Special edition

THE ANTI-CORRUPTION BULLETIN

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Dear Readers,

Good governance, entrepreneurship, knowledge and public awareness are the dynamically changing domains which shape the present. The common denominator for them is the will for real improvement of the individual's life, expressed in objection to destructive pathologies. The Central Anti-Corruption Bureau was established for suppression of one of such pathologies – corruption.

From the very beginning of its activity our institution has cooperated with many foreign institutions of similar character and accomplishing congruent scope of tasks. But this is the first time when the cooperation finds an outcome in a publication presenting something what until now has been reserved for bilateral or multilateral meetings.

That idea materializes itself in the „Anti-Corruption Bulletin" special edition, which consists entirely of texts provided by our foreign friends.

The newest initiative of the Central Anti-Corruption Bureau appears to be not only the national platform for anti-corruption knowledge promotion, but it is also an opening to foreign solutions– a must in the age of globalization.

Above all, this periodical is the manifestation of the Central Anti-Corruption Bureau pursuit to make popularization of anti-corruption knowledge a significant part of the Bureau's corruption prevention efforts.

Paweł Wojtunik

The Head of the CBA

THE INTERNATIONAL FIGHT AGAINST CORRUPTION AND THE ROLE OF THE BUNDESKRIMINALAMT IN GERMANY

Jörg Ziercke
President of the Bundeskriminalamt, Germany

1. THE PHENOMENON OF CORRUPTION

There is no clear-cut and generally accepted definition of the phenomenon corruption. While the many definitions have a common core, opinions nevertheless diverge when it comes to defining type, dimension and the end of acts of corruption. Thus, for example, Transparency International has chosen a broadly formulated criminological definition which reads: „the abuse of entrusted power for private gain".

In contrast to this, the criminal definition as laid down in the penal code is decisive for the law enforcement authorities. Of relevance here are §§ 331–338 of the penal code, some of which were newly introduced in 1997 within the context of the Anti-Corruption Act.[1]

Deriving from these, corruption has the following characteristics:[2]

- Abuse of a public office, a position in the economic sector or a political mandate,
- in favour of a third party,
- upon their instigation or one's own initiative,
- to obtain an advantage for oneself or a third party,
- with the occurrence or in expectation of the occurrence of damage to or a disadvantage,
- for the general public (in official or political positions) or
- for an enterprise (in a position in the economic sector).

From a criminological perspective, corruption has the following special characteristics:

- Corruption is an international phenomenon.
- Corruption is a form of crime which allegedly does not involve any victims: both takers and givers accept the fact that the general public or an enterprise will be prejudiced or disadvantaged in pursuit of their own advantage. The taker and giver are therefore in what is called a "win-win situation".
- As a rule, corruption offences are de-personalised. Comments such as "The company bribes" or "The agency is corrupt" demonstrate this.
- The offence is committed in a clandestine manner from the agreement on the reciprocal advantage to be gained to the con-

[1] Further elements constituting a corruption offence are to be found in §§ 108e, 108b, 299 ff. of the penal code, the International Bribery Act and the EU Anti-Corruption Act.

[2] Cf. Hetzer, Wolfgang: The impunity of bribery? Corruption as a convention. In: SIAK Journal 1/2009, p. 45.

cealment of the offence. There are no broken-open doors or any other visible signs that an offence has been committed. In light of this, the real difficulty is in actually recognising corruption and proving that it has taken place.

- A particular trait of the offenders is that they often fail to accept that they have done wrong. In their own eyes, their actions are not criminal. This is also seen by the statement of an indicted manager who stated in court that he had seen his role simply as that of a "service provider" who had acted on the instructions of and in the interests of his company. Arguments are often put forward to the effect that they had no choice but to act as they did due to the government's excessive regulations, their responsibility in terms of safeguarding jobs or the customary, not quite legal practices in their sector that are necessary in order to survive.
- Corruption is a classic example of crime which is only detected in exceptional cases if reports are filed and with intensive action by the law enforcement authorities.
- It is extremely difficult to put a figure on the damage caused by corruption. On the one hand, financial losses such as economic disadvantage, the prejudice of public finances or also the general increase in costs resulting from price-fixing agreements are being registered. However, not less serious are the loss of image and the efficiency of the public administration. Corruption is characterised by varying forms of damage which are in part closely connected: loss of jobs, environmental damage as well as a reduction in the transparency of economic processes with a negative impact on the competitiveness of businesses. At a global level, corruption is one of the main causes of underdevelopment. Law and order and democracy are jeopardised as a result.
- Typical accessory offences are acts of fraud and breach of trust, document forgery, bid rigging in public tenders, obstructing criminal justice, falsification of official records, violation of official secrecy and violations of supplementary statutes.
- We also have to take into account the fact that money laundering and corruption are linked. A decision made by the Federal Court of Justice (BGH) in Germany on 18.02.2009 points out that the passing on of bribes can also be commensurate with an element of a money laundering offence as stipulated in § 261 subsection 1 sentence 1 of the penal code. Bribery pursuant to § 334 of the penal code can be a predicate offence and the bribe paid a suitable element of a money laundering offence.

2. SITUATION IN GERMANY

The registered situation data most likely literally only relates to „the tip of the iceberg" since, due to the high level of conspiracy mentioned at the beginning, we have to reckon with a high volume of undetected offences in this field of crime.

In 2010, over 1,800 cases of corruption were reported. In this sense, from a statistical viewpoint Germany is regarded as a country where corrupt activity is not widespread. Approximately 63 % of the investigations relate to the field of structural corruption, i. e. the corrupt practices between „taker" and „giver" take place within the framework of a long-term relationship which had already been planned prior to the actual offence being committed.

At 37 %, investigations relating to situative corruption, i. e. corrupt acts that are based on a spontaneous voluntary decision are beginning to play a greater role. In previous years the band width lay between 12 and 14 % respectively.

The focus of cases of corruption which became known to the police in 2010 lay for the first time in the economic sector. However, this fundamental change in contrast to the previous years has to be interpreted with caution. Indeed the trend identified in recent years of cases of corruption which became known to the police

with a shift from the area of public administration to the economic sector has continued. However, this significant shift in 2010 (64 % of the cases in the economic sector and 35 % in the area of public administration, the areas criminal prosecution / judicial authorities and politics play hardly any role) has to be considered under the aspect of the statistical weight which was brought about by two combined proceedings.[3]

In the area of international corruption offences, we are noting a steady growth in the number of cases in relation to German companies, however, in absolute terms, they are still very low in spite of globally operating business enterprises and growing international competition. Thus, in 2010, 69 offences were identified pursuant to the International Bribery Act (IntBestG) and 9 offences pursuant to the EU Bribery Act (EUBestG).

Also in this area we assume that the volume of undetected crime is significant. There is every reason to believe that because of the risk the companies concerned face in terms of image loss, cases of corruption are still being dealt with and sanctioned internally.

A total of 9,071 suspects were recorded in the 2010 corruption situation report. In contrast to the previous year, this represents a growth of over 200 % (2009: 2,953). From this figure, 7,759 (previous year: 1,547) were classified as the "takers" and 1,312 (previous year: 1,406) as the "givers". The huge growth in the number of "takers" is solely due to the extensive investigative complexes which have already been referred to. In one investigation alone, 6,365 "takers" came to police notice. The majority of them are in positions at clerical level.

The givers are predominantly private persons (27 %) who belong to the construction trade (16 %) or the automobile industry (8 %). Their primary objective is to win contracts.

The focus of corrupt activity is mostly the acquisition of material benefits and ready cash. In 2010, overall benefits amounting to approximately 96 million euro were registered in Germany on the taker side (+23 %). The material benefits which the giver side received through corruption are estimated at approximately 128 million euro (–12 %).

3. THE FIGHT AGAINST CORRUPTION AND THE ROLE OF BUNDESKRIMINALAMT (BKA)

3.1. National fight against corruption

As the central agency of the German police, the BKA is, on the one hand, responsible for evaluating the cases reported by the federal states and preparing the annual corruption situation report on the basis of this evaluation. On the other hand, the BKA also conducts its own investigations.

In addition, the BKA conducts research into the causes of this form of crime, as is also the case where other phenomena are concerned. Together with the Police Management Academy, now called the German Police University, from 1995 to 1999 the BKA conducted an extensive study on corruption in police, judicial and customs authorities.[4] It ties in methodically with a study published in 1995 as part of a series of research studies carried out by the BKA entitled "Corruption – accept or act?"[5].

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[3] In one investigation in Bavaria relating to the private sector, over 6,300 offences pursuant to § 299 of the penal code were registered. The same applies to an investigative complex in North Rhine-Westphalia relating to the public administration sector with a little over 5,000 offences pursuant to § 335 of the penal code. That constitutes approximately 72 % of the total 15,746 corruption offences.

[4] Mischkowitz, Robert/Bruhn, Heike/Desch, Roland/Hübner, Gerd-Ekkehard/Beese, Dieter: Assessment of corruption in police, judicial and customs authorities. A joint research project conducted by the Bundeskriminalamt and the Police Management Academy. BKA research series no. 46, BKA Wiesbaden 2000.

[5] Vahlenkamp, Werner/Knauß, Ina: Corruption – accept or act? Corruption – a diffuse phenomenon as the subject of targeted prevention. BKA research series no. 33, BKA Wiesbaden 1995.

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While the first research project examined corruption and the fight against corruption from the perspective of the industrial sector, local politics and public administration, the focus of the second study was on the phenomenon of corruption in governmental and law enforcement bodies.

The goal of both studies was to create the basis for developing new suppression approaches using the situation-related information and the key features of the phenomenon "corruption". Thus, in the second study business activities and business processes were identified that are particularly susceptible to corruption. Criminal courts and public prosecutor's offices were classified as being practically unaffected. In contrast, the prison service and the customs were classified as being at risk. The number of corruption cases relating to the uniformed police and the criminal police was assessed as being equally high as in the case of the customs.

In 2002, Professor Britta Bannenberg submitted a further study which appeared in the BKA Research + Police series.[6] She primarily tackled the question of what makes up the typical "taker". One of the things she found out was that the offender of structural corruption is "conspicuously inconspicuous": male (97 %), German (86 %), predominantly over 40 yeas of age, seldom has previous convictions and is for the most part without debts. He is often married, lives an orderly lifestyle and has a good to very good education.

Since the fight against corruption cannot be the task of law enforcement bodies alone, all levels of society are called upon to contribute.

In order to support this approach borne by society as a whole, in recent years the BKA has increased co-operation with the private sector. Besides close contact with the Association for Security in Trade and Industry (ASW), we have intensified our direct dialogue with the economic sector, in particular, with German global players who do business throughout the world. Meanwhile, 42 global players have joined the initiative.

The goal of the joint efforts with the economic sector is to break down the taboos surrounding corruption. In this respect we very much welcome the private sector's growing readiness to report cases of corruption. This development is confirmed by the fact that many companies now have anti-corruption guidelines and in this way document that the economy has identified the problem and the dimension of corruption and is taking action to counter it. Drawing up guidelines is the first step. „Living" these principles as part of the corporate culture is of course the decisive next step.

However, in spite of all the positive signals we are receiving, we are nevertheless identifying large differences: while some companies simply have general ethical guidelines at their disposal, others have devoted intensive and exhaustive attention to the issue of corruption.

In addition to sound guidelines, this is above all illustrated by the availability of a well thought out whistleblower or reporting system. Employees have to be enabled to pass on information on corrupt behaviour on a basis of trust. Where this is concerned, it is not enough just to report to the direct supervisor as a contact person. For this reason, we welcome the fact that more and more companies with compliance areas have introduced specialised points of contact. In principle, anti-corruption guidelines should contain three essential points:

a) a clear ban on corrupt behaviour,
b) definitive clarity on what corrupt behaviour entails
c) the designation of points of contact and the facilitation of confidentiality.

3.2. International fight against corruption

Let us look initially at the problems which have to be overcome in the international fight against corruption:

[6] Bannenberg, Britta: Corruption in Germany and its criminal control. A criminological-criminal analysis. BKA volume 18, Police + Research series. Neuwied Kriftel: Luchterhand 2002.

- An international situation report on corruption does not exist.
- Corruption is a prevalent phenomenon throughout the world and is also often an allegedly essential income factor.
- Additionally, different jurisdictions in the criminal prosecution of corruption in the individual countries hamper quick and targeted co-operation. Especially with regard to enquiries requiring a quick response, frequently the judicial authorities do not have any central contact point.
- It is often the case that effective cross--border co-operation in the day-to-day exchange of information is obstructed by prolonged processing and response times. Information admissible in court must be obtained within the context of protracted legal assistance proceedings.
- With countries, such as China, where the death penalty is imposed for corruption, it is also only possible to conduct a limited exchange of information.

Nevertheless, in spite of all the difficulties which arise in the international fight against corruption, it has been shown that while European and international co-operation has developed slowly, the development has nonetheless been steady.

Numerous organisations such as the United Nations, Interpol, the OECD, the World Bank and Europol are active in the fight against corruption.

As a rule, the international exchange of police information, also with regard to the fight against corruption, is conducted through "Interpol channels". At the 78th General Assembly of ICPO-Interpol in October 2009, an initiative to establish an information platform (UMBRA) was approved. With the help of this platform, in future information on the national anti-corruption programmes of the Member States is to be exchanged. In line with the best practice approach, countries will be able to build on the most successful anti-corruption programmes.

Interpol has also established an anti-corruption unit which facilitates the networking of the different anti-corruption authorities throughout the world. Confidential (case) information can be exchanged in a timely manner through this channel between the various actors involved in the fight against crime. Furthermore, the anti-corruption unit conducts cross-border phenomena-based analyses and coordination.

The International Anti-Corruption Academy (IACA) seated in Lower Austria, which was set up in Vienna at the beginning of September 2010, is pursuing a new approach. Its goal is to effect a global improvement in the quality of corruption suppression in future and if possible, to standardise it. To this effect, agency representatives from all over the world and students are to receive basic and advanced training in the fight against corruption. An inter-disciplinary approach is the main focus of this: the training of judges, public prosecutors, police officers or auditors are to be linked where the fight against corruption is concerned.

At European level, the fight against corruption has fallen within the mandate of Europol since 1st January 2002. Its activities concentrate on the gathering and exchange of information, for example, within the framework of the European Anti-Corruption Network (EACN). The BKA also participates in this network, which was decided upon by the Council in 2008 during the German EU Presidency, as it does in the initiative linked to it, the European Partners against Corruption (EPAC), in which experts from the units combating corruption regularly exchange views.

All the initiatives mentioned so far support the networking in the area of corruption suppression. At the same time it is also important that the fight against corruption offences does not just begin at home. Corruption networks have transnational structures. The BKA'S source country strategy comes to bear here. A worldwide network of 66 liaison officers at 53 locations in 50 countries enables us to monitor the crime situation in the respective regions from both a strategic and a tactical angle as well as to provide substantial support in the course of investigations in this area of crime.

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4. LEGAL POLICY INITIATIVES AND CRIME PREVENTION MEASURES

4.1. General measures

The following has priority in the enhancement of the fight against corruption: on the one hand – as already mentioned – we have to shed light on the undetected crime. This implies raising the pressure for criminal prosecution since corruption crime is a form of crime that can only be detected if it is reported or if active police operations are executed. On the other hand, we have to create practical as well as legal instruments which integrate not only law enforcement authorities but other social protagonists as well.

Apart from general measures which include anti-corruption programmes, such as:

- consistent reporting of suspicious cases,
- diligent selection of staff, further training for staff and rotation,
- the establishment of specialised compliance areas as well the
- "four-eye" principle,

other avenues of suppression exist in the fight against corruption. I would like to bring to mind current legal policy initiatives and crime prevention measures aimed at improving the suppression of corruption.

I should like to give a brief account of two approaches:

4.2. National anti-corruption register

In my opinion, the active fight against corruption calls for the introduction of a national anti-corruption register which would be an important element in allowing effective action to be taken against corrupt public officials and bribe-prone companies. The data of companies and organisations who wish to be awarded contracts using illegal methods could be centrally stored there. In this way, it would be possible to temporarily preclude black sheep throughout the country from being awarded contracts from public authorities. This would also have a preventive effect and the signal is clear: corruption must not pay off! Eight federal states have corruption registers in place at present.[7] The states of Berlin and North-Rhine Westphalia have had the most positive experience with the instrument.

4.3. Whistleblower systems

In recent years both the economic sector and the public administration have created new anonymous channels for potential informants, e. g. telephone hotlines, the use of intermediaries or the establishment of web-based whistleblower systems. Thus, a whistleblower system which was initially set up at Lower Saxony State Criminal Police Office as a pilot project has meanwhile become a fixed structure. Also the federal state of Brandenburg set up a whistleblower system which has also proven successful and has resulted in numerous leads. Other State Criminal Police Offices are planning to introduce web-based whistleblower systems.

A whistleblower programme such as that in the USA which is connected to its own in-place overall protection package does not exist in Germany. Admittedly, it might be possible to apply the general guidelines on the protection of witnesses from the witness protection programme to this whistleblower system.

In view of the positive experience which the states of Lower Saxony and Brandenburg have had, a review should be carried out in respect of the introduction of a whistleblower system at national level. In this way, new investigations could be initiated and ultimately a contribution made to shedding light on unreported crime.

5. CONCLUSION

Corruption is often referred to as „cancerous tumour in society and the state", an „enemy within". It undermines the trustworthiness

[7] Baden-Württemberg, Bremen, Berlin, Hamburg, Hesse, Lower Saxony, North-Rhine Westphalia and Rhineland Palatinate

of state and social decision-makers. Corruption in public administration and the private sector brings about large-scale losses. Public bodies lose their status, their integrity and ultimately their ability to function properly. In the economic sector, corruption leads to competition distortion, running roughshod over market mechanisms, loss of trust in international competition and insolvency. The decoupling of work and success, performance and income which is associated with corruption destabilises every social system sooner or later. Corruption is not a trivial offence, it has to be reported and prosecuted. This understanding is at the same time the most important approach for the fight against corruption. □

10 YEARS OF DACI. NEW CHALLENGES

The Directorate for Anti-Corruption Initiative (DACI), Montenegro

The Directorate for Anti-Corruption Initiative (DACI) is the first specialised anticorruption prevention body of the Government of Montenegro. It was set up by the Decree establishing the Directorate for Anti-Corruption Initiative in early 2001. In terms with Montenegro's Administrative Reform Strategy 2002–2009, approved by the Government in March 2003, DACI was actually set up, retaining to this date its mandate in preventative anticorruption activities.

With the adoption of the Government anticorruption strategy papers, the 2005–2009 Programme for the Fight against Corruption and Organised Crime and the 2006 – 2009 Action Plan for its implementation, the main responsibilities mandated to DACI included: implementation of international standards, through analyses of legislative alignment and implementation of the Declaration on 10 Joint Measures to curb corruption in South Eastern Europe. With the updated 2008 AP for the Programme implementation, DACI got new competences in the area of prevention and education, through public campaigns and lectures, but also corruption-related surveys. The need to build DACI capacities was also noted, leading to significant staffing increase (from 6 to 17 members of staff as per the Government decision).

Since the establishment of the National Commission (NC) for monitoring the AP for the Fight against Corruption and Organised Crime in February 2007, the DACI director has been a NC member, and DACI staff has been members of the working group for the preparation of reports for the NC. On the occasion of drafting new strategy papers (2010–2014), the DACI director was the head of the inter-agency working group, with two additional DACI staff acting as a member and a secretary. In the new NC composition, the DACI director is a member, and one staff acts as a secretary to the NC.

DACI's purview was extended and made more detailed by the amendments to Article 26 of the Decree on Organisation and Method of Operation of State Administration in January 2011, related to cooperation with state authorities in a procedure invoked by corruption reports that DACI receives from individuals and different entities. In addition to the above, DACI responsibilities include: promotion and prevention, corruption awareness raising through campaigns, lectures, round tables for the general and expert public; surveys of the extent, forms, causes and mechanisms for emergence of corruption; cooperation with state authorities, nongovernmental and private sector through joint promotion and prevention efforts, development and implementation of intensive public campaigns and education; proposals to the Government for the adoption and implementation of European and other international anticorruption standards and instruments, as well as monitoring the implementation of the Council of Europe's Group of States against Corruption (GRECO) recommendations; coordination of actions stemming from the implementation of the UN Convention against Corruption (UNCAC) (by drafting amendments to existing legislation in line with the analysis of compliance with UNCAC provi-

sions, and taking specific measures towards its full implementation); regionally, coordination of activities stemming from Regional Anticorruption Initiative (RAI) membership. Current DACI purview implies intensive cooperation with many other international bodies and organisations dealing with corruption (UNODC; UNDP, OECD; OSCE; UNDP – Bratislava Regional Centre, EPAC, IAACA, etc.).

Following the adoption of the 2010–2014 Strategy for the Fight against Corruption and Organised Crime and the accompanying 2010–2012 Action Plan, DACI responsibilities have been extended to act also as the Secretariat to the National Commission for monitoring the Strategy implementation, including: coordination in compiling and analysing reports from over 90 reporting entities, preparation of the Draft Report for the NC, based on the individual reports, and their quantitative and qualitative processing.

Current strategy papers envisage DACI to be entrusted with additional competences in 2011 through the implementation of the legislative provisions on the principle of integrity in public administration and the Law on Lobbying to be adopted in the course of 2011.

The need to strengthen DACI coordination role was also noted in the recommendations stemming from IPA 2007, which were taken into account when redefining the DACI role in the new strategy papers. Also, the EC Progress Reports indicate the need for DACI to assume the leading role in coordination and analysis of preventive anticorruption efforts.

Obviously, since its establishment, DACI has focused solely on preventive anticorruption activities, which are not always visible or appealing as law enforcement, i.e. the repressive measures. Nevertheless, the implementation, coordination and supervision over anticorruption policies, and improved knowledge and exchanges regarding corruption prevention are in no way of lesser importance in effective combating of corruption, and are as such recognised in all international documents and standard practices of European countries.

As for other anticorruption agencies in Montenegro (both preventive and repressive ones), their establishment started with the introduction of DACI and lasted until 2005; hence, Montenegro may be said to have a complete institutional anticorruption framework in place which should be reviewed and redesigned to reflect the overall state administration reform.

Stemming from the existing anticorruption framework in Montenegro, two typical preventive anticorruption bodies stand out, DACI and the Commission for Prevention of Conflict of Interests. DACI is a Government body with its competences stipulated in the Decree and the strategy papers endorsed by the Government. The Commission for Prevention of Conflict of Interests was established by law and it reports to the Parliament. For some time now, the recommendations of the EC, GRECO and other relevant international bodies referring to the Commission, have insisted on stepping up its control function and the need for more effective sanctioning of the Law on Prevention of Conflict of Interests violations. As for DACI, the recommendations mostly refer to strengthening its coordinating role and analyses of anticorruption efforts.

Over the 10 years of DACI work, the trend of extending its purview is evident, with further anticipated changes going in the direction of DACI being the central and coordination body for preventive activities, as well as the analyses of actions taken as per strategic anticorruption documents. In the course of this year, DACI should see the extension of its mandate to include the implementation of provisions on integrity in the public administration and lobbying. Supervision over DACI compliance and effectiveness is conducted by the Ministry of Finance.

Given the above, when adopting the latest Strategy and its AP, among other things, the position of DACI within the existing institutional anticorruption framework was reconsidered. The view taken was that in the 2010–2012 AP implementation DACI should continue with its normal activities, act as the

Secretariat to the NC and carry out activities related to integrity in the public administration and lobbying, at the same time stepping up its administrative and technical capacities, so as to be able in mid-2012 to be reformed into some form of an autonomous and independent anticorruption body resembling the ones existing in the region (e.g. in Slovenia and Serbia).

In preparation for this, the 2010–2012 AP envisages a whole set of actions related to DACI, such as: strengthening its capacity for monitoring the implementation of the provisions on integrity plans and provide for efficient application of the Law on Lobbying; strengthening the administrative capacity, through specialisation of employees involved in receiving and processing corruption complaints, as well as the protection of persons who report corruption; affirmation of the channels for reporting corruption and protection mechanisms; implementing public awareness campaigns and encourage citizens to report corruption.

Furthermore, DACI is supported by two donor-assisted projects, aiming at stepping up its capacities: Strengthening Internal Capacities of DACI, launched in September 2010 (Government of Norway, with the assistance of UNDP), and IPA 2010, launched in September 2011, as a support to the introduction of the integrity principle in public administration, implementation of provisions on lobbying and prevention of conflicts of interest.

Given the comparative experiences in the region and some EU member states, mostly having in place the anticorruption bodies with preventative, control or repressive authorities, we believe the best option for Montenegro would be to have an autonomous and independent anticorruption body, as per the standards set by Articles 5 and 6 of UNCAC, implying functional independence, in the sense of proper financing, and staff training and specialisation.

□

THE FIGHT AGAINST CORRUPTION IN ESTONIA

Estonian Security Police

Anti-corruption efforts in Estonia have been one of the government's priorities for the past decade. In connection with the fight against corruption, Estonia possesses a contemporary European-style legal framework and competent institutions have been created to deal with the problem at various levels within the society. Constant cooperation and the exchange of corruption-related experiences take place between agencies at the national as well as international level.

Publicised cases of corruption create considerable repercussions and active discussion in the Estonian society about how to deal with the problem even more effectively. When needed, training and information days are organised for the state and local government officials and pertinent printed material is prepared. In order to identify corruption-related developments and assess the situation in the society, studies and surveys are periodically conducted, in which various target groups are included.

1. CORRUPTION SURVEYS

1.1. International surveys

The perception of corruption in Estonia has been studied since 1998. The level of corruption in Estonia is assessed by international organisations as still below average. As recently as 2003, Estonia earned a score of 5.4 in Transparency International's Corruption Perception Index, which put it in 33–34 place. Since then, Estonia's position has improved at a constant rate. In 2010, Estonia's score was 6.5, placing it at No 26 out of 178 countries. This ranking shows that Estonia is one of the most successful Eastern-European countries, but in comparison with the Nordic Countries there is plenty of room for development. In 2010, for example, Finland and Sweden had a score of 9.2 and ranked 4th in the table.

In the World Bank report "Doing Business 2011", which measures the ease of doing business and dealing with entrepreneurship, including the competitiveness of countries and economic growth, Estonia ranked 17th out of 183 countries. Among European Union Member States, Estonia ranked 7th, placed between Sweden and Germany. In the case of Estonia, it is worth noting that various e-government applications (electronic State Gazette, E-Procurement Estonia, the Tax and Customs Board's electronic service centre, the Company Registration Portal, etc.) reduce the state's administrative load and increase the transparency of performed transactions and decisions.

The Index of Economic Freedom report, prepared by the Heritage Foundation and the Wall Street Journal, which ranks the world's 183 countries, puts Estonia in 14th place. The report takes into consideration 10 widely profiled components of economic freedom, including business and trade freedom, property rights and levels of investment and cor-

ruption. In 2011, Estonia received 75.2 points out of 100, placing it 5th among countries in Europe. Therefore, the assessments of Estonia by international organisations are generally positive.

1.2. National surveys

Various national surveys and studies show that residents of Estonia as well as entrepreneurs are aware of corruption – related problems. Based on the results of the detailed corruption survey "Corruption in Estonia: Study of Three Target Groups in 2010", carried out by the Ministry of Justice in 2010, the number of individuals having contact with corruption has decreased in comparison with the last study performed in 2006. While bribes were requested from 15% of entrepreneurs in 2006, then in 2010 the number was only 10%. While 8% of residents had paid bribes or brought gifts for officials in 2006, then in 2010 there were only 4% of such people. The results of the survey also indicate that there has been a decrease in the number of people who are ready to offer bribes to officials. If 44% of people were ready to offer bribes in 2006, then in 2010 only 34% were ready to do so. Therefore, it could be said that corruption is less common in comparison with previous years.

As mentioned above, the results of the survey indicated that 4% of residents paid bribes to officials last year. In turn, bribes have been requested directly from 18% of people, most often in the course of the technical inspection of vehicles (11%) and when communicating with doctors (9%). Entrepreneurs have also encountered the requesting of bribes most often in the course of the technical inspection of vehicles (5%) and in public procurements (4%). It is important to note here that, within the provisions of Estonian law, neither technical inspection service employees nor doctors are state officials. For example, in the case of technical inspection, they are legal persons governed by the private law and monitored by the state.

At the same time, based on the results of the survey, a problem is exposed among the attitudes of non-Estonians and youth between the ages of 15–30, who accept corruption above average. For example, Estonians are significantly less willing to pay bribes (28%) than non-Estonians (47%). Therefore, the survey proved the continued need to raise awareness among the mentioned groups in order to change current value judgements and attitudes.

In conclusion, it may be stated that the awareness of corruption is increasing in Estonia. One part of the reason for this is the conducting of proceedings in detected cases of corruption. It must me noted however, that as the crimes of corruption are of a latent nature, then the corresponding official statistics may insofar be of relative nature, reflecting, above all, the capacity of the state to deal with difficult to detect types of crime[8]. In a comparison of countries, statistical indicators are also affected by different legislation – some states follow a strict, so-called classical definition of corruption, while others treat the phenomenon more broadly.

2. CORRUPTION AS A SECURITY THREAT

Corruption is currently a phenomenon that certainly poses a direct threat to national security, in broader terms negatively affecting the entire economic and financial sector of a state. A pronounced example of this can be seen in the economic difficulties persisting in certain regions of Europe. The poor state of an economy inevitably leads to a decline in other

[8] Official Ministry of Justice statistics: In 2010 there were 223 corruption related crimes registered, which is 10% more than 2009, and 32% more compared to 2008. The largest share of corruption related crimes was made up of the giving of bribes (41%) and the accepting of bribes (14%). The most corruption related crimes were registered in local governments (36), legal persons governed by private law (34) and the police (29).

fields, including the capability of a state to guarantee internal and external security.

In Estonia, the battle against corruption is being pursued directly by the Police and Border Guard Administration and the Security Police. Limited possibilities, mainly in exercising supervision, carrying out surveys and monitoring incidents, have for example the Parliaments (Riigikogu) Special Committee on the Application of Anti-corruption Act, the National Audit Office, the Chancellor of Justice, internal audit and review units of state authorities and local governments and non-profit associations.

Estonian Security Police as a security authority has a jurisdiction over criminal proceedings involving the malfeasances of higher state public servants and high officials of the local municipalities (based on population and budget size of the local municipality). At the same time, security aspects are also followed during the identifying of priorities for information procurement as well as procedural priorities and the directing of resources. Higher priority areas include for example, corruption in state and law enforcement authorities, as well as in external financing and larger public procurements.

As opposed to the security authorities of many other states, the Security Police also fulfils police functions in addition to traditional security related tasks, including having the right to conduct surveillance and criminal proceedings. Thus, the Security Police has dual competence – the information gathering which is inherent to security authorities along with surveillance and also the preliminary investigation of criminal matters, this synergy has provided relatively good results so far in the detection of corruption as a highly latent type of criminal act.

The current experience of the Security Police has shown that success in combatting corruption is ensured by a systematic approach to domains threatened by corruption. The continuous monitoring of processes taking place is necessary because in certain instances like public procurements, months or even years could be passed from the beginning point, starting with the preparation and invitation of notice to tender until the fulfilling and acceptance of procured works. If a continuous effort is not made to identify corrupt agreements at an early stage, then it is often impossible to identify or fix them after the outcome.

When combating corruption, it is also important to focus on the continuous and active gathering of information, not to wait for the receipt of traditional criminal complaints or tips. Experience shows that complaints or tips suitable for proceeding are in reality received rarely, since both parties committing the criminal offence have a stake in the transaction, are satisfied with the results and are not interested in notifying law enforcement authorities.

Within the Security Police, all sectors threatened by corruption are monitored by officials having specialised in that specific respective sector of life and information is actively acquired. The specialisation of officials is necessary, since processed sectors frequently prove to be highly complicated and diverse in terms of content. In order to assess the corruption risks of different sections of work and to understand what is going on, one must become well versed in the specific legislation, personalia, etc., of the corresponding domain.

3. CORRUPTION TRENDS

On the basis of criminal proceedings conducted over the last few years by the Security Police, it can be stated that the most common crimes of corruption are the accepting of gratuities and bribes by state officials and by local government officials during conducting public procurements and during making various procedural decisions. There has also been a notable increase in the number of cases of (political) corruption involving the trading in influence.

Over the last few years the corruption schemes utilised by officials have grown more

sophisticated and more complicated in terms of detection. If at the beginning of the last decade officials concluded relatively simple, as far as detection was concerned, corrupt transactions with companies related to themselves or their relatives or were unafraid to take cash gratuities or bribes from people unknown to them, then in the last few years there have been only rare instances of such simplistic schemes. Nowadays, the corrupt officials are using the help of very well-known acquaintances acting as intermediaries in accepting cash or are directing gratuities or bribes to companies in which they have covert holdings or which are owned by their acquaintances, so the sum can be withdrawn later.

While it would be possible to cite numerous examples of attempts to conspiracy of the officials over the years, only a few of the more memorable cases are listed below. In 2005, for example, the court found the Director of the Investigation Department of the Tax and Customs Board guilty of accepting a bribe, after he had asked for the person offering the bribe to show that he was not wearing a wire under their clothing. He also ended up sending his cohabitee to collect the bribe. In 2008, the court found a senior specialist of the Investigative Division of the Tax and Customs Board guilty of accepting a gratuity, who had asked for the amount of the gratuity to be deposited in the accounts of an offshore company, the details of which he anonymously mailed to the person paying the gratuity. Both officials were punished with partial actual imprisonment.

Consequently, over the last few years, dishonest officials have increasingly attempted to conceal their illegal activity, taking lessons from mistakes made by their colleagues that have been caught in the act. Without a doubt, this type of tendency partially points to the fact that the anti-corruption fight has become more systematic and effective over the last few years and dishonest officials are sensing the growing risk of getting caught.

4. SPECIFIC TRENDS IN COMBATING CORRUPTION

4.1. Corruption in fulfilling non-proprietary functions in the public sector

The fight against corruption is divided into three larger sectors within the Security Police:

- corruption in fulfilling non-proprietary functions in the public sector
- corruption in the use of state budget funds and state assets;
- corruption in local governments.

Corruption in performing non-proprietary functions in the public sector encompasses primarily those incidents which are connected to the making and implementing of procedural decisions in law enforcement authorities, as well as the issuing of state permits, licences or approvals in other state agencies.

Without a doubt, the **activities of courts** are subject to the most scrutiny among all law enforcement authorities, in which several cases of corruption have appeared over the last few years. The greatest threat of corruption in courts is the influencing of judges by the accused, by their counsel or by third parties, in order to obtain a more favourable judicial decision.

In 2010, a total of three county court judges were found guilty of committing various corruption related crimes, and were partially punished with actual imprisonment. It should be mentioned here that over the last decade a combined total of six judges have been found guilty of committing various professional crimes. The particulars in all of the above mentioned cases are of course different. For example, in a case in which the accused was charged with murder, the corrupt presiding judge demanded a bribe from the friends of the accused, who possessed criminal backgrounds, in order to release the accused from custody on bail. In exchange for a bribe, the second corrupt judge unlawfully disclosed data on the pre-trial procedure of a criminal matter, and surveillance information that was a state

secret classified as "restricted" to the subjects under surveillance. The third judge knowingly made unlawful judicial decisions in cases over which he was presiding that benefited his two acquaintances and received a bribe in return from one of his friends.

In the estimation of the Security Police, the handled cases do not provide reason to consider the Estonian judicial system to be corrupt. These have been isolated incidents, with different backgrounds and causes. Predominantly, the persons involved in the corruption of the judicial system are those who have been judges since the restoration of the independence of the Republic of Estonia. At the beginning of the 1990s, for a number of different reasons, sufficiently strict requirements were not submitted to candidates for judicial office and the most likely causes of the above incidents are the result of the selection of incorrect personnel.

Among the other law enforcement agencies, the Security Police has also focused greater attention on the identification of **police corruption**. Based on international experience, the above is an extremely dangerous type of corruption, since police possess, among other things, the right to use coercion against persons. According to the analysis of the Security Police regarding the cases of police corruption, the most dangerous form of it is considered unlawful agreements with offenders by police officials in exchange for compensation or a favour. The sheer number of tasks assigned to police together with the rights given to them provides various opportunities for a corrupt official to commit offences. The criminal matters processed by the Security Police and the judicial decisions made by courts have certainly resulted in a general preventative affect in the respective field.

Systematic corruption must be held here as the greatest threat, which may take the form of the leaking of official information, collusion between officials and the creation of unlawful advantages. The largest discovered incidence of police corruption was the criminal matter handled in 2009 and involved the police prefect of the East and South Police Prefectures as well as eleven police officials. The individuals were charged with the embezzlement of assets belonging to the prefecture, unlawful surveillance activity, unlawful handling of firearms and ammunition, and essential parts of explosive devices, as well as unlawful hunting and fishing. The court, in the form of settlement proceedings, ordered that the former police officials serve partial real or conditional imprisonments or pay pecuniary punishments.

Similar examples have also occurred before, the two most interesting of which are recounted below. In 2009, the chief superintendent of the narcotics unit of the Central Criminal Police, was accused of the repeated unlawful handling of a large quantity of cocaine, unlawful surveillance and accepting bribes, was finally convicted by the court. In 2011, the director of the crime department of the South Prefecture was found guilty of accepting a bribe. He had accepted a bribe from a private person in exchange for not reacting to possible violations and for the leaking of information that became known to him in the course of performing his official duties. The court punished both corrupt police officials with partial real imprisonment.

One of the most important work sectors of the Security Police is detecting corruption related to state licences, permits, approvals and the performing of supervision. The sector mainly covers **customs and border corruption**, since, as the external border of the European Union, Estonia must be capable of hindering the illicit trafficking of strategic goods, immigration of illegals, etc. The main sources of danger on the border are groups of corrupt senior officials, who perform unlawful administrative decisions and other acts or unlawfully fail to perform them in exchange for bribes.

For example, in 2004–2006 the Security Police exposed a total of nearly fifty border officials at Northeast and Southeast border customs inspection points, who carried out organised crimes in exchange for gratuities

and bribes. The officials in question mainly accepted bribes in order to not to search for illicit goods when they were being imported into Estonia. It turned out, that the majority of officials working the same shift at the border customs inspection point were involved, as they assigned specific roles to each other to carry them out. The majority of the above mentioned cases of corruption have been concluded as of today, whereas the court mainly sentenced conditional imprisonment to the dishonest officials. As a result of the apprehending of corrupt officials, the situation today at border customs inspection points has markedly stabilised, the effectiveness of customs and border control has improved and tax receipts have increased.

4.2. Corruption in the use of proprietary assets

In the case of corruption related to the use of proprietary assets, large scale and specific public procurements, which are frequently connected to the use of the European Union financial support, are mostly under survey. In the estimation of the Security Police, greater attention must be focused on **corruption in infrastructure development projects** (construction and road construction procurements, etc.), as well as corruption in the organisation of **procurements involving areas of national defence and information technology**. As opposed to the so-called standard corruption, this area is frequently characterised by conspiratorial criminal schemes. Frequently, gratuities or bribes are channelled through acquaintances or companies in which there are covert holdings, trading takes place in exchange for various services using influence and competition related criminal offences are committed.

In the worst case scenario, the decisions of higher officials who are acting for personal gain and are easily influenced could in fields of strategic importance to the state cause a decrease in investments and budget revenue, reduction in honest competition and diminish the credibility of the state at the international level. One striking example is a case that took place involving the former Minister of the Environment, who was found guilty in 2011 for demanding a bribe. According to the charges, the minister demanded, via the intermediation of a private person, a gratuity in the sum of EEK 1.5 million (EUR 95 800) from the representative of a company in exchange for making favourable decisions for the same company during the sales process of a registered immovable belonging to the state. The court punished the minister with conditional imprisonment.

One of the most problematic work sectors is definitely also related to the **information technology sector**, where stiff competition reigns among companies and so the state agencies are praiseworthy clients for the private sector. Abuses are primarily related to information technology developments and investments, whereas companies use their former employees, who have left the job at some state authority, to acquire procurements. There have also been cases where a company ends up pushing one of its former employees into employment at a state authority, where the former employee then begins to direct procurements towards his former employer.

It would be possible to discuss numerous cases which were detected over the past years involving corruption related to information technology procurements, but here we will mention only a few of them. In 2005, the information technology director of the Ministry of Social Affairs was found guilty in court for having earned income in the form of gratuities and bribes from the representatives of various companies in exchange for allowing those companies to win public procurements announced by the ministry. In order to hide the receipt of the gratuities and bribes, the official used the fictitious invoices to transfer the income to the accounts of companies connected to him. The fact worth mentioning is that the corrupt official allowed the companies to submit their tenders higher by the amount of the bribe, thereby creating real material damage to the state authority.

In 2010, the court convicted the deputy director general of the Social Insurance Board, who gave preference to one company over the course of several years in the creation, development, maintenance and training of the information system, as well as the acquisition of other information technology devices, having received gratuities in cash as well as via fictitious contracts of employment. In 2011, the information technology development director of the states Environmental Investment Centre Foundation was found guilty of repeatedly demanding bribes from a company for directing towards them the information technology procurements and also allowing the company artificially inflate the tenders it submitted. In addition, for the purposes of receiving personal material gain, the development director, through fraudulent conduct, arranged the Foundation he worked for to pay the fictitious invoices of an acquaintance's company for work which was never actually performed. The court punished the above mentioned officials with partial real imprisonment or conditional imprisonment.

In addition to the information technology sector, heightened attention has been given for all **national defence related public procurements**. Similar to several other fields, corruption is present in the Defence Forces, above all in activities related to public procurement and support services. Corruption in military structures weakens national defence capacity, also placing in danger the capacity to meet international obligations.

In addition, regarding the Security Police's other responsibilities, it must also be taken into consideration that corrupt higher state public servant, including a higher member of the Defence Forces is, without a doubt, an easy target for recruitment by the intelligence services of unfriendly foreign countries. One example that can be cited here was the internationally famous case of Hermann Simm – former adviser and director of the Security Department of the Ministry of Defence – who was convicted for treason in 2009, as he had passed Estonian state secrets and classified foreign intelligence over the course of several years to the intelligence service of a foreign country, receiving cash in exchange for his services.

For the above mentioned reasons, particularly in recent years, the Security Police has focused its attention on corruption in the Defence Forces. For example, in 2010, the court found guilty the Head of the Ship Repair Section of the Estonian Marine Corps Repair and Maintenance Service and the Head of Armament Section of Estonian Marine Corps Repair and Maintenance Service, who repeatedly accepted bribes from the representatives of the companies performing repair and maintenance works on ships, and in return provided them with competitive advantages in public procurements. The court punished the members of the Defence Forces with partial real or conditional imprisonment.

Also in 2011, the court found guilty a staff officer of the medical service of the logistics department of the General Staff of the Defence Forces, who repeatedly accepted gratuities and bribes from the representative of a medical equipment company in exchange for declaring those tenders submitted by the same company to be successful in the procurement of medical accessories and devices for the Defence Forces. The court punished him with partial real imprisonment.

4.3. Corruption in local governments

Alongside the corruption related crimes of higher state public servants, the Security Police has also the competence to conduct proceedings over the senior officials of Estonia's six largest local governments (Tallinn, Tartu, Pärnu, Narva, Kohtla-Järve, and Jõhvi) for the purposes of discovering possible corruption related crimes.

Considering the conditions in Estonia, the reining in of corruption among local government officials in Tallinn is of utmost importance, since it is the capital and the centre of political and economic life of the coun-

try. Another important region that should be mentioned is Ida Viru County, which borders the Russian Federation and the population of which is comprised primarily of non-Estonians. Numerous historical reasons and security considerations are the main motives to ensure the balanced development of the region in question in comparison with the rest of Estonia, including a competitive economic environment and transparent management at the local government levels.

Rarely the initial source of corruption is the over-politicization of local government administered agencies, which means that posts are sometimes assigned to persons on the basis of party affiliation or loyalty, thus failing to take into consideration their competence and professional qualifications. This type of situation, where, for example, people are appointed directors of social and educational institutions (schools, libraries, cultural houses, etc.) of local governments based on their party affiliation, should be avoided. This aspect certainly increases corruption risks, since it weakens supervision and creates the so-called circled party defence.

Problematic areas are also the transparency of local government activities in the area which concerns local government documentation and the public availability of reports covering financial data. In practice, the documentation (council and government decisions, regulations, protocols, public procurement documentation, signed contracts and invoices, correspondence) of local governments and their agencies is not digitized on a regular basis nor made available to the public through the webpages of local governments, which in the end does not increase the transparency of local governments or reduce the risk of corruption.

In comparison with the state sector, local government corruption is frequently characterised by the inefficiency of different risk management measures and internal audit mechanisms, as a result of which individual officials have greater opportunities to commit infringements. Awareness of the need for internal audit units in local governments is insufficiently promoted and units are not always assembled from professionals in their respective fields. So in practice the efficiency of internal audit units is relatively low, since frequently the focus is placed on concealing the actual facts or cases.

In the estimation of the Security Police the main corruption risks in local municipalities are related to public procurements carried out by local governments and procurement contracts prepared to be signed. For example, a large portion of the public purchases of local governments are made without organising public procurements. Many local governments have also performed transactions with commercial and non-profit undertakings, with which the same members of the governing bodies of local governments are connected.

Especially condemnable are cases of corruption in such local government agencies which are tasked in the maintenance of law and order and where the hiring of officials should presume conducting of a thorough background investigation, and sample checks if necessary. For example, in 2011 the court found guilty the director of the Tallinn Municipal Police Department, who preferred one bailiff over others working in the city of Tallinn for the carrying out the compulsory execution of claims for the payment of unpaid fines issued by the municipal police. In exchange, the official received gratuities in cash. The court punished the city official with partial real imprisonment.

5. SUMMARY

Dangers of corruption in Estonia have remained relatively unchanged. Although fewer cases may be occurring in comparison with the period of ten years ago, the violations of law are bigger in scale and result in more damage. The corruption schemes being used are becoming more covert, while in practice the actions of officials are quite frequently in contradiction with the principles of honest competition.

In the long-term perspective the corruption within state budget funds negatively affects the development of the specific area of society, placing in danger the required performance of both internal as well as external obligations of state. In the future, the threat of cross border corruption may be increased by Europe's shared political and economic space. For that reason and in the context of the global economic crisis, the corruption is currently no-longer the internal problem of a state, but instead it affects all European Union Member States and their cooperation partners. Therefore, corruption involves a threat to security, towards which greater attention should be paid by various state security authorities.

CORRUPTION SITUATION IN HUNGARY – AN OVERVIEW OF GOVERNMENTAL EFFORTS TO CURB IT

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'Hungary does not take seriously the international anti-corruption convention' – states the Transparency International (hereafter TI) Spring Report 2011[9]. Before hypocritically protesting against this statement which undoubtedly affects our country's international reputation negatively, let us take a look at the entries of previous years' reports as well. We believe that the situation was not better in 2010 either, since the 2010 annual report classified Hungary as weak concerning implementation[10] of the OECD Convention against Bribery of Foreigners. Consequently, it is self-evident that the 2009 annual report of the organization does not set our country as an example for the 35 other countries which participated in the survey (according to the qualification as 'inactive' Hungary has done nothing or hardly anything to curb or suppress the phenomena of corruption)[11] .

1. GENERAL PRINCIPLES

The exact definition[12] of corruption as a phenomenon does not exist, just as the boundaries of activities which are considered corrupt, have been changing in various cultures and at different times. In the psychological sense, corruption is an attitude opposing the system of social values and standards. It is a specific behavior based on the system of personal attitudes and conducts. In their development, external effects influencing the individual such as family, social and micro-environment play an important role[13]. The Act CXXXIV of 2005 announcing the United Nations Convention against Corruption (Merida Convention) states: 'corruption implies a serious problem and threat to the stability and security of societies. It undermines the institutions and principles of democracy, ethical values and justice, and jeopardizes sustainable development as well as the rule of law.'

As József Petrétei[14] strikingly formulates the complexity of the phenomenon of corruption: 'corruption is breaking and shattering the community, because:

- as a negative segment of social, economic and political life, it disrupts and distorts the systems of rules of coexistence of the community,

[9] OECD Progress Report 2011.
[10] OECD Progress Report 2010.
[11] OECD Progress Report 2009.
[12] The word in Latin means hex, deterioration, cracking.
[13] Definition by criminal psychologist Pál Bilkei
[14] Former Minister of Justice, at present professor at the Department of Constitutional Law, Faculty of Law, University of Pécs

- reduces transparency and verifiability of the political, social and economic system, thus jeopardizing the governance of a given state, hinders and distorts the functioning of democratic institutions,
- distorts functioning of the market and economy in general, undermines the spirit of competition, decreases efficiency and predictability, thus keeping people in uncertainty, that makes them be frustrated,
- weakens people's respect for the law and their sense of social responsibility, reduces their mutual trust, solidarity, undermines people's faith in social justice, the social order and the country's leadership.'[15]

2. STATISTICAL DATA

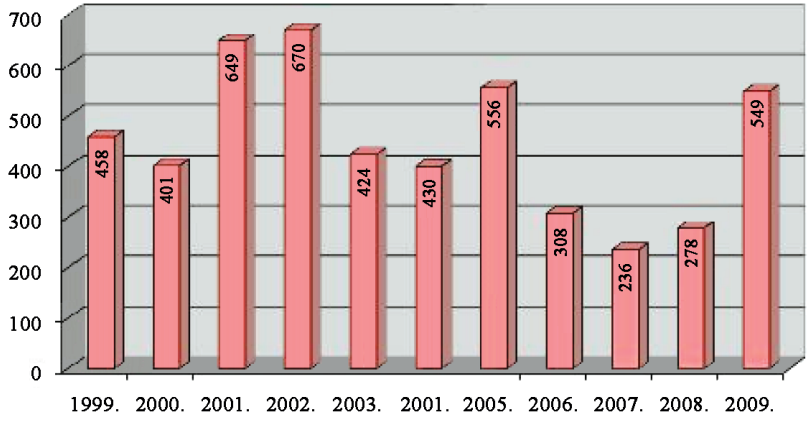
Within the social phenomenon of corruption, criminal statistics measures the criminal corruption only, thus keeps track of e.g. abuse of authority, complicity, mismanagement, criminal act against the order of election, referendum, popular initiative as felony. It should, however, be pointed out that statistical counting for methodical reasons does not allow to conclude which from among registered corruption – related crimes indicate corruption effectively. Therefore, while analyzing the crime of corruption, we examine the data on bribery, profiteering and abuse of authority only. The examination of the abuse of authority is justified by the fact that, according to the experiences of criminal statistics, the vast majority of this kind of corruption crime cases are actually related to effective corruption.

The Division of Statistics and Analysis of the Ministry of Public Administration and Justice based on the 2010 Integrated Law Enforcement and Prosecution Criminal Statistics published a detailed guide titled 'Crime situation after the millennium', from which we present below the data relevant to our subject.

Registered cases of bribery in official capacity

In the past decade the number of registered cases of bribery in official capacity remained around 400 per year on average, nevertheless in the two salient years (2001 and 2002) it almost reached 700. During three years prior to 2008, the number of registered cases of bribery in official capacity dropped below 300, in 2009 grew to 549.

Registered cases of bribery in official capacity

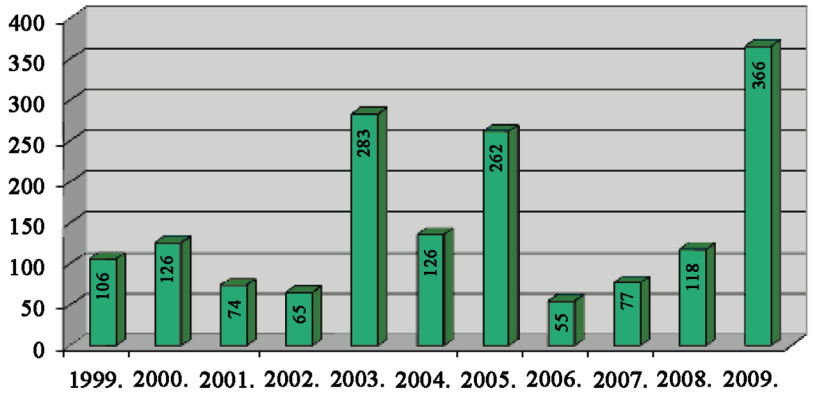


[15] József Petrétei: Characteristics of corruption and potentials of combating it, Hungarian Journal of Law in Romania, 2007/4, pp. 25–35.

Registered cases of economic bribery

The average number of economic bribery had been fluctuating between 50 and 100, so that at the beginning of the decade the number of cases per year dropped from 100 to 50, and during the three years prior to 2008 it increased again to 100. In the two salient years, 2003 and 2005 the number of registered economic bribery cases exceeded 250, and in 2009 as much as 366 economic bribery cases were registered.

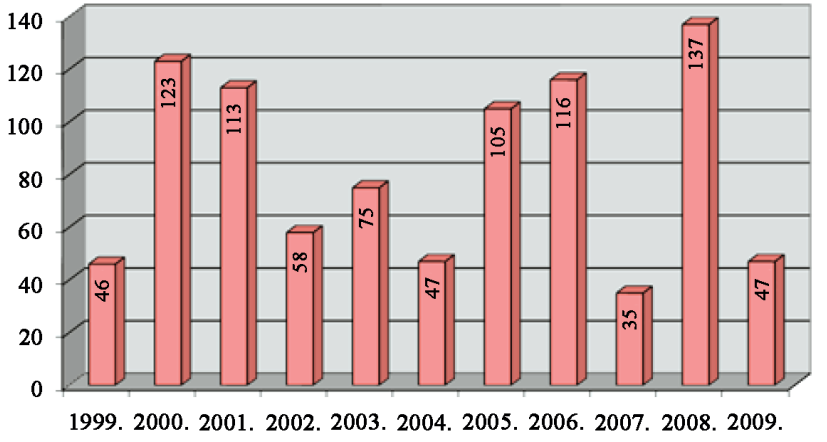
Registered cases of economic bribery



Registered cases of trafficking in influence

The number of cases of trafficking in influence increased rapidly. The annual average number of registered cases fluctuated between 40 and 140, several times almost reaching both the lower and higher threshold during the decade.

Registered cases of trafficking in influence

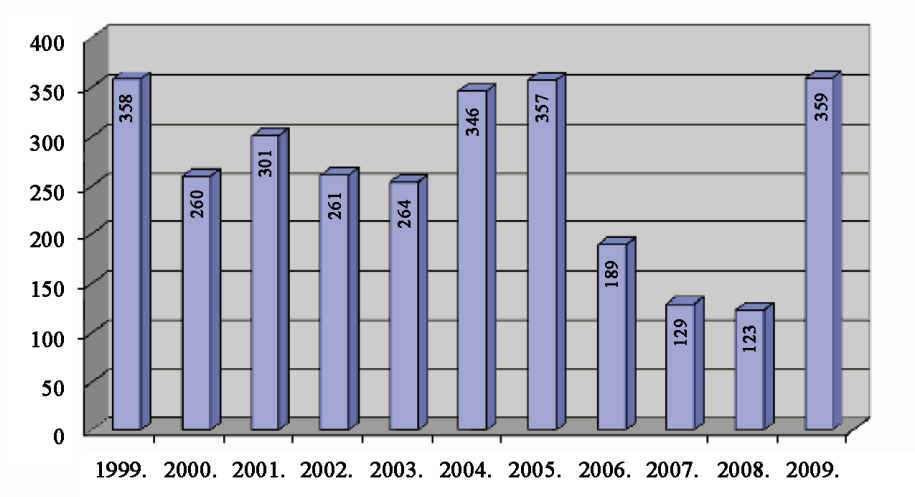


Registered cases of bribery in official capacity

The number of cases of bribery in official capacity in the first half of the monitored period showed a relatively balanced picture (250–350 cases per year) and until 2008 it started scattering one trend line lower (100 to 200 crimes per year). In 2009, a number of cases corresponding to that of previous years was registered again.

The latest data suggest that in 2010 228 cases of bribery in official capacity, 147 of economic bribery, 106 of trafficking in influence and 376 of maladministration were known[16].

Registered cases of bribery in official capacity



Losses caused by bribery

Crime statistics of felony of corruption record only the scale of losses inflicted by bribery cases. While releasing data concerning bribery losses, one has to apply to stipulations. Concerning crimes against the purity of public life the Criminal Code does not qualify the extent of a given or promised advantage within the scope of corruption as a factual element. That is, corruption prosecuted by criminal law can be executed by providing or pledging any small amount of money or non-cash benefit. It follows from these two factors – the value of losses being not a factual element of the bribery and corruption can be executed not only by an advantage in monetary terms – that losses caused by bribery can be apprehended as informative data provided by criminal statistics, that at most offer a picture of minimal losses by corruption, suitable for further estimates. Over the past decade the scale of losses caused by bribery and recorded by criminal statistics, constantly fluctuated between the less than one hundred million lower limits and the more than seven billion upper one, but typically it had been stabilized around the lower limit. These informative data also confirm that in the control of corruption crime and the work of criminal authorities significant contingency and professional unevenness should be reckoned with.

3. CRIMES AGAINST THE PURITY OF PUBLIC LIFE

In everyday language, we tend to interfuse the concepts of lobbying, 'request for a favor',

[16] Information about crime in 2010, published by the Department of Coordination and Statistics, the Ministry of Interior, and the Department of Computer Application and Information, Prosecutor General's Office

'if you scratch my back I will scratch yours' and bribery. In this paper, we merely undertake to outline essential elements of two kinds of crimes against the purity of public life and one in official capacity, all sanctioned by the current Criminal Code[17] and exclusively from aspects of substantive law. Through the scholarly activities of numerous domestic and foreign authors, we could become acquainted with the criminological background of the above discussed phenomenon and causal factors. Here, we do not wish to deal in great detail either with various international conventions, EU directives or their ratification, our goal is rather to give a relatively realistic diagnosis of the situation in Hungary and means and opportunities of how to manage it. We believe that conducts explicated below and prosecuted by means of the criminal law, could serve as an adequate basis for the future common thinking.

Since the phenomenon of corruption itself includes extremely diverse conducts of perpetration, we present in detail three facts of criminal law, the consistent application of which can grant that perpetrators of illegal acts will be held responsible.

The purity of public life means legal, nonpartisan and non-interfering operation of state and social agencies, officials and other important public persons. It is typical for crimes of corruption that they undermine the confidence in regular operation of aforementioned organizations and individuals because decisions appearing as a result of corruption appear as the 'form' of regular management. There are necessarily two parties in this relation, on the one hand the one who asks or accept, on the other hand the one who provides or promises an advantage.

Therefore, these criminal acts – typically – do not have any passive subjects, because both opposing parties stand on the ground of illegality. The passive perpetrator of bribery requests or accepts an advantage; the active one provides or promises the advantage.

The distinction between the cases of active and passive bribery is based on whether the crime was committed by a public official or any other (economic) person.

On the grounds of this distinction, the law regulates crimes against the purity of public life in ten sections. All crimes' common subject is the purity of the public life and regular operation of aforementioned organizations and individuals.

3.1 Passive Bribery in Official Capacity

Section 250

(1) Any public official[18] who requests an unlawful advantage in connection with his actions in an official capacity, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the advantage, is guilty of a felony punishable by imprisonment between one to five years.

(2) The punishment shall be imprisonment between two to eight years if the crime is committed *a)* by a public official in a high office, or by one entrusted to take measures in impor-

[17] Act IV of 1978 about the Criminal Code

[18] Section 137, Criminal Code
For the purposes of this Act
1. Official persons are:
a) Members of Parliament;
b) the President of the Republic;
c) the Prime Minister;
d) members of the Government, political state secretaries;
e) constitutional judges, judges, prosecutors;
f) ombudsmen of citizens' rights and national and ethnic minority rights;
g) members of local government bodies;
h) notaries public and assistant notaries public;
i) independent court bailiffs and assistant court bailiffs;
j) persons serving at the constitutional court, the courts, prosecutors offices, state administration organs, local government organs, the State Audit Office, the Office of the President of the Republic, the Office of Parliament, whose activity forms part of the proper functioning of the organ;
k) persons at organs or bodies entrusted with public power, public administration duties on the basis of a legal rule, who fulfil responsibilities of public power, or state administration.

tant affairs, b) by another public official in an important matter of great importance.

(3) The perpetrator shall be punished by imprisonment between two to eight years, or between five to ten years in accordance with the distinction contained in Subsections (1) and (2), if he breaches his official duty in exchange for unlawful advantage, exceeds his competence or otherwise abuses his official position, or if he commits the act in criminal conspiracy or in a pattern of criminal profiteering.

An unlawful advantage may be of financial, personal and moral character, the essence of it for the public official is a directly or indirectly better status than earlier. A financial advantage implies as a natural consequence which usually occurs in cash or cash-value tangible benefits. This offense may be committed only deliberately.

A public official in high office is a public official who governs one or more departments at a representative, administrative or judicial body.

A public official in an important matter is one whose power is exclusively or predominantly decision making or individual preparation of such decision influencing citizens' rights or legitimate interests to a considerable extent.

Other public official acts in an important matter if it is justified by the features of the case. The substance of their activity is that their powers do not typically embrace a 'more important' matter, only in the given situation.

Criminal conspiracy is established if two or more persons commit crimes in an organized manner or agree about it, and they attempt to commit at least one offense, but no criminal organization is created.

3.2 Misdemeanor of Passive Economic Bribery

Section 251

(1) Any employee or member of a budgetary agency, economic organization or non-governmental organization who requests an unlawful advantage in connection with his actions in an official capacity, accepts such advantage or a promise in exchange for violating his responsibilities or agrees with the party requesting or accepting the advantage is guilty of a misdemeanor punishable by up to two years' imprisonment.

(2) Any person who breaches his official duty in exchange for unlawful advantage is guilty of felony punishable by imprisonment between one to five years, or between two to eight years if the breach involves a matter of greater importance or if committed in criminal conspiracy or in a pattern of criminal profiteering.

A budgetary agency is a legal person that as part of the state finances performs state responsibilities defined in legal regulations, decrees, charter of foundation as basic activity that serves to meet common social needs, not for the purpose of profiting. It carries out responsibilities in an obligatory manner under professional and economic supervision of the body denoted in the charter of foundation, within the range of competence and operation, as laid down in the charter of foundation.

3.3 Crime of Passive Bribery in Official Capacity

Section 252

(1) Any employee or member who is authorized to act in the name and on behalf of a budgetary agency, economic organization or non-governmental organization, who requests an unlawful advantage in connection with his actions in an official capacity, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the advantage is guilty of a felony punishable by imprisonment between one to five years.

(2) Any person who breaches his official duty in exchange for unlawful advantage may be punished by imprisonment between two to eight years.

(3) The punishment shall be imprisonment between five to ten years

a) if the breach involves a matter of greater importance,

b) if committed in criminal conspiracy or in a pattern of criminal profiteering.

A person, who makes decisions in essential matters concerning the rights and interests of persons contacted with the functioning of the given agency or the very agency, is authorized *to act individually.*

The so-called *salesperson's* commission may be included in a range of economic corruption cases. The salesperson can be employed by a given company, or can be called upon as an 'external mediator' occasionally, who is involved in a successful realization of the actual contract. Another typical area of economic corruption is the *activity of lending.*

3.4 Active Bribery in Official Capacity

Section 253

(1) Any person who gives or promises unlawful advantage to a public official or to another person on account of such official's actions in an official capacity is guilty of a felony punishable by imprisonment not to exceed three years.

(2) The person committing bribery shall be punished for a felony by imprisonment between one to five years, if he gives or promises the advantage to a public official to induce him to breach his official duty, exceed his competence or otherwise abuse his official position.

(3) The director of a business association, or a member or employee with authority to exercise control or supervision shall be punished according to Subsection (1), if the member or employee of the business association commits the criminal act defined in Subsections (1) and (2) for the benefit of the business association, and the criminal act could have been prevented had he properly fulfilled his control or supervisory obligations.

(4) The director of a business association, or a member or employee with authority to exercise control or supervision shall be punished for misdemeanor by imprisonment not to exceed two years, work in community service or a fine, if the criminal act defined in Subsection (3) is committed involuntarily.

The advantage may not be insignificant, social habits do not disapprove to offer it (e.g. a few flowers on a name day, insignificant, symbolic gift). The advantage may not be applicable for moving a public official to misconduct of duty. Providing advantage after passing a decisive resolution may be considered as such provided there is no continuous relation between the parties involved.

The non-compliance of the obligation of supervision or auditing implies specific behavior of the accomplice in case of the fulfillment of duties; the felony could not have been committed.

Favoring several public officials (by even one conduct) is considered as cumulative felony.

3.5 Active Economic Bribery

Section 254

(1) Any person who provides or promises unlawful advantage to an employee or member of a budgetary agency, economic organization or non-governmental organization, or to another person on account of such employee or member, to induce him to breach his duties, is guilty of a misdemeanor punishable by imprisonment not to exceed two years.

(2) The punishment shall be imprisonment not to exceed three years if the unlawful advantage is given or promised to an employee or member who is authorized to act in the name and on behalf of a budgetary agency, economic organization or non-governmental organization.

The active economic bribery will be punished if only the goal of the perpetrator's conduct is the breach of duty (connecting the advantage to fulfillment of duty is also con-

sidered as breach of duty). In on aggravated case, there is a special passive subject, a worker authorized for an individual act or a member.

Section 255

(1) Any person who gives unlawful advantage to another person, or to a third person on account of such person, to induce him to refrain from exercising his lawful rights in a court or other judicial proceeding, or to induce him to neglect his duties is guilty of felony and may be punished by imprisonment not to exceed three years.

(2) Any person who accepts unlawful advantage so as to refrain from exercising his lawful rights in a court or other judicial proceeding or to neglect his duties shall be punished according to Subsection (1).

Section 255/A

(1) The perpetrator of a criminal act defined in Subsections (1) and (2) of Section 250, Subsection (1) of Section 251, Subsection (1) of Section 252, and Subsection (2) of Section 255 shall be exonerated from punishment if he confesses the act to the authorities first hand, surrenders the obtained unlawful financial advantage in any form to the authorities, and reveals the circumstances of the criminal act.

(2) The perpetrator of a criminal act defined in Section 253, Section 254, and Subsection (1) of Section 255 shall be exonerated from punishment if he confesses the act to the authorities first hand and reveals the circumstances of the criminal act.

3.6 Failure to Report Bribery

Section 255/B

(1) Any public official who has learned from credible sources of an act of bribery (Sections 250–255 of Criminal Code) yet undetected, and he fails to report it to the authorities at the earliest possible time is guilty of misdemeanor and may be punished by imprisonment not to exceed two years, work in community service or a fine.

(2) The close relative of the perpetrator cannot be punished pursuant to Subsection (1).

The legal fact refers to the time of perpetration (as soon as it can). This means the first possible time after learning of the perpetration. The subject of the offense may only be a public official, who in his capacity, during his official activity learns about a yet unexposed corruption crime.

3.7 Trafficking in Influence

Section 256

(1) Any person who – purporting to influence a public official – requests or accepts an unlawful advantage for himself or on behalf of another person is guilty of a felony punishable by imprisonment between one to five years.

(2) The punishment shall be imprisonment between two to eight years if the perpetrator

a) purports to or pretends that he is bribing a public official,

b) pretends to be a public official,

c) commits the crime in a pattern of criminal profiteering.

(3) Any person who commits the crime defined in Subsection (1)

a) in connection with an employee or member of an economic organization or non-governmental organization is guilty of misdemeanor and may be punished by imprisonment not to exceed two years,

b) in connection with an employee or member who is authorized to act in the name and on behalf of an economic organization or non-governmental organization is guilty of felony and may be punished by imprisonment not to exceed three years.

(4) Any person who commits the crime defined in Subsection (3) in a pattern of criminal profiteering is guilty of a felony punishable by imprisonment not to exceed three years, or between one to five years, as consistent with the categories specified therein.

The influence implies a conscious control over the pre-determination conduct of the public official in order to act not just duly to legal requirements and established facts, but also to take into consideration such aspects which – otherwise – in the decision may not prevail. This influence may be real but also feigned, misleading the client. The crime is realized even if the perpetrator is only pretending to influence the official person and the essential aspect is that the client should take the pretended influence as real. The reference to influence should not be explicit, but it is a condition to be unambiguous.

Claiming about the bribery of a public official constitutes an explicit statement of fact. Creating the pretence of bribery hints and allusions create an impression that the public official will also benefit from it.

Assertion of the same influence in several matters realizes an aggravated case no matter whether the advantage had been required from the same or various persons. When the advantage is acquired through pretense of influence, the legal fact of fraud may also be determined. Trafficking in influence in official capacity and the realized fraud constitute only an ostensibly aggravated form, because of its particularity only the trafficking in influence may be determined.

3.8 Abuse of Authority

Section 225

The official person who, with the aim of causing unlawful disadvantage or obtaining unlawful advantage, breaches his official duty, transgresses his competence or otherwise misuses his official position, commits a felony, and shall be punishable with imprisonment of up to three years.

The legal subject of the criminal act is the trust in the apparatus of authority and objective, regulative operation of it.

Conduct of perpetration

Breach of official duty: the duty of the official person is determined by legislation, organizational and operational rules, procedures and instructions of their supervisor. In case of breach of official duty the public official acts in a matter within the range of their responsibilities, but performs a conduct contrary to the one required by the above listed rules and instructions.

The breach of duty may manifest in active conduct opposed to the duty or failure of fulfillment of it.

Transgression of competence: breach of instructions and regulations that fix the range of responsibilities of both the given agency and public official constitutes transgression of competence. It may also be realized when the public official acts within the range of the duty of the agency but they are not authorized for or their measure is not included in the range of the responsibilities of the agency either.

Other misuse of official position: it includes any ostensible, formally legitimate measure and procedure which implies jurisprudence opposed to the function of rights connected to the official position. The delict is intentional and conducts of perpetration should aim at causing unlawful disadvantage or acquiring of unlawful advantage. The disadvantage or advantage is a new situation less or more favorable for someone than the situation prior to the perpetration and is connected to it. The disadvantage or advantage may be pecuniary or personal. The disadvantage is endured exclusively by a person other than the perpetrator however the advantage may occur in the perpetrator but in any other person as well. The advantage or disadvantage is illegal and in causally relation to the conduct of perpetration and not as the quid pro quo occur for conducts of perpetration (because that would be bribery in official capacity).

The abuse of authority within the discussed field is the most general legal fact. Compared to that, other crimes that may be committed by an agency or a public official evaluate special conducts of perpetration.

4. GOVERNMENTAL EFFORTS TO CURB THE PHENOMENON OF CORRUPTION

TI in its study made in 2007[19] listed the following fields contaminated by corruption risks:

- executive
- legislature
- political parties
- electoral commissions
- Supreme Audit Institution/State Audit Office
- judiciary
- civil service, public sector
- law enforcement agencies
- public contracting system
- ombudsman
- government anti-corruption agencies
- media
- civil society
- regional and local governments
- international institutions.

Act XXIV of 2003 (the so-called Glass Pocket Act) is actually not the creation of a new law, but coordinated amendment of 19 former acts (e.g. amendment of the Act on the State Audit Office, state budget, organizations of public utility, Civil Code, economic companies, registration of companies, data protection, concession, local self-governments, etc). The aim was to make the state management transparent, extend powers of control and curb corruption in official capacity.

Elements of the Glass Pocket Act

- Powers of the State Audit Office were significantly expanded, which now allows to investigate purchases financed by a subsystem of the national budget, and also contracts affecting public property (Section 1). (Up to now it only could audit the utilization of subsidization from the state budget).
- From now on the protection of trade secrets may not limit the publication of data concerning the utilization of budget finances (including also self-governments), and the management of public property (Section 16 (3)). Accordingly, the data protection act is amended as well (Section 19 (2)).
- The main data of a contract or subsidization related to public finances shall be made public in case of deals exceeding the net value of 5 million HUF (Section 6).
- Budgetary agencies along with the content of their commissions and contracts are obliged to make public all data related to the utilization and spending of public finances. Consequently, on their webpage, ministries shall make available all information related to the spending of tax forints, including expenses on cars and mobile phones used by their officials and sums spent for trips abroad and additional allowances to their employees.
- Henceforth, the establishment of government agencies requires the approval of the Minister of Finance, and central budgetary agency may establish a business company by the preliminary approval of the Government. And state management agencies henceforth shall not establish any company at all and shall not acquire any share in a business company. In addition, chances of self-governments to establish companies become stricter, as well as regulation concerning public organizations how to utilize public finances (Section 8). (These changes were necessary to prevent the uncontrollable formation chains of companies.)
- In case of subsidizing public foundations and companies with a sum exceeding one million HUF, it is obligatory to announce a tender and regulations of practicing founders' rights had also been tightened (Section 13).
- Senior management and supervisory board members at least in majority state-owned entities whose registered capital is mini-

[19] Corruption Risks In Hungary, National Integrity System Country Study, Part One, Summary 2007

mum two hundred million HUF are obliged to make a wealth declaration every two years (Section 12 (1)).
- Those business companies which fulfill state or municipal responsibilities determined by legislation and are subsidized by the state budgetary allocations, have become subjected to the Public Procurement Act (Section 30).[20]

According to the provisions of the Government Decree 1037/2007 (June 18) on responsibilities in combating against corruption, the Anti-Corruption Coordination Corps had been set up which put before itself as responsibilities the following goals to be achieved:
- *gradual elimination of corruption reasons*
- *management of corruption phenomena (general goals)*
- *management of regulation problems*
- *risk analysis*
- *management of audition problems*
- *management of transparency problems*
- *management of reasoning problems*
- *reduction of material vulnerability*
- *development of anti corruption warning system*
- *granting of all conditions for already launched procedures*
- *improvement of the system of sanctions*
- *strategic priorities*
- *making the fionancing of parties and their campaigns more transparent*
- *making the processes of public procurement more transparent*
- *clear and transparent utilization of development subsidies*
- *curbing corruption during licensing procedures (specific goals).*

5. SUMMARY AND PROGNOSIS

In the context of statistical measurement of criminal corruption, one has to refer to latency determining corruption. It is obvious that criminal statistics do not include corruption crimes undetected by the authorities. Statistical occurrence of criminal corruption is so in low that figures concerning registered corruption crimes report at most about the minimum of criminal corruption in Hungary. With means of criminal statistics, no real picture can be created about the real volume and the extent of social presence of criminal corruption. It can be declared with certainty that the reason for latency characteristic for corruption is that interests hiding behind corruption are extremely powerful and chronic. Significant increase of the willingness to report may not to be expected. This professional assumption is confirmed by the fact that as of April 1, 2002 self-report has been considered as a reason for abolition of punishment for the crime of bribery, and which has not at all influenced the number of registered cases of corruption crimes. Consequently, the means provided against criminal corruption are at most capable to manage the actual level of corruption crimes. Moreover, there are reasonable grounds for presuming that the measures against corruption intended by the government to be introduced, especially the whistle blowing protection, and the so called public advocacy office yet to be set up, will multiply the number of warnings related to corruption, and which shall be controlled and processed by intelligence agencies and criminal authorities which already participate in the combat against corruption.

Without the development of the system of organizations and, even more, of the forensic science apparatus and the competence available against criminal corruption, one cannot count on a situation where the growing number of warnings related to corruption and the already known corruption crimes would also increase the number of challenged perpetrators. However, if a larger number of warnings about corruption continuously remain without any legal consequence (above all by criminal law), and it still strengthens the sense of being exempt from any consequences.

[20] http://gazdasagkifeheritese.uni-corvinus.hu

The transparent and pure public life is a fundamental duty of constitutional democracies by their citizens. Community norms, the legal and ethical rules shall draw a strict standard for all private and public actors. In combating corruption, although utilizing recommendations of international organizations and experiences of other states, each country has to find the best solution for its people. The transparency of the public life, ability to detect the jeopardy of corruption, controllability of compliance of legal and other standards and the challenge of perpetrators of corruption crimes: these are those four pillars on which an effective strategy to combat corruption may rest. The state has to develop, implement and lead coordinated anti-corruption policy that fosters social participation, and reflects principles of the correct management of the rule of law, public affairs and public property, principles of integrity, transparency and accountability. No form of corruption shall be acceptable or to which one could turn a blind eye. We talk about the vulnerability of the democratic society that may be protected only by authentic and professionally grounded engagement in politics, legislation based on real risk-analysis, consistent jurisdiction, monitored implementation, and with the support of the economy and civil society after reconciliation carried out fairly. The chances of the combat against corruption come true only then and only where there is an agreement between the society and its political leadership.

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About the current publication

The sentence for corruption crimes is extremely severe, in case the crime is proven, in the majority of cases the verdict is rather heavy. Thus, legal regulation meets the conditions stipulated by the constitutional state. The present essay wishes to stress that it is not entirely the responsibility of the legislature to curb the phenomenon of corruption. This goal can rather be achieved by the coordinated efforts of the society and the government. Knowing the historical traditions of Hungary, we are sceptic about this matter. The severity of the law seems to have little power to deter offenders. We, however, consider an option to expel offenders from the society, create a certain feeling of shame, openly stigmatize and shame corrupt persons. The above options, however, are out of question when the society is affected by corruption to such a great extent. □

CORRUPTION A REFERENCE GUIDE AND INFORMATION NOTE ON THE USE OF THE FATF RECOMMENDATIONS IN THE FIGHT AGAINST CORRUPTION

FATF - GAFI
FINANCIAL ACTION TASK FORCE

A Reference Guide and Information Note on the use of the FATF Recommendations to support the fight against Corruption

The Financial Action Task Force (FATF) is the inter-governmental policy-making body with the mandate to develop and promote the effective implementation of anti-money laundering and combating the financing of terrorism standards (the FATF Recommendations).

The FATF Recommendations are the internationally recognised and globally endorsed standards in this area.

The FATF has developed this information note to raise public awareness of how the FATF Recommendations, when effectively implemented, help combat corruption.

- Safeguarding public sector integrity
- Protecting the private sector
- Increasing transparency in the financial system
- Detecting, investigating and prosecuting corruption and money laundering and, recovering stolen assets.

1. INTRODUCTION

Leaders throughout the international community recognise that anti-money laundering (AML) and counter-terrorist financing (CFT) measures are powerful tools that are effective in the fight against corruption. The G20 leaders have asked the FATF to help detect and deter the proceeds of corruption by strengthening the FATF Recommendations. As part of this work, the FATF has developed this information note to raise public awareness of how the FATF Recommendations, when effectively implemented, help to combat corruption.

2. THE LINK BETWEEN CORRUPTION AND MONEY LAUNDERING

Corruption and money laundering are intrinsically linked. Similar to other serious crimes, corruption offences, such as bribery and theft of public funds, are generally commit-

ted for the purpose of obtaining private gain. Money laundering is the process of concealing illicit gains that were generated from criminal activity. By successfully laundering the proceeds of a corruption offence, the illicit gains may be enjoyed without fear of being confiscated.

Combating money laundering is a cornerstone of the broader agenda to fight organized and serious crime by depriving criminals of ill-gotten gains and by prosecuting those who assist in the laundering of such ill-gotten gains. The FATF recognises the link between corruption and money laundering, including how AML/CFT measures help combat corruption. This is why corruption issues are taken into account during the FATF mutual evaluation process which assesses countries' compliance with the FATF Recommendations. For example, the FATF considers how effectively AML/CFT measures are implemented in a country by considering the number of investigations, prosecutions and convictions for money laundering, and the amount of property confiscated in relation to money laundering or underlying predicate offences, including corruption and bribery (Recommendation 32). As well, the FATF considers whether the country can demonstrate that it has a solid framework of measures to prevent and combat corruption through respect for transparency, good governance principles, high ethical and professional requirements, and established a reasonably efficient court system to ensure that judicial decisions are properly enforced (FATF Methodology, paragraphs 6–7 and 15–21). These elements are important because significant weaknesses or shortcomings in these areas may impede effective implementation of the FATF Recommendations.

By effectively implementing the FATF Recommendations, countries can:

- better safeguard the integrity of the public sector
- protect designated private sector institutions from abuse
- increase transparency of the financial system
- acilitate the detection, investigation and prosecution of corruption and money laundering, and the recovery of stolen assets.

A proper culture of compliance with AML/CFT standards creates an environment in which it is more difficult for corruption to thrive undetected and unpunished.

3. SAFEGUARDING THE INTEGRITY OF THE PUBLIC SECTOR

Corruption flourishes in an environment where state officials and public sector employees misuse their positions for private gain. Effective implementation of the FATF Recommendations helps to safeguard the integrity of the public sector by ensuring that key government agencies involved in anti-money laundering and combating terrorist financing (such as the financial intelligence unit, law enforcement and prosecutorial authorities, supervisors and others) are adequately resourced and manned by staff of high integrity.

What do the FATF Recommendations require and how do these requirements fight corruption?

Key government agencies must have sufficient operational independence and autonomy to ensure freedom from undue influence or interference. This reduces the likelihood of them falling under the influence or control of corrupt persons (Recommendations 26 and 30).

Key government agencies must be provided with adequate budgetary resources to fully and effectively perform their functions. Adequate compensation can at least eliminate the need to embezzle or take bribes to reach a fair level of compensation (Recommendation 30).

Staff of key government agencies must have appropriate skills, receive adequate training, and maintain high professional standards. Such measures help to foster a culture of

honesty, integrity and professionalism (Recommendation 30).

4. PROTECTING DESIGNATED PRIVATE SECTOR INSTITUTIONS FROM ABUSE

Private sector institutions are an attractive venue for laundering the proceeds of corruption, particularly if they are owned or infiltrated by corrupt persons or have implemented weak AML/CFT measures. Effective implementation of the FATF Recommendations helps to protect designated financial institutions (such as banks, securities firms, insurance companies, foreign exchange dealers, and money remitters) and other designated businesses and professions (such as casinos, lawyers, accountants, real estate agents, dealers in precious metals and stones, and trust and company service providers) by requiring that their owners, controllers and employees are properly vetted, and they have adequate systems in place to comply with AML/CFT requirements.

What do the FATF Recommendations require and how do these requirements fight corruption?

Persons holding a significant controlling interest or management function in a designated private sector institution must be vetted. In the case of financial institutions, such vetting should use "fit and proper" criteria for directors and managers. This helps to prevent corrupt persons and other criminals from gaining control over a financial institution or casino (Recommendations 23 and 24).

Designated private sector institutions must screen employees to ensure high standards. This helps to prevent corrupt persons from infiltrating or otherwise criminally abusing a financial service provider (Recommendations 15 and 16).

Designated private sector institutions must implement internal control systems and audit functions to ensure compliance with AML/CFT measures. This helps such institutions to detect when they are being abused by criminals and corrupt persons (Recommendations 15 and 16).

Designated private sector institutions must be subject to adequate supervision and monitoring by supervisory authorities (or self-regulatory organisations, in the case of lawyers, accountants, real estate agents, dealers in precious metals and stones, and trust and company service providers) with sufficient supervisory, inspection and sanctioning powers to ensure compliance with AML/CFT measures. Robust supervision and monitoring of the financial sector deters and facilitates the detection of corruption and other criminal activity (Recommendations 17, 23, 24 and 29).

5. INCREASING TRANSPARENCY IN THE FINANCIAL SECTOR

Corruption is more likely to go unpunished in opaque circumstances where the proceeds of such crimes are laundered and cannot be traced back to the underlying corrupt activity, as is the case when the ownership of assets is obscured, and transactions and transfers leave incomplete (or no) audit trail. Effective implementation of the FATF Recommendations increases the transparency of the financial system by creating a reliable paper trail of business relationships, transactions, and discloses the true ownership and movement of assets.

What do the FATF Recommendations require and how do these requirements fight corruption?

When establishing business relationships or conducting transactions on behalf of customers, designated private sector institutions must verify the identity of the customer, any natural person on whose behalf a customer is acting, and any individuals who ultimately own or control customers that are legal persons (such as companies) or legal arrangements

(such as trusts). Additional precautions must be taken when transactions are conducted through a third party or are not done face-to-face. These precautions increase transparency by making it difficult for corrupt persons to conduct business anonymously, or hide their business relationships and transactions behind other people, corporate structures, or complex legal arrangements (Recommendations 5, 6, 8, 9 and 12).

All customer identification, transaction and account records, and business correspondence must be kept, so that they can be made available to the authorities on a timely basis. Such record keeping measures ensure that there is a reliable paper trail the authorities can use to trace the proceeds of corruption, and use as evidence to prosecute corruption and other crimes (Recommendations 10 and 12).

Financial service providers must put in place appropriate risk management systems to determine whether a (potential) customer or the individual who ultimately owns or controls the customer is a politically exposed person (PEP). When doing business with a PEP, financial service providers must take reasonable measures to determine the PEP's source of wealth and funds. Such measures increase the possibility of detecting instances where public officials and other persons who are (or have been) entrusted with prominent public functions in a foreign country – such as Heads of State, senior politicians, senior government judicial or military officials, senior executives of state-owned corporations and important political party officials-are abusing their positions for private gain (Recommendation 6).

The authorities must have timely access to adequate, accurate and current information which identifies the individual(s) who own or control legal persons and legal arrangements. This increases the transparency of ownership, and makes difficult to hide the proceeds of corruption within a company or trust (Recommendation 33 and 34).

Wire transfers are a fast way to move the proceeds of corruption elsewhere to obscure their source and must, therefore, be accompanied by accurate and meaningful information which identifies the person who sent the transaction. Likewise, cash or bearer negotiable instruments that are being moved across national borders either on one's person, through the mail, or in containerised cargo would also leave no paper trail and, therefore, must be declared or disclosed to the authorities. Transparent movement of assets makes it possible to trace the movement of corruption proceeds (Special Recommendations VII and IX).

Financial secrecy laws must not inhibit the implementation of the AML measures in excess of legitimate data protection and privacy concerns, including those aimed at increasing the transparency of the financial system thereby facilitating the prevention, detection and prosecution of corruption (Recommendation 4).

6. DETECTION, INVESTIGATION, PROSECUTION AND RECOVERY OF STOLEN ASSETS

Jurisdictions become safe havens for persons and funds related to corrupt activities unless there is a legal framework and mechanisms to detect, investigate and prosecute corruption offences and related money laundering, and to recover stolen assets. Effective implementation of the FATF Recommendations establishes a legal framework and mechanisms to alert the authorities to suspicious activities in the financial system, and to provide them with sufficient powers to investigate and prosecute such activities, and to recover stolen assets.

What do the FATF Recommendations require and how do these requirements fight corruption?

Designated private sector institutions must conduct ongoing due diligence on all business relationships to ensure that the transactions being conducted are consistent with their knowledge of the customer, business and risk profile, and where necessary, the source of funds. Spe-

cial attention must be given to any complex, unusual or large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. Increased scrutiny must be given to high risk customers (such as foreign PEPs), jurisdictions, business relationships and transactions. This enables the detection of unusual or suspicious activity that might be related to corruption and which must be reported to the authorities for further analysis and investigation (Recommendations 5, 6, 11, 12, 13, 16 and 21).

Countries must establish a financial intelligence unit (FIU), with adequate capacity and powers, to receive and analyse suspicious transaction reports, and disseminate disclosed information to the proper authorities for further investigation, if appropriate. These requirements also apply to suspicious transaction reports that may be related to corruption (Recommendation 26).

The laundering of proceeds from all serious offences, including a sufficiently broad range of corruption and bribery offences, must be criminalised. This should normally apply to both natural and legal persons, regardless of whether they committed the predicate offence or are a facilitating third party. By ensuring that the related money laundering and corruption conduct can both be investigated and prosecuted, corrupt persons may be punished even if the corruption offence cannot be pursued. The law enforcement authorities must have sufficient powers to access financial records and obtain evidence for the purpose of ensuring proper investigation and prosecution of money laundering offences and underlying predicate offences. These powers also enable the authorities to "follow the money trail", and trace back and investigate the underlying corruption offence (Recommendations 1, 2, 27 and 28).

Corruption is often driven by greed. Countries can remove a main objective and incentive for engaging in corrupt activities by depriving the perpetrators and others from the benefit of such crimes. To do so, countries must have effective laws and procedures to freeze, seize and confiscate stolen assets, the proceeds of corruption and laundered property, while also protecting the rights of bona fide third parties. The authorities should have sufficient powers to trace assets, including in co-operation with foreign counterparts. Countries should consider sharing assets confiscated as a result of co-ordinated law enforcement actions and also consider establishing funds into which confiscated assets may be deposited for law enforcement, health, education or other appropriate purposes. These requirements facilitate the protection and compensation of the victims of corruption and bribery, and the recovery of stolen assets, even if such assets have been concealed abroad (Recommendations 3 and 38).

To fight cross-border corruption, countries need to implement effective laws and mechanisms which enable them to provide a wide range of mutual legal assistance, execute extradition requests and otherwise facilitate international co-operation. It is also important for countries to have mechanisms that facilitate domestic co-operation and co-ordination for all authorities (policy makers, the FIU, law enforcement, supervisors and other competent authorities) at the policy and operational levels (Recommendations 31, 36–40).

Further reading on www.fatf-gafi.org

Since its creation the FATF has spearheaded the effort to adopt and implement measures designed to counter the use of the financial system by criminals. It established 40 + 9 Recommendations that set out the basic framework for AML/CFT efforts and are of universal application.

Members of the FATF and of FATF-style regional bodies (FSRBs) are strongly committed to the discipline of multilateral peer review. The mutual evaluation programme is the primary instrument by which the FATF and FSRBs monitor progress made by member governments in implementing the FATF Recommendations. Through this process, the FATF

monitors the implementation of the FATF Recommendations, assesses the effectiveness of the AML/CFT systems in FATF member jurisdictions, and publishes these assessments.

The FATF also has procedures for identifying and reviewing non-cooperative and high-risk jurisdictions. Jurisdictions found to be high-risk or non-cooperative are publicly identified and can face multilateral counter measures. □