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Bojan Dobovsek, PhD

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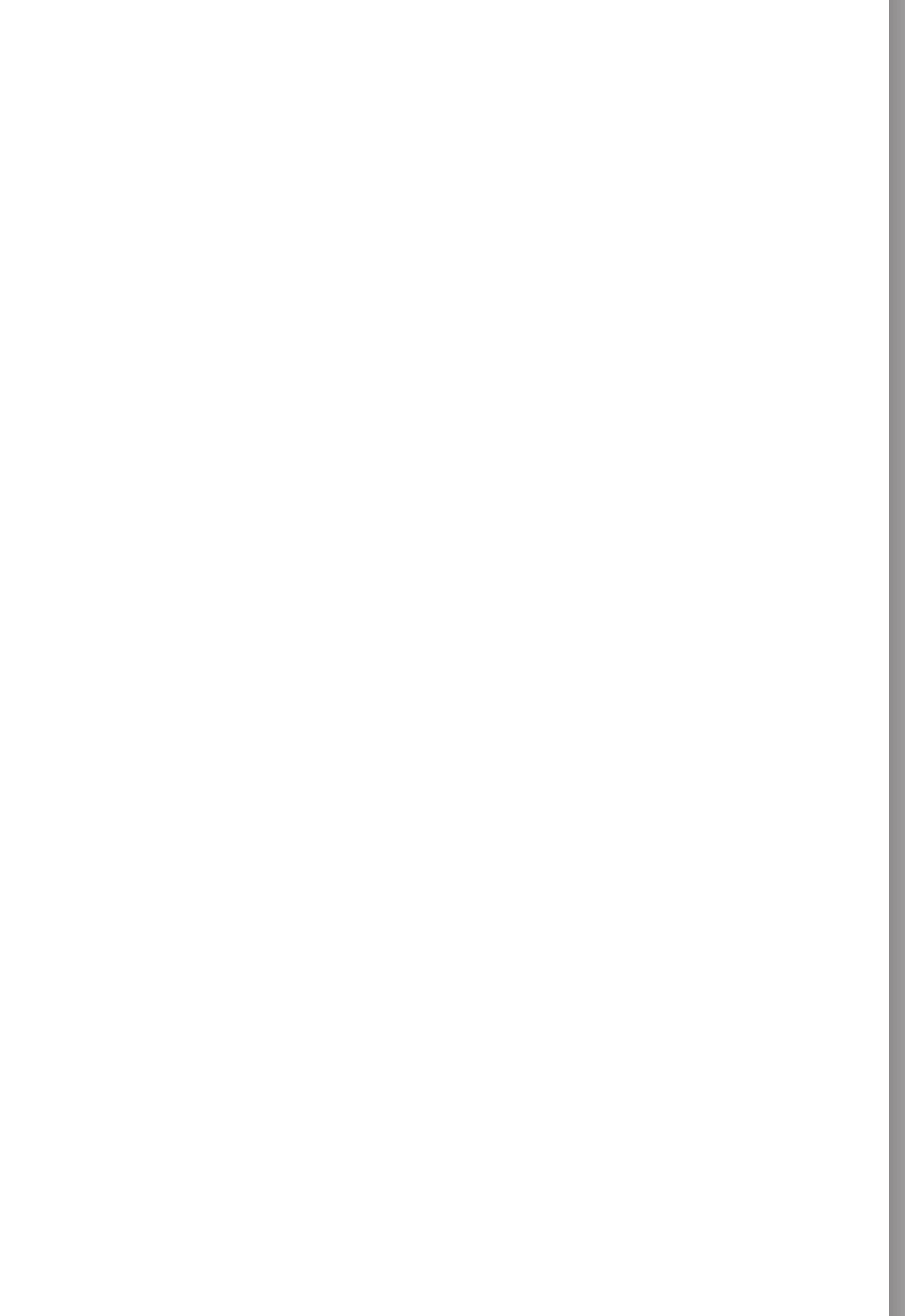
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1



INTRODUCTION
ABOUT CORRUPTION

1

INTRODUCTION ABOUT CORRUPTION

Bojan Dobovsek, PhD⁽¹⁾

The purpose of this work is to warn about corruption, which threatens contemporary countries all over the world, especially states in a so-called transition, with developing democracy, human rights and market economy. It is specifically important for Balkan countries that were so far affected by external factors to understand as soon as possible the significance of corruption prevention in the period of transition as elite may take advantage of such circumstances. This refers to unstructured legislation and institutions of trade and personal income control, unstructured state system and similar. The state institutions should forestall corruption by timely adoption of laws, institutions building (police, judiciary, a state body for prevention of money laundering, tax departments, etc) and by raising awareness of the community and media.⁽²⁾

Among sources of threat in the world, there is a corruption as an independent source of threat on one side and on the other, it is related to other forms of threat and as a red thread, it links all other forms of threat for which we think that they are impossible to be

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2 Dobovšek, B. (2003): Sodobni problemi korupcije u javnoj upravi. V Dobovšek, B. (ur.), Corruption in Public Administration, Ljubljana: MNZ.

correlated. For that reason, previous model of ensuring security against corruption, which was based on military and police mechanisms within the national security, loses its importance and becomes subjected to the requirements of demilitarisation thereby evolving into the new way of institutional ensuring of security within the integral security enabling development and security of collective goods and society as a whole. Accordingly, we ask ourselves what must be like the future concept of security and what position it would have as a concept of security in respect of corruption.

A corruption system emerges in parallel with the state system and as such, it can be determined as a society that works outside the state and public control. As such, it involves a number of criminals who operate in layered structures, which reminds of entrepreneurial organisation. Internal laws are strictly observed, which is not the case with state laws. The most important targets are control of organisation and highest possible financial profit. Knowledge is being adjusted to latest techniques and forms of economic management aiming to attain the highest possible profit. Material loss caused by such activities destroys and destructs the state system and moral foundations. In spite of all that, capacities of the police and other state organs to confront corruption are increasingly close to failure. As a consequence of all that, the corruption system affects fundamental functions of a state. Therefore, we ask ourselves what mechanisms a contemporary state may use to respond to corruption.

Accordingly, it is possible to conclude that a new concept of security, of which significant part is prevention of corruption, develops in front of us. As a response to corruption in the first phase, a state must establish a national policy of corruption prevention and repression. Therefore, every country should initiate development of an anti-corruption policy in which each social institution would find basis and its own role in fighting against corruption. As the awareness about damage that corruption causes has not yet been developed in the public, it is necessary to stimulate competent institutions in order to find the solution. There is no international conference where the problem of corruption was not mentioned not only as an issue in a single country but as a problem in the whole world.

It is necessary that majority of governmental departments deal with the internal security as it depends on many segments of a society. Thus the anti-corruption policy is not only a matter of state bodies who investigate, prosecute and adjudicate, but also an entire social policy and all relations pertaining to the economic sphere must be taken into account. That means that causes of corruption must be studied more detailed (social, economic, political and similar) even in those state departments which do not encounter corruption directly. Economic, cultural, educational and environmental departments appear to be the most important departments influencing crime.⁽³⁾

Investing of money gained from criminal activities into legal business through money laundering and corruption appears to be the biggest threat of the contemporary crime. Thus, the criminality tends to enter into legal sphere of the economy and it becomes a competition to the other economy. Since such criminal enterprises do not need money to start production, and investments are covered with the money gained from criminal activities, they become more competitive and gradually destroy healthy enterprises or they even buy them. By using pressure on politics and on other state institutions, they acquire different privileges and win public tenders. Since they do not pay taxes for majority of criminal spectrum activities, they become invisible, thus imposing a great damage to a state. As criminal is increasingly internationally connected and since Montenegro is a small country, even a small action of international criminal organisations could destroy the whole economy.⁽⁴⁾

In countries in transition, crediting is dynamically developing as new entrepreneurs need money to open their firms. In that connection, groups who are engaged in collection of money which was lent develop. These groups are violent and their work is brutal. Interests and payment of interests that are very high is the aim of crediting. Due to the high interest rates, it is not possible to repay the remaining debt (it should be noted that repayment of debt is not the

3 Dobovšek, B. (2005). Korupcija, lobiranje in neformalne mreže. Korupcija in politika, ur. Dr Bojan Dobovšek, Ljubljana: Republika Slovenija, Ministrstvo za notranje zadeve, Policija, Generalna policijska uprava, Uprava kriminalistične policije.

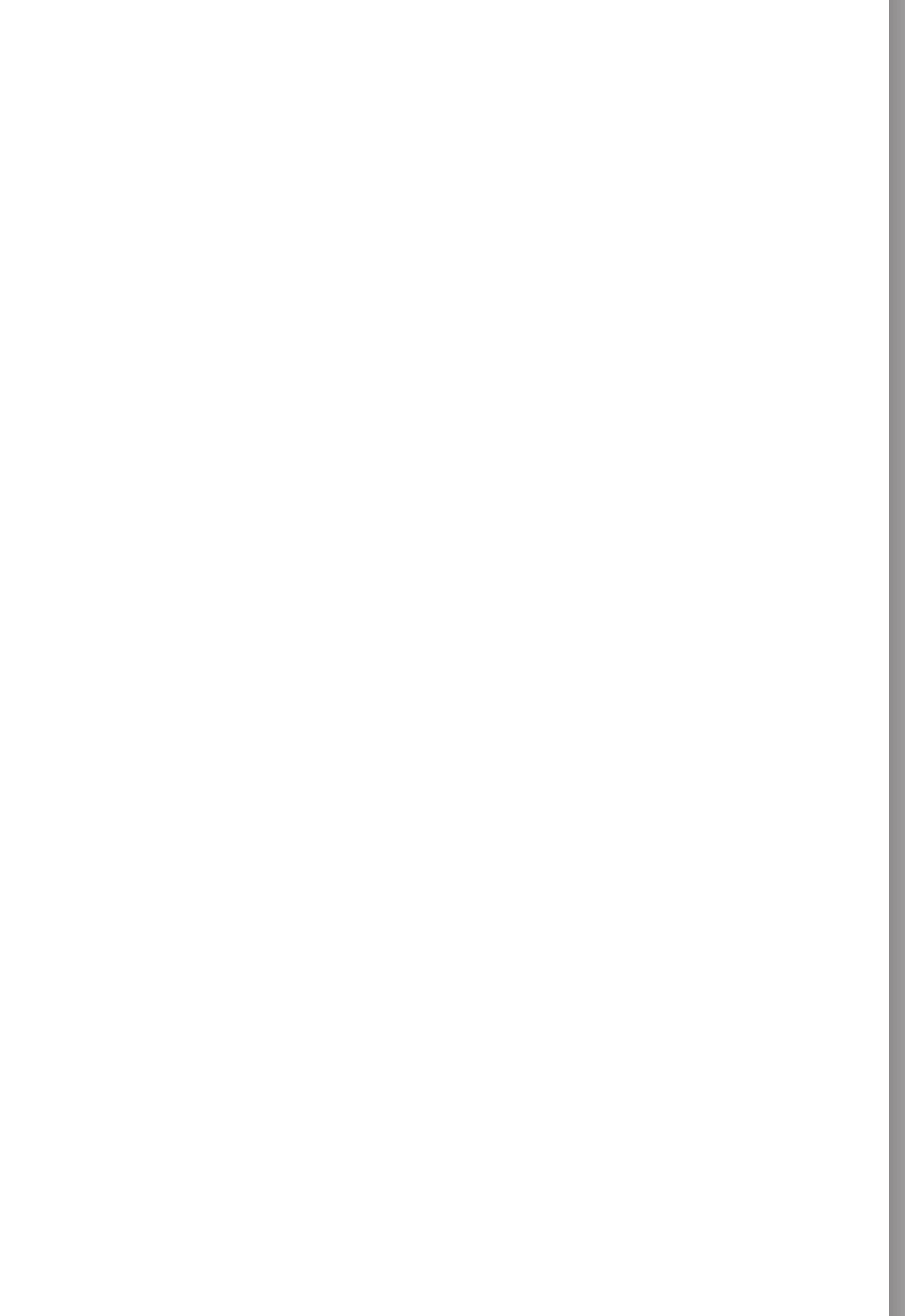
4 Dobovšek, B. (2004): Obrnjeno dokazno breme. V Dobovšek, B. (ur.), Korupcija v gospodarstvu, Ljubljana: MNZ.

aim, the aim is payment of interests and what follows in the text) and the criminal organisation must be provided with a company, house or a car, or certain activities have to be performed as demanded by the criminal organisation. In connection with crediting, collecting of taxes for criminal organisations also develops. This problem is greater than we want to admit and its solution requires participation of police, judiciary and all state institutions and even establishing of a programme for protection of witnesses and their statements.

Money laundering, like corruption, is a secondary phase of organised criminal groups work. Within the mentioned primary phases, illegal money is attained, while money laundering or corruption ensures the investment of that money in a legal sphere, whereby criminals enter the legal life becoming directors of enterprises or even politicians. Migration into the legal sphere is the present trend of criminal organisations (according to some theories, it is a battle of the poor to come to power) that can be noted worldwide. Money laundering is any technique aimed at transformation of undue or unlawfully attained capital in such a way that it is presented as just and legal income. The principal aim of money laundering is to prevent disclosure of financial malversations and to avoid taxation while the money is being included into the regular, legal system. Consequent to the fact that money laundering is a complicated activity, the fight against money laundering must involve all state institutions (police, judiciary, banks and tax institutions).

Corruption, as bribing of persons who abuse their authority in a state or private sector, is increasingly developing in the world. That is a particular problem in countries in transition due to the abuse by state officials, nepotism, misappropriation of funds, and misapplication of certificates and similar. In the private sector, it is primarily manifested as favouritism at work, bargaining and similar. As a separate form, there is a corruption related to organised crime that is dependent upon corruption and these two cannot develop without each other. Lack of experts for corruption detection seems to be the biggest problem in combating corruption. In corruption, both person giving/promising and the one receiving money benefit and therefore, nobody want to report it. Furthermore, damage is not made to an

individual who would report corruption, but the damage was made to the state, which is not aware of the corruption. Because of that, many issues remain open and this area requires far more work, which is also my future objective.



2



**STATE CORRUPTION
AND CONFLICT OF INTEREST**

2 STATE CORRUPTION AND CONFLICT OF INTEREST

Political and regulatory aspects of state corruption are considered a major concern in business by enterprise managers. Selling of parliamentary votes and government bodies to private interests, described as the state capture, requires a special attention. It is a public secret that acceptance of bribe in order to influence content of legal acts and other binding decisions – which is the most direct indicator of state corruption – is a widespread practice in all levels of authority in countries in transition. An economic conflict of interest is also extremely present. Abuse of public office for the purpose of protecting interests of entrepreneurs, with whom debtors have political or other connections, is perceived as a widespread problem. Unlawful financing of political parties is another indicator of state corruption. The corruption is characterised not only by the relation user-provider of services, but also by the interaction among public officials. Phenomenon of bribing among holders of public office is considered very frequent by the employees of these institutions.

Corruption has a negative impact on the poor for many reasons. In many cases, the bribe is a lump sum, thus making a higher percent of the budget of the poor families than of one of the wealthier households. The corruption makes budget disbursements less predictable and distorts a household income structure. Furthermore, it

makes public services less accessible to poor families, most of which have to stop using public services, which results in further fall of their standard of living. Corruption affects the quality of public services because the bribe is often given not only for the access to services but also for the purpose of obtaining higher quality services.

Criminal groups, who may cooperate with businessmen, state officials and politicians through corruption, intertwine in all mentioned relations in a society. Activities of the criminal groups are different and their adaptability to market is important. In situations when there is no capital or a state imposes some restrictions, it is expected that criminality will emerge. Capital is invested in legal business, which does not provide so much profit; however, movement into a normal life is secured. That specific transition owing to money laundering and corruption makes the biggest damage to a state, sometimes even endangering its existence, as it happened in some countries in the Central and South America.

In my opinion, so far everything implies a danger, which corruption represents to a society. The danger is present now and is concrete, thus it requires an instant action. One of the first and inevitable steps is certainly the establishment of crime policy and corruption combating policies. Political will is necessary upon harmonisation of interests and priority objectives setting. In addition, it is necessary to professionalize the work of all state institutions, which have to participate in fight against corruption by the principle of cooperation. It is also necessary to work on preventive activities, not only on repressive ones, since the prevention is one among the strongest weapons against corruption.

As it can be noted, corruption is a result of the system and at the same time, the main obstacle to its change. A strategy of the fight against corruption includes both systematic and strategic measures for eliminating reasons of the persistence of corruption, such as economic stagnation and social poverty, low standard and high expectations for material profit, cultural and traditional factors, massive social insecurity, unemployment, inefficiency of authority, etc. Legal resolutions include systematic introduction of measures for making corruption development more difficult. Proposals of any future legi-

slative amendments, especially those which are enacted in the areas having a high risk of corruption, proposals should be observed from that aspect too. Changes in the economic system should enhance privatisation of state property as centralised management and blurred structure of ownership encourage abuse of authority. Legal resolutions, in this and other areas, include systematic introduction of measures for making corruption development more difficult.

Therefore, Josip Kregar⁽⁵⁾ analyses dimensions of good governance, which can handle corruption. The below listed principles of good governance should be interpreted as tasks set in front of all those who want to modernise public administration – democratisation of political life. These standards move the issue of fight against corruption in a completely new context. The fight against corruption is an integral part of democratisation process, state and public administration modernisation, fair play in the field of economy, efficiency of judiciary and protection of citizens' rights and freedoms. Corruption is a social evil and its suppression requires a systematic effort and high level of mobility of all social forces. The main prompting actors are the institutions of civil society, which have to identify needs, institutions of authority and administration formulating measures and various actions of the competent state institutions. A prerequisite for measures is a clear political will in supporting fight against corruption, not only in supporting regulatory and system changes and institutions but also in the concrete examples.

2.1 LEGAL CERTAINTY - RELIABILITY AND PREDICTABILITY

Legal certainty - reliability and predictability, also termed as the rule of law principle, i.e. strict respect of legality and constitution and guaranteed procedures of the protection of human and individual rights; legal competence, which stipulates a legal principle that

5 Prof Josip Kregar, PhD, Faculty of Law, Zagreb. What is the good governance? Determination of the term according to the standards developed by the international organisations. V zborniku: Korupcija u javni upravi, ur. Bojan Dobovšek, MNZ, 2003, Ljubljana.

competence is determined only on the basis of legal framework and that boundaries of competence should not be exceeded; discretion, which is interpreted as an obligation to achieve the legal aim; proportionality, which was recognised as a principle in the interpretation of the European Convention on Human Rights and it is corrective towards the strict bureaucratic application of regulations; procedural fairness, which was also taken over from the judicial practice, along with the Article 6 of the European Convention on Human Rights, timeliness in passing government's decisions and resolutions, which is related both to measures (general legal acts) and procedural restrictions of the deadline for passage of individual legal acts. Finally, a need for professionalism and development of the professional integrity is clearly emphasised.

2.2 OPENNESS AND TRANSPARENCY

Openness and transparency is a principle according to which the governmental organisations are obliged to ensure the public character of their work. Accordingly, the government must inform the public about its activities timely, broadly, precisely and fully. Everyone has right to obtain information from the public authority. What is not a secret must be available to the public and that is introduced as a principle of work of the public administration meaning that only matters that were defined as confidential in a legal procedure or within protection of privacy are not available to the public. The listed principles are elaborated in the Recommendation 2 of the Council of Europe (2002, 21 February) concerning public activities in the areas of political decision making, public administration (central and local) and judicial system. The mentioned recommendation binds the state to guarantee to every person, without discrimination, a right of access to documents of public bodies. All potential restrictions of that right are listed as follows: state security and defence, public security, persecution of crime, privacy, economic interest, and equality before the law, supervision of the administrative work, exchange rate, and preparation of decision. A rule (developed on the basis of the English

practice!) stipulating that in case of conflict of principles and rules, a public interest and right to know have predominance (“unless there is an overriding public interest in disclosure”), has a revolutionary significance.

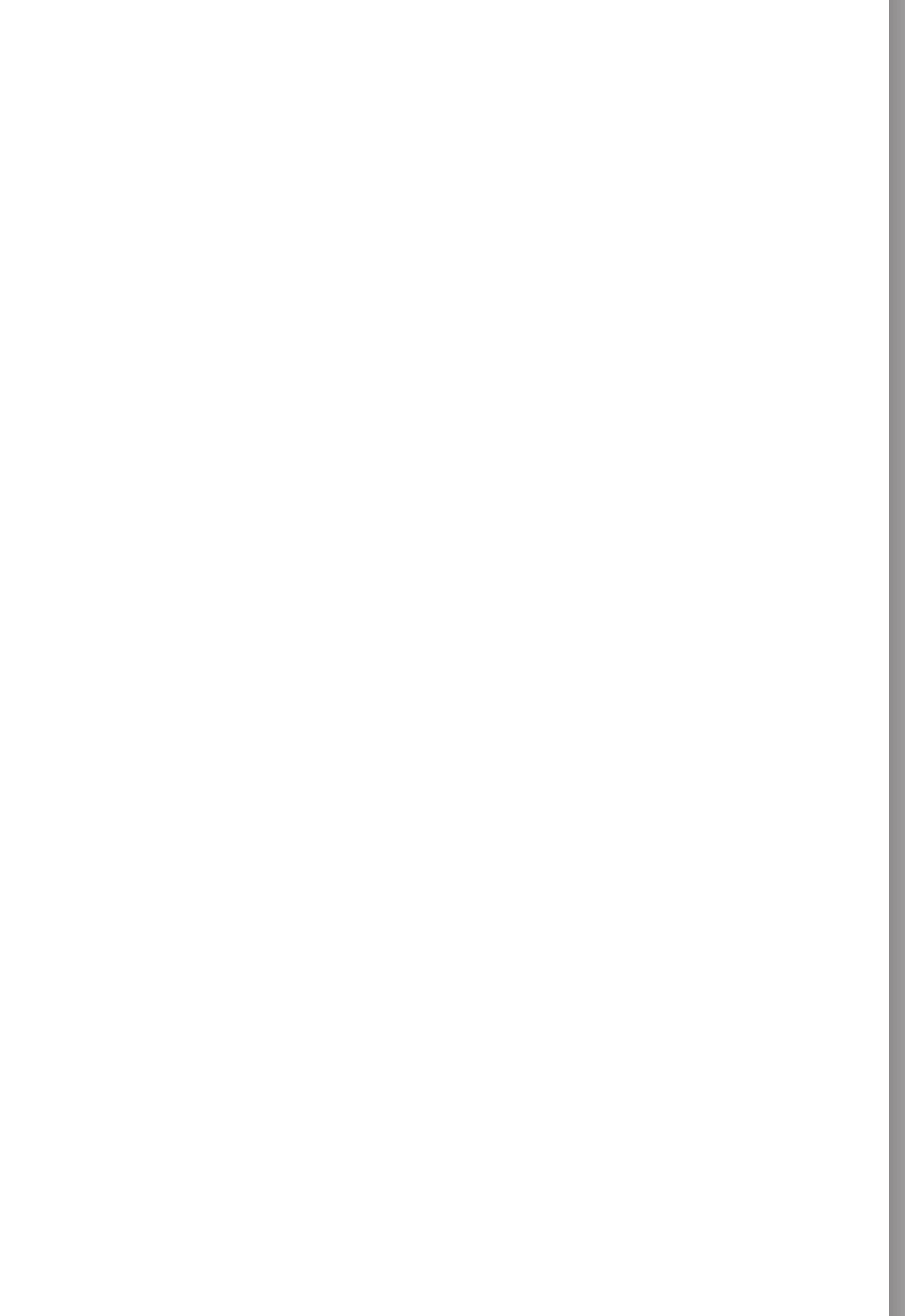
ACCOUNTABILITY means necessity for clear procedural determination of accountability, democratic supervision of political functionaries and possibility for their revocation and relinquishment and protection of individual rights of those who are accountable within the framework of the state hierarchy.

EFFICIENCY AND EFFECTIVENESS means that there is an obligation for the public authority to achieve the goals with lowest possible expense and that the activities of the authorities are effective (factual efficiency).

The principles of professionalism are especially precisely elaborated. By the theoretical definition, the professionalism means that a holder of a public office has been prepared for his/her function by his/her education, that he/she performs that office for a salary and that he/she spends a prevailing part of his/her office hours performing the function. The principles of the European Public Administration have broadened that definition. They insist on separation between public and private sphere, which implies development of the rules and procedures for protection against conflict of interests. The term professionalism encompasses separation between politics and public administration, individual accountability and protection of job and career in public administration (job protection, stability, level of pay, clear rights and duties). It should be insisted on a strict “merit principle” of selection, status, promotion, awarding, stimulate de-politisation of the positions and functions and work on permanent expert and professional (ethical) education.

During discussion, it is necessary to consider the phenomenon of informal networks in society – elites, which are generated in a state and through corruption activities; they attain advantages for themselves damaging the state. In addition, a special attention should be paid to the “state capture” phenomenon (takeover of a state), in which powerful groups (from political or business environment) take control of the legislative process to make it serve them rather

than society as a whole. The activities related to construction and urban planning, which influence the society through subtle forms of corruption without being punished for their activity, are included in that category. Finally, powerful groups of organised crime, who use corruption instead of force as it is more efficient and who may unite with powerful businessmen and politicians, should be mentioned.



3



PRACTICAL WORK – HOW TO
RECOGNISE CORRUPTION?

3

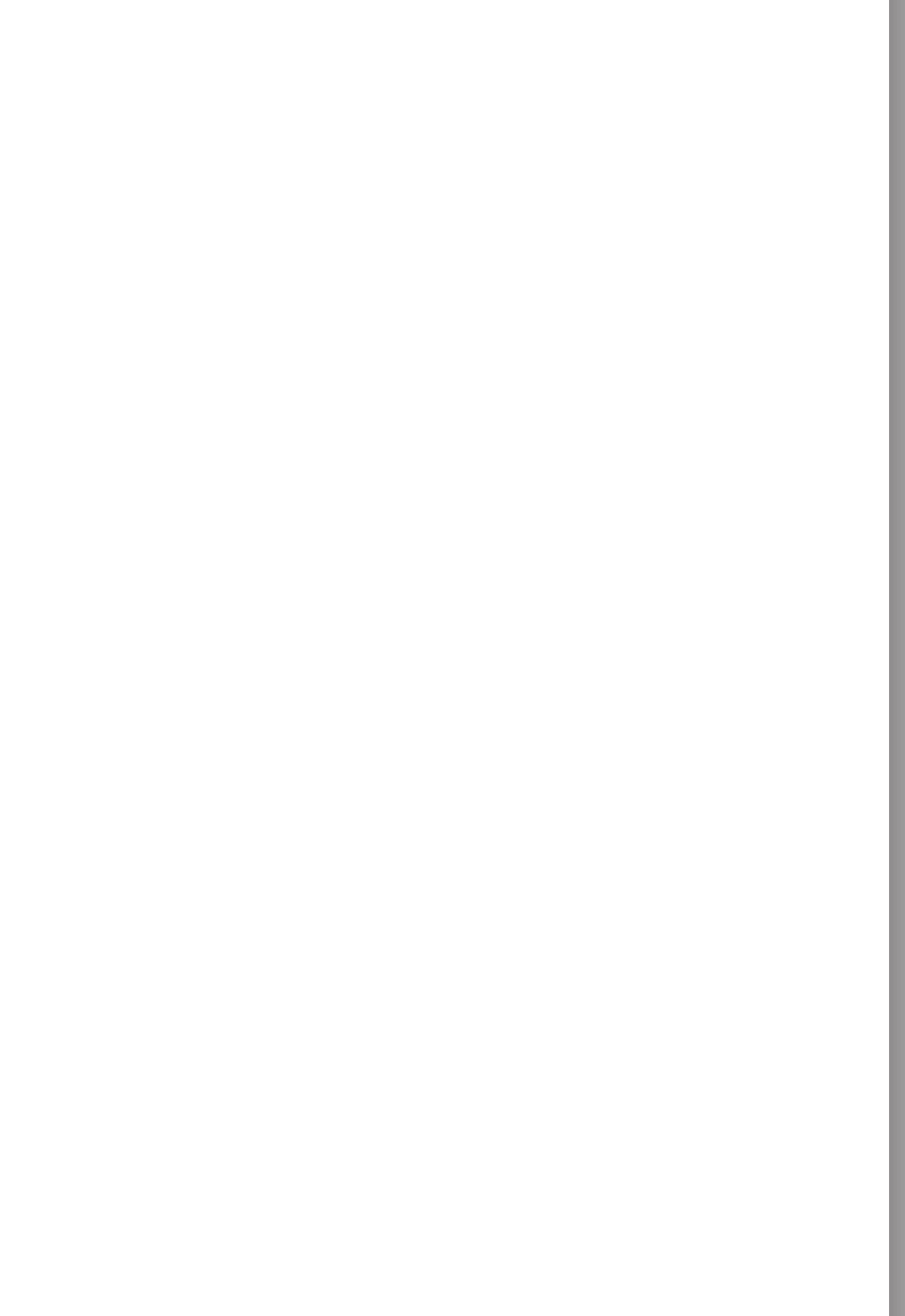
PRACTICAL WORK – HOW TO
RECOGNISE CORRUPTION?

It should be mentioned that the investigating journalism can have a key role in detection of corruption, especially in the highest levels. Therefore, everything that is valid for police, prosecution, and other institutions applies in particular to investigating journalists who perform a detective job. In order to handle and detect the phenomenon of corruption, they first have to get well acquainted with such phenomena that few are immune to. By analysing corruption and its forms, we have determined that it is important that people know how to recognise its forms as they are not phenomenon defined only by the law. Phenomenon of nepotism, conflict of interest, favouritism of circles of certain people, informal networks and other forms that cannot be punished by the criminal law and by the police but by the preventive and other actions, are important for our research. Education of both civil servants and all people in the society is important, in order to enable them to recognise the forms of corruption and report them. For that purpose, indicators referring to behaviour of persons who may be corrupted, thereby focusing the work of public institutions on the behaviour of these persons and the ways in which their property was obtained are presented below.

CORRUPTION INDICATORS

<i>Everywhere</i>	<i>Public Institutions</i>
Change of lifestyle	Bypassing regulations
Status symbols	Inexplicable decisions
Dependency	Overuse of discretionary power
Outside employment	Different assessment/decisions
Invitations, tickets	Ignoring duties
Gifts, comforts	Afternoon work
Impeccability at work	Collaboration between persons
Offers for work	Missing documentation
Ideas for new work	Acceleration
Refusal to accept reassignments	Influencing associates
Discretion	Complaints

The above clues help in detecting of persons engaged in corruption activities and work with clues is a part of practical exercises during seminar. This part is particularly important for investigating journalists, who may focus their research on suspicious persons and by applying a reverse burden of proof, ask corrupted persons to prove the origin of their acquired property.



4



PREVENTION
OF CORRUPTION

4

PREVENTION OF CORRUPTION

Bojan Dobovsek, PhD⁽⁶⁾Gorazd Mesko, PhD⁽⁷⁾

4.1 INTRODUCTION

The suppression of corruption should be one of leading challenges of contemporary democratic societies. Corruptive practice in the areas of social life creates belief that society cannot function without corruption. In majority of phenomena where social science and institutions of formal social control encounter the problems concerning the measurement of the scope of that phenomenon, it is possible to talk about hypothetical explanations of the scope and conclusions based on indirect clues indicating that such phenomenon exists.

In this work, we would like to present a summary of studies on phenomenal forms of corruption and possibilities for its suppression and prevention based not only on police activities. Due to the complexity of corruption phenomenon, it would be naive to ascribe the prevention of corruption to the police only. Police is only one of the social institutions, which can influence reduction of corruption, but a precondition for that activity is integrity within the police organisa-

6 Bojan Dobovsek, PhD, Faculty of Criminal Justice and Security, Slovenia.

7 Gorazd Mesko, PhD, Faculty of Criminal Justice and Security, Slovenia.

tion. Especially in countries in transition, where police officers have very low salaries, they could be facilitators of the corruptive practice and reinforce the opinion in citizens that corruption is completely normal and acceptable social practice.

This work consists of three parts. The first part represents an attempt of the phenomenological analysis of corruption in the broadest sense. The second part is a reflection of possible preventive measures against corruption. The last, third part, is related to the specific problems concerning corruption prevention and significant changes in the police function in the contemporary society.

4.2 PHENOMENOLOGICAL ANALYSIS OF CORRUPTION

The corruption exists in the society since long time. Despite that fact, the society has always been denying existence of corruption and corruptive practice in general. Corruption usually emerges in connection with greed, which represents a precondition for an individual disposition to corruptive practice. Greed is not the only reason for development and survival of corruption. Corruption also develops in relation to, for instance, major social differentiation (especially in the example of poverty of civil servants), disintegration and transformation of political and economic systems, and particularly in connection with the situation in former socialist states, war and post-war periods, shift of political leaders or high state officials and similar.

Globalisation and global transition of all societies in the world create conditions for the corruptive practice worldwide. This does not refer only to countries in transition (e.g. former socialist countries) and therefore, it is possible to conclude that corruption represents a global problem.

Corruption was defined as a negative social phenomenon as early as in the Roman law (*Lex Iulius Repetundae*). Criminal offence of corruption was defined as offering, receiving or demanding some benefits in view to influence on official's acts. Aristotle, Machiavelli

and Montesquieu (Pusic, 1989) determined that corruption is a sign of bleeding of the society moral values. They consider corruption an immoral and harmful phenomenon in the society as holders of public functions must plead for common and not their own, private interests. With development of contemporary state, corruption cannot be regarded only as morally harmful phenomenon but also as cause of state inefficiency. The most important forms of corruption are: giving and acceptance of bribe, nepotism – abuse of position/office for private purpose. Proclaimed values – especially success at any price – seem as an encouragement for the spreading of corruptive practice.

4.3 DIVISION OF CORRUPTION

The authors of studies on corruption (Van Duyne, 1999) divided corruption into the following types: internal-external, individual-institutional and material, political and psychical. The most common corruption is the external corruption characterised by payment of services for execution or non-execution of specific official procedures. Giving of gifts to persons who have influential positions in a society is also a form of external corruption. Internal corruption is characterised by activities of subordinated civil servants/public officials (bribe, giving of gifts) intended to attain private advantage from their superiors.

Individual corruption is an activity of an individual in the corruptive practice. This activity is discrete as it involves solely two persons. These acts are characterised by the guilt of both actors in giving and acceptance of bribe/gifts. This form of corruption is the most prevalent of all other types of corruption.

From the aspect of social damage, institutional corruption is the most hazardous as it causes disintegration of social values. Institutional corruption is followed by the similar processes in politics and in the area of state governance. The influence of this corruption form on public opinion and public awareness is severe as it induces a fear and uncertainty causing demoralisation in majority of citizens.

Beside presented division, the corruption may be divided into active and passive corruption. The active corruption involves persons giving some advantage thereby inspiring execution of a criminal offence. The passive corruption is characteristic for persons receiving »a good« in exchange for the execution of a criminal offence in connection with their public offices (McCormack, 1998). The most typical form of corruption is material corruption – giving bribe, which instantly brings advantage to both sides. Psychical corruption is related to the psychic power of a person giving and a person accepting bribe. At this point, it is necessary to underline significance of the psychic characteristics of persons receiving bribe and collaborate in corruptive acts.

Political corruption has a special place. In connection with political corruption, it is necessary to also mention lobbying, which greatly instigate the corruptive practice but in democratic countries, it is regulated by the law. Boundaries between lobbying and political corruption can be blurred.

CATEGORISATION OF CORRUPTION

<i>SECTOR ENVIRONMENT</i>	<i>Public</i>	<i>Private</i>	<i>Political</i>
Public	X	X	X
Private		X	X
Political			X

Source: Van Duyne 1996

Corruption develops in the area of public, private and political sector (Duyne, 1996). Persons involved in corruption, could be civil servants in all levels, individuals from corporations companies or politicians in local and state levels. At this point, it is necessary to point out that the interest of organised crime is to control all three

sectors and influence the state economy and politics. The interest of organised crime is to create a social environment characterised by uncertainty and social disorganisation.

The typical characteristics of corruption are concealment and imperceptibility but the influence of corruptive practice can be perceived in a daily life. Corruption in the area of activities of civil servants/public officials, in situations when they are the perpetrators of actively corruptive acts, is characterised by favouritism and provision of services to people from which they expect an advantage. Higher rank in the hierarchy implies higher authority of officials, thus higher pressure on them is anticipated.

Corruption among public officials and private persons is the most widespread. The simplest form of corruption in that area is bribing of public officials. If an institution encounters spreading of such practice, the issue of the institution integrity is brought into question. If such practice is characteristic in a number of institutions, it is possible to talk about endemic phenomenon of corruption in state institutions.

The corruption in the area of economy is the most apparent. It develops in the form of misuse and adjusting of bids in tenders (presenting fraud values and setting unrealistic price of services, usually unrealistically lower than the market prices) including abuse as well as breach of contracts, violation of business customs and practice.

Corruption between private sector and politics is widespread in the whole world. Businessmen are motivated by the profitability of their work while politicians want to retain their power. It is an interesting fact that the roles of these two often shift, especially after the expiry of their term of office. The most typical form of corruption in this area is bribing in favour of political parties. Omissions, such as illegal investments in some economic activities, are quite often and a connection between private persons and politicians is manifested through public justification of this act by politicians.

Legislations in most countries incriminate corruptive behaviour of public officials/civil servants and politicians, but they do not incriminate deviant behaviour of the businessmen. Economic investments are not limited within one country, on the contrary, contem-

porary trends are characterised by internationalisation, trans-national interests and globalisation.

4.4 POSSIBILITIES OF CORRUPTION PREVENTION

Fight against corruption is not based only on repression. Contemporary trends in the area of suppression of all types of crime are inclined towards prevention. One of the potential models of crime prevention is based on situational measures (Clarke, 2000). In his typology of preventive measures, Clarke focuses on minimizing opportunities for crime and creating situations limiting execution of a criminal offence. Basic measures imply more efforts for execution of a criminal act, increase of risk and reduction of profit resulting from criminal activity, while the latest measures focus also on «combating ignorance about rights and obligations» (professionalisation, good knowledge of legal acts regulating certain social activities, moral condemnation of deviancy, precise definition of declarations and procedures, encouraging of exemplary behaviour and activities).

The following model used for the problem analysis is called PAT (Problem Analysis Triangle). This model includes analysis of three relevant determinants of a criminal act. It refers to perpetrators, victims and places where criminal act took place. This model is used in situational prevention of criminal activities, when it is relatively simple to determine an influence of the three determinants (Sherman, 1995; Block and Block, 1995). In the area of corruption offenders and victims research, there are several problems occurring due to the specificity of the criminal act of corruption, in which «there is no victim in a classical sense of that word», but the entire society is considered a victim. The similar problem is encountered in an analysis of a crime scene. Here, there is also an objective problem condemning to some extent the statistics concerning these incriminations to the so called «dark number». It is a practice of legal incrimination for «receiving» and «giving» of bribe. In this case, there is an intertwining of the role of a victim and that of a perpetrator, and it is questionable whether someone would report these criminal acts in practice.

Preventive measures of corruption reduction (Council of Europe, 1998-www) include understanding of security factors based on research on organised crime, terrorism, corruption and other sophisticated criminal forms. In the area of corruption prevention, it is necessary to involve the state institutions, local community and individuals. The measures of prevention involving the abovementioned actors include the following:

- Increasing transparency, checking and control
- Encouraging competitiveness and eliminating of monopole
- Providing information to the public
- Creating appropriate economic and social politics
- Simplifying various procedures and ensuring their higher transparency
- Control of financial transactions
- Encouraging transparency and competitiveness in political processes
- Introducing freedom of press and independent media

4.5 ACTORS AND FACTORS IN PREVENTION OF CORRUPTION

The state bodies implementing different strategies (law amendments, restriction of authority of persons performing public office and stricter control over their work, modification of business customs and professional codes, control of tenders, establishment of independent bodies for fighting against corruption and encouraging activities of non-governmental organisations) are important actors in the area of corruption prevention.

It is very important to educate, train and provide information to public officials, private persons and politicians on corruptive practice and its consequences on the entire society. At this point, the importance of training of trainers in this area of social life should be emphasised. It is a common practice that officials are introduced with the issue of legitimate - illegitimate practice and consequences of the corruptive behaviour by trainers. Sometimes, education in formal

state institutions largely differs from the practical work in performance of the public office. The influence of education must reach the level of a change in the professional (sub) culture.⁽⁸⁾

Civil society has the most important role in the prevention of corruption. State bodies cannot be the only actors in the fight against corruption since suppression and prevention of corruption is a matter of wide social consensus. Discussions in media, scientific gatherings, public discussions and polemics on this problem can have a great influence on public awareness regarding the corruption problem and potential measures for its suppression. Political and economic reforms, legitimate authority, reform of public institutions, transparency and professionalism are preconditions for creating an environment that does not tolerate corruptive practice.

Media and investigating journalism have a significant influence on corruptive practice transparency but tendency to sensationalism and biases can convict innocent persons, institutions or corporations. Ali Hadji wittily (Mesko 1999) claims that newspapers can serve two purposes. The first is killing of politicians and the second is killing of mosquitoes. Journalists should be educated about laws, criminal phenomenology, and social importance of crime and similar.

Culture and socio-cultural values influence people's behaviour and their reactions on deviant phenomena. The changes in society influencing changes in culture and socio-cultural values inside the society should be considered in prevention of corruption. Two types of cultures of public officials are referred here. Primarily, there is a distinction between an Austro-Hungarian and Byzantine culture in performance of public and administrative duties. The characteristics of Austrian-Hungarian culture of public officials could be summed up into a precise distinction between a private life and work, with an absolute respect of the principle of professionalism in performance of these official duties (in the name of state). On the other side, the Byzantine administrative culture is largely characterised by elements of insufficient distinction between private interests and public office,

8 In the course of the training, police officers, custom officials, tax collectors and other fiscal inspectors come across proclaimed models of professional behaviour. Nevertheless, when they start with practical work, the influence of already instituted practice often prevails and that practice can be contradictory to what they have learnt in training.

which by itself, represents a permanent and latent danger of corruptive behaviour (Bebler 1999).

Individuals, activists and so-called 'moral entrepreneurs' have the important role in the fight against corruption and endeavours in suppression of corruption in the society. Objective social circumstances influence behaviour of an individual, some of which condemn and report corruption without hesitation while others do not, because of the «feeling of shame and betrayal ».

Joutsen (1994) made analysis of factors of crime in the Central and Eastern Europe. Beside other factors, «belief that crime pays – social tolerance of criminality» and «problems of formal social control» are presented as two most important factors according to this work. Prevention of corruption in the police work is based on education of police officers, integrity of police organisation and new orientation in the area of police work – community policing, which is established on the basis of cooperation with citizens, good understanding of problems in the community and consensus between community and police in finding solutions of different security problems.

4.6 POLICE INTEGRITY AND CORRUPTION IN POLICE

Historical development of policing in democratic countries, especially in USA is divided into four eras (Ziembo-Vogl and Meško, 2000). The first is the political era, when police was particularly connected to politics. Recruitment of police officers, especially chiefs, was in the hands of politics. The main activities of the police in this era were law enforcement, maintenance of public order and peace and providing different services. In that period, corruption in police was connected with the interests of politicians. The second era is the reform era or era of professionalism, which was supposed to be a cure for corruption in police and interference of politics into the work of police. In that era, links between the politics and police were reduced to a minimum and police activities were focused on the fight against crime, which caused a significant distance between the police and

citizens. The professionalisation has turned into an abuse of authority and discretion. The culmination of this era occurred in the sixties during which USA encountered social unrest. The police treated demonstrators severely and rudely and vast majority of people were injured (on both sides). The similar thing happened twenty years after, in the case of miners' strike in Great Britain. The next era is the transition era which primarily includes foot patrols, problem solving approach and testing of relations between police and community. The last era is the community policing era, which developed as a consequence of estrangement between police and citizens. The activities of police in this era were oriented towards intensifying cooperation with citizens and local community and increasing accountability in implementation of police activities. Community policing is based on good cooperation of the police with citizens and local community, joint identification and efforts towards consensual problem solving. Implementation of this police activity requires decentralisation of police.

4.7 POLICE AS ONE OF THE INSTITUTIONS FOR CORRUPTION PREVENTION

A complexity of corruption affects the possibility of its prevention. Prevention of corruption, as one of many activities of the police at the level of local community, is a part of police work in the community (Community Policing). The philosophy of community policing is based on cooperation in problem determining as well as in finding solutions for the issues that are not under the police jurisdiction, however, police actively participate in the process. Community policing is based on cooperation with people of that community, finding possibilities for problem solutions, working with the community and redefining objectives of the policing.

4.7.1 Cooperation with the community

Numerous authors concluded that cooperation of the police and citizens from the community is a fundamental element of the police work (Trojanowicz, 1983; Rosenbaum, 1988; Skogan 1994). The police must cooperate with representatives and members of the community – individuals, groups of citizens, people in business, state bodies and public institutions (e.g. hospitals, inspectorates, departments for urban planning, etc.) and other actors of social life.

4.7.2 Problem solving

Problem solving is the most important part of community policing and it takes place after the classical police activity – detection and investigation of crime and keeping public order and peace. Crime and other problems dealt with by the police are only clues indicating that something is wrong in the community. In that sense, problem solving means looking for solutions and eliminating causes of crime and disorder.

The police work focused on problems includes a process of problem definition and finding appropriate solutions for specific problems. Each situation is unrepeatable and requires creativity, knowledge and cooperation with other actors who may contribute to a problem solution. This is important transformation of policing because police do not only deal with law enforcement and implementation of criminal law and other laws stipulating procedures for responding to crime and other deviant phenomena. If the law defines some specific behaviour as a criminal act, the police must respond to that behaviour. Law enforcement has two effects – a general and a specific prevention – including incapacitating perpetrators of criminal acts (depriving of freedom). Strict law enforcement in relation to persons causing disorder and chaos without consent of the local community has a short effect and does not provide favourable results. Law enforcement is only one segment of problem solving followed by the actions eliminating a problem cause. That is possible only in cooperation with the local community. The community policing is a

long-term police work and police officers become so-called security managers. All activities are based on community, which facilitates implementation of such police activity.

4.7.3 Community – a basis of policing

Decentralisation of the police work is an important factor of the community policing. The community policing means recruitment of police officers who work in a specific community for a longer period of time. That means that it is good to employ a police officer who has thorough understanding of the living and working environment and who is familiar with problems of citizens from that specific local community.

The community policing is based on close and firm relations with the representatives of local communities and citizens from different neighbourhoods. One of the hypothesis of community policing is also a classical police work in the community, which by itself, cannot provide adequate results due to the large distance and ineffectiveness in identification of real community problems. The fact that police officers patrol in vehicles additionally contributes to decreasing contacts between police and citizens. Daily contacts between police officers and citizens must be constant so that problems in the community can be identified and a consensus in the area of finding solutions of small or big problems achieved. The quality work of police officers in the community contributes to a higher willingness of people for cooperation with the police and facilitates better support in the police security work.

4.7.4 Redefinition of the police work objectives

The fourth important element of the community policing is redefinition of its objectives, which is related to the idea of identification and elimination of primary problem causes in the community. That implies change in the area of police efficiency and success appraisal. In case of classical police work, the appraisal is based on a number of cases submitted to the justice of court, number of manda-

tory sanctions and similar. Cooperation with the community requires different standards of appraisal of the police officers work. The police officers should be appraised on the basis of decreased crime rate, quality of problem solutions, increased feeling of safety, decreased number of cases regarding violation of public order and peace in the community and increased cohesion and quality of life within the community.

Beside four cited elements, the theorists refer to others, which are worth mentioning: less rigid organisational structure of police, focus on law enforcement strengthening, modification of training for police officers and similar (Eck and Rosenbaum, 1994; Hope, 1994; Wilkinson and Rosenbaum, 1994; Carter, 1995).

4.8 DILEMMAS ON COMMUNITY POLICING LIMITATIONS AND PREVENTION OF CORRUPTION

In spite of the belief that community policing decrease a number of problems, it proves that the police officers do not show interest for this type of police activity (Bennett, 1994; Eck and Rosenbaum, 1994; Sadd and Grinc, 1994) and they even show resistance to it. The highest resistance towards the community policing is manifested in those police officers who support the idea of traditional policing. Critics are mainly related to insufficiency of patrol police officers covering the local community areas and late response to problems in the community (Wycoff, 1995).

The other type of critic is supported by the opinion that community policing is not a genuine police work and it represents a threat to police professionalism (Skolnick and Bayley, 1988). Apart from that, the community policing is not adopted at all levels of the police organisation. In most cases, the police officers performing their duties in the community change their attitude regarding the role of police in the society (Skogan, 1995). The important factor is also training of police officers for the work in community. Skolnick and Bayley (1988) claim that resistance of police officers towards the commu-

nity policing is a consequence of poor training, (lack of) knowledge and (im)maturity of police officers in respect of problem solving in the community, which requires more knowledge, capacities and communication skills and not only repressive police treatment. Community policing requires from the police officer stability and respect of agreement, as well as high level of integrity (Skogan, 1995; Sadd and Grinc, 1996).

Lack of knowledge and capacity for the community policing has a consequence in partial decisions, poor coordination and inadequate response to problems in the community. Apart from that, the public should be informed about the fundamental elements of community policing and expectations about the mutual cooperation between citizens and police (Sadd and Grinc, 1996).

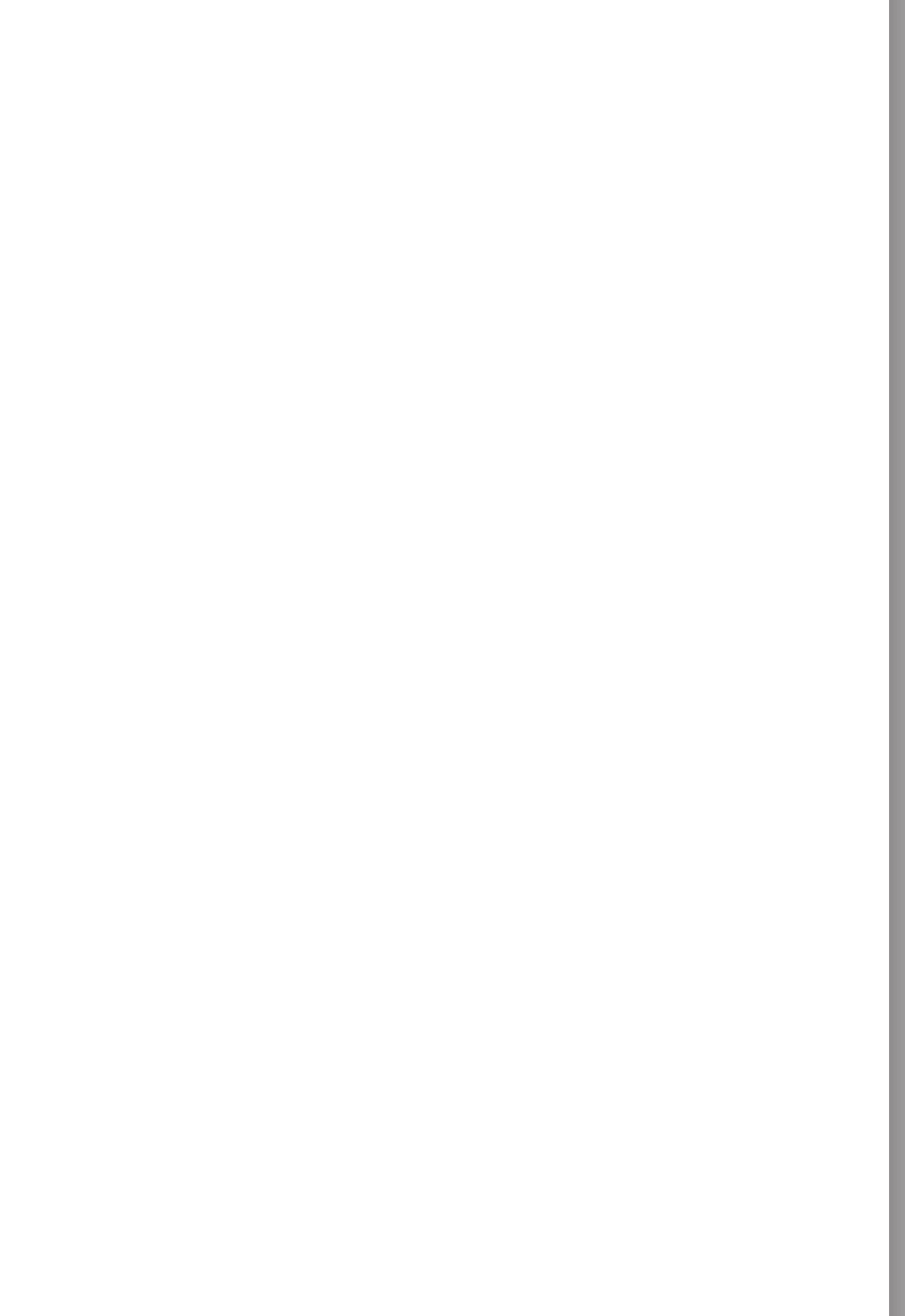
4.9 CONCLUSION

Jandos (1999) divided corruption into micro, mezzo and macro. Generally, the police can be partially successful in the area of prevention and suppression of micro and mezzo corruption while macro corruption is too complex for the police officers to be understood, prevented or influenced by them. Micro corruption includes small criminal offences such as bureaucratic extortion, unjustified acceptance of gifts in the area of administration and health care, in schools, police and criminal justice. Mezzo corruption is related to middle management in customs, finance police, police, local community etc. Macro corruption is related to various activities of the government, tenders, construction of highways, telecommunication, health institutes and hospitals and similar.

The police considerably reflect the social values and it is not possible to exclude it from the socio-cultural context and prevailing perception (tolerance and intolerance) of the corruption. The police can be more or less successful in prevention of corruption only with support of the society at large and in cooperation with other institutions in the civil society.

In addition, it is important to invest in activities of the specia-

lised departments of the criminal police for suppression and prevention of corruption as well as in education of experts-criminologists and police officers in uniforms about corruption in all levels of the police organisation.



5



**OPENNESS OF PROCEDURES
AND CONTROL OF LOBBYING
IN PASSING OF GENERAL
LEGAL REGULATIONS**

5

**OPENNESS OF PROCEDURES
AND CONTROL OF LOBBYING
IN PASSING OF GENERAL LEGAL
REGULATIONS****Becir Kecanovic, M.Sc.⁽⁹⁾**

Laws and other general legal regulations are extremely important for the democratic society, freedom, legal protection, rights and interests of individuals and social groups. In a contemporary democratic society, a legislative body (parliament), as a rule, is authorised for their passage while drafting of law proposals and adoption of other general legal regulations is a responsibility of the competent executive authority i.e. in most cases, government and other expert bodies of the state administration. Preparation and passage of these regulations always require certain knowledge and time necessary for studying current social problems, harmonisation of interests and acceptance of final resolutions, to be regulated by a specific legal act. Since the general legal regulations are relating to an undetermined number of persons or situations, it is very important that the procedure of their preparation and passage is transparent. In our discussion on the procedure of passage of the general legal regulations, this

9 Commission for the prevention of corruption, Slovenia

should mean that the process should be open for active participation of any citizen or civil society (participatory democracy) under equal conditions and that procedural rules and public control are respected in all phases. In that way, legal regulations and other democratic decisions of general social importance have far more possibilities to achieve the set objectives and ensure necessary conditions for each individual to live and exercise freedom, protection and justice in the common environment. Taking all that into consideration from the aspect of prevention of corruption, the logical conclusion is that, apart from formal rules, the procedure of passage of laws and other legal acts requires consideration about efficient control of lobbying i.e. activities of individuals and interest groups trying to fulfil their interests in that procedure in a justified (legitimate) or unjustified (illegitimate) manner. These activities and interests can be a determining factor in strengthening or weakening of the citizens' confidence in democracy, rule of law and institutional efforts of a society in prevention of all corruption forms. Therefore, transparency or openness of procedures and efficient control of lobbying during the procedure of passage of general legal regulations represent an extremely important factor in prevention of the political corruption. If a danger of that type is compared with individual cases of corruption, it is possible to conclude that specific cases bring specific and practically unrepeatable consequences while the political corruption, particularly in the process of passage of laws and other regulations of general social importance, opens broad possibilities and countless and repeatable phenomena of systemic corruption and institutionalised robbery of the public property.

5.1 TRANSPARENCY OF THE PROCEDURE FOR ACCEPTANCE OF GENERAL LEGAL REGULATIONS

In contemporary period, it is characteristic that a person rationally (with common sense) selects the best ways and means in order to fulfil certain interests or goals. A goal-rational acting and partially

value-rational acting⁽¹⁰⁾ are the closest to that way of acting. When the goal-rational acting is in question, it usually means that an individual or a group of people rationally decide on activities and means for achieving of their goals. In addition, there is always a certain comprehension of values motivating and orienting these activities, as well as opinion on consequences which may or should occur in that course. The value-rational acting develops from the conscious conviction or belief that something is good, important or worth our tendencies and efforts, regardless of the consequences that may develop as a result of these activities. In theory, development and passage of general rules of social life, with special focus on laws and other legal regulations, represent a part of the ideal type of the goal-rational acting of people, for which the process of decision making and passing of final decisions are primarily important. Decision making and passing of decision always include a selection among possible ways and means necessary for achievement of specific goal, i.e. selection among different options representing potential solutions of the specific problem.⁽¹¹⁾

Acceptance of laws and other general legal rules represents a separate form of social decision making that is subject to certain rules, which encompass the process of that decision making in advance. In that, a process understanding of decision making is especially significant and it includes several subsequent phases, which means that acceptance of a final decision is only one of the phases in that process. From the formal aspect, the final selection of an option i.e. acceptance of one final decision is the most important act of the process. It is understood that all previous phases are equally important in a material sense (in the sense of content). The process usually starts with (1) problem activation occurring through (2) data collection and (3) shaping of options' proposals for problem solution and after that, through (4) discussions and evaluations (intersubjective validations), (5) selection of one of options i.e. acceptance of decision and its (6) execution in actual social relations take place.

10 Max Weber ascribes the listed types of acts to the modern society when traditional acts were prevailing in front of the modern society, being developed through extended repeating and inducing in people a feeling of obligation and affective behaviour, in which means and goals are based on irrational tendencies without awareness of consequences of such behaviour/acts; See in: Weber M., *Wirtschaft und Gesellschaft*, Vierte Auflage, J. C. B. Mohr, Paul Siebeck Tübingen, 1956.

11 Jambrek P.: *Uvod v sociologijo*, DZS, Ljubljana 1997, str. 151.

(1) The starting phase of the decision making process is problem activation. That means that a social problem is activated in institutions which are competent (authorised) for decision making, with the purpose to consider it within the institutional competence and within processes for which they are accountable and find adequate solution for it.⁽¹²⁾ In the process of passage of laws, a term legal initiative (actuation) is used and it is resulting from the need to regulate some area of social relations by the legal norms. Therefore, it is very important in every political and legal system that, whoever has a legislative initiative in the sense of rights and authorities should propose passage of law to the legislative body. In contemporary systems, that right is regulated in the constitution itself and usually it is given first to the parliamentarians and the government and after that to different bodies and stakeholders, depending of the specificity of particular constitutional system (citizens' legislative initiative, Prime Minister's legislative initiative, initiative of federal units, second legislative chamber, such as the State Council in Slovenia). In the starting phase of the legislative procedure when proposal on law is submitted, political elements of the decision making process are in the first plan, which means that by legislative initiative a social problem becomes a political or legal problem.

(2) The second phase of decision making process is characterised by data collection and processing. That is, in all cases, a very complex procedure requiring an analytical consideration but also a daily empirical evaluation of facts, situations and relations in a specific social segment. Within the process of the legal proposal preparation, in Slovenian legal system for instance, the basis of for secondary legislation is elaborated in the introduction of the proposal of the law itself. In that part in particular, it is necessary to describe the situation in the area of the planned normative system, reasons for passage of the law and objectives and principles of the proposed legal resolution including its financial and other consequences. In that phase, the focus of the legal proposal is on expert novelties, as it is necessary that

¹² Not accepting or obstructing presentation of some problem to social or political institutions, which are competent to make decisions, is a decision itself, a so-called *non-decision*.

data collection and processing is executed objectively, impartially and precisely.

(3) The phase of shaping of proposals and various possible solutions of specific problems in the process of passage of law including other general legal regulations is primarily a matter of building of its content in an expert sense. Here the author deals with determining of solutions in specific articles of the law and their explanations, which certainly represents one or the most difficult tasks in the process of legal regulations drafting. In this part, political and expert (nomotechnical) elements intensively intertwine. For that reason, in the phase of shaping of regulation proposals, especially proposals of laws, the influence and participation of the democratic public in the form of previous (pre-parliamentary) consultations with expert organisations including initiatives from the civil society and interested representatives from the public are also very important. Accordingly, a legal proposal must offer politically acceptable solution, which on the other hand and in a legal sense, must be clear, precise and nomotechnically well shaped. For that phase of the legislative procedure, the legal theory suggests defining of the highest possible number of options, while in most cases; the practice is more oriented towards unilateral proposals. In any case, decision making in the next part of the procedure progresses within the framework of proposed articles and resolutions, which represents a socio-political component of that part of the procedure.

(4) Quality decision making requires patient, proper and thoughtful consideration of the proposed solutions and their alternatives. In that phase in particular, interests are expressed by active participation in discussion, namely interests of individuals and social groups who elaborate and defend their needs and objectives. In that way, by participating in the discussion from the aspect of their own interests, objectives and understanding of common values, they evaluate presented solutions and provide further proposals in the form of amendments. In the legislative procedure, this part of decision making is dedicated to discussion in the first, second and third phase of consideration and voting on proposed amendments and articles of the proposal. In this part, parliamentarians take an active partici-

pation in the meetings of the parliamentary working bodies and in the plenary sessions. Furthermore, their participation in the passage of laws implies that, apart from general and social interests, personal stances and interests of individuals or social groups, political parties and interest organisations, are included in the proposed resolutions. All these stakeholders are trying to influence the content and passage of law – primarily through parliamentarians – in such a way that the law is accepted or rejected or, in the procedure of consideration by the parliament, its content is amended to suit their expectations, which may not be legitimate.

(5) The result following finalisation of the procedure for acceptance of the regulation proposal (final decision) or one of the options depends on the social power in relations of the actors participating in the process of decision making. Finally, the ultimate option, at least in case of laws and some important bylaws, always depends on votes based on whatever – determined ahead – majority. In legislative procedure, the phase of acceptance of the final decision is related to voting on the law as a whole. It is certainly a politically motivated act, in which the role of the parliament as a political body is particularly demonstrated, as decisions are made primarily according to the political criteria, with reference to certain ideological premises and political affiliation of the parliamentarians. In that way, a social power of political parties and a principle of majority (quantitative) democracy are primarily reflected in the parliament and the opinion of minority in voting and passing of final decisions is not considered much. It is precisely for that that the renowned theorists, including those from the Slovenian region, justly warn that the democracy increasingly changes in favour of „party racy“ or absolutism of political parties, which consider their assignment in a society and making decisions about common welfare primarily in the context of their own advantage and political spoils.⁽¹³⁾

Different models of voting, starting from the requirement for two-third (absolute) majority of all parliamentarians, two-third majority of present parliamentarians or at least majority of all parliamentarians who must vote during the passage of a law, may slightly

13 For instance: Bučar F., *Demokratija in kriza naših ustavnih institucij*, Nova revija, Ljubljana 1998, str. 106

mitigate the harmful consequences, which are usually encountered when the laws are passed on the basis of a very low number of votes. In most cases, these are the situations when the number of votes for adoption of the law is barely higher than the number of votes for its rejection – followed by a high number of abstained votes of absent parliamentarians who were supposed to vote. The laws adopted in such way, with unconvincing majority, from the aspect of democracy and the will of the people in general, prove as weak and inefficient regulations in practice, usually bringing to individuals and legal state more damage than benefits and legal protection. It is similar in situations of passing of other social decisions, for instance, different government's regulations and rule books of ministries. In comparison with the legislative procedure, in most cases, the procedure for passing of these regulations is under the less strong control of the democratic public, although their significance for a society and common interest is sometimes more important than the law itself. Public openness of the procedure is therefore one of the determining factors in achieving of transparency i.e. clarity in the process of adoption of the general legal regulations, both in the parliament and in the executive bodies, government and ministries. In that way, it is ensured that every interested individual, citizens and their associations of common interest, civil society and non-governmental organisations perform democratic public control and actively participate in enactment and implementation of laws, other legal regulations and social decisions.

(6) The phase of execution facilitates transition of a final decision from the formal into material sphere of social life and activities. Decision making, as selection among many possible solutions, is primarily a mental process, which occurs in thoughts and expresses itself through the mutual communication within some process. When that process is finalised and certain agreement regarding the final decision is made, it is necessary to move that decision into reality in order to achieve specific results and objectives. In respect of this phase, the theory usually talks about the implementation of decisions or resolutions in a practical, daily life. In the procedure for passing of laws and other general legal regulations, before transferring the adopted legal

act (“law in books”) into practice (“law in life”), a promulgation is necessary and in that way, a specific high state body – concerning laws, it is the president of a country – confirms that the regulation was passed according to the procedure and that it becomes the law. That is followed by an announcement (publication) in the official gazette or in some other way, for instance, in an electronic form designed for proclamation of laws and legal acts. In addition, it is necessary to ensure possibilities for the best possible information about the new legal act and organise an appropriate monitoring of its implementation. In this phase, it is necessary to monitor the practical effects of the law and at the same time, pay attention to needs and initiatives in practice for its potential amendments. Apart from classical forms and instruments of social control (police, inspections, etc), theory and practice have different models of strategic control for measurement of the regulation implementation results in practice.

The below table indicates the process of social decision making compared with specific phases of the legislative procedure:⁽¹⁴⁾

	<i>The process of social decision making</i>	<i>Legislative procedure</i>
1	Problem activation	Legislative initiative (impulse)
2	Data collection and processing	Introduction of the law proposal
3	Shaping of proposal	Shaping of law articles, elaboration
4	Consideration of proposed solutions	1st, 2nd, 3rd phase of law proposal consideration
5	Acceptance, final decision	Voting on the law as a whole
6	Execution of the final decision	Promulgation, publication, control and supervision of the material acts of legal bodies

14 Igličar, A.: Zakonodajni proces z osnovami nomotehnikе, Pravna fakulteta, Ljubljana 2004, str. 222

5.2 INTEREST GROUPS AND THEIR INFLUENCE ON ACCEPTANCE OF DECISIONS OF GENERAL SOCIAL IMPORTANCE

On the basis of theoretical and practical knowledge, it is possible to ascertain that the interest groups mainly influence the state functionaries and high public officials by a particular method of operating – lobbying. A powerful spreading of interest groups in the political system occurred in the 20th century.⁽¹⁵⁾ As representation of a general type based on the territorial principle, could hardly encompass all interests that were, at the time, already highly differentiated, organised groups for achieving and ensuring particular common interests have been established. Cognition that some group from the civil association may achieve its interests through the intervening country resulted in massive establishing of the voluntary associations of individuals who associate in order to achieve or defend their interests in a society.

Usually, interest groups are not publicly involved in the activities of political parties. However, in practice, cases of connection between the interest groups and one of the political parties are not rare. In that way, specific interest groups manage to achieve their interests in an easier and better way, especially if political party, which the interest group sympathises with, wins the elections, rather than in cases when some other party has a majority in the parliament or in the government. Due to the high number of interest groups, the relationships between them and the political parties are very diverse. For comparison, they are best presented as a continuum, which stretches from such interest groups, some of which are more approaching to each other while others are approaching to the other boundary points of that imaginary continuum of relationships between the interest groups and political parties. Both theory and practice proved that in most cases, majority of interest groups has certain connections with the parties. Sometimes, it is even result of the fact that most

15 About the interest groups, see: Iglčar A. : Sociologija prava, Cankarjeva založba, Ljubljana, 2004, str. 273 – 289.

of the members of some interest group are also the members of the same political party. Generally, the relationship between the interest groups and political parties is manifested in three major forms. In some cases, a party determines and directs the activities of an interest group by positioning political leaders in specific interest groups. In other cases, an interest group can be so powerful that it determines the activities of a political party. Finally, activities of a political party and an interest group may be jointly coordinated without a hierarchic relationship. Such cases are even prevailing in practice.

Certainly, there are significant differences between political parties and interest groups. Typically, the interest group do not tend to acquire political power like political parties do, but they are only trying to attain or maintain the influence on the authority i.e. its representatives. In addition, the interest groups do not want to take over the responsibility for political decisions. They leave it to the political parties and state bodies. Interest groups do not tend to plead for some general national interest; they rather stand up for only particular or even specific interests. They do not hide these intentions, as it happens in case of political parties. Therefore, the interest groups do not have specific political programmes and they do not participate in elections with their candidates. However, by their activities, they can often significantly support or contribute even to the selection of a political party candidate or an independent candidate. Numerous interest groups are active only for a short time, ceasing their activities once they fulfil certain interest. Political parties and some interest groups are active for a longer period and they do not cease their activities once they accomplish some of their interests. Differences between interest groups and political parties depend more or less on the type of political system, number of parties, election procedures and similar.

Interests, as a reason for establishing of interest groups, are very diverse, starting from the economic, professional and religious to sports and other. In order to achieve some of these interests, people associate in a formal organisation, such as union or association of citizens. Activities of such organisation are, as a rule, oriented towards state bodies, trying to use them to secure the most comfortable

position for the group's interest, and move it from the civil sphere into the state politics, which normally reflects the general interests of the community in a formal manner. In that way, the interest groups are trying to either prevent some decisions or request passing of some others in order to change certain state in a society or achieve solution and the interest they go behind. Forms and methods of the interest group activities are very diverse. Since these groups use illicit or even suspicious ways for achieving of their objectives, sometimes a term "groups of pressure" can be used. At present, it is more proper to call them interest groups. Until recently, focus of interest groups was oriented to the representative body (parliament), while in the last period, it is moving towards the executive and administrative bodies. That is achieved in different ways.⁽¹⁶⁾

Techniques used by interest groups in the process of the passage of general legal regulations differ from case to case and also depends on their composition and an interest they pursue. In the legislative procedure, direct contacts with certain parliamentarians are well known. Their influence on the public through media may be particularly strong, which results in influencing of the decision making process in the legislative procedure or in other forms of acceptance of social decisions. This undertaking is especially emphasised in cases of particular legal proposals, which the interest group either pursue or oppose. Led by that intention, a separate, smaller group or team usually forms within the interest group, being assigned for contacts with a legislative body or its particular members. It is the similar situation in other cases or procedures for passing of decisions of general social importance. Representatives of the interest group are trying to bring around the influential parliamentarians, sometimes even by using different forms of illegitimate pressure, extortion, fraud or simply corruption.

As it is well known in practice, stronger interest groups usually have their sympathizers, friends and allies from political and other structures of authority in a society. However, success in accomplishment of a certain interest is most secured when the members of an interest group are the parliamentarians i.e. those who have direct

16 Mark Kober – Smith: Legal Lobbying, Cavendish Publishing Limited, London, Sydney, 2000.

impact on the passing of final decision. In that case, influence of the interest group is secured in all phases of, for instance, a legislative procedure, i.e. on plenary sessions and meetings of the parliamentary bodies (boards), which discuss legal proposals. Due to the extreme complicity of legislative procedure, influential delaying and even obstruction of the passage of law or other decision through the boards is quite possible. Proposal of such law or decision can be entirely legitimate and generally, socially beneficial; however, it is in contrary with expectations and interests of an influential individual or dominant interest group and therefore, they make all efforts and use all possible means to complicate or obstruct its acceptance.

The described method or pattern of the interest group influence is actually universal and may occur in different procedures for passing of decisions of general social importance, starting from laws and other general legal regulations to the national programmes and projects – for instance, regarding national, European or international assistance for social development, subsidised environmental, economic or infrastructural projects, public procurement and similar. In addition, the following questions can be helpful in determining of the essential difference between legitimate and illegitimate influence on results of one such procedure: 1) are there rules for that procedure, 2) did the actors in the procedure actually respect those rules, 3) was the procedure transparent to the extent that is necessary for the efficient democratic and legal control and equal possibilities of all interested individuals and social groups. If some of the listed elements are missing, there is a valid concern that in some point, illegitimate interests of influential individuals or social groups harmful to others or to an entire society will be achieved and that corruption or even organised criminal will take place. In fact, experience with regards to the organised crime and corruption, indicate that criminal groups, especially in the area of the economic criminal and particularly in Slovenia, are no longer satisfied with a classical criminal prize only, but alike mafia organizations, they are persistently engaged in finding possibilities for achievement of desired influence on strategic points of democratic and state authority decision making, in order to gradually weaken and devastate institutions of the state and public control, which na-



turally represent an obstacle in the pursue of their criminal interests and further plundering of the social capital.⁽¹⁷⁾

5.3 LOBBYING

In the European region, particularly in the last several years, there is an intensive work on strengthening of integrity and transparency and on regulating entire system of lobbying as a way of functioning of the interest groups in achieving of certain goals through participation in democratic decision making processes. For example, the Commission and other institutions of the European Union are intensively working on development of models for strengthening institutional control and moral i.e. ethical self-control of individuals and organisations engaged in the lobbying activities.⁽¹⁸⁾ Consequently, it is possible to conclude that lobbying is not always something negative and something that usually provokes unpleasant feeling when we talk about social interests, respect of democratic standards, laws and rights of individuals and crime and corruption prevention. In a positive sense, it is an activity that is completely acceptable and useful for democratic processes, provided of course, that its holders respect certain rules. In both theory and practice, there is a whole class of different meanings of the word lobbying.⁽¹⁹⁾

For most continental European countries, it is possible to ascertain that the legal organisation of lobbying is undertaken only partially, usually within legal acts primarily regulating some other issues, such as position of parliamentarians or other high state officials. A few countries, such as Canada, managed to institutionalize that issue in a more or less comprehensive way, but even then by a number

17 Blagojević, S. Kečanović, B., *Z integriteto proti korupciji in kriminalu*, Pravna praksa, 2007/17, str. 6.

18 Commission of the European Communities, Green paper European transparency initiative, Brussels, 3.5.2006; http://ec.europa.eu/transparency/eti/docs/gp_en.pdf

19 In the Green paper of the EU Commission – European transparency initiative, the term lobbying includes: »... all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions.« The American Lobbying Disclosure Act of 1995 describes the term lobbying in the following way: »The term lobbying activities means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contasts, and coordination with the lobbying activities of others.«

of legal acts, for instance in package of laws or code of conducts.⁽²⁰⁾ However, no country has so far regulated lobbying by a single legal act. Of course, it is also practically impossible, as such legal act would have to encompass shaping, acceptance and even implementation of social (political) decisions in practice, including all stakeholders and bodies of a state authority, which are included of these processes. Fundamental reason for which it is impossible to regulate the entire issue of lobbying within only one regulation is therefore, intertwining and pretension of various details composing. Therefore, it is essential that at least some of these issues are left to ethical norms, professional codes and similar. Furthermore, it is not possible to disregard tradition – especially democratic, parliamentary, legal, anti-corruption... and experiences of some states in which specifically problems with lobbying in practice resulted in a need for normative regulation i.e. limiting and control of lobbying, for instance in the United States of America.⁽²¹⁾

The main obstacles that are encountered in the legal organisation of lobbying is intertwining of that process with numerous and hardly recognisable phenomenal forms and stakeholders, complicated mechanisms of political decision making, conflict of interest and similar. In addition, it is very difficult to legally separate lobbying from the institutional forms of participation and influence of individuals and groups on formulation and acceptance of decisions (e.g. citizens initiative or legislative referendum). Therefore, it is necessary to determine a subject of legal organisation of lobbying, position of lobbyists and those being lobbied, their rights and obligations, including restrictions and sanctions for violation of prescribed rules. Furthermore, it is necessary to consider a fact that normative organisation can encompass only part of issues from that area, particularly only those for which it is possible and allowed to have them organised by laws and other general legal regulations. Other issues are, as a rule, left to be organised in other legal acts, especially in ethical codes, rules of conduct and similar. Naturally, legal organisation of lobbying and particularly its restrictions must also take into account standards

20 See: Lobbyists Act Registration, Annual Report, 2005-2006, Government of Canada; <http://www.oecd.org/dataoecd/18/13/38944265.pdf>

21 Federal Regulation of Lobbying Act 1946; Lobbying Disclosure Act of 1995.

of human rights and freedoms, which are, as a rule, guaranteed by the constitution and the international law. Among these standards, a principle of democratic society has particular importance in consideration of lobbying, which primarily requires freedom of expression of opinions, speech and public appearance, freedom of press (media) and other forms of public information, freedom of association, acceptance and dissemination of news and opinions including right of every person to receive information of public importance. In that framework and in addition to the citizens' initiative, the following rights are also important: right to petition, right to participation in management of public issues and implementation of a public control and right to association.

In the case of the Republic of Slovenia, lobbying is not entirely legally organised too, apart from some provisions in specific laws. As already noted, since lobbying was neither organised in European Union so far, that issue was not among direct requirements for accession of Slovenia in the membership, in the course of negotiations. Nevertheless, determination of the Commission and other institutions of the European Union to organise that area in due course could raise certain requirements to future member states concerning the respective area too. In any case, considering that the lobbying always includes a certain level of risk (in the sense of illegitimate influences on democratic processes) for democracy and rule of law, as well as the risk of development of corruptive and criminal practices, regulation and control of lobbying activities is, at any rate, a very serious task and objective for any democratic society and rule-of-law state. As early as in 1997, a group of experts in Slovenia prepared a draft version of the Law on Lobbying, which was later in 2003 proposed for the procedure for passage of law in the parliament by the group of parliamentarians.⁽²²⁾ However, apparently there was no real political will for adoption of this law and legislative procedure was put on hold already in the first phase of consideration. Since the proposal of this law was, without a doubt, prepared expertly and precisely, a number of its solutions are now included in the new proposal of the law of prevention of corruption and strengthening of integrity in the

22 V strokovni skupnii so bili P. Svete, dr I. Kaučič in dr A. Igličar

public sector, which is drafted and submitted for the legislative procedure in 2007.⁽²³⁾ It is understood that in any case, the legal system institutionalise specific mechanisms, which, at least regarding their objective orientation or even form, represent lobbying and that numerous bodies assume that function, although we do not call them lobbyists. They are institutionally and normatively defined mechanisms and bodies assigned to directly influence acceptance of different decisions in the state bodies. Majority of them is determined by the constitution itself, while some of them are defined by lower legal acts as well. Among these bodies in Slovenia, the most important is certainly the State Council as the representation body of the holders of social, economic, professional and local interests.⁽²⁴⁾ The activities of different counselling bodies, such as economic and social council of the government, council of high education and similar, are somewhat less formalised. In addition, some legally and constitutionally regulated mechanisms, such as human legislative initiative ensuring that certain number of voters may propose passing of specific decisions, for instance laws in their interest, have the same function.⁽²⁵⁾

Among regulations which are directly or indirectly related to the issues of lobbying in Slovenia, the most important regulations are certainly those regarding prevention of corruption and incompatibility of public office and private interests, i.e. conflict of interests. Regulations in these areas prohibit parliamentarians, president of the republic and functionaries with representative and executive functions in the state bodies and bodies of the local community to be, during the term of their office, engaged in a private business that is not compatible with their public office according to the law. Furthermore, the regulations make distinction between those who are professional (permanent) functionaries and those who perform their public

23 Predlog Zakon o integriteti v javnem sektorju (EPA 1529 – IV) z dne 22. 6. 2007

24 Constitution of the Republic of Slovenia, Article 96: »The State Council has 40 members. It consists of: four representatives of employers; four representatives of employees; four representatives of peasants, handicraftsmen from independent professions; six representatives from non-economic branches; twenty two representatives of local interests.«

The State Council may propose acceptance of law and provides the Parliament with an opinion on matters of deciding by the Parliament, requests organising of referendum, requests investigations on matters of public importance and may prescribe a suspensive veto (suspension) of law accepted in the Parliament.

25 Ustava RS, član 88: »Zakon lahko predloži tudi najmanj pet tisoč volilcev.« (The Law may recommend minimum of five thousand voters).

office unprofessionally. The parts of these provisions that are closer to the comparative legal arrangements of lobbying in the world, are the provisions on prohibition of acceptance of gifts and other benefits during the performance of the public office.⁽²⁶⁾ Incompatibility of certain occupations is legally regulated for specific categories of civil servants too. With regard to the professional members of the police and armed forces, even the Constitution of the Republic of Slovenia prohibits them a membership in political parties, which, in young democratic society, can be very important in prevention of potential negative influences on democratic control and improper (illegitimate) forms of lobbying in defence and police structures.⁽²⁷⁾

5.3.1 Models of lobbying

From a positive aspect, lobbying is certainly an important mechanism of ruling in the contemporary society. Complex regulations, complicated bureaucracy, prolonged and difficult processes of decision making and even elusion of citizens in exercising of their rights often requires assistance from experienced and well informed experts – lobbyists. Therefore, lobbying is not only a reality of the contemporary democratic society but also an activity that is increasingly cognisable and inevitable in some countries, intergovernmental communities and in global community.⁽²⁸⁾ Lobbying, in a positive sense, is therefore a legitimate part of the democratic system, regardless of whether it is carried out by individual citizens or companies, civil society organisations and other interest groups working on

26 In comparison with running norms in Slovenia, already mentioned Proposal of the Law on Integrity in the Public Sector has defined the incompatibility of the public office and conflict of interest, in accordance with relevant decisions of the Constitutional Court of the Republic of Slovenia on cancellation of the Law on Incompatibility of Public Offices (ZNOJF-1) from 2006, in which the solutions concerning that area were regulated in a constitutionally disputable manner. As already mentioned, The Proposal of the Law on Integrity specifically regulates lobbying, control of financing of political parties in respect of prevention of corruption, protection of persons who are exposed to chicanery or other forms of physical and psychic assault due to their engagement in prevention of corruption („whistleblowing“), prohibition to functionaries that in certain period following cessation of their public office use that office for attaining or strengthening their business connections („revolving doors“, „pantouflage“) and some other mechanisms of strategic importance for prevention of corruption, transparency and integrity of public sector including integral strengthening of the anti-corruption culture in a democratic society.

27 The Constitution of the Republic of Slovenia, Article 42.

28 Lobbying: models for regulation, OECD Symposium on Lobbying: Enhancing Transparency, 7-8 June 2007, Paris.

behalf of third parties (public affairs professionals, think-tanks and lawyers). Endeavours of the European Union to regulate lobbying in a transparent manner show that lobbyists can significantly help bring important issues to the attention of the European institutions. Therefore, in some cases, the European Union offers financial support in order to ensure appropriate conditions that views of certain interest groups are effectively voiced at European level, e.g. consumer interests, interests of disabled citizens, environmental interests and similar. On the other hand, the Commission of the European Union in its documents states that concerns have been voiced by the media, academics and interest representatives about lobbying practices which are considered to go beyond legitimate representation of interests. This applies not only to practices which are clearly unlawful, such as fraud and corruption but also to other improper lobbying methods which abuse the EU institutions' policy of openness or are plainly misleading. For that reason, the EU Commission's existing policy on transparency in the area of lobbying is based on providing information to the general public about the relations between interest representatives and the Commission in order to allow outside scrutiny and monitoring. On the other hand, there are the rules on integrity which govern the proper conduct of the lobbyists themselves and of those individuals or institutions being lobbied. These rules are mainly based on ethical behaviour standards and self-regulation of those being lobbied and of the lobbyists themselves.⁽²⁹⁾

The Slovenian proposal of the Law on Lobbying prepared in 1997 was based on model oriented to transparency and control of the lobbyists' behaviour. In its introductory part, the draft proposal of the law defined lobbying, lobbyists and manners of lobbying. In that regard, it encompassed functionaries in the legislative and executive authority and in bodies of the local community. The law proposal offered solutions for governing the lobbyists' obligations, especially registration, reporting and supervision of their work, including also regulation of their rights, such as obtaining information, documents, proposals of legal and other acts, announcements and reports necessary for their unobstructed work, including information regarding

29 See: Green Paper of the EU Commission on transparency in Europe

participation in meetings of the working bodies, expression of public opinion, etc. Although this proposal of the law was not accepted in the parliament, interested individuals and associations may exercise these rights on the basis of rights and freedoms on participation in passage and implementation of decisions of general social importance guaranteed by the constitution.⁽³⁰⁾ That constitutional provision specifies certain rights which an individual can enjoy on a basis of law on free access to information of public importance. This law intends to ensure public openness and transparency of the work of state bodies and to regulate rights of individuals and legal persons to obtain information of public importance. Each person seeking such information has right to obtain the information of public importance by being granted the right to view the original form of the information, or its transcript, photocopy or electronic form, following the request for information and in accordance with the law.⁽³¹⁾

By regulating the activities of lobbying, rights and obligations of lobbyists and those being lobbied, the intention of the abovementioned proposal of the law from 1997 was to strengthen participation of the civil society in those processes of democratic decision making in which, at least formally, decision making is executed without political parties. Active participation of the civil society in democratic processes (participatory democracy), as a rule, strengthens transparency of decision making and respect of democratic decisions, protects rights of vulnerable individuals and minorities from arrogance and assault of majority, opens the information flow and exchange of general resolutions proposals between the civil society and political state bodies. In these processes, there are, more or less, different forms of lobbying, which requestors and holders are not always interested in respecting common interest and democratic standards of decision making. Therefore, the fundamental intention of the mentioned proposal of the law was to regulate the lobbying activity, which was alre-

30 The Constitution of the Republic of Slovenia guarantees that every citizen of Slovenia has right to participate, directly or through the elected representatives of democratic authority, in the governance of public matters, in accordance with the law; See: Constitution of the Republic of Slovenia, Article 44: »Vsak državljan ima pravico, da v skladu z zakonom neposredno ali po izvoljenih predstavnikih sodeluje pri upravljanju javnih zadev«.

31 The Law on Access to Information of Public Importance (LAIP). The law and other legal acts including decisions and practical experiences in that area are available at internet page: <http://www.ip-rs.si/> (Informacijski pooblaščenec Republike Slovenije).

ady ongoing between the political actors and a civil society, in a way to be predictable, rational and transparent for public control. Thus, the law would ensure transparent expression of number of interests by interest groups in passing of important decisions by the legislative and executive bodies of the authority. Pursuant to legal provisions, lobbying contacts would be public and controlled while position of professional lobbyists would be legally regulated.⁽³²⁾

Each legal system, as a rule, emanate from the principle of publicity, which in case of lobbying, requires also transparency of that activity. The principle of publicity prevents machinations and backlog-stage activities in public work (*res publica*). By means of the law, actual influences of the big and powerful on political decisions are directed to transparent processes. In that way, the principle of publicity e.g. public control protects also functionaries in legislative and executive bodies from dubious pressures, imposition, harassment and attempts of bribing, and at the same time ensures that individuals and interest groups have lawful and legitimate representation of their interests to the representatives of the authority in the decision making procedures. The principle of publicity is related to an institutionalised social supervision. That supervision consists of the registration and reporting institute. In that way, majority of lobbying processes becomes socially controllable and both lobbyists and those being lobbied are protected from potential suspicions and imputation. In the stipulated procedures and bodies, it is possible to verify legality of the lobbyists' behaviour and activities and impose sanctions for unlawful lobbying. All these elements for ensuring transparency and control of lobbying within the proposal of the law from 1997 has now been incorporated in the Law on Integrity in the Public Sector (LIPS), for which it has already been mentioned that the final draft has been prepared and submitted to the parliamentary procedure 2007 with the intention to put forward already achieved standards in preven-

32 Similar objectives are contained in the Green paper - European transparency initiative and with respect of lobbying, it stipulates that »... greater transparency in lobbying is necessary. It considers that a credible system would consist of:

- * A voluntary registration system...
- * A common code of conduct for all lobbyists...
- * A system of monitoring (control) and sanctions...«

tion of corruption in the Republic of Slovenia and strengthen the competence of the commission for prevention of corruption, which would, under this law, become a body with the authority to handle administrative offenses and impose sanctions in cases of law violation. Among other novelties, the content of the proposal of the LIPS introduces transparency and control of lobbying as well as financing of political parties as the most important among mechanisms for prevention of corruption in systemic and individual cases.⁽³³⁾

Among other solutions incorporated in the law proposal from 1997, the proposal of the LIPS took over the principle of professionalism of lobbying. That principle is very important also because it is directly connected with compulsory registration of lobbyists and reporting on their lobbying activities. Contacts with functionaries of legislative and executive bodies are, as a rule, authorised only to accredited lobbyists performing that activity as a profession. Professional lobbying activity is in accordance with the legal and ethical norms (codes) and in itself it sets up certain standards and customs including complementary interrelated and autonomous mechanisms of internal control and self-control of lobbyists and their associations. In that way, the interest groups have transparent possibilities to temporarily engage or grant indefinite appointments to professional lobbyists, who perform their work in accordance with the law, ethical codes and standards of the public control. In that case, interest groups, civil society and non-governmental organisations build confidence, gradually lose negative connotation as “pressure groups”, and their activities are no longer exposed to suspicion and contempt in the eyes of the democratic public. Influence of all interest groups – not only political parties – on political life in the community becomes normal and essential part of a democratic system, political processes and political and legal culture. For that reason also, it is necessary that the regulatory acts of lobbying activity contain rules enabling lobbyists to perform their activities in bodies of the legislative and executive authority and obtain and exchange information and contacts with functionaries in those bodies. It is understood that legal provisions

33 The proposal of the LIPS is available at internet page of the National Assembly of the Republic of Slovenia: www.dz-rs.si.

on illicit behaviour of lobbyists and respective sanctions are also very important.

The proposal of the LIPS contains also a principle of registration, which requires keeping of the official register of lobbyists.⁽³⁴⁾ The register is a public book and a registration entry is the constituting act of the lobbying activity. Due to the intensive dynamics of lobbying, theorists and experts in that area recommend limiting of the registration validity to one year, with possibility of extension on the basis of the renewed application. For that interval, the proposal of the LIPS foresees the two-year period that can also be subject to extension. For the reason of rationality, it is sufficient to maintain only one register of lobbyists, regardless of the body in which the lobbyists want to work. Since the registration requires also data on the interest organisations represented by the lobbyist, the register ensures the transparency of the lobbying process. According to the proposal of the LIPS, the commission for prevention of corruption is a competent body for the control of the register. For the purpose of the efficient controlling of the lobbyists' activities, it is foreseen that lobbyists report to the commission on their work within the certain timeframe. In case that a lobbyist, whose registration validity is close to the expiry date, temporary de-register from the register or his registration validity expires, he/she must submit to the commission a report on his/her work for the respective period until de-registration or expiration of the registration validity date. The proposal of the LIPS regulates rules of positioning of lobbyists and their rights related to the performance of the lobbying activity. A lobbyist must not perform the following: spread misleading information with the employees of state bodies, lobby for those who refused contact with the lobbyist, lobby in a way that conflicts the legal acts that prohibit acceptance of gifts and attaining of particular advantages in connection with performance of a public office; in addition, business activities between state, public enterprises and public bureaus and economic stakeholders, enterprises or bureaus, whose owners and share owners are public functionaries or their family members are also prohibited.

34 The European Union i.e. the EU Commission foresees adoption of the code of conduct for lobbyists in 2007 and establishment of the registry of the so-called representatives of interests in 2008; see: http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm

The proposal of the LIPS stipulates that in case of violation of these provisions, public officials i.e. functionaries are obliged to report such lobbyist to the commission for prevention of corruption. For such misdemeanour, a fine of 400 to 100.000 EUR is prescribed for the interest group employing the respective lobbyist, while the lobbyist may be delivered a written warning, or suspended from further lobbying in a specific case or for a certain period of time, or forbidden registration renewal in the register of lobbyists for the next registry period, by the commission for prevention of corruption.

5.4 PRACTICAL WORK:

Openness (transparency) of procedures and lobbying control in passing of general legal regulations

Case study: Recently, state bodies and civil society notice growing number of cases of chicanery, harassment i.e. psychic and physical assault of employees by the employers in the private enterprises and state institutions. Information provided by the commission for prevention of corruption confirm that in these cases, there are also much of those involving psychic and physical assault of individuals due to their engagement in reporting of different malversations and corruption („whistle blowing“).

Seminar participants form a working team and divide into two groups:

- group which takes the role of state bodies' representatives
- group in the role of civil society representatives

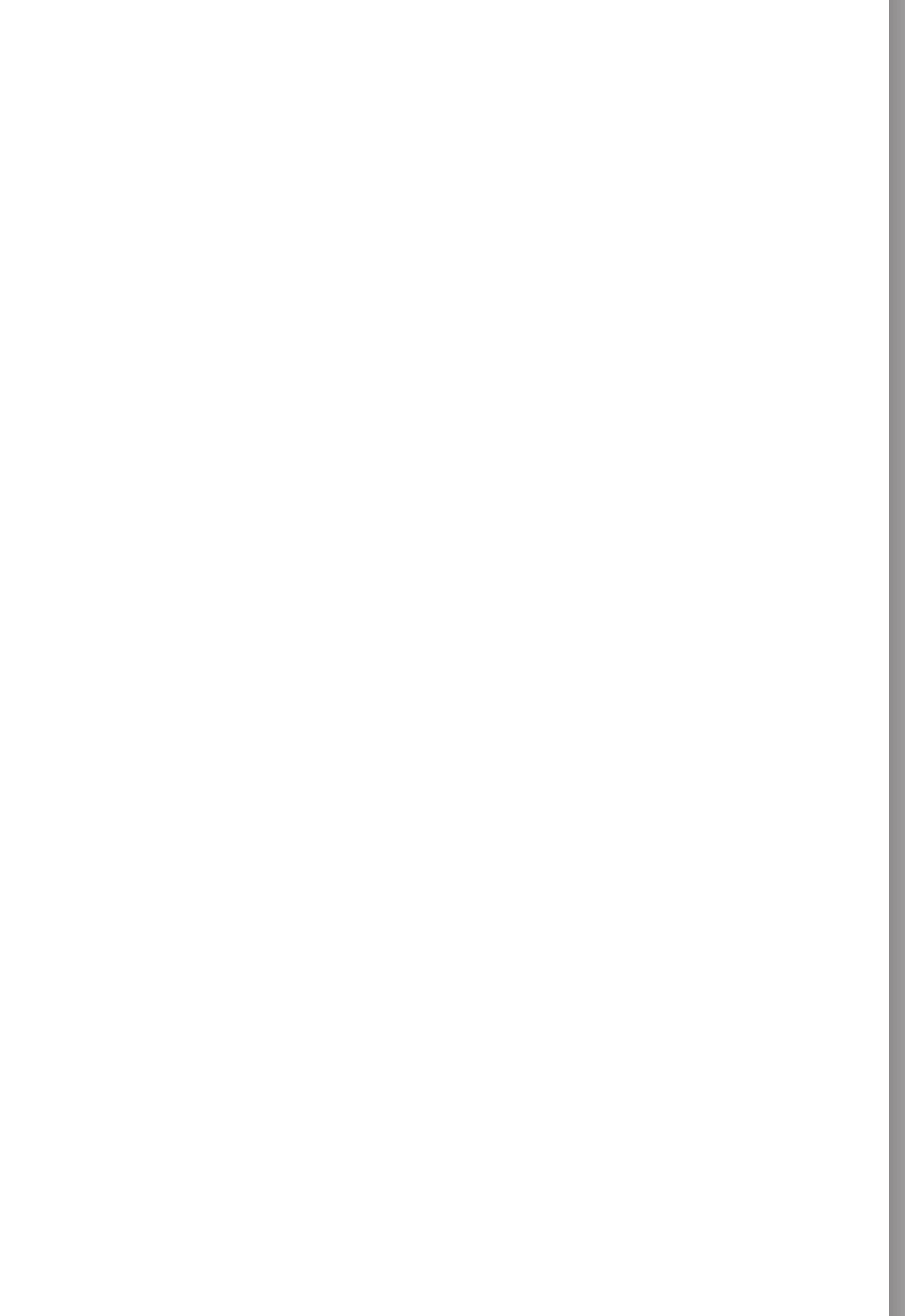
The work in groups should last approximately 1 hour. In the beginning, the participants read the case study and try to cotton on to the situation. In case of larger number of listeners, more working teams can be formed. Both groups, each with its own role, jointly agree on activities for problem solution using guidelines from the below table, theoretical knowledge, running norms and practical experience regarding passage of general legal regulations, access to information

of public importance and participation of the civil society in those procedures. The working group of the state bodies' representatives pays attention to the rules of procedure, drafts necessary documents and indicate which bodies should cooperate in specific phases of the procedure.

	<i>Decision making process</i>	<i>Formal procedure</i>
1	Problem activation	Preparation of the procedure in a formal sense
2	Data collection and processing	Introduction i.e. thesis for drafting of the regulation proposal
3	Proposal shaping	Shaping of the legal regulation provisions and elaborations
4	Consideration of proposed solutions	Formal perspective of consideration by phases of the procedure
5	Acceptance, final decision	Decision on passage of the regulation
6	Implementation of the final decision	Strategy and division of work assignments for effecting control and supervision over the set objectives implementation

Conclusion analysis and roundtable participation:

Following finalisation of the practical work, the teams or groups analyse results and select their representatives who participate «in live» in the roundtable discussion about results of the practical work together with the representative of public, media and non-governmental organisations.



6



**INTERNAL CONTROL AND
PREVENTION OF CORRUPTION**

6

INTERNAL CONTROL AND
PREVENTION OF CORRUPTIONBecir Kecanovic⁽³⁵⁾ M.Sc.

When we try to explain the word «control» in more details, we are always faced with difficulties how to explain the real meaning of that word. There are different explanations in theory while in usage there are even more, according to which the word «control» is related to examination, supervision, inspection, revision, consideration and prevention of instantaneous, as well as possible risk which can, more or less, endanger certain process, activity and aim of human`s living and work. In biological and intellectual sense, the word «control» is related to internal processes of recognition of certain phenomena – either those that can be useful for good living and work or those that can make us suffer pain, distress and other negative feelings and consequences. That enables us to adequately respond to different phenomena and in that way to live and work more easily and successfully. In sociological, political, ethical and legal terminology word «control» is often used for defining different patterns of behaviour of individuals and social groups: informal (different unconstrained behaviour of individuals, their habits, manners,...) or formal (prescribed by formal rules – standards, for example, ethical or legal), according

35 Commission for prevention of the corruption, Slovenia.

to which social community regulates certain situation and behaviour in relation to the current rules of social control. Thus, we are made to believe that the usage of the word «control» is always related both to the particular social context or frame where certain control is performed or should be performed and to the values which thus are to be ensured. Even the title of this chapter is making us comprehend that internal control in certain state bodies and their working units is inseparable part of the more extensive public control system. Relation itself, between concepts of internal control and prevention of corruption points out to the very dynamic and operative dimension, which cannot be comprehended if separated and isolated from its more extensive context. Due to that, it is necessary to begin from the foundations of the public control over instantaneous and possible risks which usually lead to corruption. At this point, it is suitable to mention the idea which the author has taken from the practice of the Constitutional Court of the Republic of Slovenia. It says that the social need to prevent corruption has originated from the foundation of the legal state itself, including, certainly, observing of the valid international regulations and conventions. Thus, internal control is inseparably fitted in more extensive social context and institutionalized system for prevention of corruption. That context again represents foundation for standing or pulling down of strategic aims, operational tasks, vision and legation of internal control for prevention of corruption and reaching all the aims due to which internal control exists.

6.1 SYSTEM FRAME OF THE PUBLIC CONTROL

Discussion, in which the fact that the system frame of the public control is integrated into foundations of the legal state and general valid regulations on international law cannot neglect doctrinarian conceptions concerning theory on Constitutional law, which result from historical experience of the mankind regarding achieving of freedom, safety and justice over centuries. Based on this experi-

ence, conception matured that freedom, safety and justice are very difficult to achieve, but even more difficult to preserve, especially under circumstances that state government can govern lives of certain individuals and marginal groups of people, without limit and control. Thus, contemporary civil society in systematic, or better say, in constitutional manner requires demarcation or division of government to: legislative, executive, judiciary branch with balanced system of control (checks and balances). It generally means that starting points of system frame for internal control are rules, processes and aims based on the Constitutional law and constitutional policy of the state. Thus, public control must be lowered in the social system by passing and implementation of laws, other legal regulations and general acts of state government. Those tasks, as a rule, are executed by expert bodies of the government. Due to their social role, authorities and measures of enforcement, which are mostly at the disposal of repressive state bodies, democratic government must ensure efficient control or supervision of the bodies.⁽³⁶⁾ Control of state bodies work is usually external and internal. Temporally speaking, it can function in advance, instantaneously, (ad hoc) or in case of undesirable and harmful occurrence. External control of the work of state bodies can be divided into political and legal control. Political control is performed by political bodies of the state, first of all Parliament, Government and Ministers. Key issues of the political control between Parliament on one side and Government and Ministers on the other, regarding above mentioned division of government, represent for a long time prime question of constitutional theory on political accountability of high-ranking officials for performance of their tasks pursuant to Constitution and state laws.⁽³⁷⁾

36 Grad, F. et al., *Razmerje med ministrstvom in organi v sestavi*, (Relations between ministries and bodies within system), Faculty of Law, Ljubljana, 2001; round-table discussion *Nadzor nad represivnimi organi države* (Supervision over repressive state bodies) Ministry of internal affairs, Ljubljana, 2002.

37 According to the Constitution of Republic of Slovenia, that type of accountability is regulated concerning accountability of the President of the state, Government and Ministry, who may be impeached before the Constitutional Court of the Republic of Slovenia. Thus, pursuant to Article 109 of the Constitution of the Republic of Slovenia, concerning accountability of the President of the Republic it is determined that he/she may be impeached by the National Assembly before the Constitutional Court if he/she violates the Constitution or seriously violates the Law through performing his/her office. The Constitutional Court shall decide either that the impeachment charges are justified or it shall dismiss the charges and it may further decide on relieving the President of office by a two-thirds majority vote of all judges. The Constitutional Court may make a temporary decision that accused President of the Republic may not perform his/her of →

Legal control is first of all, control of legality regarding propriety of judiciary government execution. Theoretical notions and experience of democratic states prove that the role of courts is very important for rule of law and protection of citizens from willfulness of state bodies and of course for prevention of corruption. Judiciary government, due to its harmonization with Constitution and laws, significantly contributes to the execution of public control and limiting of political power through Constitution and laws. Due to above mentioned, judiciary government is sometimes, in Slovenia also, exposed to causeless and primitive attacks of individuals, even certain politicians. The attack to courts in democratic society is best described by syntagm «democratic primitivism». The syntagm is not only related to individuals who attack, but also to those members of society who, in such cases, are silent and do not react. If democratic society once allows destruction of basic conditions for independence of courts, in such way, than there will neither be any state, democracy, freedom nor legal safety of individuals. In such case, inevitably, instead of freedom, safety, civil rights and public wealth in state, we have growing criminal, violence and corruption rate. Judiciary government does not have at disposal political power and measures of enforcement which could be used to defend independence when attacked. Its only „weapons“ are unconditional esteem in society and legal authority of courts. Due to that, every democratic society must rise against attacks to independence and reputation of courts and against endangering the social status of judges. But, in cases when criticizing of certain judges is justified, legal state must be consistently asked to execute legal proceeding for determining of accountability.

office from the day of lodging a charge to the day when final court decision is made. From that day he/she is temporarily suspended. His/her office will temporarily be performed by the President of the Parliament, who usually replaces the President of the state on different occasions when he/she temporarily or permanently cannot perform his/her office. The Parliament of the Republic of Slovenia may, pursuant to Article 119 of the Constitution lodge a charge before the Constitutional Court against the President of the Government and some ministers. The Constitutional Court considers the charges in such a manner as determined in Article 109 of the Constitution of the Republic of Slovenia for the President of the state.

6.1.1 Role of citizens, civil society and independent state bodies in public control performance

Efficient public control represents the essential condition for civil democracy. It is well known that every government without efficient control sooner or later becomes disdainful, arrogant and self-sufficient. Under such circumstances, ideals of freedom, safety and civil rights, and prevention of corruption are practically unrealizable. Public control is performed by citizens through direct democracy institute, on elections, through legislative initiative and through different types of referendum. The institutes guarantee to citizens that they can directly or through members of parliament influence realization of interest, passing of legal regulations and other decisions of general interest of society and control holders of political and state power.⁽³⁸⁾

Very important type of control and prevention of corruption in political and state institutions can be performed by individuals themselves, by submitting supervisory petitions and complaints, in certain cases. But, one of the most efficient types is the control performed by citizens through civil society, non-governmental organizations and media. So, citizens and their associations can significantly contribute to the strengthening of democratic society, preserving of human rights and prevention of corruption. Very often, the expression «participatory democracy» is used for that type of public control. In states that have democratic tradition and obvious manner of ruling, political and state government pay attention to that type of public control and holders of the participatory democracy accept as equal partners in governing the social processes and realizing of common interests. That is one of the major differences between democratic and totalitarian government systems. Democratic government respects and recognizes the holders of public control and participatory democracy, while totalitarian government priori oppresses them and prevents their work.

Based on civil society experience, it is known that classical

38 Compare: Kečanović, B. Openness of the procedure and control of lobbying in the course of adoption of legal regulations, Seminar Corruption in public administration, Podgorica, September 2007.

division of government to legislative, executive and judiciary is not enough for efficient public control. Based on that experience, raised a need to establish relatively independent state bodies, which besides civil control and participatory democracy performing also perform control in different areas of social life. Traditionally independent status, in relation to the classical division of government has for long been reserved for special institutions within judiciary system, such as practice of law and notary public. Certain independence from political power is also foreseen for State prosecutor's office and Public attorney, however more in functional than in institutional way. It means that certain ministry, which is, as a rule, Ministry of jurisdiction, must perform political control of their work, which of course is not political, regarding struggle for power but regarding criminal and judiciary policy of state. Constitutional and legislative principles of work of state bodies must be taken into account. In functional respect, i.e. in respect of their special tasks performing, state bodies are through those principles related exclusively to the Constitution and laws. That principle does not only relate state bodies to law and rights, but it always protects them from attempts of political power to usurp society and state, regarding «political prey».

Concerning legal arrangement of state bodies independence, it is always necessary to have sensible approach to that delicate issue. Such precaution is very important concerning repressive state bodies, first of all, army, information-safety service and police. With those bodies there is always danger that exaggerated and unsuitable control will suppress them into dark field. So, in the most difficult and most dangerous situations for safety of citizens and democracy system they will have to exceed the limit of control in order to protect human's life, property and public order or to take responsibility for consequences. Regarding that, theoretical and practical challenge of considering good and bad sides of legal resolution for independent police agency, which was in former Republic of Yugoslavia first adopted by Republic of Slovenia in the Law on police, might be interesting. At the beginning, that resolution promised that young democracy in that area will soon achieve European standards regarding human rights and freedoms in police actions. Delight, at first, soon turned

into disappointment. First delightful idea regarding independent police – which due to authorization to use armed forces and other measures of enforcement must be under efficient democratic, legal and civil control and must be tightly related to the Constitution and law, turned later into opposing to democratic government with obvious control rejecting in certain cases. Such opposing set into motion in such degree that managing director of police forces once set criminal charges against authorised Minister for internal affairs before the Constitutional court, claiming that he has no right to control the work of the police. In such unpleasant situation, Constitutional court rendered a judgement that the charge of the managing director of police forces was unfounded. Judiciary profession and civil society criticized in public such relations in police leadership and asked for efficient control of the police. By amending the Law on police, problems were formally solved, but in practice they remained the same or even became larger, even though the European court for human rights and Constitutional court of the Republic of Slovenia warned through their decisions, several times, that problems regarding control of the police must be solved by the state. At the end, price for those problems, arising from unsound illusion of complete autonomy of the police, grown on wrong understanding of its position in democratic society, will be mostly paid by the police. The police that eliminates or even challenges democratic and civil control remains at the end alone, isolated from the society and citizens.⁽³⁹⁾

Notion that classical division of government is not enough for efficient public control, stability of democracy and rule of law, in contemporary states in Europe and in democratic world caused also development of independent institutions for public control performance. Their establishing in certain states depends on different factors, sometimes due to internal needs or under direct influence of binding regulations of international law. Common for those institutions is low connection or even no connection with one of the classical branches of government. The most significant among them is the institution of ombudsman and specialized state institutions for

39 Kečanović, B. et al.: *Policijsko pravo in pooblastila* (Police rights and authorities), GV Založba, Ljubljana, 2006.

supervision over spending of public financial resources and bodies for prevention of and fighting against corruption in all segments of society, which have lately been mentioned very often and have been established pursuant to international rules. Those rules are not intended for themselves but for efficient prevention of corruption in order to preserve values of democratic society, rule of law and legal state, which are during certain periods or every day exposed to dangers of corruption.⁽⁴⁰⁾

6.2 INTERNATIONAL LEGAL FRAME FOR PREVENTION OF CORRUPTION

In international regulations on prevention of corruption it is emphasized that corruption endangers rule of law, democracy and human rights, social justice, prevents economic development and endangers regular and appropriate operating of market economy with harmful consequences to individuals, states and internal institutions what implies that corruption is not any more problem of some states, but that it is large global threat to peace and welfare in the world. Thus, the number of international regulations concerning prevention and overcoming of corruption becomes larger. Thus, the number of international regulations concerning prevention of and fighting against corruption has grown. The most important among them, which determine duties of states in prevention of and fighting against corruption are as follows:

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD), which is in criminal-legal terms related to criminal offences for money laundering, and violation of accounting or book-keeping regulations;
Criminal Law Convention on Corruption of European Council (ETS 173) with accompanying protocol (ETS 191) incriminates active and passive corruption in public and private sector, as well as money laundering and violation of accounting regulations, and bo-

⁴⁰ Kos, D., Je samostojnost nezavisnih nadzornih institucij res potrebna (Is independence of supervising institutions really necessary?), Zbornik IJU, Ljubljana, 2007.

ok-keeping regulations, determines responsibility of legal persons for those criminal offences and requires establishing of specialized and independent bodies for fighting against corruption and efficient international cooperation;

Civil Law Convention on Corruption of European Council (ETS 174) determines civil law responsibility for corruption of responsible individuals and state in cases when corruption offence is done by public officials and sets certain requirements that facilitate determining of responsibility,

United Nations Convention against Transnational organized crime requires incrimination of bribery and introducing of legal, administrative and other measures for integrity promotion as well as measures necessary for preventing, detecting and punishing bribery of public officials and establishing of appropriate independence of authority bodies;

Convention on the protection of the European Communities financial interests with accompanying protocols incriminates financial frauds affecting the financial interests of the European Community, regarding expenditure and revenue, incriminates active and passive corruption of local, foreign and international public officers, determines responsibility of legal persons for such offences and determines obligation for establishing of mechanisms for punishing and seizure of proceeds attained through frauds and corruption;

Convention on Prevention of Corruption of Officials of European Union and Officials of the Member States of European Union, which incriminates active and passive corruption of public officials of European Union and members states of EU; recommendations of the Fifth Conference of specialized bodies in member states of European Council for prevention of corruption, which emphasized, as very important task, establishing of central national anti-corruption bodies for coordination of work of different authorized services;

United Nations Convention against Corruption, which besides repressive measures requires certain preventive measures, establishing and maintaining of independent body for prevention of corruption, specialized body for detection and investigation of corruption and similar body for prevention of laundering the gain attained through

corruption.⁽⁴¹⁾

International institutions agree through the conventions that the corruption as global danger shall be efficiently confronted only by harmonized application of all means which are at the disposal of a democratic society. Besides criminal bodies and independent bodies for prevention of corruption there are other means, such as adopting of qualitative legal regulations, national-political programmes and action plans for fighting against corruption through states and civil society, efficient system for detection of criminal offences with elements of corruption and criminal prosecution of executors, strengthening of social ethics, anti-corruption culture and integrity in society. According to comparative legal summary, many countries implemented international anti-corruption standards in their national law by adopting anti-corruption laws and by establishing independent, specialized bodies for prevention of and fighting against corruption. Those institutions differ in each country by status, tasks and authorizations (scope of their work is stretched from strategic to ethics-morally and police-repressively). It is interesting that in the clearest countries regarding corruption, such as Scandinavian countries, there are no special, independent anti-corruption bodies. According to more detailed analyses, in those communities fundamental concepts on fighting against corruption are deeply rooted in political and legal culture as well as into ethical, moral, social and secular supervision system of standards of plurality of citizens. It is clear that in countries with such social progress there is no need for establishing specialized institutions that provide professional help to citizens, public officials and society and that guide them in prevention of and fighting against corruption. Thus, individuals and society understand prevention of and fighting against corruption as their own duty and moral respon-

41 Among stated international conventions, only the UN Convention Against Corruption has not been ratified so far in Slovenia. Practically, for a longer period, Slovenia fulfils main requirements for ratification of the Convention and its implementation into internal laws. However, that has not been realized so far due to political reasons more than due to legal and operative reasons. Lately, in Slovenia but in other countries also, it can be noticed that certain political parties are trying to suppress present Commission for the Prevention of Corruption, which is according to the UN Convention standard of fighting against corruption. Commission is highly respected by Slovenian citizens and also has a very good cooperation with related bodies in other states and international institutions. It is interesting that Commission is »thorn in the heel« to those political parties which before taking over the authority promised aloud to the citizens that would use all weapons to fight against corruption. Among all great promises, the Commission for the Prevention of Corruption has become the only target of their attacks.

sibility. When citizens and society through joint efforts once reach such level of anti-corruption culture it will no longer be necessary to establish special anti-corruption bodies. That is also the final aim to which all regulations and institutions must strive regarding prevention of and fighting against corruption.⁽⁴²⁾

6.2.1 Implementation of international regulations on corruption into national legal system of the Republic of Slovenia with review of Civil Law Convention on Corruption of the European Council

Before entering the European Union, Republic of Slovenia committed to fulfil all required obligations by December 31st 2002, including corruption prevention issues. In final report of the Council of Europe's Group of States against Corruption (GRECO), from the year 2000, evaluation of conditions in that area is presented. It is stated that corruption in Slovenia is not widely spread and that there are no signs showing that corruption will endanger the society. Despite that, GRECO group gave Slovenia a lot of recommendations for strengthening of all types of fighting against corruption in society. Slovenia, however, in February 2000, ratified Civil Law Convention on Corruption of the European Council, in January 2001 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD). In the same year, Civil Law Convention on Corruption of European Council has been ratified.⁽⁴³⁾ Simultaneously, provisions of that Convention have been included into the Draft Law of Obligations, which has been in the second phase of adoption by National Assembly – Parliament. Besides above mentioned, whole class of different professions in Slovenia has already had its ethical and deontology codices, while the

42 Taken over from the introduction of: **Proposal of the Law on Integrity in Public Sector**, No. 212-05/07-0058/0001, date 22.06.2007, Parliament of the Republic of Slovenia:
http://www2.gov.si/zak/Pre_Zak.nsf/4a5c82eff607df6bc12566160029a695/fbaeaa1c75576bbc1257302002ff399?OpenDocument.

43 **Civil Law Convention on Corruption**, Strasbourg, 4.XI.1999;
<http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm>.

Government of the Republic of Slovenia in the same year (2001) adopted the code of behaviour of public officials. After considering GRECO report, the government established inter-department coordination committee for fighting against corruption. In its work the following participated: representatives of the most important bodies of executive government and representatives of the Supreme Court, State Prosecutor's office, State auditing Committee for public procurements and Court of Auditors. Committee task was to strengthen inter-department cooperation and to harmonize institutions concerning prevention of and fighting against corruption. The government also decided to establish a special body for prevention of corruption which will function at the President of Government, which is forerunner of the current Committee for prevention of Corruption of the Republic of Slovenia.⁽⁴⁴⁾

By ratifying, Civil Law Convention on corruption became integral and compulsory part of national order of the Republic of Slovenia. According to the Constitution of the Republic of Slovenia, laws and other regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia.⁽⁴⁵⁾ According to the Constitution, National Assembly is competent for ratification.⁽⁴⁶⁾ By ratifying, Civil Law Convention on corruption became part of internal law.⁽⁴⁷⁾ Another aspect of implementation of Civil Law Convention into Slovenian legal system is related to the legislative procedure for adoption of Law of Obligations. Law of Obligations is one of the most comprehensive fields of civil law, which regulates human relations based on equality of entities principle. For legal state it is very important to have that field thoroughly and contemporarily regulated. Until Law of Obligations has been adopted, former Law on Obligations was in use, i.e. from the former Republic. Thus, Slovenia began preparation and adoption

44 Find more about that in: *Poročilo o napredku Republike Slovenije pri vključevanju v Evropsko unijo* (Report on progress of the Republic of Slovenia regarding entering the European Union), June 2001; published on: http://www.svez.gov.si/si/dokumenti/temeljni_dokumenti/porocila_o_napredku_republike_slovenije_pri_vkljucivanju_v_evropsko_unijo/

45 Constitution of the Republic of Slovenia, Article 8.

46 U Constitution of the Republic of Slovenia, Article 86.

47 Law on ratification of Civil Law Convention on Corruption (MCKK), Official Gazette of RS No. 35/03; available at: <http://www.uradni-list.si/1/objava.jsp?urlimpid=200323>.

of new Law of Obligations at the beginning of 90ties of the last century. The first law was submitted into legislative procedure in 1996.⁽⁴⁸⁾

When procedure for passing of Law of Obligations began in Slovenia, Civil Law Convention on corruption did not exist, since it was adopted in 1999. In that time, Slovenia was highly engaged on its entering European Union, and as we have already said, one of obligations imposed by that process was implementation of Civil Law Convention on corruption. First draft of Law of Obligations from 1996 was in accordance with that. It was amended, so in the chapter on obsolescence, issue of obsolescence of requests for compensation for damage caused by corruption was newly regulated. In legislative procedure, the amendment was made to the proposal of Law of Obligations through resolution containing the following text: »If the damage was caused by the activity, influenced by direct or indirect offering, giving, accepting or requesting of bribe or any other advantage or promising of the advantage, or by implementation of activities for prevention of corruption, but through another act, which according to the law or international agreement means corruption, the request would become obsolete for a five year period since the person who has suffered damage become aware that damage has occurred and of the identity of the responsible person, in any case in the fifteen-year period, from the date of the act of corruption.«⁽⁴⁹⁾ In the explanation of the amendment it is stated that request of the Civil Law Convention on Corruption (Strasbourg, 4.11.1999) is thus taken over into legal system. In the Article 7 of the Civil Law Convention on Corruption each signatory country is obliged to provide in its internal law for minimal deadline for obsolescence of requests for compensation for damage caused by corruptive activities, as determined in Convention, and for taking certain measures for prevention of corruption. In explanation it is stated that, before the beginning of ratification process of the Convention, this subject matter must be suitably organized through the Law of Obligation. Definition of corruption stated in the proposal of the law was ta-

48 Predlog obligacijskega zakona, prva obravnava, Državni zbor Republike Slovenije (DZ RS), Poročevalec 30/96, datum 26.07.1996

49 Text remained unchanged – refer to: Law of Obligations (OZ), Article 354 (Uradni list RS 83/01 z dne 25. 10. 2001); available at: <http://www.uradni-list.si/1/objava.jsp?urlid=200183&stevilka=4287>.

ken over from the Article 2 of the Convention and also amended by definitions of corruption stated in already accepted national and international regulations on corruption.⁽⁵⁰⁾ According to the theory in comment of the Article 354. of the running Law of Obligations, it is stated that obsolescence of the request for compensation for damage caused by corruptive activities does not exclude application of rules regarding obsolescence of the request for compensation for damage caused by (other) criminal offences.⁽⁵¹⁾ However, regarding responsibility for damage caused through corruption actions, it is necessary to take into account responsibility of state for breaching of individual's rights and freedoms guaranteed by Constitution and international conventions, which might have elements of corruption in state bodies. Regarding responsibility of state for damage, it is determined by the Constitution of the Republic of Slovenia that everyone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or authority performing such function or activity within a state or local community authority or as bearer of public authority.⁽⁵²⁾ It is similar with cases that are within competence of European Convention on human's rights and freedoms and European Court in Strassbourg. In any case, it can happen that corruption motive lies in a cause of breaching of the rights and freedoms itself.⁽⁵³⁾

6.3 INTERNAL CONTROL

Every individual, and of course, each society aims at predictable circumstances, which represent condition for safety and freedom from danger. If an individual knows where are the boundaries to which he/she can go without exposing himself/herself to danger,

50 Predlog obligacijskega zakona, druga obravnava, DZ RS, Poročevalec 82/00, datum 20.09.2000.

51 Plavšak, N. Juhart, M. Obligacijski zakonik (OZ) s komentarjem, 2. knjiga, GV Založba, Ljubljana, 2003, stran. 485.

52 Constitution of the Republic of Slovenia, Article 26.

53 There are numerous data on compensation of damage related to the European Convention on Human Rights and Freedoms which are available on internet. About that issue in Slovenia, please refer to: Bukovec, M. Odškodnina oziroma pravično zadoščenje zaradi kršitve človekovih pravic (Compensation or rightful satisfaction due to breach of human rights), Legal practice 16-17/07 – attachment.

he/she will feel like living in predictable circumstances, in which he/she can easily recognize what is good or bad for him/her. That is how people make choices-what they should and what they should not do. Discipline, which requires respecting of certain rules and experiences on what is in certain environment, system or society necessary for accomplishing common aims, but what can endanger their accomplishment and preserving is also very important for organized work. For that reason people have long ago shown tendency to lay down certain rules (moral, legal...) and to control exercising of (social) discipline. External control is discussed in the first part. Under term internal control we will try to consider an integral system of rules, forms of organization, processes and behaviour of individuals, as well as other conditions for exercising of discipline within certain group of people, work unit or state body. Role of the internal control within the limits of social sub-systems or groups in distinction to external control, which is related to the whole society, is more or less inseparable part of the process within sub-systems. Thus, it is very important to emphasize that internal control cannot be considered only at control point of view, but it is necessary to take into consideration whole part of the process which should provide safe and successful accomplishing of basic aims.

In profitable organizations, profit is usually the basic aim of control. In social organizations, and especially in state bodies, basic aims cannot be adequately expressed in terms of economic measures. If, regarding that, you ask, for example, a policeman how he would express the value of his work in terms of economy, he will certainly answer you that it is not possible since the value of his work is measured by number of saved lives and safety of people, while human's life is inestimable. It is similar with prevention of corruption. Each prevention of and fighting against corruption is aimed at illegal money taking or other financial frauds performed by individuals or groups to disadvantage of some citizens and society as a whole. But damage caused by corruption is not only financial. It has other consequences which, regarding value, can be even far more reaching than financial damage. Those consequences cause that citizens lose confidence in democratic system, human rights and freedoms, legal security and

economic and social justice. As it has already been said, when people once lose confidence in those values, than whole society and state also are lost. Thus, regarding internal control in state bodies, it is very important – same as for external i.e. public control – in the course of its establishing and planning of aims, to take into account all values which one democratic society emphasizes and orders state bodies to defend and preserve. It could be said in other words that external control, concerning prevention of corruption and criminal, which is performed by state bodies, preserves citizens and society from jeopardizing of basic values, while main task of internal control is to prevent jeopardizing within state bodies themselves.

Internal control function in state bodies is to create and preserve values and conditions which enable undisturbed execution of work tasks in society. Thus, it must be organized to improve but not to obstruct work execution. It requires application of principle of prudence here, since in case that internal control is making more damage than benefit to state body work, it is totally opposite to common sense and aims which should be accomplished. Other issue regarding principle of prudence is efficiency of internal control. If internal control is not efficient, than it is of no use to desirable aims and it is even hindering their accomplishment. Reasonable and efficient control can be achieved only within certain rules and organization forms. Those are normative and organizational principles of internal control. Since each organization is usually organized according to rules, than organizational principle is usually equal to normative principle or principle of legality. Besides all that, internal control must respect principles of humanity, human`s rights and freedoms and reciprocity. Those are the most significant principles, especially concerning internal control over repressive government bodies, that have at their disposal very restrictive authorities to use force and weapons. Regarding work of those bodies and application of their authorities, internal control is very important factor of legality and preserving of human`s rights and freedoms. According to theory and practice, and also according to certain court decisions, it can be concluded that external control is not adequate for behaviour of those bodies, due to specificity and danger, but on the other side, due to general

social importance of their work tasks. Due to that, internal control in those bodies has a very important task concerning implementation and preserving of democratic values and legality, human`s rights and freedoms, as well as prevention of corruption in bodies themselves. Finally, members of internal control must have required knowledge and experience, as well as moral or ethic qualities, in order to enable accomplishing of determined aims and respecting of all principles.⁽⁵⁴⁾

Concerning principles of humanity, human`s rights and freedoms and reciprocity, active role of internal control for protection of citizens is required. Also active role of state or public officers is required, who honestly and legally perform their work tasks but who are because of that exposed to harassment, abuse, threats and similar, by persons involved in procedures, managers or other persons in working environment. According to information gained by Commission for the prevention of corruption of the Republic of Slovenia, persons who intercede for prevention of corruption in their surroundings are very often exposed to harassment and abuse. Due to that, Commission warned public and institutions in Slovenia, several times, to provide appropriate protection for such people. Commission also offered adequate professional help for civil society mobilization in order to prevent special types of abuse at work place (mobbing) and to prepare programme for adoption of regulations on preventing and punishing of those activities. Pursuant to special provisions in the proposal of already mentioned Law on prevention of corruption, protection of jeopardized persons who intercede for prevention of and fighting against corruption is foreseen. Regarding state bodies and their internal units, that is very important task for internal control, since state official who is not safe in his/her working surrounding from harassment and corruption cannot bravely defend citizens and society.

Concerning compensation for damage and objective state responsibility for damage caused by work of state bodies and public officials, it has already been said that causes, in some cases, may be related to corruption, for example, for activities and measures which state bodies use to make decisions or to affect human`s rights and

54 Refer to, for example: Miller, S. and Blackler, J.: *Ethical Issues in Policing*, Ashgate, 2005.

freedoms. It even should not be legal or material (physical) act or decision of the body, but it can be general regulation, law for example.⁽⁵⁵⁾ These cases can be recognized as objective state responsibility for damage, while in criminal sense they do not mean responsibility of the official. Namely, these two categories of responsibility – objective state responsibility and subjective or criminal responsibility of the individual are different – both in legal and material (real) sense. Bodies which are in charge for conducting and monitoring of such cases, and also internal control in body where cases appeared, should carefully study all causes and determine whether such cases are caused by intentions and offence of certain officials. Motif for that can be corruption. For example, certain individuals may but do not have to be entitled to or deprived of issuing certain licences and similar decisions by state bodies, pursuant to discretionary authorizations.

Internal control, taking into account above mentioned values and need to thoroughly consider risks for their preserving, has possibility to detect, in due time, deviant behaviour in the system or body where is applied and to prevent and suppress efficiently their causes, without waiting for consequences. Thus, internal control must function proactively. It means that it should, for a long term, predict all possible risks and plan measures for their preventing or accepting least of detrimental consequences. Thus, internal control is using different models of strategic control combined with operative measures, actions, evaluations and predictions of risky factors. Taking into account complexity of situations which are to be solved and actions required for that, internal control is asking for integration of human knowledge with artificial intelligence of computer systems, i.e. information technology.

6.3.1 Strategic and operational perspective of internal control

It has been said that external and internal control consist of political and legal institutions. According to practice of government

⁵⁵ Refer to: Kečanović, B., Openness of the procedure and control of lobbying in the course of adoption of legal regulations, Seminar – Corruption in public administration, Podgorica, September 2007.

authorities, political and legal control are overlapping, first of all, in the role of relevant minister. He can be politician, member of the party on elections, but when his party is once given the mandate to lead the state, then, according to rule, state policy should be given priority. State policy does not fight for power any more, since fight for power is political programme issue on free elections, but it supports democracy, rule of law and prosperity of citizens and whole society. This policy is national state policy in certain area, for which certain ministry is responsible, for example, Ministry of justice for judiciary state policy, Ministry of internal affairs for public and state safety, etc. Thus, state policy and legal rules are implemented through strategic planning, operative work and internal control. Very often, in regulations, we come across terms such as directing, orientation, strategic or action plans and similar, while operational work implies all processes, measures and specific actions of state officials, which cause material and real results and accomplishing of certain aims. Different types of reporting, collecting and data processing, comparing and evaluating of the results are feedback of the process. That is the function of internal control, which is, regarding those issues, overlapping with functions of planning and task managing and application of information technology. In order to prevent certain risks or consequences, internal control has one very important task, to propose or pronounce penalty for ignoring the rules of internal discipline, and to suggest to managers adoption of general measures and internal regulations, strategic plans and operational outlines for organizing and improvement of work in certain tasks, in this case for prevention of corruption.

Strategic perspective of internal control comprises analysis and monitoring of certain conditions within controlled environment and setting of short-term and long-term aims, what will provide achieving of better results or at least preserving of the existing manners of success for realizing of work tasks. In that case, we are talking about strategic planning of aims and measures for their accomplishment. If one such plan is prepared, internal control will change to the phase of operational accomplishment of set aims. As agreed with leading team or certain manager, it is necessary to prepare operational plan

and provide instructions to certain working units. If internal control is, through legal regulations and arguments of hierarchy authorized to prepare instructions for realization of work tasks, adaptation of organization or certain processes to provide achieving of better results, rational spending of public financial resources, strategic conducting of internal processes and comparing of short-term and long-term results... than, it is actually performing strategic control. In state bodies that control is originating from democratic and legal architecture of society or from public control and realization of common social interests, in compliance with the role of certain state body in democratic and legal state system. Its establishing always tends towards already developed and tested model of strategic control, as it is shown in the table below – concentrated indicators of corruption prevention and integrity strengthening.

6.3.2 Example of strategic control model establishing in order to prevent corruption and strengthen integrity in public sector

Ideally, model has been made according to one well-known strategic control model - «Balanced scorecard». ⁽⁵⁶⁾ Practical application of that model has been confirmed in many different business systems and state bodies. The model has also been applied to police in Slovenia for performance of strategic control i.e. supervision of the police by Ministry of internal affairs. Based on thus gathered information, in the year 2000 a pilot project was prepared which was finished in the end of 2006, which task was to analyse causes for increased number of requests for compensation for damage to persons involved in police procedures, who due to breach of their rights and freedoms and other consequences submit complaint against state with rather high financial claims. ⁽⁵⁷⁾

Contents of strategic control model presented below is related to corruption prevention and strengthening of integrity in public sec-

56 Refer to, for example: Kaplan, R. S. Norton, D. P.: The strategy-focused organization: how balanced scorecard companies thrive in the new business environment, Harvard, 2001.

57 Refer to: http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/SOJ/2007/word/Koncno_porocilo.pdf

tor or whole society. Model is made based on information gathered in the course of preparation of already mentioned proposal of Law on integrity in public sector. Presentation of the model was intended for improvement purposes on Seminar – Corruption in public institutions, Podgorica (September, 2007).

HIGH LEVEL OF INTEGRITY IN PUBLIC SECTOR

High level of respect of democratic values

High level of legal protection

High level of openness and transparency

»BUILDING OF BRIDGES«

Establishing of values through cooperation

State authority

Civil society

National anti-corruption strategy

ACTIVITIES AGAINST CORRUPTION

Commission

Solved cases

Society costs

prevented cases

criminal acts

society confidence

offences

SELF-CONTROL

Preeminence of public functionaries

Responsibility in all levels (outlines of integrity)

Preeminence of public officials

»REPRESSION OF RISKS FOR CORRUPTION OCCURENCE«

Qualitative regulations

Efficient public control

Efficient internal control

Efficient control of lobbying

Ef. control of funding of pol. parties

6.4 PRACTICAL WORK: Internal control and prevention of corruption

Participants form work teams and separate into work groups:

- group, which takes the task of internal control for preparation of strategy for prevention of corruption;
- group, which takes the task concerning solving of fictional case of prevention of and fighting against corruption;

Time of work in groups shall be adapted to available time, but shall not be less than one hour. Due to subject complexity, local experts and guest lecturer all the time actively take part in work. After completion, work teams or groups can substitute work tasks and compare experiences. In the beginning, participants must get acquainted with tasks and can themselves choose environment or state organ where they would perform fictional work task. Work managing is taken over by representative of the participants from that body or a local expert.

I. Work task of group a):

Participants should identify with the situation or environment for which they should prepare strategy and agree on work plan. They should act in accordance with valid regulations, action plan for prevention of corruption, theoretical knowledge and experience in preparation of strategic plans and outlines of integrity. Work of the group shall be realized in following phases:

1. Analysis of real and possible external and internal risk factors which cause or can cause corruption arising. The following matrix shall be used in the course of analysis:

ANALYSED AREA	GOOD SIDES	BAD SIDES	THE BEST POSSIBLE SOLUTIONS
LEGAL REGULATIONS AND OTHER GENERAL RULES			
PROCESSES OF WORK TASK CONDUCTING AND ACCOMPLISHING			
TEACHING AND PERSONAL DEVELOPMENT OF EMPLOYEE; PROFESSIONAL ETHICS			
CERTAIN CASES AND WORK RESULTS			
ODNOSNO REZULTATI RADA			

2. Oblikovanje ciljeva za postizanje željenog stanja na osnovu najboljih mogućih rješenja, strategija i kontrole njihovog izvršavanja

TARGET AREA	REF. NO. AND SHORT DESCRIPTION OF AIMS AND SUB-AIMS	DATE OF CERTAIN PHASE AND OF FINAL REALIZATION	INCUMBENTS AND SHORT DESCRIPTION OF THEIR TASKS	CONTROL
LEGAL REGULATIONS AND OTHER GENERAL RULES				
PROCESSES OF WORK TASK CONDUCTING AND ACCOMPLISHING				
TEACHING AND PERSONAL DEVELOPMENT OF EMPLOYEE; PROFESSIONAL ETHICS				
DEVELOPMENT OF GOOD PRACTICE AND WORK SUCCESS STRENGTHENING				

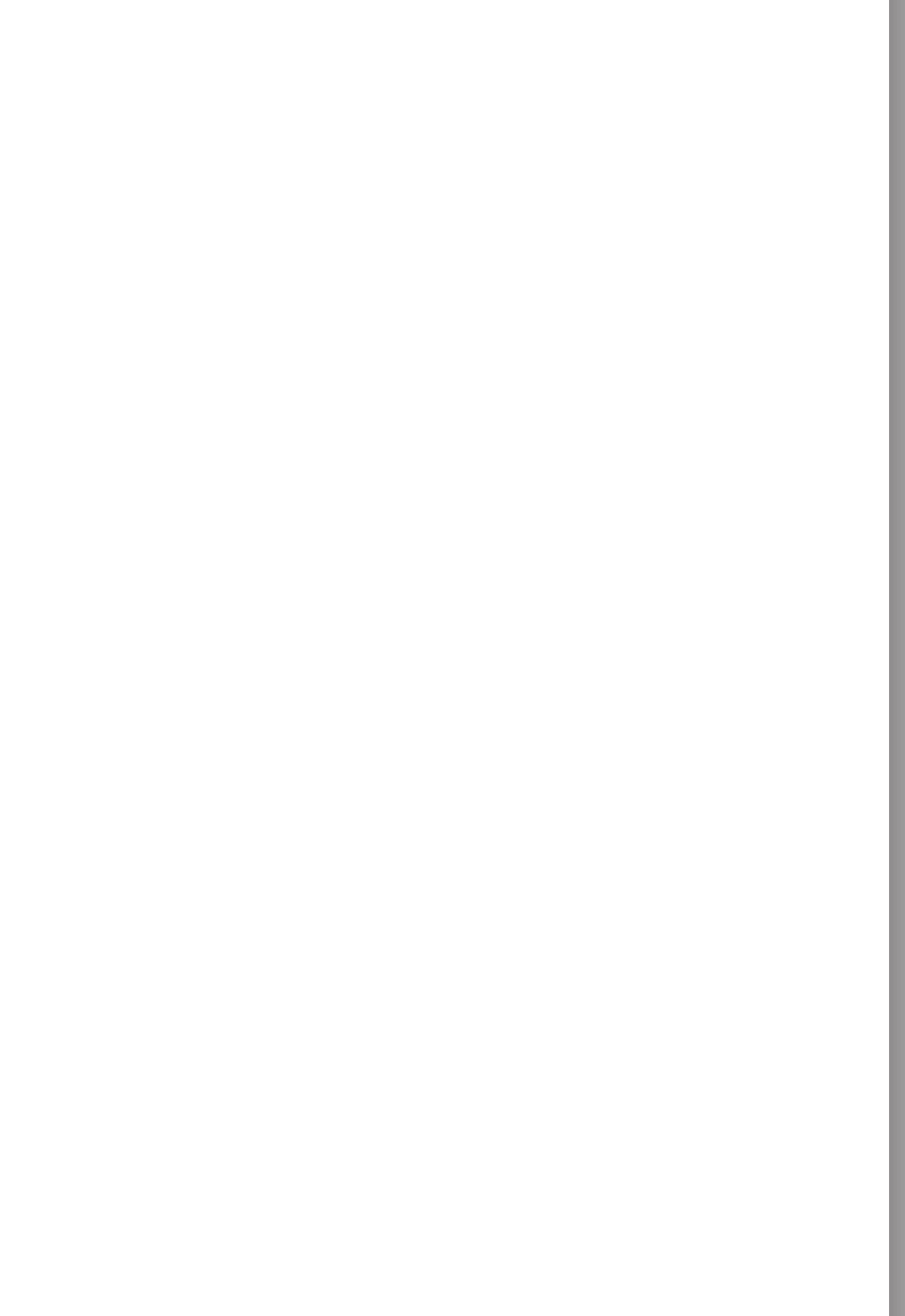
II. Work task of group B):

When study on fictional case is prepared, local experts in cooperation with guest lecturers take into consideration working environment of participants and demands, according to their information, for prevention of and fighting against corruption in that environment.

After participants read study on fictional case, they should be assigned roles and they should agree on activities necessary for problem solving. They have the following at the disposal: whole time, experts from anti-corruption commission, experts from body for money-laundering prevention, police and representatives of prosecution and police.

Final analysis or round table:

After practical work is completed, teams or groups should analyse results, determine good and bad sides and determine problems to be solved in their working environment and practice.



7



**REVERSE BURDEN OF
PROOF AND CORRUPTION**

7

REVERSE BURDEN OF PROOF
AND CORRUPTIONPhD Bojan Dobovšek⁽⁵⁸⁾

7.1 INTRODUCTION

Practically, the purpose of this paper is to arouse interest in discussion on reverse burden of proof problems, as contemporary means for fighting against corruption, which requires cooperation of financial institutions and journalists with repressive institutions in society. Reverse burden of proof is one of means for fighting against corruption and other criminal activities, but at the same time it also reduces human rights. That is why this subject has been discussed a lot lately. In this paper we are going to analyse Institute of reverse burden of proof in corruption, as indicator of problems in practice. High officials in society, who have access to resources are inadequately controlled by the police and prosecution. In order to prevent them from taking possession of those resources illegally, Institute of reverse burden of proof is performing control of gained property. Institute of reverse burden of proof is related to transparency of property of all employees in state institutions.

58 Bojan Dobovšek PhD, Faculty of Criminal Justice and Security, Slovenia.

Repression performed by prosecution bodies could be response to organizations which are fighting against corruption and organized crime. However, preventive measures of other institutions are more taken. In this part, repressive measures related to hidden investigations will be explained. Hidden investigations are applied to discover perpetrators of criminal offences, especially those of organized crime. But, those measures are not omnipotent. They increasingly imply limiting of human rights guaranteed by state, pursuant to the Constitution. It becomes more difficult to determine whether state institutions caused corruptive activities. That is referring to police provocation problems, which in final phase prevents conclusion of court procedure.

Criminal offences of corruption are, as a rule, committed by two persons. Both of them derive profit from corruption and nobody wants to submit criminal charges or cooperate with Prosecutor's office. State response to such criminal offences is wide application of different hidden investigation techniques and secret procedures. Besides, more measures of proactive police work, which open more questions on human rights protection are applied. Thus, in this article we wanted to analyse theoretical consideration of reverse burden of proof, which would be late used in practice.

7.2 REVERSE BURDEN OF PROOF

One of the possible weapons against corruption, which has interfered with economy is establishing of the institute of reverse burden of proof. It seems that all modern states should consider this institute and establish it for the purpose of fighting against corruption. Arguments that state is more powerful factor in criminal proceedings are not true any longer, since criminals have become very powerful in court procedures. Also, they prevent work of institutions thanks to their relations in politics. Their lawyers are more powerful and better prepared to defend rights of criminals before court. If, in modern states we analyse introduction of measures against organized crime, it can be concluded that confiscation of proceeds from crime is

the most successful. Confiscation of proceeds could easily be performed through institute of reverse burden of proof. Since, generating of goods illegally is primary activity of organized crime, seizure of the proceeds from crime is the strongest penalty in fighting against organized crime (Dobovšek, 1997).

Directing of fight against crime to its economic component has been emphasized in international community and on many conferences on organized crime. Seizure of economic goods of the perpetrators of criminal offences has been analysed a lot through international conventions and other agreements (Marinko, 2001). According to the institute of reverse burden of proof, the suspect shall lose all proceeds unless he/she proves that proceeds are attained in legal manner and that the taxes are paid to the state. Application of this institute in USA was very successful. That is why its application in European community is considered. As it has already been mentioned, establishing of the institute is discussed, since it also implies influence on human rights. Justification of illegally attained goods and other assets is in opposition to basic principles of criminal proceedings, such as principle of innocence, right to fair trial and principle of equality. Also, investigating journalism through reverse burden of proof requires people to explain how they attained their assets and by which means.

In order to introduce these measures it is necessary to organize fiscal legislation first and to strengthen control and insight into financial resources, what is one of the important measures in European Community. Evaluation of criminal group assets is rather difficult, but financial resources audit (inspection) can help a lot. According to police statistics in all states, it can be concluded that criminal organizations benefit a lot from criminal offences and that it can be approximately evaluated. There are a lot of examples of criminals involved in arms trade, drugs and similar, who have attained wealth, been sentenced, but seizure of their bankruptcy goods after legal procedure has not been done. These examples demonstrate that it is necessary to amend the law, what several states have already done. Amendments of law enable efficient prevention of gaining proceeds from crime. It must also be pointed out that illegally attained money

can be used for future criminal offences, such as corruption and money laundering. Perpetrators of criminal offences can invest money gained through criminal offences into legal business and thus acquire social status what affects morality of young people who want to work legally.

Seizure of the proceeds from crime is traditional weapon of criminal law. Novelty is that this measure will be introduced for criminal offences related to organized crime, what implies alteration of legal systems themselves. This new legislation is aimed to: a) determining of illegally attained proceeds through application of presumptions, b) application of reverse burden of proof, c) wide application of seizure of the proceeds which have not been attained through criminal offences but are subject of particular criminal proceedings.

According to European Convention on Human Rights rational application of real and legal presumptions, according to the principle of proportionality (depending on rights being protected) and principle of equality of weapon is allowed. Regarding presumption of innocence, it is important that such presumption can be refuted. European Court of Human Rights thoroughly worked out presumptions at the charge of convict and confirmed decisions of the national court in states that have already been mentioned. If the person who handles assets which are legally attained is engaged in criminal proceedings, it is possible to apply presumption of seizure of illegally attained proceeds. This presumption is related to other issues, such as scope of proceeds, argumentation standards, relation of proceeds and illegal activities and possibility of complaint (Marinko, 2001).

Seizure of property is regulated also by the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime.⁽⁵⁹⁾ Articles of UN Convention against international organized crime are similar. Also, joint actions against money laundering, regarding identification, tracing, seizure and confiscation of proceeds from crime are very significant within European Community. It all points out that this subject will be more discussed.

59 That Convention primarily regulates prevention of money laundering.

7.3 SEIZURE OF THE PROCEEDS FROM CRIME

Based on analysis of cases and crime it has been determined that the issue of seizure of proceeds from crime has been neglected so far. Search bodies have not done enough regarding identification of proceeds, what would enable their seizure. Even more, bodies and state institutions have not performed their tasks regarding criminal offences of organized crime which proceeds are not sign of criminal offence (drugs, weapons, transport of people, prostitution and similar). It is obvious that seizure of proceeds from perpetrator of criminal offence is preventive instrument in fighting against organized crime. Criminals should understand that illegal attaining of money and proceeds does not pay. That idea is stated in all documents of European Union, thus prosecution and police are instructed to intensify their activities regarding seizure of proceeds.

Prosecutors, police and court must understand that seizure of illegal proceeds is meaningful only in cases when it is performed in the beginning of criminal search and suing procedure. Due to complexity of organized crime, it is necessary to have cooperation of all institutions in society, such as institutions for prevention of money laundering and tax institutions, with police and prosecution. According to the practice so far, if the seizure of proceeds was not done in early stages of procedure, criminals would transfer proceeds to other persons until validity of judgement, so in the end, state institutions could not perform seizure of the proceeds from sentenced criminals. It can be concluded that more resources should be allocated to training of police, prosecutors and other officials in financial institutions. New communication means and open borders enable criminals to perform faster money transfer from one part of the world to the other.

International cooperation has become required and necessary. Prosecutors assign identification and money transfer tasks to the police and other bodies, but must coordinate and take further actions. Insight into bank accounts, insurance policies, shares, register of vehicles, registrar of apartments and houses and other instruments

represent base for criminal property supervision. Based on those documents, property owned by criminals can be determined, so it is necessary to determine how they have attained that property. Determining of money origin is difficult job for state bodies, so institute of reverse burden of proof is more used in the whole world.

For successful work of prosecution and police it is necessary to have insight into complete documentation and state data bases. According to analysis of activities so far, it has been determined that state institutions have not been active enough regarding investigation of criminal offences for which proceeds are not sign of criminal offence. On the contrary, it is very rare that proceeds from criminal offences regarding drugs trade, weapons trade, prostitution are investigated, while seizure of the proceeds almost has never been applied. Proceeds have been seized only in those cases when during investigation besides drugs money was found. Proceeds belonging to criminals are instrument for committing more criminal offences and for investing into legal business. That is how criminals get into legal sphere and even in politics. Due to that new measures have been taken in Euroepan Union which are related to seizure of illegal proceeds from crime. Those measures should be established also by states in transition, in order to gain money and property required for development.

European Convention on Human Rights allows reasonable application of presumption and reverse burden of proof. Different states apply different presumptions, but similar to them is that they exactly define:

- when they can be used,
- scope of proceeds being seized,
- justification standards for determining relations between proceeds and illegal activities,
- possibility of using these institutes.

Based on analyses it can be concluded that seizure of proceeds with reverse burden of proof has in some countries become usual instrument for fighting against organized crime. Thus, further in the text you can find a task – fictive solving of criminal offence through

reverse burden of proof.

7.4 PRACTICAL EXAMPLE ANALYSIS

This part is intended for practical analysing of criminal activity case and it consists of starting analysis of proof through application of reverse burden of proof and one criminal case which is to be solved (FBI Manual, 1995). For solving cases of reverse burden of proof first it is necessary to collect data and documentation on person performing criminal activities. Data must be classified and organized according to income and expenditure standards, for each year separately.

First step is to ascertain assets acquired by the person during target year.

	1. YEAR	2. YEAR
Bank	20	120
Car	20	20
House	175	175
Shares	25	70
TOTAL:	240	385

Second step is to determine liabilities which must be paid by the person.

	1. YEAR	2. YEAR
Credits	50	30
Loans	10	5
TOTAL	60	35

Now, the assets acquired by the person during observed year

can be determined. (For the first year: $240-60=180$, for the second year: $385-35=350$.)

	1. YEAR	2. YEAR
Assets	240	385
Liabilities	60	35
Net value	180	350

According to calculations it is determined that assets of the person during first year amount 180 units, and during second year 350 units. Since we are interested in second year, it is necessary to deduct first year assets from the second year assets.

1. YEAR	2. YEAR	Net value realised during the 2nd year
180	350	170

During the second year the person realized 170 units of new net value.

Next step will be selecting data on running living expenses (energy, food...). That expenses should be added to the net values of the year we are interested in, since the person spent at least that amount of money for his/her everyday activities. Based on particular example, it is determined that those expenses amount 50 units and should be added to the net values acquired during the year.

Net values realized during 2nd year	Living expenses	Total value in the 2nd year
170	50	220

Next step will be collecting of documents regarding income statements for that person. In our example, it has been found that the person submitted income statements to the state for 125 units for

which taxes are paid. That sum must be deducted from the total value realized by the person during the target year.

Total value realized during 2nd year	240
Income statements	125
Income fraud	95

According to all above mentioned it can be concluded that the person acquired 95 units of assets for which there are no evidence documenting that assets have been legally acquired and that the taxes have been paid. Through the Institute of reverse burden of proof, 95 units of assets will be seized, which will be returned only in case that the person provides evidence documenting that assets have been acquired legally and that the taxes have been paid. This example is ideal and simplified, but it demonstrates purpose of reverse burden of proof application and it is intended for police, prosecution and financial institutions. According to my opinion, financial institutions should organize course in crime investigation for providing education in the field of data collecting and convicting criminal corruption offences and others.

7.5 PRACTICAL WORK

There is the task in front of you. Each participant in seminar (especially important for financial institutions, journalists, non-governmental organizations) will get the task, to analyse property of fictive person and to determine whether the property has been acquired legally or illegally. Means of evidence, such as investigation, discussion with witnesses and perpetrators of corruption and search of apartment and flat will be pointed out in the course of analysis.

7.5.1 Example of investigation of organized criminal activities

It is the year 2003 and we are investigating the case of Janez Novak from Ljubljana, Street Prečna No. 7. Based on selection of information it is evidenced that Janez Novak is the main person in criminal organization involved in drugs bussiness and economy investments with many corruptive cases. Based on additional information, the following data are gathered:

Janez has company called IMPORT EXPORT & CO. Ministry of Finance provided the following data:

YEAR	TOTAL SALE	PROFIT
2002.	8.500.000	1.325.000
2001.	4.700.000	515.000
2000.	4.000.000	395.000
1999.	2.000.000	60.000

As managing director of company Janez paid himself salary in the amount of 105.000 for the year 2002, 85.000 for the year 2001 and 55.000 for the year 2000.

Janez has open account at NLB on which pays his personal expenses. At the end of the year 2000 he had 5.000 on bank account, in the year 2001. he had 7.000 and in the year 2002. he had 9.000 on the bank account.

At Kmečka zveza he has opened savings book with balances, as follows:

at the end of the year 2000 - 7.800,
 at the end of the year 2001 - 18.000 and
 at the end of the year 2002 -20.000

By the insight into real estate register, the following data are gathered:

Appartment in Street Erjavčevi in Ljubljana, purchased on October 12th 2000 for the amount of 126.500. The appartment was purcha-

sed on instalment system at Hypoleasing trade Ljubljana. The apartment was paid off on October 31st 2002.

On December 15th 1999 he purchased flatlet on Beli Križ above Pirana for the amount of 68.000 at Stanospoljne cooperative Piran on instalment system, which was not paid off.

On March 22nd 2001 Janez bought a house on Bled for the amount of 244.400 on instalment system. There are no data on payment of instalments.

On July 3rd 2002. he purchased new house on instalment system in Trzin for the amount of 166.700, at Domžalska banka.

Mr. Novak has two cars. WW Passat (year 1996.) he purchased in the year 1999. for the amount of 14.400. Pesonal car, Mercedes, was purchased on February 28th 2002 for the amount of 37.850. Both cars were purchased at Auto & Cash, in Ljubljana and were paid by cash.

Janez Novak visits cultural events also. In the year 2001 in Modern Gallery he purchased three pictures by Ivana Kobilica for the amount of 14.000. In the year 2002 in the same gallery he purchased Ming dynasty vase for the amount of 17.500.

At the end of the year 2000 Janez owed to Hypoleasing 97.400 for his house in Street Erjavčeva and 58.500 to Stanospoljnja cooperative Piran for flatlet on Beli Križ. At the end of the year 2001 Janez owed 96.200 for the house on Erjavčeva and 57.900 for flatlet in Piran. On October 13th 2002 Janez paid off the total debt for credit at Hypoleasing in the amount of 95.300 (he had a discount). He still owed 57.300 for flatlet in Piran, what was declared at the end of the year 2002.

At the end of the year 2001 Janez owed 195.000 for house on Bled. At the end of the year 2002 Janez owed for Bled 193.100, and 134.600 for house in Trzin.

Based on information it was determined that credit was allowed to Janez in Novi Gorici in the year 2000 in the amount of 35.000. At the end of the year 2001 he owed 32.800 to bank and by the year 2002 amount of 20.000 more.

Ministry of Finance provided data on living expenses, as follows: in the year 2000 - 44.750; in the year 2001 - 64.400 and in the

TOTAL			
Known assetss income			
Unknown assetss income			

(Please read introduction, chapters or solution further in the text. It will help you solve the task.)

Solution:

First, active assets should be calculated.

Janez Novak

ASSETSS	31.12.2000	31.12.2001	31.12.2002
NLB	5.000	7.000	9.000
HK KZ	7.800	18.000	20.000
Lj. Erjavčeva	126.500	126.500	126.500
Piran	68.000	68.000	68.000
Bled		244.400	244.400
Trzin			166.700
WW	14.400	14.400	14.400
Benz			37.850
Pictures		14.000	14.000
Vases			17.500
TOTAL assetss	211.700	492.300	718.350

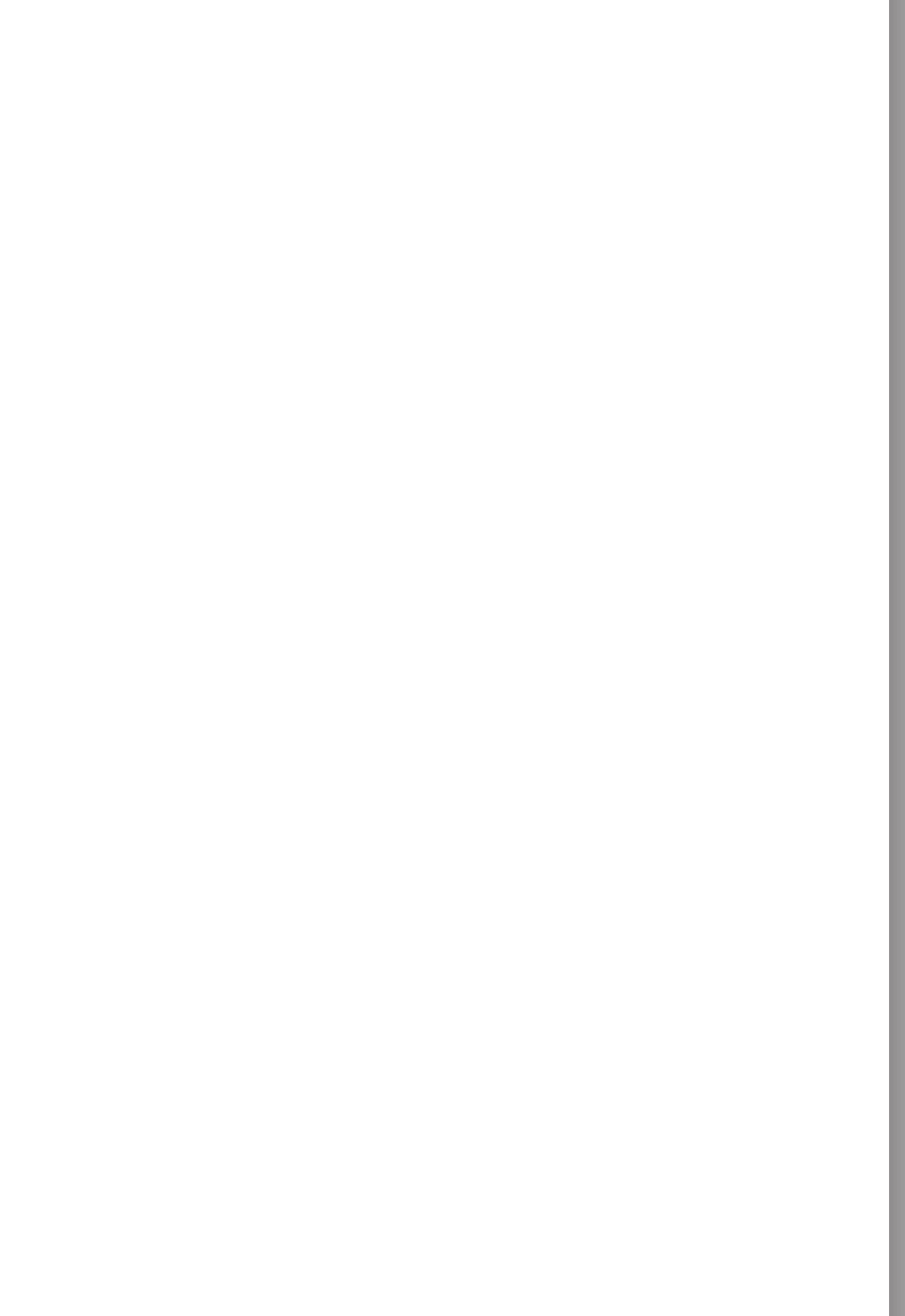
Then, Janez`s debts should be calculated (liabilities).

LIABILITIES (Debts)			
Lj. Erjavčeva	97.400	96.200	
Piran	58.500	57.900	57.300
Bled		195.000	193.100
Trzin			134.600
Credits	35.000	32.800	20.000
TOTAL: debts	190.900	381.900	405.000

Then, net value for each year should be calculated, living expenses should be added and known incomes deducted. At the end we should calculate unknown income.

Net (clear) value	30.800	110.400	313.350
Reduction of net value of the previous year		30.800	110.400
Increase of net value of the current year		79.600	202.950
Living expenses		64.400	81.700
TOTAL		144.000	284.650
Known assets income		85.000	105.000
Unknown assets income		59.000	179.650

By solving this example we wanted to stimulate you to actively analyse the article and continue further consideration of reverse burden of proof problems.



8



**PUBLIC PROCUREMENT
AND CORRUPTION**

8

PUBLIC PROCUREMENT
AND CORRUPTIONM.Sc. Zoran Krunic⁽⁶⁰⁾

Public procurements represent group of activities of Employer directed to economical purchase of goods, services and civil-engineering works. Economical spending of huge part of the budget resources of the state depends on procedures and manners according to which selection of Contractor is performed. Due to that, most of the countries regulate tender procedures financed from public resources by special Public Procurement Laws.

Public procurements can be divided into three basic phases:

- proposal for public procurement procedure, which includes determining of the procedure type and preparation of tender documentation,
- conducting of public procurement – from tender opening session to selection of the most admissible tenderer,
- conducting of public procurement and control over public procurement

60 Zoran Krunic, graduated from the Faculty of Social Sciences, University of Ljubljana, M.A. in defense studies from the same Faculty, from 1985. to 2004. served in the Ministry of Internal Affairs of Slovenia (inspector, lecturer at the College of Police and Security Studies, undersecretary in the Office and acting manager in the Office for European Affairs and International Cooperation), from 2004 expert of the European Commission (adviser for reform of Ministry of Internal Affairs of Georgia, projects in Russian Federation and Kosovo).

Employer may by the Decision on the beginning of public procurement procedure appoint expert committee for conduction of certain activities, related to realization of procedure, such as preparation of tender documentation, notarization of tender documentation, opening of tenders, evaluation of offers and similar. Number and structure of committee members are determined by Employer regarding subject and type of public procurement procedure. Members of expert committee must be experts in the field which is subject of public procurement and must not be in any kind of interest relation.

When decision on beginning of public procurement procedure is made, Employer must begin preparation of tender documentation, i.e. documentation which will be used by tenderers to prepare their offers. Main task of tender documentation is to clearly, explicitly and in detail present subject of procurement, conditions, criteria, deadlines, place of realization and other possible requests. Thus, potential tenderers must be presented all the information required for preparation of offers or applications. Clearly defined subject of public procurement of services, goods or construction with all parameters, conditions, deadlines and quality enables tenderers to prepare qualitative and easily comparable offers.

Information given in tender documentation must be equal to information given in public procurement notice. If the information were different, it would mean that the Employer wants to deceive certain Suppliers and Contractors and to prevent them from purchasing of tender documentation. Tender documentation is comprised of the following documents: Contract template, elements necessary for preparation of Bill of Quantities, technical documentation, plans and similar, what enables Tenderers to submit all necessary data systematically (Kranjc, 2004: 134). Regular offer is the one submitted in due time and which during tender opening session is determined, based on inspection and evaluation that completely fulfils all requirements set in tender documentation (Mužina, Vesel, 2004: 257).

Preparation of tender documentation is interdisciplinary activity which requires technical, economical and legal knowledge. That is probably the most important and the most difficult phase in the whole public tender procedure.

Compulsory elements of each tender documentation are conditions and criteria. Without them there is and there cannot be any tender documentation. Definitions of terms »condition« and »criterium« are provided in the Law. »Condition« is each element which is exclusive and must be completely fulfilled in the offer in determined manner. »Criterium« is the element of evaluation, comparison and decision making. So, difference between »condition« and »criterium« is that condition does not influence insertion into the scale, but its fulfilling enables insertion. Preparation of conditions and criteria for offer evaluation is, besides preparation of technical specification, the most significant task in the public procurement procedure. Legislator obliges Employer to determine criteria in advance. It is not possible that Employer in public procurement notice announce certain criteria, and that offer is evaluated based on other criteria which have not been predetermined in tender documentation. Failure to fulfil conditions set by the Employer, obligates the committee to declare the offer irregular (Mužina, Vesel, 2004: 467).

Technical documentation is the basic element of each tender documentation. It defines subject of public procurement and thus, potential tenderers also.

How will the Employer prepare descriptions of the subject of public procurement depends on subject itself. If the purchase order is more complex and/or complicated, descriptions will probably be very comprehensive and will comprise many drawings and technical specifications. If the purchase order is less complicated, description can be short and simple and may (but also should not) comprise different technical specifications. In any case, quality of offers will depend on the definition of the subject of purchase in tender documentation. Only precise description and clearly defined requirements of the Employer will enable preparation of qualitative offers.

Public procurement procedure may be open or limited. Transparent procedure allows for the smallest degree of subjectivity. Transparency is guaranteed by issuing public procurement and by public opening of tenders. Limited procedure can be divided into two phases: in the first phase, Employer through public notice – open competition collects offers of interested tenderers and chooses eligible,

who are in the second phase invited to submit particular offers. The lack of this procedure is that, according to the Law, public opening of offers is not foreseen in the first, but only in the second phase of the procedure.

Anyway, it should be pointed out that public procurement procedure is not completed when the most successful tenderer is selected. It is completed only when its realization is finished.

8.1 CORRUPTION

Laws of course can never be ideal, so that breaking of laws is not possible. Each of stated phases of public procurement conducting, starting with the request for public procurement conducting to its realization, comprises specific areas where possibility for unlawful activities is greater (Kodjela, 2002). In all phases there is possibility that persons who are in charge for public procurement conducting act illegally.

Concerning the fact that the proposal for conduction can direct public procurement, it is necessary to pay special attention to that element. There is possibility that preparation of the public procurement proposal, in a way that it contains certain specific requirements which can be fulfilled only by certain Contractor, is directed to him, what in advance causes excluding or limiting of potential competition. Breaking of law is mostly done concerning tender documentation. In that case, definition of rules is discriminatory, so the priority is given to certain offerer.

There are, as always, two sides: interest of the representative of the Employer and interest of the Contractor. Criminal offences and corruption can be committed at both sides.

International research, in which citizens of Bulgaria, Czech, Romanian, Slovakia and Slovenia participated warned about following possible irregularities:

- we were informally disqualified (offerer);
- it is impossible to get public procurement contract unless you misuse your relations and acquaintances or unless you pay for

- the service (offerer);
- they are trying to bribe me (Employer) – there are different types of bribe, from money to different services;
 - they are applying pressure on me (Employer);
 - misuse the acquaintances.

Acquaintances, relations and bribe are used in all phases, for getting information on tender requirements and procedures, as well as for influencing the evaluation results of public tender.

8.1.1 Fight against corruption

State must be protected from detrimental consequences which can occur in public procurement procedures. Protection is done by appropriate law/laws. At the same time, in the course of public procurement procedures, only honest, moral, ethical and professional persons must take part. Conscience of public officials is extremely important.

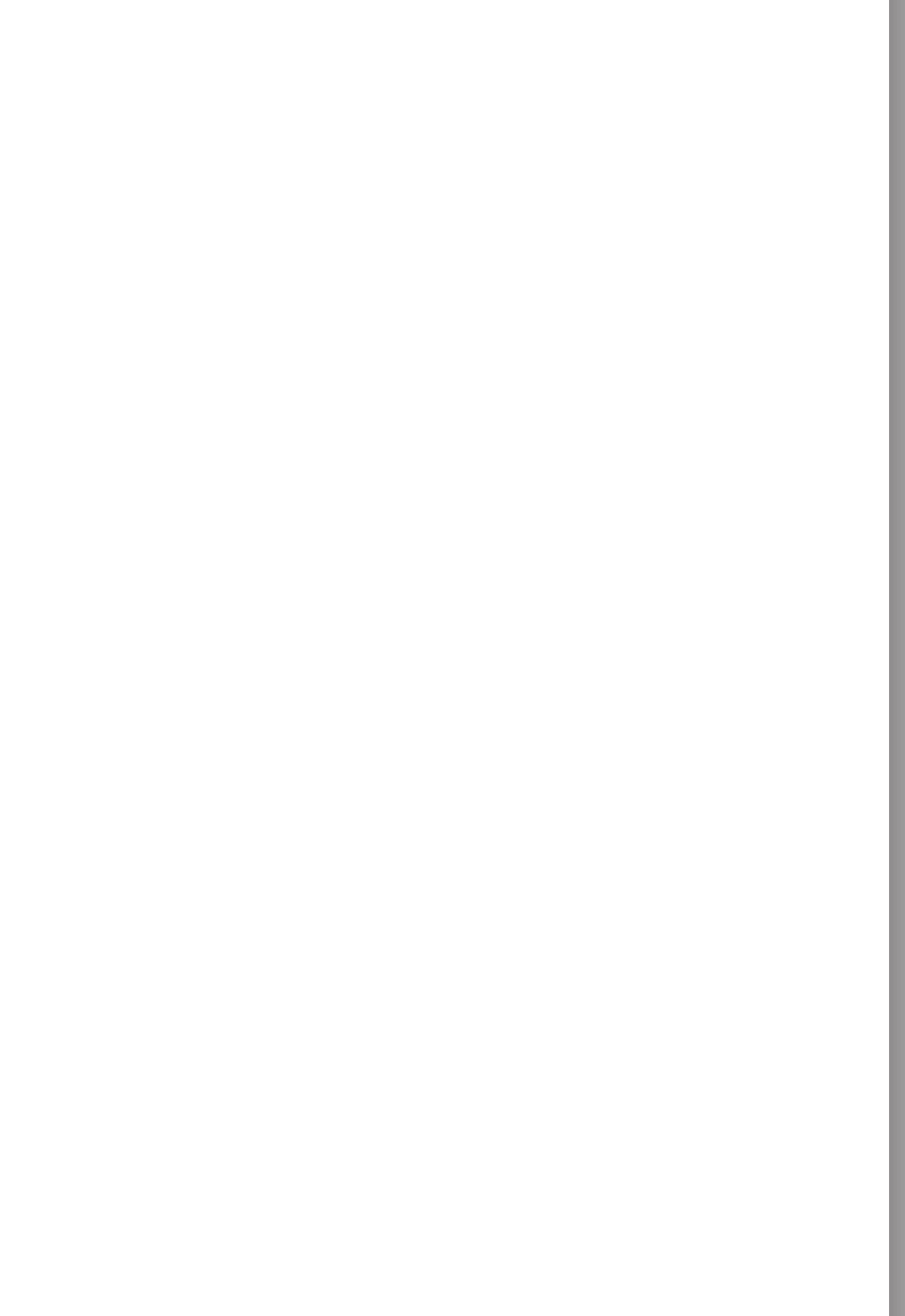
It is difficult to discover corruption in public sector, especially regarding public procurements. Even if it is discovered, it is very difficult to collect evidence material. Both sides involved in criminal offence (Employer and Contractor) are interested in keeping it secret. Criminal offences are hidden under cover of usual business. Besides that, business is in many cases protected by business secret. Persons from the side of Employer are usually involved in such activities, Those persons usually are very powerful and misuse their relations and power, what can prevent conducting of appropriate police investigation.

Police inspector must besides police knowledge also have good economical and legal knowledge. It can be said that investigation of these criminal offences is the one of the most difficult investigations. Corruption investigator concerning public procurements must answer the following questions: is there any trace who ordered, who checked receipt, who approved payment. Also it is necessary to find difference in relations between order, supply, payment, checking dates (deadlines for payment, who was given advance payment, why

are the payments late, etc.).

There are the following main problems in Slovenia concerning searching of corruption in public procurement procedures: lack of experts who are dealing with that issue, inadequate qualification, insufficient resources. Probably, the main problem is that there is no real political intention to oppose that problem in appropriate manner and in appropriate extent.

In all countries, serious social action for promotion of anti-corruptive behaviour is necessary. Thus, besides awaking of public, zero tolerance to all forms of corruption will be established. It is necessary to establish transparency mechanisms and to eliminate corruptive situations (more details in Dobovšek, 2002, 2004). The best controllers of power are civil society and mass information media, to which attention should be paid.



9



OUTLINES OF INTEGRITY

9

OUTLINES OF INTEGRITY

Bojan Dobovšek⁽⁶¹⁾ PhD

9.1 ETHICS, MORAL AND INTEGRITY

Increasing of corruption forms in society raises many questions regarding effectiveness of its detecting and eliminating. Repression, so far, has not given any results, so, it is necessary to search for new solutions. The most successful is preventive area, especially elimination of causes and possibilities for corruption. Since corruption is always done in private, there are no witnesses and no visible damage, but damage is done to the whole society. That is why conscience of people must be arisen – people should not perform activities which can create corruptive relations. In that case, moral standards, ethics and integrity of individuals and society play the main role.

Corruption should not be understood only through straight definitions stated in conventions and laws, but it is necessary to take into account all other forms, such as nepotism, clientelism, conflicts of interest and similar. At the beginning, it is interesting to point out that criminal law sometimes does not use term corruption, but in incriminations, related to this area, term bribe is used. Although, in theory, terms corruption and bribe are equalized, it is difficult to

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agree with that completely. If corruption and bribe were synonyms, than according to the legislation, it would mean that only persons who committed criminal offences of offering and receiving bribe are dealing with the corruption. However, term corruption is broader, i.e. besides criminal offences of offering and receiving bribe, other forms of unlawful behaviour are within the punishable area. So, it would be more accurately to talk about corruption in wide and narrow sense.

Corruption in narrow sense comprises criminal offences against official and other responsible duty, with predominant attitude that corruption should be defined in wider sense of that term. According to that attitude, corruption in wider sense understands negative phenomenon, which appeared from the very beginning of human society and establishing of first states, than developed and gained its forms depending on social, economical, political and other conditions determined by different historical periods, making by its immoral, antisocial and unlawful essence, damage to the society. Corruption has deeply been conditioned and caused, directly and indirectly, by social, economical and other opposites and by conflicts of interest between different social layers. It is the most dangerous form of economic crime characterised by: disguising, changeability, high level of social danger, variety of forms, wide spreading and internationalization, difficult proofing in criminal-proceedings, self-interest, perfidy of perpetrators and specific subject endangered by corruption, such as: legal functioning of state and economical institutions and services. In order to understand better the term corruption in wider sense, some characteristic activities of certain officials and other persons are mentioned. Primarily, there are different forms of misuse of social status and reputation in performing certain public functions, which are not state functions, only (members of parliament, leaders of political parties, managers of social – charity institutions or associations and similar), such as: doing different favours, based on friendship, making presents, creating different relations which are opposite to basic moral, custom and other accepted codes, offering gifts and organizing of banquets, as expense accounts, which turn into dissipating of state property, bribing of certain state and public officials, misusing of funds for commercials and commercial advertising, fictional fees

for fictional experts (advisers, associates and similar), fictional charges documented by fictional legal business and forged documents, making certain decisions by the most responsible managers through which, committing of numerous criminal offences of corruption is directly enabled.

Besides that, gaining of material proceed through misuse of the status, stealing by the officials in state sector, maintaining of unethical contacts with private sector (for example, by taking provision to conclude certain contract), bribing in case the state makes decision on certain rights of legal or natural person, misuse of information which are important for commercial and business issues (which public official gathered thanks to his/her function or status), preventing of competition or other activities. Corruption actors could be state officials at all levels, persons who work in different corporations, politicians on local and state level. It is important to point out that interest of the organized crime is to control all three sectors and to influence economy and politics of the state, creating thus climate of uncertainty and social disarrangement. Van der Westhuizen (2003),⁽⁶²⁾ says, that ethics is branch of philosophy dealing with immoral, while moral is dealing with practices and activities which we understand as right or wrong and indicates right behaviour in certain situations. Although, ethics and moral are determined differently, authors use them as synonyms. Moral behaviour means ethical behaviour, thus there are ethical codes and codes of right behaviour. Due to that, we will consider ethics here as philosophical discipline, which interprets what is good and what is wrong and establishes moral principles and standards regarding behaviour in certain professions. Moral will be considered as set of rules and standards of the society which are used to characterize behaviour of the individual as good or wrong.

Term integrity originates from Latin (lat. *Integritas*) and means completeness, honour, purity, harmony and similar, what is opposite to depravation, moral perversion, bribability, corruption and similar. (Pagon, Meško, Lobnikar, 2003: 147).⁽⁶³⁾ Integrity means also

62 Van der Westhuizen, E.J. (2003). *Etika pri upravljanju policijske dejavnosti in njenem izvajanju: Pogled iz Južnoafriške Republike*. V: Pagon, M., Meško, G. in Lobnikar, B. (ur.), *Etika, integriteta in človekove pravice z vidika policijske dejavnosti*, str. 79-91. Ljubljana: Visoka policijsko-varnostna šola.

63 Pagon, M., Meško, G. in Lobnikar, B. (ur.), (2003). *Etika, integriteta in človekove pravice z vidika policijske* →

manner of behaviour of institution and individuals who act honestly, independently, impartially, transparent and similar. Person who has integrity acts ethically, since it behaves morally and is not susceptible to unethical and immoral (corruptive) pressures. Personal integrity can be defined as behaviour which is in accordance with moral purity and which is basic characteristic of self-confidence and confidence in different organizations.

9.2 INTEGRITY AND PREVENTION OF CORRUPTION

Crime prevention is activity directed to reducing and excluding of dangers and risks, and it especially disables perpetrators to commit criminal offences. That activity »ante delictum«, before the criminal offence is committed, is very important for remedying of situations which would cause crime activities. Primary prevention comprises activities regarding avoiding of causes for occurrence and further development of crime. Secondary prevention is directed to early discovering of potential perpetrators of criminal offences and situations which can cause criminal offences, while tertiary prevention is directed to persons who have already committed criminal offence (corruption) (Meško, 2002).⁽⁶⁴⁾

The only useful manner for reducing of corruption is elimination of causes and circumstances, which enable and intensify occurrence and development of corruption. Repression thus remains measure for correction of already committed offences, according to the principle »prevention is better than cure«. Since corruption is an international problem, international cooperation is very important element in elimination of corruption. Due to that, corruption should be eliminated in the whole world. International institutions and Conventions advise us to act like that (Council of Europe, GRECO, OZN, OECD, World Bank, Transparency International and others).

Due to efficiency and rationality of preventive activities, those

dejavnosti. Ljubljana: Visoka policijsko-varnostna šola.

64 Meško, G. (2002). Osnove preprečevanja kriminalitete. Ljubljana: Visoka policijsko-varnostna šola.

mechanisms must be supported also by repressive mechanism, which will complement each other. Activities at legislative and institutional level must be mutually harmonized. First of all it is necessary to identify areas exposed to corruption. Then, mechanisms can be introduced, in order to prevent corruption in those areas. Two very important tasks of outline of integrity are identification of possible forms of corruption and measures for prevention of and fighting against corruption.

9.3 OUTLINES OF INTEGRITY

Outline of integrity is an up-to-date preventive method for establishing of legal and ethical quality of work of governmental and other institutions. It can be defined as measure of legal and real composition, which prevents possibility of corruption occurrence and development within institution. Outline of integrity consists of:

- evaluation of institution's exposure to corruption;
- data on persons responsible for outline of integrity;
- description of work processes, manner of decision making and determining of process as well as exposure of work places;
- preventive measures for prevention of corruption.

Outlines of integrity are important for reputation of the institution which is losing integrity through nepotism, clientelism, conflicts of interest and similar. Through outlines of integrity, conscience on weak points and vulnerability to corruption is raised, and the aim is to prevent and warn about corruption. Within the outline, system resistance to mistakes which can cause corruption is studied. Also, laws and rule-books are tested as well as possibility of their misuse in the course of creation or application. It is important that integrity of individual is not evaluated (it is done by integrity tests). System is evaluated as a whole, and after adoption of outline of integrity, when measures well known to everyone in the institution are introduced, breaches of the measures supported by everyone in the institution will be punished through situations which are opposite to the regu-

lations adopted through outlines of integrity.

Outlines of integrity can be successful only if all members in the institution understand that outlines are positive and moral issue for the institution and that everyone will thus make profit, unlike corruption, when only certain persons make profit. In other words, everyone must become aware of the benefit of the outlines of integrity. Thus, in the first phase it is necessary to demonstrate what will be gained by outlines of integrity and what will be lost by corruption in institutions and in society. Of course, those who gain profit in current corruptive business (nepotism and similar) will act in opposition to integrity, moral and ethics, but joint work supported by journalists and civil society can break resistance.

Outlines of integrity through prevention of corruption are based on transparency and prevention of establishing of networks which are base for corruption. Also, work satisfaction and efficiency are increasing. Benefit of the institution which has outline of integrity manifests in flow and larger amount of information which are important for decision making and competition. Managers (especially, politicians) must be ideal of morality and give example by their behaviour and lead people to non-corruptive behaviour, not only on declarative level but based on real behaviour.

Regulations, which enable existence of health institution, resistant to corruption are determined as important element of the outline. Regarding that, special attention must be paid to the following:

- external activities of individuals;
- business trips and private trips;
- accepting of presents, services, privileges;
- financial investments;
- activities of cousins and friends;
- access to information;
- application of official matters;
- political participation.

Preventive measures which are introduced must be provided for everyday application. They must not be complicated and difficult for implementation. Outline of integrity is cyclic work – when one is

finished, analysis and work on another, better outline start.

In the society it is necessary to achieve that people can recognize corruption and warn about that, but not to act corruptively. Civil society and media are the best controllers of government and its institutions. Police and prosecution must educate on prosecution of corruptive offences in the frame of legislation and new repressive measures.

9.4 PRACTICAL WORK

Participants in seminar are given necessary material and they should prepare outline of integrity for their organization and below stated instructions for practical work.

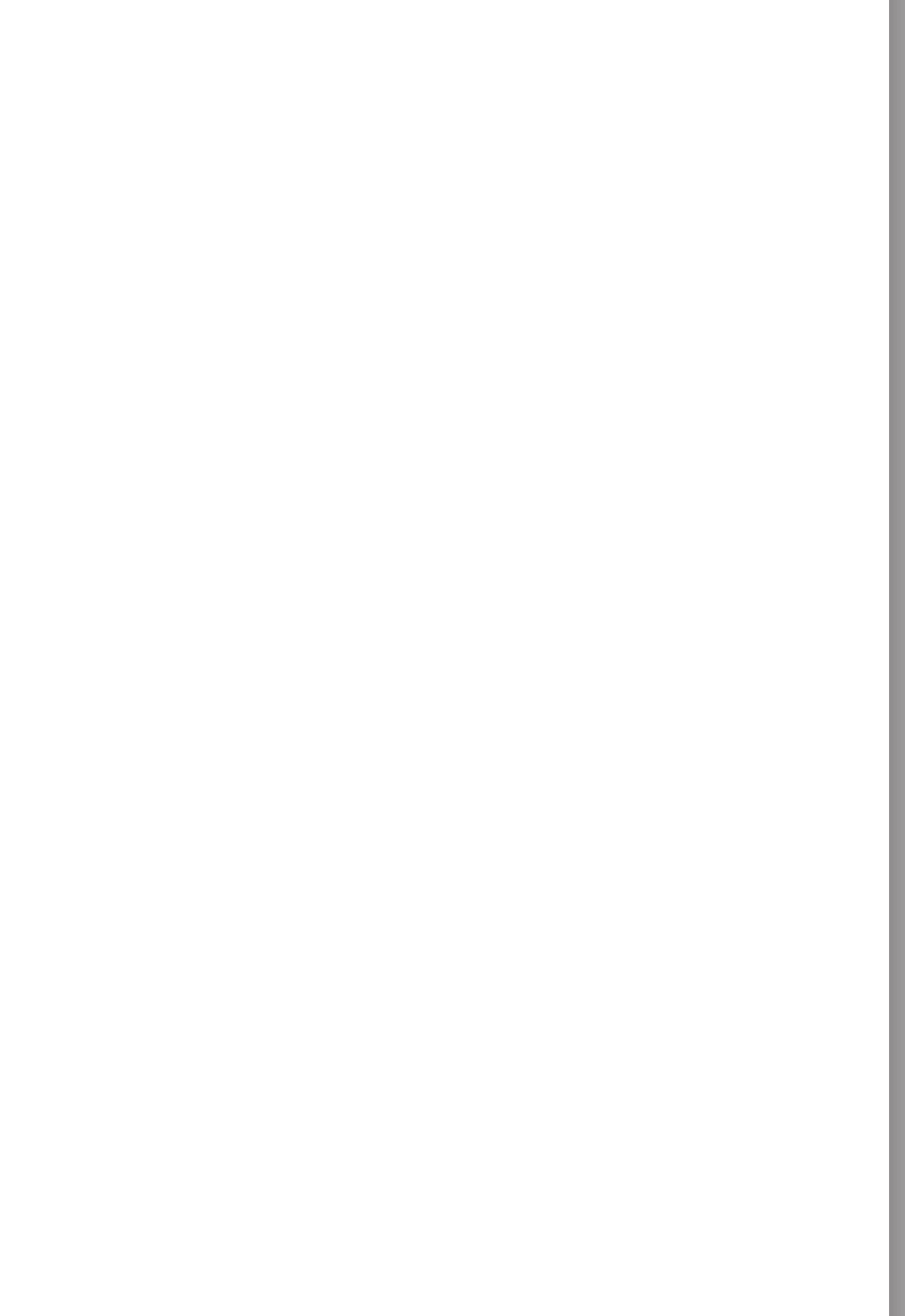
Outline of integrity is the preventive mechanism programme of certain organization. It represents method for identification of activities vulnerable to fraud and corruption in organization. In order to be realized successfully, organization must be businesslike, and if it is like that it will use this plan as crucial instrument. Outline of integrity will strengthen preventive mechanism and rouse awareness on vulnerable activities; thus it will rise level of integrity of institution. All that will increase efficiency, quality, respect and confidence in organization.

Outline of integrity consists of four phases: start phase, examination phase-examining of designated activities, evaluation phase – evaluating of existing forms of resistance and introduction of new measures for increasing of resistance and integrity improvement. At the beginning, it was explained to all employees that purpose of project which subject is preparation of integrity improvement outline is not evaluation of their personal integrity but evaluation of organisation integrity. In the second phase, all employees filled in questionnaire, than they were interviewed and additional meetings of the managers with employees were held. The main aim is identification of corruption risks, which endanger certain work positions. In the third phase, based on results of questionnaire analysis, interviews and additional meetings, outline of integrity improvement and reducing

of corruption risks at selected work positions is prepared. Also, all relevant data are gathered and additional review of laws and regulations, regarding identified work positions is performed. In the fourth phase, final report is written, all participants are introduced with proposals for improvement and deadlines for their implementation is determined.

Table presenting outline of integrity phases

I phase:	Preparation	Introduction
II phase:	Searching for risky activities	Questionnaires and interviews
III phase:	Evaluation of the existing preventive mechanisms	Analysis and proposals
IV phase:	Final phase with proposals for improvement	Report and launching





**ATTACHMENT
INTEGRITY PLAN**



Montenegro
Government of Montenegro
The Human Resources
Management Authority

INTEGRITY PLAN

In Budva, April 01st 2008

**OUTLINE OF INTEGRITY
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INTRODUCTION

Describe what do terms corruption and integrity mean (material for seminar), what will be done (activities and persons involved) ...

Outline of integrity improvement is the preventive mechanism programme of certain organization. It is method used for identification of activities which are vulnerable to fraud and corruption, within certain organization. In order to implement the outline successfully, organization must be businesslike, and if it is like that it will use this plan as crucial instrument. Integrity improvement plan will strengthen preventive mechanism and rouse awareness on vulnerable

activities; thus it will rise level of integrity of institution. All that will increase efficiency, quality, respect and confidence in organization. Integrity improvement plan consists of four phases: start phase, examination phase-examining of designated activities, evaluation phase – evaluating of existing forms of resistance and introduction of new measures for increasing of resistance and integrity improvement...

Regulations as base for work

MINUTES OF OPENING MEETING

Minutes of work group meeting

Meeting subject: Corruption and integrity within institution

On the opening meeting of project group:

1. DECISION

**on performance of activities regarding outline of integrity
(person in charge; responsible person).**

2. Project presentation to work group

3. Programme for outline of integrity preparation
programme for outline of integrity preparation,
anticipated group activities according to phases,
aims to be accomplished.

PHASES:

Preparation (Decision, group agreement...)

COLLECTING of regulations, work places – looking for activities
outstanding for corruption (subjective group estimate)

QUESTIONNAIRES, INTERVIEWS – estimation of the existing
preventive mechanisms and analyses of questionnaires and interviews

Final phase with proposals for improvement.

DETAILED DESCRIPTION OF PHASES:

Decision on PROJECT GROUP appointment

Pursuant to Articles 6 and 7 of the Rule book («Official Gazette 03»), the President has made the following

DECISION

WORK GROUP is established in order to implement the outline of integrity

For the President of the work group and for the Project team leader the following persons are appointed:

-

For the work group members the following persons are appointed:

-

Work group is obliged to perform tasks determined by this Decision in accordance with outline of integrity.

Supervision of work group functioning will be performed by the President

**PROGRAMME FOR OUTLINE
OF INTEGRITY PREPARATION**

BODY: Body ...
 PERSON IN CHARGE: Aaa Bbb
 PROJECT TEAM LEADER: Ccc Ddd
 PROJECT GROUP MEMBERS: Eee Fff, Ggg Hhh, Iii Jjj
 DATE OF PROGRAMME APPROVAL: 30.12.2008
 PROJECT START: 01.01.2009.
 ESTIMATED DATE OF PROJECT END: 01.04.2010.

Ref. No.	Activity	Start	Conclusion
1.	Project preparation meeting		
2.	Work group establishing		
3.	Meeting with employees		
4.	Collecting of regulations		
5.	Allocation of workplaces		
6.	Work place estimations		
7.	Filling in questionnaires		
8.	Interviews with employees		
9.	Risky work places estimation		
10.	Questionnaire analysis		
11.	Proposals for improvement		
12.	Final meeting with employees		

LEGAL FRAMEWORK OF THE BODY

It is necessary to name all legal acts and regulations used in the work of the institution.

Ref. No.	DOCUMENT NAME:	Valid until:
1.	Legislation (www. ...) (description – what is it organizing!!!)	
2.	Internal acts (Attachment ...)	
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		

6. BODY STRUCTURE

Insert body scheme here !

6.1. Catalogue of work places

Catalogue of work places can be found in the Act on systematization and in Catalogue on information of public importance.

Ref. No.	Name of the work place	Work description
1.	President	Description of activities
2.	General Secretary	
3.	Deputy General Secretary	
4.	Head of the office	
5.	Adviser	
6.		
7.		
8.	Officer	
9.	Courier	

7. CRITICAL WORK PLACES ESTIMATION

List of work places and corruption risk degree:

Ref. No.	NAME OF THE WORK PLACE (or group)	Degree risk
1.	President	2
2.	General Secretary	4
3.	Deputy General Secretary	1
4.	Head of the Office	5
5.	Advisers	2
6.	Officers	2

(1 – no risk, 2 – low risk, 3 – middle risk, 4 – high risk, 5 – very high risk)

General criteria for work place estimation:

- 1 – no risk, no information which will cause corruption, does not make decisions
- 2 – little possibility, limited information, no communication with surroundings
- 3 – middle possibility, has the influence on work process, has limited authorizations, determines work
- 4 – large possibility, has information, communicates with surroundings, makes decisions, authorised to sign
- 5 – huge possibility for corruption, authorization without limits, makes strategic decisions ...

7.1. Description of risky work places

Based on analyses, GROUP estimates that risky work places are as follows:

- 1.
- 2.

7.2. Description of risky activities

Describe how risky places are identified

Work place 1

Work place 2

Possible risks:

Work place – why there are possibilities? ...

Work place 2 –

Risk evaluation:

Work place 1 – description of authorization

Work place 2 –

QUESTIONNAIRES AND INTERVIEWS INTERVIEW

Institution:

Work place:

- 1.) What does term corruption mean to you?
- 2.) Have you ever found yourself in the situation that somebody asked you to exceed allowable limits?
- 3.) Is your work place risky – regarding corruption?
- 4.) What are the conditions which would cause corruption at the work place?
- 5.) What would you suggest to be done or what would you do, if you

had possibility, in order to decrease corruption risk at your work place and in your institution?

6.) What does term institution integrity mean to you?

7.) What do you suggest for increasing – building of integrity?

Date:

EVALUATION

8.1. Evaluation of conditions based on questionnaire analysis

Description of analysis and critical answers.

8.2. Evaluation of conditions based on interview

Description of interview analysis.
.....

Results with the most obvious difference in given answers and the results revealing disturbing conditions will be used in the course of evaluation of the questionnaire importance. Also, interview results, conversations with employees and management and of course, interactive work group discussions were used for general evaluation of performed activities by District Court in Belgrade, as well as for evaluation of possibilities for occurrence of corruption risks and integrity violation.

ANALYSIS

8.3. Regulation base (Analysis of regulations)

Description of regulation analysis and findings

Existing regulation base (Rule books, Laws, all stated under Item 5 of the Integrity Plan), does not completely regulate all activities and tasks which are in particular situations set to the executors, what can cause confusion in work and making of coincidental errors. Confusion is caused due to presence of several different acts which regulate the same area, since no sublegal acts are passed for the purpose of enforcing of the existing laws

8.4. WORK PROCEDURES

How they are regulated and findings - description.

8.5. Cooperation with other bodies

How is body cooperating ... (according to regulations, facts, other...)
Proposals for new cooperation ...

PROPOSALS FOR CHANGES - IMPROVEMENT

Based on performed analysis, it is determined that the following changes are necessary:

Regulation area

Deadline

Person, in charge

Work procedures

Deadline

Person, in charge

Manner of solving (for example, of discovered problems)

Deadline

Person, in charge

Cooperation with other bodies

Deadline

Person, in charge

Control of realization of proposed improvements

Deadline

Person, in charge

Who ...

When...

How...

Written records about control shall be kept. It is an integral part of outline of integrity!!

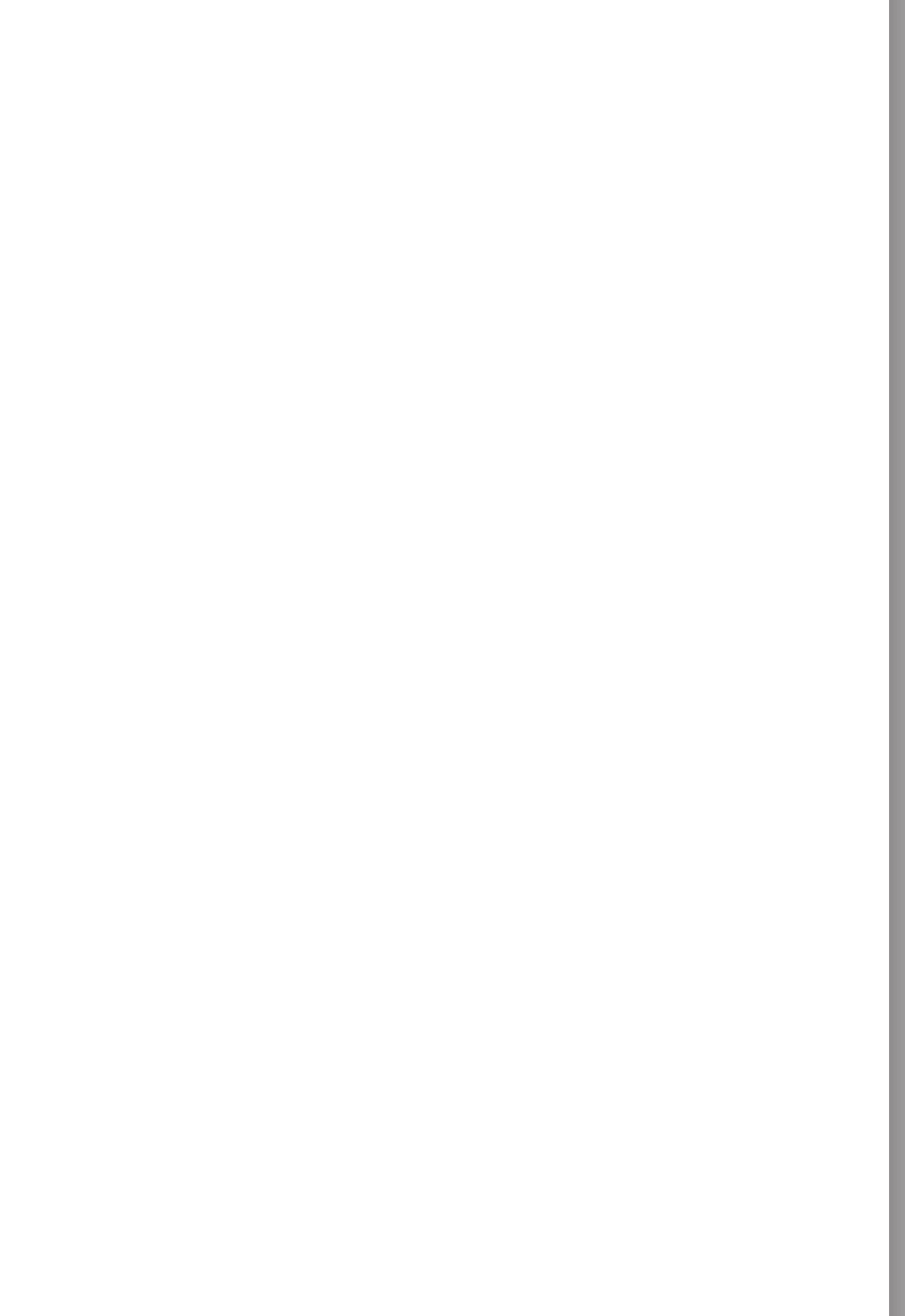
CONCLUSION

Description of main issues of the outline, what was done, suggested

All persons within institution must be informed about everything!!!

During preparation of Integrity Plan, work group concluded that the existing system solutions which regulate organization, activities and position of employees do not efficiently eliminate conditions for occurrence of corruption. Despite, there are possibilities to make certain improvements within current system, in order to strengthen integrity. For that purpose, work group performed analyses of all work places in order to recognize certain risks for occurrence of corruption, as well as for occurrence of other negative conditions which could violate integrity of institution and occurrence of risk circumstances which could endanger or offend integrity of the work

place, what is furthermore reflected to the discrediting of the institution and its activities.....





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