

Certified translation from the Polish language

**THE CIVIC
ANTI-CORRUPTION
CHARTER**

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I. Corruption as a social problem

“...Corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society...”

(Preamble to the Criminal Law Convention on Corruption signed by Poland in Strasbourg on 27 January 1998, ratified – Journal of Laws as of 2002, No. 126, item 1066).

Corruption, colloquially referred to as bribery, exists in almost every country and affects social, political and economic life.

Along with organised crime, it poses the greatest threats to legal operation of the state authorities, national security, constitutional and legal order, as well as to the belief that everyone is treated equally by the law.

The commonness of this phenomenon gives rise to a widespread belief that to receive a proper service, especially at an office, hospital or from law enforcement agencies, one needs to give a bribe, and that money can buy everything, including impunity.

Unfortunately, although this kind of behaviour is evaluated negatively as being contrary to the sense of justice, still sometimes it is accepted by the society. There is a widespread misconception that an ordinary citizen cannot do anything about corruption; and low wages of public servants are believed to be one of the reasons for existence of the phenomenon.

However, such opinions are groundless, as giving or accepting a bribe is a matter of individual choice depending on one's system of values. It is rather a moral than a financial choice.

No one has to agree to giving bribes, as every citizen has right to demand that the state should handle their affairs without any payments.

To fight corruption it is necessary not only to amend the law and improve the efficiency of justice authorities but also, and first of all, to change the attitudes and mentality of Poles.

According to public opinion polls, bribery happens most often in the field of administration at the time of handling affairs connected with health care, social welfare, construction and at the time of legalising vehicles or applying for a driving licence.

Corruption among police, customs and revenue officers is believed to be commonplace.

In the field of economy, corruption is connected with a wish to obtain a credit, subsidy, grant or public procurement order.

Political life is also perceived as susceptible to corruption. The press and television have reported on cases of offering citizens alcohol in exchange for votes in parliamentary and local elections.

International surveys indicate that Poland is especially strongly affected by corruption.

In 2003, Poland was ranked 64th among 133 countries in the Corruption Perception Index published by Transparency International.

Surveys conducted by the organisation showed that Poland would be the most corrupt member state in the enlarged European Union.

The forecasts have proven correct.

In the Corruption Perception Index, which was announced on 18 October 2005 by Transparency International, Poland had the worst result among the new European Union member states.

According to the survey, the corruption level had been growing for 4 years only in our country in the group of the new European Union member states.

159 countries were listed in the 2005 Index.

The countries, similarly as in preceding years, were evaluated on a scale, where 10 was equivalent to complete transparency and 1 meant omnipresent corruption.

Two third of all the evaluated countries achieved the results lower than 5.

Poland, with 3.4 index, was ranked 70th.

In 1996, when Poland was evaluated for the first time, our country was ranked 24th among 54 countries, with 5.6 index.

The corruption level in Poland was lower than in Czech Republic (5.4) and much lower than in Hungary (4.9).

If today Poland had achieved the result it had in 1996, it would have been ranked 38th.

Moreover, results of the domestic poll conducted by CBOS indicate that there is a commonly shared opinion in the Polish society that corruption is a great and constantly growing problem.

In the opinion of Poles, bribes are most often accepted by people dealing with politics; they were mentioned first by 61% respondents interviewed in 2005 by CBOS upon the order from Stefan Batory Foundation. Healthcare employees were mentioned in the second place (50%), and judiciary and prosecution authorities were mentioned third (37%). Schools, universities and banks were believed to be the least corrupt institutions (each 4%). Respondents admitted that they gave bribes most often to healthcare personnel. Offices and traffic police were mentioned second. Stefan Batory Foundation has been conducting surveys for five years now; for all this time, politicians have invariably occupied the first position.

According to surveys, 15 % respondents have personally given a bribe, and 21% know someone who has done that. Bribes are most often given by entrepreneurs.

In all likelihood, corruption as such cannot be combated using only penal sanctions.

It is necessary to make the society more aware and engaged in fighting this pathology.

Combating corruption has been declared a priority task for the Government.

Moreover, it was stated in the Prime Minister's exposé at the Sejm on 10 November 2005 that "corruption, apart from the public deterioration, causes damage to the market mechanisms."

Founding the Central Anti-Corruption Office is supposed to be an institutional manifestation of fighting corruption.

According to projects, it is intended to fight corruption, paid protection, document forgery, crimes against elections, mismanagement and economic crimes, and it will be searching for cases of violating the anti-corruption law and misstatements in property statements.

II. Corruption vs. international conventions

The international community, aware of the threats posed by corruption, has taken a number of actions and initiatives to combat this phenomenon. As a result of developing international contacts it is no longer viable to combat corruption by individual states; instead close international co-operation in this field is necessary.

In 1996, Poland presented a draft convention against organised crime to the UN General Assembly. The United Nations Convention against Transnational Organised Crime was adopted at the 55th Session of the General Assembly and came into force on 29 September 2003. Under article 8 of the Convention, corruption of public officials, in both active and passive forms, was penalised. Each State being a party to the Convention was obliged to adopt legislative measures to deem such behaviour criminal.

Poland signed the United Nations Convention against Corruption in 10 December 2003. The Convention includes a definition of corruption concerning both the public and the private sectors, rules of criminalisation and international co-operation in fighting corruption.

It was stated in principle 12 of the Pre-accession Pact on organised crime between the Member States of the European Union and the applicant countries of Central and Eastern Europe and Cyprus that corruption was one of the major threats to our societies, defrauding citizens and private and public institutions alike.

In 2002, Poland ratified two fundamental conventions vital for improving the efficiency in combating corruption:

- Criminal Law Convention on Corruption, drawn up in Strasbourg on 27 January 1999; and
- Civil Law Convention on Corruption, drawn up in Strasbourg on 4 November 1999.

Article 2 of the Civil Law Convention includes a definition of corruption, according to which "*corruption*" means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.

The Criminal Law Convention imposed on the signatory states the obligation to take a number of measures on the national level.

It imposed on each signatory state the obligation to adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

The same solution was adopted in the case of request or receipt of any undue advantages by a public official.

Such regulations must also concern members of domestic public assemblies exercising legislative or administrative powers.

Penalisation covered both public officials and representatives of legislative and executive authorities of a given state, as well as foreign public officials representing states being parties to the convention, officials of international organisations, members of international parliamentary assemblies, judges and officials of international courts.

The convention also deemed necessary to regulate issues concerning corruption not only in the public sector but also in business activity. The parties to the convention were obliged to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

Regarding lobbying, it was deemed necessary to establish as criminal offences the promising, giving or offering, directly or indirectly, of any undue advantage in exchange for exerting an improper influence over the decision-making. It was recommended to penalise such behaviour, regardless of whether or not the influence was exerted or whether or not the supposed influence led to the intended result.

It was also decided that penal liability should be imposed not only on natural persons but also on legal persons for corruption crimes committed for their benefit by any natural person who had a leading position within the legal person.

The aforementioned conventions have been used as the basis for amending Polish anti-corruption legislation.

On 22 July 2003, the Council of the European Union, in consideration of growing cross-border trade in goods and services, deemed it necessary to handle the issue of corruption in the private sector and adopted the Council Framework Decision on combating corruption in the private sector.

The following types of criminal behaviour were deemed to be active and passive corruption in the private sector:

- a) promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity an undue advantage of any kind, for that person or for a third party, in order that that person should perform or refrain from performing any act, in breach of that person's duties;
- b) directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one's duties..

Member States were obliged to take the necessary measures to ensure that corruption in the private sector was punishable by effective, proportionate and dissuasive criminal penalties of a maximum of at least one to three years of imprisonment.

Legal persons, apart from fines, could be punishable by such sanctions as:

- a) exclusion from entitlement to public benefits or aid;
- b) temporary or permanent disqualification from the practice;
- c) placing under judicial supervision; or
- d) a judicial winding-up order.

The Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union deals with issues of corruption among European Union officials.

For the purposes of the Convention, "Community official" means:

- any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities;
- any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other servants.

Passive corruption was defined as the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties. In turn, the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind

whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties constitutes active corruption.

III. Corruption in the Polish penal law

1. Subjects of corruption in the public sector (articles 228–231 of the Polish Penal Code)

The subject of active bribery can be any person who offers (gives) or promises giving a bribe in exchange for settling a matter the person wants at an office or institution by a person who accepts such a financial or personal advantage or a promise thereof.

The subject of passive bribery (venality) can be a public official or any other person performing a public function who accepts (takes) a bribe.

The public official, pursuant to article 115 § 13 of the Polish Penal Code, is:

- 1) the President of the Republic of Poland;
- 2) a member of parliament, a senator or a councillor;
- 3) a judge, juror, public prosecutor, notary, court enforcement officer, probation officer, a person who passes decisions on misdemeanours (labour inspectors) or at disciplinary authorities acting under a law (e.g. members of Chambers of Physicians);
- 4) a member of the state administration staff (e.g. President of the Council of Ministers, members of the Council of Ministers, Province Governor), of any other state authority (e.g. staff of the Chancellery of the President of the Republic of Poland, Chancellery of the Sejm, Senate, Ombudsman's Office, Constitutional Court Office) or local government, except for service personnel (this group includes employees of the Commune Offices, commune auxiliary units, social welfare centres) and any other person to the extent he/she is authorised to pass administrative decisions (such persons are public officials only at the time of passing administrative decisions and in connection with such decisions, e.g. a physician who passes an administrative decision on including a patient in the group of incapacitated for work);
- 5) a person employed by a state control authority or local government control authority, except for service personnel (e.g. employees of the Supreme Chamber of Control, Ombudsman, such control authorities as the National Trade Inspectorate and Regional Audit Chamber);

- 6) a person directing any other state institutions, i.e. directors, deputies, department and section managers of such institutions;
- 7) an officer of a law enforcement agency (Police, Internal Security Agency, Border Guard) or an officer of the Prison Service;
- 8) a person performing active military service.

The person performing a public function, pursuant to article 115 § 19 of the Polish Penal Code, is a public official, a member of a local authority, a person employed by an organisation unit empowered to dispose of public funds, except for service personnel, and any other person whose rights and duties concerning public activity are set under a law or an international agreement binding on the Republic of Poland.

According to this interpretation, a person performing a public function can be a teacher, including a university teacher, who is not necessarily a manager of the school, a physician employed by a public healthcare facility (polyclinic, emergency service or hospital), as well as a physician who provides medical care to a patient as part of healthcare benefits financed from the public funds.

The law has been intended to penalise corruption of physicians, teachers and personnel of courts, public prosecution authorities, etc.

Service personnel are people who do not exercise the powers of a given authority and are not authorised to manage the authority or take any decisions to that effect, and who only facilitate the operation of such authorities (keeping them clean, heating).

2. Penal regulations and comments on them

Corruption in the public sector:

- 1) passive bribery, article 228 of the Polish Penal Code;
- 2) active bribery, article 229 of the Polish Penal Code;
- 3) paid protection, article 230 of the Polish Penal Code,
- 4) active paid protection (influence trading), article 230a of the Polish Penal Code;
- 5) abuse of public function (abuse of power), article 231 of the Polish Penal Code.

Both passive and active bribery affect the principles of fair and equal treatment of citizens and the correct functioning of national and local government institutions.

In both cases the law protects the impartiality of people performing public functions and the public trust in reliable operation of national and local government institutions, as well as public institutions in foreign countries and in international organisations.

Article 228 of the Polish Penal Code

§ 1. Any person who, in connection with performing his/her public function, accepts a financial or personal advantage or a promise thereof, or requests such an advantage, shall be liable to the penalty of imprisonment for a period not shorter than 6 months and not longer than 8 years.

§ 2. In the case of a less serious crime, the perpetrator shall be liable to a fine, restriction of liberty or imprisonment for a period not longer than 2 years.

§ 3. Any person who, in connection with performing his/her public function, accepts a financial or personal advantage or a promise thereof in exchange for his/her behaviour that violates legal regulations shall be liable to the penalty of imprisonment for a period not shorter than 1 year and not longer than 10 years.

§ 4. Any person who, in connection with performing his/her public function, makes execution of his/her official service dependent on receiving a financial or personal advantage or promise thereof or who request such an advantage shall be liable to the same penalty as provided for under § 3 above.

§ 5. Any person who, in connection with performing his/her public function, accepts a financial advantage of a significant value or a promise thereof shall be liable to the penalty of imprisonment for a period not shorter than 2 years and not longer than 12 years.

§ 6. Any person who, in connection with performing his/her public function in a foreign country or in an international organisation, accepts a financial or personal advantage or a promise thereof, or who requests such an advantage or makes execution of his/her service dependent on receiving such a benefit shall be liable accordingly to the penalties provided for under §§ 1 – 5 above.

Financial advantage means any property which can satisfy a certain need and the value of which can be expressed in money. This can be not only

increasing property but also any lucrative contracts, e.g. a loan granted on favourable conditions.

Personal advantage means a benefit not involving property which improves the situation of the person who receives it (e.g. promise of promotion, awarding with a distinction, training for a profession).

Corruption involving property or personal advantages includes advantages both for the person him/herself and for anyone else.

Accepting a financial advantage or a personal advantage means taking possession of the advantage by the perpetrator, e.g. receiving money or an exclusive present.

Accepting a promise of financial or personal advantage consists in receiving by the perpetrator of a promise of giving any of the advantages.

Accepting a promise of any of the advantages can be connected with a promise for the person him/herself or for any other person.

Less serious crimes include those varieties of prohibited acts of the basic type in the case of which the extent of social harm and the guilt of the perpetrator are much smaller than in the case of the basic type, yet not so small as to be deemed of minimal social harm and as to deprive the act of the criminal quality.

The basic type of passive bribery consists in accepting a bribe or a promise thereof in connection with performing a public function.

The perpetrator of the prohibited act under article 228 § 1 of the Polish Penal Code is liable to imprisonment between 6 months and 8 years. In the case of this type of criminal behaviour the law distinguishes less serious crimes, which are punishable by a fine, restriction of liberty or imprisonment for up to two years. This regards crimes, where the circumstances and the characteristics of the perpetrator cause the need to impose a much more lenient punishment (e.g. if the perpetrator accepts a symbolic advantage for carrying out an official duty after the working hours, for helping the applicant to gather a complete set of documents or for providing information, unless the person has the duty to do so).

Imprisonment from 1 year to 10 years is imposed for accepting a financial or personal advantage or a promise thereof for behaviour in breach of legal regulations (e.g. accepting a financial advantage by an official in exchange for issuing a document with certifies untrue information, groundless cancellation of

tax, failing to report a crime to prosecution authorities by a person obliged to do so). The same penalty is imposed on a perpetrator who makes execution of an official service dependent on receiving a financial or personal advantage or a promise thereof and on a perpetrator who requests such an advantage. *An advantage can be requested both before and after carrying out an official service, whereas if carrying the service out is made dependent on receiving a financial advantage, in such a case the advantage is a condition for carrying out the activity, consequently, it must precede carrying out the activity.* In the case of both types of behaviour, the corruption initiative is taken by the person performing a public function; the crime includes carrying out an official duty, refraining from performing an official duty, delay, acceleration, carrying out or not at the place and time desired by the applicant, etc. The strictest penalty, from 2 to 12 years of imprisonment, is imposed for accepting by a person performing a public function a financial advantage of a significant value or a promise thereof, i.e. an advantage the current value of which is more than 152,000 zlotys.

Property of significant value means property the value of which at the time of crime committing is larger than the value of the lowest monthly wage multiplied by two hundred.

For accepting an advantage or a promise thereof to be punishable, it must be **in connection with** performing a public function by the perpetrator.

There must be a relationship between the bribe and the activity of the person performing a public function, if the bribe is given e.g. to avoid an unfavourable decision, getting a positive opinion or if the bribe is connection with the activity in general. The relationship also exists when the corrupt person receives for an activity which has already been carried out and which the bribe has not affected in any way.

Consequently, the relationship means relationship with both specific official activities and official function in general.

The perpetrator does not have to be the only person competent to handle a given matter; it is sufficient if he/she participates in a given stage of such handling and can have an influence on the final decision. Consequently, bribery can be committed by a person who finally handles a given matter, by a person who prepares – even to a limited extent – the basis for the decision and by a person authorised to give opinions, alike.

It is accepted that giving and taking a token of respect, which is customary in a given environment, such as flowers, sweets or a small present, has no features of criminal behaviour (e.g. giving presents to teachers on the Teacher's Day or at the end of the school year).

If gifts are only intended to express gratitude of the donors and have a symbolic financial value, although they constitute financial advantage, they cannot still be treated as a bribe. The voluntary character, which is preserved if the gift is

given e.g. on behalf of the whole class, is important in this situation. A bribe has an equivalent nature. The one who gives a bribe always counts on some sort of an advantage from the one who accepts the bribe; such a person makes advances to the other person hoping he/she returns a favour in the future. A person who offers a gift expresses his/her gratitude for a service, without counting on any favours from the person who accepts the gift.

The line between forms of gratitude and bribery is very thin. Therefore, evaluating it, such circumstances as the size and nature of the advantage accepted, the intention, the person who receives the advantage, the custom existing in a given social group and the degree of social harm need all together be taken into consideration.

Article 229

§ 1. Any person who gives or promises to give a financial or personal advantage to any person performing a public function in connection with performance of such a function shall be liable to the penalty of imprisonment for a period not shorter than 6 months and not longer than 8 years.

§ 2. In the case of a less serious crime, the perpetrator shall be liable to a fine, restriction of liberty or imprisonment for a period not longer than 2 years.

§ 3. If the perpetrator of the prohibited act referred to in § 1 above acts so as to induce a person performing a public function to violate legal regulations or gives or promises to give to such a person a financial or personal advantage for violation of legal regulations, then the perpetrator shall be liable to the penalty of imprisonment for a period not shorter than 1 year and not longer than 10 years.

§ 4. Any person who gives or promises to give a financial benefit of significant value to a person performing a public function in connection with the performance of the function shall be liable to the penalty of imprisonment for a period not shorter than 2 years and not longer than 12 years.

§ 5. Any person gives or promises to give a financial or personal advantage to a person performing a function in a foreign country or in an international organisation in connection with the performance of the function shall accordingly be liable to the penalties provided for under §§ 1 – 4 above.

Behaviour of the active briber is in a way the other side of the passive bribery referred to in article 228 §§ 1, 2, 3 and 5 of the Polish Penal Code, and consists in giving a financial or personal advantage or a promise thereof.

The penalties are the same for both active and passive bribers. The person who offers a financial or personal advantage or a promise thereof is liable in the same way as the person who accepts such an advantage.

There are many different ways of giving bribes; direct offering is in practice the most usual way. It may happen that a person who gives an advantage is trying to act on pretences of legality, e.g. by 'selling' a valuable watch for a very low price, deliberately losing a certain amount of money in a card game or giving groundlessly an exceptionally low-interest credit.

Article 230 of the Polish Penal Code (paid protection)

§ 1. Any person who, referring to his/her influence at a national or local government institution, international or domestic organisation or in a foreign organisation unit having public funds at its disposal or convicting another person or confirming such a person's conviction of existence of such influence, undertakes to act as an intermediary in handling a matter in exchange for a financial or personal advantage or a promise thereof shall be liable to the penalty of imprisonment for a period not shorter than 6 months and not longer than 8 years.

§ 2. In the case of a less serious crime, the perpetrator shall be liable to a fine, restriction of liberty or imprisonment for a period not longer than 2 years.

This crime consists in the perpetrator's undertaking to handle a matter in exchange for a financial or personal advantage. The perpetrator claims to have influence in a certain circle of entities or convinces the briber or reinforces his/her conviction of the existence of such influence.

The influence the perpetrator claims to have does not have to be his/her own influence. Influence of any other person, e.g. that of a relative, who, according to the perpetrator's claims or pretences created by the perpetrator, is able to handle a matter as he/she is employed by one of the institutions listed in the regulation quoted above, counts, as well.

Article 230 a of the Polish Penal Code (active paid protection/influence trading)

§ 1. Any person who gives or promises to give a financial or personal advantage in exchange for another person's acting as an intermediary in handling a matter at a national or local government institution, international or domestic organisation or in a foreign organisation unit having public funds at its disposal with the intention to illicitly influence a decision, cause a person performing a public function to take an action or refrain from taking in connection with the performance of the function, shall be liable to the penalty of imprisonment for a period not shorter than 6 months and not longer than 8 years.

§ 2. In the case of a less serious crime, the perpetrator shall be liable to a fine, restriction of liberty or imprisonment for a period not longer than 2 years.

This crime supplements the anti-corruption regulations by imposing penal liability for the so-called active influence trading, i.e. bribing an intermediary, which consists in giving the intermediary a financial or personal advantage in exchange for his/her acting as an intermediary in handling a matter at any of the institutions listed in the regulation.

Behaviour of the perpetrator is intended to induce the intermediary to illicitly exert influence on a decision, action or omission by a person performing a public function.

The usage of the word 'illicitly' in the regulation excludes payment for such legal ways of exerting influence as motions or means of appeal from penal liability under this regulation.

Article 231 of the Polish Penal Code (abuse of power)

§ 1. Any public official who due to abuse of his/her official powers or due to failure to fulfil his/her duties acts against the public interest or against private interest shall be liable to the penalty of imprisonment for a period not longer than 3 years.

§ 2. If a perpetrator commits the act as determined in § 1 above in order to gain either financial or personal advantage, then he/she shall be liable to the penalty of imprisonment for a period not shorter than one year and not longer than 10 years.

The crime of abusing power as referred to in article 231 § 2 of the Polish Penal Code can be committed only by a public official who by abusing his/her powers (e.g. issuing driving licences by an official who has no authority to do so) or by failing to perform his/her duties (omitting performance or improper performance of a duty) acts contrary to the public or private interest. The official, acting so, intends to obtain an undue financial or personal advantage.

The advantage does not have to be for the illicitly acting official him/herself; it can be for another entity, e.g. for an entity receiving e.g. a favourable administrative decision permitting construction of a building in a place where it normally would not be allowed to, or a resolution by a local government authority to give an attractive plot of land for free-of-charge perpetual usufruct while otherwise such land could be sold for a good price and funds for the city budget could be received.

If it is found out during proceedings that a public official, abusing powers, has accepted a financial or personal benefit or a promise thereof, the official will be held liable under article 228 of the Polish Penal Code and not under article 231 § 2 of the Polish Penal Code.

A group of other corruption-involving crimes referred to in the Polish Penal Code also includes:

- 1) electoral corruption, article 250a of the Polish Penal Code**
- 2) business corruption**
 - corruption of managers, article 296a of the Polish Penal Code,**
 - corruption in sport events, article 296b of the Polish Penal Code,**
 - corruption of creditors, article 302 §§ 2 and 3 of the Polish Penal Code.**

Art. 250 a of the Polish Penal Code (electoral corruption)

§ 1. Any person who, being authorised to vote, accepts a financial or personal advantage or requests such an advantage for voting in a certain way shall be liable to the penalty of imprisonment for a period not shorter than 3 months and not longer than 5 years.

§ 2. Any person who gives a financial or personal advantage to a person authorised to vote in order to induce the person to vote in a certain way or for voting in a certain way shall be liable to the same penalty.

§ 3. In the case of a less serious crime, the perpetrator of the act referred to in § 1 or § 2 above shall be liable to a fine, restriction of liberty or imprisonment for a period not longer than 2 years.

Article 250a of the Polish Penal Code deals with two basic types of electoral corruption, namely passive electoral bribery as referred to in § 1 and active electoral bribery as referred to in § 2, as well as two privileged types in the case of less serious crimes, covering both passive and active bribery, in article 250a § 3 of the Polish Penal Code.

Perpetrator of passive electoral bribery can be any person authorised to vote who accepts a financial or personal advantage or requests such an advantage in exchange for voting in a certain way. In turn, perpetrator of active electoral bribery can be any person who offers a financial or personal advantage to a legitimate voter (e.g. a politician interested in the election or a person acting on his/her behalf, etc.) in exchange for voting in the way indicated by the perpetrator, e.g. for a given person, slate or crossing out certain individuals or casting an invalid ballot. The very fact of striking such ‘deals’ on the way of voting, regardless of whether or not and how they are implemented, provides sufficient grounds to punishment under the regulation. This crime is punishable by imprisonment from 3 months to 5 years.

It is worth noticing that this regulation does not provide for penal liability for giving and accepting a promise of a financial or personal advantage.

Corruption in economic life poses a serious impediment to economic development of the country. It causes the commercial offer become poorer, economically groundlessly growing prices and threatens the basic economic principle, free competition.

Article 296 a of the Polish Penal Code (corruption of managers)

§ 1. Any person who, performing a function of a manager in an organisation unit running a business activity or, as a result of holding a post or performing a function, having a significant influence on taking decision concerning the activity of such a unit, accepts a financial or personal advantage or a promise thereof in exchange for behaviour which may inflict a financial damage on the unit, or for an act of unfair competition or for preventing a preference from being given to a purchaser or consignee of goods, service or benefit, shall be liable to the penalty of imprisonment for a period not shorter than 3 months and not longer than 5 years.

§ 2. Any person who gives or promises to give a financial or personal advantage in the cases specified in § 1 above shall be liable to the same penalty.

§ 3. In the case of a less serious crime, the perpetrator of the act referred to in § 1 or § 2 above shall be liable to a fine, restriction of liberty or imprisonment for a period not longer than 2 years.

§ 4. If the perpetrator of the prohibited act under § 1 above causes a significant financial damage, he/she shall be liable to the penalty of imprisonment for a period not shorter than 6 months and not longer than 8 years.

The regulation included in article 296 a of the Polish Penal Codes protects the correct trade operation, undisturbed by unfair and dishonest actions. It also protects correct operation of an enterprise directed by a perpetrator of passive bribery, as well as individual interests of purchasers and consignees of goods, services or benefits.

Article 296 a § 1 of the Polish Penal Code (passive bribery)

The perpetrator of passive business bribery in business activity can be only a person who is a manager (e.g. a company director) at the organisation

unit referred to in the regulation or a person who because of his/her position or function (e.g. an accountant) has a significant influence in decisions concerning operation of such an entity. Therefore, pursuant to the regulation, liability is imposed on ‘decision-makers’, i.e. those who decide on behalf of the entity on particular actions to be taken by the company, as for instance on choosing business partners, purchasing goods, etc. However, passive bribery of business entity employees whose functions are not connected with taking any essential decisions concerning the company is not punishable.

Prohibited behaviour of the perpetrator consists in accepting a financial or personal advantage or a promise thereof in exchange for action or omission that may inflict a financial damage on the entity.

Such an advantage can also be given for an act of unfair competition or discriminating in favour of one of market players.

Article 296 a § 2 of the Polish Penal Code (active bribery)

This regulation imposes penal liability for active bribing of the person referred to in § 1 of article 296 a of the Polish Penal Code in exchange for any of the dishonest behaviour as described in this regulation.

Consequently, the perpetrator of this crime can be anyone, yet in most cases this will be a representative of a business entity interested in benefits that may result from the behaviour in connection with which the advantage or promise thereof has been given (e.g. when the bribed person discloses a company secret).

The law in § 3 of article 296a for both forms of business bribery, passive and active, provides for a privileged type, i.e. a less serious crime.

In such a case the perpetrator is liable to a fine, restriction of liberty or imprisonment for up to 2 years.

Such circumstances as the perpetrator's motives, lack of harmful consequences and a particularly hard situation of the perpetrator should be decisive for resolving whether the case is a less serious crime or not.

The law provides for a much stricter liability for the perpetrator of passive bribery who due to his/her behaviour has caused a significant damage, i.e. a damage currently exceeding 152,000 zlotys, to the unit he/she is employed by or represents. The penalty is between 6 months and 8 years of imprisonment.

Article 296 b of the Polish Penal Code (sport corruption)

§ 1. Any person who, holding a professional sport event or taking part in such an event, accepts a financial or personal advantage or a promise thereof in exchange for unfair behaviour, which may affect the result of the competition, shall be liable to the penalty of imprisonment for a period not shorter than 3 months and not longer than 5 years.

§ 2. Any person who in the cases referred to in § 1 above gives or promises a financial or personal advantage shall be liable to the same penalty.

§ 3. In the case of a less serious crime, the perpetrator of the act referred to in § 1 or § 2 above shall be liable to a fine, restriction of liberty or imprisonment for a period not longer than 2 years.

This regulation protects the fairness of sport competitions, which should be held in compliance with the legal regulations and the rules of sport competition provided for a given type of competition.

Article 296 b § 1 of the Polish Penal Code (passive bribery)

The perpetrator of this corruption crime can be both the organiser of a sport event (e.g. president of a sport club) and a participant (e.g. a competitor or a referee), who is liable for behaviour consisting in accepting a financial or personal advantage or a promise thereof in exchange for unfair behaviour (against the rules), which may affect the result of the competition.

The very fact of exposing a competition to distortion of results is punishable; the law does not require the consequence, i.e. distortion of the result, to actually take place (e.g. regardless of unfair behaviour of the corrupt competitor, the competition result is different than the one 'agreed').

Article 296 b § 2 of the Polish Penal Code (active bribery)

The perpetrator of active bribery in sport can be anyone who, in exchange for unfair behaviour that may affect the result of the competition, gives or promises to give a bribe to either the host of the events or a competitor.

Article 296 b § 3 of the Polish Penal Code

Both active and passive bribery in professional sport competitions can constitute a less serious crime.

In such a case the law provides for a more lenient penal sanction.

Article 302 §§ 2 and 3 of the Polish Penal Code (corruption of creditors)

§ 2. Any person who gives or promises to give a financial advantage to a creditor for the latter's acting to the detriment of other creditors in relation to

bankruptcy proceedings or ones aimed at preventing bankruptcy, shall be liable to a penalty of imprisonment for a period not longer than 3 years.

§ 3. A creditor who in relation to proceedings referred to in § 2 above accepts a financial advantage for acting to the detriment of other creditors or requests such an advantage shall be liable to the same penalty.

This regulation is intended to protect the correct and undisrupted by unfair and dishonest activities operation of economic turnover during pending bankruptcy proceedings or proceedings aimed at preventing bankruptcy.

The subject of the bribe given or promised to the creditor for acting in the way as described in §2 is a financial advantage. In turn, the subject of the bribe accepted by the creditor is an advantage in any form, including personal.

Article 302 § 2 of the Polish Penal Code (active bribery)

This regulation provides for liability for active bribery of a creditor or creditors, which consists in giving by the debtor or any person acting on his/her behalf a financial advantage or a promise thereof to the creditor in exchange for acting to the detriment of other creditors.

Article 302 § 3 of the Polish Penal Code (passive bribery)

Active bribery by a debtor corresponds to passive bribery by a creditor, who accepts from the debtor or any person action on the latter's behalf an advantage or requests and advantage for acting to the detriment of other creditors.

Active bribery of a creditor can be committed by both the debtor and any other person acting on his/her request, while passive bribery can only be committed by a creditor.

For the corruption crimes specified in the following regulations:

- article 228 of the Polish Penal Code, passive bribery;
- article 229 of the Polish Penal Code, active bribery;
- article 230 of the Polish Penal Code, paid protection;
- article 296a of the Polish Penal Code, corruption of managers;
- article 296b of the Polish Penal Code, sport corruption;
- article 302 §§ 2 and 3 of the Polish Penal Code, corruption of creditors

pursuant to regulations of the **law on liability of collective entities for punishable prohibited acts as of 28 October 2002 (Journal of Laws as of 2002, No. 197, item 1661, with subsequent amendments)** a collective entity shall also be liable for an act being behaviour of a natural person acting for or on behalf of the business entity, provided that such behaviour has given or could give an advantage, even if not financial, to such a collective entity.

The law introduces into the Polish penal law system legal elements provided for in the Convention on the Protection of European Communities' financial interests adopted by the Council of the European Union on 26 July 1995 and in the additional Protocols numbers I and II to the Convention.

This way the law is closely related to the accession of the Republic of Poland to the European Union and is in compliance with the EU legal regulations.

Collective entity is a legal person (e.g. a joint-stock company) and an organisation unit having no legal personality (e.g. a partnership or a limited partnership), except for the State Treasury, local government units and their associations, and national and local government authorities. A collective entity is also a commercial company owned or co-owned by the State Treasury, local government units or associations of such units, an entrepreneur not being a natural person, as well as a foreign organisation unit.

A collective entity is liable if the committing of a crime by a natural person acting for or on behalf of the collective entity has been stated in a legally valid guilty sentence by a court. Proceedings are launched upon motion by either a public prosecutor or the wronged.

IV. Premises for exclusion or mitigation of penal liability

Active repentance

1) Exclusion from penal liability

Both the person who accepts and the one who gives a bribe commit a crime; therefore, in the case their behaviour is disclosed, both sides can incur penal liability. The threat of a penalty imposed by court, which is realistic for both the giver and the taker, makes them adopt the same defence policy and mutually support their statements. Therefore, to break the criminal solidarity/conspiracy of silence existing between the person who has accepted a financial or personal advantage or a promise thereof and the person who has given such an advantage, the law includes regulations which allow, under certain circumstances determined by the law, for impunity of perpetrators of the crimes referred to in the following regulations:

- article 229 §§ 1-5 of the Polish Penal Code (active bribery in the public sector);
- article 230 a §§ 1 and 2 of the Polish Penal Code (influence trading);
- article 296 a §§ 2 and 3 of the Polish Penal Code in conjunction with § 2 (active business bribery),
- article 296 b § 2 and § 3 of the Polish Penal Code in conjunction with § 2 (active sport bribery).

The lack of such regulations had frustrated efficient fight against corruption.

The benefit of impunity can be used by perpetrators of active bribery; the law does not give such a chance to people who accept bribes.

The institution of impunity in active bribery, existing since 1 July 2003, has gone so far that even if the bribery has been made on the initiative of the active bribe perpetrator, regulations relieving him/her from penal liability are applied.

Conditions for impunity of a perpetrator of a crime

1. A financial or person advantage or a promise thereof has been accepted.

It is worth noticing here that, pursuant to article 230a, penal liability is imposed on the person who contacts a person performing a public function not directly but through an intermediary.

If the perpetrator was behaving so with regard to a person performing a public function, he/she would commit active bribery (article 229 of the Polish Penal Code).

The perpetrator of the prohibited act under article 230 a of the Polish Penal Code incurs penal liability only in the case if his/her intent includes all the attributes of the crime, including the attribute of illicitness.

Thus, if the perpetrator is not aware of the fact that exerting an influence can be illicit, such behaviour is not sufficient to be qualified as the crime.

2. A perpetrator who has given a bribe and reported the fact to a justice authority.
3. A perpetrator who has given a bribe and disclosed all the essential circumstances of the crime.

Reporting the crime and circumstances thereof to authorities **must** take place before the authority competent to prosecute crimes gets to know such facts.

Impunity provided for under the aforementioned regulations means that the prosecution authority does not launch penal proceedings against the person who has given a bribe, and the perpetrator of active bribery in the case against the person who has accepted the bribe acts as a witness.

2) Exceptional mitigation of penalty or refraining from imposing it, article 250 a of the Polish Penal Code (electoral corruption) and article 302 §§ 2 and 3 of the Polish Penal Code (corruption of creditors)

As the regulation under article 250a of the Polish Penal Code does not provide for a more lenient treatment of a person who actively bribes a voter, especially as the perpetrator can be a candidate for an MP or senator, and considering greater possibility of contributing to disclosure of electoral corruption by a person authorised to vote, the law provides, under certain circumstances determined in legal regulations, for a more lenient treatment of a person who has accepted an advantage.

There exists an obligation of exceptional mitigation of penalty and even a possibility of refraining from imposing the penalty on a perpetrator of passive electoral bribery (i.e. a person who has accepted a financial or personal

advantage or requested such an advantage in exchange for casting a ballot in compliance with the ‘deal’.)

However, exceptional mitigation of penalty depends on the satisfaction of the following two premises:

1. the perpetrator has reported the crime and the circumstances of committing thereof to an authority competent to prosecute crimes;
2. the report has been made before the prosecution authority gets to know about the crime and circumstances of committing thereof.

Mitigation of penalty or refraining from imposing thereof happens regardless of the aim, motives or motivation which has caused the perpetrator to report the crime.

Exceptional mitigation of penalty consists in imposing a penalty below the minimum level provided by the law or a penalty of a more lenient kind.

Refraining from imposing a penalty consists in deeming the perpetrator by the Court guilty of the crime he/she is charged with and refraining from imposing a penalty for the crime.

Exceptional mitigation of penalty in the case of the crime under article 250a § 1 of the Polish Penal Code consists in imposing by the Court a fine or restriction of liberty. In the case of a less serious crime under article 250a § 1 of the Polish Penal Code the exceptional mitigation of penalty consists in refraining from imposing the penalty and awarding a penal measure provided under regulations of the Polish Penal Code.

In turn, in the case of a perpetrator of corruption against creditors (article 302 §§ 2 and 3 of the Polish penal Code), who has voluntarily compensated for a whole damage, the law provides for a possibility of exceptional mitigation of penalty and even refraining from imposing it. This is provided for under article 307 § 1 of the Polish Penal Code.

If the perpetrator has compensated doe a damage in a significant part, this gives grounds only for exceptional mitigation of penalty, article 307 § 2 of the Polish Penal Code.

Compensation for damage as referred to in the quoted regulations does not have to take place before penal proceedings are launched.

Such conditions can be effectively satisfied until the legally valid decision is passed.

The regulation included article 307 of the Polish Penal Code is based on the institution of active repentance, which consists in mitigation or exclusion of penal liability as a result of repentance shown by perpetrator of a crime and intends to compensate for the damage incurred by the creditors as a result of the criminal behaviour of the perpetrator.

Perpetrators of both active and passive bribery can benefit from this regulation.

Apart from the regulations indicated directly in the law, the Court may in the cases provided for under article 60 of the Polish Penal Code exceptionally mitigate the penalty, considering e.g. **the attitude of the perpetrator**, especially manifested by making attempts to compensate for or prevent a damage. This institution is also available for a perpetrator who has committed the crime as an exception from his/her previous behaviour forced by special circumstances, e.g. giving a financial advantage to a director of a residential home for accepting at the home a person who needs 24-hour care, in the case when the perpetrator cannot use the institution of active repentance, and at the same time, the crime committed by him/her cannot be evaluated as causing minimal social harm.

Minimal social harm

Pursuant to article 1 § 2 of the Polish Penal Code, a prohibited act does not constitute a crime, if it causes minimum social harm. Consequently, committing such an act does not result in penal liability.

Assessing the degree of social harm of an act, the court takes into consideration the kind and nature of the good violated, the size of the caused or expected damage, the way and the circumstances of committing the act, the significance of the duties violated by the perpetrator, and the form of intent, motivation of the perpetrator, kind of the protection rules violated and the degree of violation thereof.

The circumstances which decide that an act is of minimal social harm include the size of the caused or expected damage, the way and the circumstances of committing the act, and the motives, motivation and aim of the perpetrator's activity. For instance, if a person bribes a doctor to advance a surgery to save the life or health of the briber or his/her relative, this will be considered an act of minimal social harm.

A person giving a bribe, considering the need of further treatment or rehabilitation, usually does not report bribery to prosecution authorities, if

such an act is discovered. Consequently, the person will not be able to use the benefit of impunity.

However, considering all the circumstances of the act, first of all the motivation of the person giving the bribe, this act can be considered as causing minimal social harm. Therefore, the briber will not face penal liability. In such a case, the proceedings will not be launched or, if launched, will be discontinued.

The value of an accepted or offered advantage, which is only minimally higher than the usually accepted value of a gift, must be carefully considered by prosecution authorities to check whether the act is of minimal social harm.

For such a benefit to not constitute a financial advantage in the meaning of regulations of the Polish Penal Code, it must in fact have only a symbolic nature, which regardless of its tangible quality and certain financial value, cannot be treated by a reasonable observer as 'increasing property'.

However, in some cases of corruption crimes, even the value of a gift cannot decide on minimal social harm of the act. This concerns first of all situations where an advantage is given as a result of a request from a person performing a public function (requesting such an advantage, the person cannot expect that his/her behaviour will be assessed as causing minimal social harm) or if the advantage is a payment for acting in contravention of legal regulations. In such a case, the behaviour of both giver and taker of the bribe is unpardonable.

Penal law consequences for parties to corruption crimes

The currently applicable regulations are intended to efficiently combat corruption by imposing a penal sanction and depriving persons committing such acts of the proceeds from the crimes committed by them, as well as to counteract such types of behaviour in the future.

The measures concern all the varieties of corruption crimes.

The sanctions include:

- imprisonment;
- fine, article 33§2 of the Polish Penal Code,
- penal measures, including: ban on holding a certain position, practicing a profession or running a certain business activity, article 41 of the Polish Penal Code, seizure of objects, article 44 of the Polish Penal Code and seizure of advantages, article 45 of the Polish Penal Code.

Courts passing judgements on corruption crimes, considering their nature, usually sentence to **imprisonment** or conditionally suspended imprisonment.

A fine, which is imposed along with the penalty of imprisonment, is an additional penalty of financial nature, independent of the basic penalty. It is imposed, if the perpetrator has financially benefited from the crime, and is intended to be an additional burden for the perpetrator, along with the basic penalty.

Another measure of combating corruption includes penal measures consisting in a **ban on holding a certain position** (e.g. a traffic controller, car inspector), **on practicing a certain profession** (e.g. a physician, teacher, police officer) or **on running a certain type of business activity** (e.g. ban on running construction activity or activity concerning professional sport, holding sport competitions, if the perpetrator has bribed referees or competitors).

The penal measure **in the form of seizure of objects being direct proceeds from crime** (e.g. a car received as a bribe) and of objects being the ‘product’ of the crime (e.g. documents certifying untrue information received for a bribe) is intended first of all to deprive the perpetrator of the so-called proceeds of crime. For instance, the law provides for an obligation by the Court to award seizure in the case the perpetrator is found guilty for a corruption crime.

The obligation to award seizure of objects being direct proceeds from crime is supplemented by the obligation to award by the Court a penal measure in the form of **seizure of the financial benefit achieved by the perpetrator** (e.g. a car purchased for the bribe).

Such measures can be an efficient instrument to counteract and combat all varieties of bribery, only if used together.

V. How a citizen should behave in a corruption situation

1. Consistent enforcement of one's reasonable rights can in many cases prevent corruption offers from people expecting financial (personal) advantages in exchange for activities (decisions) they have obligation to carry out and which they receive wages for.

- Pursuant to applicable regulations (article 9 of the Polish Code of Administrative Procedure) public administration authorities have the obligation to properly and extensively inform those interested about any legal and actual circumstances which may affect the establishment of their rights and obligations. They also have the obligation to provide necessary information and guidelines. Similar obligations are imposed under regulations concerning many other entities, e.g. article 31 of the Law on the Profession of Physician and Dentist as of 5 December 1996 (uniform text in the Journal of Laws No. 21 as of 2002, item 204, with subsequent amendments).
- Every citizen has the right, which is guaranteed by the Constitution of the Republic of Poland (article 63) to lodge complaints against negligence or improper performance of their tasks by competent authorities or personnel thereof, as well as against lengthy or red-tape manner of handling a matter (article 227 of the Polish Code of Administrative Procedure). Complaints can be lodged to either the superior of the employee or to a superior authority (the direct principle does not apply).
- Complaints can be lodged either in the written form (at best by registered mail) or orally; regulations in force do not provide for a possibility of lodging complaints via telephone. Information on the ways of receiving complaints and on the time of receiving (at least once a week in the afternoon) should be available in a visible place at the office of a given organisation unit (article 235 of the Polish Code of Administrative Procedure).
- Province administrative courts are competent to consider complaints against idleness of public administration authorities (article 3 § 2 point 8 of the law as of 30 August 2002 The law of proceeding in front of administrative courts (Journal of Laws No. 153, item 1270). Protection of rights can also be claimed in other proceedings, e.g. civil.
- Many foundations, associations and other non-governmental organisations provide free-of-charge legal advice and assistance in claiming one's rights. Information on them is available for instance on the Internet. In civil proceedings, a court may relieve a party, upon its reasonable request, from either the whole or part of the costs and appoint an attorney or legal counsel (article 117 of the Polish Code of Civil Procedure).

2. In a situation when financial (personal) advantage is requested or offered and a person has information that a corruption crime has been committed by others:

- such a person can (and even should) request assistance in this regard from specialist prosecution authorities, i.e. the Police or the Internal Security Agency. Special sections have been established at those entities, on a province level, to combat corruption crime, which can also be reached by telephone, e.g. through an officer on duty. They have both procedural and operational knowledge, and professional technical means to enable correct securing of criminal evidence;
- if contact with such agencies is impeded, the person should independently aim at obtaining, as far as possible, as much as possible objective evidence proving the fact that the crime has been committed, e.g. conversation recording, various kinds of documents, outside witnesses, etc.;
- a reasonable suspicion of corruption crime can also be reported either in the written form or personally to the nearest public prosecution unit. Written records will be made on such a report. The person who reports a corruption crime committed by others can request non-disclosure of the fact that he/she has reported it. Such information will be verified by conducting operational activities.

3. A person who has committed a corruption crime can avoid penal liability or seek mitigation of penalty under the circumstances referred to in part IV of this study.

- The crime should be **personally** reported to an authority competent to prosecute crimes, i.e. a public prosecutor's office, Police or Internal Security Agency. This can also be done in the written form, provided however that the letter should be signed with the perpetrator's own hand.
- If a financial (personal) advantage has been given by more individuals, for them (or some of them) to be able to use impunity or mitigation of penalty, they have to report the crime **at the same time**.

4. It needs to be emphasised that one of the basic types of civic behaviour limiting corruption is refusing to give or accept a bribe. One has to be aware of the fact that involvement in a corruption situation can often affect the rest of one's life, limiting the fundamental right of each human being to freedom of decision-making.

If we do not disclose such a situation, we become in a way 'hostages' to the associate in crime and possibly to other individuals.

Repertory No. 822/2006

I, the undersigned, Ryszard Pruszkowski, sworn translator of the English language for the District Court of the City of Warsaw, hereby certify that the above text is a true and complete translation of the original Polish document.

Warsaw, May 16, 2006