

Combating corruption in Poland
current situation, legal institutions in criminal law



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The definition of a “financial benefit” is contained in Art. 11594 Penal Code of 1997 and is stated more widely and more precisely than in the Penal Code of 1969 (Art. 13093).

Art. 115§4.

Financial benefit constitutes a benefit for

- 1) oneself;
- 1) another natural or legal person
- 3) organizational entity not having personality at law;
- 4) group of persons performing organized criminal activity.

Inclusion into the term “bribe” of personal benefits is reasonable, valid and relating to the state of fact. It is generally known that a “bribe” does not always take the form of a financial benefit. It could have the form of a mutual performance or ensuring of a high function.

In this group of crimes, legal protection is effected to the benefit of “correct” operation of State and public institution.

The statutory lower limit of the penalty has remained the same as in the Penal Code of 1969 - 6 months, whereas the upper limit of penalty has been increased by 3 years, i.e. to 8 years.

A special novelty introduced in the Penal Code of 1997 is the introduction of an “offense of lower magnitude”. This has been provided in Art. 288§2, i.e.:

§2. In cases of lower magnitude, the offender is subject to a penalty of fine, restriction or liberty or deprivation of liberty of up to 2 years.

This provision will apply also to offender in a qualified form of passive bribery, i.e. a person who demands a bribe, what greatly lowers the rank of the offense. The qualified form of passive bribery is provided for in Art. 288 §3 to §5 Penal Code of 1997. The wording is as follows:

§3. if the offense provided for in §1 has been committed in connection with violation of the applicable laws, the offender is subject to a penalty of deprivation of liberty of from one year to 10 years.

§4. The penalty provided for in §3 shall apply also to a person, which in connection with fulfillment of a public function makes performance of his/her official duties conditional upon obtaining a financial benefit.

§5. Whoever in connection with fulfillment of a public function accepts financial benefit of significant value or a promise thereof, shall be subject to a penalty of deprivation of liberty of from 2 years to 12 years.

The offenses provided for in §§ 3 and 4, above, are classified as misdemeanors. The penalty for the above forms of passive bribery has remained unchanged as compared with the Penal Code of 1969.

In §§4 and 5 the legislator did not place the words “personal benefit”, which limits the bribe just to “financial benefit”, thus greatly narrowing the sphere of persons who are liable under those provisions.

Art. 240 Penal Code of 1969 was liberalized, as it provided for a qualified bribery committed by persons fulfilling a public function related with special responsibilities and by offenders who accepted personal benefit of great value. In the first case the legislator abandoned at all the concept of a public function related with special responsibilities.

The following four changes could be concluded from the above:

1. Art. 141§3 Penal Code of 1969 provided for a higher penalty in respect to bribery comprising the issue of a bribe for the public officer to violate applicable law, and the new penal Code provides only for violating official duty.
2. Also, the above provisions render to penal liability both of the person who issues the bribe to induce a person **fulfilling** a function to violate his official duty, as well as the person who issues a financial benefit for the violation of such duty. Such solution was not provided for in Penal Code of 1969.
3. The next change involves abandoning in the Penal Code of 1997 the concept of “financial benefit of great extent”; see remark to Art. 228.
4. Penal liability for such acts was liberalized in both cases. In the Penal Code of 1969 Art. 241§3 provided for a penalty of deprivation of liberty of one to 10 years, whereas in Art., 241§4 Penal Code of 1969 provides for a deprivation of liberty of not less than 3 years. In the second situation, the offense was included into the category of felonies. The Penal Code of 1997 provides for a penalty of deprivation of liberty of 6 months to **8** years for both these qualified forms of active bribery; thus reducing both the lower as well as the higher threshold of the penalty.

PAID PROTECTION

Art. 230. Whoever, referring to his/her influence in an State institution or territorial self-government, undertakes to intermediate in resolving of any matter in exchange for a financial benefit or a promise thereof, shall be subject to a penalty of deprivation of liberty to up to 3 years.

This is a common offense and comprises the undertaking of intermediacy in resolving of any matter in exchange for the obtaining of a benefit. In comparison with Art. 244 Penal Code of 1969, the principal nature of offender’s action, by which he refers to influence in an institution, did not change. As compared with Penal Code of 1969, the scope of the offense is limited to just one type of behavior, i.e. “referring to influence”. This term cannot include shall behaviors as misleading the victim or benefiting from victim’s mistake.

The Penal Code of 1969 penalized not just behavior of the offender in which he/she referred to influence in an institution, but also the referring to influence of other persons. In the new Penal Code, liability is borne only by the person who renders to his/her own influence. Moreover, the new penal provisions do not include offenders of paid protection who refer to their influence in a public institution. However, the scope of penal liability of offenders referring to influence in territorial self-government has been extended.

The next change contained in Art. 230 Penal Code of 1997 covers narrowing of the meaning of “benefit”. Same as in Art. 228 §4 and §5 the legislator resigned **from** penalizing the offense of accepting by the offender of personal benefit. The Penal Code of 1969 did provide for such an eventuality.

Penal liability for an act comprising paid protection has been greatly lowered, both in the lower and in the higher threshold of the penalty. The Penal Code of 1969 provided a penalty of deprivation of liberty of one to 10 years. Presently this is from one month to 3 years. In consequence of this change, the extraordinary mitigation of penalty for paid protection will include only a fine or penalty of restriction of liberty, which shall be subject to conditional stay pursuant to Art. 60§6.3 in connection with Art. 69§1 Penal Code of 1997.

the prosecuting authorities of the offense and its circumstances prior to its disclosure by such authorities.

Also Art. 6 1. § 1 Penal Code of 1997 does not provide for a situation in which only two persons committing an offense appear, so it is not applicable to corruption, as it requires division into persons fulfilling the main and subordinated role in a criminal group. Therefore, those provisions will not play the role provided for in Art. 243 Penal Code of 1969.

Other anti-corruption legal regulations promulgated for the purpose of preventing such behaviors have to be taken account of in combating crime of corruption. These include:

- Law of 5th June 1952 on limiting performance of business activities by persons fulfilling public functions (Journal of Laws No. 56 item 274), the so-called “anti-corruption” law
- Law of 10th June 1994 on public orders (Journal of Laws No. 76 item 344)
- Law of 16th April 1993 on combating dishonest competition (Journal of Laws No. 47 item 211).

Penal provisions contained in the latter law provide for penalizing behavior of any person who contrary to his/her duties to the entrepreneur, discloses to other person or uses in his/her own business activities any information which constitute a secret of such enterprise, when this leads to a material damage to the entrepreneur (Art. 23§1). Also, a person who illegally receives information constituting secret of an enterprise and discloses such information to any other person or uses it to own business activities is subject to a penalty (Art. 23§1).

Struggle with corruption requires development of codes containing model behaviors for certain professional groups. As international cooperation is growing in importance, it is also necessary to penalize corruption undertaken in respect to officers of other countries, international and non-governmental organizations.

- What is the role of economic lobbying;
- What is the level of activity of public organizations;
- What is the general public feeling about anti-corruption activities.

CORRUPTION IN LIGHT OF THE POLISH PENAL CODE

The Penal Code of 19th April 1969 (as amended) is the principal legal act on the basis of which penal law provisions are applied in Poland. A new Penal Code adopted by the Polish Parliament on 6th June 1997 is to become effective with the 1st of January 1998.

Both Penal Code provide for two basic types of corruption:

- 1) Acceptance of a bribe, referred to a venality of officers or passive bribery, provided for in Art. 239 §1 to §3 and Art. 240 §1 and §2 Old Penal Code (Art. 228 § to §5 New Penal Code)
- 2) Issue of a bribe, called bribery or active bribery, provided for in Art. 241 §1 to §4 Old Penal Code (Art. 229 §1 to §4 new Penal Code).

In the first case, Arts. 239-240 protect the neutrality of fulfilling a public function against accepting bribes by persons fulfilling such functions.

Bribery comprises the acceptance by the offender of financial or personal benefit or a promise thereof in connection with fulfillment by the offender of a public function (Art. 239§1 Penal Code). The feature of this form of bribery is an initiative of giving a bribe on the side of the applicant, whose matter is being considered by the offender, and that the offender receives the bribe for resolving the matter in accordance with the applicable law. It constitutes as if an additional remuneration for an activity the offender should have been performing neutrally.

Bribery takes place also when the bribe accepted applies not to any concrete activity, but is to cause favorable disposition of the person fulfilling public functions, or avoidance of negative decisions to be issued by such person in the future.

Financial benefit is a benefit for oneself as well as for any other person. It comprises any form of material benefit, e.g. money, securities, objects, relinquishing of property rights or deletion of an obligation, but also agreements favorable to the offender, e.g. a loan.

Personal benefit may take a number of forms - securing promotion, medal, acquainting with certain persons, having a sexual intercourse.

Customarily accepted acknowledgment does not constitute a bribe, provided these are issued on complete voluntarily basis.

Violation of Art. 239 Penal Code in its basic provisions is threatened with a penalty of deprivation of liberty of from 6 months to 5 years.

Qualified venality of **officers** may be present in four cases. The sanctions are more severe when:

- Issue of a bribe is forced out (Art. 239§2)
- Illegality of **official** action (Art. 239§3)
- Fulfillment by the offender of a function related with special responsibilities (Art. 240§1)
- Great extent of material benefit (Art. 240§2).

Due to the same reasons, any person providing aid and abetting is also subject to a lesser penalty in the Old Penal Code than the penalties provided for bribery.

Aiding and abetting in the new Penal Code is penalized to the same extent as committing of the offense.

The difficulties associated with disclosing of the crime of corruption arise from the fact that these offenses are committed under situations of specific conspiracy, both by the issuer of the bribe as well as by acceptor thereof, who are equally interested in hiding the offense.

Mutual fear of bearing penal liability leads in this type of offense to creation of a strong defensive relationship by and between the issuer and acceptor of a bribe.

Practice shows that offenders rarely break such ties and notify the authorities of the crime committed.

Moreover, prosecution and prevention of bribery is made difficult by the specific and individual assessment of the phenomenon as such, depending on the circumstances.

Bribery in democratic societies are generally negatively assessed by public opinion as an activity deserving moral condemnation and penalty.

However, individual assessment by people will not be equivocal, depending on the circumstances, particularly in respect to one's own actions and actions by people in our direct environment. Sometimes, receipt of a favorable administrative decision in exchange of a specific motivation of the officer in the form of a bribe is considered to be natural and only way of resolving the matter.

Such double standards of morality will greatly reduce the number of social groups ready and willing to cooperate with prosecuting authorities in disclosing events of corruption and penalizing offenders.

Art. 243 of the Penal Code is an attempt to break these ties of solidarity in respect to events of bribery. It provides for a specific form of active repentance.

It allows both parties participating in the offense a less stringent treatment by the court, i.e. extraordinary mitigation of the penalty or even waiving the penalty in exchange for having notified the prosecuting authorities of the act and its circumstances. However, application of this provision by the court is not compulsory.

SCALE OF CORRUPTION IN POLICE AND PROSECUTING AUTHORITIES STATISTICS

Public opinion polling conducted this year by appropriate institutions has shown that more than one-half of all Poles consider that high ranking State officers receive benefits from the public functions they fulfill. Three-fourths of the people are of the opinion that nepotism is blooming and two-thirds consider that acceptance of bribers for resolving a variety of matters is routine. 56% of the polled group consider that public money is used to benefit political parties.

In opinion of respondents, corruption is blooming most often in administration, highest authorities of the State and in the field of justice, i.e. in institutions established to adopt law and control adherence thereto.

The health service comes next, as well as the police, political parties, trade and services, and banks (from 23% to 14%).

However, only 8% of all respondents consider that territorial self-government is corrupted.

Bribery (Art. 241 Penal Code)

The threat of bribery has regularly increased over the analyzed period of time, except for just some specific features. The data is illustrated as follows:

- Number of offenses disclosed through process actions has increased from 453 in 1990 to 876 in 1996;
- Number of suspects increased from 308 in 1990 to 656 in 1996;
- Number of arrested persons, from 4 in 1990 to 14 in 1996;
- Proven amount of bribes issued, from PLN 9,399 in 1990 to PLN 8 13,000 in 1996.

Conclusions drawn are similar to those for venality.

Overall, these two forms of corruption in 1996 were characterized by the following data:

- Number of offenses: 1,204
- Number of suspects: 890
- Value of bribes: PLN 1.6 Mln

The first two parameters increased by 85% and 121% respectively as compared with 1990, with the amount of bribes increasing almost one hundred-fold over the same time.

In reference to the overall threat of corruption in Poland on the basis of the above data it has to be remembered that the number of corruption cases confirmed by process constitute just 1.6% of all offenses related to business activities reported per annum and 1.3% of all criminal offenses reported in Poland.

Certainly, the picture would be different if all forms of bribery were considered. This was not done on purpose to give the documentation some clarity, as well as due to formal reasons. This is because the statistical methods applied in Poland do not allow the explicitly separate all cases of bribery accompanying other criminal activities, which have been given their own classification in the Penal Code.

Besides the two main forms of venality and bribery, corruption in the Penal Code also involves aiding and abetting bribery (Art. 242), paid protection (Art. 244) abuse of position (Art. 246§2), disclosing State and business secrets (Art. 260), certification of untruth (Art. 266§4), as well as penalized under the Law on Business Activities: abuse of confidence (Art. 1§2), preventing or hampering public order (Art. 2§1) and deriving benefit from laundering money of others (Art. 5§3).

Areas threatened by corruption

Susceptibility to criminal activities will be higher the higher is the extent to which decisions associated with economics belong to public officers or are left to their discretion. The more permits, licenses, quotas, concessions and allocations - the more there will be of corruption.

Views of Polish people reflected in public opinion polling on areas of State activities and the economy threatened with corruption are similar to police assessment based on cases being conducted in court and within investigations.

Police statistics shows that State administration and self-governments are threatened to the highest extent, due to a variety of administrative restrictions of a variety of spheres of the economy. Most of the ministries still have the right to issue and grant permits and concessions, thus controlling operation of almost fifty branches of the economy.

Many cases of bribery were also reported in falsifying quality parameters of coal in mines, by agents and by customers in the **CHP** plants sector:

- In customs offices and border guards - in relation to goods smuggling;
- In tax offices and tax control offices - in implementation of tax policy and tax supervision;
- In justice and police - primarily in relation to contacts with criminals (particularly in the trade in stolen vehicles, smuggling of alcohol and cigarettes).

These areas are not exhaustive. However, it seems these well reflect the current threat of corruption.

The presentation given above may give a feeling of a catastrophe. However, this was not my intention. I just wanted to present an abridged due to available time, objective and prospective threat which occurs along with the democratic transformations taking place in the management of the State and its economy.

Also, even countries having a long tradition of democracy and stabilized free-market economy are not free from such threats.

I also wanted to convince you that Polish police is aware of the dangers associated with corruption and that it is performing a systematic analysis, review and prosecution of such crimes. Recently it also seems that we are becoming more and more successful.

Our successes are associated with the tools granted to the police by the Polish Parliament in the form of the, so-called, “police legislation”, allowing the police to perform undercover, controlled purchase, traced shipments and controlled bribery operations.

Poland is a member of an international program for combating corruption and organized crime in Central and Eastern Europe (“Octopus project”) since 1996. The program was initiated in result of an understanding reached by the Council of Europe and the European Commission in May 1996. Work on the Second phase of the project (Octopus II) will commence in 1999. It will be devoted to the development of cooperation and exchange of experience in al. fields threatened with corruption, and to development of direct contacts between institutions dealing in combating corruption.

In line with recommendations of the “Program”, Poland is regularly developing and enacting legal and functional instruments to combat corruption and organized crime. This involved amendment of the Penal Code, Code of Penal Procedure and the Penitential Penal Code, Law on Public orders, Law on political Parties, Law on performance of the Mandate of Member of Parliament and Senator, Law on Public Service.

This also includes “police legislation” the institution of incognito witness and rights granted to perform operational activities by customs service, border guard and tax control.

Work is underway to organize within the Police headquarters and local units’ special services to combat corruption.

However, even best solutions and legal concepts will be insufficient if political will to combat corruption will be lacking.

To create such an atmosphere, it is necessary to inform people not just about events of corruption but first of all about applying penal, disciplinary and political measures.

Corruption will undoubtedly grow is public consent to various manifestations of corruption prevails.