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Corruption as a net of influences, links and connections

Introduction

The topic of corruption practices fits into issues widely publicised and used by the media with the intensive discussions or disputes of political nature in public spaces. There are superficial and curt comments of emotional nature while it is clearly noticeable that there is lack of in-depth and substantial knowledge as well as an even-handed analysis of the phenomenon. In view of how complex and multifaceted problem it is nowadays, corruption becomes more and more a subject of numerous case studies. This need for wider inquiring and scientific exploration is rational and justified by its cognitive and utilitarian qualities, since the topic stays within the interests of special services. Their legal tasks are recognition, prevention as well as fighting corruption in public and economic life.

The aim of deliberations and analysis is to present the essence of corruption perceived in organizational and legal aspects of social and economic environment, which influence to the greatest possible extent the common management methods and decision making processes. As the preliminary remark it has been explained how the corruption notion should be understood and main corruption mechanisms have been characterised. Further on corruption as an element of management system has been described. Risks to the economic interests of a state have also been raised as well as violations of principles of the rule of law and social justice. An important argument for such broad approach to the problem is communiqué on the website of the Central Anti-Corruption Bureau, which clarifies in legible and clear way risks connected to the described phenomenon.

“Corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society” (Criminal Law Convention on Corruption ratified by the Republic of Poland on 27 January 1998 in Strasbourg).¹

Definitions

The starting point of further considerations shall be an explanation of the term corruption, which is essential and absolutely necessary because of diversity and ambiguity of definitions² as well as through perspectives of the phenomenon

¹ Public Information Bulletin of the CBA, <http://bip.cba.gov.pl/bip/nabor-do-sluzby/profile-kandydatow/ekonomisci/14,Ekonomisci.html> [access: 10 I 2018].

² A. Kubiak, *Działania antykorupcyjne – wybrane przykłady*, „Acta Universitatis Lodzianensis

described.³ It should be pointed out that the information showing the way corruption is understood is fundamental⁴ because it determines interpretation of a certain notion and, in consequence, sets orientations for further analytical actions and scientific research. Having the above in mind, corruption will be perceived in broad terms as **an abuse of power, influences, professional position for one's individual interests and goals.**⁵ It means that the phenomenon will cover both corruption criminal offences and also other forms of the so called legal corruption, which is not sanctioned in the penal code.

In the proposed definition one should pay attention that it uses the words “an abuse of power” intentionally. From the legal perspective it is fundamentally different from “misuse of power”, which can be treated as misconduct in relation to a particular group of people, as provided for in Article 231 of the penal code. To present substantive arguments for the validity of assumptions, it is worth referring to one of the official governmental documents, i.e. The Anti-Corruption Governmental Program for the period 2014–2019 (Rządowy Program Przeciwdziałania Korupcji na lata 2014–2019) approved by the Council of Ministers. In the introductory part of the document there is the following passage:

Legal definition of corruption is contained in Article 1 paragraph 3a of the Act of 9 June 2006 on the Central Anti-Corruption Bureau (Journal of Laws 2012, item 621, as amended), and the Program refers to such definition for the main part. Nevertheless, one should also not forget about other non-punishable forms of corruption like conflict of interest, nepotism and favouritism which are a problem also for public life. That is the reason why this document refers also to these kinds of corruption phenomenon understood in broad terms.⁶

Folia Oeconomica” 2013, no. 288, pp. 45–46; K. Nowakowski, *Korupcja a instytucje w gospodarce*, „Ekonomia i Prawo” 2006, no. 1, pp. 140–148; A. Stachowicz-Stanuch, A. Sworowska, *Definiowanie korupcji w kontekście różnic kulturowych*, „Organizacja i Zarządzanie” 2012, no. 1, pp. 97–116.

³ K. Dzieczyk, *Zjawisko korupcji jako element życia społecznego*, „Seminare. Poszukiwania naukowe” 2016, no. 3, pp. 111–121; A.Z. Kamiński, *Korupcja jako symbol instytucjonalnej niewydolności państwa i zagrożenie dla rozwoju polityczno-gospodarczego Polski*, „Zeszyty Centrum im. Adama Smitha” 1997, no. 29, pp. 3–32; K. Nowakowski, *Korupcja jako problem teoretyczny i społeczno-ekonomiczny*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1996, no. 2, pp. 77–94; J. Svensson, *Osiem pytań na temat korupcji*, „Gospodarka Narodowa” 2006, no. 9, pp. 77–106.

⁴ R. Maćkowska, *Informacja w przestrzeni publicznej a zjawisko korupcji i jego postrzeganie*, in *Public relations w perspektywie naukowej*, A. Adamus-Muszyński (ed.), Katowice 2016, pp. 116–124.

⁵ The parts written in a bold print come from the author.

⁶ The Anti-Corruption Governmental Program for the period 2014–2019 (*Rządowy Program Przeciwdziałania Korupcji na lata 2014–2019*), adopted by the resolution no. 37 of the Council of Ministers of 1 April 2014, Polish Monitor Polish official journal, item 299, Warszawa, 28 April 2014, source: <https://cba.gov.pl/pl/publikacje/strategia-antykorpcyjna/3409,Rzadowy-Program-Przeciwdzialania-Korupcji.html> [access: 10 I 2018].

A careful examination of the cited interpretation by the Council of Ministers regarding existing forms of corruption, shall unequivocally confirm the accuracy of the concept of the multifaceted approach to the described phenomenon adopted in this article. Furthermore, it gives legal bases for using adequate terminology while describing certain activities, decisions and patterns of behaviour of some concrete persons.

According to the Chief of CBA (...) *corruption is a multidimensional phenomenon analyzed and diagnosed in the aspects most important for a country, i.e. social, ethical, legal.*⁷ However, one could argue with the opinion that (...) *corruption criminality violates basic rules of the country*⁸, because all categories of corruption patterns pose a threat to the economic interests of the country, sense of security among nationals, and blatantly devastate the rules of law and social justice. It seems that a direct reference to Article 2 of the Constitution of Poland would be justified here, which states that *The Republic of Poland is a democratic country based on the rule of law making rules of social justice real.*⁹

Agata Miętek, while analyzing this note, notices that the last part of that sentence pointing out the need of making rules of social justice real by the country is a subject of much smaller interest than the idea of a country based on the rule of law.¹⁰ It is a very relevant opinion, that one should agree with.

Corruption fostering mechanisms

While describing main areas of threats from corruption from the perspective of the Supreme Audit Office (NIK), Alina Hussein points out the way services are commissioned by public entities to private ones and the area building investments are localized.¹¹ Using experts' services and consultancy services is described as follows:

(...) outsourcing takes place often without needs analysis (which means unnecessary services are ordered), without following the rules of public procurement/contracts and competition, without preserving required transparency of actions. Remuneration of outside bodies is overstated, contract conditions are unilaterally beneficial to private contractors and not to public institutions.¹²

⁷ *Mapa korupcji. Zwalczenie przestępczości korupcyjnej w Polsce w 2016 r.*, Central Anti-Corruption Bureau, Warszawa 2017, p. 5.

⁸ *Ibidem*, p. 5.

⁹ The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).

¹⁰ A. Miętek, *Zasada demokratycznego państwa prawnego w orzecznictwie Trybunału Konstytucyjnego*, „Dialogi Polityczne III RP” 2009, no. 11, p. 76.

¹¹ A. Hussein, *Obszary zagrożenia korupcją – przegląd badań NIK opublikowanych w 2016 roku*, „Kontrola Państwowa” 2017, no. 5, p. 51.

¹² *Ibidem*, p. 51.

What is important in the above cited paper is that there are multi-million sums of money paid from contracts revealed in the course of checks (inter alia 15 million Polish zloty on contracts with employment agencies in 4 courts from the territory of the Warsaw Court of Appeal, consultancy and expert services contracts between 2012 and 2014 by the 4 PKP group companies for the amount of 171 million Polish zloty, and so on), and with regard to the described occurrence the following term is used: (...) *irregularities having qualities of corruption mechanisms*.¹³ It is particularly telling and symptomatic, especially in view of the lack of any mention of liability for decisions made, that resulted in appearance of large sums of money in the accounts of chosen beneficiaries.

For further considerations it is necessary to discuss chosen terms and to make an attempt to present the phenomenon of corruption in systemic frames. In the first place it is necessary to explain what corruption mechanisms are. In the nomenclature applied by the Supreme Audit Office corruption mechanisms mean *irregularities in functioning of public institutions, which cause or enhance the risk of corruption*.¹⁴ In other words it can be said that these are factors and conditions which favour the occurrence of corruptive practices. NIK points out 4 most important premises: (...) *discretion of the proceeding, conflict of interests, lack of required transparency of the proceeding, lack or weaknesses of the control*.¹⁵ It is worth mentioning that the conflict of interests has been mentioned in the Governmental Program of Counteracting Corruption for 2014–2019 in a **double sense**, i.e. as a non-punishable form of corruption (*one cannot forget about non-punishable forms of corruption, like conflict of interests*¹⁶), and as one of recognized corruption fostering mechanisms.¹⁷ According to NIK conflict of interests *is a situation when public official is involved in conflicting private businesses*.¹⁸ In this governmental document there is a much broader description:

We can speak about this conflict when a public official resolves in a certain sphere of public matters or takes part in preparations for such resolve does have or may have personal interest in the way the case is resolved. The conflict occurs not only when a public official acts in his/her personal interests but also when there is even a hypothetical possibility that the interest would outweigh the concern over public interest.¹⁹

A comparative analysis of the cited interpretations tends to notice certain differences having a significant influence on the way the essence of the problem

¹³ Ibidem, p. 52.

¹⁴ A. Hussein, *Mechanizmy korupcjogenne – cztery grzechy głównie władz publicznych*, „Przegląd Antykorupcyjny” 2011, no. 1, p. 43.

¹⁵ Ibidem, p. 44.

¹⁶ *The Governmental Program of Counteracting Corruption for 2014–2019*, p. 7.

¹⁷ Ibidem, p. 19.

¹⁸ A. Hussein, *Mechanizmy korupcjogenne ...*, p. 44.

¹⁹ *The Governmental Program of Counteracting Corruption for 2014–2019*, www.antykorupcja.gov.pl/ak/prawo/polskie-przeoisys-1/11409/Rządowy-Program-Przeciwdziałania-Koruocji-nalata-2014–2019.html, p. 19.

is understood. Well, in one of the opinions the term “entangled” has been used in the aspect of already existing circumstances, and the second one emphasises the likelihood itself, i.e. a theoretical possibility of such a situation in the process of decision-making. These remarks indicate how different the perception of certain things is, and also how ambiguous the term conflict of interests is. Unfortunately, in Polish legislation there is no legal definition of the term, which is crucial for these deliberations. In view of the above three questions arise:

- Was a situation of conflict of interests rightly mentioned explicitly in the governmental document as a non-punishable form of corruption and a particularly dangerous corruption-fostering mechanism at the same time?
- Is it logical and eligible to narrow a conflict of interests down only to situations when decision-making by public officials is involved?
- What are other factors and circumstances that foster corruptive practices?

The answer to the first question is yes, which means that conflict of interests situation is in fact one of the forms of the so called legal corruption.

As far as the second question is concerned one should admit that in each and every case of using power and decision-making competences connected to a particular position in a certain organization, a real conflict of interests can occur. And hence, the term should not be limited in any way or assigned to public officials activities only, because conflict of interests can take place not only in other public institutions (courts, prosecutor’s offices, hospitals, high schools etc.) or in companies with capital engagement of state legal entities, but also – with no exceptions – in all the other categories of private entities. Rather common are events, processes and decisions when not only public interest, common good but parties’ interests, personal benefits of a certain profession, benefits of private business, foundation, company, group of colleagues, mates, or acquaintances etc. are taken into consideration.

According to the assessment of the Polish government the other **corruption fostering mechanisms** are:

- Irregularities in law-making process: violating existing legal procedures, and omitting necessary procedure of commenting or interdepartmental arrangements in particular; amendments to already agreed projects; adopting implementing acts with a considerable delay, loopholes and ambiguity causing discretionary interpretation of provisions, inconsistent revision of laws, adopting more and more legal acts,
- Cumulating competence: too much decision-making authority and departure from the rule of action allocation regarding one case among different officials,
- Disregard for documentation and reporting: accepting insufficient documentation, without all evidences or attachments required by the procedure, resignation from required reporting, and decision-making without justification which makes control of decision-making procedures more difficult,
- Lack of personal responsibility for decisions already taken.²⁰

²⁰ *The Governmental Program of Counteracting Corruption for 2014–2019 ...*, pp. 19–20.

It should be added that from the perspective of management practice it is significant that the authority accumulation element as well as combining positions by one person is not dominant sufficiently. This is really a very important factor, whose role and significance cannot be depreciated.

Corruption as element of management system

For the correct understanding of **areas and forms of corruption** in the organizational reality, it is helpful to highlight some basic topics regarding management paradigms used in practice, which, unfortunately, differ from ideas popularised in scientific theories.

1. Corruption comes down to taking advantage of the opportunities which arise from the authority held and granted decision powers to ensure personal as well as material benefits. As a result it becomes an integral element of management processes. According to Article 115§ 4 of the penal code it is about (...) *material or personal benefit both for himself/herself and for someone else*.²¹ In the opinion of the Central Anti-Corruption Bureau material benefits are different goods meeting certain needs, the worth of which can be expressed in money. Apart from cash it can be inter alia: *attractive objects, excursions, preferential loans, debt write-off or public procurement*.²² In practice there are numerous situations that personal benefit improving situation of the person is directly linked to a material benefit, for example promotion in a work place or employment in a particular position, attractive training granted for free, apprenticeship, fellowship overseas and so on.
2. Management of organizations is to a large extent based on managing property and finances of the third party, which makes perception of such terms as thriftiness, economy, purposefulness and rationality of spending to be completely different than it is in the situation of spending one's own money. An example: people represented in institutions from public finance sector taking decisions concerning taxpayers' money and not their own personal funds. Co-op authorities run the community property of its members and not their own, and as far as the finances are concerned they dispose the residents' payments. Banks and other financial institutions, like Polish SKOKs manage the assets entrusted to them by citizens, CEOs of the state-owned companies run state-owned property, authorities of the municipal companies manage municipal property, the authorities of the private companies manage their property and their clients money, authorities of foundations spend money from donors, sponsors, from state subsidies, 1% of income tax, Norwegian funds, EU funds and from public fund-raisers, and it is not their private money.
3. **Personnel and financial decisions** (both taken collectively and one-man decisions) are of **arbitrary, discretionary and biased nature**. In most cases

²¹ The Act of 6 June 1997, Penal Code (Journal of Laws 1997, no. 88, item 553 as amended).

²² *Mapa korupcji. Zwalczanie przestępczości korupcyjnej w Polsce w 2016 r.*, Warszawa 2017, p. 23.

the only justification required is confirmation that the decision was taken by the competent authority, competent person within the powers attributed to them as well as on the basis of and in accordance with national law provisions such substantive explanation is absolutely sufficient. If the law imposes an obligation of specific procedures, for example the so called open and competitive procedure, it is always possible to fix and prepare proper action and members of the commission in such a way that „the choice made” will be in line with previous informal arrangements and planned scenarios accepted in a narrow circle of the most trusted confidants.

4. Corruption contributes significantly to the strengthening of power and expanding sphere of influence by creating and widening nets of personal links and dependencies. That is the reason why personnel politics plays such a crucial role from the perspective of efficient effective, right and secure performance of particular interests.
5. Corruption is a particularly precious value and the main factor integrating bonds and relations between people, who are extremely successful thanks to it, make careers, get above-average material benefits as well as personal benefits.
6. In each organization (from public finance sector or private sector) it is always possible to create and justify the need for employing particular persons, signing certain contracts, cooperation in other legal forms and spending some money on the established business venture in order to achieve a certain goal. Then, the scenarios of further activities would be submitted to this idea. They will *de facto* legitimise, from the legal perspective, legitimacy of the material benefits obtained by the favoured group of chosen and privileged beneficiaries.
7. Integrity, justice, compliance with the law, equal treatment, constitutional principle of equality before the law: *everyone is equal before the law. Everyone has the right to be equally treated by the public authorities* (article 32 § 1)²³, moral norms, ethical principles, decency and responsibility have no significance at all from the corruption point of view. These values are replaced by arrogance, being self-interested, bias, clientelism, discrimination, accessory, favouritism which are subordinated to one idea: striving for maximum private benefits and securing one’s own interests.
8. From the management perspective taking power and control over assets and finances of a certain organization, i.e. placing the most trusted people on the highest positions with a wide range of decision-making competences are of crucial importance. While analyzing personnel politics one cannot narrow the whole picture only to profits because even more valuable fact is what kind of budget the entity is working with and what kind of **financial flows** to other entities, companies can be created. It is about a **real influence on**

²³ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).

material benefits gained by other institutions and people. The **contacts and ties** (political, business, professional, family) of the particular position holder as well as **the accumulation of posts**, previously taken positions, other areas of interest and activity are equally crucial. These topics are of significance for analytical activities, which enable proper understanding of the events and processes studied.²⁴

Structuring some chosen questions of terminology shown in the picture 1 is important and necessary, because – as Łukasz Goczek points out: *corruption is one of the most controversial topics in public debate, although its mechanism is also one of the least understandable.*²⁵

Basic factors creating plane for corrupt practices are **legal provisions, accumulation of power** and **a sense of impunity** for actions taken. Jerzy Matusiak takes the view that the source of corruption is law, adding at the same time that (...) *the fight with corruption sails under false colours.*²⁶ The author adds that (...) *the basis for criminal responsibility are legal acts and: nullum crimen sine lege.*²⁷ So, if a particular pattern of conduct, a particular act is not directly specified in a penal code, such behaviour cannot be treated as a criminal offence. From the management practice point of view accumulation of posts and performing many tasks by one person plays a very important role because it leads to accumulation of decision-making powers, and thus it allows direct influence on the course of actions, their assessment and control in a few organizations simultaneously. Maciej Gurtowski claims that (...) *corruption possibilities can be linked to a control over sources of uncertainty.*²⁸ It is very important, particularly in view of the real influence on settlements made. The more posts one combines, the more one broadens and strengthens the authority acquired, which in consequence creates multiple influences and possibilities to run errands, do some businesses, formalities, proceedings. Because the accumulation of positions involves several different institutions (organizations, companies) there comes a multidimensional and extensive network of contacts, links, dependencies, relationships of both formal and business nature (institutional, overt) and of informal, private nature (covert). This configuration of **ties, interdependencies** and the architecture of **accumulated power and influences** are the biggest driving force in terms of real possibilities to create corrupt practices. In this respect, it is important to

²⁴ W. Walczak, *Działania analityczno-informacyjne identyfikujące mechanizmy korupcyjne w procesach zarządzania*, „Przegląd Bezpieczeństwa Wewnętrznego” 2017, no. 16, pp. 55–72.

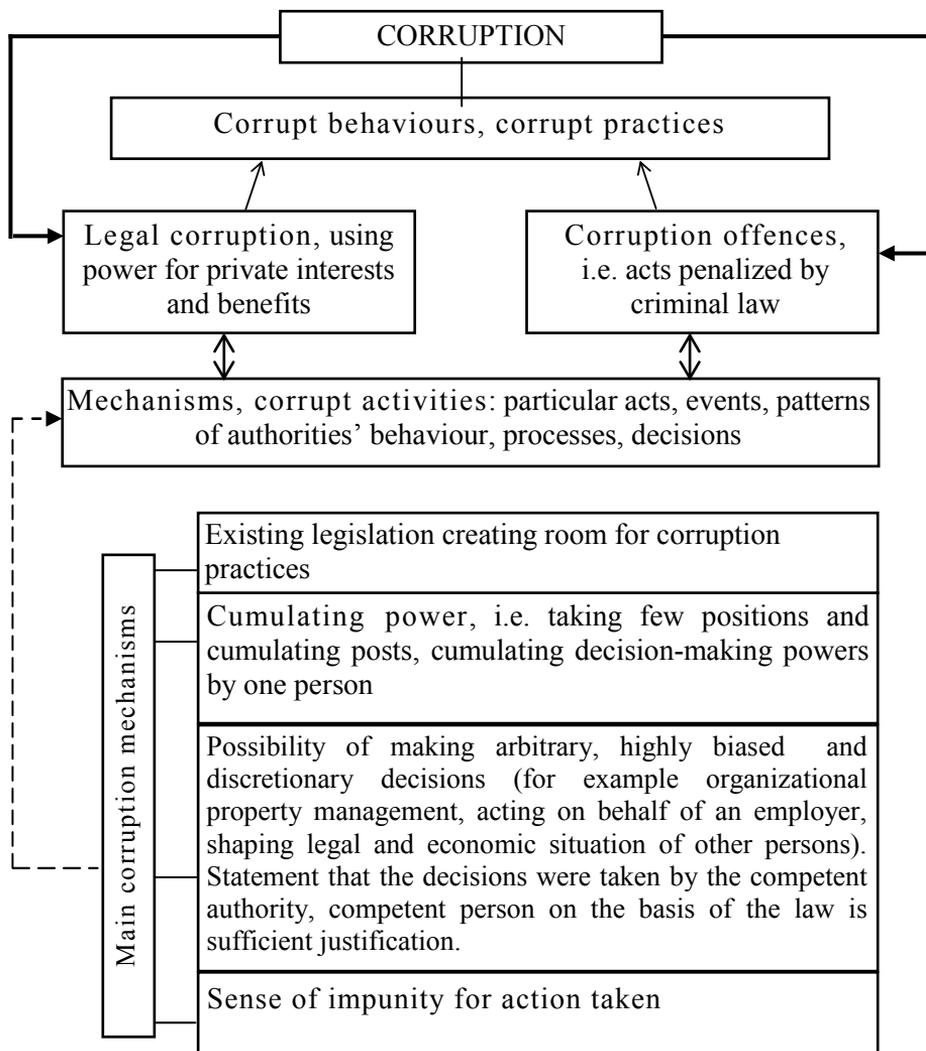
²⁵ Ł. Goczek, *Przyczyny korupcji i skuteczność strategii antykorupcyjnych*, „Gospodarka Narodowa” 2007, no. 4, p. 33.

²⁶ J. Matusiak, *Peryferyjny kapitalizm zależny*, e-book, 2006, pp. 123–124.

²⁷ Ibidem, p. 124.

²⁸ M. Gurtowski, *Niepewność, korupcja i granice podmiotowości w medykalizującym się świecie z perspektywy teorii władzy Michela Croziera i Erharda Friedberga*, „Pogranicze. Polish Borderlands Studies” 2016, no. 2, vol. 4, p. 200.

note that the sense of impunity and immunity²⁹ is a key element which determines the real effectiveness of ongoing projects.



Pic. 1. Broad understanding of corruption in practical organization management.

Source: private study.

Main corruption mechanisms mentioned in the picture 1 do not exhaust the list of factors that can lead to corruption, nor do they contest the significance of the elements mentioned earlier in the governmental anti-corruption program.

²⁹ P. Falenta, *Przestępstwo korupcji – uwarunkowania karnoprawne i społeczne*, „Prace Naukowe Wyższej Szkoły Zarządzania i Przedsiębiorczości w Wałbrzychu” 2016, no. 1, p. 157.

Division of corruption practices into two separate categories: legal corruption and corruption offences, is clearly derived from applied criterion, i.e. punishability of specific conduct in accordance with the law in Poland. Unfortunately some common corruption practices are subject to differing interpretations because of their complexity and ambiguity. They can also be assessed depending on who expresses value judgements and what is the reference point. Momentous and sensitive problem concerns perception and legal categorisation of certain behaviours, concrete decisions, facts and processes in the context of possible irregularities, pathologies³⁰ and whether they can or should be described as criminal offences.³¹

Anna Pluskota gives some interesting thoughts on the topic: (...) *every time when there is something about corruption coming from transgressing one's powers, interpretation of such behaviour can differ depending on cultural background of the society. Mostly, it is citizens who with the help of legal provisions in force recognize a particular activity as corruption.*³² It is very hard to agree with such a way of thinking that it is up to citizens to make a binding assessment of an activity if it is corruption coming from transgressing one's powers.

Waldemar Wojtasik is of the opinion that political corruption violates basic principles of democratic system, free market and civil society. The general perception is that it is a (...) *pathology of modern economic and political relations.*³³ Does it mean that each and every symptom of political corruption can be interpreted only in this way? Well, definitely not. Social perception of a particular phenomenon by services, prosecutors (i.e. law enforcement) can differ from legal and criminal approach as well as from the final and binding **interpretation by courts**. So, only the competences of judiciary of the Republic of Poland shall be decisive in terms of assigning criminal responsibility for any concrete corruption activities (proceeding, trials, decisions). It happens that such activities like extreme abuse of authority and unfair, highly harmful practices are recognized by society, however they are treated by law enforcement only as forms of unethical conduct authorized under law. Nevertheless, it does not change the fact that each form of corruption³⁴ (legal and punishable) is a fundamental **breach of social and economic justice** and poses

³⁰ K. Dendura, *Korupcja jako patologia kapitału społecznego*, in: *Zarządzanie bezpieczeństwem w sektorze publicznym i biznesie*, T. Białas, M. Grzybowski, J. Tomaszewski (ed.), Wyższa Szkoła Administracji i Biznesu, Gdynia 2009, pp. 31–38.

³¹ K. Laskowska, *Rola korupcji w działalności zorganizowanych grup przestępczych*, in: *Oblicza współczesnej przestępczości zorganizowanej*, K. Laskowska (ed.), Temida 2, Białystok 2014, pp. 143–154.

³² A. Pluskota, *Czy globalizacja wspiera korupcję?*, „Ekonomia Międzynarodowa” 2017, no. 17, p. 40.

³³ W. Wojtasik, *Spoleczne postrzeganie korupcji politycznej w perspektywie oceny uczciwości władz politycznych*, „Political Preferences” 2017, no. 17, p. 120.

³⁴ A. Stachowicz-Stanuch, A. Sworowska, *Oblicza korupcji: formy i typy zachowań*, „Organizacja i Zarządzanie” 2012, no. 1, pp. 117–133.

serious threat to moral foundations of the Polish society.³⁵ Propensity to some acts³⁶ cannot invalidate or question this.

Boundaries between corruption criminality and legal corruption have become more and more blurry. Punishable forms of corruption in general understanding are associated with such activities as promising, proposing and giving an undue advantage. Marcin Brol states that (...) *the more difficult detection and proving the fact of giving or taking bribes the more frequently corruption exchange will take place.*³⁷ One of the reports of the Internal Security Agency (ABW) of 2004 rightly emphasises that modern types of corruption take the form of secret and veiled actions. The way and form of giving benefits changes – (...) *more frequently it is of non-cash nature.*³⁸ Bribery scheme is often attributed to non-material services (for example legal advisory, business consulting, expertise), value of which is hard to assess and measure unequivocally. According to ABW (...) *in many cases astronomical fees amounting to tens of thousands Polish zloty, paid for example for one-page legal opinions or expertise (often fictional or of poor value) are nothing else than hidden form of bribery.*³⁹ There is also additional problem in the fact that one cannot speak about undue compensations in the context of passing money, if there is a proper legal basis for it because of a signed contract or other assignments related to advertising, marketing, sponsoring, public relations and appointment to the supervisory board or board of directors, delegation of appointed agent or plenipotentiary of the board of directors function.

The real corruption on a big scale is that the transfer of benefits has its legal grounds in legal economic situations and financial operations. Then, it is impossible to charge somebody with undue profits. What is more, material benefits distribution can be postponed in time for appearances' sake and security reasons as well as it can be delivered to a designated trusted recipient, intermediary (intermediaries) so as not to arouse any suspicion. Subsequently, further businesses and capital transfers are created, frequently involving other people and entities (companies, foundations, associations). The more complex structure of those processes the more difficult it is to understand real intentions and goals of some established financial operations because they seem to be apparently normal events associated with pursuit of economic activities. Currently corruption becomes a synonym of well-thought-out long-term **investment strategy**, not only what is achievable right now that counts but also what can be achieved in the future thanks to certain activities.

³⁵ K. Kietliński, *Korupcja jako naruszenie sprawiedliwości społeczno-gospodarczej oraz zagrożenie dla moralnych podstaw społeczeństwa*, „Problemy Zarządzania” 2010, no. 2, pp. 139–147.

³⁶ P. Chodak, *Zgoda społeczeństwa na niewielkie przestępstwa korupcyjne*, „Journal of Modern Science” 2013, no. 3, pp. 193–209.

³⁷ M. Brol, *Ekonomiczne i instytucjonalne metody przeciwdziałania korupcji*, „Współczesne Problemy Ekonomiczne” 2017, no. 2, p. 59.

³⁸ *Korupcja w Polsce – próba analizy zjawiska, Raport Agencji Bezpieczeństwa Wewnętrznego*, Warszawa 2004, p. 13, also accessible on: http://www.antykorupcja.gov.pl/download/4/5356/Raport_AgencjiBezpieczenstwaWewnetrznegoKorupcjawPolsce-probaanalizyzjawiska.pdf.

³⁹ *Ibidem*, p. 14.

All this happens within a narrow circle of trusted people who are aware of what they are taking part in and what their role in it is, but also how tangible benefits they get. There is no question of demanding or expecting some undue benefits because returning the favours is not forced and volitional. At the same time, one can legally support a particular political party, election campaign of a particular politician, friendly media, friendly scientific association, private high school, cultural institutions, chosen NGO, foundation or think tank because they meet social objectives and nobody should be surprised that someone wants to be a donor, backer or sponsor of a certain event.

Unfortunately, the notions about modern forms and the real scale of corruption in Poland cannot be pictured from the 31-page-long publication *Map of Corruption* or from the 33 page study *Information on the CBA activities in 2016*.⁴⁰ Naturally, some general remarks can be found there like (...) *there were analyses of contracts for consultancy services, legal services, insurance services and security services by chosen state-owned companies in the years 2015–2016. The actions are carried out within the frame of coordinated control and presentation of final findings and results will be possible upon completion*.⁴¹ 2015 and 2016 have passed and the public got no information on the results of the control. The knowledge is secret and not accessible for potentially interested citizens.

Similar situation is with corruptive practices. Society gets only fragmented media information on disclosed repercussions and effects of certain actions but the essence of corruptive mechanisms is a sequence of processes and the course of actions which were of original character. In order to know exhaustively the case one should get answers to questions, who was the initiator, originator, who assisted, who was engaged, with whom, what kind of dependencies and interpersonal links there were, who had a direct impact on the course of actions and decisions taken, on whose authority, in whose name, for whom worked, who offered immunity and so on. This, however, is a matter of exclusive esoteric knowledge, its depositaries being a close circle of insiders.

Dorota Karpziel claims that corruption is linked to organized crime. *Common interest of all those involved makes this phenomenon difficult to discover and even more difficult to prove. This truth is so common and confirming impunity that has undoubtedly influence on broadening zones of direct danger from it*.⁴² ABW takes the same view, the circumstance that makes corruptive offences difficult to detect is the fact that individuals involved in this practice are not interested in disclosing it at all. The most frequently detected cases of bribery, trading in influence and the abuse of functions, (...) *occur solo very rarely, in most cases they are disclosed in connection*

⁴⁰ *Informacja o wynikach działalności Centralnego Biura Antykorupcyjnego w 2016*, Warszawa 2017, pp. 4–5.

⁴¹ *Ibidem*.

⁴² D. Karpziel, *Przestępczość zorganizowana*, „Internetowy Przegląd Prawniczy TBSP UJ” 2017, no. 7, p. 12.

to other economic cases.⁴³ Corruption in the practice of management does not come down to isolated incidents but takes a complex form of **organised actions in a systemic dimension**. It is its main hallmark and its most important attribute. It is a deliberate and intended **use of legal power** and influences to create and extend **nets of closed systems** overlapping a plane of financial streams to the chosen beneficiaries' accounts. In other words, the point is to reserve prominent positions, good job, lucrative contracts, orders, serious businesses, career paths, possibilities of promotion and development **only to those from a deal, with right connections, links**, and thanks to them they take privileged positions.

Elżbieta Durys is of the opinion that deals, connections, hooks resemble (...) *conspiratorial paranoia in the modern Polish theatre*.⁴⁴ The author has every right to her independent views, opinions and value judgements as well as to announce results of scientific studies in any chosen subject. Freedom of doing science is a constitutionally guaranteed right.⁴⁵ Taking the above under consideration it is worth answering the question whether a “deal” is only an invented and abstract existence noticed by followers of conspiracy theories. According to E. Durys it is present in films as: *“They” create a group taking care of their mutual interests. (...) Impunity is guaranteed by connections and links (...)*.⁴⁶

Analysing a public statement of one of the representatives of judiciary we come across a passage on personnel changes: (...) *I just do not fit into **the new system** which is being created right now*.⁴⁷ Cognitively, it is a very valuable sentence for scientific goals connected to the topic of this article. Firstly, the cited statement is considered, measured, true and authentic. It is an important argument confirming the fact that **a “deal” in judiciary exists**, and moreover it shows the present transformation of its structure. In a logical way it can be understood in the following way: created “deal” is subject to some modification, and hence personal changes. This is rational and substantive argumentation as well as correct usage of the word deal to describe the way an organised group functions.

Secondly, this information has not been made public incidentally but it was deliberate and intentional. It is not from illegal tapping nor is it of private nature. One should admit, that it correctly maps described organisational reality. Thirdly,

⁴³ *Korupcja w Polsce – próba analizy zjawiska*, ... p. 13.

⁴⁴ E. Durys, *Układy, znajomości, „haki”*. *Paranoja spiskowa w polskim kinie współczesnym*, in: *Studia Etnologiczne i Antropologiczne*, vol. 16, M. Rauszer, G. Studnicki (ed.), Katowice 2016, pp. 44–54.

⁴⁵ According to Article 73 such right is granted to each and every citizen. *The freedom of artistic creation and scientific research as well as dissemination of the fruits thereof, the freedom to teach and to enjoy the products of culture, shall be ensured to everyone*. According to Article 54 § 1 *The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone*. Source: the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483 as amended).

⁴⁶ E. Durys, *Układy, znajomości, „haki”* ..., p. 50.

⁴⁷ Source: <https://www.tvn24.pl/lodz,69/odwolany-prezes-lodzkiego-sadu-nie-pasuje-do-nowego-ukladu,807449.html> [access: 7 II 2018].

the analysis of the cited wording does not refer to assessment of the validity of personnel decisions in judiciary by any means but its goal is to verify a thesis about the deal which was the subject of the present considerations.

Areas of corruptive behaviours, its manifestations and forms

If we want to identify correctly modern types of corruption which has its real confirmation in a day to day organisational reality, we should bear in mind that they are tightly linked to the following elements: governance (gaining power, maintenance of power, strengthening of power, expanding of power), applied methods of management, style of management, taking decisions, possible personal and material benefits. Maciej Ciesielski quite rightly believes that (...) *in modern forms of corruption it is about realisation of scenarios based on complex personal interdependences, which are not the same as criminal activity described in articles 228, 229 and 230 of the Penal Code.*⁴⁸ The author adds that more and more common forms of corruption are nepotism and clientelism, as well as (...) *relationships (links), usually of informal nature, which centre on the influence, whose effect is the achievement of particular objectives (personal, business purposes).*⁴⁹ The observations cited are extremely accurate and by any measure correct, although with one tiny restriction of semantic nature. Namely, these relationships and connections are not built (...) *around the influence*, but around concrete persons having influence, power and decision making competences.

Jerzy Matusiak presents opinions that develop the issue. *Nepotism, clientelism and jobs for the boys take care of cushy jobs, and even ministerial seats. It is society that pays for all those sinecures. They secretly subordinate state interest to private interests. In Poland political capitalism is a sanctioned substance of governing.*⁵⁰ It is hard not to agree with these beliefs because in a synthetic formula they resemble a description of methods and processes of management commonly present in organisational reality. Bearing in mind the consequences of such patterns of behaviour it should be assumed that the statement (...) *corruption undermines trust in law and state authorities, plus it violates citizens' sense of security, devastates basic moral values, destroys honesty and responsibility*⁵¹ is true and reasonable. What is more, it poses a serious threat from the perspective of protecting economic interests of the state, because (...) *loss caused by corruption in economic trade only exceeds many times loss caused by ordinary criminality.*⁵²

⁴⁸ M. Ciesielski, *Zjawiska korupcyjne jako podstawowa kategoria zagrożeń bezpieczeństwa i zdolności bojowej Sił Zbrojnych RP – perspektywa Służby Kontrwywiadu Wojskowego*, „Przegląd Bezpieczeństwa Wewnętrznego” 2015, no. 13, p. 214.

⁴⁹ Ibidem, p. 213.

⁵⁰ J. Matusiak, *Peryferyjny kapitalizm zależny*, e-book, 2006, p. 123.

⁵¹ Ibidem, p. 117.

⁵² Ibidem.

Dirk Tanzler points out that (...) *corruption does not happen in the void but at the interface between public sector administration and private companies, wherever there are public funds*.⁵³ The above beliefs require a few words of comment to direct thinking to a correct identification of possible areas where corruption practices appear. Firstly, one cannot narrow the field of vision only to a chosen category of institutions financed from taxpayers' money, known as *administration*, because public finances sector embraces also among others public control bodies and law enforcement courts, tribunals, executive agencies, budget institutions, Social Security Office (ZUS), Agricultural Social Insurance Fund (KRUS), National Health Service (NFZ), public autonomous health care management units, public high schools, Polish Academy of Science (PAN) and its organizational units, state and local institutions of culture (article 9 of the Act on public finances).⁵⁴ Secondly, there are also other entities in the ordinary course of trade, like state-owned companies and their subsidiaries, companies with a capital share of local government authorities, housing corporations, societies and credit unions, sports federations, foundations, associations, private financial institutions, media concerns, listed companies, law firms, and so on, that trade with public sector organizations as well as with private sector.

So, corruptive practices can occur in all categories of organizations functioning in the economy⁵⁵, although they are perceived and interpreted differently depending on whether they are present in institutions supervised by the state or in private entities.⁵⁶ Nevertheless, it cannot be said that corruption in a broader meaning occurs only in public sector⁵⁷, although undoubtedly the most frequently detected forms of corruption refer to the described situations.

⁵³ D. Tanzler, *Korupcja jako metafora*, „Roczniki Nauk Społecznych” 2012, no. 4, p. 78.

⁵⁴ The Act of 27 August 2009 on public funds (Journal of Law 2009, no. 157, item 1240 as amended).

⁵⁵ J. Burzyński, T. Burzyński, *Ryzyko zachowań korupcyjnych w instytucjach państwowych na przykładzie Służby Celnej*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2013, no. 2, pp. 217–229; A.E. Chodorowska, J.M. Stopińska, *Korupcja w ochronie zdrowia*, „Journal of Modern Science” 2012, no. 4, pp. 163–181; K. Nowakowski, *Zagrożenia etyczne i korupcyjne w mediach*, „Studia Medioznawcze” 2017, no. 2, pp. 128–140; J. Potulski, *Penalizacja korupcji w sporcie – uwagi krytyczne*, „Prokuratura i Prawo” 2012, no. 3, pp. 67–78; P. Szwajdler, *The legal aspects of corruption in sport*, „Journal of Education, Health and sport” 2016, no. 5, pp. 445–451; A. Turska-Kawa, M. Czaja (ed.), *Postawy wobec korupcji w samorządzie terytorialnym. Raport z badań w województwie śląskim*, Katowice 2015; L. Wilk, *Korupcja w reklamie farmaceutycznej*, „Prokuratura i Prawo” 2011, no. 10, pp. 21–36.

⁵⁶ J. Burzyński, T. Burzyński, *Ryzyko zachowań korupcyjnych w instytucjach państwowych na przykładzie Służby Celnej*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2013, no. 2, pp. 217–229; A.E. Chodorowska, J.M. Stopińska, *Korupcja w ochronie zdrowia*, „Journal of Modern Science” 2012, no. 4, pp. 163–181; K. Nowakowski, *Zagrożenia etyczne i korupcyjne w mediach*, „Studia Medioznawcze” 2017, no. 2, pp. 128–140; J. Potulski, *Penalizacja korupcji w sporcie – uwagi krytyczne*, „Prokuratura i Prawo” 2012, no. 3, pp. 67–78; P. Szwajdler, *The legal aspects of corruption in sport*, „Journal of Education, Health and sport” 2016, no. 5, pp. 445–451; A. Turska-Kawa, M. Czaja (ed.), *Postawy wobec korupcji w samorządzie terytorialnym. Raport z badań w województwie śląskim*, Katowice 2015; L. Wilk, *Korupcja w reklamie farmaceutycznej*, „Prokuratura i Prawo” 2011, no. 10, pp. 21–36.

⁵⁷ J. Bojarski, *Korupcja gospodarcza. Studium z dziedziny polityki kryminalnej*, Toruń 2015.

Another important issue that should be mentioned here is that public money passed to a concrete private entity under a prior contract (for example winning a tender, signing a lucrative multimillion contract, lucrative assignment) is usually distributed further by authorities of this company, and, at the same time, it gets to other organizations, contractors, suppliers, subcontractors, co-workers, and so on. Referring to further financial flows one cannot absolutely acknowledge that these are processes and decisions connected to spending public money. Similarly, it is not true that a foundation established by state-owned companies shall become the authorising entity as far as public means are concerned and spends taxpayers' money concluding commercial agreements with third parties. That is why speaking about a particular case one should adopt a more complex perspective without reducing thinking perception to noticing only single isolated economic events because the sequence of processes and links between them, as well as their dependences or organisational and legal conditions are equally important. To supplement the considerations one can only add that state-owned companies do not belong to public finances sector and private companies (entities) are not obliged to comply with the public procurement law⁵⁸, they can freely part with their assets and their authorities do not have to justify their decisions in front of the public.

Piotr Borowiec, while analysing the chosen aspects of huge corruption in the 3rd Republic of Poland, refers to privatisation of state assets, legislation processes, media activity, public procurement and corruption by employing. He also adds that such practices are used in (...) *all procedures connected with getting jobs or changing positions and, what should be stressed, it does not refer only to jobs in the budgetary area and well-paid positions*.⁵⁹ He also pays attention to usurpation of public institutions commenting that (...) *access was strictly limited to "the chosen" – unnecessarily competent and honest people*.⁶⁰ Insightful analysis of concrete events and processes going on in the economy lets us confirm that it is a pragmatic and right reasoning. The same reasonable statement is that corruption (...) *undermines the principle of equality of citizens before the law and equal access to public institutions*⁶¹, and notorious corruption is (...) *the biggest threat to the state*.⁶² Equally rational seems the following statement: (...) *wherever huge money is involved, there is also a risk of corruption, and the bigger amount of money the higher the risk is*.⁶³ Piotr Solarz adds that (...) *corruption will occur when a monopolistic decision is discretionary, without any risk of personal responsibility for results of the choice. Corruption is a monopoly plus discretion minus responsibility*.⁶⁴

⁵⁸ The Act on public contracts of 29 January 2004; Journal of Laws 2017, item 1579 as amended.

⁵⁹ P. Borowiec, *Korupcja w III RP – obszary szczególnego występowania*, „Środkowoeuropejskie Studia Polityczne” 2007, no. 1, p. 196.

⁶⁰ Ibidem, p. 201.

⁶¹ Ibidem, p. 191.

⁶² M. Romański, *Znaczenie zjawiska korupcji dla bezpieczeństwa państw upadłych*, „Roczniki Ekonomii i Zarządzania” 2017, no. 1, vol. 9, p. 25.

⁶³ M. Chruściel, *Wojsko jako podatny grunt dla korupcji*, in: *Realizacja działań antykorupcyjnych w resorcie obrony narodowej*, R. Wykurz (ed.), Warszawa 2017, p. 7.

⁶⁴ P. Solarz, *Korupcja, klientelizm i kapitalizm polityczny jako podstawowe pojęcia w dyskursie*

To following issues are included within the functional areas of organisation management, where corruption usually occurs:

- Employment processes, i.e. getting jobs in institutions of public finance sectors, positions in supervisory boards and boards of state-owned companies and executive positions in those entities. The same phenomena occur in other organizations of private sector but there they are not perceived as pathologies but rather as family and environmental entrepreneurship.
- Contracting with outer companies, lucrative orders, contracts.
- Awarding of grants from public money, awarding concessions and permissions.
- Tenders and public procurement.
- Reprivatisation.
- Issuing of fictional invoices to prove non-existing economic events, VAT extortion.

Personnel policy as a key component of corruption

As mentioned earlier corruptive practices exist in each area of social and economic life in different form and scale, in all institutions of public finances sector, state-owned companies and other companies and organisations of private sector. Law frames for certain categories of organisations basically create ground for some particular behavioural commitments, as well as for their different assessment not only from legal and penal perspective but also in the context of social approach. It is a widespread feeling that in private business such phenomena as nepotism, favouritism, job for the boys and accessory are considered positive – treated as desired expression of resourcefulness.

Personnel policy in institutions under state supervision is one of the topics that attracts media attention and arouses numerous controversies because of ambiguity of opinions and assessment of the phenomenon. Commonly accepted are beliefs that in many cases it is not outstanding and above-average competences and extensive knowledge that decide about nominations, promotions to lucrative positions, but such factors as agreements and connections, relationships with high-profile contacts, i.e. powerful people are decisive. What is more, the subject of **access to the so called lucrative and highly-paid positions** and functions for Polish citizens is also very important. In this matter legal provisions describing formal and legal procedures of employment in a particular category of organisation play the key role. For example, procedures of choosing members of management boards and supervisory boards in state-owned companies and companies that belong to regional and local authorities do not require an open and competitive competition procedure. At least, it would make an illusory impression that the interested people have proper knowledge, competences and qualifications to apply for the position. The same situation applies to management positions and other jobs in state

companies, as well as many other positions in the public administration and the local administration who are appointed in the legal frame of appointment for the position. It is sufficient to give a legal ground for a personnel decision and statement that the decisions are taken by competent organ, person and according to the legal regulations.

Against this background there may appear different opinions and interpretations. If everything is going on in accordance with applicable law, under no circumstances one can question actions by competent authority in the area of personnel policy. It is not illegible to hunt corruption out in these processes, because it influences the reputation, undermines credibility, reliability and authority of government, as well as citizens' trust in the country's public bodies. Nevertheless, one can take slightly different, widened and multi-dimensional perspective of analytical thinking, which refers to the so called **principle of availability** in public service. It stems directly from the Constitution: *Polish citizens enjoying full public rights shall have a right of access to the public service based on the principle of equality* (Article 60).⁶⁵

The act amending the law on the civil service⁶⁶ adopted in the end of 2015 has introduced some significant changes, for example discontinuation of the so called "open and competitive mode" by employment on higher management positions as well as the scope of qualifications, the candidates shall fulfill.⁶⁷ In the public debate back then there were logical and justified arguments that resignation from competitions for recruitment for higher positions in the civil service is appropriate, because all those notifications were anyway fictitious – and the winner was the person who was supposed to be chosen, and there was no need to pretend that it was honest and competitive. There were also other rational and right opinions that the modifications of provisions made a quick change of personnel possible. Naturally, official explanatory memorandum to the draft generally indicated that (...) *proposed changes with regard to the occupation of higher posts are a consequence of previous practice which disclosed how ineffective and long-winded the procedures were*⁶⁸, and in the legal opinion of BAS (Bureau of Parliamentary Analyses) of 12 January 2016 on the changes made, there are neither remarks nor comments with reference to Article 60 of the Constitution of the Republic of Poland. It all proves how illusionary the provisions of the Constitution are, which theoretically are a set of rules of law – a foundation of a democratic country based on the rule of law.

⁶⁵ The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483 as amended).

⁶⁶ Evolution of the legislative process, source: <http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=119> [access: 7 II 2018].

⁶⁷ The Act of 30 December 2015 amending the act on civil service and some other acts (Journal of Laws 2016, item 34).

⁶⁸ M. Gintowt-Jankowicz, *Opinia prawna o projekcie ustawy o zmianie ustawy o służbie cywilnej oraz niektórych innych ustaw*, druk sejmowy nr 119 z 15 grudnia 2015, Biuro Analiz Sejmowych, Warszawa 2015, source: <http://orka.sejm.gov.pl/rexdomk8.nsf/Opdodr?OpenPage&nr=119> [access: 7 II 2018].

There are no problems with giving examples of attractive state sinecures, which are taken by arbitrary decisions in the legal form of appointment for the position. It means that all decision making processes connected to filling the positions can be assessed and interpreted on the ethical and moral plane, but they cannot be questioned from the legal point of view. Information given to the public on certain nominations describes in fact the final effect of other backstage activities (recommendations, support) of some people having a direct or indirect impact on the course of events. The awareness of these processes is not for the public and is of **secret nature**. The most constitutive feature of the described personnel processes is their efficiency in the sense that every time informal arrangements, which were made previously (in a narrow circle of **influential** people), are next implemented without any obstacles and according to the scenario required.

This is exactly the same situation with **legal corruptive practices** in personnel area, their effects are overt but **the course of events prior to a certain legal action is covert**. This mechanism within benchmarking is duplicated as a model of efficiency in other recruitment processes where, according to the law, the institution is obliged to publish vacancy notices. First, preliminary decision is taken in a narrow circle of important people about the need to employ a particular candidate. Then, next actions regarding the so called “open and competitive” procedure are subordinated to the idea. Proper criteria and formal requirements are prepared, which need to be fulfilled by the employee. Without much effort one can profile formal requirements like detailed education, postgraduate studies, specific courses, trainings and necessary professional experience on particular positions to successfully constrain the number of potential rivals and only on a preliminary stage show **favouritism** of a particular person. In other words, one can dedicate, fix a vacancy notice for a particular person so that the requirements could be filled only by the one and only candidate. In practice, there is also a second, more sophisticated and subtle method to lend colour to fairness of the proceedings and competitiveness of the choice. The requirements formulated then are less precise to let other candidates show up. Then no one could say that others did not have a chance. In the end, of course the predefined beneficiary wins and it can be said that the winner was assessed as the best by the “independent” recruitment commission.

With regard to presented considerations one might wonder from which perspective the **fixing of competitions** and interfering with their course should be assessed. And how such behaviours shall be assessed from the legal perspective? In fact it is a very important question because depending on the criteria and the reasoning different conclusions and opinions could be drawn.

From the perspective of a person representing an employer the following arguments will be given that according to competences he/she does have the right to take autonomous personnel decisions as well as to profile detailed formal requirements crucial for a particular position in order to conduct effectively tasks on the highest possible level. The fact that there was only one candidate who fitted formal criteria

given in the notice can give only satisfaction that the person with required qualifications and expected experience was managed to be found. All procedures took place in accordance with the law, so it is completely unfounded and unauthorised to raise any objections in the case.

Looking at a particular case from the other side one should undoubtedly admit that **fixing formal criteria so that a concrete candidate** would fit in is an activity that has a direct impact on the whole competition procedure. As a result a particular beneficiary gets tangible personal and material benefits. The person chosen is treated specifically and their position of dominance compared to other potential candidates looking for a job is guaranteed. In view of the fact that such a case happens in one of the public finances institutions, which are obliged to carry out open and competitive recruitment procedures under appropriate legal act, the actions described above completely **undermine** and **contradict** the authenticity of conduct. Further dilemmas come up whether to qualify such behaviours only as deficiencies or irregularities, or deliberate and targeted **abuse of power and acting against the public interest?**

Analysing publicly available communiqués by CBA (Central Anti-Corruption Bureau) on the web-site one can come across only one case connected to a job offer: (...) *people arrested used their positions and influenced the course and results of competition procedures relating to the recruitment of some officials, i.e. directed the recruitment process to employ only predetermined individuals.*⁶⁹ Unfortunately, the media reports give no information which would allow to comment on the legal status of the act and the grounds for detainment. From the fact that CBA do not identify more practices of this kind it cannot absolutely be concluded that fixing competitions is of incidental nature only because a separate case was found in one of local municipalities. In reality it is quite opposite because the crushing majority of recruitment procedures look exactly like this and the final result is known even before the vacancy note is published. All the people who are engaged in implementing the scenario and having real influence on the course of events, perfectly know about it and accept it.

Staying in the area, we can mention another, given in media case of influencing recruitment procedures in the Supreme Audit Office (NIK). In this case, according to the prosecutor's office a crime of power abuse was committed (Article 231 §1 of the penal code), and the acts were assessed as (...) *highly socially harmful. They caused a real damage to public and private interests.*⁷⁰ Presented interpretation of the analysed case in connection with the abuse of power and influences corresponds with former remarks on competitions, which were formulated according to the rules of the correct reasoning and knowledge and life experience. However, it is not

⁶⁹ See. The communiqué of CBA of 2 XII 2016 in the case of competition procedures in recruitment process in a local municipality, source: <https://cba.gov.pl/pl/aktualnosci/3610,Zatrzymani-wojt-sekretarz-i-kontroler-NIK.html> [access: 3 II 2018].

⁷⁰ See. The Chairman of NIK with allegations, 8 IX 2009, source: <https://wpolityce.pl/kryminal/356851-prezes-nik-z-zarzutami-zdaniem-prokuratury-doszlo-do-przestepstwa-naduzycia-wladzy-przy-obsadzaniu-stanowisk-w-izbie> [access: 3 II 2018].

the final and binding assessment of the problem because it is the court that shall settle the matter, and to be more precise indicated jury.

Completely different are recruitment processes in state-owned companies and other institutions, where the law does not impose any obligations to carry out open competition procedures for prominent management positions as well as other job places. On the basis of studies, documents analyses and open source information one can notice common and repeated practices and circumstances of the usurpation of the public sector. To be precise, only a chosen category of beneficiaries gets lucrative positions of chairpersons, managing directors, specialists in those institutions where their fellow party members hold power, thanks to their arbitrary and discretionary decisions. In brief, one can describe them as councilmen, party members, former politicians, members of their families, people linked to them and their acquaintances. What is more, the common phenomenon is combining positions in management boards and positions of directors in governmental administration or local administration with positions in supervisory boards.

Description of some aspects is needed because the mechanisms, patterns of behaviour, and more importantly, the goals of the described personnel activities, are continued in other functional areas. Decision making powers are particularly used inter alia for entering into agreements with designated outer entities, or preparing and carrying out activities when it comes to procurement and public orders. But is there anyone who can admit that? Certainly not because (...) *governance is accompanied by discretion*⁷¹ and protecting the knowledge of interests and improprieties.

Conclusion

The remarks and analyses presented in the article entitle us to formulate a statement that corruption in wider sense is wrong against fair, compliant with the principles of the rule of law and social justice existence of the Polish country. One of the main goals of the study is proper organizing and structuring the knowledge of the phenomenon, as well as circumstances and factors which foster some practices. Such an approach makes it possible to get to know deeply and understand the nature of some events, processes and decisions in management. It also leads to broader horizons and better perception of behavioural patterns, common in organizational reality. In the literature an opinion dominates that unambiguous and precise definition of corruption with all its features and mechanisms is a difficult task.⁷² Because of that the basic problem is to describe in detail and fairly characterize a notion and then express assessments, logically justified opinions and value judgements on the subject.

⁷¹ P. Wiatrowski, *Prawne, ekonomiczne i socjologiczne aspekty korupcji*, „Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie” 2008, no. 776, p. 102.

⁷² M. Bartoszewicz, *Zagrożenia korupcyjne w polskim samorządzie*, „Rocznik Samorządowy” 2016, vol. 5, p. 24.

Andrzej Cieřlik and Łukasz Goczek point out that forms of corruptive behaviours tend to change along with changes and transformations in current economy.⁷³ On the basis of the observation made one can come to a conclusion that the most common practices refer to the so called **legal corruptive activities**, which take a dominant position. However, it does not mean that they are less socially harmful and do not pose a serious threat to the state economic interests – on the contrary. We have to agree with the view that corruption occurs not only in public sector⁷⁴, but it may appear in activities of all entities and organisations in the ordinary course of trade.⁷⁵ Nevertheless one cannot accept such a way of thinking that would imply the existence of corruption practices only in case of post-communist countries, because the phenomenon takes place also in countries with a democracy based on firm foundations.⁷⁶

Corruptive behaviours are mostly associated with politics and the exercise of public authority. And here a link between corruption and political pressure⁷⁷ is indicated, and it is an accurate observation. According to Piotr Solarz, there have been created dysfunctional links called “a deal”, like patron-client scheme within authority and public administration environment. *These links refer to using positions and public financial means, as well as positions in administrative apparatus to benefit political clients.*⁷⁸ It is an accurate diagnosis which differs significantly from a statement that *the state makes efforts to counteract corruption by legal norms and promotion of ethical standards.*⁷⁹

There are more and more theoretical deliberations on possible methods and ways of counteracting corruption in modern literature. There are, among them, for example the need of developing anti-corruption strategy, management by reliability⁸⁰, moving tasks connected to fighting corruption from the scope of ABW (Internal Security

⁷³ A. Cieřlik, Ł. Goczek, *On the of Corruption Patterns in the Post-Communist Countries*, „*Equilibrium. Quarterly Journal of Economics and Economic Policy*” 2015, no. 1, p. 37.

⁷⁴ A. Cieřlik, Ł. Goczek, *Korupcja, jakość rządu a wzrost gospodarczy w krajach transformacji*, „*Rocznik Instytutu Europy Środkowo-Wschodniej*” 2016, no. 5, p. 94.

⁷⁵ W.M. Grudzewski, I.K. Hejduk, A. Sankowska, *Korupcja w organizacji*, „*Ekonomika i Organizacja Przedsiębiorstwa*” 2008, no. 7, pp. 5–10.

⁷⁶ B. Czepil, *Zjawisko korupcji w demokracji skonsolidowanej. Przypadek Finlandii*, „*Przegląd Politologiczny*” 2017, no. 2, pp. 113–127; P. Grabarz, *Zjawisko korupcji w Polsce i Norwegii – zarys charakterystyki porównawczej*, „*Studenckie Zeszyty Naukowe*” 2016, no. 29, pp. 37–45.

⁷⁷ M. Piotrowska, *What Factors Matter for the Evaluation of Relationship between the Perceptions of Corruption and Politicization in Local Administration in Poland*, „*Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu. Ekonomia*” 2010, no. 136, pp. 138–149.

⁷⁸ P. Solarz, *Ekonomiczne i kulturowo polityczne przyczyny korupcji w Polsce po akcesji do Unii Europejskiej*, „*Kwartalnik Naukowy Uczelni Vistula*” 2013, no. 4, p. 12.

⁷⁹ T. Szewc, *Korupcja: wybrane konsekwencje prawne*, „*Organizacja i Zarządzanie*” 2015, no. 1, p. 127.

⁸⁰ Z. Dobrowolski, *Strategie i metody przeciwdziałania korupcji*, in: *Bezpieczeństwo ekonomiczne państwa. Uwarunkowania, procesy, skutki*, A. Jackiewicz, A. Trzaskowska-Dmoch (ed.), Warszawa 2017, pp. 122–125.

Agency) competences to CBA⁸¹, increasing economic liberties of citizens.⁸² Using modern information technologies in teaching and promoting ethical standards is also advised.⁸³ It is pointed out that high schools as institutions responsible for shaping young people's attitudes should play a significant role in the education process of present and future managers as far as ethical standards and anti-corruption behaviours are concerned.⁸⁴ It is recommended to include so called *Principles for Responsible Management Education* – PRME into teaching content.⁸⁵ However, an important question arises, if these proposals can truly contribute to a significant reduction of the corruption in Poland?

In view of the deliberations presented in this paper it is worth commenting on some statements by ABW: (...) *corruption is the phenomenon that facilitates illegal mechanisms of taking decisions that create relations in a public sphere. Socially entrenched corruption habits are a factor damaging state structures.*⁸⁶ This opinion should be supplemented, because the practice proves that in most cases **corruption** influences **legally taken decisions** by the authority representatives, i.e. in compliance with granted powers and competences. Referring to habits it should be pointed out that they are mostly created, promoted and reinforced by political parties and ruling authorities. The chosen by a nation, establishment, extraordinary caste, parlour society, i.e. groups holding power treat institutions under the state supervision as their own, which is contrary to the Constitution, because: (...) *the Republic of Poland shall be the common good of all its citizens (article 1).*⁸⁷ So, in whose interest would be activities against corruption and to whom they would serve?

Bartosz Czepil assesses in a logical and accurate way “the fight with corruption” as (...) *a never ending and self-justifying process.*⁸⁸ The necessity of counteracting corruption is justified by the fact that new forms of corruption enforce applying other methods and anti-corruption actions, which **will never end**. Agnieszka Turska-Kawa claims that (...) *the subject of corruption is a man, and it is his awareness, knowledge, strong psychological*

⁸¹ P. Chodak, *Korupcja – jak ją skutecznie zwalczać*, „Journal of Modern Science” 2017, no. 1, p. 353.

⁸² A. Pluskota, *Wpływ wolności gospodarczej na korupcję na przykładzie wybranych państw europejskich*, „Folia Oeconomica Acta Universitatis Lodziensis” 2017, no. 328, p. 161.

⁸³ E. Stawiarska, J. Machnik-Słomka, *Zastosowanie współczesnych narzędzi informatycznych w nauczaniu w kierunku zachowań etycznych i antykorupcyjnych*, „Organizacja i Zarządzanie” 2016, no. 2, pp. 143–156.

⁸⁴ Ibidem, p. 144.

⁸⁵ E. Pawłowska, K. Skowron, *Wykorzystanie nowoczesnych technologii informatycznych w procesie wdrażania zasad nauczania przeciwko korupcji w szkolnictwie wyższym*, „Zeszyty Naukowe Politechniki Śląskiej. Seria Organizacja i Zarządzanie” 2016, no. 92, p. 256.

⁸⁶ Tasks of ABW, countering corruption, source: <https://www.abw.gov.pl/pl/zadania/zwalczanie-korupcji/50,Zwalczanie-korupcji.html> [access: 9 II 2018].

⁸⁷ The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483 as amended).

⁸⁸ B. Czepil, *The “fight against corruption” as a never-ending and self-legitimizing process*, „Studia Socjologiczne” 2016, no. 4, p. 228.

*attitude, inside integrity and reliability that should be a starting point of any anti-corruption activities.*⁸⁹ In reference to these interesting remarks one fundamental question should be answered: do all the people have the same attitude to corruption and the same opinion on it?

Corruption is highly desirable and valuable for people engaged in a deal because they benefit from it, have spectacular financial successes, their career paths are ensured as well as possibilities of development. Other people from our society, people without any connections, acquaintances, the marginalized, blocked and destroyed by existing deals see things in a different way. It means that depending on the perspective corruption will be interpreted and assessed differently, in a positive or negative aspect. Corruptive practices are currently **under noticeable modification** because they adapt to new reality, challenges of modern times and that is the reason they take more sophisticated, **secure** and covert forms. Nevertheless, for many years the goals, rules and mechanisms of the deal remain unchanged.⁹⁰

Abstract

The article presents considerations and analyses that enable detailed recognition of the essence of the corruption phenomenon perceived in the context of common management methods and decision-making processes. At the beginning, it was explained how the concept of corruption should be understood and also the main corruption mechanisms were described. In the further part of the work, corruption is analyzed as an important and crucial element of management system. At this point, particular attention is paid to threats to the economic interests of the state, as well as violating the rules regarding principles of the law and social justice. Next, the aspects and contemporary forms of corruption behaviours were discussed, as well as the main functional areas of management practice where corruption occurs most frequently. In the final part the personnel policy as an important component of corrupt practices is analyzed.

Keywords: corruption, corruption-related mechanisms, authority, influences, connections, the rule of law, social justice.

⁸⁹ A. Turska-Kawa, *Przeciwdziałanie korupcji – ujęcie wielopłaszczyznowe*, „Political Preferences” 2017, no. 17, p. 110

⁹⁰ W. Walczak, *Źródła zachowań o charakterze korupcyjnym w praktyce zarządzania*, in: *Korupcja w administracji*, M. Myśliwiec, A. Turska-Kawa (ed.), Katowice 2016, pp. 63–88.