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Fachhochschule für
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University of Applied Sciences
Campus Lichtenberg



International Workshop

Structure of Institutions and Social Mechanisms for Combatting Corruption - Experiences in European States

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Hogeschool Gent
Voskenslaan 270
9000 Gent, Belgien

Fachhochschule für Verwaltung und Rechtspflege Berlin

University of Applied Sciences *for Public Administration and Legal Affairs*

Within the framework of the Socrates/Erasmus programme of the European Commission, the Fachhochschule für Verwaltung und Rechtspflege Berlin is coordinating an „Intensive Programme“ with the topic „Existing and future challenges for democratic processes in European Countries“. In the academic year 2006/2007 the international workshop was focussed on „Strategies against corruption“ and took place in Ghent/Belgium.

Participating universities are the Universitet Växjö/Sweden (Institut för Humaniora Tyska) the Hogeschool Ghent/Belgium (Faculty Business Administration and Public Administration) and the Universitet im. Adama Mickiewicza Poznan/Poland (Institution for Politics and Journalism).

These international workshop was financed by subsidies of the SOCRATES programme, budgetary means of the three participating universities and by the participants own resources.

This documentation is also the final report of the „Intensive Programme“ 2006/2007.

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1 Introduction

This is the final report of the intensive Erasmus/Socrates Programme on Corruption which took place in Ghent from 18 – 29 March 2007. During this time the programme participants, 34 students from Belgium, Germany, Poland and Sweden, attended lectures and gave presentations on the subject of corruption in their home countries. May this report contribute to a better understanding of the problems of corruption and the strategies against corruption.

The seminar was partly financed by the European Union (Socrates/Erasmus IP).

Established in 1995, University College Ghent is the outcome of two mergers that involved sixteen institutions of higher education. Many had been leaders in higher education for decades or even longer (the Academy of Fine Arts celebrated its 250th anniversary in 2001) and every single one of them put in first-class expertise. The goal is to link, mix and interconnect this formidable range of assets to create surplus value in the fields of education, applied research, services and the development of the arts.

University College Ghent is the largest ‘hogeschool’ in the country in terms of budget, staff and student population: it has more than 13.000 students, ca. 1.300 specialised members of teaching staff plus some 600 administrative and technical staff. This critical mass allows to offer additional services and opportunities, such as professional units for communication, culture and internationalisation. There is a wide range of subjects on offer, in fact almost anything from the fine arts to engineering sciences and from music to biotechnology.

This has been compiled in 24 professional bachelor programmes, 14 academic bachelor programmes and 22 master programmes. University College Ghent is the largest university college in the largest student town (roughly 55.000 students) where also the second largest university is to be found (Ghent University, 28.000 students). Together, Ghent University and the University college Ghent make up for 75 % of all students in Ghent.

University College Ghent consists of 13 faculties, a Centre for Applied Research and Services, an 11ha research farm, a 20ha site including a historic park for agriculture and horticulture, a comprehensive Social Services unit, two halls of residence within walking distance, a unique sports centre and an interdisciplinary projects platform (Nexus).

University College Ghent publishes its own staff magazine, headed the Bologna debate by releasing the first book on the subject in Dutch, participates in research projects with universities, organises exhibitions, releases cds and dvds.

The auditoria and rooms are fully equipped to meet present-day teaching standards: computer rooms, internet facilities, laboratories, film and sound studios, a concert hall, greenhouses, auditoriums, libraries, a number of classrooms especially equipped for students of Fine Arts, Music and Performing Arts, etc. Individual study schemes for top sportsmen and -women, specialised resource centres, free preparatory summer courses, student counselling and study-related services at departmental level are all proof of our student-based policy.

The Faculty of Business Administration and Public Administration is one of the 13 faculties of the University College Ghent. It existed as an independent institution in Brussels until 1995 when it was merged into the University College Ghent and subsequently moved to Ghent. The faculty has 1640 students and a staff of appr. 100. It is located on the Campus Schoonmeersen at the Voskenslaan in Ghent.

On offer are the studies of bachelor and master in business administration and bachelor and master in public management. The bachelor studies take up 180 credits, the master studies 60 credits.

The bachelor and master studies in business administration taken up four fifths of the students and are equivalent to the bachelor and master studies of applied economic studies at university. It only differs in approach, the study at the University College being more practically oriented.

The bachelor and master in public management is unique in Flanders. No other university or university college has it on offer. The student population in those studies is appr. 250. The participants of the intensive programme are students from the third year bachelor in public management.

Prof. Dr. Frank Naert

2 Participants

Berlin

Students Stefanie Grosche
Jana Jablonski
Kathleen Lingner
Sandra Müllrick
Katrín Muckwar
Anne Oehme
Julia Rachuj
Maria Savkova
Natalie Sommer
Lecturer Prof. Dr. Heinrich Bücken-Gärtner

Poznan

Students Leszek Cholewa
Lukasz Hojan
Adam Jaskulski
Kinga Kubis
Piotr Majewski
Piotr Nowakowski
Paweł Ryszka
Balbina Zygał
Lecturer Mag. Mikołaj Tomaszuk

Växjö

Students Lina Berglund
Elzana Cerimovic
Gustav Engblom
Malin Gustafsson
Sara Holmqvist
Anna-Lena Holstensson
Daniel Nilsson
Sabit Suljkanovic
Lecturer: Thomas Marten

Ghent

Students Karen Coppejans
Lien De Ketele
Sarina De Weirt
Annelies Merckx
Anneke Schack
Riet Smekens
Henk Van Ooteghem
Thomas Vanhoutte
Reinout Vanhullebus
Lecturers Prof. Dr. Frank Naert
Prof. Dr. Ludo Peferoen
Prof. Dr. Catharina Dehullu

3 Programme

Intensive Programme „Corruption”, Ghent, 18-30 March 2007

18/03/07	Arrival of the participants 19.00 h – 21.30 h Welcome address and information session
19/03/07	10.00 h – 12.00 h: introductory lectures Corruption: Measurement and its impacts on institutions and individuals 12.00 h: lunch 13.00 h – 15.00 h: Prof. Dr. L. Peferoen ‘What is ethically wrong with corruption?’ 15.30 h – 17.30 h: Prof. Dr. L. Peferoen „Prevention of corruption by dilemma training”
20/03/07	Presentation of the country reports by the students 9.30 h – 12.30 h: Sweden 13.30 h – 16.30 h: Poland
21/03/07	Presentation of the country reports by the students 9.30 h – 12.30 h: Germany 13.30 h – 16.30 h: Belgium
22/03/07	10.00 h – 11.00 h Visit of the European Parliament 11.00 h – 13.00 h Discussion with Mr. Bart Staes (MEP) about corruption in politics and in the European authorities 14.00 h – 15.00 h Visit of the Council of Ministers 16.00 h – 18.00 h guest lecturer Prevention of corruption by OLAF

23/03/07	9.30 h – 12.00 h guest lecturer Strategies against corruption in private enterprises 13.00 h – 18.00 h Working group sessions
24/03/07	9.30 h – 18.00 h Working group sessions
25/03/07	Cultural programme
26/03/07	9.30 h – 12.00 h guest lecturer Strategies against corruption in politics 13.00 h – 18.00 h Working group sessions
27/03/07	9.30 h – 12.00 h guest lecturer Strategies against corruption in public administration 13.00 h – 18.00 h Working group sessions
28/03/07	9.30 h – 18.00 h Working group sessions
29/03/03	9.30 h – 18.00 h Preparation of the final report 20.00 h: Farewell party
30/03/03	9.00 h – 11.00 h: Presentation final report Departure of the participants

4 Analyzing corruption

Karen Coppejans, Lien De Ketele, Sarina De Weirt, Annelies Merckx, Anneke Schack, Riet Smekens, Henk Van Ooteghem, Thomas Vanhoutte, Reinout Vanhullebus

Prof. Dr. Frank Naert / Prof. Dr. Ludo Peferoen / Prof. Dr. Catharina Dehullu

4.1 Definitions and forms of corruption

Corruption involves behaviour on the part of persons in which they improperly enrich themselves or those close to them by misusing power with which they have been entrusted. In short, corruption is the misuse of public power for personal gain. **National Integrity Promotion Campaign – Namibia**

In broad terms, corruption is the abuse of public office for private gain. It encompasses unilateral abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence peddling, and fraud. Corruption arises in both political and bureaucratic offices and can be petty or grand, organized or unorganized. Though corruption often facilitates criminal activities such as drug trafficking, money laundering, and prostitution, it is not restricted to these activities. For purposes of understanding the problem and devising remedies, it is important to keep crime and corruption analytically distinct. **Handbook on fighting corruption, the Centre for Democracy and Governance**

... behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them. This would include embezzlement of funds, theft of corporate or public property as well as corrupt practices such as bribery, extortion or influence peddling. **Transparency International (TI)**

...corruption is an abuse of (public) power for private gain that hampers the public interest. ...corrupt entails a confusion of the private with the public sphere or an illicit exchange between the two spheres. In essence, corrupt practices involve public officials acting in the best interest of private concerns (their own or those of others) regardless of, or against, the public interest. **United Nations Manual on Anti-Corruption Policy**

An act done with intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it be not offered by another. **Law Library 's Lexicon**

Corruption involves behaviour on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed. **World Bank**

The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of her/his or her official duties;

The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of her/his or her official duties. **Article 8 of the Convention against Transnational Organized Crime**

To spoil or destroy by putrid decomposition; to turn from a sound into an unsound condition; to infect, taint, render morbid; to adulterate; to debase, to defile; to putrefy, rot, decay; to destroy the moral purity or chastity of; to destroy or pervert the integrity or fidelity of (a person) in her/his discharge of duty; to induce to act dishonestly or unfaithfully; to make venal; to bribe; to pervert the text or sense of (a law etc.) by altering it for evil ends. **Oxford English Dictionary**

Guilty of dishonest practices, (such) as bribery; without integrity; debased in character; depraved; perverted; crooked; wicked; evil; decayed; putrid; infected; tainted. Applies to one, esp. in public office, who acts on mercenary motives, without regard to honour, right or justice.

Webster's Unabridged Dictionary of the English Language

... the use of official position, rank or status by an office bearer for her/his own personal benefit. **U Myint**¹

Corruption is not only a western concept. In any society, there is a difference between what happens above board and what is under the table, of what is accepted and what causes outrage.

Most of us have an idea of what corruption is, but we do not necessarily share the same idea. That is why we need to define what corruption is for ourselves. For example, do you believe giving money to speed up the processing of an application is corruption? Do you think awarding contracts to those who gave large contributions to election campaigns is corruption? Do you think bribing a doctor to ensure your mother gets the medical attention she needs is corruption? Do you think using government construction equipment to build an extension to one's house is corruption?

Corruption is not just the clearly "bad" cases of government officials skimming off money for their own benefit. It could also include cases

¹ www.anticorruption.info, consulted on 24th February 2007

where the system does not work well and ordinary people are left in a difficult predicament, needing to give a bribe for the medicine or the licenses they need.

All of the above are examples of public corruption. They all involve the misuse of public office for private gain. In other words, they involve a government official benefiting at the expense of the taxpayer or at the expense of the average person who comes into contact with the government.

Corruption is a general concept describing any organized, interdependent system in which part of the system is either not performing the duties it was originally intended for, or performing them in an improper way, to the detriment of the system's original purpose.²

Two types of corruption are clearly defined: political corruption and police corruption.

Police corruption is a specific form of police misconduct sometimes involving political corruption, and generally designed to gain a financial or political benefit for a police officer or officers in exchange for not pursuing, or selectively pursuing, an investigation or arrest. An example is police officers accepting bribes in exchange for not reporting organized drug or prostitution rings or other illegal activities.³

Political corruption is the misuse by government officials of their governmental power for illegitimate, usually secret, private gain. Misuse of government power for other purposes, like repression of political opponents and general police brutality is not considered political corruption. Illegal acts by individuals or corporations not directly involved with the government are not considered political corruption either. All forms of government are susceptible to political corruption.⁴ Forms of corruption vary, but include bribery, embezzlement, fraud, intimidation, extortion, abuse of power, conflict of interest, insider trading, receiving an unlawful gratuity, favour or illegal commission, favouritism, nepotism, illegal contributions, money laundering, identity theft and white-collar crime. Let's take a closer look at these different forms.

Bribery

Bribery is the promise, offer or giving of any benefit that improperly affects the actions or decisions of a public official. A bribe may be given to a public servant (direct), or to another person or entity (indirect). A bribe may consist of money, inside information, gifts, entertainment, sexual or other favours, a job, company shares etc. A variation of bribery occurs

² The World Bank, Youth for Good Governance, p.3-5

³ www.wikipedia.org, consulted on 25th February 2007

⁴ www.wikipedia.org, consulted on 25th February 2007

where a political party or government is offered, promised or given a benefit that improperly affects the decisions of or actions by the party or government.

Embezzlement

Embezzlement means the theft of resources by persons entrusted with authority and control over these valuables. Embezzlement also includes the conversion of government property and personnel for private use.

Fraud

Fraud is criminal deception, involving some form of trick, false pretence or representation to obtain a benefit or gain unjust advantage.

Intimidation

We speak of intimidation when a person threatens the general public, a particular section of the public, a person or company to change a viewpoint, to do or not to do something.

Extortion

Extortion is unlawfully and intentionally gaining some advantage, material or immaterial, from another person or entity by placing illegitimate pressure in the form of threats or intimidation to force him/her to hand over the benefit. This coercion can be under the threat of physical harm, violence or restraint and may even be a threat that a third party will suffer injury. The accused must intend his/her words to be interpreted and act as a threat. (S)He must also intend to gain some advantage as a result of the threat while knowing that the threat is illegal.

Abuse of power

Abuse of power is using one's vested authority to improperly benefit or give undue preferential treatment to any group or individual (or using vested authority to discriminate against any group or individual).

Conflict of interest

Acting or failing to act on a matter where an individual has an interest, or where another person or entity that stands in a relationship with this individual has an interest.

Insider trading

Insider trading is engaging in transactions or acquiring positions or commercial interests that involve the use of privileged information and knowl-

edge that a person possesses as a result of his/her position to provide unfair advantage to another person, entity or to the person him-/herself.

Receiving an unlawful gratuity, favour or illegal commission

This can be defined as the receipt of anything of value as extra compensation for performing official duties from others wishing to conduct business with the agency, institution or organisation.

Favouritism

Favouritism is the provision of services or resources according to personal affiliations such as family ties, party affiliation, tribe, religious, sect and other preferential groupings.

Nepotism

Nepotism is ensuring that family members are appointed to the public service or that family members receive contracts from state resources. This is similar to conflict of interest and favouritism.

Illegal contributions

When political parties or the government in power receive money in exchange for not interfering with the activities being provided by those making the contribution.

Illegal contributions are closely related to bribery.

Money laundering

Money laundering is “washing dirty money” by channelling it through legitimate enterprises, i.e. concealing the source, nature, location, ownership and control of illegally received proceeds (this can include currency and assets) of what is usually an organised crime by converting them to what appears to be legitimate income.

Identity theft

Also known as cloning, associated with organised crime and syndicates. Traditionally, the interception of an identity document on which the photograph is replaced and the ID then used to open accounts etc., payment of which the original identity holder is responsible for.

White-collar crime

A series of premeditated crimes perpetrated in sophisticated financial environments by an individual or group of individuals with the intention of

making a misrepresentation which may prejudice another person or company.⁵

4.2 Causes of corruption and democracy

Corruption is a phenomenon that takes place due to the presence of a number of factors. The causes of corruption are as varied as the phenomenon itself. Corruption results from the presence of a number of factors. Due to different causes various typologies have been made through contributory factors. The factors require a kind of general framework for a clearer understanding of the causes of corruption. Corruption can be explained by looking at three levels: macro, meso and micro institutional levels⁶.

On the first, the macro level, there are the elements which belong to the community where the corruption occurs. People are inevitably influenced by the overall social context in which they live and work. Several elements are present on this level. One element is the development of the administrative culture. The starting point is that corruption will increase when there is more opportunity to be corrupt and when there are larger interests at stake. Concretely, this means that corruption increases either because there are more contacts between the public office and citizen or because the public office has more power. A second element is the lack of coherence and transparency of legislation; because of too much and too complex legislation, nobody knows what they must adhere to. This causes the norms to become blurred which leads to corruption. A third element is ethical concepts. Some say that the increasing individualism, the diminishment of the feeling of citizenship and the growth of materialism are leading to corruption.

On the second level, the meso level, the elements are those which assume the direct professional environment. There is need for clarity and transparency of the rules of the organisation. Further, organisational structures and culture are possible causes of corruption. An example of a problem within the organisational structure is a bad separation of functions, so it is unclear who is responsible. Examples of problems within the organisational culture are a bad working environment; a lack of encouragement of personnel; placing too much faith in people lower down in the hierarchy, etc.

Finally, on the third level the causes are found in individual situations. Some people are more open to corruption than others. Moreover, one can be in specific personal circumstances which invite corruption. The moral conviction of the person can also be at play.

⁵ www.anticorruption.be, consulted on 25th February 2007

⁶ T. Vander Beke, T. Carion, B. De Ruyver, Een geïntegreerd anti-corruptiebeleid voor België.

As there are many possible causes of corruption it would be impossible to detail every one of them. In this following section, topics on corruption will be explained: a global overview of the causes of corruption, corruption and democracy and political and administrative corruption.

Global overview of the causes of corruption

Corruption is perceived to be more widespread in some countries than in others. Corruption is associated with particular historical and cultural traditions, levels of economic development, political institutions and government policies. It is often said that corruption is a symptom of an ailing economy and bad governance. Corruption has been blamed for the failures of certain 'developing' countries in their inability to develop. Recent research confirms a link between higher perceived corruption and lower investment and growth.

Economic causes

Corruption is not an independent problem; it is more an underlying symptom. There are six important economic causes which stimulate corruption⁷:

- Corruption as a market mechanism: the government assigns scarce advantages to individuals or companies on the basis of criteria other than the payment for the service. Corruption functions here as a market mechanism. For example, the assignment of land or currencies at prices that do not conform to market prices.
- Corruption as a salary (supplement): civil servants are paid too little to do their work well. Corruption serves as an extra payment to the salary.
- Corruption as cost-reducing instrument: people and companies want to reduce their costs (for example taxes or levies) and avoid government rules. Corruption reduces the costs for those paying the costs.
- Corruption as a political instrument: the government assigns large financial advantages to private companies through contracts, privatisation and concessions. Corruption determines the level of monopoly and the division of these advantages between private investors and civil servants.
- Corruption as a political instrument: corruption replaces legal forms of political influence and manipulates the political system. Bribed politicians gain more power and thereby more votes.
- Corruption to influence the jurisdiction: the judicial system has the power to arrange costs and transfers of funds between interested parties. Corruption may predominate/influence? the legislation.

⁷ <http://www.parbo.com/information/corruptie.html>, consulted on 19th February 2007

Corruption and democracy

Corruption occurs less dramatically in countries with a democratic political system than in countries with a more authoritarian political system. However, introduction of democratic institutions is not sufficient to reduce corruption in less democratic countries. Economic and social developments are necessary and only when a democracy has reached a certain level can the democratic institutions contribute to a reduction in corruption.

Figure 1 shows the connection between corruption and democracy. The vertical axis illustrates the degree of corruption and fraud: 1 indicates that corruption and fraud occur to a high degree, 7 indicates a total absence of corruption and fraud. The horizontal axis illustrates the degree of democracy: 2 means very democratic, 15 is very undemocratic.

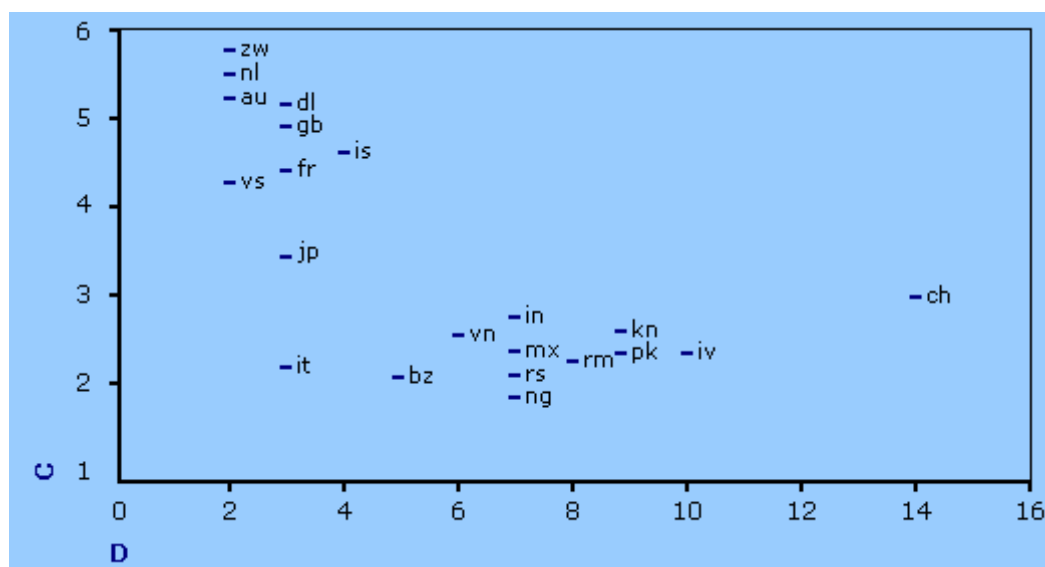


Figure 1: connection between corruption and democracy⁸

What does the graph tell us? The fact that there is not a linear relationship counters the assumption that the degree of corruption will decrease automatically when a country is in a democratisation process. The graph illustrates that when a country is very undemocratic at the beginning of a democratisation process, it is more probable that an increase in the level of corruption will take place at first. If the process continues, a decrease in the degree of corruption and fraud can be expected.

In spite of the nuances in the previous paragraph, there is a clear relationship between corruption and democracy. It can be said that in most democratic countries the degree of corruption will be lower than in countries that are less democratic. This can be explained in a number of ways. In undemocratic countries there is usually no clear separation between

⁸ <http://www.bestuurskunde.be/publicaties/bestuurskunde.php?artikel=1998,,7,4,1>, consulted on 19th February 2007

powers, which results in politics dominating the administrative field or vice versa. When politics dominates bureaucracy it can lead to political rulers using administrative rules, public organisations, appointment of governors and promotion of civil servants as their own political and economic resource. In such a situation a non-corrupt civil servant is rapidly labelled as an opponent of the political regime, whereas a corrupt civil servant is deemed more cooperative. Also if bureaucracy has the upper hand in politics, corruption will be promoted. Many South American countries experience this. A strongly politicised bureaucracy has taken the task of political balanced interests. The enormous scope of the monopoly position of bureaucracy, which goes together with excessive legislation, also forms a good breeding ground for corruption. Furthermore, more authoritarian political systems are generally characterised by a symbolic relationship between the political and economic power where a political function is a condition in obtaining economic wealth. Finally, in non-democratic countries there is a lack of essential freedom, such as freedom of expression, the right to have opposition parties and a free press which makes it very difficult to make corrupt practices public

Although there is a clearer separation between the political and administrative fields and more respect for political rights in countries with a democratically elected leadership, corruption promoting or corruptive factors are still present. The existence of a multiplicity of requirements by numerous groups in the political system means that the chances of neglecting certain groups are greater. This can generate political cynicism or corruption. A possible consequence is that citizens become disinterested in politics or apathetic voters and become more concerned about the personal graces they can obtain by voting. Another corruptive factor in a democracy is the large concentration of resources that the government has at hand and possible political balanced? interest by the public office. Sometimes these corruptive factors are present and often to a higher degree in non-democratic countries.

The following factors explain corruption both in democratic and non-democratic countries: lack of involvement of political leaders; bad management and bad organisation; lack of control and supervision; strong mutual solidarity between corporate interests, politics and government; and values and standards with respect to government officials and organisations. Certain factors have a significantly greater importance for non-democratic countries than democratic countries: economic problems such as recession and inflation; an increase in organised crime; low salaries in the public sector; strong mutual solidarity of political and administrative apparatus; social inequality; and strong family links and obligations. One

factor is more important for democratic countries: culture (values and standards) in the public sector.

Theorists hold different opinions on whether there is a negative relationship between democracy and corruption. The above theory is just one voice in the whole debate. Some theorists claim the inverse. One theory explains how democratisation provokes corruption. It says that for a number of reasons, the risk of exposure may also be higher in more democratic, open political systems. Greater civic engagement may lead to closer monitoring. In democratic systems, competitors for office have an incentive to discover and publicise the incumbent's misuse of office whenever an election beckons. Exposure may also be more likely in economically developed countries. Besides its apparent impact on democracy, economic development increases education, literacy, and depersonalised relationships, each of which should raise the odds that an abuse will be noticed and challenged.

Political and administrative corruption

Corruption in the public services is extensive. Several phenomena which generate corruption within the public sector will be explained, respectively client relationship; administrative ignorance, impotence and uncooperativeness; multi-party; affairism and lobbyism; decided decision-making; uncontrolled power implementation; unsolved problems and loss of elasticity in democracy. Corruption scandals can be explained through these phenomena.

Client relationship

In the political system client relationship occurs where parties and politicians try to bind voters by granting them so-called graces. In exchange for political support those in power give favours to the population. Client relationship (between politicians and citizens) is a source of unequal treatment, injustice and all kinds of corruption. In this system, access to certain collective goods such as social housing, jobs, benefits and government contracts are often obtained via politicians. Politicians want to win over the citizens. Client relationship is an attempt at political customer binding.

Administrative ignorance, impotence and uncooperativeness

This phenomenon coincides with the client relationship. The fundamental reason why Belgian citizens have been served so badly by their public authorities is the uncooperativeness of generations of politicians. The citizens were not able to enjoy a smooth and equal access to administration as should be expected in a normal democracy. A typical characteristic of the administration is that it suffers a lack of decision-making power. The cor-

ruption and the arbitrariness of the decisions keep the administration bound to a decisions procedure. In an administrative system the decisions are imposed, the best civil servant is consequently the most loyal civil servant. They work in a professional culture where avoiding errors is more important than showing initiative. The public service is under pressure and civil servants are going through a process of change. New circumstances must be taken into account. Rules and procedures can make civil servants act too strictly when they have to deal with ethical dilemmas. When decision space is too large, it can create arbitrariness. To avoid this, both measures must be combined. Sufficient rules and procedures are necessary, but these must give a minimum of decision space to civil servants.

Multi-party

This phenomenon belongs to the political parties and interest groups in government. It leads to a weak state, which is no longer respected. These power networks serve all kinds of interests and have right of way on the public interest. They make their own rules, or they succeed in putting off annoying legislation, or they get round legislation or they do not take legislation into account. The impact of multi-party is illegal favours and corruption.

Affairism and lobbyism

Two other phenomena that narrowly coincide with multi-party are affairism and lobbyism. All kinds of lobbyists try to regulate small matters to a large degree with the parties in power. They prefer to do this with the strongest party, which always or almost always holds the power.

Decided decision-making

After reading the above, few will be astonished that the real political decision-making and the real power exercise takes place within a small group of people. Thereby they do not tolerate snoopers and certainly not somebody from parliament, nor from justice or from the media. One barely notices the fundamental decision-making and power exercise in the public forum.

Non-controlled power implementation

Justification and control are the cornerstones of democracy. The legislative and judicial powers control the executive power insufficiently. The government and parliament barely control the judicial power. Such a degree of non-controlled executive power leads to the arrogance of those in power, especially of parties and politicians that govern almost continuously. Such arrogance is also noticed in the judicial power. As long as the judicial

power and politicians are able to continue their actions without controlling each other, complaints and certainly those that concern the executive power and the judiciary are going to take an extended amount of time. Neither politicians nor judges are able to tackle their problems. In a normal democracy the judiciary and executive should control each other and point out each other's mistakes.

Unsolved problems

The political system fails in several areas. Cases appear to get bogged down and large problems never get solved unless they lead to a heavy and open crisis.

Loss of elasticity of democracy

Treating democracy in an arbitrary way too frequently is likely to lead to a loss of elasticity of democracy. In such a situation politics are necessary and a larger political debate is imperative. However the opposite situation is noticed as citizens dissociate themselves from the political and public forum where the real power is present. Those citizens inform themselves less.

4.3 Corruption from a psychological point of view

The phenomenon that is indicated with the term corruption is like a prism with many faces. Thus we can consider it from different perspectives such as philosophical, ideological, criminal, civil, ... or as we will in this chapter, from a psychological perspective.

The core of corruption is not the theft from the cash register, but rather the decay of the decision-making process. What does such decay mean? A decision-maker in a private organisation or in public service is considered to make a decision on the basis of impartial criteria. A stakeholder tries to illegally influence those criteria: s/he promises something on the condition that the decision-maker leans towards her/his interests. What or how s/he promises is irrelevant. The honesty and impartiality of the decision-making process is considered to have decayed. This interpretation appears to be the largest common denominator in most of the literature on this subject. Of essential importance is the expected favour in return, which takes the place of the impartial criteria. Service and service in-return-for have an exchange relationship (Van Duyne, 1994).

We will look more deeply into this essential part of the decay in the decision-making process. Why do decision-makers give such favours in return? Why does a service from one person require a service in return from the other? Apart from the obvious reason of personal economic gain, there is also a huge psychological reason why people, usually subconsciously,

become influenced by other people. Robert B. Cialdini, a Resident Professor of Psychology at Arizona State University, speaks of *reciprocation* as the main factor. Before we examine that, we firstly need to look at another concept that Cialdini calls *click-whirr* in order to fully understand the above idea.

Click-Whirr

Cialdini describes how both animals and humans have a built-in automatic response to stimuli called fixed-action patterns activated by a trigger feature. He characterises these automatic responses with the phrase *click-whirr*: Click and the appropriate tape is activated, whirr and out rolls the standard sequence of behaviours (Cialdini, 2001). A good illustration was given by a professor some years ago. He mailed some Christmas cards to absolutely unknown individuals. Although he only expected a couple of reactions, the amount of cards he got back was amazing. The majority of people who sent a card back never asked for the identity of the unknown professor (Kunz & Woolcott, 1976). They received his card, *click*, and *whirr*, they automatically sent one back.

While these behaviours can look foolish when they are tricked during experiments, they usually perform a useful function most of the time: they save us time when making snap decisions; they are usually necessary shortcuts. The drawback of such fixed-action patterns is that they can lead to unwise mistakes, especially when other individuals try to take advantage of the situation by illegally manipulating trigger features and thus corrupting the situation (Cialdini, 2001).

Reciprocation

Possibly one of the most potent compliance techniques is the rule of reciprocation, which prompts us to repay what someone has given us. When we are given a gift, we feel indebted to the giver, often feel uncomfortable with this indebtedness, and feel compelled to cancel the debt...often against our better judgment. The rule of reciprocation is widespread across human cultures, suggesting that it is fundamental to creating interdependencies on which societies, cultures, and civilizations are built. In effect, the rule of reciprocation assures that someone can give something away first, with the relative assurance that this initial gift will eventually be repaid... nothing is lost (Cialdini, 2001).

So important is this principle for building trusting relations that it has been internalised as part of the socialisation process for millennia and is now second nature. The rule of reciprocity is considered to be a defining element of what it means to be human: "*We are human because our ancestors learned to share their food and their skills in an honoured network of*

obligation" (Leahey & Lewin). Other cultural anthropologists argue that this web of indebtedness is the foundation of such diverse human practices as the division of labour, exchange of goods and services, evolution of experts, and other interdependencies that connect humans into more efficient cooperative units. As a result, we are trained from an early age to comply with the rule of reciprocity (Cialdini, 2001).

The rule is so powerful it can overcome our feelings of dislike or suspicion for the person who gives us a gift. It is not required that we have requested a gift or favour for the rule to be engaged, it can be given uninvited. The rule can trigger unequal exchanges when the combination of internal discomfort over the indebtedness and the fear of external shame and judgment threaten to exact their costs. We will often give back more than we receive to ensure that we are not subject to these combined psychological costs. Cialdini cites the example of women who allow men to buy drinks for them in bars, and then feel obligated to have sex in return (Cialdini, 2001).

Case study

When a man buys women drinks, we will of course not accuse him of corruption, although it is not different from the person who tries to influence the decision-maker. The idea is that the decision-making process of both the women and the decision-makers are undermined. Service and service in return have an exchange relationship, now psychologically backed-up by the rule of reciprocation. Let us take a look at an example which will clarify this further. The article below was published some months before the Belgian city council elections of October 2006.

Vlaams Belang was handing out free window and door alarms in the build-up to the city council elections. In that way the political party wanted to emphasize its election campaign '*Your security, our priority*'. The party made 80,000 gadgets in a special wrapping showing its campaign slogan and party name. The free window and door alarm could be picked up free when one went to the local secretarial offices or could be sent to you by mail.

The party leaders did not present the election campaign for the coming elections until the following day. The news was however leaked out prematurely through *Vlaams Belang*'s local newsletter which had already been sent to its subscribers in Leuven.

Giving out gadgets and gifts during election campaigns has been prohibited in Belgium since 1989. This rule is in effect for the three months before each election. The gadgets did not cost more than one euro apiece (Belga).

It is possible that Vlaams Belang really is concerned with the security of those 80,000 people. From an ideological point of view, we can only welcome such noble deeds. If we look at the timing of this noble action we can see that there is more at stake than just the security of those families. Remember that the core of corruption is not the theft from the cash register, but it is the decay of the decision-making process. Vlaams Belang hands out free gifts, *click*, and *whirr*, the voter is automatically influenced by the rule of reciprocation. Its impartial decision-making process has been decayed. Of course Vlaams Belang is not the only party that uses this tactic, which is why since 1989 there has been a prohibition of handing out free gifts and gadgets. However, “small gifts are not illegal, when, on the one hand, those distributions are not limited to a weak, compliant group of voters and, on the other hand, the gadgets are of little value.” (Counsel of State, 1995). After fully understanding the power of the rule of reciprocation, Cialdini stresses that even the smallest gift or a gift of no significant value triggers the rule.

It is not only elections that are dominated by the rule of reciprocation. In the wide political battle arena we see the rule at its best. If a representative gives an unusual vote for a bill, we can often interpret that as a favour or as a service in return. From the big lobby groups and the mighty private organisations that give millions of euros to influence the decision-making process at its highest level, to my neighbour who buys dinner for his friend the council member so that he will ‘look deeper into the fact that his street needs some repair’, they all understand the working of the rule of reciprocation. You give, you take... and you undermine the decision-making process. The reason why it is so powerful is that it is almost invisible, even to the person who is influencing the decision-making process and thus is ‘corrupting’. It is not as obvious as giving someone money so s/he acts as you want. It is powerful because it is so strongly embedded in our society.

4.4 Corruption measurement

In this paper we have already seen the different meanings and forms of corruption, but how can we measure corruption? In management courses it became clear that a lot of difficulties can arise when attempting to measure something and especially in the public sector. In this part of the paper we will firstly take a look at the difficulties that can appear with indicators that have to measure corruption. Secondly, there will be an enumeration and explanation of the corruption-indicators. This part of the paper ends with a conclusion.

Perceptions of corruption does not measure the reality

While looking for information on the internet, it became clear that there is a lot of discussion taking place about this topic. The public management institute in Flanders has done research to demonstrate the dangers of the indicators. The results indicate that opinions on corruption in Flanders are frequently based on the position of the government. The Public Management Institute found that most of the indicators for corruption measure perceptions and not the real value of corruption. This includes a dangerous aspect in the measurement of corruption. The opinions of citizens about corruption in the public sector are strongly influenced by their overall position towards the government. This means that the results are not based on specific results but rather on the image of the government, based on the feelings of the citizen.⁹

The corruption-indicators

A report by The Public Management Institute helped look at the different indicators of corruption. This report was written by Steven Van de Walle who is a researcher at the Catholic University of Leuven. In this report, the author gives an outline of corruption in government in numbers. The different indicators he uses are included in this paper as the corruption-indicators. The eight different indicators are presented below.

Corruption Perceptions Index

The Corruption Perceptions Index or CPI is possibly the most important source of information in measuring corruption. The annual Corruption Perceptions Index (CPI), first released in 1995, is the best known of Transparency International's tools. It has been widely credited with putting Transparency International and the issue of corruption on the international policy agenda. The CPI ranks more than 150 countries as determined by expert assessments and opinion surveys.¹⁰

The CPI from Transparency International ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, drawing on corruption-related data in expert surveys carried out by a variety of reputable institutions. It reflects the views of businesspeople and analysts from around the world, including experts who are resident in the evaluated countries.

At the beginning of this paper it was stated that corruption has many definitions. While CPI is seen as the most important corruption-indicator it

⁹ http://www.aps.vlaanderen.be/survey/archief/2005-05_corruptie.htm, consulted on 20.2.2007

¹⁰ <http://www.transparency.org>, consulted on 20th February 2007

is useful to see which definition of corruption the CPI uses. The CPI focuses on corruption in the public sector and defines corruption as the abuse of public office for private gain. The sources do not distinguish between administrative and political corruption nor between petty and grand corruption.

One has already been warned about the dangers of corruption indicators. On the question of whether CPI is a reliable measure of a country's perceived level of corruption, the following answer was found. In terms of perceptions of corruption, the CPI is a solid measurement tool. The reliability differs, however, from country to country. Countries with a low number of sources and large differences in the values provided by the sources (indicated by a high standard deviation) convey less reliability as to their score and ranking.

Bribe Payers Index

Another Transparency International index is the Bribe Payers Index. This index gives the degree in which companies act corruptly while investing in new economies. What is the difference between that and the CPI? While the CPI indicates the overall levels of corruption in countries, the BPI focuses on the propensity of firms from leading export countries to bribe abroad – creating the 'supply side' of corruption. The BPI therefore underlines the point that corruption in international business transactions involves those who give as well as those who take. The most recent Bribe Payers Index was published in 2002.¹¹

Control of Corruption indicator

In the World Bank's governance dataset, a Control of Corruption indicator is included. As in Transparency International's CPI, this indicator is composed of a wide series of subjective indicators such as surveys. The difference between CPI and Control of Corruption indicator lies in the number of used data resources and method of aggregation.¹² The World Bank aggregates governance research indicators for 213 countries on 6 dimensions of governance, namely voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law and most important for this paper, the control of corruption. Control of corruption is a measure of the extent of corruption, conventionally defined as the exercise of public power for private gain. It is based on scores of variables from polls of experts and surveys.¹³ The World Bank also explains

¹¹ <http://www.transparency.org>, consulted on 20th February 2007

¹² Van de Walle, S., *Corruption with the government in numbers*, (2004)

¹³ <http://www.info.worldbank.org>, consulted on 20th February 2007

why subjective measures are used as opposed to objective indicators. The primary reason for this choice is that for many of the key dimensions of governance, such as corruption, objective data are almost by definition impossible to obtain, and so there are few alternatives to the subjective data on which we rely.¹⁴

Global Competitiveness Report

The Global Competitiveness Report is set up by the World Economic Forum and is taken up in the World Competitiveness Yearbook of the International Institute for Management Development.

The first three indicators discussed above are about citizens being asked for information. In this indicator, managers are being asked about their perceptions of corruption. These opinions are taken into consideration in order to compose the Global Competitiveness Report.¹⁵ The Global Competitiveness Report was first published in 1979. It is the most comprehensive and authoritative assessment of the comparative strengths and weaknesses of national economies used by governments, academics and business leaders. What does it measure? The Global Competitiveness Report assesses the ability of countries to provide high levels of prosperity to their citizens. The Global Competitiveness Index measures the set of institutions, policies and factors that set the sustainable current and medium-term levels of economic prosperity.¹⁶

European Social Survey

This indicator is based on a survey taken in 22 European countries. The questions in this survey are based on 4 different aspects of corruption. The first aspect deals with the confidence of citizens that public officials treat people honestly. The second aspect is personal experience with a public official who has asked for a favour or money in order to undertake a service in the last 5 years. Thirdly, there is the degree to which one experiences a negative personal conflict with this kind of behaviour. Lastly, the countries are asked about the appearance and frequency where citizens themselves offer a favour or money to a public official in order to receive a service. This indicator covers a wide range of acts and attitudes inclining towards corruption.¹⁷ The European Social Survey (the ESS) is an academically driven social survey designed to chart and explain the interaction between Europe's changing institutions and the attitudes, beliefs and behaviour patterns of its diverse populations. Now in its third round, the

¹⁴ <http://www.info.worldbank.org>, consulted on 20th February 2007

¹⁵ Van de Walle, S., *Corruption with the government in numbers*, (2004)

¹⁶ <http://www.weform.org>, consulted on 20th February 2007

¹⁷ Van de Walle, S., *Corruption of the government in numbers*, (2004)

survey covers over 20 nations and employs the most rigorous methodologies.¹⁸

HDI versus CPI

The connection between corruption and development for the 25 European countries is also an indicator for corruption. The perception of corruption declines when human development increases. The HDI is stable on a certain level, whereas there are still strong differences in the perception of corruption occurring, so there certainly is a connection between the two indicators, but only to a certain level. From a certain level of development it is not possible to explain the differences in corruption based on the level of development. There are two reasons for this: firstly, the economic and human development is held up by corruption. The second fact is that low economic development can stimulate corruption in a country.¹⁹

Number of legal cases

The phenomenon of corruption can also be indicated by the number of legal cases of corruption. However, this indicator measures only the discovered or illegal corruption.²⁰

International Crime Victim Survey

This is one of the few indicators that measures corruption personally experienced rather than perceptions.²¹ The International Crime Victim Survey (ICVS) is the most far-reaching programme of standardised sample surveys to look at householders' experience with crime, policing, crime prevention and feelings of insecurity in a large number of countries.

There were two main reasons for setting up the International Crime Victim Survey. The first was the inadequacy of offences recorded by the police for comparing crime in different countries. The second was the absence of any alternative standardised measure.²²

Conclusion

The most important conclusion we can make here is that perceptions of corruption are not the same as real corruption. While citizens share the opinion that you need political support in a corrupt way to get somewhere, it does not necessarily mean that you actually need that support. Perceptions about corruption can also measure the image of the administration

¹⁸ <http://www.europeansocialsurvey.org>, consulted on 20th February 2007

¹⁹ Van de Walle, S., *Corruption of the government in numbers*, (2004)

²⁰ Van de Walle, S., *Corruption of the government in numbers*, (2004)

²¹ Van de Walle, S., *Corruption of the government in numbers*, (2004)

²² <http://ruljis.leidenuniv.nl>, consulted on 20th February 2007

through the personal experiences of citizens. Numbers about real corruption are missing. However it would be interesting to find out how many times the tax inspector is invited to lunch and so on. These actions do not necessarily imply unethical behaviour, but they would give us an indication how the standards and values stand towards corruption.²³

4.5 Effects of corruption

Corruption has a number of adverse consequences. In particular, recent empirical evidence suggests that corruption lowers economic growth, it can undermine the political legitimacy of the state, it affects the poor, it creates inequities... In this chapter, we explain the different effects.

Damaged political legitimacy

Systemic corruption undermines the legitimacy of governments, especially democracies. Citizens may come to believe that the government is simply for sale to the highest bidder. The principles underlying democratic political systems presume that governments are accountable to their citizens, that they administer laws equitably and fairly, that their actions are transparent, and that all citizens have access to the political process. As a result, political scientists have long assumed that political systems that fail to live up to these promises are likely to be plagued with low levels of legitimacy.

How does corruption influence people's attitude toward the existing political order? When corruption is present, democracy's tenets of procedural and distributive fairness become a myth; this, in turn, is likely to diminish the legitimacy of democratic political institutions. The idea that corruption has a negative impact on people's views of their government is open to both theoretical and empirical challenge.

Mishler and Haerpfer's cross-national study of nine central and eastern European countries found that higher levels of corruption were associated with lower levels of support for the regime and a decreased likelihood that people would reject undemocratic alternatives. Similarly, Mishler and Rose's study of political trust across 10 east-central European states found that higher levels of corruption were related to lower levels of political trust.

Also, in a study by Christopher J. Anderson and Yuliya V. Tverdova of Binghamton University, they examine how corruption affects people's attitude toward government. This study investigates one feature of modern democracy – corruption – that systematically undermines democratic principles and, as a result, diminishes people's faith in the political process. They argue that corruption is an important indicator of the performance of

²³ Van de Walle, S., *Corruption of the government in numbers*, (2004)

a political system and shows that high levels of corruption reduce citizen support for democratic political institutions across mature and newly established democracies around the globe. Moreover, they hypothesize and show empirically that the negative effect of corruption on people's beliefs about government is filtered through voters' political allegiance. Building on the insight that those who voted for the incumbent government are more likely to evaluate the performance of political institutions positively, we find that corruption has less of a corrosive effect on people's evaluation of the political system's performance among supporters of the government than among those who oppose it.

Christopher J. Anderson and Yuliya V. Tverdova also posit that the effects of corruption on attitudes toward government are strengthened or weakened depending on whether people have a stake in the existing political regime and the maintenance of the status quo. This expectation emerges from a growing number of studies, which show that citizens who identify with or voted for a governing party are predisposed to evaluate the government's performance positively and to be more supportive of the political system.

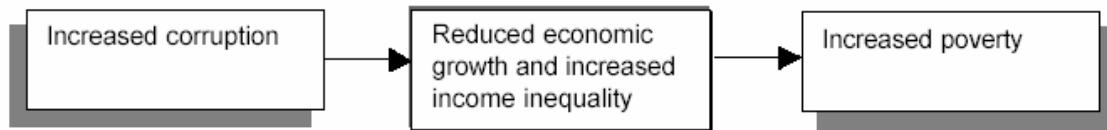
Inequalities

Popular belief suggests that corruption and poverty are closely related in developing countries. Corruption in the public sector is often viewed as exacerbating conditions of poverty in countries already struggling with the strains of economic growth and democratic transition. Alternatively, countries experiencing chronic poverty are seen as natural breeding grounds for systemic corruption due to social and income inequalities and perverse economic incentives.

The burden of petty corruption falls disproportionately on poor people ... For those without money and connections, petty corruption in public health or police services can have debilitating consequences. Corruption affects the lives of poor people through many other channels as well. It biases government spending away from socially valuable goods, such as education. It diverts public resources from infrastructure investments that could benefit poor people such as health clinics, and tends to increase public spending on capital-intensive investments that offer more opportunities for kickbacks, such as defence contracts. It lowers the quality of infrastructure since kickbacks are more lucrative on equipment purchases. Another negative effect is that money collected for natural disasters does not reach the affected areas. Corruption also undermines public service delivery (World Bank, 2001: 201).

There is a model, the "economic model" which has emerged from the research literature, to describe the relationship between corruption and

poverty. This model postulates that corruption affects poverty by first impacting economic growth factors, which, in turn, impact poverty levels. In other words, increased corruption reduces economic investment, distorts markets, hinders competition, creates inefficiencies by increasing the costs of doing business, and increases income inequalities. By undermining these key economic factors, poverty is exacerbated.



The economic model

The literature shows an inverse correlation between aggregate economic growth and corruption; in general, countries with higher corruption experience less economic growth. Many of the studies reviewed for this paper address the channels through which corruption affects economic growth, for instance, through impacting investment and entrepreneurship, distorting markets, and undermining productivity. Furthermore, there is empirical evidence that corruption aggravates income inequality and is associated with slower economic growth. Finally, studies present evidence that as the rate of economic growth increases, the number of people above the poverty line tends to rise as well.

Corruption Impedes Economic Growth

The relationship between corruption and economic growth is complex. Economic theory supports the notion that corruption hinders economic growth in the following ways:

- *Corruption discourages foreign and domestic investment:* rent taking increases costs and creates uncertainty, reducing incentives to both foreign and domestic investors.
- *Corruption taxes entrepreneurship:* entrepreneurs and innovators require licenses and permits and paying bribes for these goods cuts into profit margins.
- *Corruption lowers the quality of public infrastructure:* public resources are diverted to private uses, standards are waived; funds for operations and maintenance are diverted in favour of more rent seeking activity.
- *Corruption decreases tax revenue:* firms and activities are driven into the informal or grey sector by excessive rent taking and taxes are reduced in exchange for payoffs to tax officials.

- *Corruption diverts talent* into rent seeking: officials who would otherwise be engaged in productive activity become pre-occupied with rent taking, in which increasing returns encourage more rent taking.
- *Corruption distorts the composition of public expenditure*: rent seekers will pursue those projects for which seeking is easiest and best disguised, diverting funding from other sectors such as education and health.

These theoretical propositions are supported by a number of empirical studies. They demonstrate that high levels of corruption are associated with low levels of investment and low levels of aggregate economic growth.

Corruption Exacerbates Income Inequality

Several studies have demonstrated a relationship between corruption and income inequality. The statistically significant results include:

- Higher corruption is associated with higher income inequality such that a worsening of a country's corruption index by 2.5 points on a scale of 10 corresponds to an increase in the Gini coefficient (worsening inequality) of about 4 points. Tests showed the same results for an average decrease in secondary schooling by 2.3 years, as an example of the significance of corruption.
- Even considering economic development, corruption appears to be harmful to income equality. Moreover, a test of directionality suggests that it is corruption that increases inequality and not the reverse.
- Corruption tends to increase the inequality of factor ownership.
- Corruption increases income inequality by reducing progression of the tax system, that is to say the impact of corruption on income inequality was shown to be higher after taxes.

How does corruption exacerbate income inequality? Evidence from diagnostic surveys of corruption in several countries suggests that corruption aggravates income inequality because lower income households pay a higher proportion of their income in bribes. In conclusion, the literature establishes clearly that corruption impedes economic growth and augments income inequalities. How does reduced economic growth, in turn, increase poverty?

Reduced Economic Growth Rates Increase Poverty

Studies have shown conclusively that income rises with economic growth and vice versa. It should be noted that economic growth does not necessarily lead to *more equal* income distribution; an increase in income may benefit the better off rather than bringing the poor out of poverty. Income

distribution seems to be an important moderating factor in the relationship between economic growth and poverty reduction.

4.5 The effects of corruption on investment and economic growth

Corruption has its adverse effects not just on static efficiency but also on investment and growth. A payment of bribes to get an investment license clearly reduces the incentive to invest. One might add that in the taxation system of many countries, negative profits (losses) can be deducted from taxable investment income, but there is no corresponding loss offset in the case of bribes, so that the latter are particularly harmful for risk-taking in the context of innovation. Similarly, when public resources meant for building productivity-enhancing infrastructure are diverted for politicians' private consumption (cement for public roads or dams used for luxury homes) growth rates will obviously be adversely affected.

Another growth effect follows from the fact that higher bribes imply declining profitability on productive investments relative to rent seeking investments, thus tending to crowd out the former. As Kevin Murphy, Shleifer, and Vishny (1993) point out, there are many reasons why there are increasing returns to rent seeking, so that an increase in rent-seeking lowers the cost of further rent-seeking relative to that of productive investment. In general when there is slow growth the returns to entrepreneurship (particularly in production of new goods) fall relative to those of rent-seeking, and the ensuing increase in the pace of rent-seeking activities further slows down growth. Besides, innovators are particularly at the mercy of corrupt public officials, because new producers need government-supplied goods like permits and licenses more than established producers. In any case, as Romer (1994) has suggested, corruption as a tax on ex post profits may in general stifle entry of new goods or technology which require an initial fixed cost investment. Some of these growth effects have been statistically corroborated from cross-country data. On the basis of corruption rankings data assembled from the Business International correspondents in 70 countries in the early 1980s, Paolo Mauro (1995) finds a significant negative association between the corruption index and the investment rate or the rate of growth. A one-standard-deviation improvement in the corruption index is estimated to be associated with an increase in the investment rate by about 3 percent of GDP. The negative relation seems to hold even in sub samples of countries where bureaucratic regulations are reported to be cumbersome, indicating that corruption as a way of bypassing these regulations may not have been very beneficial. Historians, of course, point to many cases when a great deal of corruption in dispensing licenses, or loans, or mining and land concessions has been associated with the emergence of an entrepreneurial class. In European history the latter

class grew out of the sales of monopoly rights, tax farms, and other forms of privileged access to public resources. In the U.S.'s "gilded age" of 1860s and 1870s widespread corruption of state legislatures and city governments by business interests and those seeking franchises for public utilities is reported to have helped rather than hindered economic growth. More generally, corruption may have historically played some role in undermining the sway of collective passions that used to fuel internecine group warfare.

What about the effects of the growth process on the extent of corruption? Although the requisite time-series evidence in terms of hard data is absent, circumstantial evidence suggests that over the last 100 years or so, corruption has generally declined with economic growth in most rich countries (and in some developing countries, like Singapore, it is reported to have declined quite fast in recent decades). While the historical relationship between economic growth and corruption is thus likely to have been negative in general, it is possible to envisage some non-linearities in this relationship: in particular, in some countries with the process of modernisation and growth, corruption may have got worse for some time before getting better. What kind of forces work toward possibly increasing corruption at the earlier stages of economic growth? As the economy expands and becomes more complex, public officials see more opportunities for making money from their decisions, which now go beyond simple functions like maintaining law and order and collecting land revenue. As the markets in many new products are "thin" for quite some time, this gives scope for those officials to milk the process of granting monopoly rights and franchises. In the process of transition from controlled to market economy in Eastern Europe, China, and Vietnam it has often been observed that there are some special factors increasing corruption even as income grows. For a considerable period of time the transition economy is on a dual-track system: a part of output is still under obligatory delivery at controlled prices, while the rest is allowed to be sold at market prices. This creates all kinds of new opportunities for corruption. Yet, it is probably correct to say that the process of economic growth ultimately generates enough forces to reduce corruption. Rewards to entrepreneurship and productive investment relative to rent-seeking investment, rise when there is sustained growth. A prospering economy can also afford to pay its civil servants well, reducing their motivation for corruption. To the extent that prosperity in the long run brings more demand - at least on the part of the middle classes - for democratic reforms, the latter may install institutions that check corruption. Not merely is the coordination problem in bribe-collection among legislators rendered more difficult under democracy, as we discussed at the end of the preceding section, but, more importantly, democratic institutions build

mechanisms of accountability and transparency at different levels which make it difficult for the networks of corruption to be sustained for long. A qualifier to this argument relates, as we have previously noted, to campaign finance in democratic elections which leads to influence peddling on the part of politicians. Thus while rich democracies have been quite successful in better enforcement of laws, they have in some cases been less successful in reducing the influence of money on the process of the enactment of those laws.

Inefficient government contracting and privatisation

When payoffs are commonplace, government contracts, privatised firms, and concessions may not be allocated to the most efficient bidders. One might, however, argue that the most efficient firm can pay the highest bribe. This will not be so if the firm happens to be scrupulous. Corruption favours those with no scruples and those with connections over those who are the most productively efficient. Although there is no necessary relationship between honesty and efficiency, the need to pay bribes is an entry barrier. Only those who already have a close trusting relationship with government officials and politicians may enter the bidding. Officials may refuse to deal with those they do not know for fear of exposure. Furthermore, the high briber may expect to make payoffs, not just to win the contract or the privatisation auction but also to obtain inefficient subsidies, monopoly benefits, and regulatory laxness in the future.

Corruption introduces other inefficiencies into government contracting. Projects may be too large and too numerous if bribe revenues increase with the dollar volume of procurement. They may also be more complex than necessary since corrupt payments are easier to hide if projects are one-of-a-kind. An experienced World Bank official mentioned that complaints about ‘inappropriate capital-labour ratios’ in evaluation reports were often a way of flagging corrupt deals. Quality may suffer if contractors make payoffs in order to be allowed to skimp on quality.

In privatisations, there is a subtle reason why the most corrupt firm will not necessarily be the most efficient. A corrupt bidder with good access to insiders may persuade officials to bankrupt or badly manage a parastatal organisation so its value is lowered in the subsequent sale. This tactic will make it difficult for outsiders to evaluate the company, and more of the benefits will go to the successful bidder – who is also an insider – than to the government.

The efficiency costs of corrupt privatisations will be especially high if the winning bidder has to actually operate the company for a time. If the winner can sell out to a more efficient competitor, it can cheat the state from some of the gains of privatisation, but the privatised firm will eventu-

ally be operated efficiently. An inefficient corrupt firm might not sell out, however, if it can continue to use payoffs and connections to gain illicit advantages in the future.

Inefficient use of corrupt payments

Illicit funds may be used for consumption by top bureaucrats, invested in legitimate businesses at home or abroad or diverted into illegal businesses. Payoffs are more likely to be diverted into illegal activities or foreign bank accounts than other funds because they are already illegal and must be kept secret. Of course, if bribes are paid out of a multinational's profits, the diversion of bribes abroad may have marginal effects on society. The bribe is just a transfer from the excess profits of the contractor to public officials. This is not a general result. Bribes may be paid out of profits that are themselves inflated because of the corrupt nature of the transaction. Then the export of bribes is a form of capital flight that is likely to be costly for a nation's citizens. The net cost of such transfers, of course, depends on whether other capital investment comes in to take its place. If capital markets were perfect, funds from international investors would replace any inefficiently exported corrupt payments, but, especially in the developing world where knowledge of local conditions is likely to be valuable, the assumption of perfect capital markets does not seem warranted.

Conclusion

The fight against corruption is a need of which a lot of countries are aware. Corruption means a serious threat to the rule of law, democracy, the economy, poverty etc. To avoid these negative consequences of corruption for individuals, ventures and governments, it must be tackled on a basis of international cooperation.

4.6 Dealing with corruption

Whistle blowing

The first way to deal with corruption is so-called "whistle blowing". To make things clearer, we'll take a closer look at the specific description of a whistle blower; the person who takes action and actually participates in the process of whistle blowing. Secondly the difference between blowing the whistle and making a complaint is clarified. Thirdly we look at the two most common types of whistle blowing, namely internal and external whistle-blowing. As a fourth topic the advantages and the disadvantages of whistle blowing are examined. Another theme that is mentioned is the usefulness of a whistle blowing policy and which points this policy should

make clear. We also take a look to see if it's possible to legally protect whistle blowers in Flanders.

Definition

A whistle blower is an employee, former employee, or member of an organisation, especially a business or government agency, who reports misconduct to people or entities that have the power and presumed willingness to take corrective action. Generally the misconduct is a violation of law, rule, regulation and/or a direct threat to public interest - fraud, health, safety violations, and corruption are just a few examples. As written, whistle blowing can occur in both private and public sphere.

Whistle blowers provide an early warning system that can alert their colleagues, employers or the public to danger or illegality before it is too late. They can be among the most loyal and public-spirited employees. Unfortunately, there are still some people who believe that "whistle blower" is a dirty word and do not realise how whistle blowing can save lives, jobs, money and reputations.

There are those who view whistle blowing narrowly and try to limit the impact of whistle blowing by arguing that so-called role-prescribed whistle blowing, for example whistle blowing done by quality control personnel or internal auditors, does not constitute whistle blowing in the traditional sense, because the purpose of the employment is to report such things.

Difference between blowing the whistle and making a complaint

In practical terms, whistle blowing occurs when a worker raises a concern about danger or illegality that affects others (e.g. customers, members of the public, or their employer). The person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequently, the whistle blower rarely has a personal interest in the outcome of any investigation into their concerns. As a result, the whistle blower should not be expected to prove their case; rather he or she raises the concern so others can address it.

This is different from a complaint. When someone complains, they are saying that they have personally been poorly treated. This poor treatment could involve a breach of their individual employment rights or bullying and the complainant is seeking redress or justice for themselves. The person making the complaint therefore has a vested interest in the outcome of the complaint and, for this reason, is expected to be able to prove their case.

Different types of whistle blowing

Taking a closer look at the different types of whistle blowing, two important types can be distinguished; the internal and external whistle blower. It can be said that any kind of misconduct may prompt whistle blowing, with the vast majority of cases based on relatively minor misconduct. The most common type of whistle blowers are internal whistle blowers, who report misconduct to another employee or superior within their company or agency.

In contrast, external whistle blowers report misconduct to outside persons or entities. In these cases, depending on the severity and nature of the wrong-doing, whistle blowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or to other local, state, or federal agencies. These external whistle blowers must think things over very carefully before they actually take action and make the move to blow the whistle. As they go outside their own organisation, the organisation can sustain serious damage when an employee acts thoughtlessly.

Advantages and disadvantages

It can be said that whistle blowing has both advantages and disadvantages. On the one hand, fraud comes to the surface and the people concerned can be addressed. In that way further fraud and misconduct can be prevented. The existence of whistle blowing in an organisation gives way to a certain social control within these organisations. If one had the feeling that there's a certain social control, the use of misconduct and fraud will be limited. A positive whistle blowing culture has numerous advantages. It:

- detects and deters wrongdoing;
- gets information to managers that they need to make decisions and control risk;
- demonstrates to stakeholders and regulators that the organisation is serious about good governance;
- reduces the chance of anonymous or malicious leaks (including to the media); and
- reduces the chance of legal claims against the organisation

On the other hand, there are also disadvantages. As previously mentioned, whistle blowing can lead to serious damage for an organisation. To avoid this situation, an (external) whistle blower must act rationally, without emotions. If not, the organisation can suffer serious harm. When whistle blowing is a current instrument in an organisation it can reduce confidence amongst colleagues and mistrust can rise. It is important to be aware that whistle blowing can be costly for an individual employee. Sometimes

whistle blowing can lead to colleagues isolating the whistle blower, but as we will see, in Flanders, whistle blowers are legally protected.

Whistle blowing policy, is it useful?

There are many reasons why it is in the interests of all organisations to establish and promote an effective whistle blowing policy.

A whistle blowing policy is a statement of an organisation's commitment to good governance and a guide for employees on how to raise a concern responsibly. It can help create an environment in which employees understand their responsibilities and management can demonstrate their accountability. Without such a safe alternative to silence, a concerned employee may feel their only other option is to say nothing or to disclose or anonymously leak information outside the organisation.

An effective whistle blowing policy will enable an organisation to find out when something is going wrong in time to take the necessary corrective action. It is not a means by which a disgruntled employee can wreak revenge by giving away trade secrets or hold their employer to ransom. A good policy encourages employees to raise concerns responsibly while making it clear that those who abuse the scheme by maliciously making untrue allegations will risk their jobs.

A whistle blowing policy should make the following points clear:

- The organisation takes malpractice seriously, giving examples of the type of concerns to be raised, so distinguishing a whistle blowing concern from a grievance.
- Staff have the option to raise concerns outside of line management
- Staff are enabled to access confidential advice from an independent body
- The organisation will, when requested, respect the confidentiality of a member of staff raising a concern
- When and how concerns may properly be raised outside the organisation
- It is a disciplinary matter both to victimise a bona fide whistle blower and for someone to maliciously make a false allegation ²⁴

Legal protection for whistle blowers

Ideas about whistle blowing vary widely. Some see whistle blowers as selfless martyrs for public interest and organisational accountability; others view them as “snitches”, solely pursuing personal glory and fame. The majority of cases are very low profile and receive little or no media attention

²⁴ www.pcaaw.co.uk, consulted on 20th February 2007

and whistle blowers who do report significant misconduct are usually put in some form of danger or persecution.

In Flanders, a whistle blower receives legal protection. The Flemish staff statute (VPS) has contained a passage since 25 January 2002, a result of which whistle blowers are legally protected. The VPS stipulates that 'a civil servant, except in cases of bad faith, personal advantage, wrong or false declaration which damages a service or a person, is not submitted to a punishment or another way of explicit or implicit sanction for the following reasons: that s/he indicates abuses or offences.' Therefore, a whistle blower cannot be dismissed, transferred or less well evaluated because s/he accuses the organisation of a failure.

If a civil servant is nevertheless sanctioned, s/he can lodge an appeal against this at the Social Security Appeals Tribunal. If a manager wants to tackle a whistle blower via an evaluation of her/his function, the person who blew the whistle can go to the second evaluator or s/he can add observations to the evaluation report or again lodge an appeal. When other forms of explicit or implicit sanctions or annoyances are mentioned the whistle blower can call in the aid of the public resources management employees. The trade unions can also offer support.

To conclude

We have seen that there can be different types of whistle blowers, namely internal and external. Both have advantages and disadvantages, and both internal and external whistle blower must think things over carefully when they actually blow the whistle. They must think rationally, not impulsively. Blowing the whistle is different from making a complaint. These principles are two different ways to tackle a problem within an organisation. As mentioned before, people who make a complaint are saying that they have personally been poorly treated. A person blowing the whistle is usually not directly personally affected by the danger or illegality.

A whistle blowing policy is undoubtedly useful in an organisation. This policy can be a form of guideline for both employees and employers if a case of misconduct occurs.

In Flanders, whistle blowers are legally protected when a person has actually blown the whistle. The employee cannot be dismissed. However, we must keep in mind that within an organisation, in a case of whistle blowing, the trust among colleagues can be reduced. That is why the previously mentioned whistle blowing policy in organisations is important.

Dilemma training

Today there are a lot of discussions about the integrity of the government and government employees. A lot of government corruption scandals have

been raised in the media and this led to a wider debate on corruption within the government. The government had to take action, which they did by organising training and education days. The government also worked on a code of ethics, a whistle blowing policy, dilemma training and risk analyses followed by structural measures. In this part of the paper we are going to further examine dilemma training.

We can see that the government is making changes in their way of working today. Employees are given much more freedom to make decisions themselves and therefore have much more responsibility. This causes problems for some people and corruption can appear faster. Those people who have problems with this newly gained freedom need to receive help. This is what the government's integrity policy is about.

In the context of a whole integrity policy there are multiple tools to help improve the ethical thinking of government employees. One of these tools is dilemma training or training in ethical decision making. An integrity policy is more than repression and control.

The primary aim of this training is to make employees familiar with ethical dilemmas so that their capacity for moral judgement is enhanced. By discussing different concrete cases with ethical dilemmas in interactive sessions the skills to deal with questions of integrity are practiced.

When all the participants come from the same organisation or department, the training can also be an important instrument in changing the culture of the department. When colleagues discuss integrity problems with each other within their own work environment, it can create a more open atmosphere and an opportunity to discuss those problems that would otherwise be forgotten.

In these training sessions ethical dilemmas are used, but what exactly are they? An ethical dilemma can be described as a situation where different values and norms are present and a choice has to be made from different alternatives. The difficulty however is that within each of the alternatives there are also good reasons, so it is not about choosing between something bad and something good but between different values and norms. You have to choose which of them are most important for you. Therefore, whatever you do or choose, there will always be a moral cost connected to your decision. The problem with these types of situations is that rules or intuitions do not give a solution; they can help but not in a direct way.

How does dilemma training work?

First of all it is important to point out administrative integrity so that participants know what the training is about. At the beginning of the training there are often mental barriers. Employees can have preconceptions about

dilemma training. They feel that it is a waste of time because the reality is much more complex and difficult. They also feel that their managers are the one's who should have dilemma training. All these prejudices have to be addressed at the beginning of the session so that the training can work as optimally as possible. Of course the reality is very complex, but dilemma training can only help you make good decisions. They have a learning effect that will help you to make future decisions faster. The answer to the other question is that it is important to organise the sessions in a top-down way so that the management knows what the employees are learning and because management have to make important decisions, it is critical that they know how to act soundly. Also, management has a function in acting as an example to staff so if they follow the sessions enthusiastically it will enhance the chances of effective training for employees as well.

Then the real dilemma training can begin. First of all there is a presentation of the values and standard framework. Values like legality and objectivity that are used in the organisation are discussed in this part of the session. For example, a civil servant cannot accept a gift of substantial value. The discussion about the values and standards can be very brief but it is necessary to make sure everyone sees the dilemmas through the same framework.

The next part of the training is the essential part. Here the step model is explained and then used in different cases. It is through taking the steps in this model that participants will try to solve the dilemmas. The purpose of the step model is twofold. A few of the steps have already been taken implicitly when confronted with a dilemma, but it can be useful to be explicit about these steps. By clarifying them, it is easier to improve on them. Also such a model helps structure the decision making process. It also structures the discussion on the dilemmas so that issues are not repeated and it also helps structure thoughts so that participants do not go round in circles.

A serious dilemma can evoke moral perplexity, people get overwhelmed with emotions, presumptions, considerations... Thus, it can help to arrange thoughts by means of the step model and therefore find a systematic way to solve the dilemma.

The step model we use is that of Terry Cooper, American Professor in the science of public administration. It is slightly adjusted for the training of federal, Flemish and local civil servants.

The best way to work with the step model is to use it with a concrete case study.

The Terry Cooper model

The model has five steps and we are going to discuss each of them briefly.

Step one is the objective description of the problem. The use of a fictitious example is more useful than one from the work environment. A real dilemma usually goes together with strong emotions, which can make it difficult to assess the problem objectively.

To clarify it all we will give a fictitious example of a dilemma that can occur in a government department.

You are Eric. Eric is a civil servant at a ministry with approximately 500 employees. The minister asks her/his subordinate to prepare a report that will be used for the new ICT policy. The minister has no specific political profile on this matter so the employee has a large amount of freedom to work on the report. However, the minister does request that a great number of experts are consulted with differing viewpoints. Your boss knows you have a lot of experience in this area and asks you to prepare the report, but s/he will closely follow what you are doing. There is a quick consensus about the experts to be consulted, except for one. You think Annemarie Vandevelde, an authority in this field should be consulted but your boss does not agree and does not want her named in the report. You know that the reason for this refusal is a personal one: Annemarie was previously chosen above your boss for a position. You are convinced that the quality of the report will be improved by including Annemarie Vandevelde's point of view. What are your options? What will you do?

After this objective description it is also useful to make a stakeholder analysis. A summary of all the people involved in the dilemma and their interests. In these summaries two types of people are often forgotten. Some people forget to mention themselves although they also have interests. Also 'invisible people' are usually forgotten, in this case, the people affected by a bad ICT policy.

The second step is the description of the problem in ethical terms. The purpose of this step is to list all the values that are involved in this dilemma. At the end you have to be able to form two columns with contradictory values, otherwise it wouldn't be an ethical *dilemma*. So when we take Eric's dilemma, there have to be values indicating that you follow your boss and there have to be others which indicate that you do not simply do that. There are values that would indicate honesty, loyalty to the government, quality, objectivity etc. Obedience on the other hand is a value that indicates that you would follow your boss's request. However, you can also be obedient to the minister so this value can be interpreted in two ways. The most important thing in this step is that you go beyond the practical problem and that you formulate the problem in ethical terms.

Step three is to identify the different action possibilities. In this step the point is to make a list of all possible solutions to the dilemma. The danger here is that people tend to think in terms of black and white when they have to come up with a solution. When we look at the case here that would be, either I obey my boss, or I do not obey him and I go into conflict with him and I involve others. The reality is that there are more than two extreme solutions. It is however normal that people have a tendency to think in black and white terms when they have to solve an issue because in real life there is not always time to consider all the possibilities. However, when there's a serious dilemma it can be good to consider as many possibilities as possible. The purpose of this step is to maximise the chances that an alternative is chosen which brings the least moral cost.

It is essential to bear in mind that this step is an exercise in brainstorming. There mustn't be judgement of the possibilities in this phase. The appraisal of the possibilities is done during the next steps.

The fourth step is to project the probable consequences of each alternative. In this step it is important to look at the different alternatives in a process of phases which follow each other. A scenario of the consequences of each decision is necessary. When we take our example we can say that the first alternative is to try to convince the boss to put Vandeveldel's ideas in the report and if s/he really does not want to do that you can try to put in Vandeveldel's ideas in without explicitly saying they are hers. There are also other possibilities. Nevertheless, the danger with this exercise is that you look only at the consequences and less at the values and principles. If you only think of the consequences there's a bigger risk of acting out of self gain.

The fifth and last step is to choose between the different possibilities of action.

This is of course not the only approach to dilemma training and other approaches are also possible.

Legislation

Another instrument to prevent corruption and a lack of integrity is to make legislation about corruption. There are already multiple laws concerning corruption, even on an international level. The United Nations have voted on a treaty to put a stop to corruption. This treaty has been approved by the Belgian Council of Ministers.

5 Country reports

5.1 Situation in Belgium and Flanders

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As clarification I would like to point out that in this chapter the aim is not to give a list of famous corruption cases in Belgium. This chapter is intended to illustrate the most common forms of corruption in Belgium and Flanders, the situation for the Walloon region is not included although corruption is a serious issue in two large cities in Wallonia.

In advance of this research it was rather difficult to find sufficient academic works to justify the existence of this chapter. I conclude and am therefore forced to presume that Belgian and Flemish universities have not done very much academic research on the phenomenon of corruption in our country. For that reason most texts used are on the one hand political and institutional instruments, and on the other, more journalistic works written for news and weekly magazines.

In the second part of the chapter, about institutional measures, I will point out the lawmaking of the past few years, academic analyses of these new laws and the intentions of policymakers in fighting corruption.

The third part deals with the changes that began in the mid nineties. These changes were institutional as well as changes to the mindset. The reason can be found, I suppose, in what we in Belgium call *white anger*. The most direct reason for this anger against the government and the way its institutions worked, were two famous cases. The first case occurred at the beginning of the nineties and concerned the murder of a socialist party political leader in Wallonia and the discovery of corruption within the socialist party in Wallonia as well as in Flanders. The second case concerned paedophilia. Bad communication and bad cooperation between the investigators and security officers resulted in four deaths and two girls being traumatised.

The idea that all this was possible in our country gave Belgian citizens the feeling that we had class justice; that politicians could do anything they wanted. Citizens' reactions were not aggressive, but rather, silent. They held the 'White March' in Brussels and brought about a regime change at the end of the nineties. Some journalists also played a big role in the change in mindset because they started digging very deeply.

In the last part I will summarise the most common kinds of corruption in Belgium.

Institutional

To begin, I will give an outline of the way Belgium is organised institutionally. Belgium is a federal state with autonomic entitlements for the states, which means that the regions and communities have full authority in the fields not regulated by the federal government. Furthermore, the federal government can only regulate what they are authorised to in the constitution. In simple terms, although that simplifies it somewhat, the communities and regions have authority over all personal matters.

This federal organisation of the state means that each state government takes its own measures and makes its own laws about fighting against corruption. The basic law against corruption is found in penal law. The last major changes to this law were undertaken in 1999. In the coalition agreements made by and including the federal, as well as the Flemish government, the word corruption cannot be found. Both most recent agreements use the words as deontological code, transparency, efficiency, ethics, participation and so on. All this fits in with the challenge of improving government institutions.

The institutional changes of the mid nineties are reflected in two new organisations; the Office of the Federal Ombudsmen of Belgium and the Flemish Ombudsman Service, and the transformation of the High Committee of Supervision into a central service within the federal police. These three organisations together with the Court of Audit, an institution that did not change, are the most important organisations in the fight against corruption in Belgium. These organisations are also highly independent from the legislative and executive powers in Belgium and Flanders.

The Office of the Federal Ombudsmen of Belgium established by law in 1995 has a Dutch-speaking and a French-speaking chamber. The Office has three main tasks. The first is to mediate between citizens and the administration. A second task is doing research within an administration at the request of the Chamber of Representatives and reporting to the Representatives. The last task is making recommendations to the Chamber of Representatives based on the treatment of complaints and research done by the Office of the Federal Ombudsmen. The Flemish Parliament also set up a Flemish Ombudsman Service in 1998 the tasks of which are complementary to those of the Office of the Federal Ombudsmen. In addition, the Flemish Ombudsman Service also has to supervise the compliance of the deontological code. Both Ombudsman Services belong to the legislative power.

The Court of Audit of Belgium was set up almost immediately after the independence of Belgium, in December 1830. The Court of Audit is a part of the legislative power. It has the authority to scrutinise the federal government, the government of the regions and communities and the deputations of the provinces. The Court of Audit is specialised in the scrutiny of receipts and expenditures. There are three sorts of scrutiny which the Court of Audit uses. Firstly, financial scrutiny whereby the Court of Audit checks the accounts that the previously named executive powers are obliged to present. Second the Court of Audit performs a legality audit, it checks the conformity of the public expenditures and receipts with the budgetary law and it ensures that law rules applicable to the controlled operation are correctly implemented. Lastly, the Court of Audit is also charged with the monitoring of the sound use of public funds in order to inform Parliament about the way the public services are managed. The nature of this audit is defined on the basis of three principles: economy, effectiveness and efficiency. The Court of Audit informs the legislative assemblies and the provincial councils of the results of its audit missions.

The central service for the fight against corruption is a police service that is authorised to detect offences that are detrimental to the interests of the state. In the service's mission it is noted that they have to change perception by detecting corruption and by working out an integrated preventive approach against corruption. Police services belong to the executive power. Until 1998 this service was autonomous and belonged to the chancery of the Prime Minister, it was called the High Committee of Supervision. In the nineties the service moved to the HRM department and some cases of political interference came to the surface during this operation. Some good intentions by politicians from different political parties to integrate the High Committee for Supervision in the Court of Audit failed and finally the political majority in Parliament chose to establish a new service within the recently reformed police services.

All the different organisations that are fighting against corruption nowadays work very independently and regularly uncover new corruption cases. An absolute exclusion of corruption with institutional tools is a utopia and that is why it is also necessary to try to change the mentality of public servants and citizens who come into contact with the public administration.

The mental evolution in the nineties

The Belgian political institution was hit very hard when some serious corruption cases broke and the bad performance of some administrations was made public. The clearest expression of this discontent was the rise of the ultra-right wing in Belgium, particularly in Flanders.

After the most important corruption cases were brought to court and some important politicians disappeared from the political arena, an operation to restore the administration and to improve perception about the government authority started. It is within this mental cleansing that the new deontological / ethical codes, public attention and the administrative reforms should be placed.

The administrative reforms of the last decade concentrate on effectiveness and efficiency, an economical and purposeful use of available resources and the correct practise of their own rules. Those measures are rather a preventive approach that has to exclude corruption on the one hand and tries to urge public servants, clients and suppliers to act properly in their contact with the public administration on the other.

The restoration of the independence and strengthening of the scrutiny and investigative services makes a repressive approach more successful and that was what citizens wanted. Changing citizens' perception happens very slowly, although Belgium has a good approach to fighting corruption, both preventive as well as repressive, which is proved in the most recent Transparency International (TI) Corruption Perceptions Index on which Belgium does not score very well. Having said that, TI has not done a great deal of research in or about Belgium.

Facts about corruption in Belgium

The most common sorts of corruption in Belgium are bribery, the selling of various licences and favouritism for certain people. Legislative powers have made regulations so that these forms of corruption are not as easy today as they were a decade ago.

New laws on how to assign public contracts made procedures clearer and more open to the public. Selling building or environmental licenses is another sort of corruption that was widespread. Nowadays controls are more severe and public opinion disapproves of violations much more than a decade ago. New procedures and difficult exams, often organised by an independent service make it almost impossible to favour someone.

Specific corruption cases are discussed in the next chapter.

Belgian corruption cases

The X files

In Belgium, the X-Files refer not to the U.S. television series, but to a series of horrific witness accounts about an alleged paedophile network. Five women and a male transvestite who testified anonymously in Belgium under the code-name "X" described an underworld of snuff movies and sadomasochist torture that was almost impossible to believe. They also

claimed that politicians and other highly placed members of society were involved.

A book by three crime reporters, "The X-Files: What Belgium Was Not Supposed to Know About the Dutroux Affair," asserts that the X-witnesses were more credible than was initially thought. Evidence indicates a huge effort by magistrates and senior police officials to demolish the testimonies of the X-witnesses. The authors infer from this evidence that there was considerable official interest in laying the blame for the paedophile scandal that exploded in 1996 entirely on Marc Dutroux, a convicted rapist and child abductor, who was convicted of kidnapping six young girls and murdering four of them. To admit otherwise, the authors argue, would have allowed the affair to threaten the stability of the nation, as it almost did when Mr. Dutroux stole a police guard's gun and escaped in 1998. That episode led to the resignation of two government ministers.

A retired prosecutor, Judge Guy Poncelet, called the thesis of the book "brilliant and convincing." He said that "certain political and judicial authorities," with the help of the state radio and television and much of the press, had deliberately played down disturbing evidence uncovered in the Dutroux investigation. Judge Poncelet's son, a police officer, was involved in another case in which Mr. Dutroux was implicated. His son was investigating the trafficking of stolen cars in 1996 when he was shot and killed in an unsolved murder.

The arrest of Mr. Dutroux in August 1996 brought a provincial prosecutor, Judge Jean-Marc Connerotte, to the world's attention. In rescuing two kidnapped girls from Mr. Dutroux's underground dungeon, the judge became a national hero. Judge Connerotte brought in one of the National Gendarmerie's top officers, Patriek De Baets, and his team of investigators to lead the Dutroux investigation.

A few weeks later, however, Belgium's highest legal authorities removed Judge Connerotte from the case because he had accepted an invitation from the grateful parents of the rescued girls to a fundraising dinner for families of missing children.

Mr. De Baets was in charge of interrogating the X-witnesses after they volunteered information. The most controversial of them was a young woman originally known only as X1, but whose real name, it later emerged, was Regina Louf. Mr. De Baets became convinced that the horrors Mrs. Louf dredged up from her memory corresponded to the truth. He had each of her statements checked out, and discovered that she had inexplicably detailed knowledge of the unsolved murders of two young women in the 1980s that supported the thesis of a conspiracy.

Senior magistrates and gendarmerie officials became concerned about the sweeping scope that the investigation was assuming and about the

enormity of the evidence. They therefore initiated an inquiry into Mr. De Baets's handling of the case, which eventually consumed as much time and energy as the investigation itself. Mr. Baets and his colleagues were dropped from the investigation and sent home on indefinite leave.

The Agusta-Dassault case

The Agusta affair has implicated some of Belgium's most senior political figures in a scandal which extends from bribery to money-laundering, forgery and possibly even murder. Apart from former Nato Secretary General Willy Claes, two former deputy prime ministers were also tried for their alleged role in securing huge government contracts for defence firms at the end of the 1980s, in return for substantial contributions to Socialist Party funds. One defence firm was the Italian manufacturer, Agusta. Agusta had an agreement with the Belgian government to supply 46 new A109 fighting helicopters to the Belgian army. The other one was the French firm Dassault Aviation. Dassault Aviation got a contract to modernise the Belgian F-16 jets.

Mr Claes, the economics minister at the time, signed both contracts, but during the whole process he denied any knowledge of receiving payments in return. Those payments to Socialistic Party funds amounted to 50 million francs or around 1.25 million euros. This was only small change for the two firms who harvested contracts worth hundreds of millions of euros. Details of the Agusta payments only emerged, however, during investigations into the mysterious murder of Andre Cools, a leading socialist politician in 1991. During this investigation it emerged that Cools had knowledge about the Agusta deal. An official investigation into the deal was started in January 1993 by judge Véronique Ancia, when a search warrant was issued for Agusta and its lobbyist Georges Cywie. In January 1994 the Belgian senate removed immunity on minister-president of Wallonia Guy Spitaels and minister Guy Mathot. Guy Coëme, deputy prime minister and minister of transport resigned that same month. Willy Claes, NATO Secretary General, resigned in 1995. Minister of Foreign Affairs, Frank Vandembroucke resigned in 1994 after playing a strange role in the story when he declared that he gave an order to burn the money, which never happened, of course.

After Claes' and other ex-cabinet members' parliamentary immunity had been lifted, the criminal trial was handled by the court of cassation, which has competence for cases involving ministers. The trial was held in front of 15 judges of Belgium's highest court. Eliane Liekendaël was the public prosecutor. Until 1989, private contributions to political parties were legal. They have since been banned so the prosecution had to prove the money was paid so closely to the awarding of contracts that they could

not simply have been a gift and those involved had to have known they were bribes. In total, Agusta and Dassault payed more than 160 million francs (about 4 million euros) to the PS and SP. Willy Claes was sentenced to 3 years probation and 5 years prohibition on running for public office. Guy Coëme and Guy Spitaels both got 2 years probation and also 5 years prohibition on running for public office. Serge Dasault got 18 months probation for bribing the people previously mentioned. The murder of Cools remains unsolved, but there are suspicions that his apparent readiness to blow the whistle on his party's corrupt activities may have cost him his life.

Prince Laurent and the navy

Prince Laurent is the son of the current Belgian King Albert II. He was recently implicated in a scandal involving the misuse of public (navy) funds. The Belgian weekly 'Humo' reported that Laurent's former navy friends had siphoned 175,000 euros in funds from army budgets to decorate the prince's Brussels home, Villa Clementine, in the late 1990s. It is a public secret that Prince Laurent likes to spend money. The prince's former adviser Col. Noël Vaessen was quoted in several reports saying that Laurent "was obsessed with spending money and buying fast cars". He added: "Laurent tries to get money from everything and anybody because he always is short of money. There is no limit to his spending on luxury goods". "In the 1990s he spent most of the annual stipend he gets from the government, which currently stands at around 295,000 euros on expensive watches, clothes and going out, he could hardly buy food for himself at the end of the month." All this knowing that he and his family live rent-free in their villa mansion.

It is commonly known that state services' allowances and grants are fully spent before the end of the year to prevent a cut back of resources the following year. The Belgian navy's surpluses were shifted to the prince, navy officers and contractors who drafted false invoices charged to the navy. A vast amount was used to buy furniture and for the renovation of Villa Clemintine. Fifteen people have been charged on several allegations including falsification of documents, fraud and larceny. Col. Vaessen stated that the prince was aware of the system to support him. However, judicial investigators refused to confirm that the prince was directly involved in the scheme.

The judge believed in the ignorance of the prince, although he had to testify, he was not charged with any crime. The former advisor was less fortunate; he got two and a half years of which two years was probationary and a fine of 3,718 euros. In Belgium, however, there is no room in prisons for convicts who receive a sentence of 6 months or less, so Vaessen will

not spend a day in jail. Contractor and ex-military, Marc Luypaerts got also two and a half years of which two years probationary and a fine of 4,957 euros. According to the court, retired captain Johan Claeys and financial servant Andrea Vanden Abeele, are guilty of the charges of fraud and embezzlement. They each got 200 hours labour penalty. Finally, Lut Kleuteghem, the ex-wife of primary defendant Luypaerts was convicted and given 100 hours labor and a fine of 1,735 euros. All clandestinely obtained goods were forfeited by court order. The state of Belgium gets a provisional reimbursement of 1 euro. In total there was embezzlement for over 2.2 million euros.

The prince is also president of the 'KINT' organisation for durable guardianship of natural resources. As a result of the investigation questions arose about the usage of the 'KINT' allowance. The Flemish government is questioning the usefulness of this institution and they are planning to audit the organisation. Some people suggest that 'KINT' was created for the purpose of creating an additional income for the prince. The last word is yet to be reached in this dossier.

The Antwerp VISA scandal

13 March 2003 was the date of the early discharge of Antwerp mayor Leona Detiège and the Antwerp aldermen. They all resigned because it turned out that city officials and politicians liberally used their city Visa cards for private expenses. They used the credit cards for gifts, clothing and fancy dinners. Eventually last year three cases concerning five highly ranked officials, the ex-director of the Antwerp police academy and a contractor were opened before the Antwerp correctional court.

The most eye-catching dossier is the one of the alleged fraud with the city visa-cards. Former city secretary Fred Nolf, his chief of cabinet Nadia Andries and the suspended vice-secretary Freddy Vandekerckhove will have to answer to the charges of forgery and embezzlement. Nolf, Andries and Vandekerckhove are accused of making unlawful expenses using their city credit cards. In addition, they seem to have committed fraud with the so called 'pre mandate' system. This system comes down to the payment of expenses before these expenses are effectively made. The money the accused received for restaurant expenses for example were only partially used to pay the restaurant bill; the rest disappeared into their pockets.

The second case involves city secretary Nolf, suspended city financial coordinator Roger Bekaert, his wife, chief of cabinet Dianne Heyman, Freddy Vandekerckhove and contractor Etienne Orens. They are charged with forgery, embezzlement and active and passive bribery. The money of the urban foundations (vzw's) 'Soma' and 'Telepolis' was used for personal use. Fred Nolf bought flowers, a GPS system and furniture for his home with

'Soma' money. Bekaert and Heyrman made a deal with the contractor for the renovation of their homes. Lastly, 'Telepolis' money was used by Vandekerckhove for the purchase of a stereo, a television, a satellite phone and GPS system.

In the third case there is controversy concerning two paintings by the Flemish artist Roger Bekaert, a friend of former Antwerp police academy director Eddy Den Hondt. The artworks were bought by the academy for the sum of 3,250 euros. This is substantially more than the actual value of the paintings.

5.2 Corruption and Corruption Prevention in Germany

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Background structural information

Germany has an area of approx. 357,031 km², inhabited by 82.5 million people. The percentage of foreigners is 8.8 %. The state administration is characterised by the principles of both federalism and communal self-government.

The federal state structure is exhibited in that Germany is made up of 16 federal states (Bundesländer), including the city-states of Berlin, Bremen and Hamburg, which are both federal state and municipality. Each federal state has its own constitution, government and parliament.

At national level is the Federal government (Bundesregierung), the Federal Diet (Bundestag) and the Federal Council (Bundesrat), which is involved in legislation as representative for the federal states. The legislative powers of the federal states are regulated by the Basic Law (Grundgesetz). The federal states and local authorities mainly execute state administration. The police and legislative institutions are mainly state authorities. Only the instances of the Supreme Court are federal courts. The federal police and the Federal Criminal Police Office have only limited jurisdiction.

The principle of local self-government ensures that the municipalities are widely autonomous. This particularly applies to organisation and human resources. Moreover, the local authorities can regulate many affairs themselves in their own constitutions within the framework of existing legislation.

The structural framework in Germany has a range of consequences for dealing with corruption. Firstly, the StGB provides a standard definition for all criminal acts. Secondly, each state has special civil servant laws. However these differ only insignificantly from one another, so that sanctions for corrupt behaviour are generally uniform for civil servants in Germany. Thirdly, there are different organisational regulations in the municipalities, states and in the federal government, for how corruption is handled and in particular, which preventative measures are implemented. Ultimately the public prosecutors and the police authorities in the 16 states decide how intensively they wish to devote themselves to the problem of corruption. Some states – including Berlin – have formed special interest groups specialised in corruption, in the police investigation authorities and the public prosecution as public prosecuting services. Other states, in

which such special interest groups are lacking, are less successful in fighting corruption.

Corruption: Definition and scale

In Germany, there is no generally applicable definition for corruption. The two following definitions are often used. The first is taken from Transparency International, according to whom corruption is the misuse of entrusted power for private gain or advantage.²⁵ The second definition is one used by the Federal Criminal Police Office; this does not differ significantly from the first. It states: corruption is the “misuse of a public office, a function in the economy or political mandate for the benefit of another, on his inducement or on one’s own initiative in order to gain an advantage for himself or a third party, with or in expectation of damage or disadvantage for the general public (in an official or political function) or for a company (in an economic function).”²⁶

German criminal law has no own definition of corruption, but punishes injustices connected with corruption through 9 different offences:

- Sec 108b StGB (StGB): bribery of the electorate
- Sec 108e StGB: bribery of a deputy
- Sec 299 StGB: acceptance of bribes and bribery in business transactions
- Sec 300 StGB: particularly serious cases of accepting bribes and bribery in business transactions
- Sec 331 StGB: advantage taking by officials
- Sec 332 StGB: bribe taking by officials
- Sec 333 StGB: advantage granting by officials
- Sec 334 StGB: bribery of officials
- Sec 335 StGB: particularly serious cases of corruption and bribery of officials

The paragraphs 331 to 335 of the StGB apply to officials. This refers to civil servants, judges and all government employees. According to a recent judgement from the Federal Court of Justice as the highest instance for criminal cases, a mayor who has been elected by the people is not an official, but a politician, although in Germany he is generally the highest-

²⁵ <http://www.transparency.de/Was-ist-Korruption.45.0.html>

²⁶ Bundeskriminalamt: Bundeslagebild Korruption 2005. Pressefreie Kurzfassung. Wiesbaden 2006, S. 1

ranking member in local government. Because he is simultaneously not a representative, a mayor in Germany can accept bribes without prosecution. The same applies to ministers who are not simultaneously members of parliament.

For public servants, judges and government employees in addition to punishment under criminal law, a corrupt act is also connected with the loss of office or job. This is stipulated in civil service law and for employees in the contract of employment. Corruption by an employee of a commercial enterprise is usually followed by immediate dismissal as regulated in the contract of employment.

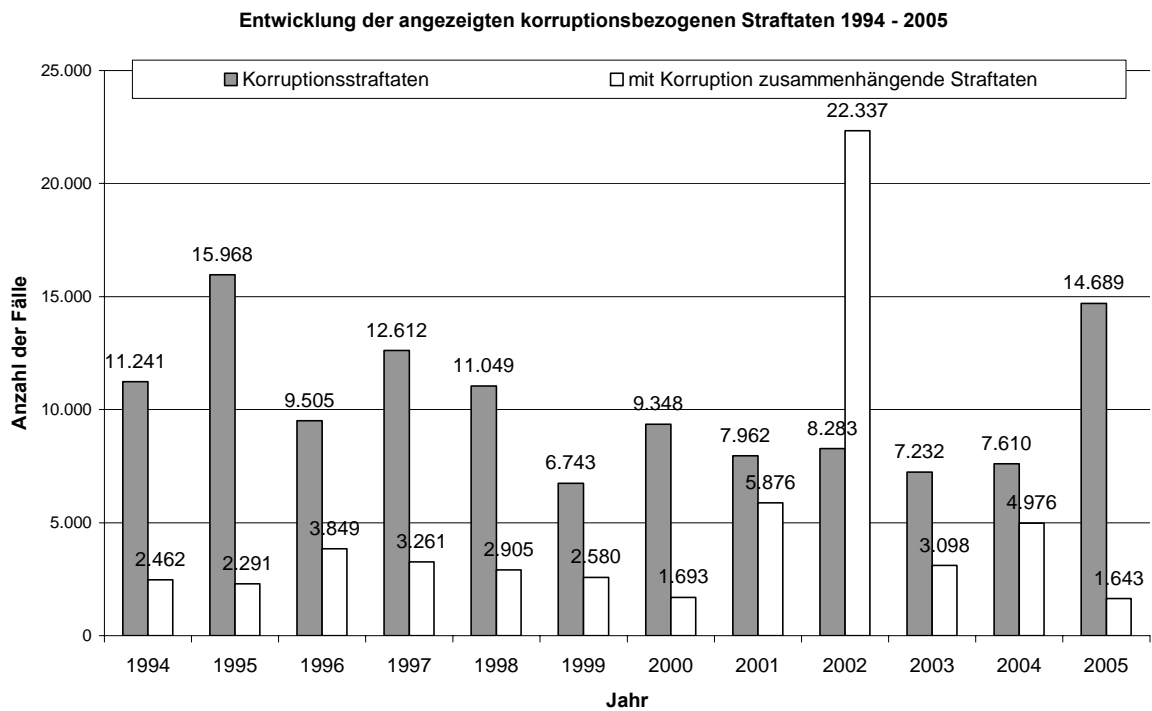
In addition to the aforementioned classic corruption offences are also statutory crimes, which are often linked to corruption. The following concerns prosecutable acts under German criminal law:

- Sec 261 StGB: money laundering
- Sec 263 StGB: fraud
- Sec 264 StGB: subsidy fraud
- Sec 266 StGB: embezzlement
- Sec 267 StGB: falsification of documents
- Sec 298 StGB: restrictive agreements
- Sec 339 StGB: perversion of justice by a public servant
- Sec 348 StGB: false certification in office
- Sec 353b StGB: disclosure of official secrets
- Sec 357 StGB: inciting a subordinate to commit a crime

Additionally relevant to the legal fight against corruption in Germany are the Foreign Corrupt Practices Act and the EU-Anti-Corruption Act. However these relate to almost all criminal procedures with connections to corruptive acts on indictment under the German Criminal Code.

The following diagram provides an overview of how the number of offences in Germany, which can clearly be characterised as corruption, and the number of offences that are often linked to corruption have developed in the period from 1994 to 2005. The data was compiled by the Federal Criminal Police Office based on the number of current cases provided by the public prosecutor offices in all German states.²⁷

²⁷ Quelle: Bundeskriminalamt: Bundeslagebild Korruption 2005. Pressefreie Kurzfassung. Wiesbaden 2006, S. 2; Bundeskriminalamt: Lagebild Korruption. Bundesrepublik Deutschland 2002. Wiesbaden 2003, S. 7



This diagram shows the interchanging development. The data does not however provide reliable information as to the extent which corruption in Germany has increased or decreased. Then a more exact analysis of the data shows that in the states where more cases of corruption are discovered, the police and public prosecution conduct more intensive investigations. As a rule, corruption cases which were mainly discovered through coincidence, have lead the investigating authorities to set up special anti-corruption units, which are often then dissolved after a few years. The particularly high number of offences connected to corruption in 2002 result from an investigation into a corruption scandal in Frankfurt am Main city administration, which unearthed many cases of restrictive agreements and breaching of official secrets.

Cases of corruption disclosed in Germany, mainly concern the civil service. Only around one in twenty cases of corruption discovered by the legal authorities is related to the private economy. This is not evidence that corruption in German enterprise is rare. Rather it is assumed that companies do not report discovered corruption cases, as they fear that their image could be damaged. The cases of corruption investigated in Germany in 2005 are divided into the following areas:²⁸

- 91.0 % civil service,
- 5.6 % private economy,

²⁸ Bundeskriminalamt: Bundeslagebild Korruption 2005. Pressefreie Kurzfassung. Wiesbaden 2006, S. 6

- 3.3 % security agencies (judiciary, police, customs),
- 0.2 % politics.

The discovered cases of corruption mainly concerned the awarding of public contracts (supply contracts and construction projects). The convicted civil service workers were supervisors and staff, approximately in equal part.

The number of corruption cases discovered, however do not provide information as to which extent the courts sentence the guilty parties to the statutory punishment. An extensive empirical study was performed in Germany almost 10 years ago. According to this, preliminary investigations into corruption were discontinued in 41% of the cases, due to insufficient evidence for prosecution and only 16% of the cases led to a prison sentence.²⁹ This data underlines how difficult it is to prove corruption so that it stands up in court.

Preventing corruption in politics

Criminal law only refers to a small area of possible corruption in the political arena. The bribery of MPs prohibited under Section 108e StGB only applies to the conduct of MPs during parliamentary elections. The influential preliminary decisions of party committees, working groups and commissions are hereby not included. It is here however that lobbying is most effective. A broad area of “public relations” of interest groups and commercial enterprises to politicians, concerns donations to political parties. This area also remains outside the focus of corruption investigation in Germany, although there have been a number of scandals surrounding party donations, which have been punished under the Political Parties Act.

It becomes clear at this point, that German criminal law does not sanction all behaviour, which falls under the above definition of corruption, particularly in politics. Then, it is exactly this aim that is being pursued in “public relations” between politics and business; politicians abuse their position to the advantage of a specific interest group. The consequences of such behaviour are grave. The people lose their faith in politics. The result is political sluggishness and an ever-decreasing turnout. Moreover a rapid decrease in member figures in all parties is being recorded. Political corruption ultimately endangers democracy.

Measures for preventing corruption in politics are discussed in the following:

1. More transparency in politics and administration through freedom of information acts. The German state administration is strongly influenced

²⁹ Bannenberg, Britta: Korruption in Deutschland und ihre strafrechtliche Kontrolle. Eine kriminologisch-strafrechtliche Analyse. Neuwied 2002, S. 275.

by a tenet of secrecy. Political or governmental information is considered secret or confidential. This out of date approach in a modern democracy has long been replaced in most European countries, as it has in the USA, Canada and Australia by freedom of information acts. These acts allow every person to freely access all government information and allow few exceptions. Secrecy protects the political government leadership and makes it difficult for the people and the media to control its decisions. Some countries have already passed this type of law.

2. Introduction of a code of honour for all MPs, members of the federal government and political civil servants. The code of honour should include adequate sanctioning measures for contraventions.

3. Obligating the parties to regularly school their members on the theme of corruption and conflict of interest.

4. The additional jobs of MPs should not only be reported to the president of the respective parliament, but also be published on the Internet home page of the Federal Diet. The corresponding should apply to members of the government and political civil servants.

5. Longer waiting times between retirement of higher-level civil servants from the government or administration and entering of commercial enterprises. These waiting times must be first introduced for politicians. Thus the previous Federal Chancellor, Gerhard Schröder was able to join the supervisory board of a company, whose major shareholder is the Russian gas monopolist Gazprom with 51%, directly after retiring from political office. Gerhard Schröder politically boosted the engagement of Gazprom in Germany during his time in office.

6. Amendment of the Political Parties Act, the regulations on party financing have proved particularly inadequate. The experiences of the past years have shown that despite all past contraventions and a forced tightening the current regulation of party donations still enables great misfeasance. This ruling must therefore be urgently reformed. The German system for party financing is principally correct if the ground rule is observed, that money should not be permitted to buy influence. It must be ensured that the principle of democracy – one man, one vote – is not annihilated through the greater influence of a large donation. It is for this purpose that Transparency International in Germany has proposed amendments to the Political Parties Act which are summarised under the following points:

- Reasonable maximum limit for donations: party donations from legal entities and natural persons at maximum 50,000.00 euros per annum. Restriction of cash donations to maximum 100.00 euros.
- Improved transparency through the obligation to disclose all donations made to a party and publishing of the party's statement of accounts, also on the Internet.

- Adequate sanctions: in addition to the existing threatened fines for parties, criminal prosecution for the individual responsible must be introduced (prison sentence, fine, ejection from office, loss of right to stand for election).
- Reliable controls through a control committee not subject to directives, subordinate to the federal president's office.
- Maximum limit and obligation to publish donations, also those from overseas.

Preventing corruption in the civil service

In the face of the general regulations presented above, the various authorities in Germany mainly determine themselves how corruption should be prevented. There is no standard catalogue of anti-corruption measures in the civil service. The following introduces the model from the Berlin borough of Spandau. This model was commended in 2005 by the German University of Administrative Sciences in Speyer for the best practice in Germany, Austria and the German speaking part of Switzerland. The borough of Spandau has in the city-state of Berlin the similar legal standing as a local authority. Corruption prevention in Spandau is based on three pillars, described in closer detail in the following.³⁰

Work directives and control groups

The legal provisions for the awarding of public contracts, which have been in existence for many years have been reinforced by a current work directive, which is handed out and explained in detail to all employees. For the administrative units that award building contracts, a strict division has been made between scheduling and planning on the one side and execution of the tendering process on the other. Furthermore, a database of awarded contracts has been set up. This documents without gaps which firm received which contract, when and from which administrative unit. The contracts are awarded through the borough's approving agency. This is organisationally separate from the administration responsible for construction. The borough's approving agency has the authority, following submission of the company proposals by the site manager, to independently remove individual companies proposed. The principle of competition in public procurement law is thus sufficiently fulfilled.

The work directive also includes a very restrictive line on the question of whether it is permissible to accept gifts. The acceptance of gifts is generally prohibited. The concept also concerns grey areas such as sponsoring,

³⁰ <http://www.berlin.de/ba-spandau/verwaltung/antikorrupktion.html>

controlling incompatibilities through additional employment or monitoring the distance between decision makers and those affected by the decisions, which in local politics, are often difficult to assess.

An anti-corruption monitoring group has also been established. This group includes the head of the legal office and several professionally experienced employees from various back offices. The anti-corruption control group has received an independent control mandate; it is required to submit information and report to the executive committee of the regional administration and the political representative body. A hazard atlas has been developed for the activities of the monitoring group, which provides information as to which administrative unit could be more strongly and which could be less hit by corruption. This hazard atlas determines the priority for provoked and non-provoked investigations. The individual inspectors are free and independent. The employees in the administrative branches are confronted with the results and where faults are found; a subsequent announced control is performed, which is intended to have a preventive effect. The activity of the anti-corruption monitoring group has a more restrictive rather than preventative effect. Offences discovered by the group are reported.

Controlling public procurement

The awarding of contracts through the civil service is generally on the basis of an invitation for tenders. There are two exceptions to this rule: the so-called “single tender action“ and “limited invitation to tender”. A single tender action is not an invitation to tender. The awarding of a contract is here at whim. A single tender action should prove a very rare exception, which is unfortunately however no longer, the case. With a limited invitation to tender, only a few firms are invited by the administration to submit an offer. This is not an open, transparent procedure. Public invitations to tender, where the awarding of the contract must be announced publicly are often circumvented through such procedures. Corruption offences are almost always committed in the framework of non-transparent award procedures such as so-called “single tender action“ and “limited invitation to tender”. Due to their obscurity, these cases are rarely disclosed.

In the administration for the Berlin borough of Spandau, it was primarily agreed that procurement procedures and decisions should be accompanied by controls, required optimising and that the dual-control principle must be introduced across the board in areas at risk of corruption. The main aim of tender awarding controls is to create more transparency. To this purpose, the legal office was provided with a new function as a staff unit with interdepartmental functions. The jurists appointed for this purpose were selected as specialists in the area of procurement. In light of ex-

perience that the potential for corruption is highest in the awarding of contracts, the procurement jurist is equipped with extensive participation rights and right of clearance for all procurement procedures.

It was often the case in the past that contracts were signed and awarded by one individual employee. Through the dual-control principle, this weak point has been very successfully counteracted, as the signing of a contract always requires a second person and so complicate the individual actions, which enable corruption.

The procurement jurist is mainly concerned with the legal aspects, and the employee from the competent department supplies the specialist knowledge required to award the contract. Above all, through the use of procurement control the preventative aspect against corruption is implemented and the pre-eminent significance for adherence to procurement laws to prevent corruption is particularly emphasised. Controlling here means above all that the legitimacy of the procurement procedure is ensured through legal accompaniment and consultation in the whole unit for each step of the procedure, from scheduling to the awarding decision.

Through procurement controlling, a visible improvement in the prevention of corruption has been achieved. This is particularly aided through:

- Legally advising heads of department and employees in all procurement matters.
- Supporting the procurement offices during all procurement processes.
- Offering training courses in procurement law for workers entrusted with procurement and the regular compilation and distribution of information circulars.
- Cooperating in procedures linked with procurement (e. g. expression of interest procedures, sponsoring, public private partnership).

This has clearly shown us that safeguarding the legality of public procurement procedures and preventing corruption are fused together; therefore procurement procedures urgently require more effective controls at a neutral and independent level. The procurement jurist works well with the employees in all aforementioned areas.

The workers incentive to turn to the procurement jurist is that they ultimately hand over part of the responsibility. Therefore working with the jurist is understood as being supportive and not restrictive, denigrating, or even as derogatory. The procurement jurist strives for a trusting cooperation as only then can it be ensured that as many employees as possible seek cooperation with her and the work, which is mainly directed at prevention, is successful.

Procurement controlling relies on trust and communication with the working units and therefore plays no role in the rather repressive work of the monitoring group to the outside. On the subject of procurement controlling, it must finally be said that due to this level, a diversion from the strict provisions of public procurement law is hardly conceivable. Cooperation of the procurement jurist and the introduction of the dual-control principle make a significant contribution in this respect.

Ombudsman

Following the anti-corruption example of large companies (e.g. Deutsche Bahn AG), Spandau borough office has appointed an ombudsman. The aim of introducing an ombudsman is, amongst others, to wake the interest and engagement of the workers in combating internal corruption. The poor image of the civil service should also be fought against. The ombudsman is an independent lawyer, who is available free of charge as an independent contact person for all (workers, people and companies) who wish to voice their suspicions of corruption.

The ombudsman is as a lawyer, subject to discretion. If he passes on information disclosed to him in his capacity as lawyer without authorisation, he risks prosecution and could even lose his accreditation. The ombudsman also accepts tip-offs, if the tipper doesn't reveal his name, anonymity is ensured. This is something the leader of the anti-corruption monitoring group cannot do. Through the ombudsman workers need have no fear that they could become involved in the corruption case and that it could hamper their career. The experiences from private enterprise show that with external contact persons the inhibition to communicate observations that convey the appearance of corruption is lessened. Inhibitions are so lowered in reporting suspected or known incidents to the ombudsman. He not only receives tips from the employees of Spandau borough office, but also from citizens, deliverymen and contractors. This means anyone wishing to report a suspicion of corruption concerning Spandau borough office can come to him. Also when someone has committed corruption, he can contact the ombudsman and receive advice on his "retirement" from corruption.

The ombudsman does not organisationally belong to the borough office; he is an external, independent contact person. Despite the fact that the ombudsman is a lawyer, it is stipulated that he does not enter into a lawyer-client relationship with the tipper. He therefore does not become his lawyer. Following a tip, he investigates whether this could concern bribery, advantage taking or systematic corruption and rejects cases of obvious denunciation. If there is a good foundation for definite suspicion, the ombudsman is to inform the leader of the anti-corruption monitoring group or

the borough mayor without delay. These then decide on the further procedure, not the ombudsman.

The services of the ombudsman are free of charge for the informant. The costs incurred are carried by Berlin Spandau borough office. The agreed rate is 150 euros per hour. Experience over the previous years has shown that the services of the ombudsman cost the borough office between 1,500 euros and 3,000 euros annually.

The borough of Berlin Spandau model is innovative for German public administration as it exceeds the usual and legal service. It consequently and successfully binds in the political leadership of the borough council. Above all it is carried by the psychologically important ideology of including politics and particularly all the workers in the process. Targeted procurement controlling strengthens all elements with an anti-corruption effect and makes workers aware of the gateways to corruption.

Preventing corruption in the federal police

The disclosed cases show that corruption is a danger in all branches of the civil service. Members of the police and judiciary must put up with having to measure up to a particularly high standard, then as guardians of law and order, a higher than average level of resistance against corruption is demanded of them. The German police have developed a concept for preventing corruption, which runs under the following motto:

**Combating corruption successfully
must begin in our own ranks.**

Risk areas

A tangible risk for corrupt activity in an authority can particularly occur where

- There is contact to the outside,
- Decisions are made or prepared which could advantage or disadvantage a third party,
- Public contracts are awarded,
- Sensitive data is handled.

Furthermore, additional employment cannot only have a negative effect on the work capacity and motivation of the civil servant, but are also possible areas of vulnerability or gateways to corruption (e.g. security industry or public contractors of all types).

For preventing corruption within the department, regulations on the acceptance of rewards and gifts provide a significant orientation guide for recognising the boundaries. The regulations must be effectively communi-

cated to all civil servants. Strict standards must also be applied, if outsiders want to endorse the fulfilment of the operational tasks of the department through any form of donation (sponsoring). Collective gifts directed at groups of civil servants or to the department as a whole must be ranked equally to individually granted benefits. Scattered gifts and also the arranging of a party, tombola or an excursion should not be considered harmless.

Prevention

Police officers are bound to a code of conduct through civil service law; in addition a documented briefing is performed each year, which requires signature. The rules are first effective when they become guidelines for the day-to-day professional life. Every police officer can make a personal contribution to the prevention of corruption. In addition to accepting and supporting the mandatory countermeasures, this contribution lies above all in the critical examination of one's own, official and private conduct as well as vigilance in the professional environment. The police therefore direct the following requirements to all employees:

- *Outlaw* corruption and assist your environment in outlawing corruption.
- *Help*, to develop and encourage a positive "team spirit" in the department. Unity helps to prevent corruption.
- *Accept* anti-corruption measures, even if these should restrict existing freedom of action or decision.
- *Perform* your duty correctly and conscientiously. You don't require rewards and gifts to do so.
- *Signal* external contacts that you cannot be bribed and your freedom to reach a decision cannot be influenced through gifts or promises.
- *Promote* the image of the police through your own exemplary conduct both internally and externally! Your exemplified resistance to corruption communicates itself to others.

There are further options for tackling corruption. These principally include:

- Determining and analysing the work areas particularly at risk from corruption,
- Transparency,
- Selection of personnel,
- Appointing an anti-corruption contact person,
- Creation of organisational units for corruption prevention,
- Training and further training,
- Consistent staff and functional supervision,

- Briefing and provisions in cases of suspected corruption,
- Public procurement guidelines,
- Strict separation of planning, awarding and accounting,
- Restriction covenants,
- Anticorruption clause, obligation of contractors under the terms of the Act on the Obligations of Public Servants (anti-corruption clauses are to be added on awarding the contract),
- Regulations on the acceptance of gifts to collective events and social areas - sponsoring
- Controlling the donee,
- Job rotation.

Contact persons

In the framework of implementing corruption prevention guidelines, contact persons were appointed for all departments of the federal police headquarters in Berlin Mitte. The contact person for corruption prevention is the direct contact for all issues, which concern preventing and combating department internal corruption. He advises, receives tips, evaluates suspicious facts and recommends suitable solutions and countermeasures. This hereby not only concerns determining possible misconduct by members of the department, but also exonerating of employees who have been falsely accused.

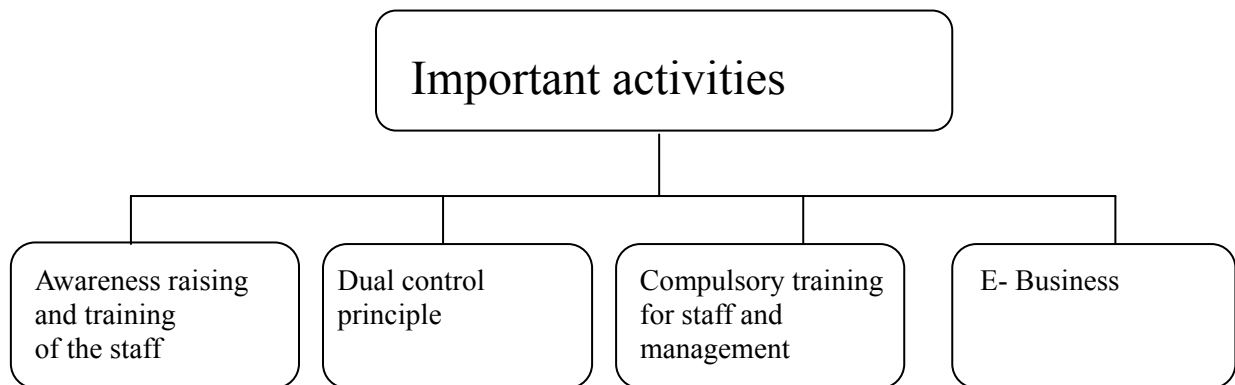
The federal police therefore direct the following appeal at its workers: do not be afraid to submit your own suggestions and tips for combating corruption in the federal police to the contact person for corruption prevention.

**We can only fight corruption effectively,
if we do it together**

Corruption prevention requires cautious procedure and requires a high level of trust amongst civil servants. Systematically operated, long term effective corruption prevention therefore begins with raising the awareness and educating all department employees. This is the continuous duty of the contact person for corruption prevention.

The contact person for corruption prevention has as the permanent duty the investigation of the structural and procedural organisation of the department for risk and hazard areas and weak points, which could generate or aid corruption. Moreover, there is a special group named "Prevention and Internal Investigation" which exists since 1999. Anyone can report suspicions in writing, orally or by telephone. Reports can also be made anonymously.

Conclusion



The introduction of preventative or countermeasures should not first occur, when ascertained cases necessitate it. Prevention helps:

- To retain the people's trust in the federal police,
- To preserve the image of the police,
- To structure co-operations with other security agencies without reservation,
- To facilitate the employees' duty,
- To safeguard the personal safety of employees,
- To maintain job satisfaction for employees.

The acceptance of corruption prevention amongst employees is of the utmost importance in order for it to be successful. The three most important aspects for this are:

**No one is immune from attempted corruption!
Corruption prevention should help,
to promote resistance against corruption.**



**„Black sheep“ do not
belong to federal police
service or other federal
public authorities !!!**

5.3 Situation in Poland

5.3.1 Institutional structures and social mechanisms for combating corruption – experience in Poland

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Mag. Mikolaj Tomaszuk

The students participating in this project are from the two cities of Poznań and Słubice. They are studying at the Adam Mickiewicz University in Poznań and Słubice. Poznań has an academic tradition spanning more than 400 years. The Adam Mickiewicz University encompasses 13 faculties with 200 courses of study and 50 disciplines. This university has signed 190 partnership agreements.

We are pleased to have been invited to Ghent and able to participate. We are also happy that young people from Germany, Belgium and Sweden are implementing this project. Of the Polish group, one student studies International Relations; the others study Political Science or Law.

The group spent six weeks in preparation. We had two seminars in Nekielka, a meeting at the Victoria Foundation, and a workshop. This means that we worked together for approximately 50 hours and have become well acquainted with each other. We studied the issues of corruption and the mechanisms for countering corruption in Poland in detail and will now present our results.

Polish Law and Corruption

Where Polish statutory provisions are concerned, it must be said that in Polish law, there are no statutes that specifically describe corruption. The corresponding term in Polish law is “venality“. The following activities are regulated under the definition of “venality” in chapters 228, 229, 230, 231 of the Polish Criminal Code: active and passive bribery, favouritism against payment, and misuse of power. These are the most significant forms of corruption, considered in Polish criminal law.

Passive venality

“Anyone, who performs a public duty and accepts a financial or personal advantage, or allows himself to be provided with a promise to the equivalent” is passively venal. This applies to persons acting as president, Member of Parliament, senator, jurist, prosecutor, official, worker in a Polish state office, policeman or soldier, and persons working as doctor or head of

state and companies operating with state money. What are these persons not permitted to do? They are not permitted to:

- Accept a financial advantage
- Accept a promise of financial advantage
- Accept a personal advantage
- Accept the promise of a personal advantage
- Demand a financial advantage
- Demand a personal advantage

Anyone not complying with this provision may be convicted to a prison sentence of between 6 months and 12 years.

Active venality

Active venality is regulated in chapter 229 of the Criminal Code. “Anyone who performs a public function, furnishes or promises to furnish a financial or personal advantage falls under this law and its penalty”. Active venality is also described as bribery. The following can be cited as an example hereto: Mr Kowalski wants to build a house, his wife is expecting a child, and therefore the house must be built quickly. Mr Kowalski visits the competent official and says, “give me my planning permission quickly and I’ll give you 1,000 euros”. Or a second example: Mr Kowalski wants to build a house; although he knows that he is not permitted to build on the site he wants to. “Give me planning permission quickly and ignore the fact it is not permitted, and I’ll give you 1,000 euros.” An individual acting in the manner of Mr Kowalski in the two examples above, would in the best scenario receive a fine, or a prison sentence of 2 to 10 years.

Other regulations: financial advantage, nepotism, fraud, favouritism

Financial advantage is regulated in chapters 230 and 230a of the Criminal Code. What is financial privilege or protection? Any person with influence who makes a promise to another individual to use her/his influence against payment, in order to assert her/his interests. Example: Mr Kowalski goes to Mr Noack. Mr Kowalski has influence over the building authority. Mr Noack wishes to open a business, but has not received an official permit. Mr Kowalski informs him that he can obtain the official permit for him but that Mr Noack will have to pay 2,000 euros for it. Anyone acting in such a manner as Mr Kowalski in this case, will risk facing a prison sentence of up to 2 years.

The causes of corruption in Poland

We now ask ourselves, why is corruption such a problem in Poland? Why does Poland have the highest level of corruption in the EU? Is corruption

typical in post-socialist countries? Or is it typical to Poland alone? Before answering these questions, we wish to present two opposing views:

- a. The philosopher Prof. Wesoły is of the opinion that corruption is typical to capitalism. Where profit reigns, so does the temptation of wealth or other forms of profit. But we are also familiar with countries where the democratic and capitalistic system works; they have a very low level of problem with corruption. For example, the countries of Scandinavia. So what does corruption hinge on?
- b. Some scientists hold the opinion that the post-communism countries have a corruption problem due to the democratic system being too new and the political transformation not yet complete. These scientists see the causes in the incomplete development of the civil society, in poverty, and the sluggishness of the state administration. It is also typical not only for Poland, but also for other post-communist countries, that corruption was generally accepted. Some people continue the small forms of corruption, usual during the communist era, e.g. a “thank you” for e.g. good care while in hospital.

The second view seems more plausible to us. The following 7 causes were taken from relevant literature:

1. Corruption depends on communism. Some people in Poland consider that corruption is a habit born from communism. The communists governed Poland for almost 50 years and one could not speak of a democratic and constitutional system. These times were very hard on some Poles. Those belonging to the communist party were able to have a career, to study, receive an apartment etc. Such opportunities were generally closed to other Poles, unless certain “door openers” were provided. Thus an extra payment helped to receive a certain apartment, or to study, or to buy fresh meat or certain sweets for the children. This was normal, also in hospitals, official offices and in other areas. These extra gifts were not only provided in monetary form, but also assumed the form of gifts. Some presented articles from overseas or sought after products, which had been produced in their factories, e.g. a man worked in a furniture store and had a sick mother in hospital. The doctor responsible might need some new furniture or a new carpet. One could report of such cases ad infinitum. It must be emphasised that these situations were the norm under the socialist system. The people, who associate corruption with socialism, are correct. Now following the transformation, people are still clinging onto old practices.
2. Inadequate development of the social society. The political elite has been developing a democratic system since 1990. The economic re-

forms are behind us, we have a new constitution and we are members of NATO and the European Union. The reforms wouldn't have been possible without society aid. Solidarność and the first president, Lech Wałęsa, provided significant influence. But the price of reform was too high for most. Therefore one cannot speak of a civil society in Poland. For this reason we cannot say that transformation is complete. The earlier the civil social structures are complete, the more people will respect the democratic and constitutional system. The two components are very strongly linked to each other: democratic constitution and social society.

3. Poland does not trust its politicians. The political elite has lost the trust of society. This is often expressed. Political participation in Poland is low. Approximately 40% of Poles entitled to vote participate in elections. The people no longer trust the politicians as their programmes and statements appear to ring hollow.
4. The Polish legal system is not yet complete. Above all, lobbying is not legally regulated. For this reason, the ambiguity of individual legal provisions can be used to one's own advantage. This mainly applies to persons with great power and influence.
5. Sluggishness of the state administration. In 1997, the Polish premier, Jerzy Buzek prepared an extensive administration reform. Poland has 16 states (województwo) since this year. The administration has improved, but one still finds miserable standards in official offices. This applies above all to the procedure in small communities and local state offices. In order to improve the situation, a community competition was organised under the title "fair play community". In order to bring the local authorities closer to the people, mayor competitions were organised or official doors were opened to the public, in order that they could inform themselves about the administration.
6. The tradition of "thank you" gifts is still generally accepted. This still remains the case in Poland. The phenomenon originates from socialist times. One encounters this practice in hospitals, where the patients give the doctors money in the expectation that they will so receive better care. Only occasionally do the doctors request or demand money. Such situations also arise as doctors in Poland earn very little money.
7. Lack of adequate information and education. To change these habits, civil social structures have to be developed, which inform the people and provoke a change in behaviour. One must remind the youth and also the adults that good service in hospitals or official offices can be expected through normal methods. A good example of this is a project with the slogan: Just say no to corruption!

Which areas in Poland are affected by corruption?

Corruption mainly finds its victims in the following areas:

1. Hospitals, particularly prior to or following operations. Most of all when there are no free beds in the hospital, the patient then pays money to be operated more quickly. For this situation is a joke where the doctor says to the patient: “the bed has four legs”.
2. In politics, the members of parliament, senators, party leaders. The biggest corruption affair in the political arena was Rywingate. There are situations where one can purchase legal policies for special projects.
3. Police or traffic police and in auctions for goods confiscated by the police.
4. Local administration- this mainly concerns permits not only for building houses, but also supermarkets and filling stations etc.
5. Merged political and economic interests. One is not permitted to be an MP or senator whilst at the same time acting as a company director. But a wife or other close relative of a senator or an MP is officially permitted to head the company.

How is corruption combated in Poland?

Corruption and combating corruption have been subjected to intensive discussions over the last few years in Poland. The Poles have not forgotten the big Rywin corruption affair. Since then, newspapers and television have regularly reported on other corruption scandals. But it must be emphasised that fighting corruption has a long tradition in Poland. Since the transformation, there are state and private legal bodies for combating corruption in Poland e.g. the Stefan Batory Foundation and research institutes, e.g. the Opinion Research Centre (CBOS) and others.

State and private anti-corruption institutes

You probably know that the Kaczyńscy twins currently govern Poland. Their party won the election with the slogan fight corruption. The Central Anti-Corruption Bureau (CBA) initiated by the Kaczynscy brothers has been in operation since 2006.

Other state anti-corruption institutions are:

1. Parliamentary Commission
2. Fact-finding commission
3. Supreme Chamber of Auditors
4. Internal Security Bureau
5. Central Anti-corruption Bureau
6. Public Prosecution Service

7. Police

Non-state organisations:

1. Stefan Batory Foundation
2. Transparency International, Poland office
3. Opinion research centres e.g. CBOS, PENTOR, OBOP and others.
4. Non-state programmes e.g. „Nie daję nie biorę łapówek“ and others.
5. The “clean hands“ programme – „Czyste ręce“ and others

These state and private institutions each have their own areas of operation. They operate their own programmes against corruption.

Can corruption be prevented?

The answer is: yes, certainly. The institutions which we have already spoken about undertake a lot to minimise corruption. But one is forced to ask the question whether it is enough? And that is not easy to answer. We believe that for Poland, the following steps must be undertaken through statutory regulation:

1. Statutory anti-corruption provisions must be more simply and precisely formulated.
2. The statutory regulations concerning lobbying must be amended and made clearer.
3. Ambiguous statutory regulations must be replaced.
4. Officials working in areas with a risk of corruption must be closely monitored.
5. Officials must compensate any injury they have caused to the state through corruption.
6. People, who have been convicted of corruption in a court of law, must be revealed.
7. The economy and effectiveness of the state administration should be audited according to specified criteria.
8. Commercial enterprises should no longer be permitted to issue permits.

One should however not forget the social aspects. In order for corruption prevention to be effective, the following measures are required:

1. The government should develop a special programme for teenagers, which promotes behaviour, which hinders corruption.
2. Further anti-corruption initiatives are required, for implementation by the government or other non-state organisations.
3. Political and government bodies must be transparent.

4. Economic development must lead to adequate salaries. We need a broad middle class to support civil social structures.
5. The political elite should adhere to high moral standards and monitor the persons in their ranks who abuse these. Thus can the people's trust in politicians be re-established. . These standards should be developed in a coordinated form for the individual government bodies. The more moral or ethical standards are effective, the fewer cases of corruption are expected in the individual states.

5.3.2 The Process of Enhancing Political Accountability in Poland in the context of the Rywin Affair

Balbina Zyga

The problem of corruption can be found in every country in the world. Unfortunately, temptation remains a challenge everywhere. However, when it comes to assessing the scope of this phenomenon in particular states, we can easily define conditions in which corruptive practices are the most likely to persist. On the other hand, good governance, transparency, responsibility and accountability in developed countries with a minimal level of corruption constitute the normative standards in attempting to grasp the more qualitative aspects of democratic performance in order to most effectively combat corruption. However, the evolutionary process, which may eventually lead to such effectiveness in the struggle against corruption usually takes a long time and requires numerous efforts which must consequently be deliberately enhanced to tackle this problem until there is significant improvement.

Taking into consideration the situation and level of corruption in Poland, it might be said that this post-communist country has just started on the path towards changes that form numerous challenges to its still young democratic system. According to recent statistics, Poland achieved 3.7 points and took 61st place (maybe better “WAS 61st?”) in the CPI (Corruption Perceptions Index) and finally overcame a long-term trend of systematic decline in this ranking.³¹ This result however, although better in comparison with recent years, is still considerably worse than the average in the European Union. Moreover, in accordance to Eurobarometer 2005, the survey which began before the last enlargement of EU in January 2007, Poles have the least confidence in political parties, the national parliament and the government among all 25 EU member states. Last but not least, the recent survey conducted by GFK Polonia (published in November 2006) shows that 93 percent of Poles consider their country as corrupt. Undoubtedly, all these indicators are alarming. However, benefiting from this knowledge about the scope of corruption in Poland, we can find better solutions and take well-aimed and necessary measures to fight against it, which is the best and only possible way to challenge this worrying phenomenon.

³¹ CPI, the survey published annually by Transparency International, presenting the Index which rates countries on a scale from 10 (high transparency, no corruption) to 0 (no transparency, high corruption). Data from CPI 2006.

In fact, as has already been highlighted above, the omnipresence of corruption in Poland calls for changes. Additionally, it seems that the process of systemic transformation and strengthening of democracy in countries like Poland is an important area to implement indicators of good governance such as transparency and accountability in public life, among others. That is why, in this paper I would like to devote my attention to the aspect of political corruption in Poland. I have chosen this particular field of interest, while considering the so-called 'Rywingate' and its impact on the process of enhancing political accountability in Poland. This shows the mechanism of civil society's involvement in correlation with the enhancement of accountability as a result of one of the biggest recent corruption scandals in our country.

The whole Rywin Affair, named after the prominent Polish film producer Lew Rywin, started in July 2002. At that time, Mr. Rywin met Adam Michnik, the editor of *Gazeta Wyborcza* - Poland's largest daily newspaper - and a former dissident. He offered his help in tailoring a media bill then under discussion in parliament, in exchange for a US\$17.5 million bribe. The new bill would restrict the potential concentration of the Polish media and strengthen the role of the state regulatory and licensing agency. As part of the deal, Mr. Rywin would be nominated head of TV station bought by *Gazeta's* publisher (Agora). Moreover, the important fact is that Mr. Rywin claimed that he was sent by the 'group holding power', (possibly including the then Prime Minister Leszek Miller), while making his offer to Mr. Michnik. The conversation, between Mr. Rywin and Mr. Michnik was secretly recorded by the editor of *Gazeta Wyborcza*, and published five months later, after unsuccessful journalists' investigations causing real turmoil on the political scene and in public opinion. Since the key political figures seemed to be involved in the affair, the decision to set up the first parliamentary investigative commission based on a special 1999 law was made in the course of the following days. In addition, it was decided that hearings led by this investigative commission must be broadcast and made public. Indeed, it was the first time that the political class was exposed to such public scrutiny. As a result of months of the commission's proceedings (January 2003-April 2004), the final report was prepared. The main author of its final version was the commissioner Mrs. Błochowiak, a member of the SLD party (Left Democratic Alliance), which was the ruling party represented by politicians involved in the affair. According to this report, Rywin had been acting completely alone. However, in the course of events, the lower chamber of the Polish parliament unexpectedly voted to accept another minority report, which named the masterminds behind Rywin's mission. Nonetheless, judges stated that Mr. Rywin acted alone, which undermined any further investigation into the 'group in power'. He

was sentenced to two years in prison and fined 100,000 PLN (25,000 USD) for a so-called trial of paid protection.

In fact, the hearings led by the commission and broadcast on television, showed viewers the numerous shortcomings of the formal proceedings in the government's activities that provoked questions about the level of existence of formal mechanisms of political accountability.

In accordance with Bovens' definition, political accountability: is a relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgments, and the actor can be sanctioned. (Bovens, M. 2005)

It is worth underlining with regard to the Rywin Affair that this corruption affair initiated an important public debate, which has gone well beyond the scandal itself and simultaneously started the process of enhancing political accountability. Eventually, 'Rywingate' resulted in the resignation of Miller's cabinet (in May 2004) and ultimately led to a change of government and significant shift on the Polish political scene. The right-wing politicians from the Law and Justice party called for an end to the Third Republic (III Rzeczpospolita), which they considered extremely weak, corrupt and controlled by a closed circle of people. They finally won the 2005 parliamentary elections under this banner, calling for the formation of an institutional framework within the new Fourth Republic.

Furthermore, what always comes together with questions of accountability is the role of civil society and its involvement in public life. As Habermas claims, civil society results from communicative action: open debate, deliberation and rational argument inside linked and competing public spheres. As a result democratic institutions become both more socially embedded and more effective in exercising their fundamental role of democratic control.

In fact, a vital role in the Rywin Affair was played by the autonomous Polish mass media, often seen as boosters of accountability. Their dynamic activity influenced Polish society, who although initially sceptical towards the commission's proceedings and its output, have slowly become very involved and regularly follow the hearings led by the commission.

This is how the whole chain started. However, we should be fully aware that we have just started walking the path of change which contains the growth and empowerment of active civil society who are able to enhance control over politicians and public officials by exerting structured pressure towards transparency in decision-making processes and accountability in political life.

There is still much to be done since the Rywin Affair exposed a number of weaknesses and deficiencies in Polish democracy and was followed by numerous other corruption investigations. Nevertheless, what we have

learnt is precious. Transparency and accountability constitute the prerequisite condition to start an effective struggle against corruption in modern societies.

5.4 Corruption and Corruption Prevention in Sweden

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What is corruption?

The definition in Sweden's largest dictionary states: *Corruption is the misuse of a position of trust for personal gain.*³² This means: there are very many different forms of abuse of confidence behind this definition. SIDA, a development agency financed by the Swedish government provides a more specific definition of corruption: *Corruption is when an individual as holder of a position of trust is involved with the following: active and passive bribery, extortion, favouritism, nepotism, embezzlement, fraud and illegal politic party financing.*³³ SIDA has devised a very specific definition here – there is even a specific example for each form of corruption named.

The advantage of a very specific definition is that one has clear boundaries of what constitutes corruption. If there is a case which should be investigated in order to ascertain whether it concerns a case of corruption or not, it is simple to look up in a list such as the one from SIDA and to compare the current case with the forms provided in the list. It could be that the current case fits one of the provided examples.

The disadvantage is that it is very difficult to compile a complete list containing all forms of corruption in all possible situations. The more specific a definition is, the higher the risk of forgetting something and that ambiguous cases arise, which most people would describe as corruption, but which is either not included in the list or does not conform to the given examples.

It is important that this problem in statute books is considered, that a balance between an exact legal specification and a more generally worded version is reached.

Swedish anti-corruption laws

Corruption has been outlawed in Sweden for centuries. Laws against corruption exist, which were written in the middle ages. In 1734, laws were introduced, which prohibited district presidents and judges from accepting bribes. In 1919, the first laws against bribery were introduced. In 1976, all public employees and municipal and government contractors were prohib-

³² http://www.ne.se/jsp/search/article.jsp?i_art_id=230357&i_word=korrupcion 2007-03-08

³³ <http://www.sida.se/sida/jsp/sida.jsp?d=439&a=1444> 2007-03-08

ited from accepting bribes. 1978, this was extended to include private employees and contractors.³⁴

There are two statutory provisions against corruption: Chapter 17 section 7 Criminal Code concerns the offering of bribes and chapter 20, the acceptance of bribes.³⁵

The word “corruption” does not appear once in chapters 17 or 20, but it is these and the Marketing Act – in an additional chapter of the act, which apply as the Swedish legal regulations against corruption.³⁶ In addition to the Marketing Act and laws against bribery, there are also many other paragraphs in the Act that are closely associated with corruption.³⁷

Criminal Code Chapter 20 sect. 2 Breach of professional confidence against principal

Criminal Code Chapter 9 sect. 5 Usury

Criminal Code Chapter 9 sect. 4 Extortion

Criminal Code Chapter 20 sect. 1 Misuse of office

Criminal Code Chapter 9 sect. 1 Fraud

If corruption is the misuse of a position of trust for personal gain and the aforementioned laws prevent the misuse of a position of trust for personal gain, it would be accurate to also consider these laws as anti-corruption provisions, this is however not the case.

The paragraphs were amended in 2004. The international group was extended. Prior to 2004, according to Swedish law it was only illegal to bribe MPs, commissioners, judges and auditors in the EU. It is now also illegal to bribe foreign MPs, ministers etc. See articles 6-9 of Chapter 20 sect. 2 of the Swedish Criminal Code.

Also following the last amendment (2004) of the legal sections, an analysis by the *Institute against Bribery* indicate many weaknesses in Swedish legislation while at the same time issuing several proposals on how these sections could be improved.

The word “improper” is very central. But what is actually meant by “improper”? There is no definition in the statute book. The legal wording is unclear due to the aforementioned problem; if the text was too specific, there is a risk of something being omitted, if it is written too generally, the specific meaning is uncertain. According to the Institute against Bribery it is necessary to make the text clearer and the institute is of the opinion that

34 Korruption s. 7, Thorsten Cars, Författaren och Istus Förlag AB, 2 upplagan, Uppsala 2002

35 Korruption s. 8, Thorsten Cars, Författaren och Istus Förlag AB, 2 upplagan, Uppsala 2002

36 Mutbrott, bestickning och korruptiv marknadsföring s. 13, Thorsten Cars och Nordstedts juridik AB, Stockholm 2001

37 Mutbrott, bestickning och korruptiv marknadsföring s. 20, Thorsten Cars och Nordstedts juridik AB, Stockholm 2001

in this context the word “improper” means the following: a transaction which seen objectively is intended to influence the official activity of a functionary. The institute proposes that the wording of the law should refer to this definition to explain what is actually meant by “improper”.³⁸

The Institute against bribery provides several recommendations on how large gifts may be, in order not to be described as “improper”. These recommendations state, for example, that gifts in monetary form are not permitted and that an official with whom one has a professional relationship should not receive a birthday gift with a value of more than 400 krona.³⁹

A further problem with Swedish legislation is the difference between bribery and serious bribery offences. The wording of the law does not describe how a serious case of bribery is judged. Public workers receive stricter sentences when compared to private employees. The Institute against Bribery recommends that an explanation be appended to the current law concerning the point at which a contravention is considered serious. For example where systematic bribery is concerned, or when the bribery leads to significant disadvantage for the general public or if the infringement was committed through a public authority, etc.⁴⁰

The Institute against Bribery also proposes that the long lists of categories of persons, who may not be bribed, stipulated in Chapter 20 Sec 2 should be shortened. According to the institute, the nine points could be replaced by one sentence: [one may not bribe] those who according to law or contract have been entrusted to perform a task or assignment in a certain manner.⁴¹

The Institute against Bribery also proposes that chapters 17 and 20 be amalgamated, in order that the two sections on active and passive bribery are next to each other.⁴²

“Expenditure for bribes or other improper rewards may not be deducted [from tax]” Chapter 9 Sec 10 Income Tax Law.

At a first glance, this law looks a little strange. If bribery were prohibited, people who have bribed someone would logically not record it on their tax return. Why do we need this law? It concerns bribery abroad. Sweden has very weak laws in this area. There are situations in which it is not illegal for Swedes to bribe foreigners abroad. This particularly applies

³⁸ En kritisk analys av den svenska mutlagstiftningen, Cleas Beyer m fl, http://www.institutetmotmutor.se/_upload/imm/imm_rapport_hela.pdf, 2007-03-09

³⁹ http://www.ne.se/jsp/search/article.jsp?i_art_id=230357&i_word=korruption 2007-03-08

⁴⁰ En kritisk analys av den svenska mutlagstiftningen, Cleas Beyer m fl, http://www.institutetmotmutor.se/_upload/imm/imm_rapport_hela.pdf, 2007-03-09

⁴¹ En kritisk analys av den svenska mutlagstiftningen, Cleas Beyer m fl, http://www.institutetmotmutor.se/_upload/imm/imm_rapport_hela.pdf, 2007-03-09

⁴² En kritisk analys av den svenska mutlagstiftningen, Cleas Beyer m fl, http://www.institutetmotmutor.se/_upload/imm/imm_rapport_hela.pdf, 2007-03-09

to Swedish businessmen abroad. The legislature has considered that the perception of that which could be seen as corruption varies greatly in different countries. Why should Swedish businessmen abroad be punished when they are merely acting the same as everybody else in that country? It was thought in the past that money paid by businessman in bribes abroad could be considered tax-deductible expenditure.⁴³ This was stopped with the introduction of section 10 in Chapter 9 of the Income Tax Act. Viewed in this context, the reason for this law becomes logical.

The stricter the legislation – the greater the corruption

Countries with stricter corruption laws often have larger corruption problems. If one considers logically, it could hardly be the case that stricter laws encourage corruption, but it appears that legislation cannot be the most important instrument for corruption prevention. The causes for corruption within a nation are dependent on a range of factors. Trust between the people appears to be a very significant factor, where the level of corruption within a country is concerned. Sweden is a good example for this theory. Sweden is a country with a low level of corruption, where the people have great trust in each other and in public institutions. Therefore compared to other countries there are few documented cases of corruption.⁴⁴

There is “no corruption” in Sweden

The definition “corruption is the misuse of a position of trust for personal gain” is often used in Sweden. This definition encompasses much more than bribery and corrupt marketing. But all other forms in which a position of trust can be misused are not described as corruption. The press often writes of corruption cases but they do not call it corruption, instead the words “business”, “wangling”, “scandal”, “cheating” etc are used. Seldom is the word corruption used when describing cases in which an individual has misused a position of trust for personal gain.⁴⁵ One can perceive a certain attitude towards the term corruption.

Corruption?

⁴³ Hederlighetens pris, Anna Hedborg m.fl, 1999
http://www.regeringen.se/download/cb0d500a.pdf?major=1&minor=36264&cn=attachmentPubl Duplicator_0_attachment 2007-03-08

⁴⁴ Hederlighetens pris, Anna Hedborg m.fl, 1999
http://www.regeringen.se/download/cb0d500a.pdf?major=1&minor=36264&cn=attachmentPubl Duplicator_0_attachment 2007-03-08

⁴⁵ Se upp med "affärer" och "gräddfiler"!, **Inga-Britt Ahlenius, DN, 2004-12-22**
<http://www.dn.se/DNet/jsp/polopoly.jsp?d=578&a=357990&previousRenderType=2> 2006-03-08

No, we certainly don't have that in Sweden. That type of thing only occurs in other countries: here we only have "wangling", "cheating" and "dirty business"

Areas at risk of corruption

Areas at risk of corruption

The term "area at risk of corruption" refers to the public sector, which is linked to many opportunities for corruption behaviour. This means that a large number of bribes and suspicions are directed at this sector. This does not necessarily mean that corruption occurs in the public sector. It is only considered that this is a risk area, as there is extensive opportunity for corruption to develop.

Furthermore it is thought that corruption can be seen as more of a social concern and not an individual trait.⁴⁶ One cannot see whether a person is corrupt based merely on their appearance. As a shy person can become a passionate lover in a love relationship, a person who appears at first glance to be honest (law abiding) in a social relationship, can be corrupt.

As corruption is not an individual trait, but is connected to social relationships, the problem of corruption cannot be solved through strict morals or higher ethics. When the circle of relationships where corruption can develop, becomes larger, it becomes harder to retain private morals. The question that should be asked is: in which social relationships can corruption thrive and not which individuals are more corrupt than others.

Areas where corruption can develop

Two areas can be named where corrupt relations can develop. The first with which we will concern ourselves is corruption at the fringes of an organisation; the other is corruption between organisations.

Corruption on the fringes of an organisation

Corruption is secretive and thrives in social relations. Nevertheless, here it is more or less visible. This refers to the form occurring on the open street. This form of corruption is seen on the fringe of organisations to public activity and is connected by one of the participants in the corrupt relationship being the barrier guard to the organisation. A few examples: A customs officer accepts money (is bribed) to let a person pass through before others, or police officers, who are bribed not to issue a fine. These are typical examples of this easily recognisable form of corruption. The other participants in this relationship (the bribers) will for example, avoid a large fine

⁴⁶ Apostolis Papakostas / Fiffel Sverige

through bribing the police officer or avoid waiting in a queue and so bribes the barrier guard to get through more quickly. What we can see from this, is that when corruption is to develop, all others are excluded from the relationship, for example, the other people in the queue, or those who have no money to bribe an official.

Corruption on the boundary between organisations

There is another form of corruption, which is more cultivated than the previous. This form or type of corruption occurs in the higher levels of the social structure. Moreover, it is described by international literature as “high level corruption” or “grand corruption”. This form of corruption is often hard to detect, it is very difficult to see. When detected, it metamorphoses into something different. It is not viewed as corruption. This means the same action can be interpreted in a number of ways; it depends on where in the social structure it occurs. As this form of corruption occurs on the boundary between organisations, it is difficult to discover and also difficult to handle. The larger the contact area is between large organisations, the more social relationships develop between individuals and these relationships can potentially develop into corrupt relationships.

Furthermore, it is important to name the organisational part of the organisation. The higher one is in the organisational hierarchy, the more freedom one has to act, whereby at the other end one finds more controls.⁴⁷ This means therefore, that through the large freedom to act that exists in the organisational hierarchy, it is easier to turn the actions into something else, in order that it does not constitute corruption. As mentioned above, it therefore becomes harder to capture this form of corruption.

The more easily detected form of corruption, which we mentioned earlier (that occurring on the fringes of public institutions) is much easier to prevent; for example through disciplinary punishments, different forms of organisational control or social reforms. Social reforms help to eliminate the most important prerequisite for corruption – poverty.

It is believed that the eliminating of poverty, which is a central component of Scandinavian welfare politics, has, together with direct and subtle control mechanisms, contributed to a noticeably lower level of corruption in Sweden. At the same time, it is also thought that controls and sanctions in other countries have strongly contributed to keep the easily recognised cases of street corruption at a low level. There is reason to believe that the difficult to recognise form of corruption in higher social structures has recently increased.

⁴⁷ Apostolis Papakostas, Fiffel Sverige; Ahrne 1994; 28-45

The integration of organisations

Organisations can be integrated in a variety of ways. We can name two methods. The first makes itself known in the sense that in the Swedish system, organisations of a certain size, are self-sufficient and can support themselves. The smaller organisations are reliant on other organisations. Therefore the relationships between organisations and the employees who maintain these relationships have large freedom to act. Furthermore, state activities extend more and more to companies owned by the state and are active in the market economy. Other state activities have been transformed into enterprise-like operations. The leadership and decision-making models in the market economy have been taken over by the public sector.⁴⁸ The exchange logic of the market economy has been integrated with the legislative. With a growing public sector it can no longer be recognised whether state regulations or market economy principles are being applied.⁴⁹ It is known from past experience that when these two logics are merged, corruption can develop.

The other form of integration arises through personal networks, which develop between employees. This concerns persons who switch sectors or others who hold several positions at the same time. They contribute most of all to the integration of organisations.

Another form of these personal networks is so-called mingling. This happens outside organisations, as opposed to the two previous examples. Mingling occurs, for example at information meetings, where people have the opportunity to meet and make contacts.

Risk areas in Sweden

Generally speaking, the risk areas in Sweden do not significantly differ from those in other countries. In an official survey from the OECD in 1997, Sweden responded to the question on whether the country had an official opinion to risk areas with “no”. A further study of this type has not been conducted.

What we can confirm is that corruption is highly represented at a local level.⁵⁰ Sweden does not greatly differ in this respect from other western countries. Sweden has an extensively developed local administration of public functions. The proximity of decisions and their implementation is also a contributing factor, to there being a risk area here. This means that

⁴⁸ (Forsell & Johansson 2000; Fiffel Sverige

⁴⁹ (Apostolis Papakostas; Fiffel Sverige

⁵⁰ Andersson 1999, En sömngångartig inställning

the risk of corruption is greater here. Other areas that could be defined as risk areas are:⁵¹

- Sectors linked with great freedom to act for authorities and employees, where decisions for licenses and public procurement procedures are made.
- The building industry
- Police, customs

Much is currently being discussed about risk areas. Types of national risk areas, international corruption, companies in Sweden or Swedish companies involved in corruption, foreign companies involved in dubious activities in Sweden.

At national level, the local public sector is considered the highest risk area. The municipal auditing court has not been changed in the last years as opposed to the state auditing court. Friendships, contacts outside the workplace and auditors, who inspect a part of the work themselves, are a normal occurrence in Sweden.

As regards the international perspective, we have the pharmaceutical industry, which is both a national and international risk area. Hospitals today have a tendency in cooperation with universities and other academic institutions to purchase training from subcontractors for financial reasons. This then becomes a race for the pharmaceutical industry and other interested organisations with the result that sponsoring networks are created, which bring a large risk of corruption with them.⁵²

Corruption prevention measures

The institutions working against corruption will be named in the following sections. Sweden has no official anti-corruption guidelines but institutions that exert controls and indirectly issue guidelines.

Swedish National Auditors Office (Riksrevision)

The Swedish National Auditors Office is one of the institutions that contribute to fighting corruption. This institution investigates state offices and indirectly issues guidelines, their Directives (instructions) regulate national operations. This regulation occurs through their duty of reporting both to the organisation during the audit. The Swedish National Auditors Office should also safeguard secure, effective and adequate public activity and while doing so, issue guidelines for progressive administration work.⁵³

⁵¹ Andersson 2002, En sömgångartig inställning

⁵² En sömgångartig inställning

⁵³ OECD/ PUMA 1997, En sömgångartig inställning

An important change that occurred in 2003 was the separation of the Swedish National Auditors Office from the government. Up until this point, it was financially and politically subordinate to the government. The separation of the auditors office from the government shows that Sweden is heading in the right direction in the fight against corruption. Also, if one doesn't believe that much corruption occurs at such a high level in the country, it is nevertheless a good measure for preventing corruption.

The State Authority against Corruption (Riksenhet mot korrupktion)

Another important institution is the state authority against corruption under the direction of the Prosecutor General. Its duties:

Firstly, the state authority against corruption is a legal agency that deals with corruption cases; moreover it is also available to authorities and the economy as advisors. The Prosecutor General's office department for special cases previously processed its assignments. The Prosecutor General formally established it but recently several requirements for special units have been issued via EU conventions.⁵⁴ In other words, this means that the National Office against Corruption was mainly established through interstate conventions from the EU.

Proposals from the Chancellor of Justice

Following a meeting of the Swedish Prime Minister, the Chief of Police and the Prosecutor General in 1996, the Chancellor of Justice received the assignment to issue proposals for measures against the spreading of corruption. According to his report, he questioned the effectiveness of control mechanisms; in addition the employees were insufficiently informed about the issue of corruption.

The functioning regulatory system was highlighted and also the requirement for strengthening employment regulations and the Local Government Act. Mixed duties are seen as a risk, as systematic controls can be lost. Furthermore it is thought that offices should be monitored by independent control bodies and not by subordinates. At local government level, the position of the auditors should be reinforced in order that an auditor can make a note against a higher-ranking official.

Furthermore, the people should be better informed at local government level, and auditing should be coordinated together with audits of local government business.⁵⁵

⁵⁴ En sömngångartig inställning

⁵⁵ Hederlighetens pris, en *ESO* Rapport om Korrupktion av Staffan Andersson 1999

Measures taken by the Swedish Government 2000- 2005

Cases of bribery and undue influence in state bodies were noticed above all by the Ministry of Foreign Affairs and also by the Ministry of Finance, which has led to the introduction of several measures over the last few years.

In the administration department of the government office, a study is in progress, which concerns internal controls in the government office. A dual-control principle is applied. This means a worker may not be assigned to handle a case, which is connected to the exercising of government office alone. The government office has also increased demands on the organisations, which receive or apply for financial donations.

The Ministry of Foreign Affairs is working to fill any gaps in the action plan and also to ensure that the activities of the organisation do not contribute to promoting corruption in the promotion of exports. Measures undertaken include increasing the level of knowledge concerning corruption in the Ministry of Foreign Affairs and in the foreign authorities.

The Ministry of Finance has contributed by setting up a special department in 2005. This is intended to exist until 2008. Its duty includes issuing proposals to measure the scope of irregularities. They should also issue proposals that should result in fewer cases of irregular payments.

Examples of corruption scandals in public administration

Motala Municipality

The journalist Britt-Marie Citron exposed the Motala case in 1995. She received an assignment to investigate the municipality of Motala. The social democrat party had been in power for a long time. It had been shown that this increases the risk of corruption. The affair received a lot of attention in the media. Many high-ranking politicians and officials were involved. The Chairman of the municipal council who was also the economic advisor, was particularly implicated. Through the principle of public access, the journalist was able to examine the man's credit card receipts. She found many strange receipts. The politician had celebrated his own birthday and paid for it with the municipal credit card. He had also taken private trips with his family also paying for these with the municipal credit card. This politician had also made other purchases with the credit card. During his holiday, he had hired a car, bought alcohol and a golf set at a duty free shop and bought clothes and shoes on a journey to Gothenborg. He and his party colleagues also visited pubs. There were transferrals of public funds to private accounts. This man was heavily implicated. He was in possession of power and was entrusted with a large sum of money. The politician arranged a lot of trips, e.g. to Denmark, Berlin and Nice. He also paid for

these trips with the credit card, but these trips were not official. The politicians' wives accompanied them and the journeys were mainly pleasure trips.

In Motala there is an association (MFS), which promoted economic cooperation between the municipality and the company in Motala. This association first paid for the trip to Berlin, then forwarded the bill to the municipality. This method hid the costs. Hundreds of thousands of euros were transferred from the municipality to MFS accounts. This money was then used for alcohol and holidays.

When comparing Motola with a similarly sized municipality such as Piteå, the municipality Motola spent 70,000 euros and Piteå only circa 10,000 euros for representation purposes in 1995. This is a major difference. Under the terms of a 1951 resolution, there should only have been alcohol-free hospitality. This was not the case in Motala.

Many politicians and officials were involved and were very aware of what they had done. Nevertheless, they were unwilling to confess to the truth. They even lied. A friend of the journalist managed to reach a hotel receptionist in Berlin. She confirmed that the men had been there and that their wives had accompanied them. This proved that the trip was no official trip. Wives are not permitted to accompany business trips and it is not permitted to consume too much or drink alcohol on state money. This was what they had done in Berlin.

Charges were brought in 1997. The chairman of the municipal council was charged with serious breach of confidence against a principal. Shortly afterwards six other politicians and officials were charged with breach of confidence. In 1998 the Chairman of the municipal council was sentenced to 1.5 years in prison, one politician to four months in prison, three others received probation and fines and one politician received only a fine. New information subsequently came to light that two politicians had bought two cars using the municipal credit card. One of these men was the former chairman of the municipal council. He was sentenced to a further six months imprisonment. The man was also to pay approx. 100, 000 euros to the municipality.

The auditors were permitted to remain in office despite all this. They hadn't committed any formal errors.

How could this happen?

The social democrat party had been in power for a very long time. It was a tradition in Motala and no one questioned the municipal leadership. An in-

sight into their activities was difficult; for example, no protocols were written.⁵⁶

Gävle Municipality

This case also received a lot of attention in the media and became known in 1996. It led to a debate on ethics and morality. The executive of the municipal public transport company visited a striptease club in Brussels. The managing director paid for everything, approx. 3,000 euros with the municipality's credit card. This was naturally no official visit. The head of the local authorities association in Gävleborg had also been busily using the credit card; he had played roulette and black jack in restaurants across the city. This continued over the course of several years, no one in the leadership reacted. The credit card was also used several times for private expenses.

A member of the local parliament had visited an illegal club. As the police discovered this, the man resigned. All these political dealings resulted in the resignation of five high-ranking politicians; two members of the municipal council in Gävle, a member of the municipal council in Hudiksvall or in Ovanåker and also a member of the provincial parliament. In addition, the managing director of the local authorities association and the managing director of the municipal company were forced to resign. The director of the local authorities association was convicted of serious fraud, serious embezzlement and breach of confidence. He received a two-year prison sentence and was required to pay approx. 100,000 euros in compensation to the local authorities association. This man had used his knowledge of a flaw in the control procedure, in order to exploit the organisation. He had transferred money to his own account several times and had also used the association's money for projects, which were not recognised. The man had also transferred a total of approx. 50,000 euros into his own bank account.

During the trial, the director reported of a trip to Milan, where two other politicians purchased the services of two prostitutes using taxpayers' money. This case also involved several politicians and officials. Here again, the social democrat party had been in power for a long time.⁵⁷

The District President in Örebro

This case concerns representation costs and became known in 1996. It is a particularly interesting case but the court found nothing unlawful. The pub-

⁵⁶ Britt-Marie Citron, 1999: *Sölve & Co - Korruptionsskandalen i Motala*; Staffan Andersson, 1999: *Hederlighetens pris - en ESO-Rapport ob Korruption*

⁵⁷ Staffan Andersson, 1999: *Hederlighetens pris - en ESO-Rapport ob Korruption*

lic reacted however and considered it was a crime against ethical norms. This case shows how important controls are. This concerns the highest officials in the administration, the district president, who made the mistake. The previous district president in Örebro (1989-1994) was charged with breach of confidence against a principal and fraud. He was found to be not guilty on all charges.

The district president had not declared his representation costs. It is thought that he used the representation account to pay for costs, which the provincial parliament should not pay. There were also invoices, which did not correspond to the actual costs. The district president had the invoices at his home. He had cut the receipts, which can appear rather strange. He said he had done so as he could have several receipts on the same piece of paper. In Örebro a special model is used; the district president requests a refund of the representation costs against receipts. It was thought that he had made a personal profit and the administration was being cheated. The court however found it could not be proved, but many thought that he was guilty.

It is difficult to say what representation is exactly. It is difficult to set limits. The district president could himself decide what representation in his case was.⁵⁸

Definition of economic crime

It is important to limit the definition of economic crime. A usual definition is that economic crime is illegal activity with financial gain. A study by the Economic Crimes Bureau (Ekobrottsmyndigheten) 2007 includes the following definition:

“Economic crime lies in economic malfeasance in a company which operates legally. In Sweden, this mainly concerns offences by a manager or a company representative such as corruption and embezzlement”

A restricted definition is necessary as most crimes are linked to financial gain, for example in human and drug trafficking and sometimes, also violent crimes. Economic crime in Sweden is associated with the legal activities of companies. Private tax evasion and fraud are not included as economic crime. Defrauding by private individuals can also affect legal activity, e.g. illegal employment in business.² Examples of economic crimes are tax evasion, corruption, fraud, embezzlement, ecocide and insider trading. These concern a different criminality to violent crimes.

Economic crime can be divided into three categories. 1) Corporate crime – an offence is committed in order that a company profits. This is the usual form in Sweden. 2) Occupational crime – when an offence damages

⁵⁸ Staffan Andersson, 1999: *Hederlighetens pris - en ESO-Rapport om korruption*

a company. This is more usual internationally. 3) In companies, accounting offences are the most usual form of economic crime. The Economic Crimes Bureau (Ekobrottsmyndigheten) assignments consist to 90 % of accounting offences and tax evasion. Tax evasion alone costs approx. 100 billion krona (10 billion euros). The tax office is Ekobrottsmyndigheten's biggest informant.

In Sweden, a clear distinction is made between economic and organised crime. Sometimes businessmen are also involved in organised crime; in this case it's not an assignment for Ekobrottsmyndigheten. Mixed criminality is the jurisdiction of the police and not for Ekobrottsmyndigheten. Most economic crime in legal activity affects competitors or the state.

Insurance fraud is a new phenomenon in Sweden. In the last year, private individuals have committed a series of frauds against private and public insurances, e.g. invented traffic accidents and misappropriation of insurance benefits.

Most cases of economic crime involve the middle and upper classes. Persons of high ranking in the economy commit the serious offences. These usually evade punishment. In contrast, the less serious cases – usually committed by the middle class – are more often discovered. There are also more control mechanisms at this level, e.g. through tax controls.

Economic crime requires a special personality. Here we find three personalities, which tend more towards economic crime: the positive, egoistic and the neurotic.

Trust in the economy

Sweden has experienced many economic scandals in the past ten years. The Swedes are very sceptical, when they hear of high redundancy payments and they find that leading managers receive immoral benefits. The previous social democratic government reacted in 2002 and mobilised a committee. It was to examine Sweden's trust in the economy. The appointment of the committee was a political initiative to inspire new trust in the economy.

Measures for combating economic crime

Sweden is effectively a country with very little economic crime, which is why fighting such crime was virtually ignored in the past.⁵⁹ Economic crime very rarely has direct human victims and is also often very hard to detect. A further difficulty is the fact that the authorities and not the police often investigate cases of fraud. Therefore these cases are often not in-

⁵⁹ GRECO (06-2001) *First Evaluation Round. Evaluation Report on Sweden*. Strasbourg.

cluded in the statistics.⁶⁰ At the beginning of the 90's, attention was directed more often at this form of criminality, as more and more scandals were revealed and it is assumed that economic crime is continuingly on the increase.⁶¹ The statistics are however not particularly reliable, mainly as it is difficult to determine which crimes should be considered economic crimes⁶² and because economic crime was seen as relatively low.⁶³

The more this criminality is detected, the greater the requirement for measures. In the mid 90's numerous committees were appointed, to find a solution to the problem. These also led to the establishment of Ekobrottsmyndigheten (Economic Crime Bureau) in Sweden.⁶⁴

The inspiration for the organisation and function of this agency was mainly found in Denmark and Norway. There were already similar agencies, which have national responsibility to combat the largest and most complicated cases of economic crime. In Sweden, Ekobrottsmyndigheten is also charged with counteracting all economic crime in the three metropolitan areas (Stockholm, Gothenburg and Malmö). It is namely assumed that working only with "serious" crime would restrict the employees too much and that they would receive a slanted view on reality. Economic crime in metropolitan areas is different as the majority of the largest companies are based there. Expert help is more often required there to combat criminality. The employees of the regional public prosecutors offices investigate economic crime in the remaining areas of Sweden. They often work closely together with the regional police departments for economic crime.⁶⁵

420 people work for Ekobrottsmyndigheten⁶⁶ including public prosecutors, police, economy experts and administrative staff. They mainly work in teams of four people (a public prosecutor, two policemen and an economic expert) and each team receives a case.⁶⁷ The agency is represented in approx. 6 locations; in the three major cities and also in several smaller

⁶⁰ Korsell, Lars (2004). Ekobrott drabbar vanliga människor. *Apropå*, 2/2004. Available at <http://www.bra.se/extra/pod/?module_instance=12&action=pod_show&id=41> Latest update 2005-03-29.

⁶¹ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁶² Sjöstrand, Glenn (red.) (2005) *Fiffelsverige – sociologiska perspektiv på skandaler o fusk*. Malmö:Liber.

⁶³ GRECO (06-2001) *First Evaluation Round. Evaluation Report on Sweden*. Strasbourg.

⁶⁴ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁶⁵ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁶⁶ <http://www.ekobrottsmyndigheten.se/templates/Page___12.aspx>

⁶⁷ GRECO (06-2001) *First Evaluation Round. Evaluation Report on Sweden*. Strasbourg.

towns⁶⁸. Approx. 10 police officers work for Ekobrottsmyndigheten in each major city. The employees who work at the agency have various employers; the federal police office employs the police, as it is responsible for the police exertion of force. The other employees are employed by Ekobrottsmyndigheten itself, but because Ekobrottsmyndigheten is actually a part of Åklagarmyndigheten (the public prosecutor's office), the real employer is Åklagarmyndigheten. The agency can determine its internal organisation itself, the general director is however appointed by the government.⁶⁹

Ekobrottsmyndigheten's predominant objective is investigating economic crime. Examples of various cases handled by Ekobrottsmyndigheten are insider trading, fraud and embezzlement. Ekobrottsmyndigheten also carries the national responsibility in Sweden for the investigations of all offences concerning EU money in Sweden. Ekobrottsmyndigheten is also the Swedish agency which liases with OLAF, the EU anti-fraud office.⁷⁰

The most usual cases, which Ekobrottsmyndigheten investigate, concern tax evasion offences. These make up 90 percent of all reports to the authorities⁷¹ and it is estimated that tax evasion costs approx. 70 million krona (7.5 million euros) each year⁷². Anyone may report a crime to Ekobrottsmyndigheten – also private individuals – but most reports come from other authorities, such as the tax authorities⁷³ (see below).

Ekobrottsmyndigheten should not only clear up crime. Another important duty is to assist in the prevention of economic crime, also through information and the development of suitable legislation. 4 percent of the total budget is used to this purpose.⁷⁴

Ekobrottsmyndigheten is the largest economic crime prevention agency in Sweden, but it works closely with many other important authorities. Firstly, with the police and their 21 regional departments. As mentioned before, most regional police departments have an economic criminal department. At central level are the federal criminal police (responsible for secret service information and combating serious crime), the security police (works with counter espionage, protection of persons, counter-

⁶⁸ <http://www.ekobrottsmyndigheten.se/templates/Page___14.aspx>

⁶⁹ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁷⁰ <http://www.ekobrottsmyndigheten.se/templates/Page___368.aspx>

⁷¹ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁷² <http://www.ekobrottsmyndigheten.se/templates/Page___17.aspx>

⁷³ <http://www.ekobrottsmyndigheten.se/templates/Page___1924.aspx>

⁷⁴ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

terrorism etc.), and forensic laboratory.⁷⁵ The police also have a department named the financial news service, which actually belongs to the criminal investigation department. This service is mainly responsible for detecting and investigating suspected money laundering.⁷⁶

Closely cooperating with the police are Åklagarmyndigheten (public prosecution) and its various departments. Åklagarmyndigheten also maintains four “development centres” with various specialisations.⁷⁷ Its headquarters, which are located in Stockholm, are specialised in finance and economy.⁷⁸ There is also the Riksenheten mot korruption (institute against bribery) at central level. They investigate all cases involving bribery.⁷⁹

The financial authorities have also taken steps to prevent economic crime. A lot of the reports that reach Ekobrottsmyndigheten originate from the tax authorities. As mentioned above, most cases of economic crime concern tax evasion. In order to assist Ekobrottsmyndigheten in their investigations, the tax authorities set up ten units nationwide to investigate tax evasion in 1998. Their task is to gather, process and analyse information. In their search for evidence, the approx. 220 employees have no right to exert force.⁸⁰

Brottsförebyggande rådet (National Council for Crime Prevention) is the name of the Swedish authority that has the task of recording data for criminal statistics. Through this it is also possible to advise the other agencies, as to what can actually be done to prevent crime.⁸¹

Finansinspektionen (The Swedish Financial Supervisory Authority) issues permits to firms and companies and is intended to safeguard the stability of the financial market.⁸²

With so many different agencies, coordination is naturally of great importance if their work is to succeed. Therefore at central level is Ekorådet (the National Council for Cooperation against Economic Crime), where

⁷⁵ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁷⁶ <<http://www.police.se/inter/nodeid=4298&pageversion=1.jsp>> Latest update 2006.

⁷⁷ <<http://www.aklagare.se/Om-oss/Utvecklingsverksamhet---utvecklingscentrum/>>

⁷⁸ <<http://www.aklagare.se/Om-oss/Utvecklingsverksamhet---utvecklingscentrum/Utvecklingscentrum-i-Stockholm/>>

⁷⁹ <<http://www.aklagare.se/Om-oss/Riksenheten-mot-korruption/>>

⁸⁰ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁸¹ <<http://www.bra.se/>>/Om BRÅ

⁸² <http://www.fi.se/Templates/Page_2292.aspx>,
<http://www.fi.se/Templates/Page_2296.aspx>

the heads of the agencies meet.⁸³ At regional level SAMEB (cooperation against economic crime) is responsible for cooperation.⁸⁴

A further measure against economic crime is for example the obligation to report for various agencies, companies and professions. The obligation to report applies to banks securities companies, insurance companies, bureaux de change, jurists, auditors, accountants, estate agents, jewellers, antique dealers and casinos.⁸⁵

All forms of company in Sweden have a legal obligation to keep records.⁸⁶ If one commits a serious financial offence or is grossly negligent in business, one can be barred from a profession. This means that an individual is prohibited from forming a company for between three to ten years or from holding a higher position in a company.⁸⁷ The register containing those who have received such a ban is public.⁸⁸

A problem, which has been “discovered” by GRECO (the group of states against corruption), as they investigated the Swedish measures, was that legal entities cannot be sanctioned in Sweden. If a natural person has committed a crime and the legal entity has not done enough to hinder the crime, the legal entity can be sentenced to a fine. The fine however does not count as a sentence and may not exceed 330,000 euros.⁸⁹

That Ekobrottsmyndigheten is the most important agency in combating economic crime in Sweden, is fairly obvious. It has no counterpart in any other EU countries. Norway, Denmark and Great Britain have similar institutions, but they work only on the biggest most complicated cases while Ekobrottsmyndigheten concerns itself with all economic crime in the three metropolitan areas. Ekobrottsmyndigheten therefore has a very large area of responsibility, which encompasses circa 56 percent of the population.⁹⁰

A government survey was conducted in 2005 to control how Ekobrottsmyndigheten functions, this means the advantages and disadvantages arising since the agency was established in 1998. It was found that Ekobrottsmyndigheten had above all been successful in regard to productivity. Ekobrottsmyndigheten processes circa 4000 reports annually.⁹¹ To process

⁸³ <http://www.ekobrottsmyndigheten.se/templates/Page___25.aspx>

⁸⁴ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁸⁵ <<http://www.police.se/inter/nodeid=4298&pageversion=1.jsp>>

⁸⁶ http://www.ekobrottsmyndigheten.se/templates/DictionaryList___150.aspx#bokföringsskyldighet>

⁸⁷ <http://www.ekobrottsmyndigheten.se/templates/PageList___433.aspx>

⁸⁸ GRECO (03-2005) *Second Evaluation Round. Evaluation Report on Sweden*. Strasbourg.

⁸⁹ GRECO (03-2005) *Second Evaluation Round. Evaluation Report on Sweden*. Strasbourg.

⁹⁰ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁹¹ <http://www.ekobrottsmyndigheten.se/templates/Page___5.aspx>

the workload more quickly, the reports are divided into groups; “Project cases” or “quantity cases”.⁹² This makes it easier to decide how much resources should be used for each case. Although productivity has been increased, there have unfortunately been difficulties in investigating many larger cases and obtaining convictions for the biggest criminals.⁹³

Problems, which were mentioned in the study were for example, that Ekobrottsmyndigheten only investigates the most complicated cases outside the metropolitan regions. One proposal is that Ekobrottsmyndigheten should be modified to resemble the agencies in Norway, Denmark and Great Britain. Then Ekobrottsmyndigheten would only concern itself with the most serious cases of economic crime. According to the study, there is also the danger that too many experts and too few people with a general overview of the problem work for the agency. Experts tend to overvalue their own field and thus set false priorities. The personnel at Ekobrottsmyndigheten also reported that they have the feeling that it is difficult to switch workplaces between the agencies or sectors.⁹⁴

Relatively little funding was provided for counteracting economic crime. After the agency was established, it has been simpler to ensure that the money is really used for this purpose. It has however simultaneously become more difficult to transfer money if an extra financial supplement is needed elsewhere within the law.⁹⁵

The final sentence of the study is that Ekobrottsmyndigheten should be dissolved. Although Ekobrottsmyndigheten has a good productivity level and the work method and cooperation function very well, any comparison with economic crime prevention outside the metropolitan areas shows that prevention through Ekobrottsmyndigheten does not function better nor has it a higher success rate. The duties of Ekobrottsmyndigheten could be organised exactly as in the remaining regions of Sweden. This means the duties could be divided between the police and public prosecution.⁹⁶

The Moderate Party which entered government in September 2006, has spoken out against the recommendations of the fact-finding committee and stated that a closure is neither topical or will become topical.⁹⁷

⁹² <http://www.ekobrottsmyndigheten.se/templates/Page___17.aspx>

⁹³ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁹⁴ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁹⁵ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁹⁶ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

⁹⁷ Utredningen om översyn av Ekobrottsmyndigheten (2007) *Nya förutsättningar för ekobrottsbekämpning*. Stockholm: Fritzes. (SOU 2007:8)

Stricter legislation or self-control?

When GRECO (the group of states against corruption) has examined Sweden's measures against economic crime, it did not reach a too negative conclusion. Sweden has many agencies and institutions for the prevention of this form of criminality and also economic crime does not appear to be a particularly major problem. GRECO discovered several weak points, whereby the most serious is the lack of adequate sanctioning for legal entities.⁹⁸ In Sweden, one often relies on the financial market itself and one thought that a bad stock quotation after a loss of image following a scandal was sufficient punishment.⁹⁹

The question is also whether Sweden requires stricter laws or whether the financial market punishes its companies and corporations sufficiently itself. In 2005, the Swedish sociologist Tage Alalehto examined punishment of economic crime. He selected several cases, which were described in "Dagens Industri", the biggest financial newspaper in Sweden. He examined how the stock exchange listings of these companies and corporations moved, prior to and following the disclosure of criminal affairs.¹⁰⁰

Alalehto's study showed that the stock market listing sank shortly following exposure. This shows that the market really does react to criminality. Alalehto also examined how the "criminal" firms and companies had developed after a period of time had passed and the study showed that most companies and corporation generally followed the development of the general index, with only slight negative deviations.¹⁰¹

Alalehto continued to examine the stock market listings of these companies and corporations before the disclosure, and was able to ascertain that most companies shortly prior to the disclosure had shown a very good development and strong capital gain. This phenomenon could be so interpreted, that the criminal dealings of the company or corporation actually "helped". Then comparing the situation of the company/corporation shortly before disclosure and one year afterwards, it becomes obvious that most companies/corporations didn't particularly suffer. Seen in general, most had earned more than those who played by the rules.¹⁰²

Why don't the shareholders and the financial market react differently? Why don't they punish immoral trading? The most probable explanation is

⁹⁸ GRECO (03-2005) *Second Evaluation Round. Evaluation Report on Sweden*. Strasbourg.

⁹⁹ Sjöstrand, Glenn (red.) (2005) *Fiffelsverige – sociologiska perspektiv på skandaler o fusk*. Malmö:Liber.

¹⁰⁰ Sjöstrand, Glenn (red.) (2005) *Fiffelsverige – sociologiska perspektiv på skandaler o fusk*. Malmö:Liber.

¹⁰¹ Sjöstrand, Glenn (red.) (2005) *Fiffelsverige – sociologiska perspektiv på skandaler o fusk*. Malmö:Liber.

¹⁰² Sjöstrand, Glenn (red.) (2005) *Fiffelsverige – sociologiska perspektiv på skandaler o fusk*. Malmö:Liber.

that the market players simply aren't too concerned with morality. To them, finance is more important than morality. Criminal affairs are for them purely a financial issue. When the position of a company or corporation has regained its stability, there is no reason for speculators not to invest in a company/corporation. Morality does not appear to be important in the long run, as long as money is being made.¹⁰³

For non-speculators it might be difficult to understand, why morality appears to be totally unimportant in finance. Someone who has attempted to explain this phenomenon is Edwin Sutherland.¹⁰⁴ His theory is that various groups in society experience different "isolated" socialisation processes. What is described as being totally normal in one group, is misinterpreted by another as totally wrong. As long as the own group doesn't punish this behaviour, this behaviour is not perceived as being wrong. It is claimed that the economy and its players form such a group. Their perceptions and values of right and wrong, where finance is concerned are very different to those of the state and society. The speculators therefore do not punish other speculators, as they share the same values and the same perception of right and wrong.¹⁰⁵

In order to cope with economic crime, the gulf between the financial market and society must somehow be bridged. How that can be achieved is naturally a complicated question, but it is very probable that agencies and legislation for preventing serious crime could succeed in solving at least part of the problem.

A real example of economic crime: the Trustor affair

The so-called Trustor affair is considered the largest economic crime in Swedish history.¹⁰⁶ In 1997, the investment company Trustor was bought using its own capital. Today, ten years on, no one could be convicted and the Trustor affair reminds Sweden that the country is not spared from economic crime.

How it all started is something that we cannot know. It is claimed however, at least by the police, that the person who is mainly involved is Joachim Posener alias Joe Falk. Posener had already been sentenced to three years in prison in 1994, after he had committed the biggest economic

¹⁰³ Sjöstrand, Glenn (red.) (2005) *Fiffelsverige – sociologiska perspektiv på skandaler o fusk*. Malmö:Liber.

¹⁰⁴ Sjöstrand, Glenn (red.) (2005) *Fiffelsverige – sociologiska perspektiv på skandaler o fusk*. Malmö:Liber.

¹⁰⁵ <<http://www.criminology.fsu.edu/crimtheory/sutherland.html>>

¹⁰⁶ Radio program. Johnson, Fredrik. Hansson, Kristofer (2006). *Trustorhärvan*. Sveriges Radio P3. Available at <<http://www.sr.se/p3>> /Samhälle-kultur/P3 Dokumentär/Trustorhärvan.

crime in Denmark.¹⁰⁷ He had probably already planned the Trustor affair during his time in prison.¹⁰⁸

After Posener was released, he, his cousin Thomas Jisander, his childhood friend Peter Mattson and his contact in London, the affluent Lord Moyne alias Jonathan Guinness decided to purchase the investment company Trustor. As the large Trustor Corporation was so expensive, the team of four men were permitted to transfer the money five days subsequent to the actual purchase. During this time another Swedish firm “Sandvik” purchased an affiliate of Trustor and Trustor earned almost 900 million krona (95 million euros) through the sale.¹⁰⁹

When the Trustor men had to transfer the money they took 600 million krona from Trustor¹¹⁰ (65 million euros), transferred the money from account to account and as a result the company had bought itself with its own capital. In July, auditors examined the Trustor company accounts. To hide the fact that the account was empty, the Trustor men had induced a bank in Luxembourg to write a certificate that Trustor had enough money in its account. The auditors did not discover any irregularity.¹¹¹

In July, Jisander and Mattson travelled to Saint Tropez in France in order to celebrate. Their luxury lifestyle was so extreme that the French press wrote about it.¹¹² Amongst other things, the two gentlemen had hired a 60 metre long boat with a helipad and a crew of 14. A story that became particularly well known is where the two gentlemen landed on the roof of a bar in the helicopter, whereby the lunches of 150 people were blown away. To make amends, Jisander who was dressed in high heels, a bathing suit and with a carrier bag on his head, bought 408 bottles of the most expensive champagne. He later distributed the bottles to the other guests and also had a bathtub filled with champagne, in order that they could bathe in it.¹¹³

It is also rumoured that Jisander and Mattson had a bet on who could buy the most. The story ended as they totally emptied a Versace store – the Swedes even bought the fittings. The partying in Saint-Tropez may have

¹⁰⁷ Radio program. Johnson, Fredrik. Hansson, Kristofer (2006). *Trustorhärvan*. Sveriges Radio P3. Available at <<http://www.sr.se/p3>> /Samhälle-kultur/P3 Dokumentär/Trustorhärvan.

¹⁰⁸ Castelius, Olle (2001). Ett knapptryck gav dem 600 miljoner. *Aftonbladet*, 2001-02-04. Available at <<http://www.aftonbladet.se/nyheter/0102/04/trustor.html>>

¹⁰⁹ Radio program. Johnson, Fredrik. Hansson, Kristofer (2006). *Trustorhärvan*. Sveriges Radio P3. Available at <<http://www.sr.se/p3>> /Samhälle-kultur/P3 Dokumentär/Trustorhärvan.

¹¹⁰ TT (2006). *Bakrund: Trustorhärvan lever vidare*. *Privata affärer.se*. 2006-05-30. Available at <<http://www.privataaffarer.se/newsText.asp?src=pa&article=14495#forts>>

¹¹¹ Radio program. Johnson, Fredrik. Hansson, Kristofer (2006). *Trustorhärvan*. Sveriges Radio P3. Available at <<http://www.sr.se/p3>> /Samhälle-kultur/P3 Dokumentär/Trustorhärvan.

¹¹² Castelius, Olle (2001). Ett knapptryck gav dem 600 miljoner. *Aftonbladet*, 2001-02-04. Available at <<http://www.aftonbladet.se/nyheter/0102/04/trustor.html>>

¹¹³ Radio program. Johnson, Fredrik. Hansson, Kristofer (2006). *Trustorhärvan*. Sveriges Radio P3. Available at <<http://www.sr.se/p3>> /Samhälle-kultur/P3 Dokumentär/Trustorhärvan.

pleased the two Swedes, but Lord Moyne was not so happy at the time. He sat at the airport located near Saint-Tropez and waited in vain for his two colleagues who were presumably so occupied that they simply forgot Lord Moyne's visit.¹¹⁴

At the same time in Sweden, the journalist Gunnar Lindstedt was planning to write a story about Trustor and therefore later conducted an interview with Lord Moyne, Mattson and Jisander. Lindstedt discovered relatively early that his questions caused the threesome discomfort. For example, he received no satisfactory answer to his question as to how it could be that Lord Moyne had stated in an interview shortly before his purchase of Trustor that he was suffering financial difficulties. The strange behaviour of the three men led the journalist to conduct further investigations into the Trustor story. He discovered what the auditors had missed – Trustor had been bought using its own capital.¹¹⁵

In October 1997 Lindstedt's first article on the Trustor story appeared. At approximately the same time the police raided the Trustor offices.¹¹⁶ Presumably gripped by panic, Posener, Mattson and Jisander attempted to acquire a new certificate from the bank in Luxembourg. This attempt was unsuccessful as the bank had seen Posener's name in the press. Mattson and Jisander quickly travelled to Stockholm, to hold a press conference. The police in Stockholm immediately arrested them. Trustor colleague Joachim Posener disappeared after the bank meeting in Luxembourg.¹¹⁷

Lord Moyne, Peter Mattson and Thomas Jisander were sued and Mattson and Jisander sentenced to five years in prison. The court was however of the opinion that Lord Moyne had probably only been used by the other three. Mattson and Jisander were also later acquitted due to lack of evidence following their appeal.¹¹⁸

Since then, Ekobrottsmyndigheten has mainly been concerned with how to find Posener, as it is believed that he planned the affair. Following his disappearance, Posener appeared once on television and has also published a book, both with the assistance of the television channel TV 3. The work by the police to capture him, proceeds very slowly as Posener is

¹¹⁴ Radio program. Johnson, Fredrik. Hansson, Kristofer (2006). *Trustorhärvan*. Sveriges Radio P3. Available at <<http://www.sr.se/p3>> /Samhälle-kultur/P3 Dokumentär/Trustorhärvan.

¹¹⁵ Radio program. Johnson, Fredrik. Hansson, Kristofer (2006). *Trustorhärvan*. Sveriges Radio P3. Available at <<http://www.sr.se/p3>> /Samhälle-kultur/P3 Dokumentär/Trustorhärvan.

¹¹⁶ Castelius, Olle (2001). Ett knapptryck gav dem 600 miljoner. *Aftonbladet*, 2001-02-04. Available at <<http://www.aftonbladet.se/nyheter/0102/04/trustor.html>>

¹¹⁷ Radio program. Johnson, Fredrik. Hansson, Kristofer (2006). *Trustorhärvan*. Sveriges Radio P3. Available at <<http://www.sr.se/p3>> /Samhälle-kultur/P3 Dokumentär/Trustorhärvan.

¹¹⁸ Radio program. Johnson, Fredrik. Hansson, Kristofer (2006). *Trustorhärvan*. Sveriges Radio P3. Available at <<http://www.sr.se/p3>> /Samhälle-kultur/P3 Dokumentär/Trustorhärvan.

abroad and international cooperation between the police does not always proceed smoothly.¹¹⁹

For Sweden the fact that the biggest case of fraud in the history of the economy still remains unsolved is a clear signal that the fight against economic crime is a long way from functioning effectively. Sweden must fight this form of crime effectively so as not to damage the image of the economy. The question that still remains is how.

¹¹⁹ Radio program. Johnson, Fredrik. Hansson, Kristofer (2006). *Trustorhärvan*. Sveriges Radio P3. Available at <[http://www.sr.se/p3](http://www.sr.se/p3/Samhälle-kultur/P3_Dokumentär/Trustorhärvan)> /Samhälle-kultur/P3 Dokumentär/Trustorhärvan.

6 Workshop reports

6.1 Financial Corruption and Crime in Four European Countries

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This part focuses on the financial aspects of corruption in the private sector, meaning bribery, embezzlement, abuse of power, etc. It was composed by an internationally mixed group of students. To begin this paper will give a more general view of financial corruption and then a comparison of the situation in the four countries. Following this a system to combat corruption will be suggested.

General Effects of Corruption

What kinds of effects can financial corruption have? There are many answers to this question, though in this report only the most important ones will be mentioned.

To begin with, corruption undermines fair competition between enterprises, and decreases trust in the market, thereby lowering economic growth and creating inequality.

The relationship between corruption and economic growth is complex. Economic theory supports the notion that corruption hinders economic growth in the following ways; corruption discourages foreign and domestic investment; it taxes entrepreneurship, lowers the quality of public infrastructure, decreases tax revenue, diverts talent into rent seeking and distorts the composition of public expenditure. Secondly, evidence from diagnostic surveys of corruption in several countries suggests that corruption aggravates income inequality as low income households pay a higher proportion of their income in bribes. Another effect of financial corruption is that fair competition can no longer be guaranteed. For example, if company A bribes company B, then company C will probably not be able to obtain the contract from company B, even if company C offers the best product.

All the effects mentioned above explain why people lose trust in the private sector and are confronted with higher prices for goods and services, thus depressing demand for these products and thereby reducing the economic growth of a country.

An effect of globalisation is a worldwide increase in import and export. This process effects all organisations in the European Union by reducing

transparency in the private sector. Globalization makes commerce easier and faster. The world export of goods and services has accelerated from 1,000 billion USD in 1980 to 10,000 billion USD in 2004. The negative outcome of globalisation is that it makes it easier to commit a crime, because in a globalised world with liberal markets it is harder to control what happens in the world economy and a state's legislation cannot regulate every area. There are many transnational actors, for example co-operations, non-governmental organisations, states, companies and individuals. States cannot combat financial crime committed in the world economy. Therefore it is necessary to have a macro perspective, for example the European Union. From an economic point of view, corruption has costs and benefits. For example high levels of corruption can ruin a country's economy.

According to Mr. Aernoudt (Secretary General of the Department of Economics, Science and Innovation in Flanders) corruption has both positive and negative effects. He argues that from a financial point of view, corruption is not necessarily a bad thing and that it can be seen as a second best solution. It can, for example, increase the efficiency of economic processes. Moreover, Mr. Aernoudt states that the most significant element in combating financial corruption is a change of mentality. A system of institutions and laws can make corruption easier or more difficult, but in the end it is up to each company and employee to commit or not commit financial crimes.

The Situation in the Countries

Belgium

Flanders has introduced a system of protection for whistle blowers within the Flemish public office (Act of 7 May 2004), protecting employees who report any misconduct or illegalities within the public office. No counterpart exists however for the private sector nor for the federal public administration. In the private sector labour legislation generally protects the employee, but not in cases of "whistle blowing". In many cases the "whistle blower" has to pay for his/her openness by having to resign, for example. A recent law has introduced the possibility of prosecuting corporate bodies as well as individuals, and as a result private organisations can now be punished. There is also a special unit on combating corruption within the federal police.

Germany

It is estimated that 95 percent of all cases of economic corruption remain undetected. There are several reasons for this. One of the biggest problems

in Germany is that corruption is not thought to be as bad as it in fact is. Furthermore, the dual-control principle does not receive enough attention. This principle means that decisions always have to be checked and countersigned by a second person. Education about corruption for colleagues does not take place very often. Another important problem is that there is no sufficient protection for employees who detect corruption. That is why they often ignore the problem and do not dare to report anything. For all these reasons people do not refrain from bribery or fraud simply because they do not fear being discovered.

Poland

Financial corruption in Poland exists as a result of the history of the country, mentality, weak legislation and low economic development. Weak legislation such as the lobbying act and the Polish procurement law allow people to influence decision-making made by officials. This is a serious weakness because public money should be spent efficiently. It is generally known in Poland that it is even possible to buy an act or an ordinance. The low economic development of the country and low salaries of civil servants, lower even than the average wage, encourage officials to take bribes. On the other hand, limited access to public goods encourages people's corrupt behaviour. In the private sector there is little awareness of corruption. There are no special regulations related to financial crime. The only legislation is written in the Polish penal code. A Polish proverb says that to become rich, the first million has to be stolen.

Sweden

There are many authorities working against financial crime, for example the police and the prosecution service. The most important authority to combat corruption in the private sector is the Swedish National Economic Crime Bureau (Ekobrottsmyndigheten) and it has no real counterpart in other European countries. The bureau is mostly active in the metropolitan areas and its main tasks are to investigate financial crime, cooperate with OLAF, the European Anti-Fraud Office, and work for prevention of financial crime. 90 percent of the cases investigated by Ekobrottsmyndigheten are tax evasion and accounting crimes.

Some professions have a report requirement. This means that these professionals are obliged to report every suspicious case they come across. For example accountants, lawyers, bank officials and insurance officials are responsible under this requirement. Finally, there is no clear distinction between financial corruption and financial crime in Sweden.

Comparison

Financial corruption is spoken of neither in Belgium nor Poland. Instead of financial corruption, crimes such as fraud, bribery, embezzlement, intimidation, abuse of power, etc. are mentioned. This is a confusion of terms, which for example has an influence on the legislation. In Germany there is also no law that deals with corruption in the private sector. In Sweden, on the other hand, a definition of financial corruption exists.

In the German system, corporate bodies cannot be punished. In Belgium, Poland and Sweden on the contrary, if an individual working at a company is sentenced for a financial crime, there are laws which make it possible to fine the corporate body, i.e. the company.

Financial reporting at least once a year is mandatory in every country. In Poland there is a distinction between companies that are listed on the stock exchange and other companies. The former are required to make their accounts public.

There is also a difference in the mentality of the people in the four countries. In Belgium, Germany and Sweden there is greater openness in talking about corruption whereas the approach in Poland is the complete opposite.

Suggestions for a System to Combat Financial Crime in Europe

The four countries all have different systems for combating financial crime and corruption. All of them are members of the European Union and therefore it would seem useful to have a common European system to combat corruption and financial crimes in the private sector.

In comparing the four countries we found a few elements that could help reduce financial crime and corruption. These elements are used in some of the countries mentioned above and could also be useful in the European Union countries. They could be implemented through a recommendation to all the European Union member states.

It would be easier to measure corruption if there was only one European definition adopted by all member states. In that way all countries would know exactly what they are combating and they would all be combating the same thing.

Another suggestion is to make it possible to punish corporate bodies. It could be effective to ensure there are consequences if employees act illegally. As a result the number of employees committing financial crime would probably decrease. Enterprises should be punished if they act corruptly. In many cases the chairman or director could be fined or sentenced to prison. This is a good start, but the corporate body should be fined as well. If the individual is sentenced for a financial crime, then there should also be a possibility to fine the corporate body. The fine should be substan-

tial, because powerful international enterprises earn so much money that they would not care much about following the law as long as breaking the law is more profitable than complying with it. In severe cases there should be the option to close down or prohibit certain economic actions. This should only be used in extreme situations, because closing down companies can have dramatic social consequences. Taking up the option of closing a firm down should be used as a discouragement to force firms to act in a more ethically correct way.

A person who has acted in disregard of his/her responsibilities as a business operator or has committed systematic abuse or caused significant damage, should be found guilty of a serious offence and therefore sentenced to limitations on exercising functions on corporate bodies. The period of limitation should last from one to eight years.

Another method of tackling the problem of corruption in private organisations is the concept of whistle blowing. A whistle blower is an employee, former employee, or member of an organisation, particularly a business agency, who reports misconduct to persons who have the power and presumed willingness to take corrective action. Whistle blowers provide an early warning system before it is too late. Therefore it is necessary to protect them. Blowing the whistle is not a bad thing and thus employees should work in surroundings where they do not feel like victims when they detect misconduct. This also means that a whistle-blower cannot be dismissed, transferred or be less well evaluated because s/he discovers a failure. Furthermore, protection of whistle blowers in private companies can have a positive outcome. By protecting people who report misconduct, more cases would be detected and the people responsible could be addressed. In this way, further fraud and misconduct could be prevented.

Financial crime takes place more easily in businesses with low levels of transparency. In general, more transparency is needed in companies. Transparency is not only needed within organisations, but also in a more public environment. That is why it could be useful to make the company's accounts public at the end of the year. This would force companies to think extremely carefully before participating in any type of financial crime. Transparency might be the first step in preventing corruption. Therefore this would be the best way to fight against it. Transparency is important in gaining the public's trust.

One way of combating financial crime is to set up a register of corrupt people and companies. It would help people learn about which enterprises have committed financial crime and are therefore not reliable partners. It also shows which employees should not receive a responsible position. This register should be a list of people who have committed financial crimes after a guilty verdict. If this situation is connected to a company,

there should be three stages of registering. For the first crime there should first be a warning, for the second crime – a final warning and for the third crime, the company would be written in the register.

The role of the media is important. Media institutions assist in showing and analysing some forms of corruption; they bring information to the public and raise the levels of transparency. Therefore it is useful that they take this task seriously. The government should guarantee that the media can act freely, without limitations.

Transparency international wants to create a commercial code in which all companies have to sign up to the statement against corruption. It could be interesting to implement this code into the recommendations for the European Union.

In order to create more transparency within organisations it is important to guide employees. It is necessary to motivate them to participate in training sessions and hence teach them how to deal with dilemmas. Discussion about corruption needs to be more open and more common in business life. Therefore firms should organise some kind of ethical training in which their employees can learn what corruption is and how to handle it. This training should not be given only once, but should be held on a continuous basis. In that way they will become more resilient against corruption. It would be helpful in changing the behaviour and mentality employees.

Conclusion

After comparing the legislation and ways of combating economic crime in the four countries represented in this programme, it can be concluded that the situation differs from country to country. From a strictly financial point of view, corruption is not necessarily a bad thing. It can for example increase efficiency. Nevertheless, from a moral point of view financial corruption can severely damage a society and its markets. Since corruption is inherent in humans it is probably impossible to completely eliminate it. An effective system can, however, clearly reduce financial crime.

The suggestion of a system, in this report, to combat financial corruption is based on measurements from the four different countries. The system should work as a recommendation to the member states of the European Union to efficiently combat financial crime and corruption in the private sector.

6.2 Political Corruption

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Prof. Dr. Heinrich Bücken-Gärtner

Definition

Political corruption is the misuse of power for personal gain or to gain advantage for a certain organisation or party.

Examples of political corruption are active and passive bribery, extortion, conflict of interest, favouritism, nepotism, illegal financing of political parties, money laundering...

Case examples

Belgium

Agusta-Dassault

Agusta-Dassault is a case of bribery in the eighties. The case was disclosed when the homicide of the former president of the socialist party in Wallonia was being investigated.

The most important members of the socialist party in Wallonia and Flanders accepted a bribe of about 16 Million Euros by two companies Agusta and Dassault. Both companies delivered military equipment to the Belgian army.

When helicopters were ordered, Agusta was chosen, although two other companies –one from Germany and one from France- offered more favourable conditions and better technology.

The company of Serge Dassault had financially supported the socialist party and the order of delivering military High-Tech technology was placed to his company in exchange.

The case has been terminated; the responsible persons are convicted or acquitted.

PS in Charleroi

This is a recent case, which has yet not been clarified. It is not a single case, but a number of different cases, all involving members of the socialist party. The cases involve different types of corruption such as misuse of power, favouritism and embezzlement.

The socialist party in Chaleroi had held the majority for many years and were therefore able to develop a power vacuum. The investigation has yet not been finished and new cases are still coming into light.

Germany

Otto Schily

Otto Schily, the former Federal Minister of the Interior introduced biometric enhancement for identity documents in connection with anti-terrorism legislation following the 11th September 2001. After leaving office, he became a member of the Safe ID Solution and the Biometric System AG supervisory board (Safe ID produces hard and software solutions for the manufacture of electronic ID documents and Biometric System develops identification techniques based on iris structure). This is not corruption in a legal sense, but the immediate change to a company in the branch that his previous office was concerned with does raise ethical questions.

Herman-Josef Arentz

The NRW state parliamentary representative receives 60,000 euros per year from the biggest power company RWE Power AG and may additionally make use of over 7,500 Kw subsidised electricity per year without having, as he himself admitted, to pay for it. It is assumed that RWE pays a number of politicians (approx. 200), in order to be kept informed of all current political decisions. It is so to speak, a form of early warning system for the company. !!!Lobbying!!!

Poland

The Rywin Affair

The Rywin Affair is one of the largest corruption scandals in Poland which reached the public in late 2002. It became known, that high ranking politicians and the famous film producer Lew Rywin were involved. The affair occurred in the surrounding of the imposition of a new media-law.

Mr. Rywin approached the editor of one of the largest Polish newspapers –the Gazeta Wyborcza - and suggested that by paying 17.5 million USD the new draft, which should limit the print media's influence on radio and television, might be changed in favour of his newspaper.

The main purpose of the new media bill was the prevention of a potential concentration of the media impact in Poland and the strengthening of the role of the state and the licensing agency.

After months of hearings, led by a special Parliamentary Investigative Commission, which purpose was to reveal the truth and disclose the main

figures involved in the affair, the Commission came to the conclusion that Mr. Rywin was acting on his own initiative.

However, some of the Members of Parliament elaborated on a minority report, which was surprisingly accepted by the Parliament. This report indicated that high-ranking politicians (generally known as “group in power”) were primarily responsible for the affair.

Nevertheless Mr. Rywin was found guilty and the existence of a “group in power” was negated. It was even emphasised that Mr. Rywin acted on his own initiative.

The Jakubowska's Case

Aleksandra Jakubowska, the former Minister of Culture in Poland and deputy member of SLD (Left Democratic Alliance), was convicted to imprisonment and a fine of 200.000 PLN/50.000 EUR. She was released from arrest after 3 months being in prison.

She was accused for bribery (500.000 PLN/125.000 EUR) namely:

- 8.000 PLN/2.000 EUR, the amount of money she got from her friend, after providing for her a post of a Director of the Public Insurance Company
- 480.000 PLN/120.000 EUR, the sum of money given to her for wrongly establishing a broker company as mediator at a power station in Opole
- 90.000 PLN/22.000 EUR, the money given to Mrs. Jakubowska and Mr. Szteliga, a colleague from SLD, by another broker company.

Sweden

Mrs Mikaelsson

For the first time in Sweden, a district president was convicted of bribery on 14 November 2006. Mrs Mikaelsson is in her position of trust as district president, responsible for the shooting plan, this means she decides how many elks each hunter team may shoot. The district president was invited by a hunt team to attend a hunt. Shortly after this invitation, Mrs Mikaelsson made a decision. In accordance with this decision, the hunt team’s quota was raised by five elks. She stated that she would have reached the same decision even without the invitation, but the court was of the opinion that the facts were sufficient to constitute bribery.

Carl Bildt

Carl Bildt, Swedish Foreign Minister, is known for his large contact network in both political and private spheres. Before becoming minister, he

was a member of the supervisory board at Vostock Nafta, an affiliate of Gazprom. Much has been written about his shares and his option, about selling these, or the fact that he even had them, but it appears that it was legally correct. Gazprom is currently planning a site in Östersjö. The Foreign Minister's earlier role in the company causes the people to be mistrustful, as impartiality in political actions connected with Gazprom is doubted. This case has recently caused a discussion concerning provisions on how much time must pass between crossing from the political sphere to the private and vice versa.

Instruments of prevention in the individual countries

Belgium

The most important organisations in Belgium to fight against corruption are the **Court of Audit** and the **Central Service for the Fight against Corruptions (CDBC)**. These organisations are bodies of the legislative power. The Court of Audit audits the public finances of the Federal State, the regions and communities. The conclusions and results of the audits are submitted to the legislative assemblies. The duty of *CDBC* is to detect offences that are detrimental to the interests of the state. The basic law against corruption is stipulated in the penal law. There are other laws dealing especially with corruption in the political surrounding such as laws stipulating the financing of political parties, the submission of a declaration of assets and a list of binding mandates.

Germany

The only organisation in Germany, which is concerned with political corruption, is **Transparency International Deutschland e.V.** TI demands:

- More transparency through freedom of information laws and a duty to disclose the additional activities of politicians,
- Longer waiting periods for higher officials between retiring from government and entrance into commercial enterprise (see Schily),
- Reform of the Political Parties Act (introduction of maximum limits for donations, disclosure of all donations, controls through an impartial committee).

As there is no further anti-corruption organisation in Germany, the media plays a very important role. The media reveals irregularities and keeps the people informed in order to stimulate public discussion and indirectly exercise pressure on politics.

Poland

Legal Regulations:

- The bill for political parties which clarifies the acceptable way of financing themselves
- The Lobbying Legislation (since 2005)
- The Ethical Code for Deputies

NGOs:

- Transparency International – Polish National Chapter (since 1998)
The Transparency Through Awareness (TTA) Program - law regulations for the distribution of structural funds in Poland
"Enforcement of the Act on Access to Public Information - monitoring and promotion" (since January 1st 2006')
- The Integrity Pact format proposed by TI to the Polish Security Minister as a tool to prevent corruption in international defence contracts,
- Stefan Batory Foundation:
 - Monitoring Presidential Election Campaign Finances,
 - Monitoring Of Local Elections Campaigns,
 - Monitoring of Electoral Promises,
 - Monitoring Legislative Procedure,
 - Program „Transparent Poland”,
- Others: The Association of Local Civic Groups, The Institute of Public Affairs, Helsinki Foundation for Human Rights, Foundation of Social Communication, Center of Civic Education

Governmental Organizations:

- Central Anti-Corruption Bureau (June 9, 2006')
- Provincial Police Specialized Anti-Corruption Departments (established by December 2004')

Sweden

One of Sweden's preventative measures is the principle of public access; a central rule is that all documents processed by the authorities must be made accessible to the public.

Another preventative instrument against corruption is the media, it reveals scandals and regularly examines the various public figures.

We additionally have a parliamentary ombudsman who ensures that public figures properly comply with legislation. At the same time, the parliamentary ombudsman also has the right to bring charges against civil servants and judges.

The state **audit court** (Riksrevision) performs auditing duties and also issues indirect guidelines. State activities are regulated through direct instructions from the state audit court.

The national anti-corruption unit (Riksenhet mot Korruption) is a judicial agency dealing with cases of corruption. It additionally acts as advisor to government offices and the economy.

Strategies and solutions

Financial independence of parties

- The parliament should finance the parties, for example through taxes
- Donations from private companies should be prohibited
- Donations from private individuals should be limited to a maximum of one per year
- Each party should keep an account of all income and expenditure per quarter
- Controls performed by an independent agency linked to parliament and the leader thereof should be appointed by the supreme court (political independence)

Secondary employment

Following extensive discussion we were unfortunately unable to reach a unanimous solution, as some would not prohibit secondary employment and others are against secondary employment.

	Pros	Cons
Secondary employment: YES	<ul style="list-style-type: none"> • Having dual competences (in private and public sector) • Retaining a fall back, should one retire from politics, or not be re-elected 	<ul style="list-style-type: none"> • Mixture of politics and enterprise and so restrictive to exercising mandate
Secondary employment: NO	<ul style="list-style-type: none"> • No cover-up of other income as none exists, • Full concentration and engagement directed at politics 	<ul style="list-style-type: none"> • One finds it difficult to resume normal professional life, after concentrating on politics for years.

It can ultimately be said that, it could not unequivocally be decided between YES and NO to secondary employment, as this proves to have ad-

vantages and disadvantages, which cannot be ignored. Only a disclosure of earnings (already possible in Sweden) could achieve more transparency in the obscurity of second incomes and secondary employment, however some see great danger in this. It would present too big an invasion into the private sphere if the individual's income were to be disclosed.

Waiting times

Transparency International Germany proposes three years.

However, also in this case could no unified concept be found, as some students found it would be too extreme to prohibit a politician from returning to his former profession after ending his political "career", if this, for example, was related to the duties of his political office. The implied conflict of interest also arises in switching from commercial enterprise to politics. The requirement for waiting period conflicts with the central principles of democracy.

Lobbying

- Register of all lobbyists
- No gifts (holidays; tickets for events) may be accepted (equal to civil servants)
- Protocol meetings with lobbyists, in the office only and through an independent party.

Code of honour

- Introduction of specific guidelines, describing how one should behave in certain situations (but not in the form of legislation, as it is more effective to raise people's awareness and to provide information; laws cannot govern everything)
- Appointment of a mentor, who is to communicate this code of honour to new politicians

Protecting informers (Whistle blowing)

- Statutory protection for informers should be introduced, in order that anonymity is ensured
- Establishment of an institution (ombudsman, mentor), as contact for politicians

Political controls through the independent media

In Poland, the media plays a very important role in proceeding against corruption, as it controls politics. They form the fourth power next to the judicial, executive and legislative and are the first to instigate an investigation of suspected corruption.

In Sweden, Germany and Belgium the media also plays an important role in proceeding against corruption, but more in the reporter and watcher role, than the role of investigator.

6.3 Corruption and combating corruption in the civil service

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The main objective area of corruption in society is with circa 75% the civil service in general.

Definition:

There is no individual statutory definition of corruption in any of the four participating countries (Poland, Sweden, Belgium and Germany).

Corruption is however similarly defined in all aforementioned countries. In Belgium, Poland and Germany, the misuse of entrusted powers for private use or gain is deemed corruption. This also applies to Sweden, here however the illegal financing of political parties and favouritism are also named.

Elements of the offence:

In the countries Sweden and Poland, the statute describes passive and active bribery, which corresponds to the German bribery and corruption.

In Belgium, only bribery is mentioned. No distinction is made between active and passive bribery.

In Sweden and Germany the distinction between bribery and particularly serious cases of bribery is the same. In Poland “nepotism” is also a criminal offence.

Areas and causes of corruption:

Corruption in Sweden mainly takes place at a local level. This also applies to Belgium and Germany and mainly concerns the awarding of public contracts or tenders. Corruption in Poland mainly concerns the health service.

The main causes for corruption at a local level are decisions being often made by a small circle of people (Sweden is an exception), inadequate controls and a weak opposition. In this sense if a party is in power for a number of years, political controls are often performed inadequately.

Through the change from bureaucracy to new public management, the authorities have been assigned with performing transparent and economic actions in order to cut costs. Due to nepotism, which exists more or less in all countries except Sweden, this is not always possible.

There is also local government corruption in Poland. The reason here is the ponderous administration, as bribery should ensure preferential treatment. Corruption is also deemed to have its roots in the previous communist regime. Many retain old habits.

Morality:

The concept of morality in the four countries is very different. While morality in Sweden plays a very large role and misconduct is publicly outlawed, the concept of morality is much lower in Poland. Belgium and Germany are similar to each other in this respect and assume a middle rank.

Due to Sweden's high concept of morality, not many anti-corruption laws are necessary and belief in the effectiveness of such laws is low. If a corruption case is discovered in Sweden, the public reacts with non-acceptance. A dismissal or transferral of corrupt government workers is the norm. This also applies to civil servants in Germany, who were convicted to a prison sentence of several months.

In Sweden, the trust in the political and public administration is very large. This categorically differentiates Sweden from the other countries. There are no known cases of corruption in the police force or customs agency.

Loyalty plays a significant role in Belgium. Too little is undertaken against existing corruption. If a civil servant should be convicted of corruption, it would theoretically be possible to dismiss him. But because civil servants are appointed for life, dismissal is complicated. An employee convicted of corruption can however be dismissed with much less difficulty. As in Sweden there are few laws, which define the elements of corruption

The concept of morality in Germany is similar to that in Belgium, Trust in politics, government and the police are greatly weakened. There are however numerous statutory offences, which are brought into connection with corruption offences. Germany clearly differs from the other countries in this point.

In Poland, two streams run together. Corruption is recognised as being a huge problem for the country. There is a strong belief in the necessity of fighting corruption; there is often very little possibility of receiving a benefit without the payment of a bribe. This form of corruption tends to be understood as a friendly service and not as bribery. Whether an official employee is permitted to continue working following proved active or passive bribery, is the decision of the judge. In Poland, there are several statutory offences linked to corruption, however these are seldom used.

Ramifications:

Using Belgium as an example, the economic damage caused through corruption can be clearly seen. In 2006, this amounted to 12 billion euros, which corresponds to 4% of the gross domestic product.

A similar result is probable for Poland, Germany and Sweden.

The ramifications of corruption are also of an intangible nature. The greater the presence of corruption and the more acceptance in society it receives, the stronger the indication that trust in the political system and its institutions is lacking.

Measures and problems in the countries Belgium, Sweden, Poland and Germany

Measures / Countries	Belgium	Sweden	Poland	Germany
Laws / Recommendations	Criminal Code, principle of public tender	Criminal Code, principle of public tender	Criminal Code, principle of public tender	Criminal Code, principle of public tender, Freedom of Information Act, Pact of Integrity, corruption register, government guidelines
Institution / control mechanisms	CDBC, Transparency International (TI), comparable 3-pillar model, ombudsman	Transparency International, Institute against bribery, corruption department of senior prosecutor, principle of publicity, ombudsman	Transparency International, CBA, Stefan Batory Foundation, social campaigns, ombudsman	Transparency International, internal revision, 3-pillar model, working group

Ethical Standards	Raising awareness	Trust, raising awareness, freedom of information	Raising awareness	Code of conduct, raising awareness
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There are no special laws as instruments against corruption in any of the four countries. All countries have various criminal offences in their criminal codes, which are often brought into connection with corruption. There are also further laws or principles in these countries that restrict corruption. Because corruption is particularly prevalent in the awarding of tenders, great value is placed on the principle of public tendering. Only this transparency can restrict circumvention of this principle. Further laws such as the Freedom of Information Act and the Integrity Pact (which are already partly in practice), must be further developed, in order to ensure consequent action against corruption. The Federal Government has issued recommendation guidelines on the prevention of corruption in federal administration. This includes the dual-control principle (unilateral actions which facilitate corruption, are impeded), staff rotation, consequent staff and functional supervision, training and further training, division of individual duties and responsibilities, and transparency. These guidelines have enabled the civil service to counteract corruption with greater effectiveness.

A leading institution with relation to counteracting corruption is Transparency International (TI). It exists in almost all countries worldwide engaging itself intensively and directly with this very difficult issue. Above all, TI strives for transparency in the civil service, as this is the strongest instrument against corruption. Due to the global activity of this institution, it can agree on a target for the different countries, but also concern itself with the different problems at the individual locations. On the basis of the fact that TI is not a state institution and cooperation is therefore voluntary, it is often difficult to implement concepts or targets effectively.

The Central Anti-corruption Service (CDBC) in Belgium, which is however a state institution, explores the prevention of corruption in depth. This agency is also represented in Poland through the CBA. Here the issue is tackled with the cooperation of the police (this cooperation is rare in many countries). In addition to Belgium, Sweden also has a state established institution for the prevention of corruption. On the one hand we should mention the Institute against Bribes. It indicates the weak points in Swedish laws and issues proposals for improvement. The institute itself has a very detailed structure and meticulously controls individual institutions.

There is on the other hand, the Department for Corruption headed by the Senior Public Prosecutor. It deals with cases of corruption and is not only available to advise other departments but also the economy. The principle of public access and freedom of speech existent in Sweden, are a very large milestone for more transparency and thus better social control in the government. This point differentiates Sweden from the other countries, as professional secrecy still exists in Belgium, Poland and Germany. In addition to TI, the Polish Stefan Batory Foundation also issues statistics on corruption (in this case only for Poland) and publishes these in brochures that are issued twice each year. Only through increased information can corruption become a wide social issue and thus motivate others to involve themselves more deeply and above all, to fight it.

The social campaign in Poland is mainly directed at publicity, in order that awareness can be also increased amongst the population. Finally, there are also many similarities in the institutions and control mechanisms of the four countries. All four have an ombudsman in the civil service, who as an independent advisor performs a particularly important duty in the fight against corruption. Anonymity is hereby ensured, which is an important factor.

The 3-pillar model, developed by the borough of Spandau in Berlin, is found either entirely or in part in other countries. (See Country Report: Germany).

Where the subject of ethics is concerned, none of the three countries can come close to Sweden. It's discussed everywhere, but trust is at the highest level and belief in the effectiveness of strict laws is limited. Through freedom of information, each citizen is provided the security of being able to inspect public authority procedures. Awareness is being increased in all countries, but is not always successful. Each person's and society's basic attitude towards corruption has to change. Faith in the own political and constitutional system hereby plays a large role. One cannot build up trust, when the battle against corruption cannot be won by our own politics or society.

Strategies and measures for counteracting corruption in public administration

An effective prevention against corruption must transcend legal measures, codes of conduct and controls.

Effective prevention

We are of the opinion that effective prevention in terms of fighting corruption should begin during school education. Through ethics lessons, an early awareness of “right“ and “wrong“ can be formed at an early age. It should also constitute a significant component in the training of future employees or officials in public administration. A special training for new employees would be appropriate, especially with regard to the existing grey areas. We furthermore recommend continuing further training for staff in all public offices.

The key word appears to be communication. This means that this issue should be permanently under discussion. Only through better communication can a better internal climate be initially created. Motivated employees accomplish more service and trust. This not only improves the relationship within the administration but also the relationship between the citizens and the authorities. The creation and optimisation of a code of honour for employees is something that we consider necessary, when possible in all administrations. To create an improvement within the administration a ”Human Resources Manager“ should be appointed. His duty is to find where the individual workers can best be used. The wishes of those concerned should be considered. This creates more satisfaction, more motivation and more efficiency.

A further factor is the principle of public access following the Scandinavian model. It provides citizens and the media with the opportunity to view documents or to be present at meetings, which in its turn leads to more transparency.

The introduction of e-government also establishes new foundations for better administrative works and thus a better service for citizens.

On the basis of the connection between corruption and efficiency, administrative procedures should be speeded up in the countries affected.

A better service could also be provided if administrative structures were more simply established. The more administrative levels there are, the more opportunity there is to corrupt them. Only with fewer levels can a more effective implementation of administrative procedures be possible.

How an effective model partially in accordance to the criteria described above could function, is shown by the Spandau concept.

More or fewer laws?

Despite all prevention, corruption can never be eradicated entirely. Therefore, laws are also required for repression. They particularly serve a function of discouragement. Faith in strict laws is highly varied in the individual countries. Sweden leads with a very good example, as it manages to get by with very few laws, due to the high concept of morality. In most of the

other countries there is either a lack of specific laws or these are not extensively developed enough to satisfy their purpose.

Therefore, each country must find its own methods of prevention through criminal legislation. The biased emphasis on criminal prosecution cannot however provide a solution to the problem; this requires the ethical standards to be considered adequately.

Finally, it appears to us that also the controlling function of the mass media is of high importance for our study. It is hereby necessary for the media to effectively exercise controls and award relevant themes top priority. Continual reporting is important, as themes that are only reported for a short time are quickly forgotten.