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Corruption-involving criminal acts and legal corruption – economic and legal aspects

It is impossible to understand specific processes and events taking place in the economic and social reality without a deep and – primarily, proper understanding of the issue of corruption¹, its purposes and mechanisms. The analyzed phenomenon is present in all spheres and fields of the contemporary economy (i.e. in the public sector², in courts³, in private business⁴), so it could be connected to every category of an organization⁵.

For the considerations made in his article a broad understanding of corruption was accepted, such as the exploitation of power, influences and professional status in order to reach particular interests and aims. This means that the analyzed behavioral patterns include both corruption-involving criminal acts and other forms of the so-called legal corruption⁶. It is the aim of this study to identify conditions and prerequisites significant to the processes of identification and assessment of selected decisions, behavioral patterns enabling the division for criminal acts and legal corruption practices. Due to the interdisciplinary nature of the problem and its complexity those issues are analyzed on the basis of economy and juris prudence. The main thesis of the study is reflected in the following sentence: the major reflection and aim of corruption is the establishment and strengthening of networks of influences, connections and dependences that eliminate all the competition, ensuring calculable economic and personal profits for the selected, privileged beneficiaries. The identification of circumstances and elements connected

¹ R. Fisman, M.A. Golden, *Corruption: what everyone needs to know*, Oxford 2017, p. 4; B. Rothstein, A. Varraich, *Making sense of corruption*, Cambridge, 2017, pp. 44–45; L. Holmes, *Corruption. A very short introduction*, Oxford 2015, pp. 2–4.

² J.R. Boles, *The Two Faces of Bribery: International Corruption Pathways Meet Conflicting Legislative Regimes*, “Michigan Journal of International Law” 2014, vol. 35, issue 4, pp. 674–713.

³ M. Ziniewicz *Korupcja w świetle odpowiedzialności dyscyplinarnej sędziów*, in: *Korupcja a bezpieczeństwo narodowe Rzeczypospolitej Polskiej*, P. Chodak (edit.), Józefów 2013, pp. 55–75.

⁴ T. Soreide, *Business Corruption. Uncertainty and Risk Aversion*, “CMI Working Papers” 2006, no. 4, pp. 1–30.

⁵ R. Grupa, M. Łączek, *Zjawisko korupcji oraz jej wpływ na funkcjonowanie organizacji*, „Organizacja i Zarządzanie” 2015, no. 3, pp. 79–90.

⁶ W. Walczak *Korupcja jako sieć wpływów, powiązań i zależności*, „Przegląd Bezpieczeństwa Wewnętrznego” 2018, no. 19, pp. 11–41.

with the division of corruption into its legal and criminal forms would require to provide answers to the three major questions:

- Is the existence of legal basis for decisions (actions) a prerequisite in every case that makes it impossible to analyze selected corruption practices against a potential criminal liability?
- How does the interpretation of regulations determine the immunity of certain behavioral patterns from criminal liability?
- Why is legal corruption so significant in the system of all authorities?

The analysis of corruption on the basis of the Law on the Central Anticorruption Bureau (CBA)

The notion of corruption in the Polish legal system is reflected in the provisions of the Law on the Central Anticorruption Bureau, of 9th June 2006.⁷ It should be underlined that – according to the provisions of this law, the analyzed phenomenon is defined according to a listed number of described situations. In order to continue the considerations it is absolutely necessary to quote and thoroughly describe the major prerequisites that specify and characterize behavioral patterns described as corruption.⁸

When analyzing those provisions special attention should be paid to the **major notions and clauses**⁹ used as **relevant differentiators** for the description

⁷ The Law on the Central Anticorruption Bureau, of 9th June 2006 (Journal of Laws of 2017, item 1993).

⁸ According to Art.1 parr.3a of the Law on the Central Anticorruption Bureau, corruption means an act which:

- „1) involves promising, proposing or giving, directly or indirectly, of any undue advantage by any person to a person performing a public function for themselves or any other person, in return for acting or omission to act in performing the person’s function;
- 2) involves demanding or accepting by a person performing a public function, directly or indirectly, of any undue advantage for themselves or any other person, or accepting an offer or promise of such advantage in return for acting or omission to act in performing the person’s function;
- 3) is perpetrated in the course of business activities, including the accomplishment of obligations towards the public authority (institution), involving promising, proposing or giving, directly or indirectly, of any undue advantage to a person who manages a unit which does not belong to the public finance sector, or who works for the benefit of such unit in any capacity, for themselves or any other person, in return for acting or omission to act, which breaches their obligations and constitutes a socially detrimental reciprocity;
- 4) is perpetrated in the course of business activities, including the accomplishment of obligations towards the public authority (institution), involving demanding or accepting, directly or indirectly, of any undue advantage by a person who manages a unit which does not belong to the public finance sector, or who works for the benefit of such unit in any capacity, for themselves or any other person, in return for acting or omission to act, which breaches their obligations and constitutes a socially detrimental reciprocity”.

⁹ All the reference are made by the author (editor’s note).

of characteristic features in a specific category of actions. The description of those prerequisites is necessary for the idiographic learning of elements significant to the criminal assessment of specific events, decisions, processes and behavioral patterns. Eventually, the investigation is aimed at a better explanation of the appearing issues which in many situations show that the differentiation between a criminal act and the so-called legal corruption is not always simple and clear. Analyses aiming at the identification the legal qualification of corruption should include assessments aiming at reliable, thorough and objective solution of the disputed issues.

The results of such activities are mostly determined and directly dependent on pre-assumptions and interpretations of legal provisions. With the above-mentioned arguments in mind one should notice that according to the provisions of the Law on the Central Anticorruption Bureau the notion of corruption is closely connected to obtaining, proposing or giving, demanding and promising of **any undue advantage**. Practically, there appears a major problem involving interpretation, i.e. the meaning of “any undue advantage”. In different words, which constitutive features, can we identify as decisive to determine if advantages obtained by a given person will be assessed as undue?

While trying to answer this question, one should start with a clear explanation of the sense of the word “any” in connection to the further part of the clause, explaining the notion of corruption, according to the provision of the Law on the Central Anticorruption Bureau. It should not raise any doubts that the plural form of the pronoun (in the Polish language form) “any” *de facto* means “everyone”. To put it shortly, it should be stated that from the logical and semantic point of view it includes all, with no exception, [kinds or sorts] of advantages that may be offered or obtained. Such a line of thought enables the statement that when **analyzing the issue of advantage**, it is correct and justified to understand this notion **in a broad sense**. Thus, it should denote gaining wealth, measurable financial gain, financial remuneration, as well as obtaining other economic profits (obtaining material gain), as well as personal gain (e.g. development opportunities, career, promotion, access to the mass-media, building a positive image) as well as political profits for a given category of organization, social group etc.

According to Rafał Wielki, the definition of material and personal advantage, is provided in the Law in a general and blurred way, which results in solving arguments with the already made work of the judiciary.¹⁰ According to Art. 115 § 4 of the penal code (...) *the material or personal advantage is the advantage for yourself and for another person*.¹¹ Paweł Daniluk perceives the obtaining of advantage from three different perspectives: (...) *as a result (effect) of a committed crime, the measure which the perpetrator is using in the course of committing the crime, as well as the aim of*

¹⁰ R. Wielki, *Legal and Criminal Law Aspects of Counteracting Corruption-Involving Crimes in the Borderland Protection*, “Polish Borderland Studies” 2016, vol. 4, no. 2, pp. 233–234.

¹¹ The Law of Penal Code of 6 June 1997 (Journal of Laws of 1997, no. 88, item 553, with subsequent amendments).

the perpetrator's activity.¹² Ryszard Eugeniusz Dominiuk explains that *the notion of material advantage in the criminal law is understood as a contemporary and the future gaining of wealth, expected material profits, general upgrading of financial situation*.¹³

According to the CBA, the notion of material advantage includes different gains providing for specific needs the value of which can be expressed in a monetary form. Besides cash, material advantage includes – inter alia, (...) *attractive items, excursions, as well as loans granted on preferential terms, debt reliefs or awarding a public contract*.¹⁴ In the everyday practice the most frequent are the situations when the personal advantage upgrading the situation of the beneficiary is directly connected with material advantage, for example promotion at work or obtaining a new lucrative job (the taking of a prestigious position, managerial position, lucrative job), a free-of-charge trip for an attractive professional training, numerous business trips, acceptance for internship, foreign scholarship, payment of educational costs, including costs of new professional training, etc). A significant question appears on the background of the above-mentioned considerations – which factors are conclusive to the statement (assessment) that material and personal advantages obtained by a person (or a group) should be due¹⁵ or undue? The Polish legal system does not include a legal definition of undue advantage provided for in Art.1 par. a of the Law on the Central Anticorruption Bureau describing the notion of corruption. The civil code – in turn, provides a passage on the undue benefit, which is a special case of unjustified enrichment. Here it should be clearly underlined that from the legal perspective the undue advantage and the undue benefit cannot be regarded as the same, as according to Art.115 § 4 of the penal code advantages could be material or personal.

Ewa Łętowska, when analyzing additional financial benefits obtained by the members of the Polish government, expresses the opinion that (...) *benefits not included in standard procedures are classic undue advantages*.¹⁶ The author, expanding this topic, explains additionally that (...) *the law requires to return the granted wealth. The person who has been groundlessly enriched should return the benefit to the impoverished This is the so-called condictio sine causa, Art. 410 § 2 of the civil code, the final sentence. Thus, there I a way, grounds and a procedure to undo the errors.*

¹² P. Daniluk, *Pojęcie korzyści majątkowej w prawie karnym*, “Wojskowy Przegląd Prawniczy” 2014, no. 1, p. 1.

¹³ R.E. Dominiuk, *Korupcja wyborcza jako patologia relacji państwo-biznes*, “Studia Prawnicze. Rozprawy i Materiały” 2017, no. 1, p. 162.

¹⁴ *Mapa korupcji. Zwalczenie przestępczości korupcyjnej w Polsce w 2016 r.*, Warszawa 2017, p. 23.

¹⁵ For a better explanation of the word “due” it is possible to refer such synonyms as “being entitled to”, “appropriate”, “proper”, “inherent”.

¹⁶ E. Łętowska, *Korupcja staje się narzędziem władzy*, 12 IV 2018 r., Oko.press, Warszawa, <https://oko.press/prof-letowska-korupcja-staje-sie-narzedziem-wladzy-mamy-instytucjonalizacje-kija-i-marchewki/> [access: 10 V 2019].

*The compulsory deposit to a recommended charity organization is the continuation of corruption – this town referring to this organization.*¹⁷

A completely different assessment of the same process (situation) is expressed in the sentence (i.e. statement given to the public) that (...) *those people were just entitled to this money.*¹⁸ The Prime Minister Beata Szydło provides additional arguments, that those were official awards, granted from the budget, approved in this chamber, and they were not watches given by businessmen-friends.¹⁹ The written answer to the MP enquiry of 07.02.2018 contains total amounts of benefits granted to individual ministers.²⁰ However, no legal basis was provided to justify the decisions that became legal actions resulting in specific financial operations, as the party submitting the enquiry did not contain such a question.²¹ Similar issues were mentioned in the subsequent letter of enquiry submitted by Krzysztof Brejza, of 09.02.2018, where he requests the (...) *access to copies of all decisions* in the matter with an explanatory memorandum.²² On 16.03.2018, after a subsequent MP enquiry in the matter of benefits granted to individual ministers, it was stated that the (...) *answer was submitted to the member of Parliament in the letter of reference number SPRM.4810.14.5.2017 of 2nd February 2018.*²³ From the perspective of legal provisions, according to Art 410 §2 of the civil code, (...) *a performance is undue if the person who makes it is not under any obligation or is not under any obligation towards the person to whom he makes the performance, or if the legal act binding him to make the performance was invalid and did not become valid after the performance was made.*²⁴ Thus, one can say that this is a special kind of groundless enrichment, resulting with obtaining advantages at somebody else's cost. The above-mentioned provision clearly indicates that groundless enrichment occurs when there is no proper legal grounds to execute

¹⁷ Ibidem.

¹⁸ B. Szydło, *Ministrom rządu PiS te pieniądze się po prostu należały*, TVN24, 22 III 2018 r., <https://www.tvn24.pl/wiadomosci-z-kraju,3/beata-szydlo-o-nagrodach-dla-ministrow-rzadu,824216.html>.

¹⁹ B. Szydło, *Ministrom rządu PiS należały się nagrody za uczciwą pracę*, "Do Rzeczy", 22 III 2018 r., <https://dorzeczy.pl/kraj/59620/Szydlo-Ministrom-rzadu-PiS-nalezaly-sie-nagrody-za-uczciwa-prace.html>.

²⁰ See more: *Odpowiedź na interpelację nr 18119 w sprawie nagród dla poszczególnych ministrów*, Warszawa 7 II 2018, <http://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=2991D101>.

²¹ MP enquiry no. 18119 to the Prime Minister in the matter of benefits granted to individual ministers, Warszawa 13 XII 2017 r., <http://www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=22A9E17C>.

²² MP enquiry no. 18119 to the Prime Minister in the matter of benefits granted to individual ministers, Warszawa 9 II 2018 r., <http://www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=6696407D>.

²³ *The answer to the MP re-inquiry no. 18119 in the matter of benefits granted to individual ministers*, Warszawa 16 III 2018 r., <http://www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=6D7E3002> [access: 10 V 2019].

²⁴ The Law of 23 April 1964, Civil code (Journal of Laws of 2019, item 80).

a specific performance or when the legal act binding them to make the performance was invalid.²⁵

We cannot talk about groundless enrichment when someone is paid remuneration for their work and other additions, according to their position. This is why the processes of taking over exposed positions in the public administration²⁶, Polish Television, National Bank of Poland, Institute of National Remembrance, Commission of Financial Oversight, foundation established by state companies, funds and agencies not funded by the national budget, supervisory and management boards involving state legal persons, prosecutor offices, courts,²⁷ intelligence services and in other public entities controlled by the government.²⁸

In the course of the analysis of the processes of (...) *taking control over the state by a party*²⁹, one should not narrow their perspective only to the government administration, because the same processes take place in the local government administration and in institutions subject to the local government.³⁰

Obviously, those decisions referring to the personnel policies are taken according to the binding regulations, however the question should be asked which real criteria and elements make this group of the chosen people entitled to special material and personal advantages, what makes them different from many other honest and talented Polish women and men, entitled to full civil rights? Is just the existence of certain legal acts in binding provisions a justification for regarding those advantages (positions, functions, lucrative salaries) as unconditionally due to the favored nominees?

Coming back to elements specifying corruption in the Law on the Central Anticorruption Bureau, it is worth noticing that the necessary condition of the above-mentioned acts is the corresponding of promising, proposing and handing of undue advantage in return for acting or refraining from acting in the frames of a specific function. For the purpose of further considerations, referring to the understanding of corruption, it is worth noticing that many of the processes referred to and commonly appearing in the management reality is a very clear and obvious example of an act of proposing and ensuring measurable and noticeable advantage by a public servant to other persons serving public functions **in return for acting within their function**. A specific example of this could be – among others, the promise of a job for a local government member, who – after changing the group they represent, would vote

²⁵ H. Witczak, A. Kawałko, *Zobowiązania*, Warszawa 2015, p. 96.

²⁶ B. Olszewski, *Problem nepotyzmu w administracji publicznej*, “Acta Universitatis Vratislaviensis” 2009, no. 79, p. 174.

²⁷ G. Kopińska, *Stanowiska publiczne jako lup polityczny. Polityka personalna w okresie od 16 listopada 2015 do 31 października 2017 roku*, Warszawa 2018, pp. 8–9.

²⁸ J. Paczocha, *Partia w państwie. Bezprecedensowa wymiana kadr w administracji rządowej i jej legislacyjne podstawy*, Warszawa 2018, pp. 4–8.

²⁹ *Ibidem*, p. 8.

³⁰ W. Walczak, *Zawłaszczanie stanowisk w administracji samorządowej – element umacniania systemu władzy*, “Acta Universitatis Lodzianis. Folia Oeconomica” 2013, no. 288, pp. 67–78.

in an expected way in the course of forming the provincial board of management; the proposal to keep the job in return for the support in the voting for the previously agreed management board, hiring local government members in urban companies, providing positions in municipal entities' management boards and boards of directors of for party colleagues, and providing vice-presidential positions **in turn for support in the course of voting and other political advantages.**

There are also situations when the holder of a given position is provided from the decision-maker (their protector) a list of other people to hire on specific positions, as well as the data of companies (entities) with which cooperation on specified terms, including subsidies, is expected, or a list of people to support in the course of selection for a specific public function. One can give numerous examples of such corruption-involving behaviors. Their common feature is that those acts are conscious, deliberate and intentional, aiming at obtaining guaranteed reciprocal benefits, ensuring gaining and maintaining power, and expanding of influences. Individuals participating in this crime are fully aware what they are participating in and they agree to do this. It is worth mentioning here, that **the transfer of profits and the exchange of advantages is the result of acts legitimized in appropriate regulations.**

The analyzed definition of corruption provides a perception and explanation to the secret service responsible for counteracting corruption in public and economic life and acts aimed against the economic interests of the state.³¹ However, it should provide guidelines for analysis and information collection, as well as intelligence operations aiming at proper identification of motives, aims and results of specified behavioral patterns. It should emphasized that - according to the legal system binding in Poland, the basis for criminal charges and liability for corruption-involving acts having the necessary elements of criminal behavior are the provisions of the penal code, and not the law on the CBA.

The characteristics of corruption

Corruption is perceived as a social problem³², with special idiosyncratic features. The complexity of the analyzed phenomenon makes the perception and assessment of the same situations and processes completely different. The differences in the perception and interpretation of specific facts result from the synergic impact of many factors that could include the knowledge, ability of analytical reasoning, ability to decipher conditions and circumstances influencing a given situation in connection with the correct identification of motives, pre-assumed aims and expected consequences of initiated actions. Logical reasoning is also of importance, as well as personal experience, which is of significant value in the course of analysis and intelligence operations. There is,

³¹ Art. 1 par 1. of the Law on the Central Anticorruption Bureau, of 9th June 2006.

³² G. Makowski, *Korupcja jako problem społeczny*, Warszawa 2008.

however, another important element, of major significance in the instances of different opinions on corruption-involving behavior. The important thing is **who gives their opinion and from which perspective the opinions, assessments and statements are made**. It is equally important how those statements can be broadcasted through the access to the mass-media, which are significantly responsible for awareness-making of the information consumers.³³ Individuals granted high material and personal profits for such reasons as personal connections, have a different, subjective assessment and opinion on the corruption-involving behavior than people who are marginalized and exploited by influential networks. Thus, the privileged will perceive corruption as a very positive phenomenon, while the perception of the rest will be completely different.

When analyzing the major attributes of the phenomenon it is worth to – first of all, pay attention to the value in the background of the parties involved. Reciprocal profits and realization of individual interests is to gain, maintain and strengthen the power, as well to protect the network of connections and dependences. An important connecting factor that enables efficiency is calculative trust, which guarantees the secrecy of the precious knowledge of conditions, circumstances and role of the group leaders – people directly involved, giving orders, providing ideas of the subsequent actions and their scale, etc.

It is the common feature of all the kinds of corruption that it involves direct, guided, willful and intentional acts. There are no chances – scenarios are well-planned, prepared, accepted to perform in a small group of insiders who decide on the division of roles and particular tasks. They usually refer to the earlier, informally agreed personal decisions (for example, support for the recommended candidate in the course of voting, appointment of the given individual on a high position, etc.), and making precise decisions resulting with specific financial effects (among others, the selection of a specific candidate of a favored tender in a tendering, signing a contract with a selected entity, company, individual person, lucrative order on favorable terms, granting subsidies, granting credit on preferential terms, selling the assets of a given organization, etc.).

Corruption has the special feature of the difficulty or impossibility of indicating the victim. Quite often individuals participating in competition procedures are even unaware that their losing to other candidates was decided upon before the formal announcement of the competition. Unfortunately, they do not have the evidence to prove that they were victims of an earlier agreement – corrupt acts. Similar situations take place also when public tendering is organized³⁴, especially when terms of specifications and criteria for the best offer are agreed upon. In the above-mentioned

³³ M. Mindur, *Korupcja a rola państwa w rozwoju gospodarczym*, “Studia i Prace Kolegium Zarządzania i Finansów” 2006, no. 74, p. 75.

³⁴ G. Makowski, *Postępowania jednoofertowe jako wskaźnik ryzyka korupcji w zamówieniach publicznych*, „Zarządzanie Publiczne” 2017, no. 4, pp. 525–550.

situations there is at least a theoretical chance and the possibility to apply for a job or a contract.

The policies in the personnel field involve appointment (employment) with no necessary open recruitment procedure. It is significant that in the instance of most economic entities the regulations do not require open recruitment, especially in the area of cooperation with external entities. So, in what circumstances and through which methods are people nominated and how are the agreements with external entities signed? If such a question was asked to the decision-makers one could expect only an official answer that all decisions are made according to the binding legal regulations. This is – however, the explanation of arbitrary and discretionary behavior, claiming the accordance with the law. However, it is not a true explanation and it does not provide methods and reasons of the choices made. In other words, this is not a proper answer and it does not explain the issue.

Interesting comments referring to **the characteristics** of corruption we can find in the report of the Central Anticorruption Bureau:

- The complex process of detecting crimes involving corruption is the consequence of the lack of the perpetrator's traces – this is the so-called latent crime, leaving no victims.
- Bribe is usually handed in with no witnesses and the operation is legalized, which creates a solidarity of perpetrators who are not interested in revealing the crime.
- The subjects of the crime are also government administration or political figures on high positions. Detecting the cases of corrupting such individuals is difficult because of their professionalism, proficiency in legal regulations and exploiting friendly connections.
- The above-mentioned circumstances significantly limit the efficiency of the detection of crimes involving corruption, which causes the fact that most of such crimes are covered by the so-called dark number.
- Currently the criminal acts are covered up by legal procedures, such as the participants in a tender procedure, who may be a part of a plot or even offer lower prices, being aware that one of them will win the competition for the rest.
- At present this phenomenon is more and more often an organized action with a clear division of roles among the criminal participants – i.e. the middlemen, paid protectors, public figures or even couriers travelling with money.³⁵

Roman Jakubowski thinks that the (...) *most typical features of corruption are commonness, entropy, functioning according to the rules of the market and interactivity*.³⁶ Józef Baniak shares the opinion on the commonness of the phenomenon,

³⁵ *Mapa korupcji. Stan korupcji w Polsce na podstawie danych statystycznych przekazanych przez służby i organy państwowe za lata 2004–2009*, Warszawa 2010, pp. 5–16.

³⁶ R. Jakubowski, *Cechy charakterystyczne korupcji i sposoby jej zapobiegania w administracji*, in: *Korupcja w administracji*, M. Myśliwiec, A. Turska-Kawa (edit.), Katowice 2016, p. 26.

adding that (...) *an important feature of corruption is its secrecy and hiding it from the public*, which guarantees the efficiency of the planned activities.³⁷ Helena Sutch adds, that (...) *corruption undermines competition, making only few the privileged on the market*.³⁸ To understand the **essence of corruption and its main goals the following features are of key significance**:

- Corruption a denial of honesty, equal treatment and rule of law, as well as the rules of social justice. Those values are replaced by a total, ruthlessness, contempt, self-interest, nepotism and back-door appointments.
- Corruption not only limits (undermines) potential competition, eliminating the chances of countering such a practice, as the binding law gives space for arbitrary and biased decisions that are binding and cannot be undermined if made legally by an authorized person, according to their powers.
- Corruption is a network, which means that it reaches beyond the scope of a given organization, leading to a form of incorporation of accepted norms, rules and behavioral patterns in the frames of management system binding in the remaining entities (institutions) to efficiently make them subject of the authorities' interests.
- Corruption is the most important element that joins together closed systems, i.e. organized groups taking care of private interests, privileges, careers, promotions for the chosen and reciprocal profits. These are made and directed by individuals belonging to the formal authorities in the organizational and legal sense and act on the basis of numerous contacts, influences and covert links (private, family relations, friendly and social, as well as political connections) enabling their superiority over the remaining members of the environment or a professional group.
- Corruption as an established network – a configuration of influences, ensuring the chosen ones a privileged status, guarantees efficient execution of private interests and individual goals and at the same time remains the key element that enables obtaining measurable material and personal gain.
- The aims and assumptions of corruption remain the same over the years, however – together with the changes of the society, economy and the legal system, corruption-involving mechanisms are changing and they are subject to modifications. Currently corruption-involving acts are taking the form of complex activities and economic processes that have legal bases, transferring property rights, etc. to avoid charges of accepting/transfer of any undue advantage to the beneficiaries.
- The broadly understood corruption has been the major factor and the fundamental connecting element for the system of government used to obtain,

³⁷ J. Baniak, *Łapownictwo w moralnej ocenie religijnych i niereligijnych studentów stacjonarnych i niestacjonarnych*, "Acta Universitatis Lodzianis. Folia Socjologica" 2012, no. 40, pp. 171–172.

³⁸ H. Sutch, *Strategia walki z korupcją. Teoria i praktyka*, Warszawa 1999, p 7.

execute and maintain the power and control over the subordinate institutions (organizations).

The issue for further analysis is the establishment whether material and personal profits should obligatorily (unconditionally) be regarded as due, if there is the basis for the initiated legal acts, which result with the increase of wealth. One can assume that the opinion in this controversial issue is of fundamental value to show the difference between legal corruption and a crime.

The prerequisites of dividing corruption into criminal acts and legal forms

When analyzing the activity aiming at using the authority for private interests and obtaining private profits it is possible to point to the examples of processes and decisions described as legal corruption.³⁹ In this context the most often non-criminal forms are given, such as nepotism, conflict of interests and favoritism.⁴⁰ It should be emphasized that such phenomena appear not only in public institutions⁴¹, but also in private entities.⁴² Such situations in the public sector are generally perceived as pathologies connected with the overuse of authority. The same situations in private companies are treated as a reflection of family business initiative, a proactive attitude and the ability to initiate profitable business relations. The government institutions – due to their tasks and money assigned to them, are a highly desirable, credible and solvent client for the business. The organizations from the public and private sector often have strong economic links, due to the completed operations, which result with serious sums of money transferred to the accounts of certain companies. Thus it seems logically justified that other processes and decisions of specific financial effects should

³⁹ D. Kaufmann, P.C. Vicente, *Legal Corruption*, “Economics & Politics” 2011, vol. 23, issue 2, pp. 195–219; P. Domadenik, J. Prašnikar, J. Svejnar, *Legal Corruption, Politically Connected Corporate Governance and Firm Performance*, “IZA Discussion Papers” 2014, vol. 8321, pp. 1–26; O. Cincer, M. Johnston, *Measuring Illegal and Legal Corruption in American States: Some results from the Edmond J. Safra Center for Ethics Corruption in America Survey*, Cambridge 2015, vol. 58, pp. 1–41.

⁴⁰ S. Rose-Ackerman, B. J. Palifka, *Corruption and Government. Causes, Consequences and Reform*, second edition, New York 2016, p. 11; C. Shore, *Culture and Corruption in UE: Reflections on Fraud, Nepotism and Cronyism in European Commission*, in: *Corruption. Anthropological Perspective*, D. Haller, C. Shore (edit.), London 2005, pp. 131–155; A. Graycar, O. Monaghan, *Rich Country Corruption*, “International Journal of Public Administration” 2015, vol. 38, pp. 586–595.

⁴¹ R. Karklins, *Typology of Post-Communist Corruption*, “Problems of Post-Communism” 2002, vol. 49, no. 4, p. 24; D.F. Thompson, *Theories of Institutional Corruption*, “Annual Review of Political Science” 2018, vol. 21, pp. 495–513.

⁴² H. Arasli, M. Tumer, *Nepotism, Favoritism and Cronyism: A study of their effects on job stress and job satisfaction in the banking industry of north Cyprus*, “Social Behavior and Personality” 2008, vol. 36, pp. 1237–1250; A. Argandona, *Private – To Private – Corruption*, “IESE Business School Working Papers” 2003, no. 531, p. 1–18.

be considered in the context of legal or criminal overuse of power for private gain or interests.

Paweł Majewski presents the opinion that (...) *corruption in the legal aspect is the illegal status of specific behavior (e.g. exerting illegal impact on decisions of the public authorities)*.⁴³ According to such a way of reasoning corruption is presented in the context of illegal impact on the decisions made by the public authorities. Thus – according to the above-mentioned author, if the indications, hints, pressure or other forms of exerting impact on decision-makers are not legally prohibited, the prerequisites for corruption are not present. Additionally, the reflections of P. Majewski could lead to a different conclusion, i.e. that the legality of decisions made by the public authorities excludes the possibility of perceiving such acts as corruption-involving. In other words, the legalization of acts done by the public authorities could provide a relevant and sufficient - the so called independent prerequisite, making the deepened legal and criminal interpretation of vital circumstances, real motives and aims connected with a given decision impossible.

The above-mentioned considerations allow to understand how complex corruption is as an issue and how difficult it is to analyze in the legal context.⁴⁴ One can think that among the most complicated (and controversial) themes are the elements/criteria enabling the differentiation between legal behavior and corruption-involving acts. It seems that such a classification is possible according to many factors that could be used as presumptions that set a benchmark for the division between criminal acts and other variations of legal corruption. The most important ones include the following:

- legalization of decisions (action), perceived in the context of the existence of legal basis, enabling specific legal actions, within the scope of granted powers,
- legal qualification and assessment of the proposed/obtained advantages as due or undue,
- legal assessment of circumstances in the context of the correct identification of targets and motives in the exchange of profits and the nature of relations between the parties involved,
- legal analysis and interpretation of the provisions of the penal code that bring the correct assessment of circumstances, motives and aims of the analyzed situation (process, decision), made by the government administration (services, prosecutor's office, courts), on the basis of logical reasoning, the collected information and life experience,
- the possibility of using material obtained through the intelligence measures of surveillance in order to find out the circumstances and prove motives and aims of the perpetrators of the corruption-involving crime in court.

⁴³ P. Majewski, *Raport na temat korupcji w polskim systemie ochrony zdrowia*, Warszawa 2007, p. 4.

⁴⁴ *Corruption and the Secret of Law. A legal anthropological perspective*, M. Nuijten, G. Anders (edit.), Hampshire 2007.

Decisions about personal issue

Considering the issue of legality one can refer to the decision made in the sphere of personnel. As it was explained earlier, in most cases the only – and legally sufficient, justification is that the nomination of a given person was executed according to the binding regulations. Such a way of reasoning will result in the conclusion that in such a situation a y acts undertaken by the authorities cannot be questioned and analyzed in the context of corruption. A slightly different perspective can initiate considerations of the circumstances of the above-mentioned decisions in the context of other, generally binding legal regulations, for example – the **Constitution of the Republic of Poland**. According to the principle of citizens' equality before the law provided for in its Article 32: all persons shall be equal before the law; all persons shall have the right to equal treatment by public authorities; no one shall be discriminated against in political, social or economic life for any reason whatsoever.⁴⁵ The above-quoted constitutional values seem to be clear and understandable, as they refer to the principles of equality and equal treatment of citizens by persons representing public authority . Having regard to the above-mentioned elements, it is possible to try to describe and assess the accessibility of selected positions for ordinary citizens in the context of “equal treatment”. In the situation where the regulations do not envisage open recruitment, individuals entitled to all civic rights do not have any chance to try to apply for a given position, so can we describe such a process as the reflection of equal treatment? For example, does somebody interested in – for example, a managerial position in the government administration and its subordinated institutions, in the civil service or in the chancellery of the President of Poland, in the offices of the lower or upper chamber of the Parliament, have the guarantee of equal rights in the application process, considering that they meet all the formal conditions and competence requirements? Another example could be positions in supervisory boards and boards of directors of companies including the state legal person participation, as well as in other entities subject to (with capital relations) the state. In this context another question could be asked, that is, if someone consciously resigns from the Member of Parliament mandate or a position in the Prime Minister's Office or from the town council without a hundred percent of certainty of obtaining a lucrative position in the board of directors of a company including the state legal person participation or a municipal company?

Grażyna Kopińska expresses thoughts that make a valuable contribution to those considerations. According to the author

(...) people interested in political activity obtain the information that the key to their career is building a network of connections and friendships. Their career or promotion in life will not be determined by competence, experience or reliability, but loyalty to the patron and clever getting rid of the competition. Citizens who

⁴⁵ The Constitution of the Republic of Poland of 2nd April 1997 (Journal of Laws. of 1997 no. 78, item 483, with further amendments).

can see that the legal regulations are not observed and that they can be avoided or change easily start to be convinced that they “are controlled” by dishonest people, or – which is even worse, that **honest people have no chances in such a system**.⁴⁶

According to Łukasz Szwejkowski (...) *corruption brings disrepute and loss of credibility to the idea of competition, because the **success in the corrupt environment cannot be reached without the participation in acts of corruption***.⁴⁷ Those are very apt thoughts and right insights. Thus, we are dealing with the situation with a group of favored beneficiaries entitled to lucrative functions, positions, payment and the rest of the citizens, who do not have the slightest chance to compete with them, on a lost position – obviously, in accordance with the law. To present a better image of the legal issues it is worth to quote the binding interpretation provided by the Constitutional Tribunal: The principle of equality (*Art. 32 of the Constitution*) *cannot be an independent basis for the constitutional claim. Bringing up this principle requires every time the indication – by the complainant, of the specific constitutional liberty or the specific constitutional right that should be breached in result of the principle of equality in their case*.⁴⁸ In the light of this opinion it is possible to connect the violation of the principle of equality with – among others, Article 1 of the **Constitution of the Republic of Poland**, according to which: *The Republic of Poland is a common interest of all citizens*, Article 2: *The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice*, Article 60: *Polish citizens enjoying full public rights shall have a right of access to the public service based on the principle of equality*, and Article 45: *Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law*.⁴⁹ Putting forward such objections would be impossible and groundless if the Constitution included the regulation that the Republic of Poland is the interest (i.e. private interest or wealth) of political groups forming the majority in the upper chamber of the Parliament and the representation of the local government elites, ruling over a specific area, and the occupation of government positions only by favored group (i.e. party activists, their relatives, aides, friends and other individuals closely associated to the authorities) with the blocking of other citizens entitled to full public rights at the same time, which should be a reflection of the social justice.

It is worth adding that even when the formula of open recruitment is used for the selection of people for government positions, there are no **appeal procedures** from

⁴⁶ G. Kopińska, *Stanowiska publiczne jako lup polityczny...*, p. 80.

⁴⁷ Ł. Szwejkowski, *Korupcja. Wybrane zagadnienia*, Training Materiale no. 87, Legionowo 2013, p. 16.

⁴⁸ Order of the Constitutional Tribunal of 27 February 2005 r., (Ts. 198/05), Inadmissibility of Constitutional Action for Annulment *Claiming the Violation of Third Person's Rights*, p. 2.

⁴⁹ The Constitution of the Republic of Poland of 2nd April 1997 (Journal of Laws. of 1997 no. 78, item 483, with further amendments).

the final decision. The recruitment procedure is final when the information on the result of the competition is announced. This refers not only to the local government positions, which is selectively raised by the Ombudsman in his report.⁵⁰ It is worth to quote the opinion of the Minister of the Internal Affairs and Administration about this issue. He claims that (...) *the attempt of regulating the completion of the recruitment procedure in the form of administrative decision could be perceived as interference in the autonomy of the local government units in the field of their human resources policies*⁵¹, while the procedure of appeal which allows bringing a decision to court is possible – for example, in the instance when the governor of the province gives a provisional decision to annul the mandate of the mayor of a town or a member of the local government council for the breaching of the anti-corruption law regulations.

An interesting supplement to the considerations on the nature of competitions is the opinion expressed by Ewa Maciejewska:

We do not really have doubts that competing for free judicial positions in a higher court has never been perfect, totally transparent and not raising any doubts in terms of fair rules. It is true that in the court of appeal in Łódź competitions organized before 2015 were apparent in the sense that the seconded candidate was always preferred. Usually it was also the only candidate, and even if their level of competence did not raise doubts in some 99% and they additionally proved themselves when making judgments on secondment, it has to be admitted that not everyone had equal chances to prove themselves with the good work on secondment, as the secondment was not offered to everyone.⁵²

Those valuable contributions move us closer to the knowledge of mechanisms that – unfortunately, are not mentioned in reports ordered and financed by NGOs.⁵³ Special attention, in the opinion of E. Maciejewska, should be paid to the words referring to the candidate preference methodology applied according to the law, e.g. suggesting the chance of seconding and the issue of the number of people applying to participate in the competition. This can be understood in such a way that no reasonable

⁵⁰ *Report on the compliance to the human and civil liberties in 2017 and on the activity of the Ombudsman*, Warszawa 2018, p. 282, <https://www.rpo.gov.pl/pl/content/informacje-roczne-o-dzialalnosci-rpo> [access: 10 V 2019].

⁵¹ *Ibidem*, p. 282.

⁵² See in more detail: E. Maciejewska, *Did they conflict us successfully?*, [sedziowie.nazwa.pl](http://www.sedziowie.nazwa.pl/nucleus/index.php?blogid=1&archive=2018-10), 20 X 2018, <http://www.sedziowie.nazwa.pl/nucleus/index.php?blogid=1&archive=2018-10> [access: 10 V 2019].

⁵³ See B. Pilitowski, M. Hoffman, B. Kociołowicz-Wiśniewska, *Skąd biorą się sędziowie? Raport z badania procesu selekcji kandydatów na wolne stanowiska sędziowskie przez Krajową Radę Sądownictwa*, Toruń 2017, <https://courtwatch.pl/baza-wiedzy/publikacje/> [access: 5 V 2019]; B. Grabowska-Moroz, M. Szuleka, *Od kadr się zaczyna. Zmiana prezesów i wiceprezesów sądów powszechnych w okresie od sierpnia 2017 do lutego 2018*, Warszawa 2018, <http://www.hfhr.pl/publication/od-kadr-sie-zaczyna-zmiana-prezesow-i-wiceprezesow-sadow-powszechnych/> [access: 10 V 2019].

judge would start such an initiative without obtaining a clear hint on the issue. One of the arguments supporting such an attitude could be the awareness that there are no real chances of competing with a favored candidate, so there is not much sense in losing and – consequently, infamy, ostracism in the community. Other elements can be connected to the fact that such an independent application to the competition (without an informal recommendation) without any chances of success could be remembered by the superiors as the lack of discipline and a wrongful assessment of one's competence level in the context of promotion for a higher position. Other opinions of this author, referring to the topic and very meaningful, are provided on the aims and intentions of actions undertaken currently by a part of the judicial community (...) *mutual efforts to stop the wrongful, unconstitutional changes and not allowing the entering and promotion in the profession of people who stood out only with their uncritical support of one political network that wants to take control over the judicial system.*⁵⁴

Tomasz Krawczyk talks about the elements that – in his opinion, are decisive for decisions related to human resources in the Polish judiciary system:

In this case the similarity of both the winning candidates results with the conclusion that it was not about wrongful choices but just promotion, at the cost of better colleagues, of at least part of the people who took positions in courts from the new government (...) in the scale of the whole country the new National Judicial Council plans to decide upon 2000-2500 competitions for judicial positions during its term; it's the number of wrongly promoted and – looking at the issue from the other side, wrongfully omitted in the promotion process, will reach 660 - 825 positions. There appears the question whether the Polish society can afford to select such a high number of judges in the way that not only raises serious objections, but is also just defective and executed for political ends. Additionally it will generate inevitable conflicts with the rest of the judges' community. (...) The whole thing goes down to the dose of interpretative flexibility one is ready to present, and the flexibility – as the current governance has proven – can be practically unlimited.⁵⁵

The above-mentioned (publicly given views) voiced by judges of regional courts, need a serious comment. Firstly, they indicate that decisions referring to human resource management are fundamental for the government system and provide a hint on the possibility of acting in connection with the binding or amended - for certain reasons – law. This – however, is not limited to the judiciary. Secondly, the objections forwarded in reference to the elements considered by the competition commission (which is the role of the national Judicial Council) that are decisive in the process of allowing a person to begin a career as a judge are in fact the confirmation of the previous assumption

⁵⁴ See in more detail: E. Maciejewska, *Nominaci neoKRS*, 24.02.2019, <http://www.sedziowie.nazwa.pl/nucleus/index.php?itemid=108> [access: 10 V 2019].

⁵⁵ See in more detail: T. Krawczyk, *Więcej niż trzydzieści trzy procent*, 3 V 2019 r., <http://www.sedziowie.nazwa.pl/nucleus/index.php?itemid=103#more> [access: 10 V 2019].

that the staff-related decisions are arbitrary, biased and discretionary. The fact that they are made according to the binding law by an authorized body does not make them objective, justified, fair and just. What is important, this statement has a **broader dimension** and refers not only to the decisions made by the former members of the National Judicial Council, but also to decisions made by other public agencies and the representatives of private companies, NGOs and other economic entities. Thirdly, there is a significant difference between the above-mentioned personnel decisions as it is only in the case of announcements made by the National Judicial Council the individuals with a negative assessment can bring the decision to court. This refers to the announcements on the election for judicial positions in general courts. Recently, on the basis of the judgment of the Constitutional Tribunal of 2 March 2019 Article 44 par. 1a of the Law of the National Judicial Council has been regarded as incompatible with Article 184 of the Constitution⁵⁶ (it referred to the appeal forwarded from the announcement of the National Judicial Council on the selection process for the position of the Supreme Court judge). At the same time it was regarded that Article 9s of the Law of 12 May 2011 on the National Judicial Council (Journal of Laws of 2019, item no. 84) is compatible with Article 187 par. 1 point 2 and par. 4 in connection with *Art. 2, Art. 10 par. 1 and Art. 173 and Art. 186 par. 1 of the Constitution of the Republic of Poland*.⁵⁷

It should be clearly underlined here that the binding legal do not include the appeal (court control) of other decision-making processes **connected with the use of power and the assigned authority**, i.e. the **law does not enable the appeal of personnel decisions**, that is legal acts remaining in the sphere of individual issues connected to the filling of public functions (inter alia – in the government administration, local government administration, in the secret services, the Prosecutor's Office, in the offices of the President, upper and lower chamber of the Parliament, etc.) not to mention about private entities. Obviously, not only the individuals that were not selected for public service, as procedures do not include open recruitment, are the issue. It is also about the individuals that were negatively assessed in the course of the competition procedures. Besides just a few exceptions referring to the selections for a term position (for example, the President of the Supreme Chamber of Control, the National Bank of Poland, the Ombudsman) most people can be deprived of their positions overnight (and exchange them with someone else's nominee) without the obligation of even justifying such a decision.

Referring to the making of decisions on the appointments, criminal forms of corruption can appear in situations when a person could demand a remuneration in

⁵⁶ See in more detail: The order of the Constitutional Tribunal of 25 March 2019, reference number: K12/18, *Wybór członków KRS przez sejm spośród sędziów; odwołanie od uchwały KRS dotyczącej powołania do pełnienia urzędu na stanowisku sędziego*, <http://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/10521-wybor-czlonkow-krs-przez-sejm-sposrod-sedziow-odwolanie-od-uchwaly-krs-dotyczacej-powola/> [access: 10 V 2019].

⁵⁷ Ibidem.

the form of Money or other undue advantage in return for the possibility of hiring, appointment or the mediation to arrange this kind of agreement. The exceeding of the authority or not performing the duty of a public official (Article 231 of the Penal Code) is possible⁵⁸, when in the frames of their authority and according to the appropriate regulations a decision referring to the personnel decisions other regulations of the binding law are violated. An example of such a situation could be the appointment of an individual for a function in a supervisory board, which violates the prohibition of connecting managerial positions defined in the anti-corruption law or the law limiting the salaries of top managers of state-owned entities.⁵⁹ Joanna Gaweł rightly points out that the basis for the liability of a public functionary, according to Article 231 of the Penal Code, is an act (...) *performed to the detriment of a public or individual interest*. The author adds that this (...) *acting to the detriment should be understood as the kind of behavior that potentially brings about a potential threat to a legal interest, both public or private. Thus, a material effect is not required, as the threat itself is the prerequisite of liability*.⁶⁰ Agnieszka Barczak-Oplustil: presents a similar opinion: (...) *the requirement of respect of human dignity* or the prohibition of unequal treatment includes also public functionaries and its violation in the course of performing duties is the act of not performing one's duties provided for in Article 231 of the Penal Code.⁶¹

The above-mentioned opinions imply that under such an interpretation some decisions, although made according to the binding regulations, can be assessed in the context of acting to the detriment of the public and private interest as the punishable excessive use of power.

Decisions referring to economic issues

Another sensitive area, where corruption-involving activities appear most often, are legal activities connected with the management of the entrusted assets and financial expenditure, inter alia – the sale of property, purchases of commodities and services, organization of tenders, granting subsidies, entering into contracts with external entities. In particular it refers to contracts for intangible services, for example legal services, ordering expert opinions and analyses, business consultancy, promotion and marketing, public relations, insurance, organization of trade fairs, training, sponsoring,

⁵⁸ Z. Kukuła, *Przestępstwo nadużycia władzy – odpowiedzialność karna funkcjonariusza publicznego*, “Kontrola Państwowa” 2018, no. 5, pp. 108–124.

⁵⁹ W. Walczak, *Aspekty prawnokarne naruszenia przepisów tzw. ustawy kominowej*, “Państwo i Prawo” 2015, no. 8, pp. 52–66.

⁶⁰ J. Gaweł, *Przekroczenie lub niedopełnienie uprawnień przez funkcjonariusza Policji jako przestępstwo*, in: *Odpowiedzialność prawna funkcjonariuszy publicznych. Wybrane zagadnienia*, M. Giżyńska et al. (edit.), Olsztyn 2017, pp. 138–139.

⁶¹ A. Barczak-Oplustil, *Naruszenia Konstytucji RP a zakres odpowiedzialności funkcjonariusza publicznego z art. 231 k.k.*, “Czasopismo Prawa Karnego i Nauk Penalnych” 2017 no. 4, p. 143.

etc. Those are the most frequent economic operations used for legal transfers of financial assets from a given organization, which is justified by the need of completing tasks connected with the ongoing operations and performing of statutory tasks. The basic problem is that those are legal economic activities that have legal grounds for the obtained profits, thus without an efficient analysis and a comprehensive control⁶² one cannot present charges of undue advantages. So, the decisions on those issues are a very convenient and safe formula for the crime of corruption in every category and organization.

However, it is beyond doubt that in a situation when upon the arbitrary and discretionary decisions lucrative orders go to a favored economic entity, it is possible to suspect that it is not just a coincidence, but deliberate misuse of authority for private interests, that is – legal corruption. This comes down to the fact that no other entity or individual person has any, even illusory, chance for a given contract, as the only chosen beneficiary was selected before and a certain amount of financial assets will be transferred to his account. No other factors mean anything to the decision made in this respect, as the priority is to eliminate potential competition and ensuring the privileged position for the previously chosen candidate. It happens very often that the lucky person is offered a contract for an unlimited period of time and its contents contain numerous buffers, in case a new authority wanted to put an end to such a contract. So, the basic message of such decisions is a complete elimination of competition and guaranteeing long-term economic profits for a chosen company. However this does not provide grounds for stating that every time in such situations criminal acts are committed.

Martin Božek notes that (...) *an act of crime is a normative category, whose constitutive features are defined in criminal regulatory acts (Penal Code)*.⁶³ Taking into consideration the above-mentioned, each and every case should be thoroughly examined in the context of major aspects which could indicate whether the analyzed case is only a reflection of instrumentally used authority or if a situation taking place in the sphere of economy is an act of crime. Zbysław Dobrowolski says (...) *that the invalidity of agreements or the provisions of agreements including acts of corruption is provided for in Article 58 § 1 and 2 of the Civil Code*.⁶⁴ It is difficult to agree with this statement, due to several reasons. Firstly, the signing of an agreement with a given entity on certain conditions, obtaining a single-source contract can be the way of transferring profits in the frames of legal corruption. Secondly, the arrangements made in the context of a planned act of corruption never come in a written form of an agreement, but remain among the few members of the interested parties.

⁶² W. Walczak, *Działania analityczno-informacyjne identyfikujące mechanizmy korupcyjne w procesach zarządzania*, "Przegląd Bezpieczeństwa Wewnętrznego" 2017, no. 16, pp. 55–72.

⁶³ M. Božek, *Zwalczanie przestępstw jako ustawowe zadanie Agencji Bezpieczeństwa Wewnętrznego. Stan obecny i postulaty de lege ferenda*, "Studia Iuridica Lublinensia" 2015, vol.24, no. 1, p. 36.

⁶⁴ Z. Dobrowolski, *Szkoły publiczne w procesie przeciwdziałania korupcji*, in: *Wybrane zagadnienia zarządzania i przywództwa edukacyjnego*, R. Dorczak (edit.), Kraków 2018, p. 26.

When analyzing an economic situation resulting with specific financial effects it is necessary to firstly thoroughly identify **motives and aims** of the perpetrator from the perspective of **financial profits**. For example, in the course of analysis of setting tender criteria favourable for a specific beneficiary it is possible to provide two different ways of reasoning and different perspectives. Looking at the process from the formal and legal perspective one can say that the ordering partner, according to the binding regulations, is entitled to a free formatting of their requirements to obtain the best offer from the company which gives the guarantee of the correct performance and providing the highest-quality product, etc. The basis of defining detailed conditions that the potential bidder should meet is an objective assessment of requirements of the buyer. The fact that only one entity forwarder a bid corresponding to those requirements can only be evidence of the fact that the remaining competitors were rightly (legally) rejected, because their bids did not correspond to the buyer's expectations. There is no doubt that decisions in terms of formatting tender requirements are significant for the result of the tender, as they can favour a given entity and efficiently limit –and even eliminate the potential competition.

When applying a slightly different optics one can assume (take the assumption) that such acts undertaken by the ordering party are the reflection of conscious decisions, made with a direct and criminal intention, which are intended to guarantee material profits for a formerly – informally, selected entity. Those above-mentioned motives and aims of the perpetrator are the only existing and true explanation of the **mechanism of fixing tenders** for the selected, favored beneficiaries. According to this course of reasoning it turns out that under the guise of legal activity it is possible to use one's authority in the manner enabling economic profits for the chosen individuals. The basic problem, significant for the correct assessment of the considered decisions is the proper diagnosis and assessment of the detailed criteria/requirements of the tender procedure, to ensure the winning of the favored company, as well as efficient blocking of the competition. First of all it is about the small formal conditions, the meeting of which cannot be justified with objective reasons which are necessary to ensure the needed profits of the buyer, in connection with the proper performance of the tender, i.e. tasks, work, services or purchase of commodities.

A correct deciphering of such limiting conditions of a tender can be a basis to the assumption it is worth to execute a **deepened control** which will bring about answers for several basic questions:

- Who had a direct influence on the fact that specific tender requirements (favorable for a specific entity) appeared on the tender requirement list, determining the person who was making orders, on whose initiative, in whose behalf were such actions undertaken?
- In which group of the entrusted individuals were decisions referring to this issue made?
- What were the circumstances, when and in what form, as well as by who transmitted the hints or agreements on the details of formal requirements?

- Who indicated the persons for the preparation of the requirement lists, who was participating in the work of the tender committee?
- Who, in the frames of their duties, supervised the tender proceedings?
- What influences, dependences and links connect individuals directly involved and interested in the completion of a given tender, with the identification of the former professional, social, business and political activity, which was the background of the current relations and dependencies between the decision-makers and the representatives of the winning entity?

In the course of analysis of the issue of **fixing tender** it is worth to refer to the order of the Supreme Court of 7 March 2012, containing the following:

The clause included in Article 305 § 1 of the Penal Code “to the detriment” is an element of an effect of a crime. This effect does not have to be a material loss in result of the final decision in tender proceedings, but even the initiation of threat to the legally protected material interests of the owner of assets or a person or an institution for which the tender is organized.⁶⁵

Michał Makowski, presenting his opinion on the above-mentioned Supreme Court decision, states as follows: *The Supreme Court stated that the preparation of significant tender requirement list which limited the number of potential bidders was a detrimental act. The execution of an agreement had taken from the public procurement procedure its most desirable feature, that is ensuring all the potential bidders equal chances at the beginning of the tender procedure.*⁶⁶ In the light of the above-mentioned elements it turns out that intentional preparation of the significant tender requirement list so that the requirements could be met by only one company can be interpreted as a criminal act, and not only as breaching of a regulation or unethical proceeding discriminating potential bidders. According to M. Makowski, *the aim of initiating such an agreement is to obtain financial gain through providing a public bid or its acquisition to the detriment of the ordering party.* The matter of the agreement is the coordination of behavior which “programmed” the objective threat for the financial interests of the ordering party.⁶⁷ In the management practice the significant tender requirement list is the first stage of mutual coordination the result of which is the forwarding of an offer by the contractor acting upon this agreement. According to Article 305 of the Penal Code it is not necessary for an act to be a crime on condition of obtaining material gain for the perpetrator or making a Real detriment to the property of the institution announcing a tender procedure. It is enough to just initiate acts that could potentially result in such a detriment.

⁶⁵ The Order of the Supreme Court of 7 March 2012 (V KK 402/11, OSNK W 2012, no. 8, item. 84).

⁶⁶ M. Makowski, *Wejście w porozumienie na szkodę zamawiającego – (de)penalizacja zamówień przetargowych w systemie zamówień publicznych*, “Palestra” 2014, no. 3–4, p. 191.

⁶⁷ *Ibidem*, p. 189.

From the perspective of his analysis an important opinion has been presented by the Supreme Court in the Ordering of 18 January 2017 (reference number II KK 324/16) in reference to the discussed Article 305 of the Penal Code, in the context of evidence obtained in result of a **surveillance operation** run by the Internal Security Agency (ABW). According to the adjudicating bench of the Supreme Court:

criminal acts provided for in Article 305 § 1 of the Penal Code is not included in the catalogue of crimes 'against the economic foundations of the state' listed in those provisions. (...) The amount of the potential loss resulting from the tender agreements charged by the indictment should not be equated to the scale of bids and the amounts of expenditures designed by the State Treasury to public procurements. It can be only perceived through the difference between the bid selected in the tender procedure and the potentially better one.⁶⁸

Another legal argument enabling the acquittal from charges in the analyzed case of fixed tenders was the issue of using intelligence in court the adjudicating bench of the Supreme Court stated the following opinion:

The Orderings of the District Court, expressing consent to surveillance operations did not restrict the court of the first instance in the matter of its free use as evidence. Both the provisions of the Law on the Internal Security Agency (ABW) and the provisions of the Code of Criminal Procedure do not indicate that the decisions on consent to surveillance operations should be a binding prejudication for the court considering a case in meriti. (...). The exceptions from the principle of judicial independence are only situations clearly indicated in the Law, such as in the instance of Article 8 § 2 of the Code of Penal Procedure. Besides the cases when the order issued in criminal matters has a constitutive character, binding the court with decisions issued by other courts or organs can only take place when a regulation provided for in an act of law gives them directly the status of a binding prejudication for other courts, such as in the instance of Article 442 § 3 of the Code of Penal Procedure⁶⁹.

The analysis of the above-mentioned opinion of the Supreme Court leads to the conclusion that fixed tender, criminalized by Article 305 § 1 of the Penal code does not meet the criteria necessary for the „acts of crime posing threat against the economic foundations of the state” set forth in the act of law, and the granting of the so-called subsequent consent, i.e. **making a decision by the District Court does not forejudge on legality of surveillance and evidence collected as a result of such**. The considerations made additionally indicate how complex tender procedures are

⁶⁸ See: The Ordering of the Supreme Court of 18 January 2017 (Reference number: II KK 324/16), pp. 19, 22, <http://www.sn.pl/sprawcy/SitePages/e-Sprawa.aspx?ItemSID=8785-350d6c73-8c3c-46fe-8bdc-f1a3e551ad56&ListName=esprawa2016&Search=II%20KK%20324/16> [access: 10 V 2019].

⁶⁹ Ibidem, pp. 24–25.

and how different legal interpretation of defined acts can be, as well as what is the interpretation presented by the Supreme Court.

Public procurement is perceived as one of the key areas where corruption occurs⁷⁰, which does not mean that this is the area in which detection of crimes is most frequent.⁷¹ Tomasz Hachoł brings to the inadmissibility of Art. 296a of the Penal Code to the counteracting of corruption in the public procurement field His arguments refer to the fact that at the stage of the tender proceedings the buyer or the receiver of goods, services or benefit does not appear. Additionally, he states the following: (...) *on the level of an organized tender procedure we can only talk about the bidder applying for such a contract. This results in a situation when corruption pathologies in this area become almost indifferent.*⁷² The above-mentioned Art. 296a of the Penal Code specifies the basis for criminal liability for corruption-involving acts of crime in the private sector.⁷³

The remaining legal acts resulting with specific financial effects, not covered by the regulations provided in the Law of 29 January 2004 on the public procurement are completely different⁷⁴ (among others, referring to (...) *the procurement and competition procedures the value of which does not exceed the sum of 30 thousand Euros in the Polish zlotys*, Article 4, point 8). It refers to contracts and trade agreements signed with third parties, that do not require any open and competitive proceeding, commonly called **single-source procurements**. It refers not only situations provided for in

⁷⁰ M. Niedźwiedziński, H. Klepacz, E. Nowak-Jamróz, *Projekt PICTURE jako sposób walki z korupcją w obszarze inwestycji ICT*, "Roczniki Kolegium Analiz Ekonomicznych" 2014, no. 33, pp. 409–419; M. Kania, *Systemowe rozwiązania w zakresie przeciwdziałania i zwalczania korupcji w zamówieniach publicznych na tle rozwiązań prawa niemieckiego*, "Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu" 2017, no. 497, pp. 128–150.

⁷¹ Police statistical data referring to crimes defined in Art. 305 §1-2 of the Penal Code: For the year 2016 the number of initiated proceedings: 127, number of crimes identified: 40, the highest number was established in 2015: the number of initiated cases: 140, number of crimes identified 66, the lowest number in 2009, source: <http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-17/63941,Udaremnienie-przetargu-art-305.html> [access: 10 V 2019]. Police statistical data referring to crimes of corruption provided for in Art. 231 of the Penal Code: For the year 2017: crimes identified: 8347, crimes detected 8317. For the year 2016: crimes identified: 21 407, crimes detected 21 319, source: <http://statystyka.policja.pl/st/przestepstwa-ogolem/przestepstwa-gospodarcz/przestepstwa-korupcyjne/122279,Przestepstwa-korupcyjne.html> [access: 10 V 2019]. Police statistical data referring to all economic crimes: For the year 2017: crimes identified 189 871, crimes detected 166 776. For the year 2016: crimes identified 150 386, crimes detected 122 444, source: <http://statystyka.policja.pl/st/przestepstwa-ogolem/przestepstwa-gospodarcz/122291,Przestepstwa-gospodarcze.html> [access: 10 V 2019].

⁷² T. Hachoł, *Kryminalizacja korupcji w sektorze prywatnym w niemieckim prawie karnym w odniesieniu do rozwiązań polskich*, "Nowa Kodyfikacja Prawa Karnego" 2011, no. 27, pp. 80–81.

⁷³ M. Błotnicki, *Problematyka korupcji w polskim kodeksie karnym na tle klarownych regulacji japońskich*, "Studenckie Zeszyty Naukowe UMCS" 2016, no. 29, p. 15.

⁷⁴ The Law of 29 January 2004 on public procurement (Journal of Laws of 2018, item 1986, 2215, of 2019, with subsequent: 53,730).

Article 4 of the Law on public procurement, but primarily all the remaining public organizations of the private sector, which are not subject to this law.

It should not raise any doubt that decisions made in this sphere are the most comfortable and safe basis for corruption-involving behavior, enabling the transfer of economic profits to selected companies, entities and individual persons. This is possible due to the fact that a **single-source procurement** have the following characteristics:

- lack of open procedures and the lack of publicly-available information on signed transactions⁷⁵,
- lack of any competition or the principle of equal treatment,
- legally acceptable bias and self-interest reflected by favoring a privileged entity and simultaneous blocking of the remaining interested parties, with no possibility of appeal,
- legally acceptable arbitrary decisions and discretionary selection of the contractor, no need to provide grounds for the decision.

Only in the instance of government administration possessing funds from the taxpayers, the legal provisions (Art. 44 par. 3 of the Law on public procurement) indicate that (...) *public expenditure should be always be purposeful and frugal, according to the principles of best results from given resources and the optimal selection of methods and resources serving the accomplishment of plans.*⁷⁶ The words “should be” is not an imperative, however and its violation will not automatically result in liability for misguided and uneconomic management of entrusted funds. On the other hand the above-mentioned Article 44 paragraph 3 can be treated as a benchmark – significant criteria should be applied for the assessment of decisions made in the sphere of public asset management. The remaining categories of entities participating in business trading, among others – companies including state-owned legal persons, are not subject to those provisions.

As it was mentioned before, orders and agreements signed with external entities are the best way to obtain measurable material profits for which there exist legal grounds. In such cases no person can be charged with no grounds that the remuneration for the completed work, provided services or commodities, etc is an illegal profit, as there exist a legal title for a specified profit. Moreover, entities and individual persons running economic activity are entitled to activity in business trade and make autonomous decisions on the choice of contractors and signing agreements referring to co-operation with the public sector. There appears a question in this context, whether the completed orders involve potential unethical situations reflecting clientelism are

⁷⁵ After the corruption affair in Kraków Court of Appeal, only the Supreme Court decided to use such a solution and publish the list of agreements signed with external entities, http://www.sn.pl/informacjepraktyczne/SitePages/Centralny_rejestr_umow_SN.aspx [access: 10 V 2019].

⁷⁶ The Law of 27 August 2009 on public finance, (Journal of Laws of 2009 no. 157 item 1240, with further amendments).

possible⁷⁷, or if any activity connected with them should have the elements of an illegal act.

According to the CBA, (...) *currently illegal activity is covered up with legal procedures*.⁷⁸ This means that traditionally envisaged bribes in the form of cash packed in an envelope are replaced with some other economic activities, agreements, orders, trade transactions, etc that ensure economic profits. The transfer of benefits takes up a **form of legal acts**. A thorough analysis of certain decisions the context of revealing the true motives and aims, there can appear circumstances and factors leading to grounded suspicion of disadvantageous disposal of assets, specified in Article 286 § 1 of the penal Code.⁷⁹ This crime can be committed only as willful misconduct, referring to both the aim and the modus operandi of the perpetrator. Among significant circumstances of this crime there are: bringing another person about to the misconception of the actual state of affairs, misleading the person. According to the Supreme Court it is necessary to prove that (...) *the aim of the perpetrator was to obtain material profit*⁸⁰.

Other situations potentially indicate the commitment of acts specified in Article 296a of the Penal Code, called punishable mismanagement of managers⁸¹, or economic corruption. According to Michał Wantoła (...) *an entrepreneur who is an individual person can be liable to criminal punishment fro the crime of passive economic corruption, when it involved an act of unfair competition or an unacceptable preference of the buyer or recipient of commodity, service or benefit*.⁸² Examples from the criminal practice indicate that punishable forms of corruption in business trade are connected to crimes against the credibility of documents, provided in – inter alia, Article 271 of the Penal Code, i.e. attestation of an untruth in documentation referring to legally significant circumstances⁸³, as well as in Art. 270a. §1, Art. 271a §2 of the Penal Code, Art. 277a. §1. That is the issuing of the so-called empty invoices⁸⁴, which

⁷⁷ S. Bartnicki, *Głosowanie klientelizmem pisane, czyli jak zwiększyć szanse reelekcji w wyborach wójtów i burmistrzów*, "Studia Socjologiczne" 2019, no. 1, pp. 65–93.

⁷⁸ *Mapa korupcji. Stan korupcji w Polsce na podstawie danych statystycznych przekazanych przez służby i organy państwowe za lata 2004–2009*, Warszawa 2010, p. 8.

⁷⁹ A.N. Preibisz, *Niekorzystne rozporządzenie mieniem jako znamię oszustwa (art. 286 § 1 k.k.)*, "Prokuratura i Prawo" 2005, no. 10, p. 63–82.

⁸⁰ The Ordering of the Supreme Court of 24 April 2018 (reference number V KK 379/17), p. 9.

⁸¹ W. Walczak, *Odpowiedzialność menedżerów z tytułu zajmowania się sprawami majątkowymi podmiotów gospodarczych*, "Wiedza Prawnicza" 2014, no. 1, p. 76.

⁸² M. Wantoła, *Odpowiedzialność przedsiębiorców będących osobami fizycznymi oraz osób przez nich zatrudnionych za przestępstwo biernej korupcji gospodarczej (art. 296a § 1 k.k.)*, "Czasopismo Prawa Karnego i Nauk Penalnych" 2016, no. 2, p. 189.

⁸³ I. Jankowska-Prochot, P. Falenta, *Criminal and legal aspects of the crime of intellectual falsification*, "Journal of Modern Science" 2016, no. 1, pp. 233–250.

⁸⁴ K. Patora *Zbrodnia wystawiania pustych faktur w VAT*, "Acta Universitatis Lodziensis. Folia Iuridica" 2019, no. 86, pp. 91–111; P. Sydor, *Problem pustych faktur w ujęciu prawno-karnym i karno-skarbowym w świetle orzecznictwa sądowego*, "Przedsiębiorczość i Zarządzanie" 2017, no. 12., cz. 3, s. 87–98.

do not reflect real economic situations. This means that corruption-involving crimes more and more often accompany tax crimes as well as VAT fraud.

Using surveillance material as evidence

The opinion that in the course of detection organized crime intelligence material is significant becomes generally accepted.⁸⁵ A very sensitive issue for efficient counteracting corruption is the possibility of using intelligence collected in the course of surveillance. In this respect the resolution of the Supreme Court of 28 June 2018 (reference number I KZP 4/18) is important. It refers to the interpretation of Article 168b of the Code of Criminal procedure.⁸⁶ This decision, made by 7 members of the judicial bench of the Supreme Court has become the inducement for the request submitted by the Prosecutor General to the Constitutional Tribunal of 31.07.2018 (PK VIII TK 45.2018).⁸⁷ This is the time when media reported instructions for prosecutors to use – in the instance of rejecting of evidence by the court according to the interpretation of Art. 168b of the Code of Criminal Procedure (presented in the resolution if the Supreme Court 28.06.2018r.), (...) *to refer to Art. 168a, which courts are bound to respect.*⁸⁸

In the first place it is worth to assess the relation between Art. 168a and Art. 168b of the Code of Criminal Procedure. It may be regarded that those regulations should be read jointly, as they were introduced at the same time, which will result in the conclusion that according to Art.168a of the Code of Criminal Procedure the court does not really have to admit evidence with the violation of Article 168b of the Code of Criminal Procedure. The necessary condition to regard a tap installed by the services – by the state and law, as evidence, it must be executed according to the Law on the police (similarly to other laws on individual government services) and according to Article 168b of the Code of Criminal Procedure. This is the reason why – if the services authorized to execute surveillance operations installed a tap violating the regulations, then such material will not be treated as evidence, according to of the Code of Criminal Procedure. And if so, then there is no problem of admissibility according to Article

⁸⁵ W. Mądrzejowski, *Prawne podstawy współdziałania służb i instytucji zwalczających przestępczość zorganizowaną*, “Kultura Bezpieczeństwa. Nauka – Praktyka – Refleksje” 2018, no. 29, pp. 108.

⁸⁶ W. Walczak, *Prawno-organizacyjne aspekty wykorzystania kontroli operacyjnej*, “Policja. Kwartalnik Kadry Kierowniczej Policji” 2018, no. 4, pp. 47–56.

⁸⁷ The Constitutional Tribunal: The Code of Criminal Procedure (ordering surveillance operations) reference number: K 6/18, documentation collected as of 10.05.2019 – only the request submitted by the Prosecutor General, <http://trybunal.gov.pl/sprawy-w-trybunale/art/10282-kodeks-postepowania-karnego-zarzadzenie-kontroli-operacyjnej/> [access: 10 V 2019].

⁸⁸ M. Jałoszewski, *Prokurator Krajowy wzywa śledczych do lekceważenia uchwały Sądu Najwyższego*, 27 VII 2018, <https://oko.press/prokurator-krajowy-wzywa-sledczych-do-lekcewazenia-uchwaly-sadu-najwyzszego/> [access: 10 V 2019].

168a of the Code of Criminal Procedure, as it refers only to evidence (including evidence obtained through their violation of the law).

On the other side, according to Article 393 § 3 and in connection with Article 168a of the Code of Criminal Procedure it is acceptable by law to use for the criminal proceedings private evidence, collected in a manner breaching the regulations of the proceedings or through a criminal act⁸⁹ Konrad Lipiński states that Article 168a of the Code of Criminal Procedure does not violate the system of non-admissibility in evidence binding in the criminal procedure, just makes it – to a certain extent, more complete.⁹⁰ In other words – Article 168a of the Code of Criminal Procedure is *lex generalis* and it is limited by *leges speciales*, particularly other cases of evidence inadmissibility.⁹¹ It should be understood in such a way that evidence cannot be regarded as inadmissible only due to the violation of the proceedings' regulations or its obtaining through an illegal act. It is important that such evidence should be the subject of free judgment of the court, made according to the principles set forth in Article 4 and Article 7 of the Code of Criminal Procedure that is according to the principles of objectivity and free assessment of evidence.⁹² Marcin Warchoł, when answering the MP's enquiry, states that (...) *all the explanations, testimonies and statements collected by force, illegal threat, hypnosis or other similar methods are still completely excluded from evidence that is submitted for assessment. Article 171 § 7 of the Code of Criminal Procedure provides that they cannot be evidence, and as such they are not subject to assessment in the context of Article 168a of the Code of Criminal Procedure, which provides for means regarded as evidence by the legislator.*⁹³

So, which situations and evidence are covered by Article 168a? For such source materials which become evidence, however obtained in result of crime or violation of a procedure, for example information from a laptop that had been taken away deceitfully from the indicted person, or a record of a transaction involving corruption in private premises of the indicted person, made against his will, evidence from documents taken away from the indicted person from the safety locker/a safe, a copy, a scan or a photo of a classified document copied without authorization, evidence from the search of the indicted person's company made with a violation of specific principles, etc.

⁸⁹ D.R. Jaworski *Dopuszczalność przeprowadzenia i wykorzystania dowodu uzyskanego za pomocą czynu zabronionego do celów postępowania karnego na gruncie prawa polskiego*, "Młody Jurysta" 2019, no. 1, p. 14.

⁹⁰ K. Lipiński, *Klauzula uadekwatniająca przesłanki niedopuszczalności dowodu w postępowaniu karnym (art. 168a k.p.k.)*, "Prokuratura i Prawo" 2016, no. 11, p. 59.

⁹¹ The Letter of the Speaker of the lower chamber of the Polish Parliament to the Constitutional Tribunal of 1 March 2018 (reference number: K 27/16) BAS-WPTK-1037/16, p. 5.

⁹² *Ibidem*.

⁹³ *Odpowiedź podsekretarza stanu w Ministerstwie Sprawiedliwości na interpelację nr 4288 w sprawie art. 168a Kodeksu postępowania karnego*, Warszawa, 29 VII 2016 r., <http://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=560C4AC5> [access: 10 V 2019].

Police taps are an exception from the rule of replacement of testimonies and explanations, as in spite of the record of a report of an act and not of the act as such, they can become evidence under the condition of submitting to the rigors of the Code of Criminal Procedure. A record or a tap may potentially register a corruption-involving crime (the transaction or the negotiations); however the discussions include secondary summaries of the act in question. There are also cases when in spite of firm material collected by secret services (or private individuals) recording and confirm unequivocally criminal corruption, such evidence will not be admitted by the court. The undersecretary of state explains this fact in the following way:

The basis of the diversification of any evidence, due to its collection in a manner breaching the regulations of material or criminal law, may be not only the above-mentioned Article 168a of the Code of Criminal Procedure, but also constitutional norms and the international law, used until now in an agreed manner in the judiciary. Information collected by the court and the interpretation of regulations is subject only to the control executed in the course of proceedings, upon the consideration of ordinary and extraordinary legal remedies.⁹⁴

In short, it is a discretionary decision of the Court members' decision whether material confirming corruption should be regarded as evidence in a case.

Summary and conclusions

It is proved by ongoing practices that legal forms of corruption reflect the efficiency in acquiring material land personal advantages. They are commonly used on a massive scale, however such acts are not recorded in statistics and only selected data on chosen cases are published by the mass media. Adopting the knowledge and life experience as a basis for interpretation⁹⁵, they allow for the statement that arguments prevailing in the public debate stand for the fight of immense closed networks, the aim of which is not the care for civil rights, constitutional principles, social justice or mutual well-being, but about taking over or maintaining control over legal corruption, i.e. the possibility of using the authority, influences or professional status for individual ends and interests.

Mirosław Romański is very critical about the role of the judiciary in the fight with corruption. The author thinks that (...) *it is unfortunately dominated by tardiness, bureaucracy, lengthiness and it itself succumbs to corruption mechanisms. Thanks to the individuals involved in corruption and organized criminal groups the judiciary*

⁹⁴ Ibidem.

⁹⁵ A. Kotowski *Wiedza i doświadczenie życiowe jako metadyrektywa interpretacyjna*, in: *Wyzwania współczesnego prawa. Księga pamiątkowa dedykowana SSN Tadeuszowi Szymankowi*, B. Bajor, P. Saganek (edit.), Warszawa 2018, pp. 103–126.

*obtains high amounts of financial assets, however it is paid for lengthy procedures and cancelling cases.*⁹⁶ This opinion forms a grim image of reality, although such a generalization may be prejudicial for honest judges. However, it should be remembered that the law enforcement agencies and the judiciary deal only with acts criminalized by the regulations of the criminal law and do not counteract legal corruption. Finally, the courts in Poland decide whether a given act (behavior) includes the elements of an illegal crime or if it is a variation of legal corruption-involving behavior.

According to Marya Gorbanova most people are conscious that they have no chances in the confrontation with corruption, don't have the slightest chances in confrontation with corruption, are helpless when facing this phenomenon; however they want to have a voice against it.⁹⁷ Expertise on the true nature of corruption is fundamental, as it influences the perception and the correct assessment of specific processes, decisions, behavior patterns. The analyses and considerations included in this article are aimed at systematizing and broadening knowledge in the area of its subject matter, which brings us closer to the understanding of corruption which is a very complex and at the same time controversial problem. The topic is not exhausted; however they can initiate further disputes, discussions and scientific investigation.

⁹⁶ M. Romański, *Czy CBA i aparat sądowniczy w Polsce są skuteczne w walce z korupcją*, "Przegląd Nauk o Obronności" 2017, no. 3, p. 216.

⁹⁷ M. Gorbanova, *SPEAK UP. Empowering citizens against corruption*, Berlin 2015, p. 20.