties arising from their employment, occupation, status or function, or ii) commit corruption practices in connection to the procurement of things of general interest, or it regulates iii) foreign public officials who were influenced by bribery in execution of their official duties. Respective provisions of the Slovak criminal code refer to persons who are holding the office at the time when criminal behavior occurred. Persons who have been selected to hold the office in the future are not expressly mentioned in these provisions. According to section 201 (b)(1) or (2) of the U.S. Code a person who has been selected to be a public official may be held criminally responsible. The section expressly refers to persons who will hold the office in the future. From our point of view, this provision can eliminate corruption from its beginning and in its entirety. The Slovak Republic could consider incorporating a similar specification into the Slovak criminal code to prevent future officials from acting in contrary to the best interest of the public. Hence, section 201 (c) of the U.S. Code extends the criminal responsibility to former public officials.

Additionally, the value of the thing given or received is not determining for criminal liability according to sections 201, 203 and 224 of the U.S. Code. Likewise, there is no minimum

threshold of value of thing given or received to invoke criminal responsibility in the Slovak Republic. An interesting finding is that the U.S. Code does not trigger heavier penalties as the value of the thing given or received by corrupted practices increases. The opposite approach is applied in the Slovak Republic. In the Slovak Republic, sanctions for criminal offences of corruption depend on value of thing given or received. There is a correlation between the value of the thing and sanction imposed on the perpetrator. Upon conviction of committing criminal offence of *Receiving a bribe* regulated in section 328 (1) of the Slovak criminal code, the perpetrator may be sentenced to 2 - 5 years in prison. If perpetrator receives thing of value of more than EUR 133,000 he or she may be sentenced to 7 - 12 years in prison according to section 328 (3) of the Slovak criminal code. The Slovak criminal code is built on the idea of penalties that grow as the damage to the society increases.

Finally, there are many legal ways of exchanging money for favors in politics in the United States. Lobbyism hampers democratic values of society and it is not legal in the Slovak Republic. American Anti-Corruption Act is aiming at limiting legal ways of exchanging money for favors in politics. American Anti-Corruption Act represents a great initiative, but its implementation is not very successful. It will be difficult to limit options for receiving money in politics, because naturally, politicians would oppose it. However, American Anti-Corruption Act is a good start for ending the controversial aspects of lobbying in the United States.

Literature:

Legal acts and court decisions

1. 720 Illinois criminal statute
2. 1997 Convention on fighting corruption involving officials of the EU or officials of Member States
3. 2003 Framework Decision on combating corruption in the private sector
4. Act no. 460/1992 Coll. Constitution of the Slovak Republic
5. Act no. 440/2015 Coll. on sports
6. Act no. 91/2016 Coll. on criminal liability of legal persons
7. Act no. 300/2005 Coll. Slovak criminal code
8. Act no. 301/2005 Coll. Slovak procedure code
9. American Anti-Corruption Act
10. Constitution of the United States
11. Foreign Corrupt Practices Act <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act> (Slovak translation <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/11/14/fcpa-slovak.pdf>)
12. Modal Penal Code, http://www1.law.umkc.edu/sun/CriminalLaw/MPC_Provisions/model_penal_code_default_rules.htm
13. N.Y. Penal Law <http://ypdcrime.com/penal.law/article180.htm#p180.45>
14. R 2/1965 (judicial decision of the Supreme Court of the Slovak Republic)
15. R 56/1999 (judicial decision of the Supreme Court of the Slovak Republic)
16. Roberto Miramontes Roman v. State of Utah
17. Treaty on the Functioning of the European Union
18. United States Code, Title 18 <https://www.law.cornell.edu/uscode/text/18/part-1>
19. United States of America v. Rod Blagojevich and John Harris https://www.justice.gov/archive/usao/iln/chicago/2008/pr1209_01a.pdf

Books and journals

20. Budra E., Čentěš J., Záhora J., Kolesár J., Kordík M., Mencerová I., Mularčík O., Prokejinová M., Tobiášová L. & Vráblová M. (2010) *Trestný zákon všeobecná časť; komentár 1. diel*. Praha, CZ: C.H. Beck
21. Budra E., Čentěš J., Záhora J., Kolesár J., Kordík M., Mencerová I., Prokejinová M., Tobiášová L., Laciak O., Martvoň A., Puchalla M., Strémy T. & Toman P. (2011) *Trestný zákon všeobecná časť; komentár 2. diel*. Praha, CZ: C.H. Beck
22. Adamcová I., Blažek R., Boháček B., Čentěš J., Ďurana V., Fábry A., Feník A., Kolcunová M., Kozolka J., Magvašiová A.,

- Novocký J., Palkovič J., Sepeši P., Sivák M., Šanta J., Šufliarský P., Šumichrast T., Zanut J. & Žilinka M. (2018) *Trestný zákon Veľký Komentár*. Žilina, SR: Eurokódex s.r.o.
23. Čentěš J., Sivák M., Ďurana V., Novocký J., Šanta J., Šufliarský P., Magvašiová A., Fábry A., Žilinka M., Adamcová I., Sepeši P., Zanut J., Šumichrast T., Palkovič J. & Kozolka J. (2006) *Trestný zákon s komentárom*. Žilina, SR: Eurokódex Poradca podnikateľa, spol. s.r.o.
24. Dahl A. R. (2001) *How democratic is the American constitution? USA*: Yale University Press
25. Lippman M. (2014) *Essential criminal law*. University of Illinois at Chicago: SAGE Publications, Inc.

Other sources

26. Anticorruption agenda of the Government office of the Slovak Republic <https://www.bojprotikorupcii.gov.sk/protikor-upcna-agenda/>
27. Graham B. & Stroup C. (2015) *Does Anti-bribery Enforcement Deter Foreign Investment?* <https://cpb-us-w2.wpmucdn.com/muse.union.edu/dist/5/317/files/2015/01/11-Graham-and-Stroup-2015-AEL-forthcoming.pdf>
28. European Commission, Corruption. https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption_en
29. European Commission, *Businesses' attitudes towards corruption in the EU*. (2017) <http://ec.europa.eu/comfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2177>
30. European Council, *The Stockholm programme – an open and secure Europe serving and protecting citizens*. (2010/C 115/01) <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:EN:PDF>
31. FBI, Rod Blagojevich Public Corruption case. <https://www.fbi.gov/audio-repository/news-podcasts-inside-rod-bлагоjevich-public-corruption-case.mp3/view>
32. Immunity of Members of the National Council of the Slovak Republic after 1. September 2012 <https://www.pravnenoviny.sk/analyzy/imunita-poslancov-narodnej-rady-slovenskej-republiky-po-1-septembri-2012>
33. Seitzinger M. V. (2016). *Foreign Corrupt Practices Act (FCPA): Congressional Interest and Executive Enforcement*. In Brief. CRS Report. Congressional Research Service <https://fas.org/sgp/crs/misc/R41466.pdf>
34. Transparency international, *Corruption perception index*. (2019, January 29) <https://www.transparency.org/cpi2018>

List of figure legends

1. Overview of Corruption Perception Index in 180 Countries Monitored by Transparency International in 2018 (Transparency International, 2019)

Primary Paper Section: A

Secondary Paper Section: AG, AH