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Bribery in Medical Service Delivery in Slovakia: Exploring the Gap

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Abstract:

The topic of corruption can be discussed from a variety of standpoints including economic, political, and social implications. The focus of this thesis project is on healthcare sector and more specifically the low-level act of corruption, the bribery, which occurs between a doctor and a patient. The aim of this thesis is to research the reasons behind the persistent existence of the bribery in medical service delivery through looking more closely at patients' perceptions on bribery in comparison to the official laws and rules created by both the Slovak government and the EU. For this purpose, qualitative approach is taken that develops this project by providing depth and detail about the bribery in Slovakia, in specific the attitudes and behaviors of the patients involved. Two direct observations and series of interviews were conducted. The theoretical framework to study this phenomenon is Eugen Ehrlich's concept of 'living law' and Marcel Mauss' concept of gift in combination with the critical discourse analysis while the emphasis is on analyzing the gap between juristic laws and laws the society de facto follows. The findings point to the most visible reasons for persistency of bribery in medical service delivery in Slovakia that is similar to other CEE states. Overall, the official laws are inconsistent with the society and the healthcare sector is poorly administrated which creates room for bribery and corruption. If the legislation will not acknowledge the grey zone between gift and bribe, and the system stays the same, Slovakia will remain on the list of countries where bribery is the most visible form of corruption within the EU.

Key words: corruption, bribery, healthcare sector, medical service delivery, living law, critical discourse analysis, Slovakia, socio-legal research.

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List of Abbreviations

EU: European Union

CEE: Central and Eastern Europe

CDA: Critical discourse analysis

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1. Introduction

The topic of corruption can be discussed from a variety of standpoints including economic, political, and social implications. Corruption is a widespread and complex phenomenon that does not belong only to the ‘non-Western’ countries (Haller and Shore 2005, 2). There is no officially accepted definition of corruption however as Miller puts it; corruption is hard to define but easy to recognize (2006, 163). According to the European Union, corruption can harm the societies and their economies. Moreover, deep-rooted corruption slows down “economic development, undermines democracy, and damages social justice and the rule of law” (EC 2014, 1) of a country. The EU is on a mission to mitigate corruption in the member states. In June 2011, the EU Commission adopted the Communication on Fighting Corruption in the EU which established the EU Anti-Corruption Report to monitor and evaluate the individual efforts of the member states (Ibid.).

Within the public sector, corruption occurs in several areas of society e.g. education, police, and/or health service. While it is possible to compare these areas, they also have different characteristics specific to them that vary across countries as well. Studying corruption, in general, is a complex project that requires a lot of time and resources. Therefore, for the purpose of this thesis project, I will narrow down my focus to bribery in medical service delivery. The health sector is different since the life and health of the people is a factor to be considered. I will study the motives for giving and accepting bribes, in specific, the morality aspect of the bribery in contrast to the legal reality.

The EU rejects bribery in medical service delivery and claims it is the most visible form of corruption in these EU countries; Czech Republic, Latvia, Croatia, Slovakia, Romania, Italy, Bulgaria and Greece (EC 2013, 9). Causes of the bribery in medical service delivery may be several; shortcomings in the healthcare system (e.g. low salaries), flaws and loopholes in healthcare supervision, anti-corruption legislation or judicial ineffectiveness (Ibid.). The main driver behind widespread corruption in the healthcare sector is a general acceptance (or tolerance) of corruption (Ibid.). Patients will offer the bribes and doctors will ask for the bribes as long as it is accepted to act that way. The EU is composed of very different countries. Thus, no single policy can be successful in fighting corruption. According to the

EU Commission, successful policies in the fight against corruption are a “combination of strong, independent institutions, and a general rejection of corruption by the society” (Ibid. 10).

Through this research, I aim to shed more light on potential causes of corruption in medical service delivery in Slovakia, and why the attempts made either by the Slovak government or EU have been unsuccessful in eliminating bribery. Thus the research question(s) is: Why bribery in medical service delivery persists despite several attempts have been made to fight it in Slovakia as a member of the EU? Although this question is quite broad, I aim at answering it through a use of socio-legal research for which I developed set of additional sub-questions:

- How do people (patients) perceive bribery in the medical service delivery?
- How does this perception collide with the current set of anti-corruption (bribery) laws developed by the Slovak government as well as the EU?

1.1. EU legal framework

The EU takes fighting corruption in public sector seriously as seen by the creation of several legal documents (conventions)¹, reports, and establishment of OLAF (European Anti-Fraud Office). Active bribery consists of undue advantages that are usually of an economic nature but may be non-material. The Criminal Law Convention on Corruption that has to be implemented into national laws of the members of the EU, states that undue advantage should be “interpreted as something that the recipient is not lawfully entitled to accept or receive” (Council of Europe 2002). However, the interpretation and definition of ‘undue’ should exclude advantages “permitted by the law or by administrative rules as well as minimum gifts, gifts of very low value or socially acceptable gifts” (Ibid.).

1.2. Structure of the thesis

The structure of the thesis starts with a brief description of Slovakia that incorporates the most recent cases of bribery in healthcare that received the attention of media. The background information is followed by literature review – previous research, and the methodology that

¹ For instance Council of Europe Criminal Law Convention on Corruption, Council of Europe Civil Law Convention on Corruption, European Union Convention against Corruption Involving Officials, European Union Convention on the Protection of the European Communities’ Financial Interests.

includes description of qualitative methodological approach including the main methods: interviews, direct observations, and critical discourse analysis. Next part is about theory. It begins with debate about how to define corruption and consequently bribery. The theoretical approach is a combination of living law, critical discourse analysis, and Mauss's concept of a gift. Then the primary data gained from the qualitative interviews and observations are presented followed by the analysis of this data together with secondary data – background information gained from the existent literature. The thesis ends with a discussion of the analyzed empirical case and conclusion in which the research questions are answered.

2. Slovakia

The Slovak Republic gained its independence after separation from the Czech Republic in 1993 (“History” 2013, 13). Czechoslovakia was ruled by the Communist Party of Czechoslovakia for four decades. Since 1948 until the *Gentle* (also known as *Velvet*) revolution in 1989, Czechoslovakia was a single-party state (Ibid., 10-12). States that were on the East side of the Iron Curtain have experienced and often inherited, among many other things, informal practices from Soviet times (Ledeneva 2009, 257). Alena Ledeneva writes about a practice called *Blat* that is present in Russia. It can be defined as “the use of personal networks for obtaining goods and services in short supply and for circumventing formal procedures” (Ledeneva 2009, 257). As mentioned in the literature review, in the post-Soviet states the practice of gift-giving is often ‘mistaken’ for bribery, thus seen as corrupt practices, especially by Western states. David Sneath (2006) viewed the exchanges as a form of materialization of social relations which can be corrupt but not necessarily. In the interviews, I researched the blurred line between what is a bribe and what is not according to patients’ perspective. In this section, I will describe current laws concerning bribery and situation in the healthcare sector including the most recent debates.

According to the laws of the Slovak Republic, a bribe is defined in criminal code as “a thing or other transaction of property or non-property nature to which there is no legal entitlement.” (National Council of the Slovak Republic 2006). Thus a bribe can be:

- a material thing (e.g. money, jewelry, car) or non-material (e.g. property, apartment)
- a performance of material nature (e.g. house repair, renting an apartment for discounted price)

- a performance of nonmaterial nature (e.g. help with tutoring for (job) interview, priority execution of administrative tasks such as issuing a passport or driving license)²

Furthermore, the bribe has to be accepted, asked for or given (or promised) in connection with any specific act that is classified as the corrupt practice ("Čo je Úplatok?" 2014). The value or price of the bribe is not decisive to classify the act as corrupt. Thus, a chocolate worth 1 euro can be a bribe. It is not determining whether the bribe was given to make the other person act in illegal way, to have an advantage against others, or the aim was to make the other person properly perform his/her duties (Ibid.). Breach of duties includes an act of someone asking for or taking undue advantage for the performance of his/her duties. The Slovak laws are clear about what is the bribe. If a bribe is given, some form of counter action is expected for it. However, the usual practice in Slovakia is to give gifts after a doctor or nurse treated a person. The difficulty begins when one tries to draw a clear line between whether this gift has affected future actions of the doctor or nurse, towards the person giving the gift. Bribery occurs even when someone accepts advantage (in whatever form) for the performance of his/her duties (Ibid.).

In 2015, 2 cases of bribery in medical service delivery were widely discussed in Slovak media. The first case involved cardio surgeon, Viliam Fisher, who is also considered one of the best in Slovakia. The second one was about the general practitioner, Peter Liptak, who said that he accepts gifts nonmonetary as well as monetary and refuses to call them bribes. In the Fisher's case, two women reported to police that they bribed Fisher before their relative was supposed to undergo a complicated operation (Todova 2015). The patient died after the surgery (Ibid.). According to the police, Fisher accepted the bribe of at least 3,000 €, chocolates, and two ducks (Ibid.). After the surgery, the women asked Fisher to return the bribes but he refused so they called the police. The aim of giving the bribes was to get an earlier appointment for the heart operation (Ibid.). The police also accused the two women of illegal activity, bribery. However, the criminal procedure allows benefits for them since they reported the illegal activity (Ibid.). Firstly, Fisher refused the accusations however in the

²All of the examples in brackets are taken from official website of Slovak government that is aimed at fighting corruption. (<http://www.bojprotikorupcii.vlada.gov.sk/co-je-uplatok/>)

courtroom he pledged guilty to get the lighter penalty. In the end, Fisher got two years of probation, three years long ban of medical activity, and 15, 000 € fine (Petrovic 2015a).

Liptak's case was slightly different. After the Fisher's case had been published in media, Liptak made a public statement in one of the TV stations where he claimed that he accepts gifts from his patients. Also, he said that he would not call the gifts as bribes and according to him they are a form of additional financing that he lacks from the insurance companies (Petrovic 2015b). In one year, he gets about 5,000 € in gifts. Liptak claimed that the healthcare sector is not functioning effectively, and the insurance companies do not pay enough money to doctors (Ibid.). "The life is somehow pushing us to it [;] that we have to accept whatever help and mainly financial help" (Ibid.). Not all of his patients give him money e.g. one of his patients paid with her paintings. A media portal did an interview with Liptak and published it on their website. They asked him a couple of questions about bribery in medical service delivery. He pointed to several problematic areas in healthcare sector involving lack of money in the system. According to Liptak, the politicians are the ones to be blamed for the situation because the doctors and patients are not the initiators or organizers of this system rather the victims of it (Ibid.). Furthermore, Liptak does not see a problem with patients paying for their insurance which covers the service and then again for the same service in form of the gift/bribe (Ibid.). He says: "although they [the patients] paid, the doctor did not get the money" (Ibid.). After the first interview had been published, the police started to act despite Liptak's claims that he accepts gifts, not bribes. Few politicians got together and filed a complaint based on which office of the public attorney begun to act ("Trestné stíhanie lekára Petra Liptáka je zastavené" 2015). After police inspection in Liptak's office, the criminal prosecution stopped, and Liptak is innocent. The reason was a lack of evidence as none of Liptak's patients reported possible bribery in medical service delivery (Ibid.).

Until recently doctors such as general practitioners were allowed to charge an amount of about 7 € for making an appointment for a patient on specific date and time. From the legal point of view, the argument was that the patients paid for priority position in a queue, not the appointment itself (Benova 2014). In March 2015, the government decided to cancel the fees including the fee for priority appointment for an examination (Folentova 2015). The fear is that the corruption will rise because people will demand to have the appointments for which

they will be willing to pay unofficially (Ibid.). This will be seen as bribe according to the Slovak laws. Also, the state will lose the taxes they used to get from the official fees (Ibid.). The other alternative is that the doctors will keep charging the fees, but they will call it differently such as professional management of a patient (Ibid.).

Overall, the Slovak laws are quite strict when it comes to bribery e.g. chocolate is considered a bribe, given the culture of Slovakia where gift-giving is part of it and has its historical roots. Therefore, the socio-legal research in this topic can shed more light on why the extensive efforts to fight corruption in medical service delivery were rather unsuccessful given that the bribery persists. Healthcare sector is the most corrupted by perception (62% perceiving corruption as widespread in 1999 and 63% in 2006) (Beblavy 2009, 14).

3. Literature review

A topic of corruption and bribery in medical services has sparked an interest in many scholars. Their aims vary from defining bribery, causes of corruption to suggestions for an elimination of the bribery and corruption in medical services. The scholars who wrote about Central and Eastern Europe (CEE) or post-communist countries agree that there is a blurred line between defining corruption as a gift or bribery and this type of behavior has its historical roots (Urinboyev 2013, Polese 2008, Chereches et al. 2014). In other countries, an informal payment in medical service is justified in media as a mean for better access to public services (Chiu et al. 2007). Also, a poor system in a country together with private sector involvement can hinder bribery as in the case of India (Bhojani et al. 2014). Markovska and Isaeva (2007) even talk about the culture of bribery in Ukraine. Nevertheless, Teodora Manea (2014) writes about medical bribery as a type of social contract created by mistrust in institutions.

A group of scholars argues for hard laws (Radin 2013), formalization of payments (Ensor 2004), incentives to report bribes (Scepanovic 2006), official fees (Lewis 2007), improved oversight and accountability (Lewis 2007), and seeing bribery as human rights violation (Lajcakova 2003) as means to tackle the corruption problem. Another group of scholars emphasizes different strategies based on raising awareness (Batory 2012), positive incentives (Batory 2012), and educational programmes on ethics and trust (Manea 2014) rather than

increasing penalties in order to close the gap between intentions of the policies (Chereches 2014) and the actual situation.

In regards to the particular case of Slovakia, few studies have been published on anti-corruption efforts by Miroslav Beblavy and Emilia Beblava. In specific, they looked at how the EU influenced corruption before and after the accession. They acknowledged significant gaps in the literature which they tried to fill with interviews and newspaper accounts where appropriate (Beblavy and Beblava 2014, 7). First, they were able to identify five channels of influence of the EU on corruption in Slovakia. Then, the authors quantitatively rated the channels accessing their positive, negative or neutral/irrelevant contribution to corruption in Slovakia. This article sheds light on overall situation of corruption in Slovakia with regards to the EU. However, given its general aim it does not explore the causes of the corruption and bribery.

On the other hand, Andreas Pawelke argues there was a significant reduction in corruption after the new government was voted into power in 1998. However, after Slovakia became a member of the EU, it witnessed slide backward into the habits of cronyism, clientelism, and favoritism (Pawelke 2010, 101). Although this study argues for overall improvement in the situation, it does not examine healthcare sector in depth. In the conclusion, the author acknowledges the healthcare and judiciary sectors as not part of the successful story, he described in the text. They are in a need of stronger civil society involvement and reforms (Pawelke 2010, 115).

Another study concentrates exactly on the differences in perceptions of corruption in the healthcare sector in Slovakia (Muzik 2011). The author was able to identify the most corrupted sector and consequently the department: healthcare and surgery. Also, the surgeons earn higher salaries than doctors and nurses in other sections. Based on these findings Muzik concludes: the cause of the corruption is greed rather than the need. Thus, he disagrees with a different view where the cause of corruption is in the system – e.g. low salaries. His study supports this view. However, I would argue only to a certain extent. The patient's aspect is omitted in this conclusion and reasons for giving bribes are not analyzed. Although, the

literature on corruption in the healthcare sector in Slovakia is limited in number it provides the basis for this research which will hopefully contribute to this already existent literature and help to create the complete picture.

4. Methodology

4.1. Qualitative approach

The existent literature (Muzik 2011) that is closely connected to the bribery in medical service delivery in Slovakia is quantitative and follows positivistic view where bribery is universally observable and measurable phenomena. Furthermore, Stephen Knack wrote an article about measuring corruption in Eastern Europe and Central Asia where he examines different indicators, relevant for quantitative measurements of corruption (Knack 2007). Although the quantitative approach is highly relevant and valuable, the choice of methodological approach depends on the purpose since no single measure or data source is most appropriate for all purposes (Knack 2007, 282). Given that Muzik has already done the quantitative study about bribery in medical service delivery, my methodological approach is qualitative.

Ethnographical approach to the topic of corruption is undoubtedly needed. Only about 2% of the relevant scientific literature on corruption deploys anthropological approach (World Bank 2006). Corruption is social practice thus can be studied according to social science approach. Recently, the efficacy of large-scale, quantitative analysis has received substantial critique pointing to need to complement these studies with qualitative research (Toresello 2011, 1). For this reason, I will gather all the findings from secondary and primary data and analyze them according to the critical discourse analysis (CDA). CDA provides tools for enriching the one-sided view of the bribery with a perception of all actors involved. In other words, bribery can mean something else for the EU, the Slovak government, and a patient or a doctor. Furthermore, it can point to the motivation for this type behavior on the side of the patients. I will use Fairclough's three-dimensional model of critical discourse analysis. It is difficult to draw the line between what is theory and what is the methodology in CDA. More detailed explanation of Fairclough's CDA is in the following section. Methodologically, the CDA will involve detailed text analysis of transcribed interviews in order to gain insight into how discursive processes operate (Jorgensen and Phillips 2002, 66). According to Fairclough,

textual analysis is not enough and interdisciplinary perspective is needed which combines the textual analysis with social analysis (Ibid.).

Fairclough created the three-dimensional model as an analytical framework for empirical research (see Appendix A). The research and analysis should focus on: (a) the text and its linguistic features, (b) discursive practice – processes related to the production and consumption of the text, and (c) social practice to which the communicative event belongs (Ibid., 68). The distinction between analysis of linguistic features and analysis of discursive practice is not always clear. However, text and discursive practice are two different dimensions and should be separated analytically (Ibid., 69). Discursive practice is a mediator between text and social practice, and only through the discursive practice the texts shape and are shaped by social practice (Ibid.). The three-dimensional model is based on the principle that texts cannot be understood or analyzed in isolation (Ibid., 70).

4.2. Methods

The qualitative approach develops this project by providing depth and detail about the bribery in Slovakia, in specific the attitudes and behaviors of the patients involved. This approach is open to new topic areas that I may not initially consider. Since the aim of this research is to analyze why patients act in certain ways, I accessed this information through interviews and two direct observations. The direct observations were carried out in a clinic and hospital. The places were chosen according to how many patients seek medical services there. I went to the clinic and hospital and sat in the waiting rooms and observed the behavior of patients and took notes. I paid especially close attention to visible signs of gift-giving practice and bribery. The interviews generated original content not accessible through secondary data. I treat the news articles about bribery in Slovakia as secondary data together with legal documents about anti-corruption. The previous research is referred to throughout the thesis but I did not analyze its features according to any of the methods used in this research, thus the distinction. Nevertheless, the collection of qualitative data is time-consuming and limiting in the number of responses I was able to gather - eight. Therefore, it poses difficulties with the generalization of the results. Also, the quality of the interviews depended on my skills as an interviewer. The methods I chose mostly comply with social constructivism. I will view the bribery as socially constructed/created notion of reality by people (Jackson 2011, 144).

I located the interviewees among my friends and acquaintances of different genders, age groups, educational backgrounds, and occupations. Table 1 summarizes the key information about the participants. The interviews ranged from an hour and a half to two hours, and were in Slovak. The interviews were semi-structured (see Appendix B for interview guide). There were slight differences in the questions or in the order of questions depending on the specific interview. I conducted most of the interviews in calm places such as cafes or parks. All of the interviews were recorded through an app on my phone with an explicit consent of the participants, and I transcribed all of them. Book, *InterViews: Learning the Craft of Qualitative Research Interviewing* by Steinar Kvale and Svend Brinkmann (2009), served as the methodological base for conducting and coding the interviews.

Table 1: Information about the participants

Name	Gender	Age	Educational background	Occupational field
Martian	Male	25-30	University degree	IT
Elohim	Male	20-25	University degree	IT
Ryba	Male	30-35	High school	Public sector
Klaudia	Female	30-35	High school	Garment industry
Erika	Female	35-40	High school	Food industry
Zita	Female	40-45	High school	Hospitality
Jana	Female	25-30	University degree	Maternity leave
Julia	Female	45-50	University degree	Hospitality

4.2.1. Methods for textual analysis

In addition to the above mentioned coding of the interviews, I used CDA for textual analysis. The critical discourse analysis was done through analyzing the particular words the participants used in the interviews to describe bribe/gift, power relations, and general attitudes towards corruption and bribery. It was a form of coding different to the one used for describing the empirical data. I focused on attitudes and linguistic features while I separated them from the physical practice of bribery and gift-giving for analytical purposes. The discursive practice is about power relations in society. In this study, it is the relation between a doctor and a patient that affects how the participants and society view and talk about bribery and gift-giving tradition – produce and consume texts. Thus, I noted in the transcribed interviews and already existent articles about bribery from news media parts about power

relations that served as base for the analysis. The social practice was the physical act of bribery or gift-giving connected through the three-dimensional model to the discursive practice and linguistic features.

4.3. Ethical considerations

Identities of all the participants are anonymous since bribery is ethically sensitive issue; the names in Table 1 are pseudonyms. At first, I tried to include doctors' perspectives as well but despite my extensive attempts I was not able to interview enough doctors to include the data in the thesis. According to official laws, there is no difference between gift and bribe thus several doctors turned me down because they did not want to talk about what is considered an illegal activity that involves them. Another reason was that the doctors did not see a point in doing research on this topic as an outsider, not someone from the healthcare sector. Overall, I had to keep in mind the ethical side of the bribery in medical service delivery to gather the primary data as well as in analyzing them. My role as a researcher kept changing from insider to outsider throughout the project. For some of the participants, I was an insider and for others I was an outsider. For instance, the doctors who rejected the interviews viewed me as an outsider with whom they did not want to share sensitive information. I was an insider because my knowledge of the cultural background and the language helped me to understand expressions the participants used or situations they referred to.

4.4. Limitations

This study is limited to patients' perspectives. The doctors' perspective would help to get the complete picture thus would provide a comprehensive answer to the research question(s). However, the qualitative bottom-up approach to the topic of bribery is missing in Slovakia, and this thesis can serve as base for determining future research. The scope of this project is limited to medical service delivery and doctor-patient level due to time and resource constrains. Including other public sectors would provide deeper analysis of bribery and corruption in general that could contribute to the already existing body of literature about CEE countries. Also, bribery is one of the methods of corruption thus the other methods should be analyzed to provide the complete analysis of corruption in the public sector.

5. Theories and definitions

The aim of this thesis is to research the reasons behind the persistent existence of the bribery in medical service delivery through looking more closely at patients' perceptions on bribery in comparison to the official laws and rules created by both the Slovak government and the EU. The theoretical framework to study this phenomenon will be Eugen Ehrlich's concept of 'living law' and Marcel Mauss' concept of gift in combination with the critical discourse analysis. It is tricky to establish a dichotomy between what constitutes a bribe and a gift in Slovakia. Therefore, I will not follow one definition of bribery rather explore how the people define it.

5.1. Defining corruption and bribery

It is a challenging task to find universally applicable definition of corruption. Nevertheless, the EU defines corruption as 'abuse of power for private gain' (EC 2014, 2). This definition is in line with international legal instruments. For instance, Transparency International uses working definition applicable for both public and private sectors: "corruption is the abuse of entrusted power for private gain" (TI 2015). However, corruption can be viewed and defined from several perspectives; political, economic, and sociological. The broad spectrum varies from on the one side legal definition to the other side: public opinion on corruption. Thus, it is possible to talk about broad and narrow understandings of corruption (Beblava and Beblavy 2007, 317). The narrow understanding includes the legal definition of corruption that is sanctioned according to the criminal law. However, this view is problematic because of imperfections of legislation, and not every deviant behavior needs to be sanctioned according to the criminal law only (Ibid.). There are other laws that can also increase the chances of punishing unlawful behavior e.g. labor law or (in politics) political liability (Ibid.).

Furthermore, corruption can be viewed as a deviation from ethical norms or as an activity that harms the public interest (Ibid.). Both ethical norms and public interest are vague terms thus it is hard to grasp the essence of public opinion on corruption. However, public opinion is important since it creates a view about how corruption should be defined while it can push boundaries of what is acceptable and unacceptable behavior. According to Gardiner (1992) a clerk will follow public opinion rather than legal rules if the difference between them is significant. Several other scholars tried to define corruption according to different views or

criteria (Becker and Stigler 1974, Ackermann 1999, Bardhan 1996, Nye 1967, Heidenheimer et al. 1989, Friedrich 1966, Rinsky 2005). Miller (2006) offers a pessimistic view on the attempts to define corruption and suggests stop trying to find one acceptable definition of corruption. Rather, the focus should be on the specific definition of forms and methods of corruption. It is not to say that all the scholars who tried to define corruption failed. Instead, culture and context are conditional for corruption that as a consequence resulted in a large body of academic literature dealing with defining corruption.

Typology of corruption can be defined from variety of perspectives depending on: the scope of activities viewed as corruption, sector in which the corruption takes place, impact of corruption on a citizen, level of organization of corruption, how much is stolen from the public sector, the relationship between the client and agent, motivation of the corrupted and the one instigating corruption, and more (Beblava and Beblavy 2007, 321). Depending on the sector in which the corruption takes place, it is possible to talk about political or administrative corruption (Ibid.). The focus of this thesis project is on healthcare sector and more specifically the low-level act of corruption, the bribery, which occurs between a doctor and a patient thus the administrative corruption. The administrative corruption includes bribery in the public sector and is called low-level corruption because citizens can experience it in everyday life in different sectors including healthcare (Ibid. 322). Bribe is a method of corruption that is defined by several dictionaries for example as: “money or favor given or promised in order to influence the judgment or conduct of a person in a position of trust” (Merriam-Webster). In the context of CEE countries, the line between what constitutes a bribe and what is a gift is blurry. Since corruption and thus bribery can be defined from wider perspective, public opinion, I aim to analyze this blurred line through theory of living law together with critical discourse analysis and a concept of gift defined by Marcel Mauss.

5.2. Analytical framework

Mauss's work has been influential in the anthropological field. His most influential work is called *The Gift. Forms and functions of exchange in archaic societies* (1954), it is a comparative essay about gift-giving and exchange in “primitive” societies. In *The Gift*, Mauss lays the foundation for a theoretical understanding of the nature of social relations. According to Mauss, exchange of objects between people forms a moral bond between the persons

exchanging gifts. Thus, the gift-giving is positioned in morality. Furthermore, the author describes several obligations connected to gift-giving. There is an obligation to give gifts by which a person shows generosity thus as one deserving of respect (Mauss 1966, 11). Another obligation is to receive gifts through which one shows respect to the giver (Ibid.). Lastly, Mauss describes obligation to return gift that demonstrates that person's honor is (at least) equivalent to that of the original giver (Ibid., 7). Although the "primitive" societies were different from the modern ones, the concept of gift represents power to a certain extent. The gift is more than a simple commodity; it is a total prestation (Ibid., 10) also called total social fact. It connects seemingly distinct practices and institutions and is defined as "an activity that has implications throughout society, in the economic, legal, political, and religious spheres" (Edgar 1999, 64). The concept of the gift is helpful in analyzing the data gathered through this project since gift-giving is existent practice in medical service delivery that public does not necessarily views as bribery.

Another important concept that helps to explore the relationship between law and society is Eugen Ehrlich's 'living law'. Austrian jurist Eugen Ehrlich, among others, used social scientific approaches to study the relationship between law and society. According to Ehrlich, society consists of formal and informal associations where the positive law is the law of only one of these associations – the state (Banakar 2011, 5). However, the so-called 'living law' is the one that dominates the life although it has not been printed in a legal proposition. Ehrlich focused on studying the reality of law, sociology of law. Thus, his focus was on social reality of law (Deflem 2008, 90). He based his view of legal sociology on a theory of social associations. The social associations can be described as social relations in which "people recognize certain rules as binding and regulate their conduct according to those rules" (Ibid.). They are based on four major 'facts of law': custom or usage, domination, possession, and disposition/ declarations of will (Schooten and Verschuuren 2008, 76). Furthermore, Ehrlich argues that the facts of law (norms that emerged from inner order of associations) have a greater impact on the social structure and organization of society than any law supposed by state (Banakar 2011, 6). The facts of law shape norms of conduct that leads to the development of norms of decisions that regulate disputes thus the facts of law are pre-legal (Deflem2008, 90).

Ehrlich's living law was one out of many attempts to describe so-called 'gap' between official laws and what laws society de facto follows. The living law is the one that dominates social life even if it is not stated in legal propositions. Also, according to Ehrlich, living law is central to the development of the juristic law (Deflem 2008, 91). However, the juristic law has less influence on the living law. The official law always runs a risk of becoming disconnected from society in which it operates (Schooten and Verschuuren 2008, 77). Many social relations and disputes fall outside of the juristic law thus different norms of decisions are relied upon. The goal of living law is peace and cooperation rather than dispute and litigation (Deflem 91).

Ehrlich advocated for two general techniques/methodologies for obtaining knowledge and understanding of the living law (Trevino 2013, 4). The first method involves close examination of legal documents while the second method focuses on "direct observation of life, of commerce, of customs and usages, and of all associations not only those that the law has recognized but also of those that it has overlooked or passed by, indeed of those that it has disapproved" (Ehrlich 1962, 493). The theory of living law in combination with the empirical case in hand provides a solid basis for exploring acts of bribery that are happening, albeit rejected by the official laws, without perceiving the bribery as unlawful acts. Ehrlich's two methods comply with the methodology of this project: CDA of interviews and direct observations at clinic and hospital.

The purpose of the theoretical framework is to make more scholarly sense of the acts of bribery in medical service delivery in Slovakia through revealing hidden power relations which are largely constructed through language in order to demonstrate and challenge social inequities (reinforced and reproduced). Therefore, I will use a combination of the theory of living law, concept of the gift together with critical discourse analysis. The CDA connects the living law and concept of the gift into one analytical framework that can be used for studying society and its relations with juristic laws. CDA can be both, a theory as well as a methodology. In terms of the theory, discourse is used to describe the way the language operates to produce meanings. According to Gee (1999), language does not occur in isolation rather between people in particular places, times, sets of circumstances, and is accompanied by particular semiotic signs such as gestures, dress and symbols. Furthermore, it is influenced by a range of values, attitudes, beliefs, emotions and ideologies (Ibid.).

A discourse is defined as “the fixation of meaning within a particular domain” (Jorgensen and Phillips 2002, 26). Discursive practices can be viewed as a form of social practices which adds to the constitution of the social world (social identities and social relations) (Ibid.). The discursive practices are ways through which “texts are *produced* (created) and *consumed* (received and interpreted)” (Ibid. 61, italics added by the authors). The aim of using critical discourse analysis is to analyze the linguistic-discursive dimension of social and cultural phenomenon. In other words, I will analyze bribery through examination of discursive dimension of transcribed and coded interviews. There are different critical discourse analysis created by various scholars however, they have few notions in common. Language as discourse serves two forms of action in CDA. People can change the world in the first form while the other one is “socially and historically situated and in a dialectical relationship with other aspects of the social” (Ibid., 62). Thus, social structure influences discursive practices. Some of the practices that were initially discursively constituted became embedded in institutions and non-discursive practices. According to Fairclough (1992, 66):

“[T]he discursive constitution of society does not emanate from a free play of ideas in people’s heads but from a social practice which is firmly rooted in and oriented to real, material, social structures.”

Although Fairclough suggests that discourse should not be only seen as constitutive but as both constitutive and constituted. Seeing discourse as only constitutive would mean that social reality originates only from people’s heads. There is a dispute between theorists whether this idea amounts to the form of idealism Fairclough describes. Nevertheless, in comparison to other approaches such as discourse theory and discursive psychology, critical discourse analysis engages in systematic, empirical studies of language use (Jorgensen and Phillips 2002, 63).

In this thesis project, I will use Fairclough’s critical discourse analysis. Fairclough created a useful framework that contains a number of different concepts that are interconnected in a complex three-dimensional model. According to Fairclough, it is central to view discourse as constitutive and also constituted. This means that discourse is a form of social practice which both “reproduces and changes knowledge, identities and social relations including power

relations” while it is also shaped by “other social practices and structures” (Jorgensen and Phillips 2002, 65). Social structures consist of both discursive and non-discursive practices. Non-discursive practice can be, for instance, the physical practice of construction of a building. On the other hand, discursive practice consists of, for example, journalism and public relations (Ibid.). The distinction between discursive and non-discursive practice may not be clear in every case and poses theoretical difficulty. However, if treated as analytical distinction rather than the empirical one, it is possible to avoid this difficulty (Ibid., 90).

Fairclough’s form of discourse analysis means that the focus will be on text-oriented approach that tries to unite three traditions: “(1) detailed textual analysis within the field of linguistics; (2) macro-sociological analysis of social practice; (3) the micro-sociological, interpretative tradition within sociology, where everyday life is treated as product of people’s actions in which they follow a set of share ‘common-sense’ rules and procedures” (Fairclough 1992, 72). The concept of discourse can be applied in three different ways. First, discourse refers to language uses as social practice. Second, it can be understood as the kind of language used within a particular field, such as medical, political, or scientific discourse (Jorgensen and Phillips 2002, 66). Lastly, discourse refers to a “way of speaking which gives meaning to experiences from a particular perspective” (Ibid., 67) meaning it refers to any discourse that can be distinguished from other discourses. Furthermore, the discourse has three functions according to Fairclough. It contributes to the construction of: “social identities, social relations, and systems of knowledge and meaning” (Ibid.). The aim of using Fairclough’s critical discourse analysis is to explore the links between language use of the participants (patients) and social practice of bribery.

CDA is about revealing power relations since discursive practices contribute to the creation and reproduction of unequal power relations between social groups (Ibid., 63). These effects are viewed as ideological. The word ‘critical’ in discourse analysis sets the aim at revealing the role of discursive practice in the maintenance of social world even if those relations involve unequal relations of power (Ibid., 64). The critique will aim at uncovering the role of discursive practice on the topic of bribery that maintains the unequal power relations in medical service delivery between doctor and patient.

Slovakia as a member of the EU is constantly influenced by directives and laws made outside of Slovak borders. This multiplicity of the laws or forms of laws presented, within a social field of Slovakia, generate legally pluralistic setting. According to Griffiths (1986, 39) legally pluralistic situation is:

“one in which law and legal institutions are not all subsumable within one ‘system’ but have their sources in the self-regulatory activities which may support, complement, ignore or frustrate one another, so that the ‘law’ which is actually effective on the ‘ground floor’ of society is the result of enormously complex and usually in practice unpredictable patterns of competition, interaction, negotiation, isolationism and the like.”

The purpose of using three different theories and concepts is to provide complete analysis of the situation instead of concentrating on single-variable explanation of the phenomena. The theory of living law serves as overall analytical framework to study the gap between juristic laws and the norms society de facto follows. Since researching norms requires examining the power relations, the CDA is used as theoretical backbone. The living law and power relations are tied to the gift-giving tradition which is viewed as something more than exchange of objects in order to get holistic perspective of society through the lenses of this tradition and not to limit the study in this perspective. The next part of the thesis includes empirical data gathered through interviews and direct observations.

6. Primary data and analysis

6.1. Direct observations

As part of the qualitative approach to the topic of bribery in medical service delivery, I conducted two observations and series of interviews. The observations took place at one clinic and hospital. In the clinic, I observed patients in the waiting room for surgery office which is open from 8 until 12. The hospital has several departments, and I observed patients in the waiting room of one of them which is open from 7:30 until 13:30. Since my interviews were anonymous, I also omit the name of the department in the hospital as it may be traceable. Both of these departments have a high number of patients waiting to be examined. The observation of patients in the clinic took place before the fee for priority appointment was canceled and the one in the hospital after the cancelation. In this section, I will present the observations followed by data gathered through interviews.

The surgery office in the clinic is for patients who are going for regular check-ups with for example broken hand or if they had an accident that is not life threatening or urgent. The fee for priority appointment was still in place. Thus, the office had time slot dedicated to those patients from 8 until 10. After 10, patients went into the office according to their position in a queue. Some of the patients who did not have any appointment arrived at 8 to get a better place in the queue despite knowing the doctor would not see them until 10. The majority of patients started to arrive around 10. The patients seemed to be familiar with the system and accepted that they are going to wait for at least few hours before the doctor would see them. However, some showed emotions of being annoyed with this system. Around 11 when the waiting room was still full more people were getting annoyed. Around three people cut in line that triggered mean comments from patients who had been waiting there for few hours already. However, the most 'interesting' situation that was when a patient arrived at about half past 10. After he saw how many people are in the queue, he called the office from the waiting room and made an appointment for that minute conditioned by paying the fine of 7€. About five people made comments about the rudeness of this person, however about two persons said that he paid the fine, and that is how it works and those complaining should just accept it. As the hours went by, the tension in the waiting room kept rising. Around 11:30 most of the patients were done and left. Overall, it seemed that people who refused to pay the fee were annoyed by the system. However, those that paid appeared to be okay with how it works. I did not notice that any of the patients would be carrying any gifts in any form. I cannot say whether any bribery or gift-giving happened in the office as I could only observe the waiting room.

I arrived at the hospital around 7 o'clock, and there were patients already waiting. It was not possible to make an appointment not even for a fee. The patients were going through more serious medical conditions as the departments in the hospital are highly specialized and deal with cases that doctors at clinics cannot either due to lack of expertise or equipment. As few hours went by, the waiting room was full. It seemed that not everyone will get examined but in the end the doctors stayed longer to examine everyone. There was calmer atmosphere in the waiting room. The queue was determined only according to the arrival time unless there would be an urgent case that did not happen during my observation. Two people cut in line that caused a small disturbance among the patients in form of few comments. The doctors saw about 30 people during the office hours, and about two had gift bags. One of the doctors from

the office left earlier because he only has a part-time contract that I learned from him. As he was leaving, he was carrying few gift bags for bottles and few chocolates. It caused a mixed reaction among the patients in the waiting room. Some of them reacted negatively and looked unpleasantly at the doctor, but the majority of people did not seem to care. It is hard to say whether the looks were because of the gifts or him leaving earlier while there are still people in the waiting room. Based on my observation, I am not able to claim whether any monetary gifts happened since I was only observing patients in the waiting room. However, I witnessed a practice of gift-giving that could be considered as bribery according to the current Slovak criminal code.

6.2. Interviews

6.2.1. Defining bribe and gift

As part of the interviews, I asked couple of questions about what consists of bribe and what does not. Based on the literature review, it is not clear what a gift is and when it becomes bribe especially in post-Soviet countries that inherited a practice of gift-giving. All of the participants defined bribe with slight differences. However, they all agreed that bribe is not anything a patient gives to the doctor after the medical service. Anything, a patient offers to a doctor after the services, is considered to be a gift, show of appreciation. Five participants (Martian, Elohim, Ryba, Erika, and Klaudia) defined bribe according to when it is given and received. Martian defined bribe as:

“Bribe is something that you have to give to the doctor before he performs some service. Because doctor’s performance to you would be return service for the bribe. Something like this. It [bribe] is for sure not a reward for already performed service. [...] reward that is asked for is a bribe. A reward is something you give from your will because you are satisfied with the doctor’s service or something like that.”

According to Elohim:

“Bribe is when a person is put into advantageous position in comparison to others [...] not based on their medical condition but social or financial things. [...] When a service was done or something like that then you can thank the doctor however you want. But this is not before the service. A bribe is given before something not after.”

Ryba said: “Anything a person [doctor] asks for before the service and conditions this service with the thing[s] it is a bribe. And it can be money or anything else such as a box of chocolates. If he receives something without asking for it after the service, it is not a bribe it is a sign of appreciation.”

In contrast, three participants (Julia, Zita, and Jana) differentiated between gift and bribe based on monetary or nonmonetary nature. The three participants that made a difference between gift and bribe based on whether it is monetary or nonmonetary agreed that money is a bribe and something else such as dessert is “courtesy”.

I followed with a couple of questions about monetary gifts and whether they are more acceptable than nonmonetary. All the participants agreed that nonmonetary gifts are more acceptable, also by society, as long as they are given after the service. For example, Martian pointed out that media would not report on someone giving a dessert to a doctor. However, if it were in the form of money, it would get the attention of media. Elohim went a step further and tried to define appropriate value of a gift:

“With the money, both the one who gives and the one who receives view it differently than when you want to give someone [...] something nonmonetary like; thank you friend I appreciate that you have done something for me. [...] But I still talk about small gifts let’s say something worth up to 5€. But money is money. Through money, you do not say thank you, if you want to show appreciation and give something to someone, you do not give him 2€ to his hand, you give him chocolate.”

Furthermore, Klaudia said that although nonmonetary gifts are more acceptable giving someone “whole truck of building material for a house” is as unacceptable as monetary gifts.

All the participants recognized in some way the existence of the tradition of gift-giving. They mentioned its presence in other public sectors such as education. At the end of a school year, students bring something small such as flowers or desserts to teachers to show appreciation. However, the participants also recognized that healthcare sector is different. As Zita underlined this notion: “[t]he human lives are at stake.” Overall, all the participants at some point recognized the origin of this tradition that they identified in Soviet Union times. Some

of them described stories they heard from their parents when it was common to bring something to a doctor, but it was always nonmonetary. However, Martian viewed the gift-giving as a bad habit rather than tradition. He said the situation in healthcare sector in regards to bribery is problematic and the practice of gift-giving does not help to solve the situation. Furthermore, he recognized the origins of this practice and he said: “[...] four more generations need to pass for the situation to get better, normal.”

The participants identified several possible reasons why doctors accept gifts or even bribes. They are low salary, lack of doctors/not enough time the doctors can dedicate to one patient, and character - greed. The reasons for patients giving gifts or bribes are connected to the doctors' ones. Through giving gifts/bribes patients want more security and attention as well as shorter waiting time for examination.

6.2.2. Perception of bribery

I asked couple of questions directed at participants' opinions about bribery in medical service delivery and about whether they ever considered giving a gift or bribe and how would such a situation occur. All of the participants rejected bribery in medical service delivery and viewed it as a wrongful and illegal act, given their definitions of bribery, not the official one. They also said that bribery is present in medical service in delivery in Slovakia. The participants view it as the wrongful act because, as Julia said, “[p]eople who give bribes abuse their position and use an option to do something like that”. Jana mentioned financial inequality that puts certain groups of people in preferential position because they have more money than others. Erika mentioned what she called, unofficial fees. She described her experience with going into labor when she heard that there is an option to ‘book’ a doctor for delivery for a certain fee. When she asked a nurse about this option, she said she has no idea what she is talking about. It was not gift-giving rather unofficial payments to get better service, thus bribery.

Except two (Martian and Elohim), all of the participants have given a gift to doctor meaning after the medical service at least once in their life. Except one, all of the participants considered giving a bribe. The one, Elohim, who rejected bribery or even gift-giving

consistently throughout the whole interview, rationalized his view through Slovak phrase: Účel nesväťí prostriedky. The phrase can be translated as: The purpose does not justify the means. I asked those that mentioned a possibility of offering bribe when they considered such an act, they all mentioned the word desperation, fear, or life-saving operation. Martian described such a situation in more detail:

“A situation comes to my mind. Situation that is closely connected to desperation, simply such a situation in which there is no other option than the help of a person [doctor] that you will get only in case you give him some bribe. [...] When a person is in a desperate situation he would do whatever he can to save someone.”

As Martian talked about this imaginary situation, he started to redefine his definition of bribe:

“But then it would not have to be maybe defined as bribe necessarily in that form but it is more like early reward [or pre-reward]. You expect some service, and you just pay for it in advance but in reality you are just rewarding. But it is only and only based on assumption that the situation is very desperate. If it is situation that is about better position in a queue, it is unacceptable.”

Throughout my interview with Martian, when asked again about the concept of early reward, he strongly argued for the connection with absolutely desperate situation when no other option seems enough to save the life of a close person. Also, he debated the human side of such an act as there are probably other people in a similar situation who maybe cannot afford the bribe. He concluded by saying that bribery in the particular situation he described is “understandable but [...] not acceptable”. Overall, all of the participants called bribery wrong while at the same time considered it to be kind of okay (except Elohim) in the individual cases depending on the situation.

6.2.3. Slovak and EU laws

I have divided my questions into several themes; one of them was legal/law theme. These questions involved finding out what the participants think about laws, legal efforts in fighting bribery, or whether the state should get more involved in the situation. All of the participants gave short answers to these questions and said that they are not familiar with laws and not even with EU's efforts in fighting corruption in the healthcare sector. In general, the

participants showed low interest in any legal topics involving bribery or gift-giving in medical service delivery.

6.2.4. Fee for making an appointment

The last theme, I interviewed my participants about, was fees for making appointments despite the fact that it was canceled before the interviews took place. Except two persons (Zita and Julia), all the participants indicated problems with this fee. It was possible to divide the responses into three groups of similar answers. First group of three participants (Elohim, Ryba, and Jana) welcomed government's decision to cancel the fee. However, they also mentioned it would be desirable for them to have the option to make an appointment but without any fee. Elohim said:

“[...] based on some financial inequality, it gives you some kind of right to priority or to better care in front of someone else who may need it more. [...] If someone should get the advantageous position it should be based on diagnosis, but it should not be based on the fact that someone has 7€ more in a wallet.”

The three participants all mentioned the disadvantageous position patients who cannot afford to pay the fee are put in. They preferred to not have the option rather than have it in what they described as poorly set up system. The biggest problem they had with the system was the fee.

The second group of participants (Klaudia, Martian, and Erika) wanted to have the option of making an appointment even when it involves paying a fee. However, they recognized that the previous system under which the appointments and fees functioned was poorly set up, and its cancelation was not a mistake. They also recognized the tensions it used to create in waiting rooms, but it would be desirable for them to keep the system with changes to make it more efficient. Klaudia said: “Let them [doctors] have the fee, but make it [the system] more sophisticated.”

The last group of participants (Zita and Julia) disagreed with decision to cancel the fee. They gave several reasons for it including; “employed person does not have the time to sit around in a waiting room”, “I do not want to spend time in a waiting room”, “it is not that big of an amount to pay”. They show disappointment when talking about the cancelation of fee. When asked about the people who cannot afford to pay the fee, they did not recognize any tensions

the fee had created among people in waiting rooms. Zita said that those people usually have more time so they can wait.

Ryba from the first group of participants and Zita from the last both talked about having different systems and how it affects our healthcare sector. While they argued for different way of dealing with the fees they both said that Slovak government should decide whether they want to have capitalistic or socialistic system in healthcare sector because this middle way does not work for anyone. The mixed system only creates more room for corruption and bribery according to Ryba and Zita.

7. Analysis

In this part of the thesis, I will analyze gathered primary and secondary data. The analysis will serve as the basis for answering my research question(s) in the conclusion. First, I will analyze the data according to Ehrlich's theory of living law. Then, I will examine linguistic features of the interviews to reveal unequal power relations by using Fairclough's critical discourse analysis. Lastly, I will connect the practice of gift-giving and bribery to Mauss's concept of gift. The CDA as a method and theory brings the theoretical framework of living law and concept of the gift together under bribery discourse. As I was transcribing, coding, and summarizing the information obtained through interviews, I came across so-called dual morality that I did not consider initially and will describe later in this section.

According to Ehrlich, the living law is the one that dominates life. As all of the participants clearly stated, the tradition of gift-giving is existent in Slovakia and originates in times of Soviet Union. It is recognized as common practice to show appreciation and gratitude. At the same time, it is not perceived as bribe rather courtesy not only in the healthcare sector but also in education. Theory of living law aims at exploring the 'gap' between official laws and laws society de facto follows. Slovak juristic laws defining bribery are rather strict when compared with real practices observed and described by the interviewees. The official laws do not make any distinction between what could be considered a gift and what is a bribe. Any reward for one's official duty is seen as bribe ("Čo je Úplatok?" 2014). Despite the formal definition, the participants have defined bribe differently and made the distinction between what constitutes

bribe and gift. It is inconsistent with the state's view where on government's website it is written in bold that taking any benefit for a performance of duties is considered bribery (Ibid.). The behavior of participants follows their definitions, not the official one. Therefore, the living law exists in medical service delivery when it comes to the common practice of gift-giving, and it is the one society follows.

The gift-giving practice is not unique to Slovakia only. There are similarities across CEE states that share the post-soviet character. Other scholars (Polese 2008, Chereches et al. 2014) have written about similar tradition in other CEE countries that has its roots in the Soviet times. Furthermore, they argued that there is a blurred line between bribe and gift. The findings from this empirical research underline this notion where the participants used different definitions of bribe and gift than the state. Also, their definitions differed in several aspects such as the contrast between monetary and nonmonetary gifts. In other words, the type of behavior a patient employs depends on his/her moral judgment of what is appropriate despite the juristically different view of the same behavior. It is a common gap in CEE countries where the Western definitions are imposed in the juridical texts (Polese 2008, 47).

The primary function of law is to create order in and between associations within society (Schooten and Verschuuren 2008, 76). The law provides people with norms according to which they regulate and coordinate their actions (Ibid.). According to Ehrlich, these norms are not created by the state but flow from the institutions and structures of which people are a part (Ibid.) – so called facts of law. These facts are the norms society follows that have greater impact on the social structure than the juristic laws. They include usage, domination, procession, and disposition (Deflem 2008, 90). The practice of gift-giving can be seen as a fact of law whereas it has its historical roots and is still practiced in the society. It involves monetary and nonmonetary gifts that are firstly possessions of the patients. In medical service delivery, the doctor is the actor in power which influences his relations with patients especially in the healthcare sector where the human life is a factor in this relationship. The power relations will be further analyzed through critical discourse analysis. Nevertheless, bribe could be seen as a type of contract when the patient is trying to make, albeit unofficial, deal with the doctor. Overall, the aim of living law is peace and cooperation rather than dispute and litigation. Perhaps, the officials creating the anti-bribery legislation and efforts

could take a look at the norms the society follows for achieving harmony in society while at the same time avoiding juristic law to become mere dead letter. As Polese (2008, 47) argues, “the moral codes and values of some emerging states, and in particular post-Soviet ones, often offer an interpretation of phenomena such as gift and corruption adapted from Western moral and juridical codes, disregarding local features”. Several scholars who looked into anti-corruption efforts in post-Soviet countries (for example, Urinboyev and Svensson 2013, Polese 2008, Werner 2002) emphasized that the local perceptions of morality should be taken into account in creating anti-corruption measures.

Through CDA, bribery discourse in medical service delivery is put under critical scrutiny. According to Fairclough, discursive and non-discursive practices are observable. In this case, the physical act of giving and accepting a bribe or a gift for that matter is non-discursive practice. Everything else connected to this practice such as verbal and non-verbal communication, the way the participants talked about it, is discursive practice. The three-dimensional model requires textual analysis of interviews, discursive practice, and social practice (Fairclough 1992, 72). The theory of living law and the concept of gift develop the analysis especially the parts about social practice and discursive practice in addition to the CDA.

Firstly, all of the interviewees talked about an act that they defined as bribery in a negative way which means that they do not agree with this practice. By using words such as wrong, illegal, problematic, the interviewees do not want the bribery to occur. However, when they talked about what they define as gift, their language omitted such strong statements and showed agreement with this practice. Also, they pointed to inequality the bribery creates which was seen as immoral. It means that people prefer to have equality when it comes to medical service delivery that is currently damaged by the occurrence of bribery and corruption. At the same time, most of the participants, except one (Elohim), said that they would consider giving a bribe if they were in a desperate situation. The words they used to describe such a situation were mainly: desperation, fear for life, life-saving operation, and similar. Therefore, when people start to feel that their life, or the life of significant other, is at risk, they tend to ‘forget’ about the wrongfulness of bribery. In other words, the interviewees (except the one) showed dual morality. Morally they rejected bribery and described it as

something that should not happen due to damages it poses for all patients. However, the participants did not feel it was immoral if their life (or the life of someone close to them) was at risk. For instance, Marian redefined bribe in the middle of the interview to morally justify such an act.

Furthermore, the words the interviewees used to morally justify bribery suggest weak power position they may find themselves or others in. When asked whether doctors demand unofficial payments, bribes, all of them agreed that they do. Given that the participants recognized that healthcare sector is different from other public sectors, it puts the doctors in the position of power. All of this reveals the unequal power relations that create room for bribery in medical service delivery in Slovakia. As the interviewees said, the reasons why patient give bribes to the doctors is to feel more secure, receive more attention, and to have a higher quality of care. These reasons are similar to a study by Chiu et al. (2007) where informal gifts are (in contrast to Slovakia) justified in media as means for better access to public services. The discursive practice is, in the Slovak case, the power relations in medical service delivery created by the use of particular language in cases of bribery. In other words, the language the participants used in describing bribery, and possible situations when bribery would be acceptable, reveals the actor and agent relations in medical service delivery.

The social practice of bribery or even gift-giving seems to be officially unacceptable. Slovak media reports negatively about revealed cases of bribery. For instance, the Fisher and Liptak's cases were reported on quite extensively by every media platform in Slovakia. Furthermore, when Liptak made the public statement about accepting gifts few politicians got together and issued the complaint against him. Although officially it is unacceptable to give gifts (and bribes) it is, according to the interviewees, a custom that does not seem to be on the verge of disappearance.

According to Fairclough, discourse can also be ideological. Fairclough views ideology as constructions of meanings that contribute to the maintenance and transformation of power relations (Jorgensen and Phillips 2002, 75). It is difficult to distinguish between what is ideology and what is not. The practice of bribery will be maintained if the same language will

be employed as the one the participants used in the interviews. Also, the unequal power relations will remain. The meaning of bribery is damaging to society as it puts a certain group of people in an advantageous position that is inaccessible by a different group(s) of people. At the same time, the officials and media make effort through certain language use to change the meaning of the gift-giving practice to the illegal one. However, the participants use different language thus, are avoiding this proposed transformation.

CDA is not the only theory that is useful for analyzing power. Marcel Mauss's concept of gift forms a moral bond between the persons exchanging the gift thus determines the nature of social relations (Mauss 1966, 10). The gift connects seemingly distinct practices and institutions. Furthermore, it has implications throughout society, in different fields including economic, legal, political, and religious (Edgar 1999, 64). The practice of gift-giving in the public sector has been common in Slovakia and other CEE countries for a long period. It is understood as a way to show appreciation to the doctor who has taken care of the patient. Mauss described the concept of gift as total social fact because the meaning of it goes beyond mere 'gift' (Mauss 1966, 10). The gift-giving practice in Slovakia, albeit illegal, influences several other spheres. From the state's point of view, it is unlawful because no taxes are paid from the transaction.

Several other scholars used Mauss's concept of gift in similar settings and found that there is deeper meaning behind the 'unofficial' transactions than mere economic transaction (Polese 2008). The participants in this study identified this meaning through listing possible reasons for giving gifts: a way of saying thank you, appreciation, gratitude. In contrast, when the participants talked about bribery, it was about the exchange of type of objects (monetary or not) for better services, more attention, and/or security. Therefore, the custom of gift-giving and receiving is part of structures underneath the Slovak (and other CEE countries) society. Scholars who wrote about the similar topic proposed gray zone between corruptions (Polese 2008), or talked about a culture of bribery (Markovska and Isaeva 2007). On the other hand, international organizations try to reinforce international legal definitions of bribery regardless of local settings and morality. For instance, Tanzi (1998) denies Mauss's definition of a gift in World Bank report. Also, Temple and Petrov (2004) argue that the practice of gift-giving and taking under the previous regime has turned into institutionalized and widespread corruption.

Although the Western countries recognize differences between economic and social standards in comparison to the CEE countries, they try to propose same legal definitions. Instead, the attention should be on new definitions of economic exchanges, call them bribe or gift, in the Slovak context as well as in the context of other CEE countries.

Based on all the data, the juristic laws about bribery do not reflect norms the society follows in medical service in Slovakia. The strong rejection of any other alternative and/or recognition of this custom create the 'gap' in society. Perhaps change in laws that would establish that anything worth less than 15 € is just a gift, not bribe would close the gap or at least make it smaller. Patients prefer equality in medical service delivery that is currently damaged by bribery that puts certain groups of people into advantageous position towards others. At the same time, people tend to morally justify the same inequality if it is about their case that is characterized by desperation. The duality in the perception of bribery makes any anti-corruption efforts difficult in trying to deal with this topic but not impossible. The gift-giving practice is morally acceptable to people who also recognize the traditional aspect of this practice. It goes beyond mere gift as it has its implications in other aspects of society. Overall, according to my qualitative study, there is a difference between bribery and gift-giving that is not recognized by juristic law. Through this empirical research, I found similarities with other researchers who studied similar subject mainly in CEE countries but also in, for example, India. I will further discuss the connection between my research and other already existing literature with broader focus on bribery and its effects on the system and vice versa.

8. Discussion

As the literature and the interviewees already suggested, the tradition of gift-giving and informal transactions are still present in the CEE countries and originate in Soviet times. Srubar (1991) described the origins of this tradition. The Soviet economies were characterized by a limited range of resources that were available officially and as Srubar said these economies could not function without the unofficial transactions. Polese uses a quote in his article that describes the situation: "The shops were empty but the fridges were full" (Polese 2008, 48). The money was not the problem. Rather if a person wanted something beyond what the shelves in the officials shops have to offer, he/she had to find the right person to help with finding the needed goods. Also, goods were often used as means of exchange instead of

money (Ibid.). After fall of the iron curtain, the borders opened up, and a wider range of goods became available. The dynamics of society had changed from finding the right people to get the goods to finding the money to buy the goods (Ibid.). At the same time, post-Soviet countries became increasingly influenced by international (Western) legal standards that did not take into account the local societal structures. The aim of this thesis project is not to judge whether the international standards are better or worse, the aim is research why the current anti-bribery efforts do not eliminate bribery and corruption in real life.

Despite the tradition of unofficial transactions which for some (Temple and Petrov 2004) set the origins for widespread institutional corruption, there may be other reasons because of which the corruption persists. For instance, in other countries such as in India a poor system together with the involvement of private sector hinders bribery (Bhojani et al. 2014). In Romania, medical bribery represents a type of social contract that is created because of mistrust in institutions (Manea 2014). According to the existent literature in combination with primary data, the reasons behind unofficial transactions in medical service delivery in Slovakia are; the existent tradition of gift-giving, poor system – low salaries and mix of social system with market economy, and character of a doctors and patients.

In both, Fisher and Liptak's cases, questions about the functionality of the current system had been raised either by the doctors or media. Fisher's definition of bribe and gift was similar to the one expressed by the interviewees. Furthermore, he claimed that he accepts the gifts because he does not get enough money from the insurance companies (Petrovic 2015b). The service should be free of charge for the patients as they pay for the insurance that covers usual medical services (Ibid.). According to the interviewees the reasons why doctors accept gifts and bribes include low payments and salaries. Some of the participants also identified the difficulties of combining two systems: the social system with parts of the market economy. Despite the other participants did not directly talked about this 'clash', according to the CDA, they prefer a social system where everyone should be equal. Certain groups of people should not get into advantageous positions due to having more money because the life is at stake. However, most of the participants showed dual morality in case of bribery thus, they are willing to act illegally in case of life-threatening situation.

The other alternative how to achieve what the patients are trying to achieve with bribes (more security, attention, and better care) is to go to private clinic rather than the state one. Instead of bribing the doctor, a patient can pay for the service and secure more or less the same advantages. However, the patient is still required to pay for the insurance (Ibid.). A patient pays for insurance to cover his/her costs of medical services but as suggested by the interviewees there is a need for bribery if one wants to get better care than the standard one. The other option is for the patient to pay for the whole service by him/herself while the insurance company gets to keep the payment that would in different case (state owned clinic) cover such a medical service. In the end, it is the insurance companies that profit from this situation. People are trying to achieve what they identified as reasons for giving bribes through either unofficial transactions or through paying twice for the medical service.

Another reason for doctors to accept bribes is low salaries as identified by the participants. The doctors and nurses are considered to have lower salaries than what they deserve. The participants all expressed this view. In addition, there was a large public demonstration of doctors and nurses for higher salaries³. Also, the motivation of Liptak and Fisher to accept either bribe or gift was explained through their dissatisfaction with the salaries they receive from the state. It is not only doctors and nurses who demonstrate for this cause. Employers from other public sectors e.g. education also demonstrate for higher wages (“Školy môžu počas protestu učiteľov prerušiť vyučovanie” 2013). It seems as a general problem of the public sector which is also visible in other post-Soviet countries (Polese 2008, 56).

Lastly, a character will always be a factor but the one that has the smallest chance to be changed by the juristic laws and anti-bribery efforts. Despite the unpredictability of human character, it is possible to concentrate on other areas such as recognition of the gift-giving tradition and finding solutions for a poorly functioning system to eliminate bribery in medical service delivery in Slovakia. The efforts to reduce the bribery have focused on establishing controlling bodies, stricter laws as well as punishments. Some authors (Radin 2013, Ensor 2004, Scepanovic 2006, Lewis 2007) suggest the measures that had been applied in case of Slovakia however, there are others that argue for different approach, for instance, raising

³ In 2011, doctors organized demonstration that paralyzed functionality of hospitalities and clinics. The demonstration was a result of three months long public pressure (Hunkova 2011).

awareness (Batory 2012), positive incentives (Batory 2012), and/or educational programmes on ethics and trust (Chereches 2014). Perhaps, focusing on different approach would be more beneficial than up to now efforts that have not changed the real life situation.

According to the EU, corruption harms society because it slows down economic development, damages social justice and rule of law and results in human rights abuses (EC 2014, 1). Although the EU perceives bribery as a serious issue, especially in the healthcare sector, it leaves room for the states to adjust their policies and laws to particular situation in the country. It is difficult to clearly distinguish gift and bribe based on whether it consists of the undue advantage or not. Nevertheless, the Slovak jurists could adjust laws and policies to take into account the custom of gift-giving to close the 'gap'.

As stated before, qualitative approach to socio-legal research has many advantages. The main aim of this thesis was to analyze the existent gap between juristic anti-bribery laws and the behavior of people. Several scholars described the 'gap' including Eugen Ehrlich with his theory of living law. Pound's law in action and Petrazycki's intuitive law approach the same phenomenon with slight differences (Deflem 2008, 97). Despite the differences between these concepts they can be summarized under one notion, community law (Banakar 22). The focus of this thesis was on the interaction between formal and informal rules rather than drawing the line between them that creates the dichotomy between facts and norms. Many of the legal scholars got caught in this dichotomy which is incapable of reflecting the liquidity of today's societies.

There are many ways how to study corruption or bribery (in post-Soviet countries). I chose the specific combination of theories and methods in order to study the Slovak context. However other approaches can be as beneficial for deepening the understanding of this phenomenon. The future research should explore the doctors' point of view. Furthermore, my focus was on the moral side but bribery, as well as gift-giving tradition, has wider implications that could be studied. It would provide a more detailed answer to the main research question when combined with this study. Also, gained knowledge would be applicable in other CEE countries as a way for studying bribery and corruption. This thesis

contributed to already existent body of literature about corruption/bribery in the post-Soviet countries as well as to the literature that is specifically about Slovakia. Furthermore, the gap was analyzed through socio-legal research based on which it is possible to create or adjust policies and laws, the official approach to bribery, that would result in more appropriate efforts to eliminate bribery and corruption. Thus, this research contributes to the existent body of literature that is focused on understanding corruption and its mitigation whereas the goal is to harmonize the relationship between juristic laws and society.

9. Conclusion

This study was set out to explore the link between juristic laws and laws/norms the society de facto follows. I started with a general interest in socio-legal research on corruption in Slovakia which led me to bribery in medical service delivery on the doctor to patient level. I asked questions about the persistent situation of bribery in Slovakia and perceptions about it to identify the most visible parts of the ‘gap’. The general literature on this subject in the context of Slovakia is inconclusive on several questions within the bribery discourse. For this purpose, the focus was on patients’ experiences and perceptions of bribery in medical service delivery in Slovakia.

Based on the analysis of primary and secondary data as well as the discussion, the answers to research questions can be determined. First, I will start with the sub-questions followed by the answer to the main research question:

- a. **Bribery in medical service delivery is perceived as wrongful and illegal activity, according to the patients, but at the same time it is necessary if a person wants to receive better care.** Bribery puts certain groups of people in an advantageous position that is problematic since everybody should have equal access to healthcare. The only exception would involve urgent cases. However, the participants agreed that bribery is needed because they are dissatisfied with the standard they receive and the unofficial transactions secure the care they desire. Furthermore, the secondary data suggest that the doctors are also unhappy about their wages and system (dys)functionality that motivates them to accept bribes as additional means of payments.
- b. **The patients recognize a difference between gift and bribe which is not identified in official laws.** According to the juristic norms, the value of a gift has no impact on

determining whether it was an act of bribery or not. In comparison, the patients defined the difference in value and also in monetary and nonmonetary gifts. The clash between the official norms and social practices creates the 'gap' that puts the juristic laws in danger of becoming disconnected from society. The goal of this empirical socio-legal research was to create a basis for peace and cooperation between positive laws and society rather than focusing on dispute and litigation. The EU offers a room in the Criminal Law Convention on Corruption for states to adjust their bribery legislation and policies in accordance with cultural and societal norms. However, the current Slovak laws do not recognize the cultural tradition of gift-giving. Several scholars who focused on similar issues in post-Soviet countries suggested recognition of the 'grey area' as well.

The main research question focused on why the up to today efforts have been unsuccessful in eliminating bribery in medical service delivery in Slovakia. The aim was to answer this question through analyzing the relationship between positive laws and society. Slovakia inherited the gift-giving tradition from Soviet times while the legal tradition has been established after the fall of the iron curtain and comes from the Western and international standards. Liberalization of healthcare sector did not result in a better situation for the doctors and nurses – their wages do not provide them with enough purchasing power. Thus, through unofficial transactions they can make up for this shortcoming. It is important to note that the units of analysis were state-employed doctors, not private practitioners. Corruption is not objective, it depends on the context. The Slovak context proved to be similar to other CEE countries in terms of unofficial transactions in public sectors. The practices developed during the Soviet times are hard to erase however specific features of Slovak culture and society should not be erased by proposing a universal definition of bribery or corruption. The question the current situation poses is whether it is worth classifying small gift such as chocolate box as a bribe, therefore, spend resources on the fight against this type of bribery. Polese, in his article about situation in Ukraine, made a conclusion that the mixed system of private and state clinics is pushing the best doctors to private clinics where they get better rewards for their work which is even worsening already insufficient standard of care in public clinics (Polese 2008, 58). It is a question to be determined by the Slovak government whether they decide to act and prevent this type of worsening or Slovak healthcare sector will face (or is already facing) the same situation.

Since the focus of this project was on the moral side of bribery, the conclusion and suggestion for policy makers is to either redefine bribery to include the concept of gift or acknowledge that the act does not have to be automatically associated with corruption. There is a gray zone between gift and bribe that has different points of morally acceptable behavior that differs from person to person. Establishing the clear line is thus damaging to desired harmony between positive laws and social norms. The imposed Western legal morality is not in line with the moral code of the citizens. However, there is room for adjustments that would result in the concentration of resources on fighting bribery and corruption that is damaging to society rather than gift-giving tradition that does not have a vast impact on the society.

This study took a critical point of view on the current situation of bribery in the healthcare sector in Slovakia. It identified the shortcomings that prevent anti-bribery efforts from being successful. There is a lot of work to be done in this area to achieve development in positive direction; peace and cooperation between law and society rather than dispute and litigation.

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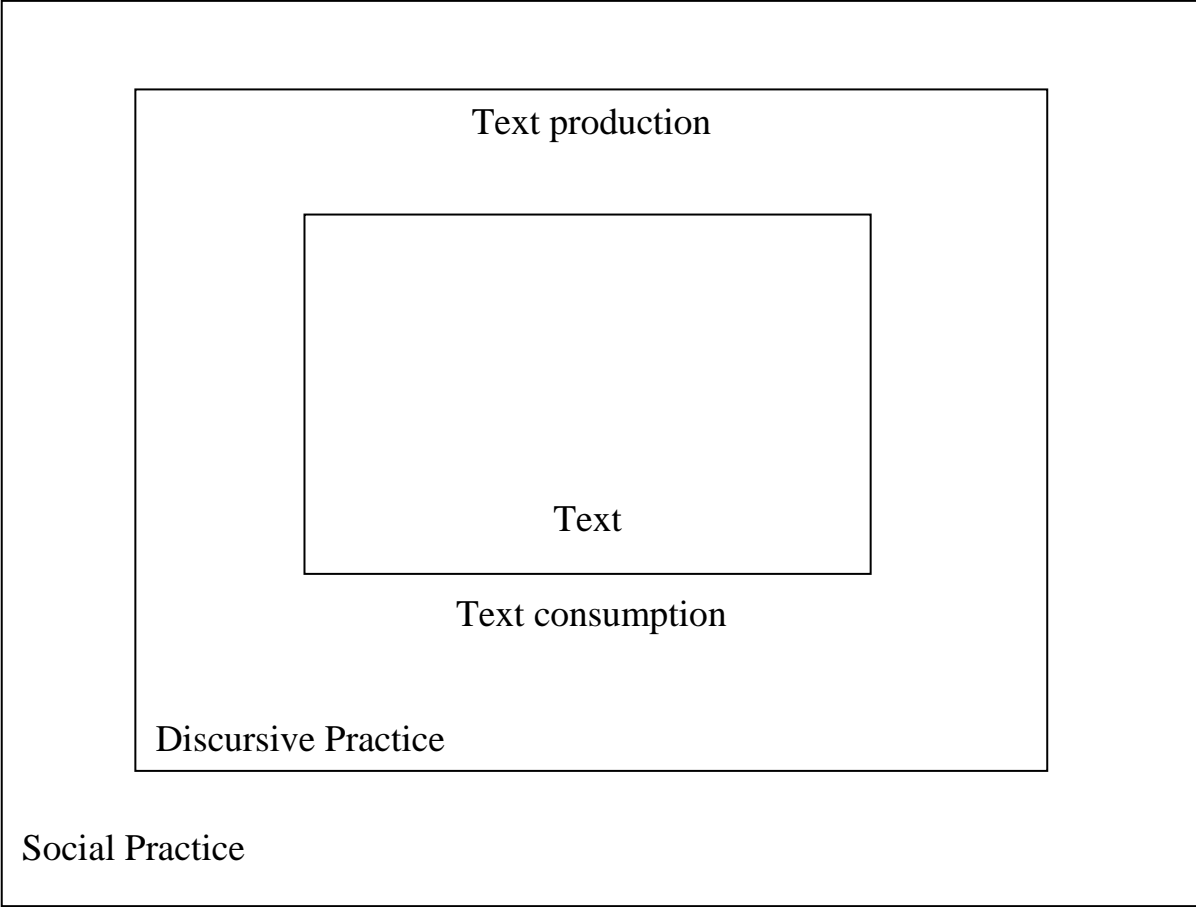
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Appendix A: Fairclough's three-dimensional model



Source: Jorgensen and Phillips 2002, 68.

Appendix B: Interview Guide

Opinion

1. What is your opinion about the bribery in medical service delivery?
2. Do you consider it to be an issue?
3. Does bribery represents a legal challenge in Slovakia?
4. Do you consider a gift to be a bribe? Illegal act?
5. What do you think about the tradition of giving and receiving gifts in public sector in general? (i.e. teachers at the end of semester – common tradition in Slovakia).
6. Do you think the medical service delivery is in any way different when compared to education or police? Why?
7. Do you think there is a tradition of giving/receiving gifts in the medical service?
8. Do you have particular opinion about giving/receiving gifts in medical service delivery?
9. Do you think there is a difference between giving non-monetary gifts vs. monetary ones?
10. Is one more acceptable than the other?
 - a. Why?

Morality

11. Can you think of a situation where giving such a gift would be acceptable?
12. What do you think about the doctors that accept the gifts?
13. What do you think about the patients who give the gifts?
14. Do you think the doctors demand such a thing?
 - a. Why?
15. Would you ever consider giving someone a gift in medical service delivery? What would be the circumstances?
16. Have you ever given someone a gift in medical service delivery?
17. If you were a doctor (patient) would you consider accepting (giving) gifts?
 - a. Why?
 - b. Under what circumstances?
18. In your opinion, what are the reasons for this situation?
19. Is it problematic situation according to you?
20. Should the state try to intervene more?

Legal:

21. Are you familiar with current anti-bribery laws in Slovakia? EU?
22. What do you think about these laws?
23. Are they effective?
24. Do you think the legal efforts are sufficient in combating bribery?
25. What should change in your opinion in the legal sphere?

Fee for making an appointment:

26. What do you think about the option to pay 7€ to get an appointment thus avoid waiting in the queue?

27. How does it impact the others in the waiting room, in your opinion?
28. Do you think the extra payment to get better place in the queue should remain or be abolished?
29. What about the people who cannot afford to pay the extra?
30. Do you think it creates tensions between patients in the waiting room?
31. Do you think the doctors are affected by this extra payment by any chance?
 - a. How?
32. Should the doctors seek the extra payments?
 - a. Why?