

CENTRAL ANTI-CORRUPTION BUREAU



THE ANTI-CORRUPTION HANDBOOK FOR ENTREPRENEURS



WARSAW 2012

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1

CORRUPTION – DIAGNOSIS



1.1. Economic and social effects of corruption

Corruption was already known in the time of the formation of the first state authorities. This is confirmed by a document from Assyria, dating back nearly four thousand years. Another one is „Arthashastra”, a treaty on corruption, dating back two thousand years. They both illustrate the manner of coping with financial statements relating to bribery, which constitutes the evidence for the existence of corruption.

Despite the lapse of thousands of years, the importance of the problem has not diminished. Some forms of corruption disappeared and some new ones turned up, for example a favourable deposit at a relative's company in return for the resignation from public procurement, coercion into ordering additional analyses or an expert's reports. The person who coerces into paying is not the direct beneficiary of the bribe, and the bribery is transferred through undercover companies and foreign companies. Corruption practices are obtaining more and more perfect forms and becoming more and more sophisticated¹.

Corruption may appear in the public sector, the private sector as well as between the two sectors. Corruption relations may occur between the representatives of the entities acting within the sectors or between groups of representatives. They may act on behalf of certain entities, on their own behalf or they may combine the two interests².

In the public sector, corruption occurs where economic and administrative decisions are taken. Multiplication of concessions, permits, licences as well as agencies substantively unjustified authorised to conduct audits of the economy, creates favourable conditions to coerce entrepreneurs into paying³.

Apart from corruption where the administration sector meets the private sector and the activities undertaken by public authorities, the

¹ Compare. Z. Bielecki, *Fenomen korupcji – diagnoza (The Phenomenon of Corruption)*, „Przegląd Policyjny” („The Police Review”), 2002, no. 2(66), p. 39.

² Foundations of Corruption Prevention Strategy in Poland, May 2001, p. 5.

³ A.Z. Kamiński, J. Stefanowicz, *Polski biznes wobec korupcji (Polish Business against Corruption)*, Institute for Private Enterprise and Democracy, Warsaw 2010, p. 43.

phenomenon spread over the business area, over the relations among entrepreneurs. To obtain a competitive position, dishonest entrepreneurs perpetrate abuses involving outbidding customers and contractors, „buying” employees to take advantage of the technologies used in the companies. In our country, it is still believed that giving financial advantage is an acceptable manner to maintain the competitive position on the market. Entrepreneurs, who undertake to conduct activities in a dishonest manner, may expect:

- 1) criminal and civil liability as well as loss of reputation;
- 2) threats of disclosure of illegal activities which, in turn, has an impact on the decrease in the security of the employees and the company property⁴.

Academic and empirical researches have been conducted, which disclosed the extent and results of fraud and corruption inside companies. The perpetrators are usually smart – continually looking for legal loopholes which with a biased interpretation may give such opportunities – possessing knowledge on how to relocate funds to decrease the risk of being caught. The perpetrators possess better and better technical knowledge and, along with it, the possibility to handle oversight mechanisms and stealing money and other resources. Practice shows that abuses are most often perpetrated in unjustified purchases, company property embezzlement, manipulation in public procurement and hidden commission. Lack of supervision by the management team may result in a situation where an employee, acting in compliance with the law, deprives a company of huge amounts of money⁵.

⁴ Business against corruption, International Business Leaders Forum and Transparency International, 2005, s. 4 <http://www.unglobalcompact.org/docs/issues_doc/7.7/BACtextcoversmall_FINAL.pdf> (as of 8.4.2011).

⁵ <<http://www.egospodarka.pl/24828,Defraudacja-i-korupcja-w-firmach-narzedzia-i-metody,1,20,2.html>> (as of 8.4.2011).

1.2. Corruption in light of research and statistics

The research done by Transparency International seems crucial for the diagnosis of corruption in Poland. According to corruption evaluation measured by the CPI⁶ in different states, in 2010 Poland obtained the score of 5.3, which placed our country on the 41st position in the ranking of 178 countries (2009 score: 5.0, position: 49 out of 180)⁷.

Since 2000 a growth in the number of corruption crimes has been observed, with the highest number of 9631 in 2007⁸. This tendency is also confirmed by the statistics of the Central Anti-Corruption Bureau and the Police. In 2009, 5884 pre-trial proceedings were instituted for corruption crimes. This means that the level of the previous year was maintained. In the period in question, 8305 corruption crimes were reported, which means the increase by 7.8% compared to 2009.

The research done by the Public Opinion Research Centre indicates that Poles claim corruption as a big problem in the country. Nowadays, 87% of surveyees share this opinion (in 2009 – 89%) including 44% who think that the problem is very big (in 2009 – 40%)⁹.

As mentioned before, embezzlement and corruption have become a meaningful risk in each organisation. It is said that an organisation loses about 5%, on average, of total revenue due to fraud and abuse perpetrated by its employees¹⁰, and the estimated costs in the world

⁶ CPI – Corruption Perceptions Index – an index used by Transparency International as a result of public opinion research based on the surveys carried out by 10 independent institutions. They take into consideration the level of public officials' abuse of power to achieve personal advantage. The index scale is 1 to 10. The higher the index, the lower the corruption level and the higher position in the ranking.

⁷ http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results (as of 8.4.2011).

⁸ Report on security state in Poland in 2009, Ministry of Interior and Administration, Warsaw 2010, p. 139.

⁹ <www.cbos.pl/SPISKOM.POL/2010/K_063_10.PDF>, Komunikat Badań CBOS, BS/63/2010 Opinia publiczna o korupcji i lobbingu w Polsce (Public opinion on corruption and lobbying in Poland), Warsaw, May 2010.

¹⁰ Profile of the organisation resistance to embezzlement and corruption, 2005–2006 Det Norske Veritas AS, p. 2.

amount to 1 billion dollars¹¹. In the past two years, nearly half of companies in the world experienced economic crimes, and the average level of direct loss increased by almost 40%¹². The May 2008 Ernst&Young report¹³ indicates that the corruption level in Polish companies is over twice as high as in other Western Europe countries. However, Polish entrepreneurs consider corruption a lesser problem than the foreign companies. Euler Hermes research conducted in cooperation with the University of Szczecin indicates that in 2009 almost 90% of Polish companies were the victims of dishonest employees. The number of abuses may be higher if we consider the fact that one fourth of them were detected accidentally and 21% are the effect of the employees' anonymous information. Merely 8% of detected cases are the result of professional risk management and internal and external audit. However, only 4% of companies enable the employees to report abuses perpetrated by colleagues¹⁴.

When the company management team realise the opportunity to put an end to the huge financial losses, it becomes possible to deploy many abuse prevention measures. The implementation of control mechanisms significantly influenced the decrease in abuse. Companies which monitor embezzlement risk more rarely incur corruption costs. It is also necessary to clearly define what is allowed and what is not. This can be achieved by the elaboration of a code of ethics. More and more businesses declare honesty and striving to preserve the fair play principle. The advantage of such performance is the creation of a positive company image¹⁵. Internal audits and

¹¹ Six Questions on the Cost of Corruption (The World Bank data), <<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190295~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html>> (as of 12.5.2011).

¹² According to the research by Martin Luther University in Halle- Wittenberg (Germany) they cover data from 5400 companies all over the world. <http://www.pwc.com/pl/pol/ins-sol/publ/2007/crime_survey_2007.html> (as of 8.4.2011).

¹³ <www.bankier.pl> (as of 8.4.2011).

¹⁴ Entrepreneurs begin fight against embezzlement, <www.wloclawek.info.pl> (as of 8.4.2011).

¹⁵ Deloitte's report „Abuse – invisible enemy in 2008 enterprises” – in enterprises in which the employees perpetrated an abuse, most respondents used disciplinary dismissal as a consequence, under art. 52 of the Labour Code, and 33% of respondents took legal action while 19% – civil procedure.

external controls are also meant to be the tools to protect companies against corruption. Unfortunately, in many companies, the so called „sweeping under the carpet” of the information on abuse can be observed. Being afraid to lose their good reputation, motivated by rationality and costs, companies decide to „get rid of the problem”, i.e. of the employee, without notifying law enforcement agencies of the detected offence¹⁶. This is due to being scared of criminal liability of other individuals whose relation to the offence could be disclosed in the course of investigation. This, in turn, results from the lack of knowledge of benefits arising from some criminal law provisions, which guarantee impunity to the perpetrator of a corruption or economic crime.

All the above make fight against corruption very difficult. It takes many forms. Practice indicates that comprehensiveness of the actions is the basic factor to achieve success.

Therefore, the book provides not only the analysis of the phenomenon of corruption and the discussion of legal issues connected with the prosecution of corruption. The authors give the most important and practical information on corruption prevention. We are aware that to some of you it will be nothing new, however, we think that all entrepreneurs and other participants in the economic turnover should have this anti-corruption handbook at hand.

¹⁶ Polish Business Strategy against Corruption, Institute for Private Enterprise and Democracy, Warsaw, September 2001, <http://www.kig.pl/assets/upload/Opracowania%20i%20analizy%20strategia_biznesu_korpucja.pdf> (as of 8.4.2011).



2

BASIC DEFINITIONS



2.1. Legal and general recognition of the concept of corruption

There are two definitions of corruption: substantive criminal law definition and a socio-economic one. The distinction was made due to the fact that criminal law requires a very precise language while for preventive purposes a broader definition is sufficient.

In socio-economic (general) meaning, corruption is defined as:

- performance of public authorities, politicians and civil servants, which results in their enrichment in an illegal and unjustified manner or in the contribution to the enrichment of their relatives, through the misuse of power entrusted to them,
- an act perpetrated by anyone who due to their direct or indirect interests breaches the system of regulations for the implementation of which they are responsible,
- betrayal of the principle of separation of private life from professional life.

Corruption, in the general meaning, is not a legal term as it covers also the behaviours, such as nepotism or cronyism, which are not penalised but which violate the principles of ethics, morality or culture.

It is widely accepted that there must be two acting parties. However, a broader interpretation of the concept of corruption allows one perpetrator who abuses public office, such as using a company car for private purposes. In this sense, corruption covers also the influence on the public interest without having to occupy public positions, such as a choice of the supplier who supports the offer with an appropriate gift¹⁷.

The scope of corruption criminalisation depends on the legal definition of the term. One of them was presented in article 2 of the Civil Law Convention on Corruption and means: *requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect of the advantage, which distorts the proper*

¹⁷ Compare: A. Lewicka-Strzałecka, *Indywidualny i społeczny wymiar korupcji (Individual and Social Aspect of Corruption)*, <www.cebi.pl> (as of 8.4.2011).

*performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect of the advantage*¹⁸.

The newest legal definition of corruption is set out in article 1 section 3a of the Act on the Central Anti-Corruption Bureau¹⁹.

2.2. A public official, a person performing a public function, a foreign public official

For the existence of venality and bribery, the person giving the advantage must be aware that the other person performs a public function and must provide the advantage due to this function. Article 115 § 13 of the Penal Code²⁰ enumerates persons who are public officials, and article 115 § 19 of the Penal Code defines a person performing a public function. Due to the Supreme Court ruling, the latter category was extended and covers:

- the director of a state enterprise within the scope of management and representing the enterprise outside,
- the chairperson of the Board of Cooperative Housing within the scope of activities associated with the disposal of public funds,
- the person authorised by the carrier to inspect the documents of the carriage of passengers or luggage in the means of public transport belonging to the carrier, set up by local authorities with the use of public funds, within public utilities in the form of a company or a commercial partnership,
- an authorised representative of an energy enterprise, who controls the legality of electricity consumption.

In light of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention), a foreign public official means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function

¹⁸ Ratified by Poland in September 2002 (Journal of Laws of 2004 no. 244, item 2443).

¹⁹ Journal of Laws of 2006, no.104, item 708 as amended.

²⁰ The Penal Code novel 20 May 2010 (Journal of Laws no. 98, item 626).

for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation²¹.

2.3. Financial advantage and personal advantage

Financial advantage (art. 115 § 4 of the Penal Code) – in the meaning of the object of a bribe – is any good satisfying a particular need, the value of which may be expressed in money. It can be an increase in assets but also profitable contracts, e.g. on preferential terms, donation, assignment of receivables, discharge of debt, tender winning.

According to the Supreme Court, a financial advantage is providing property to oneself or another person or avoidance of loss in the property, excluding the events where the advantage is due to the perpetrator or another person under the law in force at the moment of the perpetration of the act²².

Personal advantage (art. 115 § 4 of the Penal Code) – is a non-financial allowance which improves the situation of the person who obtains the allowance (e.g. a promise of promotion, a job, honouring with a medal, mastering the profession, apprenticeship, a favourable image in media, acceleration of surgery term, sexual contacts, etc.)²³.

The distinction between the financial and personal advantage should be based on which need it satisfies to a higher extent. If it satisfies financial needs first of all, it is a financial advantage. If it satisfies a non-financial need, it is a personal advantage.

The acceptance of a financial or personal advantage means its seizure by the perpetrator. It may take place directly from the provider or it may involve complicated financial operations which are meant to

²¹ Art. 1 section 4a of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions (Journal of Laws of 2001 no. 23, item 264), <<http://isap.sejm.gov.pl/DetailsServlet?id=WDU20010230264>> (as of 8.4.2011).

²² Compare: the Supreme Court resolution of 30 January 1980, VII KZP 41/78, OSNKW 1980, no. 3, item 24.

²³ Compare: the Supreme Court ruling of 10 July 1974, I KRN 9/74, OSNPG 1974, no. 11, item 130.

ensure the advantage. It is of no significance whether or not the acceptance of the advantage influenced the behaviour of the person performing the public function. What is punished is the acceptance of the advantage or a promise of the advantage, but not the undertaking of specific actions.

The acceptance of the promise of a financial or personal advantage involves the acceptance by the perpetrator of the promise to give any of the advantages for themselves or for an indicated person. It is of no significance whether it is accomplished in person or through intermediaries. The acceptance of the promise of an advantage should be interpreted as an acceptance expressed in any form.

Giving advantage involves its providing in any manner to the person performing a public function due to the performed function. The promise to give the advantage means a behaviour in the result of which the person performing a public function may expect that he advantage will be given in the future. The relations at issue need not refer to a particular activity. It may result in efforts to ensure a favourable attitude of the person performing a public function²⁴.

The promise may be expressed in any form, however, it must be express²⁵.

A considerable value property (art. 115 § 5 of the Penal Code) means a property the value of which, at the time of the perpetration of the prohibited act, exceeds PLN 200 thousand.

A great value property (art. 115 § 6 of the Penal Code) means a property the value of which, at the time of the perpetration of the prohibited act, exceeds PLN 1 million.

Property damage – the total amount of actual loss (*damnum emergens*) and lost profits (*lucrum cessans*)²⁶.

²⁴ The Supreme Court ruling of 12 June 1980, I KR 99/80, OSNKW 1980, no. 12, item. 93.

²⁵ The Supreme Court ruling of 5 November 1997, V KKN 105/97, OSP 1998.

²⁶ The Supreme Court resolution of 21 June 1995, I KZP 22/95, OSNKW 1995, no. 9–10, item 58.



3

LEGAL RECOGNITION OF CORRUPTION



3.1. Legal regulations on corruption offences

The Penal Code is the most important law which provides the grounds for combating corruption²⁷. Provisions on corruption crimes are set forth in the following chapters:

XXIX – „Offences against the Functioning of the State and Local Government Institutions” (art. 228–231),

XXXI – „Offences against Elections and Referenda” (art. 250a),

XXXIV – „Offences against the Credibility of Documents” (art. 271 § 3),

XXXVI – „Offences against Business Transactions” (art. art. 296, 296a, 299, 302, 305),

XXXVII – „Offences against the Circulation of Money and Securities” (art. 311).

3.1.1. Venality and bribery – art. 228 and 229 of the Penal Code

Bribery is the most common form of corruption. There are two forms of bribery:

- 1) passive, the so called „officials’ venality” (referring to those who accept bribes),
- 2) active, the so called „bribery” (referring to those who give bribes).

The term „venality” is more proper for passive bribery as passive bribery is often not passive, especially when a person performing a public function demands advantage. The term „active bribery” is also misleading. It is hard to speak about the person’s activity and involvement when the initiative comes from the person performing a public function.

- art. 228 of the Penal Code (passive bribery)

Passive bribery involves intentional acceptance of an advantage or the promise of an advantage. The advantage may be accepted before or after the activity²⁸. The perpetration of the act occurs at the moment of the advantage acceptance²⁹. The perpetrator may be a person

²⁷ Act of 6 June 1997 (Journal of Laws no. 8, item 553 as amended).

²⁸ The Supreme Court ruling of 8 November 1974, Rw 522/74, OSNPG 1975, no. 2, item. 20.

²⁹ The Supreme Court ruling of 20 November 1980, II KR 354/80, OSNPG 1981, no 6, item 61.

performing a public function or a foreign official. The legislator envisaged six forms of passive bribery:

- § 1 – the basic type – involves the acceptance or promise of an advantage

Example: an official in a licensing authority accepts PLN 40 thousand for a „hassle-free” concession award for the storage of liquid fuels;

- § 2 – the privileged type, an act of a lesser significance³⁰

Example: after the accomplishment of the concession procedure, an official in a licensing authority accepts a bottle of branded alcohol from the entrepreneur who obtained the concessions;

Graded types³¹:

- § 3 – advantage acceptance in connection with the breach of law

Example: an official in a licensing authority accepts PLN 40 thousand for the concession award for the storage of liquid fuels. The applicant for the concession does not have storage capacity (which is a prerequisite to obtain the concession);

- § 4 – making the performance of one’s official duties conditional upon receiving an advantage³²

Example: an official in a licensing authority declares to the entrepreneur applying for the concession that such a concession will be issued only if the entrepreneur gives him/her PLN 40 thousand;

- § 5 – the acceptance of an advantage of considerable value or a promise of such an advantage

Example: an official in a licensing authority accepts PLN 250 thousand in return for „favourable” of the concession procedure for the storage of liquid fuels;

- § 6 – advantage acceptance by persons performing a public function in a foreign country or in an international organisation

Example: a representative of an international organisation uniting entrepreneurs dealing with transportation made a report, which will be favourable to one of the entrepreneurs, conditional on receiving an advantage in the amount of EUR 100 thousand.

³⁰ Graded types of the offences are discussed in detail in section 4.1.3.

³¹ Graded types of the offences are discussed in detail in section 4.1.4.

³² The Supreme Court ruling of 3 December 2002, II KKN 208/01, OSNKW 2003, no. 3–4, item 37.

- art. 229 of the Penal Code (active bribery)

Active bribery involves intentional giving an advantage or promising an advantage to a person performing a public function³³. The conduct of the person giving the bribe is the other side of venality. Providing an advantage may be direct or indirect. An offence of promising/giving an advantage is committed at the moment of its provision³⁴. There are five forms of active bribery:

- § 1 – the basic type – giving or promising an advantage to a person performing a public function in connection with this function

Example: an entrepreneur applying for the concession award for liquid fuels gives PLN 40 thousand to the official conducting the concession award for a favourable conduct of the procedure;

- § 2 – the privileged type – an advantage or a promise of an advantage was given when the person performing a public function demanded such an advantage or conditioned his/her official activities on the advantage;

Example: after the accomplishment of the concession procedure, the entrepreneur applying for the concession award for liquid fuels gives a bottle of alcohol to the official conducting the procedure;

Graded types correspond to graded types of venality:

- § 3 – giving or promising a financial advantage in return for the breach of law

Example: an entrepreneur applying for the concession award for the storage of liquid fuels does not satisfy the requirements and gives PLN 40 thousand to the official while the official awards the concession despite being aware that there were no grounds for the award;

- § 4 – giving or promising a financial advantage of considerable value

Example: an entrepreneur applying for the concession award for the storage of liquid fuels gives PLN 250 thousand to the official conducting the concession procedure in return for a favourable conduct of the procedure;

³³ The Supreme Court ruling of 7 1994, WR 186/94, OSNKW 1995, no. 3–4, item. 20.

³⁴ M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *Komentarz do Kodeksu karnego (Commentary to the Penal Code)*, Oficyna 2010.

- § 5 – giving or promising a financial or personal advantage to a foreign official in connection with the performance of the function

Example: the owner of a chain of hotels offered a financial advantage in the amount of 10% of the gained profit to a member of an international organisation authority in return for choosing his hotels as accommodation during the competition;

- § 6 – impunity clause – referred to in section 4.1.1

Example: an entrepreneur applying for the concession award for liquid fuels gives PLN 40 thousand to the official conducting the concession award for a favourable conduct of the procedure. After some time, the entrepreneur comes to a conclusion that his conduct was improper and he notifies the Police on the situation, describing in detail the circumstances of giving the money to the official.

3.1.2. Paid favouritism and trading in influence – art. 230 and 230a of the Penal Code

- art. 230 of the Penal Code (paid favouritism)

Paid favouritism is undertaking to intercede in the settling of a matter in a state agency or a territorial government, international organisation, domestic or foreign organisation disposing of public funds in exchange for an advantage or a promise of an advantage. The perpetrator's behaviour involves claiming to have influence or evoking the interested person's conviction of the existence of such influence or fostering the person's conviction³⁵. It does not matter whether or not the perpetrator has the influence and undertakes the action³⁶. It is necessary for the perpetrator to exercise influence over an institution. The initiative of perpetrating the offence may come from the person who undertakes to settle the matter as well as from the person who is interested in a favourable solution. Paid favouritism is a common offence and appears in two forms:

³⁵ The Supreme Court ruling of 2 March 1972, II KR 4/71, OSNPG 1972, no.2, item. 156.

³⁶ The Supreme Court decision of 20 October 2005, II KK 184/05, OSNKW 2005, no. 12, item 120 and the ruling of 29 February 1984, Rw 53/84, OSNKW 1984, no. 9–10, item 94.

- § 1 – basic

Example: an entrepreneur informs a colleague that he has good connections with the Inland Revenue and is able to settle all possible decisions. He accepts PLN 4 thousand from his colleague, promising that the Inland Revenue will cancel the penalty which had been imposed on him before.

- § 2 – cases of a lesser significance

Example: an entrepreneur informs a colleague that he has good connections with the Inland Revenue and is able to settle all possible decisions. He accepts a bottle of alcohol from his colleague, promising that the Inland Revenue will cancel the fine which had been imposed on him before.

- art. 230a of the Penal Code (active paid favouritism, trading in influence)

It involves giving or promising an advantage to an intermediary in exchange for the settling of a matter in a state agency or a territorial government, international organisation, domestic or foreign organisation disposing of public funds in exchange for an advantage or a promise of an advantage. The intercession should involve unlawful influence on a decision, performance or omission by a person performing a public function in connection with the performed function. It involves the same elements as bribery; however, the aim of the perpetrator is to pay for the intercession, but not necessarily to pay the person who takes the decision. It is a common offence³⁷ and it appears in two forms:

- § 1 – basic

Example: the entrepreneur, on whom the Inland Revenue imposed a fine, gives PLN 4 thousand to the deputy head's friend in exchange for which he promises to influence the deputy head to cancel the fine;

- § 2 – a case of a lesser significance

Example: the entrepreneur, on whom the Inland Revenue imposed a fine, gives a bottle of alcohol to the deputy head's friend in exchange for which he promises to influence the deputy head to cancel the fine;

³⁷ M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *Komentarz...*, issued as above.

- § 3 – impunity clause

Example: the entrepreneur, on whom the Inland Revenue imposed a fine, gives PLN 4 thousand to the deputy head's friend in exchange for which he promises to influence the deputy head to cancel the fine. After some time, the entrepreneur comes to a conclusion that his conduct was improper and notifies the Central Anti-Corruption Bureau on the situation, describing in detail the circumstances of giving the money to the official.

3.1.3. Abuse of trust/mismanagement – art. 296 of the Penal Code

Damage must take place through the abuse of competence or negligence. The subject of this offence may be only the person obliged under the regulation or the decision of a competent authority or the contract to manage the property or business of another subject, e.g. the director of a state enterprise, a board member of a capital company, a proxy³⁸. The act is of effective nature. The effect means significant property damage. It should be expressible in money and it may also cover the infringement of intangible assets.

- § 1 – basic – covers causing, by the person obliged under the act or the decision of a competent authority or the contract to manage the property or business of another subject, of a significant property damage³⁹ in the property of the subject by the excess of powers granted to them or negligence of the obligations assigned to them.

Example: despite a negative opinion of the supervisory board as well as despite objective market circumstances, the president of the company concludes a very unfavourable contract for the supply of services, as a result of which the company loses PLN 250 thousand;

Graded types:

- § 2 – if the perpetrator acts to obtain a financial advantage

Example: despite a negative opinion of the supervisory board as well as despite objective market circumstances, aiming to obtain public procurements to the enterprise owned by his daughter, the president of

³⁸ M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *Komentarz...*, ibid.

³⁹ The Supreme Court resolution of 21 June 1995, I KZP 22/95, OSNKW 1995, no. 9–10, item 58.

the company concludes a very unfavourable contract with the enterprise on the delivery of services, as a result of which the company loses PLN 250 thousand;

- § 3 – if the perpetrator causes a huge damage

Example: despite a negative opinion of the supervisory board as well as despite objective market circumstances, the president of the company concludes a very unfavourable contract for the supply of services, as a result of which the company loses PLN 2 million;

- § 4 – if the perpetrator of the offences referred to in § 1 or § 3 acts unintentionally

Example: counting on a positive development of the market situation, the president of the company invests all free assets of the entity in shares of listed companies. As a result of stock market crash the investment brings loss of PLN 300 thousand.

3.1.4. Economic corruption – art. 296a of the Penal Code

The prerequisite for the occurrence of the offence is the perpetrator officially operating in the enterprise. The form and content of his empowerment is meaningless. The behaviour connected with „significant influence” on the decisions is tightly related to financial results arising from the decisions⁴⁰.

- § 1 – basic, venality – the perpetrator may be a person performing a managerial function in an organisational unit, or having a significant influence on decisions connected with the activity of this unit (e.g. an accountant) as well as each person remaining in an employment relationship, service contract or contract work relationship. The perpetrator’s behaviour involves the acceptance of advantage or the promise of advantage in exchange for negligence or omission by which he/she can cause financial damage to the unit. The advantage may also be given for unfair competition or inadmissible preferential activity⁴¹ on behalf of the participant in the economic turnover.

⁴⁰ Commentary to the Penal Code, ed. A. Wąsek, vol. 2, CH BECK, Warsaw 2006.

⁴¹ Unacceptable preferential activity – illegal, unfair or dishonest conduct constituting an advantage for another entity at the expense of the company represented by the manager, such as the disposal of property or business at an exceptionally low price and unlawful favouring of the bidder in connection with the implementation of public procurement.

Example: the person appointed by the board of directors to negotiate and sign trade agreements, in exchange for a financial advantage amounting to PLN 25 thousand given by one of the contractors, signs a contract for the supply of services, despite the fact that the bid is the least favourable and more expensive by PLN 75 thousand than other bids;

- § 2 – basic, bribery – involves giving or promising an advantage under circumstances referred to § 1

Example: during talks with the person appointed by the board of directors to negotiate and sign trade agreements, the supplier of services gives PLN 25 thousand to this person in exchange for the conclusion of the contract for the supply of services despite the fact that the bid is the least favourable and more expensive by PLN 75 thousand than other bids;

- § 3 – privileged

Example: the person appointed by the board of directors to negotiate and sign trade agreements, in exchange for a financial advantage in the form of a bottle of alcohol given by one of the contractors, signs a contract for the supply of services, despite the fact that the bid is not the most favourable and more expensive by PLN 5 thousand than other bids;

- § 4 – graded of passive bribery – by his conduct, the perpetrator caused a significant damage to the unit which employed him or which he represents

Example: the person appointed by the board of directors to negotiate and sign trade agreements, in exchange for a financial advantage amounting to PLN 25 thousand given by one of the contractors, signs a contract for the supply of services, despite the fact that the bid is objectively the least favourable and more expensive by PLN 250 thousand than other bids;

- § 5 – impunity clause

Example: during talks with the person appointed by the board of directors to negotiate and sign trade agreements, the supplier of services gives PLN 25 thousand to this person in exchange for the conclusion of the contract for the supply of services despite the fact that the bid is the least favourable and more expensive by PLN 75 thousand than other bids. Afterwards, the supplier comes to a conclusion that his conduct was

improper and notifies the Police on the situation, describing in detail the circumstances of giving the money.

3.1.5. Corruption in sports – art. 46–49 of the Sports Act⁴²

- art. 46 section 1 – basic, venality – the perpetrator may be anybody who in connection with sports competitions organised by a Polish sports union or an entity acting under a contract concluded with this union or an entity authorised by the union, is responsible for the behaviour involving the acceptance or promise of an advantage in return for dishonest conduct⁴³ which may influence the competition result. The distortion of the results is not required to occur.

Example: before a Premier League match, in exchange for a financial advantage amounting to PLN 20 thousand given by the opposing team's president, the other team's goalkeeper promises to let two goals in during the match;

- art. 46 section 2 – basic, bribery – the perpetrator is anybody who under circumstances set forth in section 1 gives or promises a bribe. The perpetrator must be aware that the individual given or promised an advantage is a person having influence on the competition result

Example: before a Premier League match, in exchange for a financial advantage amounting to PLN 20 thousand given by the opposing team's president, the other team's goalkeeper promises to let in two goals;

- art. 46 section 3 – privileged

Example: before a lower-class match, the referee accepts a financial advantage in the form of football boots worth PLN 60 from an activist of one of the teams in return for favourable refereeing;

- art. 46 section 4 – graded – the perpetrator of the act referred to in section 1 or 2 accepts an advantage or a promise of an

⁴² Journal of Laws 2010 r., no. 127, item 857 as amended.

⁴³ Fraudulent conduct is breaking the rules of sports or moral norms. Dishonest conduct is not only a conduct contrary to sports rules, but also to the rules of competition in sports (with the principle of the best sporting result), and also with the general principles of ethics.

advantage of considerable value, or gives such an advantage, or demands the promise of such an advantage

Example: before the Premier League match which will decide about Poland's championship, in exchange for a financial advantage amounting to PLN 250 thousand given by the opposing team's president, the other team's goalkeeper promises to let in two goals;

- art. 47 – participation in betting – the perpetrator is a person having information on committing an offence under article 46 or a person to whom the knowledge was passed, participating in betting with reference to sports competitions to which the information refers

Example: before a Premier League match, a football player of one of the teams received information that in exchange for a financial advantage amounting to PLN 250 thousand given by the opposing team's president, the goalkeeper of his team promised to let two goals in during the match. He instructs his brother to bet PLN 20 thousand on the failure of the club he plays for;

- art. 48 – the counterpart of the offences under art. 230 and 230a of the Penal Code

Example: the president of one of football clubs endangered with the fall to a lower competition class meets a man who claims to have good connections with the Polish Football Association, thanks to which he is able to influence the results of the meetings so that the team could remain in the same league. However, he will do it for PLN 400 thousand. The president gives the money and requests for action.

- art. 49 – impunity clause

Example: before a Premier League match, in exchange for a financial advantage amounting to PLN 20 thousand given by the opposing team's president, the other team's goalkeeper promises to let in two goals. However, the president comes to a conclusion that his conduct was improper and notifies the Police on the situation, describing in detail the circumstances of giving the money.

3.1.6. Money laundering – art. 299 of the Penal Code

Money laundering is entering funds originating from criminal activity into financial circulation. The aim is to conceal the illegal origin of the money⁴⁴. Corruption is a source offence in relation to money laundering, which means that all funds obtained through it is „dirty money”⁴⁵.

- § 1 – basic – the perpetrator may be anyone who enters funds originating from advantages connected with the perpetration of a prohibited act. Obstruction to find out their criminal origin and the place of storage are also punished. The objects of executive activities are the means of payment, financial instruments, securities, foreign exchange, property rights, tangible and intangible property.

Example: the perpetrator bought a life insurance policy in the amount of PLN 2 million, paying high premiums in several instalments; the money he paid with came from trade in stolen paintings;

- § 2 – basic – the perpetrator is an employee of an obliged institution⁴⁶.

Example: an entrepreneur dealing with currency exchange facilitated a friend entering huge amounts of money into circulation;

- § 5 – graded – the perpetrator acts in agreement with other persons

Example: an advocate in agreement with a notary and an IT specialist working for a bank transferred funds from the enterprise assets abroad. The advocate had the power of attorney to manage the enterprise assets.

- § 6 – graded – the perpetrator obtaining a considerable financial advantage is also subject to the penalty set forth in § 5

⁴⁴ R. Typa, *Zwalczanie przestępczości gospodarczej, Przestępczość gospodarcza – problemy współpracy międzynarodowej (Fighting Economic Crimes, Economic Crime – International Cooperation Problems)*, red. H. Machińska, p. 29–32, Warszawa 2008.

⁴⁵ See: definition of money laundering in III Guideline of the EU (Journal of Laws no. 309 of 25 November 2005). In Polish legal system, provisions of art. 299 of the Penal Code and art. 2 section 9 of the Act of 16 November 2000 refer to it.

⁴⁶ Art. 2 section 1 of the act of 16 November 2000 on Money Laundering Prevention and Financing of Terrorism (Journal of Laws of 2010 no. 46, item 276 as amended).

Example: the president of a big joint-stock company embezzled PLN 260 million out of the company's assets through fictitious companies;

- § 7 – seizure of objects from crimes;
- § 8 – impunity clause.

3.1.7. Acting to the detriment of creditors – art. 302 of the Penal Code

The provision defines the liability for creditors' favouritism, involving satisfying the claims of some of them with the detriment to others. The subject may be the debtor to at least three creditors. The payment may be in cash or by transfer of a part of assets.

- § 2 – bribery of a creditor or creditors – involves giving a financial advantage or a promise of an advantage to a creditor by the debtor or a person acting on the debtor's behalf in exchange for acting to the detriment of other creditors. The creditor may be bribed by the debtor or any other person acting on the debtor's request. The crime is perpetrated at the moment of giving or promising an advantage. The bribed creditor is not required to undertake any action to the detriment of other creditors.

Example: an entrepreneur promised to repay the debt with an additional 10% interest in return for sustaining supplies of two other competitors;

- § 3 – creditor's venality – involves the acceptance of an advantage from a debtor or a person acting on behalf of the debtor in return for acting to the detriment of other creditors.

Only the creditor may be the perpetrator.

Example: The situation as above but it was the creditor who demanded an advantage.

3.1.8. Frustration or obstruction of public procurements – art. 305 of the Penal Code

- § 1 – it covers frustration or obstruction of a public procurement or entering into agreement with another person, by which the perpetrator acts to the detriment of the property owner, a person or an institution on behalf of who/which the tender is organised. For the crime to be committed, the perpetrator is not supposed

to achieve the aim in the form of a financial advantage.

Anybody can be the perpetrator.

Example: for 10% of the tender value, in agreement with the representative of a participating company, the chairperson of the tender committee assured the company winning the tender despite the fact that the two other bidders offered better conditions.

3.2. Other provisions

- art. 271 § 3 of the Penal Code (attestation of an untruth)

- § 3 – graded – acting to obtain an advantage⁴⁷

Example: in exchange for a personal advantage in the form of an erotic service, a legal adviser certified a false document stating that AB – an entrepreneur – was staying at his hunting lodge during two summer months (for the entrepreneur it was an alibi in the on-going criminal proceeding connected with the embezzlement of his company's assets);

- art. 311 of the Penal Code (dissemination of false information)

The perpetrator disseminates false information or conceals the information on the tenderer's financial standing. This information must be relevant to the acquisition, sale of securities, an increase or a reduction in the contribution. The object of the activity is the documentation relating to trading in securities. Anybody can be the perpetrator.

Example: the entrepreneur withheld the information on the control of the product safety due to which the share price did not change (it was about to decrease significantly);

- the Public Procurement Act of 29 January 2004⁴⁸

The reports of organisations dealing with corruption in Poland indicate that public procurement procedures are most threatened with irregularities. The act aims to ensure the correctness of public procurement conduct and proper management of funds from the state

⁴⁷ The Supreme Court ruling of 13 August 1976, IV KR 148/76, OSNPG 1976, no 11, item 104.

⁴⁸ Journal of Laws of 2004, no. 19, item 177 as amended.

budget. The liability for breaching its provisions is set forth in Chapter VII, articles 200–201.

- the Act of 21 August 1997 on Restrictions on Conduct of Business Activities by Persons Performing Public Functions

The Act contains provisions which prevent the possibilities to use a public function for individual or group purposes associated with, e.g. employing a person occupying a state leading position in a commercial company⁴⁹. Implementing the restrictions on employment and conducting of business activities set out in art. 2 of the Act, the legislator aimed to eliminate the conflict of interest in the event of simultaneously performing a public function and obtaining financial advantages due employment in the economic sector.

- unfair lobbying

Lobbying is a manner of representing and promoting interests of different social groups. Its essence is to influence, within a certain legal system, the decisions taken by the public authorities.

In Poland, lobbying is regulated by an act⁵⁰. Lobbying is any activity carried out by lawful methods, aiming to influence the public authorities in the law making process. Professional lobbying covers lobbying activities and paid lobbying, conducted on behalf of third parties in order to reflect their interests in the law making process. This activity can be performed by an entrepreneur or by a natural person on the basis of a civil law agreement.

3.3. Unpunishable forms of corruption

3.3.1. Nepotism and cronyism

Nepotism is an abuse of one's position by backing one's relatives. The key determinant of nepotism is direct subordination.

Cronyism is favouritism based not on kinship but on social relationships. Protégés are people who usually do not have adequate skills or qualifications.

⁴⁹ Journal of Laws no. 106, item 679 as amended.

⁵⁰ Act of 7 July 2005 on Lobbying Activity in the Law-making Process (Journal of Laws no. 169, item 1414 as amended).

3.3.2. Conflict of interest

According to prof. A.Z. Kaminski, a conflict of interest means performing a public function by a public person or by members of their closest family, or maintaining private contacts which could affect the content of official conduct in a manner which might give rise to doubts on their impartiality.

A conflict of interest appears in different forms and occurs at all levels of economic, political and administrative activities. Most codes of ethics contain a section referring to a conflict of interest, which, on the one hand, contains an order to avoid them and, on the other hand, envisages to disclose the conflict when it is impossible to avoid it. A conflict of interest is one of key issues in business ethics⁵¹. Many entrepreneurs are aware of the significance of the problem. Therefore, special regulations are implemented, e.g. in banks, to prevent conflict of interest effectively⁵².

Conflicts of interests occur in the following events:

- having financial connections with the family, friends or other connections with the suppliers, clients, customers or other entities cooperating with the company,
- connections with the competing party, e.g. by employment or consultancy,
- involvement in the production of goods or services, which is competitive against the company,
- working for other entities than the company and using the company's equipment or working hours for this,
- rendering services for companies other than those arising from the employment relationship, e.g. sale of materials, equipment rental,
- access to confidential information, the use of which may bring a financial or other advantage,

⁵¹ A. Lewicka-Strzańska, Instytut Filozofii i Socjologii PAN (Institute of Philosophy and Sociology of the Polish Academy of Sciences) in: *Konflikt interesów – konflikt wartości. Teoretyczne i praktyczne aspekty identyfikacji i ograniczania konfliktu interesów*, red. A. Węgrzecki, p. 15 (*Conflict of Interest – Conflict of Values. Theoretical and Practical Aspects of the Conflict of Interest Identification and Restriction*).

⁵² <http://www.bgz.pl/mifid/konflikt_interesow.html> (as of 8.4.2011).

- combining the functions or connections between persons performing functions, between whom there is a unilateral or bilateral dependence, e.g. the production and control function.

3.4. International regulations

For Polish enterprises, the most important international regulations concerning combating corruption are:

- **United Nations Convention against Corruption**⁵³, which envisages, among others:
 - combating corruption in the public and private sector,
 - recovery of property originated from corruption, transferred to other states,
 - international cooperation in investigations, proceedings and punishing of perpetrators as well as in recovery of property,
 - implementation of a transparent public procurement procedure and public reporting.
- **Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**⁵⁴. The Convention specifies:
 - the penalisation of activities perpetrated in connection with business activities,
 - required actions to adjudicate seizure and confiscation of funds originated from corruption as well as the proceeds gained due to an offence,
 - guidelines concerning money laundering and accounting.
- **Council of Europe Civil Law Convention on Corruption** which ensures⁵⁵ in domestic laws that the person who suffered damage due to corruption has the right to take legal action to be awarded compensation for the damage by imposing:

⁵³ <<http://www.unodc.org/unodc/en/treaties/CAC/index.html>> (as of 8.4.2011).

⁵⁴ <http://www.oecd.org/document/21/0,3746,en_2649_34859_2017813_1_1_1_1,00.html> (as of 8.4.2011).

⁵⁵ as above.

- on each Party the obligation to provide in its internal law for any contract or clause of a contract providing for corruption to be null and void,
- on each Party the obligation to provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities,
- on enterprises the obligation to draw up annual accounts which will be confirmed by internal auditors.
- **European Union regulations – corruption in the private sector**⁵⁶
 - Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector⁵⁷ according to which corruption offences in the private sector are treated as intentional criminal offences. It also imposes the obligation to implement additional penalties of temporarily prohibition from carrying on this particular or comparable business activity in a similar position or capacity, if the facts established give reason to believe that there is a risk of abuse of position. The European Union orders the Member States to hold legal persons liable for corruption practices.
- **2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits.** It requires the Member States to undertake steps against bribery and indicates actions which should be undertaken in connection with the official support. The agencies were authorised to select export credits on the preliminary stage of analysis to eliminate those applications which may raise a suspicion of bribery. The Export Policy Insurance Committee implemented regulations to procedures associated with the export insurance guaranteed by the State Treasury, which aim to prevent bribery:

⁵⁶ <http://ec.europa.eu/home-affairs/policies/crime/crime_corruption_en.htm> (as of 8.4.2011).

⁵⁷ <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=DD:19:06:32003F0568:PL:PDF>> (as of 8.4.2011).

- 1) requiring exporters/applicants, to disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge in a national court or, within a five-year period preceding the application, have been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country, and that they do not appear on the publicly available debarment lists of one of the international financial institutions („debarment lists”: the World Bank⁵⁸ and EBRD);
- 2) requiring that exporters/applicants disclose the identity of persons acting on their behalf in connection with the transaction, and the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons;
- 3) in case of a conviction of exporters/applicants, measures for violation of laws against bribery of foreign public officials verifying whether appropriate internal corrective and preventive measures have been taken, maintained and documented.

⁵⁸ <http://www.cba.gov.pl/porta/pl/48/618/Antykorupcyjne_procedury_Banku_Swiatowego.html> (as of 8. 4.2011).



4

LEGAL CONSEQUENCES OF CORRUPTION



4.1. Penal liability

The law in force aims to combat corruption effectively through penal sanctions and deprivation of the proceeds of crime. It also complies with the preventive aspects. In the legal sense, corruption is a crime prosecuted *ex officio* and is punishable. Sanctions:

- the penalty of deprivation of liberty for a term of between 1 month and 12 years (15 years at the concurrence of offences)⁵⁹;
- the penalty of restriction of liberty for a term of between 1 month and 1 year;
- fine – art. 33 § 2 of the Penal Code imposed in terms of daily rates defining the number of daily rates to be levied and the amount of each rate; unless otherwise provided by the law, the lowest number of daily rates is 10, and the highest is 540. The daily rate may not be lower than PLN 10 or higher than PLN 2000;

And penal measures in the form of:

- interdiction preventing the occupation of specific posts (e.g. traffic controller, automotive diagnostician);
- interdiction preventing the exercise of specific professions – art. 41 § 1 of the Penal Code (e.g. a doctor, a teacher);
- interdiction to engage in specific economic activities – art. 41 § 2 of the Penal Code (e.g. construction activity or organisation of sports competition);
- forfeiture of items (all material objects) – art. 44 of the Penal Code;
- forfeiture of the financial advantage – art. 45 of the Penal Code (direct and indirect advantage obtained from crime);
- making the sentence publicly known;
- pecuniary consideration for a specific social goal.

In the event of corruption offences, the courts usually rule the deprivation of liberty, including the conditional stay of the execution,

⁵⁹ In the catalogue of penalties, the following penalties are also enumerated: deprivation of liberty for 25 years and deprivation of liberty for life, which are envisaged for other crimes.

as well as a fine. The fine adjudicated independently of the penalty of the deprivation of liberty constitutes an additional ailment of a financial nature. It is imposed when the perpetrator obtained a financial advantage from the offence.

The penal measure of the forfeiture of items from crime and the financial advantage (or their financial equivalent), e.g. a car received as a bribe as well as an object being its outcome, e.g. a car bought with the money received as a bribe, is aimed to deprive the perpetrator of the so called fruits of crime. Therefore, the legislature requires the court to rule such forfeiture as the sentence for a corruption offence.

The responsibility of the collective entity is regulated by article 416 of the Civil Code, which states that a legal person is liable to redress the damage caused through the fault of their agencies. Moreover, the Act on Liability of Collective Entities⁶⁰ defines the principles of liability of collective entities for prohibited acts under penalty as well as the conduct relating to such liability. Therefore, collective entities are liable for corruption offences set forth in: art. 228 of the Penal Code, art. 230 of the Penal Code, art. 296a of the Penal Code, art. 302 § 2 and § 3 of the Penal Code, and also art. 46–48 of the Sports Act, based on the liability for an act which constitutes the behaviour of a natural person acting on behalf of this entity if this behaviour might result in an advantage to the collective entity.⁶¹

A collective entity may be sentenced to a fine between 1 thousand and 20 million PLN but no more than up to 10% of the revenue generated in the tax year when the offence, which is the grounds for the collective entity's liability, was committed. Apart from the fine, the court rules the forfeiture of⁶²:

- the objects originating from the prohibited act, or objects used or designated for use as the tools of perpetrating the prohibited act;
- the financial gains originating from the prohibited act;

⁶⁰ Journal of Laws of 2002 no. 197, item 1661 as amended.

⁶¹ Compare: B. Kolasinski, *Obywatelska Karta Antykorupcyjna, Prokuratura Apelacyjna* (Citizen's Anti-Corruption Chart, Appellate Public Prosecutor's Office), Szczecin 2005.

⁶² Art. 8 of the Law on Liability of Collective Entities for Acts Prohibited under Penalty.

- the amount equivalent to the objects or financial benefit originating from the prohibited act as well as the ban on using public benefits.

The collective entity can be penalised with:

- the ban on promoting or advertising the business activities which it conducts, the products it manufactures or sells, the services it renders, or the benefits it grants;
- the ban on using grants, subsidies, or other forms of financial support originating from public funds;
- the ban on using the aid provided by the international organisations the Republic of Poland holds membership in;
- the ban on applying for public procurement contracts;
- the ban on pursuing the indicated prime or incidental business activities and also public pronouncement of the ruling. The temporary or permanent ban on the conduct of business activities, placing under judicial supervision or judicial liquidation⁶³.

4.1.1. Circumstances excluding penal liability (impunity clauses)

The law provides the opportunity to avoid punishment by the person who gave a bribe. The perpetrator is not punishable if the following conditions are met:

- the „active regret” provision – the person giving the bribe reveals all relevant circumstances to the law enforcement agencies before the agencies detect them. It is not sufficient to only pass some information on the event while concealing other⁶⁴. If the perpetrator repeatedly gave the financial or personal advantage to the same person, it is possible to use the institution of impunity only if the perpetrator reveals all circumstances constituting the continuous act⁶⁵. The act must be

⁶³ Compare: B. Kolasiński, wyd. cyt.; por. M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *Komentarz...*, quoted issue.

⁶⁴ The Supreme Court's ruling in Poznan, II AKa 16/02, OSA 2002/9/69.

⁶⁵ The Supreme Court's ruling of 8 March 1985, IV KR 41/85, OSNKW 1985, no. 11–12, item along with the gloss by M. Surkont, „Nowe Prawo” (New Law) 1986, no. 11–12, pp. 138–139.

reported in person to the Police, the prosecutor's office, the CBA or any other law enforcement agency. The act does not indicate the form of the notification on the fact of giving the bribe, which means that it may be reported in any manner. However, an anonymous notification does not satisfy the requirements of art. 119 § 1 item 4 of the Penal Code which sets forth that the pleading must contain the signature of the person who submits the information⁶⁶;

- the advantage or the promise of an advantage has been accepted. The acceptance may be of an implied nature, e.g. by a gesture. If the bribe has not been accepted, the person is liable for active bribery, but when the acceptance takes place while the perpetrator incites another person in order to issue criminal proceedings against them, he is liable for instigation under art. 24 of the Penal Code.

The legislature leaves the assessment, whether or not the above conditions are met, to the body set up to prosecute crimes which has been informed by the perpetrator of the crime, such as the CBA. The following provisions allow the exclusion of penal liability:

- art. 229 § 1–5 of the Penal Code (bribery in the public sector),
- art. 230a § 1 and § 2 of the Penal Code (trading in influence),
- art. 296a § 2 or § 3 of the Penal Code in connection with § 2 (economic bribery),
- art. 49 of the Sports Act (sports bribery).

In the above mentioned provisions, impunity means that the law enforcement agency does not institute penal proceedings against the person who gave the bribe, and the instituted proceedings are discontinued. The fact that the perpetrator is not punishable in the course of the pre-trial proceedings results in an order to discontinue, or if that fact was established only after the commencement of the trial

⁶⁶ R.A. Stefański, *Zawiadomienie o niepopelnionym przestępstwie w świetle prawa karnego*, „Prokuratura i Prawo” (*Notice of a non-perpetrated criminal offence in light of criminal law*, „Prosecution and Law”) 2005, no 10, p. 35.

– the sentence to discontinue the trial. The perpetrator appears in court against the bribees as a witness⁶⁷.

Only the perpetrators may benefit from impunity, even if the perpetrator initiated the bribe and then made the appropriate notification. The persons who accept the bribe may not benefit from such an opportunity.

4.1.2. Mitigating circumstances

The impunity clause does not apply to persons accepting bribes (unless they themselves are petitioners in their own case). However, also this group is offered an opportunity to mitigate the penalty or even suspend the execution of the penalty (art. 60 § 3 and § 4 of the Penal Code).

The court applies extraordinary mitigation of penalty⁶⁸, or may even conditionally suspend the execution of the penalty, with respect to the perpetrator who co-operating with others in the perpetration of an offence reveals information pertaining to the persons involved in the offence or essential circumstances of the offence to the agency responsible for its prosecution. The waiver of penalty is optional. Upon a motion from the state prosecutor, the court may apply an extraordinary mitigation of the penalty or even conditionally suspend the execution of the penalty with respect to the perpetrator who irrespective of any explanation provided in his case revealed and presented essential circumstances, not previously known to the agency responsible for prosecution, of an offence subject to a penalty of deprivation of liberty exceeding 5 years. Moreover, the court may renounce the imposition of the penalty if the role of the perpetrator in the commission of the act was of secondary importance, and the passed information has helped to prevent the commission of another offence.

⁶⁷ Compare B. Kolański, quoted issue., G. Kobuszewski, Z. Bielecki, *Przesłanki wyłączenia lub złagodzenia odpowiedzialności karnej sprawcy przestępstwa korupcji (Prerequisites for exemption or mitigation of criminal liability of the perpetrator of a corruption offense)* in: *Zwalczanie przestępczości korupcyjnej w Polsce (Combating corruption offences in Poland)*, red. Z. Bielecki, J. Szafrński, Szczyno 2007, pp. 96–98.

⁶⁸ The extraordinary mitigation of a penalty consists in the imposition of a penalty below the lower statutory level, or the imposition of a penalty of lesser severity.

It should be noted that the application of art. 60 and 61 is subject to the attitude of the perpetrator after the commission of the offense, especially to the cooperation with law enforcement agencies and administration of justice.

The extraordinary mitigation of penalty is subject to two prerequisites:

- the perpetrator notified the law enforcement agency on the offence and the circumstances of the perpetration of the offence,
- the notification was submitted before the law enforcement agency found about the offence and the circumstances of its perpetration.

The goals, motives or the reasons why the perpetrator submitted the notification do not matter for the application of the mitigation of the penalty or the waiver of the penalty:

- art. 302 § 2 and § 3 of the Penal Code (corruption against creditors)
 - with regard to the perpetrator who voluntarily compensates in full for the damage caused, the court may apply an extraordinary mitigation of the penalty or even renounce its imposition (art. 307 § 1 of the Penal Code – refers to art. 296, 299–305 of the Penal Code). With regard to the perpetrator of the offence who voluntarily repaired a significant part of the damage, the court may apply an extraordinary mitigation of the penalty – art. 307 § 2 of the Penal Code. The redress of the damage need not occur prior to the institution of criminal proceedings. These conditions can be successfully completed until the collapse of the final settlement. The provisions of article 307 of the Penal Code are based on the institution of active regret, which comprises the mitigation or exemption of criminal liability as a result of remorse expressed by the perpetrator and seeks to compensate for the loss suffered by creditors as a result of the perpetrator's criminal activities.

4.1.3. Cases of a lesser significance (graded types)

The graded type of corruption offences is the so called case of a lesser significance, subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years. It occurs in art. 228 § 2, 229 § 2, 230 § 2, 230a § 2, 296a § 3 of the Penal Code and in art. 46 section 3 of the Sports Act.

Providing advantage, which slightly exceeds socially acceptable, customary gratifications, comprising the acceptance of small gifts, such as a bottle of cognac in gratitude for expressions of sympathy or special efforts, within the limits of the function performed can be examples of the above. It is not an offence to give or accept a usual expression of recognition, gratitude in the form of flowers, small gift of an advertising nature, such as a pen or a calendar. Such gifts of symbolic value should not be treated as an object of a bribe despite the fact that they constitute a financial advantage, for example, after a surgery, as an expression of gratitude, the patients give flowers or sweets to the medical staff. However, giving such advantages prior to the admission to hospital does not exclude the unlawfulness of the act.

The graded type will also occur when the advantage or the promise of the advantage are given when a person performing a public function demanded the advantage or made the performance of an official activity conditional on the receipt of the advantage. Another element of the application of the graded type is the assessment of social consequences, as they are not significant.

4.1.4. Aggravating circumstances (graded types)

The acceptance or promise of an advantage in return for a conduct constituting the breach of law (art. 228 § 3 of the Penal Code) constitutes the graded types of venality associated with aggravated liability. Another type of graded venality is making an official activity conditional on the receipt or promise of an advantage or a demand of an advantage (art. 228 § 4 of the Penal Code). However, making an activity conditional on its obtaining is called blackmail, which corners the interested person (as often a matter of vital importance depends on

giving the advantage). If a person performing a public function makes an official activity, the performance of which is required by the law, conditional on the receipt of an advantage, such conduct justifies a cumulative qualification of the offence. Under art. 228 § 5 of the Penal Code, the acceptance or promise of an advantage of considerable value constitutes the graded type of venality.

Art. 229 § 3–5 of the Penal Code specify the graded types of bribery. Higher liability is attached to inducing a person performing a public function to violate the law in exchange for an advantage or a promise of an advantage, as well as giving an advantage for such a violation. Under § 4, a graded type is also giving or promising a financial advantage of considerable value to a person performing a public function. Under § 5, giving or promising a financial or personal advantage to a foreign public official in connection with performing the function is subject to an analogous penalty as in the two above paragraphs.

Article 296 of the Penal Code sets out two graded forms: § 2, which relates to the situation where the perpetrator acts in order to gain an advantage, and § 3 where the perpetrator causes a significant material damage. However, art. 115 § 6 of the Penal Code in connection with § 7 sets forth that a significant damage is damage of the value of PLN 1,000,000 at the moment of its perpetration.

Also art. 296a § 4 of the Penal Code defines the graded cases, where the perpetrator, by their conduct, causes a significant material damage to the entity which employs them. The material damage refers to the loss which the injured party suffered as well as the benefit which they could obtain if the damage was not caused. In this case, the material damage has the civil law meaning.

Article 299 of the Penal Code defines two graded types. The first one is specified in § 5, where the perpetrator acts in cooperation with other persons. The other one refers to situations where the perpetrator obtains a considerable advantage. Acting in cooperation is understood as co-perpetration and forms of criminal collaboration based on mutual agreement (including aiding and abetting). The agreement must be concluded by at least three persons who transfer ownership, carry it abroad or deposit funds originated from organised crime.

The provisions of art. 271§ 3 of the Penal Code set out the attestation of an untruth in order to obtain an advantage as a graded offense. The subject of the offense is a person authorised to issue a particular document on somebody else's behalf.

4.2. Civil liability

An act of corruption may cause damage to the assets of the office which employs the corrupt officer as well as of other natural or legal persons. In determining the amount of the damage caused by the act of corruption, both the actual damage and the loss of profits are taken into consideration.

Under the binding law, civil liability for the damage caused by the negligence or omission of an official in connection with the performance of official duties is borne by the employer (art. 120 § 1 of the Labour Code and art. 417–417¹ of the Civil Code), and the amount of recourse due to the employer's entitlement against the employee was set out so that the damages are determined in the amount of the damage caused, however not higher than the tripled remuneration due to the employee on the day the damage was caused (art. 119 of the Labour Code). The employee may be held liable under art. 415, 422 and 441 of the Civil Code⁶⁹.

4.3. Disciplinary liability

The acceptance of an advantage implies the disciplinary liability of the person who accepts the advantage and has the status of an employee. Art. 52 § 1 of the Labour Code sets out the most restrictive form of an employee's responsibility. The employer is entitled to terminate the employment contract without notice due to the employee's fault under disciplinary procedure.

⁶⁹ K. Ścipień, *Za co odpowie urzędnik? (What is an official liable for?)*, <<http://finansepubliczne.bdo.pl>> (as of 8.4.2011).

Art. 52 § 1 of the Labour Code determines three prerequisites, out of which each may constitute the grounds for employment contract termination without notice due to the employee's fault. They are:

- grievous breach of the basic duties of an employee; bribery acceptance, shows the features of grievous breach of the duties of an employee,
- in the employment term, perpetration of a crime by the employee, which precludes their further employment on the occupied position if the offense is obvious or has been acknowledged by a final verdict. Bribery acceptance constitutes a glaring contrast to these requirements and therefore may give rise to the termination of an employment contract without notice due to the fault of the employee. The clarification of the „obviousness” of an offense is the subject of disputes in legal doctrine, and it happens that the employer – out of caution or for other reasons – delays the termination of the employment contract without notice until the court issues a final decision. However, where it comes to temporary detention, the employment relationship expires with the lapse of 3 months if the contract was not terminated without notice before due to the fault of the employee (art. 66 § 1 of the Labour Code.),
- the loss of entitlement to perform duties on the occupied position. This reason is rarely used in practice. This prerequisite may be applied in relation to an employee who after accepting a bribe has been deprived, by court or other authority, permissions required to perform the duties on the existing post.

Even if the employer does not exercise the entitlement to terminate the employment contract with the briber under art. 52 § 1 of the Labour Code, the acceptance of the bribe justifies the use of mitigated means, such as termination of the employment contract with notice. As the reason for the termination, the employer indicates e.g. the loss of trust, the breach of the binding official practice or of the code of honour, having a negative impact on other employees' performance or on the employer's image.

The rulings of the Supreme Court are very strict about the considerable degree of an employee's fault as a prerequisite for the termination of the employment contract without notice. The employer should consider if it is in his interest to take the decision on the termination without notice, as it may involve the risk of the employee's return to work, due to the court's ruling, and award of remuneration due for the time without work or compensation. It might be more advantageous to terminate the contract the usual way, justifying it with the employee's conduct which might be an insufficient reason to terminate the contract due to his/her fault. Embezzlement of property of the employer is always a grave breach of fundamental obligations of employees, regardless of whether due to its value, it constitutes a crime or misdemeanour⁷⁰.

⁷⁰ K. Jaśkowski, E. Maniewska, *Komentarz (Commentary)*, LEX 2010, *Komentarz bieżący do Kodeksu pracy (Current Commentary to the Labour Code)*, <www.e-omega.lex.pl> (as of 8.4.2011).



5

ANTI-CORRUPTION POLICY IN BUSINESS



5.1. Ethics in business

Business is extremely vulnerable to corruption, and provides many opportunities for dishonest behaviour. The importance of this problem is serious, because corruption not only breaks the rules. In everyday life, we deal with situations where behaviour commonly regarded as reprehensible is not unlawful.

In the process of combating corruption, an important role is assigned to codes of ethics. The codes are collections of established, written standards of conduct relating to various behaviours of employees. They regulate the activities of the entity, institution, office, they tend to list the rules, which have to be followed in their business by the addressees⁷¹.

Each company operates in the environment of other operators, as well as clients, customers or counterparties. This is connected with the occurrence of situations involving the existence of many ethical problems such as competition, promotion or relationships with business partners⁷².

Therefore, the code of ethics should be part of the company development. Ethics shows us the attitude and behaviour towards other people. It indicates what to do and how to do it so that everyone knows what is right. It is a guarantee of correct relationships inside and outside the company⁷³.

Entrepreneurs are increasingly seeking to include elements of organisational culture in a company's codes. This gives a competitive advantage, which the company otherwise would not be able to achieve. A well-designed code of ethics helps to increase the profits of an enterprise. This is because it has a direct impact on reducing the number of cases of corruption, fraud and the so-called bad practices. It

⁷¹ Centrum Etyki Biznesu (Centre for Business Ethics) <www.wspiz.pl/~cebi> (as of 8.4.2011).

⁷² M. Szymańska-Baster, *Kodeks etyczny – jego rola i znaczenie w firmie* (*Code of Ethics – its Role and Meaning in a Company*), <<http://marek.wojciechowski3.nf.pl/Blog/289/Kodeks-etyczny-w-firmie-Moda-czy-potrzeba/etyka-biznes-globalizacja-clienting/>> (as of 12.5.2011)

⁷³ <www.etykabiznesu.pl> (as of 8.4.2011).

reduces the number of conflict of interest situations. It increases the confidence of clients, customers and partners. In this way, the credibility and loyalty of staff may increase⁷⁴.

In Poland, the model code for entrepreneurs is an element of ethics in business which is developed, by the „Institute for Private Enterprise and Democracy” Foundation on request of the National Chamber of Commerce⁷⁵. The objectives and the nature of development are reflected in its preamble. Individual records may be helpful to entrepreneurs in preparing their own version of the document:

Building a market economy in Poland is connected with the necessity to observe the rules of ethics and entrepreneurial culture. The National Chamber of Commerce sees the pursuit of honesty and integrity in business activities among a growing group of entrepreneurs for whom adherence to ethical standards and generally accepted patterns of behaviour becomes a reality. (...) The National Chamber of Commerce encourages businesses to adopt Codes of ethics and inform customers and counterparties on it. The code of ethics in business may be the model for these rules, adopted by individual entities. The National Chamber of Commerce is of the opinion that in all business activities, the preservation of fundamental values and appreciation of ethical obligations to all interested in the activity of the company is necessary. (...).

The standards of the organisation performance in dealing with employees, contractors, the environment, developed by the National Chamber of Commerce, are an essential component also in the concept of promotion of „Business Fair Play” – an ethical business conduct. The concept is based on the benefits that a company can achieve as a result of checking the reliability standards of conduct covering the following scopes:

⁷⁴ W. Gasparski, *Kodeks etyczny jako narzędzie w procesie budowania i utrwalania reputacji firmy*, Centrum Etyki Biznesu, Instytutu Filozofii i Socjologii PAN oraz Wyższej Szkoły Przedsiębiorczości i Zarządzania im L. Koźmińskiego w Warszawie (*Code of Ethics as a tool in building and consolidating the company's reputation*, Center for Business Ethics, Institute of Philosophy and Sociology and the School of Entrepreneurship and Management of Entrepreneurship in Warsaw).

⁷⁵ <www.kig.pl/index.php/Kodeks-etyki-dla-przedsiębiorców> as of 8.4.2011), The Code compiled from materials of the Institute of Business Ethics in London.

- advertising and promotion, e.g. of how to compete or formulate advertisements;
- contacts with clients and customers, such as means of complaint settlement, provisions on warranty;
- contacts with contractors, such as timely payment adjustments;
- with reference to employees, it examines the reasons for the termination of employment contracts, checks the results of the Labour Inspectorate controls, and checks the timeliness of salary payments;
- involving the local community, i.e. contacts between the local community and business, charity and sponsorship activities, the environmental nuisance;
- fairness to the State Treasury, i.e. the timeliness of benefits.

The awarded „Fair Play” certificates are generally used for promotional purposes. Thanks to them, the company emphasises its robustness⁷⁶.

5.2. Development of anti-corruption programmes

5.2.1. The essence of the anti-corruption programme

As mentioned, corruption weakens the state's economy by causing high volatility in its operation. The system becomes very inefficient, which is particularly troublesome when planning business. An entrepreneur cannot be sure whether or not the reasonably prepared activity will assume benefits. His assumptions may not be implemented also due to corrupt relations between other companies. It is always a threat to the basics of the performance of an enterprise. Moreover, corruption intentionally distorts the competitive process, making it easier for one party, of course the unfair one, to achieve the intended purpose. This form of doing business brings measurable loss to the entire national economy.

⁷⁶ <<http://www.przedsiębiorstwo.fairplay.pl>> (as of 8.4.2011).

Costs of the conduct of business activity are a significant element of a company's operation. Corruption is one of the most costly positions in its losses.

Taking the above into consideration, each organisation acknowledging the importance of the problem of corruption should decide to take action to minimise risk in this regard. Therefore, an anti-corruption programme within the organisation should be created. The adoption of a programme does not prove that there have been cases of corruption in the organisation. It only confirms that the institution is able or trying to assess the existing risks, in order to avoid future events or eliminate corruption.

Corruption is subject to moral norms which guide the entity. While implementing the anti-corruption programme in an enterprise, a special attention should be paid to the shaping of consciousness. Patterns of conduct should pass through all levels of the institution. In a transparent organisational structure, it is an indispensable element of the employees' identification with „the company's ethical conduct". While implementing the programme, the entrepreneur also informs the contractors that he undertakes to run fair business. Each entity involved in the common business must be aware of the rules of the anti-corruption programme of the other party.

5.2.2. Anti-corruption programmes creation and management

The scope of the anti-corruption programme

The programme refers mainly to the employees of a particular entrepreneur and to his customers. The nature of business relationships should indicate who must be covered with the programme. The complexity of the processes which take place in the enterprise will be of importance. Each process must be identified and analysed.

The main idea of the system should be the extension of the requirements of the PN-EN ISO 9001:2009 norm by additional requirements connected with anti-corruption processes, precisely described by the Polish Centre for Testing and Certification. This additional norm is referred to as the **System of Prevention of**

Corruption Threats⁷⁷. It is a system developed jointly by the National Chamber of Commerce and the Centre for Testing and Certification. It aims to support the performance of companies and institutions which want to increase the confidence in their fairness. It may be applied in the entities which have the certified quality management system.

Thanks to the application of the unique risk analysis, the System of Prevention of Corruption Threats may help to spot the „places” inside the enterprise which may be endangered by corruption. This norm supports the anti-corruption strategy implemented in our country⁷⁸, and constitutes part of the general strategy within this scope⁷⁹. It is the basis for the preparation of solutions to ensure that all decisions in the organisation are reliable and, as far as possible, impartial.

Therefore, the anti-corruption programme should refer to the overall of intentions and actions of an organisation leading to the elimination of potential corruption threats. Such a programme should be prepared by the company’s board of directors.

A decision formally expressed by the board of directors should oblige to observe the rules of ethics. It would be advantageous to include the newest anti-corruption strategy of the state. It will prove a serious consideration of the issue and a detailed recognition of current trends and activities undertaken nationwide. Sanctions on the infringement of the anti-corruption procedure should be included in it. An efficient anti-corruption procedure should force the company’s managers to analyse thoroughly the symptoms of corruption in particular areas connected with the company’s activity.

⁷⁷ <www.pcbc.gov.pl/doc/certyfikacja/systemy/wymagania.pdf> (as of 8.4.2011).

⁷⁸ <http://www.mswia.gov.pl/portal/pl/83/149/Przeciwdzialanie_korupcji.html> (as of 8.4.2011).

⁷⁹ <http://www.mswia.gov.pl/portal/pl/83/149/Przeciwdzialanie_korupcji.html> (as of 8.4.2011).

The management team's decision

They key to an effective programme combating the symptoms of corruption lies in the hands of the company's management team. Without an explicit decision, a company will not eliminate improper conduct by itself. The effectiveness of the activities depends on:

- recognition of the benefits of such changes,
- identification of potential threats,
- presentation of the anti-corruption programme to business partners (everyone should operate on the basis of the same good practices / principles),
- the system of professional training courses,
- effective problem-solving,
- encouragement to open discussion about the problems,
- on-going analysis of the implemented programme in order to increase efficiency.

„DECIDE, PASS, REGISTER, TRAIN AND MONITOR” should be the motto of an entrepreneur who intends to create an effective system of prevention⁸⁰. The company's management team should be responsible for making the staff aware of the importance of corruption elimination.

Risk analysis of corruption threats

The risk evaluation should be conducted by way of analysis of the processes with regard to the identification of potential sources of threats. Afterwards, the risk analysis should be carried out and risks of unaccepted levels should be indicated so that the proceeding with individual risks can be defined in the following stage. The aim of such activities is to minimise the risks.

Further on, the organisation must identify current potential threats. A person responsible for risk management should be appointed. In this process, it is important to skillfully assess the effectiveness of risk management measures. This involves transfer of information to superiors and co-ordination of activities. To achieve this, it is

⁸⁰ Transparency International Poland, Zasady zwalczania łapownictwa w biznesie (The Principles of fighting corruption in business), 2008, s. 28, <www.transparency.pl> (as of 12.5.2011).

necessary to determine the anti-corruption policy standards, supported by due procedures and followed by their implementation through:

- 1) familiarisation of the employees with the policy of anti-corruption organisations and with the procedures – creation of an active system of training, continuous upgrading of the employees' skills;
- 2) introduction of a system of internal control – detection and elimination of irregularities;
- 3) reporting of incidents/threats of corruption, including the possibility to preserve the anonymity of the whistleblower;
- 4) proper handling of the application – the removal and „getting rid” of the cause of irregularities, the analysis in order to prevent similar situations in the future;
- 5) ensuring that any violation regarding the implemented procedures will be sanctioned;
- 6) exchange of information/experience – both on the organisation's forum, and externally, for example, with the organisations of the entrepreneurs (domestic and international);
- 7) evaluation and update of the programme/procedures.

Carrying out of the proceedings with corruption risk should be a significant element of the system, conducted within mastering activities. Such an activity ensures precise understanding of threats arising from corruption.

Advantages of having an anti-corruption system by Transparency International⁸¹:

- 1) providing better access to international markets;
- 2) increasing the opportunity to obtain a government contract;
- 3) providing better protection for enterprises and employees against legal penalties, loss of license or being placed on the so-called blacklist;
- 4) good reputation of the business makes it more attractive in terms of sale/purchase;

⁸¹ As above.

- 5) running of an „ethical” business, which automatically becomes a good workplace, creates positive relationships and improves the morale;
- 6) business, which becomes more attractive for financial organisations;
- 7) the opportunity to save money that otherwise would be squandered on bribes and other incentives.

In practice, interesting innovations in the construction of the discussed mechanisms to prevent risks can be observed. The Det Norske Veritas certification company released a tool to measure the effectiveness of management, aiming to reduce the risk of fraud and corruption: Fraud and Corruption Resistance Profile⁸². In 2007, DNV has developed a resistance profile for the first Polish company. In the same year, the Polish translation of the book by N. Iyer and M. Samociuk⁸³ appeared on the market. The authors call for the construction and implementation of the „immune system of the organisation”, which will reduce the level of employee motivation to commit fraud and introduce protection against such actions.

5.2.3. Anti-corruption policy

The principles of anti-corruption policy

1. The policy objective is to eliminate any corruption phenomena that may occur in connection with the operation of our company.
2. The policy takes into consideration the strategy and operation of state bodies which aim to eliminate corrupt behaviours from all spheres of the economic and social life.
3. The implementation of the provisions of the policy should rest on all participants of the business process – the necessity to familiarise all customers and contractors with the policy.

⁸² Fraud and Corruption Resistance Profile – FCRP, DNV, 2005–2006 Det Norske Veritas.

⁸³ N. Iyer, M. Samociuk, *Defraudacja i korupcja. Zapobieganie i wykrywanie (Embezzlement and Corruption. Prevention and detection)*, Warszawa 2007.

4. In corruption cases, the person who accepts and who gives the bribe are treated equally.
5. The employees are not allowed to participate in any corrupt behaviour, including demanding a financial or personal advantage.
6. The customers and contractors are not allowed to acquiesce to the proposal or demand put forward by an employee of our enterprise.
7. The information about board and transportation offered by a potential customer or contractor must be explicit and available (communicated) to ensure the transparency of the business process.
8. Customers and contractors are not allowed to offer financial or personal advantages to our employees.
9. The enterprise should implement separate regulations referring to giving and accepting gifts, participation in sponsored entertainment events and incurring representation expenses.
10. If the customer/contractor suspects that a corruption-featured behaviour may occur, they should immediately provide relevant information to the company management team. If such suspicion relates to the company's management team, the information should be passed to the relevant law enforcement agencies.

Good practices

1. The involvement of all parties of the business process (employees, customers and contractors) in order to communicate the policy and to educate in to comply with the policy.
2. The company is committed to adopting the Code of Ethics (if it does not have one yet) – fair dealing is essential to healthy business relationships.
3. Providing regular training courses in Ethics and Anti-Corruption Policy.
4. The system of internal control – determination and elimination of all existing business processes in the organisation.

5. Defining clearly the results of corrupt behaviours and of non-compliance with the Anti-Corruption Policy – including a financial penalty, loss of the occupied position and notification sent to law enforcement agencies.
6. Cooperation with contractors in order to eliminate corrupt behaviours.
7. The breach of the Policy means the breach of the regulations, especially of internal procedures.
8. Familiarisation with the newest domestic and international trends referring to combating corruption.



6

EXAMPLES OF CORRUPT BEHAVIOUR



Example 1 (art. 228 of the Penal Code)

An employee of a state-owned enterprise was missing several weeks to the jubilee of 30 years of employment. Unexpectedly, she was listed for collective dismissal. The CEO of the company found a solution to this situation by offering her that she would not be made redundant provided she would give him the whole amount of PLN 2,845.81 due to her because of the jubilee. The woman agreed and when she received the payment she went to the CEO to give him the promised money, but she took a dictaphone with her. She met the deputy who claimed to know the situation and offered to take the money. While recording the conversation, she asked to count the money aloud. She also asked if she could keep 81 groszy to memorise the jubilee. The deputy refused claiming that the agreement referred to the whole amount. The District Prosecutor's Office in R. brought a charge of accepting a financial advantage in connection with the performance of a public function. The deputy was charged with aiding and abetting⁸⁴.

Example 2 (art. 228 i 229 of the Penal Code)

An entrepreneur of the car industry gave bribes to customs officers in exchange for the acceleration of the clearance procedure. Altogether, thirteen persons were detained (customs officers, entrepreneurs, an expert of the Polish Motor Association and the owner of the customs agency).

Example 3 (art. 230a of the Penal Code)

The owner of the accounting office wanted to avoid inspection. She offered PLN 10,000 to a person working in a law enforcement agency. The person reported it to the superiors.

Example 4 (art. 296 of the Penal Code)

In August 2007, the president and a management board member of the E company sold a 10 ha plot to the B company at a price much

⁸⁴ D. Palacz, D. Woźnicki, A. Wojtkowski, *Korupcja i mechanizmy jej zwalczania* (*Corruption and the mechanisms of fighting corruption*), Warszawa 2001, s. 4. <<http://www.batory.org.pl/korupcja/pub.htm>> (as of 8.4.2011).

below the market value despite the fact that the bidders offered even twice as much. As it turned out several months later, the value of the plot increased several times although the new owner did not make any investments. The former president together with the management board member endangered the company to the loss of nearly PLN 18 million.

Example 5 (art. 296a of the Penal Code)

The owner of a production company came across a disturbing phenomenon while selecting the components for the production of goods. A group of engineers was not able to compose a product with the use of cheap but good domestic components. Only the use of foreign, much more expensive components, was effective. The owner found out that the company selling foreign components gave attractive commissions to his engineers. The producer dismissed the engineers and employed new ones, who managed to use the cheaper components.

Example 6 (art. 231 of the Penal Code)

The company produced waterproofing materials and adhesives. Cold glue was one of such materials. The company requested for a proper certificate. However, the institution issuing the certificates unjustifiably prolonged the certification process despite the fact that the producer provided all necessary materials and made due payments. Only after three years the certifying authority agreed to technical approval. However, at that time, competitive EU products were launched to the market and the production lost sense.

Example 7 (art. 296a of the Penal Code)

One of the companies producing construction materials was requested by an architectural studio to place their materials in the projects developed by the studio in exchange for „commission”.

Example 8 (art. 228, 229 of the Penal Code)

Two businessmen bought land from dozens of farmers, where the authorities planned to build a road. The first one paid PLN 99 per square meter of land, and the next day he sold the acquired area of 2.7

thousand m² to the city at the price of PLN 390 per m². The other businessman bought the land at PLN 107, and sold at PLN 280. The city lost PLN 1.9 million⁸⁵.

Example 9 (art. 296 of the Penal Code)

The Vice Presidents of a state-owned company signed an agreement with journalists to create a favourable image of the company. In the agreement, the journalists, acting as a company, committed themselves to block the media speculation about the planned investments, to protect the board against press attacks and to counsel after information leaks. The agreement amounted to 15 thousand EUR. After three months the contract was terminated. The board paid each of the journalists over 60 thousand a month, although they developed only preliminary assumptions of the PR plan for the company⁸⁶.

Example 10 (art. 228, 229 of the Penal Code)

A city board member and a municipal councillor went to Canada to watch Canadian companies dealing with waste disposal. The trip was paid by the company which later entered into an agreement with the city in order to build a municipal waste processing plant.

Example 11 (art. 299 of the Penal Code)

For over six years, three entrepreneurs ran a company which was not registered as a VAT payer. The company issued several hundred fictitious invoices, which documented the sale of services or goods which had never taken place or which had been performed by other entrepreneurs. The false documents aimed to decrease the due tax and the income tax. The State Treasury lost several million zlotys.

Example 12 (art. 305 of the Penal Code)

A construction company noted that in the tender material which they received some pages were missing. After a written intervention,

⁸⁵ Transparency International Poland, Corruption Map in Poland, Warszawa 2001, p. 106.

⁸⁶ *ibid.*, p. 114.

they were informed that the missing page is irrelevant to the terms of the tender. The employee accepting the reply did not pay attention to the difference between the above pages. Afterwards, it turned out that the difference was significant enough to reject the construction company's bid due to formal shortages, it did not contain the required list of equipment which had to be delivered to the investor.

Example 13 (art. 296 and 296a of the Penal Code)

A former director of a bank branch, currently the president of another bank, was accused of granting high amount loans to five companies. From the very beginning it was clear that they would not be able to repay them. However, the bank kept giving them further loans despite their not paying back the previous ones. One of the companies belonged to the president's son, the president's wife was employed in the company and the loan applications were signed by the president's cousin. The bank branch lost at least PLN 50 million⁸⁷.

Example 14 (art. 228, 230 and 231 of the Penal Code)

The former president and the former city board member in B were accused of accepting bribes in the amount of PLN 450 thousand in connection with issuing the permit for construction and usage of hypermarkets on a plot originally allocated for housing development. The advocate who was the co-founder of the company, which was meant to transfer the bribes, was involved in the case.

Example 15 (art. 231, 296 of the Penal Code)

The management team of a state-owned company were accused of abuse of power and non-fulfilment of duties while handling the company's property. While ordering the equipment, the district board concluded very unfavourable contracts, paying much more than they would pay for individual devices. The State Treasury lost about PLN 11 million.

⁸⁷ *ibid*, p. 62.

Example 16 (art. 296a, 299 of the Penal Code)

The manager in the stationary telephony department established slush funds for lucrative foreign contracts. He was instructed by his superiors. The funds were used to bribe potential foreign suppliers, customers and officials. Citizens of seven states were involved in the case. The value of suspected transactions amounted to over PLN 6 million.



7

HOW TO BEHAVE IN A CORRUPT SITUATION



When the entrepreneur is endangered with corruption, it becomes necessary to be able to combine the provisions of the law and the procedures arising from the law. Therefore, in the further part of the book, proposals to cope with such situations are presented.

However, there are no ideal algorithms of proceedings, the use of which will bring the desired result. The presented algorithms only outline the general principles of behaviour for entrepreneurs. With regard to untypical situations, their use cannot exclude a factual assessment and common sense while taking a decision on the conduct in a particular situation. One of the basic social behaviours reducing corruption is the refusal to give or accept a bribe. One must be aware that getting involved in a corrupt situation often has an impact in further life. By non-disclosure of such a situation, we become „hostages” of the co-perpetrator of the offense and of other persons, if involved. By admitting to have given a bribe before a law enforcement agency finds out about the fact, one may get advantage of the so called impunity clause, which guarantees the entire impunity due to giving a bribe.

An example may be a case instituted on the grounds of the notification and taking advantage of art. 229 § 6 of the Penal Code by a construction entrepreneur. After winning a tender, while accomplishing the construction works, was forced by the principal to give him financial advantages on regular basis to be paid for the works done. There are procedures in which corrupt behaviour may be subjected to sanctions:

- the official procedure – by notifying the superiors of the corrupt person,
- disciplinary or professional liability – by notifying proper law enforcement agencies,
- penal liability – by notifying law enforcement agencies (in the case of an offence perpetration).

Two first procedures are recommended when the act of corruption does not have all features of an offence, i.e. it breaks the principles of ethics, dignity of the profession or professional duties, e.g. the meetings of the contractors and the tender committee members outside of the principal's office after office hours, frequent telephone calls between the committee members and the contractors. The third procedure is presented below.

7.1. The algorithm of procedure for an entrepreneur exposed to an attempt of corruption, the situation in the relation between an entrepreneur and an official

- In the event where an official suggests „settling the matter in a different way”⁸⁸, meaning the matter he arrived with at the office⁸⁹, he should be informed that such conduct could be treated as an offence.
- In the event where the official continues demanding a financial advantage or a promise of such advantage, he should be asked for an exact interpretation of his conduct by asking „**what do you mean by this?**” The suggestion itself to „settle the matter in a different way” does not provide sufficient grounds for stating the attempt of corruption. At the same time, it is advised to appoint a third person to confirm the course of events. It may be the person who came with the entrepreneur to the office or somebody else, e.g. another applicant or official.
- To inform the official’s superior or the superior authority.
- In the event where the official is expressly willing to accept a bribe, the entrepreneur should refer to the situation as to an act of corruption and undertake the following activities:
 - 1) to pursue to obtain as much evidence as possible to acknowledge the perpetration of the offence, e.g. talks recorded, indication of witnesses. In the event of giving a bribe to the official, indicating the place where the bribe was hidden;
 - 2) to inform the official that he perpetrated the offence of venality;
 - 3) appoint third persons for further activities, notifying the official’s superior on the event (if a corrupt situation took place on the premises of the entrepreneur and if possible, to

⁸⁸ Corruption is characterised by developing symbolism aiming to camouflage the conduct. In such situations, the bribery is defined as „collecting the Polish kings” (I’m offering Jagiełło to avoid trouble).

⁸⁹ As much as possible, an entrepreneur should deal with official matters in the office.

perform the so called civil detention of the official, under art. 243 § 1 of the Penal Code;

- 4) to perform all activities with the official in the presence of the third person. It is exceptionally important due to the threat of defamation;
- 5) to notify law enforcement agencies on the event immediately, e.g. the CBA, Police (art. 304 § 1 of the Code of Penal Procedure – the so called social obligation of notification on an offense) and the official's superior.

If an entrepreneur acknowledges that the above activities will be ineffective in the sense of evidence, immediately after leaving the office he should seek advice of law enforcement agencies. These services have the trial and operational powers as well as technical equipment which allow preservation of evidence. The person who reports may request not to disclose their name. Then, the activities will be undertaken as operational and investigational ones;

- 1) to await an officer of a law enforcement agency, together with the entrepreneur;
- 2) to leave further activities to the officer of the called service, on the scene of the event;
- 3) to remain at the disposal to undergo trial activities (e.g. the notification on the offence, testifying as a witness).

An entrepreneur is not allowed to:

- 1) behave in a way which might give rise to recognition as a provocation, incitement or solicitation to corruption;
- 2) procrastinate the notification of the law enforcement agencies – if they did not do it in the office, they should accomplish it immediately after leaving the office.

7.2. The algorithm of procedure for an entrepreneur exposed to an attempt of corruption, the situation in the relation between an entrepreneur and another entrepreneur

The penal law analysis conducted in this study allows to state that in no area of law there is such a smooth transition from legality to a state of lawlessness. When assessing a corrupt behaviour, the following circumstances should be taken into consideration: custom existing in a particular social group, amount and nature of the advantage accepted as well as its aim. An event where the fulfilment of the features of an offence of venality or bribery does not constitute a prohibited act is the occurrence of a countertype of the custom which had long been recognised as a circumstance excluding illegality. However, it must be stressed that there is no custom to tip a person performing a public function⁹⁰.

It is also important to establish a line between acceptable and unacceptable benefits. It requires a reply to many questions, e.g. to whom the advantage is beneficial and to whom it is harmful, whether the advantages are recorded or covered in the company's accounting books, whether they are reported to be taxed, how large the sums are, whether the advantage is given before or after the transaction, whether the advantage constitutes a discount in the documents. *Advantages which undermine fairness of the negotiation process, concluding transactions, etc. are unethical. They are suspicious when they are not a common and explicit practice, as tipping in some countries, which is recognised as improper in other countries*⁹¹.

The standards of conduct developed in building business relationships allow for some forms of gifts to be given to others, but they should not exceed certain amounts and values that are conventionally accepted as symbolic. However, the goods or services offered within such activity sometimes cause a problem differentiating

⁹⁰ Compare B. Kolasiński, *ibid.*

⁹¹ <<http://etyka-biznesu.elf24.pl>> (as of 8.4.2011).

between a courtesy commonly accepted in a particular business environment and obtaining a friendly attitude of the person having power to take decisions which are favourable to the company⁹².

To summarise the above, a conduct regarded as an offence in the relationship between an entrepreneur and an official does not always have the features of an offence in the relation between entrepreneurs. In the event of stating a conduct having the features of an offence in the relationship entrepreneur to entrepreneur, it is justified to conduct activities including a modification regarding the scene of the offence, basing on the above algorithm relating to an entrepreneur – an official.

7.3. The algorithm of procedure for an employee exposed to a corruption pressure or possessing information on a corruptive behaviour of another employee (a situation inside an enterprise)

- An employee notifies his immediate superior on the event according to the internal procedure. In justified cases, the employee notifies directly the owner of the entity (the president).
- If possible, the employee should obtain as much evidence as possible on their own, to confirm the perpetration of the offense, e.g. the recording of the conversation, the documents, witnesses.
- The employee provides the superior with the materials or indicates their place.
- On the manager's or the entity owner's request, explanatory proceedings are instituted. If an offense is ascertained, the case is submitted to a law enforcement agency.
- If the manager or the entity owner (the president) considers the evidence ineffective, they request the assistance of the law

⁹² Compare: *Polscy przedsiębiorcy przeciw korupcji*, Instytut Badań nad Demokracją i Przedsiębiorstwem Prywatnym (*Polish Entrepreneurs against Corruption*, Institute for Private Enterprise and Democracy), Warszawa 2008.

enforcement agencies, e.g. the CBA, the Police. Then, the activities will be undertaken as operational and investigational ones.

- The above mentioned law enforcement agencies cooperate to the extent necessary to check the information on corruption and obtain the evidence.
- The company's management analyses the event to introduce proper organisational and legal alterations which will prevent similar situations in the future.

7.4. Anti-corruption prevention – methods to reduce corruption

- „Example from above” – promotion of honest and transparent principles. The employees must be sure that the superiors' conduct is honest and they will enforce honesty from others. It should be prioritised to popularise the belief that violations will not be tolerated and „swept under the rug”, and that each offence will be reported and explained⁹³.
- Implementation of the reporting system – the superiors should know what tasks are carried out and how they are carried out by the subordinates. Reporting is a disciplinary tool for the employees and in the event of irregularities, it is also an important piece of evidence.
- The procedure of notifying the superiors on one's suspicions (whistleblowing) – as short as possible, e.g. directly to the management team; assurance of confidentiality for reporters.
- Determination of the employees' scope of obligations – elimination of discretion in the manner of performing obligations.
- Staff turnover within working teams – the changes will result in higher transparency of decisions and impede internal connections fostering abuse.

⁹³ Compare: *Profil odporności organizacji na defraudację i korupcję (Organisation Resistance to Embezzlement and Corruption)*, Fundacja Det Norske Veritas.

- Risk analysis – assessment of corruption risks, the introduction of procedures to ensure the special protection.
- Adoption of the rule of contacts with an official exclusively in the office seat and each time documenting this fact.
- Application of the rule of two pairs of eyes – an entrepreneur should be accompanied by a third person when meeting an official.
- The principle of a written form, documenting activities connected with the office, e.g. at public procurements.
- Avoiding the use of corporate resources for unfair or unlawful purposes.
- The company cannot delegate or authorise anyone to transfer any money or give gifts or submit promises to transfer money or give a valuable object to any person or for the benefit of any person, including „public officials” in order to establish or maintain a business relationship, obtain other advantage or posing the suspicion as to such purpose.
- The company’s account books and records must accurately reflect transactions and the sale of state assets.
- Employees involved in international transactions must refer to the anti-corruption policies in force in the countries where the company operates, in order to skillfully respond in all situations involving the transfer of funds (assigning a person who knows the contractor’s native language of negotiation teams).
- Application of the code of ethics and the System of Prevention of Corruption Threats⁹⁴ – a code prepared together with the employees has the biggest chance to be applied.
- Reporting corruption, both in the internal procedure and to law enforcement agencies (the possibility to benefit from the impunity clause).
- Principles of cooperation with external entities – to reduce the likelihood of corruption risks.

⁹⁴ See: chapter 5.

- The introduction of the principles of giving/accepting gifts and participation in informal business meetings (such as dinners, cultural or sports events, sports).
- Prohibition of giving presents, where it could be interpreted as a bribe or compensation for a business favour.
- Prohibition of giving presents to persons performing public functions.
- Checking compliance with the principles of giving/accepting gifts – control measures.
- Fair competition with competitors, without undermining their reputation (strengthening one's own reputation).
- If in doubt, ask the NGOs or law enforcement agencies for assistance.

According to the OECD guidelines, companies should not offer, promise, give or demand a bribe or other undue advantage to obtain or maintain an unfair commercial or any other advantage. They should not be encouraged to offer bribes or other unlawful benefit, i.e.:

- 1) they should not offer or be influenced by demands for payment to officials or business partners of any payment beyond the amount of the contract; they should not use sub-contracts to transfer money to officials, employees, business partners, their relatives or related entities;
- 2) they should ensure that representatives' remuneration is appropriate and received for legitimate services; if necessary, a list of representatives responsible for the transactions should be prepared;
- 3) they should increase the transparency of activities to combat corruption and extortion by, among others, the disclosure of management systems, which the company has adopted;
- 4) among the employees, they should promote the policy of combating corruption and extortion by sharing information and training courses;
- 5) they should adopt management control systems that reduce the potential for corruption and extortion as well as accounting and auditing practices to prevent the creation of secret accounts and documents which do not present the linked transactions honestly;

- 6) they should not finance secretly the candidates for offices of international organisations⁹⁵.

7.5. Symptoms of the risk of corruption

In an incorrectly functioning enterprise, the following symptoms may indicate the risk of corruption:

- the lack of procedures referring to the principles of behaviour (e.g. codes of ethics, principles of giving and accepting gifts),
- the employees living beyond their means,
- personal antagonisms among the employees, differences in the material status;
- close personal relations among the employees and the contractors (the risk of collusion),
- meetings with the officials outside of the office, after working hours,
- competition for a better position and working conditions – a wider access to the contractors,
- propensity to addictions, e.g. alcohol abuse, gambling,
- unjustified work after hours; not going on holidays;
- ignorance of the rules relating to liability for actions taken,
- concentration of too many powers/duties in the hands of one person,
- lack of division of powers and responsibilities of the employees and superiors,
- inadequate monitoring and supervision by superiors, poor network security,
- failure to comply with reporting obligations, errors in documentation,
- ignoring the complaints submitted against the employees of a given organisation.

⁹⁵ Guidelines for multinational entrepreneurs, <<http://www.oecd.org/dataoecd/61/41/38111315.pdf>> (as of 8.4.2011), OECD 2004 r., pp. 13–14.

It happens that in the name of incorrectly understood interest of the organisation or in the name of solidarity the irregularities are covered up, which may result in legal consequences for the employees who had the knowledge on the perpetrated offence but did not report to a law enforcement agency.

It must be remembered that art. 304 § 1 of the Code of Penal Proceedings provides that having learnt about an offence prosecuted *ex officio*, one has a social obligation to notify the law enforcement agencies.



8

LEGAL AND INSTITUTIONAL CAPACITIES TO PROSECUTE CORRUPTION



8.1. Legal capacities

From the perspective of combating corruption crimes, the following provisions of the Code of Penal Procedure are of significance:

- the institution of the incognito witness (art. 184 of the Code of Penal Procedure). If there is reason for a significant apprehended danger to the life of the witness or the person closest to him, their health, liberty or property, the court, and in preparatory proceedings the prosecutor, may issue a decision on maintaining the secrecy of the circumstances allowing disclosure of the identity of the witness, including the personal data. In such an event, the proceedings take place without the participation of the parties and it is covered by state secrets protection;
- the instrument of the protection of an endangered witness, the so called minor incognito witness (art. 191 § 3 of the Code of Penal Procedure). Where, in connection with their activities, there occurs a justified apprehended danger of violence against the witness or the person closest to him, the witness may stipulate his address. The address stipulation occurs to the exclusive knowledge of the prosecutor and court. Pleadings are served on the address indicated by the witness.

Another law enforcement tool in the fight against corruption is the institution of the crown witness⁹⁶, which can be used when the offence has been perpetrated in an organised group. Another condition is that the witness should inform the law enforcement agency on the circumstances which may help to reveal the offence, detect the other perpetrators, disclose other offences or prevent them; the witness should disclose his property and the property of the other perpetrators; the witness should also commit themselves to make extensive testimony in court. The person permitted to testify as a crown witness is not subject to penalty for the offences or tax offences which he perpetrated.

⁹⁶ The Crown Witness Act of 25 June 1997 (Journal of Laws of 2007, no. 36, item 232 as amended).

The acts of different law enforcement agencies provide for operational control as well as controlled delivery/acceptance of a financial advantage. These methods are often accomplished at the stage of operational works; however, the materials gathered at this stage are recognised as the evidence in the investigation proceedings. These are one of the most effective methods in the fight against corruption.

8.2. Institutional capacities

Following the entry into force of the Act on the CBA, a new legal situation occurred, concerning the prosecution of corruption in Poland. The aim of the service is to combat corruption in the public and economic sector, especially in state and local government institutions as well as the fight against activities detrimental to the economic interest of the State. The officers of the CBA perform investigational, operational and recognition as well as control, analytical and informational activities. Within the scope of its competence, the CBA also performs activities requested by the court or the prosecutor as defined in the Code of Penal Procedure.

The CBA was established as a special service to combat corruption, however, the system of the state authorities dealing with fight against corruption also covers other services (the Police, the Internal Security Agency) – therefore art. 29 item 1 of the Act on the CBA imposes the obligation of cooperation, within their competence, on the heads of the Central Anti-Corruption Bureau, Internal Security Agency, Military Counterintelligence Service and the Chief Commandant of the Police, Chief Commandant of the Border Guard, Chief Commandant of the Military Police, Inspector General of Fiscal Control, Head of the Customs Service and the Inspector General of Financial Information. The cooperation refers to combating corruption in state and local government institutions, in public and economic life as well as activities detrimental to the economic interest of the State.

The authorities combating corruption take action as soon as they learn about the offence. The information may come from media or may be reported by institutions or individuals. The number of cases reported by individuals is marginal. It may be speculated that there will be an increase in the number of reports by individuals who gave a financial advantage to an official⁹⁷. To encourage the above, there have been implemented legal regulations assuring entire impunity to those who gave a financial advantage.

The performance of offices and services is not limited to combating this pathology by means of penal sanctions. They also perform preventive and educational activities, implement government programs, present legislative initiatives. These tasks are also performed by:

- the Ministry of Interior and Administration,
- the Chancellery of the Prime Minister,
- the Supreme Audit Office,
- the Human Rights Defender,
- the Public Procurement Office.

The phenomenon of corruption is also of interest to many NGOs, the so-called third sector, among others Transparency International, Stefan Batory Foundation, Helsinki Committee for Human Rights, the Institute of Public Affairs, the Normal, etc.⁹⁸. They are referred to as „watch dog organisations”. Their role is to help to combat corruption, which involves:

- exercising control over the implementation of prevention programmes and activities aimed at controlling the public administration in this area,
- raising public awareness of the dissemination of knowledge on corruption to convince the public of the dangers of corruption,
- expert work and organisation of scientific conferences and meetings of experts, conducting research programmes.

These institutions are an important element of complementary state services in the fight against corruption.

⁹⁷ D. Palacz, D. Woźnicki, A. Wojtkowski, *Corruption...* ibid., p. 18.

⁹⁸ Anti-corruption strategy of the Ministry of Agriculture and Rural Development, Warszawa, 9 September 2008 r., pp. 6–7.



9

USEFUL LINKS



- **Centralne Biuro Antykorupcyjne/Central Anti-Corruption Bureau**
www.cba.gov.pl
 Telephone – Report corruption: 800–808–808
 The information can also be passed via the form available on the website of the Bureau, email or by letter.
- **Serwis Edukacji Antykorupcyjnej/Anti-Corruption Education Portal site**
www.antykorupcja.edu.pl

Other institutions and services involved in combating corruption

- Policja/Police
www.policja.pl
- Agencja Bezpieczeństwa Wewnętrznego/Internal Security Agency
www.abw.gov.pl
- Najwyższa Izba Kontroli/Supreme Audit Office
www.nik.gov.pl

NGOs engaged in the fight against corruption

- Stefan Batory Foundation
www.batory.org.pl
- Transparency International – Poland
www.transparency.pl
- Centrum Edukacji Obywatelskiej/Centre for Citizenship Education
www.ceo.org.pl
- Instytut Spraw Publicznych/Institute of Public Affairs
www.isp.org.pl
- Stop Korupcji/Stop Corruption
www.stopkorupcji.org
- Centrum Adama Smitha/Adam Smith Centre
www.smith.org.pl
- Instytut Sobieskiego/Sobieski Institute
www.sobieski.org.pl
- Przejrzysta Polska/Transparent Poland
www.przejrzystapolska.pl

Other national institutions

- Krajowa Izba Gospodarcza/National Chamber of Commerce
www.kig.pl
- Instytut Badań nad Demokracją i Przedsiębiorstwem Prywatnym/
Institute for Private Enterprise and Democracy
www.iped.pl
- Polskie Centrum Badań i Certyfikacji/Polish Centre for Testing
and Certification
www.pcbc.gov.pl
- Rada Przedsiębiorczości/Business Council
www.radaprzedsiebiorczosci.pl
- Polska Rada Biznesu/Polish Business Roundtable
www.prb.pl

International institutions and organisations

- Komisja Europejska/European Council
[http://europa.eu/legislation_summaries/fight_against_fraud/fight_a
gainst_corruption/l33301_en.htm](http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/l33301_en.htm)
- EPAC – European Partners Against Corruption
www.epac.at
- Międzynarodowa Akademia Antykorupcyjna/International Anti-
Corruption Academy
www.iaca-info.org
- OECD
www.oecd.org/departement/0,3355,en_2649_34855_1_1_1_1_1,00.html
- ONZ / United Nations
www.unodc.org/unodc/en/corruption/index.html?ref=menuside
- Rada Europy – GRECO/Council of Europe – GRECO
www.coe.int/t/dghl/monitoring/greco/default_en.asp