



**RESEARCH PROJECT: CRIME AND CULTURE**

**Crime as a Cultural Problem. The Relevance of Perceptions of Corruption to Crime Prevention. A Comparative Cultural Study in the EU-Accession States Bulgaria and Romania, the EU-Candidate States Turkey and Croatia and the EU-States Germany, Greece and United Kingdom**

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**GERMANY: STATE OF THE ART REPORT**

**Perceptions of Corruption in Germany  
A Content Analysis of Documents from Politics, Judiciary, Police, Media,  
Civil Society and Economy**

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# 1. Introduction: An Outline on Corruption and Anti-corruption Measures in Germany

## *General Remarks*

Germany was selected within the research project because it is known for its long historical tradition of rational bureaucracy and legal structures, but has in recent years also been confronted with a number of corruption cases within different areas of society. To a certain extent, Germany represents an institutional contrast to post-socialist countries with authoritarian traditions and resultantly less rational administrative practices and legal traditions that continue to suffer from the cultural inheritance of their recent past. However, in Germany, too, cases of corruption continue to come to light, apparently with increasing frequency (Dolata/Schilling 2004, Leyendecker 2003). The German ‘corruption sector’ continues to expand (Bannenberg/Schaupensteiner 2004). Consulting agreements, private expert reports, provisions, and exchanges of mutual ‘favours’ are among the forms of corruption most often recorded in this country.

In summary, the predominate form of corruption in Germany is not so-called ‘situative corruption’, but instead ‘structural corruption’. The former term is used to describe corruption that arises in situative, unplanned relationships that are not intended to be long-term. An example of this form would be bribing a customs official or a traffic police officer. The latter form arises within relationships that have developed over a long period of time. It is limited to particular spatial and social contexts. In Germany, these contexts are above all the construction business and that section of the civil service responsible for distributing government funds. In addition, there are corrupt networks in German organised crime circles.

## *Assessment of the Implementation of International Conventions (OECD, GRECO)*

Although the German code of criminal law does not mention the term corruption, the pertinent bribery offences are defined in a “Law on the Fight against Corruption” (KorrbekG) that entered into effect in 1997 and is intended to ensure more effective prosecution of corruption as well as severer penalties for such offences in economy and government. This anti-corruption law expands the range of offences by public officials that can be taken to court covered in the code of criminal law (personal gain, venality, enabling personal gain, and bribery) to include submission fraud (i. e. agreements in relation to tender offers that disregard procedural guidelines or break the law). Further aspects of the anti-corruption legislation are (Schilling 2004; pp. 19-23):

- a) The Federal Minister Law (BMinG), which stipulates that members and former members of the federal government are obliged to report any gifts they may have received as a function of their office. Disciplinary procedures are not taken up against member of the government;
- b) The Law on the Fight against International Bribery (IntBestG), which defines what constitutes bribery of international representatives. Bribery and attempted bribery are punished with five years prison or a fine, thus putting the offence on an equal level with the bribery of elected officials;
- c) The Law on Income Tax (EstG), which was revised on the basis of the legal framework set by the “Law on the Fight against Corruption” (KorrbekG), the The Law on the Fight against International Bribery (IntBestG) and the EU Bribery Law (of 10.9.1998), and which constitutes a widening the offence’s definition. Whereas until 1995 German tax law permitted the deduction of bribery costs from income taxes due, current legislation forbids this practise,

i.e. bribes made within Germany as well as in other countries cannot be deducted under the category of business expenses; and

d) The OECD Convention and the respective legislation towards its implementation which became obligatory for German anti-corruption legislation in 2000.

Many procedures perceived by the general public as corrupt have not been codified under criminal law, for example bribes made to functionaries in political parties. Also as yet to a great extent intact remain the practices of public office patronage, clientelism and nepotism. Furthermore, the criminal code (as pertains to debt offences) is concerned with natural persons, whereas legal persons and associations cannot be charged with these offences – in such cases, only administrative sanctions or fees are foreseen (cf. OECD 2003). Under these conditions, charges cannot be pressed against offences committed from within commercial enterprises (Bannenberg/Schaupensteiner 2004, p. 29). Similarly lacking any binding status – i. e. as yet not absorbed into national legislation –, is the “Civil Law Convention on Corruption“ passed by the European Council as a means of strengthening civil law in the struggle against corruption. These means were intended to provide a concrete co-ordination of legislation in the field of damage claims. They provide the victims with the right to compensation for losses incurred as a result of corrupt conduct. Although legal loopholes have been closed by striking of the tax deduction option for bribery costs, there are still areas in need of improvement. In particular, the index law, which would prevent unreliable firms from being granted public commissions, must be passed (GRECO 2004, p. 7). Furthermore the definition of the offence of bribery of officials must be extended to the consulting professions, the self-employed and free-lancers, as well as that of bribery of elected officials to all relevant fields of political activity including fractional voting and parliamentary committees (Bannenberg/Schaupensteiner 2004, pp. 129-130). A further aspect of a co-ordinated anti-corruption policy is the optimisation of law enforcement agencies, i.e. the introduction of a framework permitting co-operation between courts of audit, anti-trust offices and auditing bureaux (Leyendecker 2003, p. 308; cf. on this OECD 2003, p. 44). In order to ensure optimal synergy effects through the co-ordination of available resources, central state bureaux could be established at the Office of the Public Prosecutor (Bannenberg/Schaupensteiner 2004, p. 129).

#### *Anti-corruption measures: Judiciary, Administration, Civil Society*

In March 2004 the Federal Cabinet adopted the first interim report of the *Initiative to Reduce Bureaucracy* upon establishing that the efforts to contain red tape have brought positive results – of a total of 54 projects nine have already been concluded successfully. The success has encouraged the Federal Cabinet to extend the scope of anti-bureaucracy regulations adopting 14 new projects which the *Initiative* will bring forward in addition to the 54 projects. It was also planned that by the end of the year 2005 some 40 percent of meanwhile 68 projects should be implemented the conclusion of all projects scheduled to be accomplished by the end of 2006.

The Federal Government Directive on the Prevention of Corruption in the Federal Administration of 17 June 1998 is being further developed taking permanently into account the findings so far achieved, but also the international developments in the field.

According to the experience gathered particular attention should be conferred on: a) the specification on the regulation governing the rotation of staff, b) defining the independence of contact partners from mandates and the direct right of advising and informing their office management, c) further specifications on the regulation on altering and informing staff, and d)

enhancing training measures by specific reference to the users including supervisors and managers.

An important contribution to achieving transparency in sponsoring services for the Federal Administration has been made since July 2003 when the Federal Government adopted the General administrative regulation to promote activities by the Federal Government through contributions from the private sector (sponsoring, donations and other gifts). In cases such as carrying out representative events for portraying the Federal Republic of Germany to foreign countries, supporting public relations and supporting campaigns for health education sponsoring activities are allowed. For information purposes the Federal Ministry of the Interior shall from 2005 report to the German Bundestag and the public in two-year intervals on sponsoring services to the benefit of the Federal Administration.

In February 2004 Germany's largest association of pharmaceutical companies (Verband der Forschenden Arzneimittelhersteller) presented a code of conduct to its members that purports to rule out offers of improper advantage and provides regulations for corporate gifts and entertainment for doctors. Although long overdue, this regulation code is sometimes not precise enough thus being possibly ineffective. A self-regulatory association was invested with monitoring the observance of the code of conduct and imposing sanctions in case of infringement.

In April and March 2004 the states of Saxony and North Rhine-Westphalia established special task forces to combat corruption including prosecutors, police officers and accountants – their co-operate was considered indispensable in the face of the increasingly complex networks of corruption and corruption scandals (for example in North Rhine-Westphalia).

In March 2004 Hamburg became the first German state to establish by way of law a blacklist for companies found guilty of corruption. Although similar blacklists were introduced in various other states too (including North Rhine-Westphalia, Hessen, Lower Saxony and Baden Württemberg), their legal foundation is not as strong as in Hamburg because they have been established by administrative order (*Verordnung*), rather than by law. In April 2004 North Rhine-Westphalia announced its intention to update its provisions; nevertheless its current blacklist is mandatory only for tenders at state level, not at the communal level. Since 2004 eight federal states have already established by way of law blacklists for corrupt companies.

Germany finally complied with the UN Convention against Corruption concerning the bribery of members of parliament. The initial (till 2003) delay tactic characterising the German stance to negotiations on this point resulted from members of parliament arguing that creating such an offence would carry no advantage since nobody would try to bribe them and that, in addition, the rules of appropriate conduct are not easily specifiable. In December of that year Germany signed the convention and in 2005 it put it to force.

It still holds true that in the German public services there is no high awareness of the need of transparency as a powerful means combating corruption. This becomes immediately evident in the case of the access to information that is indeed an exception: if there is no explicit provision saying a document is accessible, it is to be handled as confidential. Thus restricting the right to information Germany, along with Luxembourg, is the only EU member that has not enacted freedom of information legislation. However a certain progress has been made four states [Brandenburg (1998), Berlin (1999), Schleswig-Holstein (2000) and North Rhine-Westphalia (2002)] making so far their administration's documents accessible. Since 1998 there have been various initiatives to introduce freedom of information legislation, but owing to the persistent dissent of the business sector and some ministries the Ministry of the Interior gave up the effort 2004. New momentum gained the initiative in April 2004, when a coalition of five professional associations and NGOs – The German Association of Journalists, the

Union of Journalists in the Trade Union ver.di, the Netzwerk Recherche, TI Germany and the Humanist Union – handed a to the president of the Bundestag (German Federal Parliament) a freedom of information bill. The proposed legislation rules were intended to cover only federal agencies, which had the advantage of accelerating the process of their being quickly ratified since the upper house of parliament would not to vote in favour of it, but on the other hand its shortcoming was that it would not affect information at the communal level, since the states enact their own legislation in this area.

According to a report of the Federal Criminal Office in 2003 1.100 corruption cases were taken to court – in 60 % of them companies were accused and only in 16 % were involved civil servants. These statistics testify to the alarming extent of corruption liabilities in the economic sector – as regards construction companies this susceptibility assumes the character of an intrinsic property. On these grounds and becoming increasingly aware of the extent corruption can damage the processes of market competition it is no surprise that business associations, industry federations and trade unions show a growing interest in fighting corrupt conduct. Especially regarding the regulations of public contracting and the establishment of a corruption register (at least at the level of the federal states) it is observed that synergy effects are developing between the activities of politicians, NGOs and the business world. If one compares the claims raised by industry and TI and addressed at politics, then one can easily observe the existence of a broad co-operation between politics, economy and civil society aimed at fighting corruption. As an actual example of such a co-operation is the construction of a new airport in Berlin the government of Berlin and the construction company deciding to sign the Integrity Pact proposed by TI.

Transparency International Corruption Perceptions Index 2006 score: Germany 8.0 (16th out of 163 countries).

## **2. Data Generation**

### **2.1 Research Material and Applied Methods<sup>1</sup>**

According to the general guidelines applied by all study groups of the project two case studies have been chosen: the so-called ‘Black accounts’-affair of the CDU party (CDU-donation affair) and the donation-affair of the SPD party in the federal state of North Rhine-Westphalia related to the construction of a waste incinerator. Both case studies cover three target groups of the analysis: Politics, Judiciary and Media. For the analysis of perceptions of corruption in the target group Police interrogation protocols of local corruption cases in the construction sector and about people-smuggling in the federal state of Baden-Württemberg has been generated. In the target groups Civil Society and Economy press releases, statements, analysis documents etc. from Transparency International and the German Trade Unions Association and the Federation of German Industries have been subject to analysis.

Regarding the first case study protocols of parliamentary debates of the ‘Bundestag’ (German Parliament) on the ‘Black accounts’-affair of the CDU party have been generated. However, besides the protocols of the parliamentary sessions of the Bundestag and legislation with regard to party financing related to the target group ‘Politics’ the German research team has decided to draw upon the protocols of the hearings the parliamentary investigation committee held on the illegal party financing of the Kohl-government. The related documents has been

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<sup>1</sup> Regarding details about the empirical method applied in the overall research project see more in the introduction to this state of the art report.

directly generated at the Archive of the 'Bundestag' in Berlin. The protocols of the interrogations of the Parliamentary Investigation Committee refer to the following persons and dates: Dr. Helmut Kohl: (29.06.2000, 06.07.2000, 25.01.2001, 13.12.2001), Dr. h. c. Walter Leisler Kipp (17.04.2000, 10.11.2000, 08.06.2001, 27.09.2001), Horst Wehrauch (16.03.2000, 23.03.2000, 15.11.2001), Wolfgang Schäuble (13.04.2000, 28.08.2000, 29.08.2000), Brigitte Baumeister (14.04.2000, 28.08.2000, 29.08.2000, 02.05.2002).

As a background document the 'Final Recommendation and Report of the 1. Committee of Inquiry' of the German Parliament has also been selected.

Regarding the second case study the protocol of a parliamentary debate of the 'Landtag' (Federal State Parliament) of the federal state of North Rhine-Westphalia on the Donations-affair of the SPD party along with a session protocol on the same case of the Council of the City of Cologne have been generated.

Also the following interrogation protocols of the Parliamentary Investigation Committee have been analysed: Franz Müntefering (21.03.2002, 16.05.2002), Harald Schartau (21.03.2002), Dr. Franz-Joseph Antwerpes (24.04.2002).

Within the target groups Judiciary, Police, Media, Civil Society and Economy the following documents have been selected:

Verdict of the 'Landgericht Koeln' (Court of the Federal State of North Rhine-Westphalia, Cologne) on the donations-affair of the SPD party.

Interrogation protocols of the 'Criminal Investigation Department' of the Federal State of Baden-Wuerttemberg, Freiburg.

Analysis documents published by Transparency International and Transparency International, German Chapter, Berlin.

Press analyses on the 'Black accounts'-affair of the CDU party and Donations-affair of the SPD party from the newspapers 'Frankfurter Allgemeine' and 'Süddeutsche Zeitung' (207 articles).

Recordings of the TV talk-shows 'Sabine Christiansen' (ARD channel) and 'Hart aber fair' (WDR channel) on the same corruption cases.

Public statements and analyses by the DGB (German Trade Union Association) and BDI (German Industry Association) on corruption and anti-corruption measures within companies.

The project's empirical approach proceeds from the assumption that the 'bottom-up' definitions held within 'everyday theories' of corruption are anchored in social patterns of perception that actors apply unconsciously. For this reason, they cannot be polled in the direct method commonly used in opinion research, but rather must be *reconstructed* from administrative and other official documents and protocolled statements of those persons interviewed. Building on this insight, the documents described above have been subjected to a computerised qualitative content analysis (content analysis software *Atlas-ti*) according to the principles of *grounded theory* (Glaser and Strauss 1998) methodology.

Using computer *software (Atlas-ti)* to analyse our data samples, a qualitative content-analytical reconstruction of its meanings has been conducted. The object of interest is, firstly, the manifest content through which leading interests were communicated, and, secondly, the latent structures of meaning contained within this communication structure. In contrast to a linear research process based on fixed ex-ante hypotheses implying the selection of a set array of categories, we applied an open, inductive coding process. The categories have been established during the first step of our analysis of the material, based on the semantic content of the documents. As these categories do not necessarily coincide with the argumentative patterns, as a second step, and by far the most important one, we have extended our coding procedure and analysis to the argumentative *constellations*. In other words, the codes

identified in the first analytical step have been subsequently tested in the second phase of interpretation with regards to their status within the context of argumentation.

However, documents from target groups Judiciary and Police along with the protocols of the Parliamentary Investigation Committee have been available as a hard copy only. Also the empirical material from target group Media has been delivered in a non compatible format in order to be computer-aided analysed. The analysis of these documents has been carried out according to the overall methodical guidelines of the research project described above but without the support of the Atlas-ti software.

## 2.2 Outline of the Case Studies

### *Outline of the CDU-donation Affair*

At the end of 1999 the former chancellor Helmut Kohl admitted publicly that he had access to secret accounts from which he allocated large sums of money to individual representatives and party bodies, circumventing the responsible party structures and prevailing laws, albeit securing in this way his control over the party machine. He also confessed that he received over 2 million marks from anonymous donors, placing them in secret accounts that he personally controlled and which were not subject to any official report. Part of the illegal party funding originated in weapons deals. The process of exposing the illegal financial transactions of the CDU was set in motion in 1995 when the Public Prosecutor's office in Augsburg started investigations on a large arms deal with Saudi Arabia interrogating the former CDU treasurer Walter Leisler Kiep. Soon it uncovered the fact that several hundred million marks in bribes, of which at least 1 million marks landed in the accounts of the CDU, had flowed into dubious channels. At first, questions were posed regarding only the taxes due on these funds. But very quickly there emerged the more far reaching question concerning the political services demanded from the CDU (governing party from 1982 to 1998) in return for these payments. Gradually it became clear that some million-mark donations had apparently taken complicated routes via other accounts in Germany and abroad. Having been deposited temporarily in diverse funds they then landed back in the party Kohl disposing of the money in such a way as to secure his hegemonic position. These circuitous transactions were apparently intended to launder the funds and cover up any connection between the donors and the government.

A parliamentary inquiry committee concluded (July 2002) its two-and-a-half-year investigation of the CDU Party financing scandal presenting the Bundestag a 1102 pages strong final report that comes to the conclusion that while the CDU raised millions of marks in illegal donations from 1982 to 1998 investigators were unable to trace their sources.

### *Outline of the SPD-donation Affair in Cologne<sup>2</sup>*

The parliamentary debate under evaluation refers to the SPD-donation affair in Cologne, in connection with an 24 million DM bribery scheme involving the construction of a waste incinerator. At first there were irregularities concerning the bidding process: Indeed the local authorities in city council in Cologne ignored the rules of an open call for tenders favouring

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<sup>2</sup> Concerning details about the case of the waste incinerator in Cologne there are certain differences between the presentations in the media and the investigation findings of the general attorney of the Court of the Federal State of North Rhine-Westphalia. Evaluating the acts of the court's verdict there were noticed some facts that provide a more objective account of the course of the whole affair in comparison to other public sources.

from the start the few contractors sharing the market for lucrative large-scale projects. In 1993 the manager of construction firm LCS Steinmüller met with Eisermann, the official in charge of the project, and emphasising how urgently his company needed the contract indicated that should they get the job they were ready to ‘appreciate’ it in monetary terms. Nevertheless, neither the manager nor Eisermann being able to undertake concrete steps to get the transaction under way, they drew upon the ‘services’ of the garbage entrepreneur Hellmut Trienekens, who with his extensive experience, great interest in being involved in the waste incinerator project and last but not least his network of influence was able to recommend conducting bribe payments via Switzerland. Though not alone, the Christian Democrats also lobbying strongly for the garbage plant, the SPD officials made extensive use of their knowledge that they could count on quasi-legal contributions, known as ‘thank you’ donations, from firms that won public contracts through the parties’ lobbying efforts. So the leader of the SPD faction in the Cologne city council, Norbert Rüter, collected 30 such dubious donations – some with, some without a receipt. In the course of the investigations the party treasurer admitted that after he had accepted a total of DM 510,000 in major contributions originating from LCS Steinmüller and other contractors, he wove the funds into the party’s accounts by writing receipts to party supporters for donations they never made. Once the project was underway, general contractor LCS Steinmüller regularly transferred millions of Deutsch Marks into the account of a shell company with a Zurich address. The outcome of the trial that ended in May 2004 in Cologne felt short of the expectations for a resolute corruption fighting for owing to the fact public prosecutors having withheld relevant documentary evidence until it was too late for the defence to make use of it, the trial judges could not impose heavy sentences. Eisermann, who was alleged to have received the lion’s share of bribe payments, was given a prison sentence of three years and nine months. Michelfelder, director of LCS Steinmüller, came away with a suspended sentence, but had to pay a €1 million fine. Trienekens was initially sentenced to two years’ imprisonment, but the sentence was reduced to two years’ probation on the condition that he post €10 million bail, the highest amount ever imposed for a tax-related crime. Social Democrat Rüter was cleared of all charges.<sup>3</sup>

### **3. Perceptions of Corruption**

#### 3.1 Target Group Politics

##### *CDU-donation Affair*

##### *Evaluation Units*

As evaluation units were chosen 10 Protocols of plenary sessions of the Bundestag (German parliament) [1999-2002, 14. and 15. legislation period]. The protocols are made available for scientific/public research by the on-line *Documentation and Information System for parliamentary materials* (Bundestag, Databases, Document server PARFORS: <http://dip.bundestag.de/parfors/parfors.htm>). The stenographic protocols that were drawn upon in order to carry out the evaluation of corruption perceptions held by members of the parliament are:

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<sup>3</sup> Moste part of the description of the case is based on the following source: Hans Leyendecker: Corruption in practice. Case study: Oversized incinerator burns up Cologne’s cash, in Transparency International, Annual Report 2005, pp. 51-55.

Plenary session protocol, 14/76 (02.12.1999), [6976 A -6989 C<sup>♦</sup>],  
<http://dip.bundestag.de/btp/14/14076.pdf>  
Plenary session protocol 14/87 (17.02.2000), [8048 C – 8063 A]  
<http://dip.bundestag.de/btp/14/14087.pdf>  
Plenary session protocol, 14/92 (15.03.2000), [8257 D – 8546 A],  
<http://dip.bundestag.de/btp/14/14087.pdf>  
Plenary session protocol 14/100 (14.04.2000), [9417 A – 9422 A],  
<http://dip.bundestag.de/btp/14/14092.pdf>  
Plenary session protocol, 14/115 (07.07.2000), [10998 C -11012 B]  
<http://dip.bundestag.de/btp/14/14115.pdf>  
Plenary session protocol 14/151 (14.02.2001) [14782 B – 14797 C],  
<http://dip.bundestag.de/btp/14/14151.pdf>  
Plenary session protocol 14/209 (14.12.2001), [20763 C – 20772 A],  
<http://dip.bundestag.de/btp/14/14209.pdf>  
Plenary session protocol 14/231 (19.04.2002) [22971 A – 22987 C],  
<http://dip.bundestag.de/btp/14/14231.pdf>  
Plenary session protocol 14/248 (04.07.2002), [25097 B – 25129 A],  
<http://dip.bundestag.de/btp/14/14248.pdf>  
Plenary session protocol 15/9 (13.11.2002), [505 D-523 C],  
<http://dip.bundestag.de/btp/15/15009.pdf>

The parliamentary debates refer to **a)** *law amendments* concerning the party financing legislation initiated upon the financial scandals of the government(s) of CDU (1982-1998), the decision to set up a *parliamentary inquiry committee* as well as **b)** the *corruption affair* in Cologne (North Rhine-Westphalia) in connection to the construction of a waste incinerator.

### *Characteristics of the Parliamentary Debates*

Since in the time period under examination both corruption affairs were virulent in the public sphere and consequently in politically deliberative bodies such as the Bundestag it does not surprise that the main thrust of the argumentations evolves around the contestation as to which party can legitimately confer itself the moral authority to castigate its opponents as politically corrupt. In this manner the CDU-MPs counter the accusations of the Social Democrats deploying the rhetoric figure of the *double-bind of moral arrogance*: Instead of outrageously decrying the defaults of the opposite side one should rather down play the whole affair lest its moral gravity turn back upon the accusers that are in no way better (as the opposition is constantly at pains to point out – the illegitimate use of public transport means to private use and the corruption affair in Cologne in the Federal State of North Rhine-Westphalia, governed by the Social Democrats, suffice to disqualify them as moral judges) [P1: 735-738; P3: 1093-1096]\*. The offence of moral arrogance the MPs of the opposition thrust at the government develops at times to a full blown suspicion of the legitimacy of the whole investigative procedure that in the eyes of the Opposition comes close to, or even, coincides with a tactical manoeuvre to discredit the previous governments at the same time disregarding fundamental law principles [P1: 802-806; P4: 186-187]. Moreover, this *instrumentalisation argument*, that is the parliamentary investigation committee being set up as means to discredit the former ruling parties, mobilises an additional charge claiming that

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<sup>♦</sup> The numbers/capital letters refer to the original pagination of the stenographic protocols [pdf-format].

\* The number of the protocol and the lines cited are created by the hermeneutic unit of analysis designated by the content-analytical software atlas-ti.

the committee violates one of the fundamental preconditions for the fair play of and competition between the political powers: the equality of chances [P7: 320-324]. Since it purports to ruthlessly expose its financial resources, it deprives the party of certain advantages that accrue from the fact having diverse and powerful donors thus decreasing its ability to act. Summing up according to these argumentations the activities of the inquiry committee could at best be seen as oscillating between party tactical machinations and the will to bring about total transparency [P1: 1756-1763]. The charge of the Conservatives the investigative activities being disastrous for the party and detrimental to essential preconditions of political competition is countered by the Social Democrats who claim that it was exactly this system of secret and illegal party financing that enabled the Conservatives to maintain a hegemonic power position over the years [P8: 310-326].

In the face of the overwhelming evidence against them the parties of the oppositional Christian Democrats and Free Democrats must draw the defence lines in a more differentiated manner than that of simply counter accusing the governments parties (Social Democrats and Greens) of being either

- preposterous (the double-bind argument). The charge of arrogance they level at the government must not simply exhaust in denouncing the intentions of the government parties and concomitantly discrediting them morally. It needs an additional support that the conservatives find in the argument that the way the investigation committee is planned to work violates certain elementary rules of political life. Most important it undermines the *fair competition* of political parties [P7: 286-290]. Since the commission intends to demand from the treasurers a detailed account of its financial transactions it will undeniably expose core functions and mechanisms of the party to the scrutinising gaze of the political rivals that will of course take a certain advantage. Furthermore the eventual sanctions the Parliament will impose upon the findings of the investigation commission – the Conservatives acknowledging the need certain questionable funding practises being examined and possibly sanctioned – are regarded as an aspect of the ruling parties instrumentalising the parliamentary control mechanisms to the disadvantage of the opposition [P8: 1557-1562], or the donors that see themselves criminalised [P11: 1133-1141]. In this way the moral disqualification of the accusers (i. e. the ruling parties) can be supplemented by the charge the whole investigation procedure being a political means of power struggle aiming at cutting the conservatives off from vital financial resources [P11: 1564-1568] and consequently depriving them of certain preconditions of political action. This last allegation meaning that a resolute transparency goes against the *equality of chances* political parties must enjoy should they be able to compete in fair terms [P7: 320-324] is of course too strong an argumentation to be left unanswered. The Social Democrats are accordingly eager to point out that it was exactly the system of party funding the Conservatives established over the last decades that enabled them to secure a dominant position in the political life of post-war Germany thus curtailing the equality rights of the other democratic parties [P8: 310-326]. By turning the argument against the Conservatives the Social Democrats bring successfully together their claim the hegemonic position of the conservative party being resting upon an illegal party financing with the defence of the investigation procedures aiming at transparency and re-establishing fair conditions of party competition.

and/or

perfidiously keen on making political capital out of the whole. Accordingly they draw upon certain weaknesses of the report of the inquiry committee in order to dismantle the argument *that the system of illegal donations testifies to political corruption*. Since the results of the investigation could not substantiate the claim that the financial transfers translated into exercise of influence on the political parties from external factors the accusation the former governments decisions rest on financial

dependencies must fall [P1: 703-711; P1: 3574-3579]. Neither can one assume that the premise the system of secret accounts was based on consists in the intention to private enrichment, as the government parties are then on their part obliged to concede. Indeed since their attack premised on *political corruption* cannot by means of hard evidence be sustained they must in turn draw attention to the grave effects this system has on the functioning of the party mechanisms.

In the absence of one of the pillars of corruption, that is *private benefits*, the argumentative strategy of the Social Democrats and Greens must on the other hand be to render the “system Kohl” responsible both

a) for the Byzantine-like leadership of the party with all the concomitant phenomena of favouritism, hypocrisy, cronyism, intrigues, crime compatible networks etc. Being necessitated to concede that no sanctionable private enrichment effects can be observed [P1: 2013-2015], the argumentative strategy here consists in *rendering the notion ‘private’ less personal than essentially political*. Under the premise that Kohl’s power will was strong enough as not to eschew from setting up a refined system of illegal party funding, the ‘private benefits’ should in his case be *interpreted as political assets* accumulated through distributing the secretly acquired funds so as to secure the loyalty of the party functionaries making them dependent on his political decisions [P1: 1360-1377] – *identifying himself with the party* it was all the more consequent to regard the illegal funds not as personal enrichment, but as a form of effective promoting the cause of the party [P7: 121-124]. Given this fact it does not surprise that the counter argument of the Social Democrats insists on seeing the situation both ways: if it is true that through handing out the illegal funds to secure reliable loyalty implies a certain political ‘bribery’ or corruption even in the name of the party cause, then it should be clear that the same holds true in the case of the secret donors funding the party in order to promote the cause of their economic-political interests. Either way the personal responsibility of Kohl, that is his being accountable for trespassing the law of party financing, should be beyond doubt [P7: 134-138].

and

b) the fact that this very autocratic style in the course of the hearings has turned out to be the main obstacle to carrying out the investigation to an end. Therefore in the eyes of the government parties the authoritarian rule in the CDU [P1: 2269-2271], that is the *democratic deficits of the former ruling party*, together with the influence peddling in relation to personnel decisions and political resolutions and oiled with discreet transfers of money – all this deemed the efforts to clear up the case to failure. As the main obstacle to investigative transparency the democratic deficits of the former ruler party are attributed to a certain fundamental attitude of Kohl: both the authoritarian control over the party and the system of secret funds are seen as the results of his false understanding of party life and democracy [P8: 615-620]. The attitude the critics claim to be the root of the problem consists in placing the value of *personal confidence* above the procedures of political life [P7: 125-130]. Having decided that the trust put by his donors in his discretion is to be valued higher than the formal procedures of parliamentary control mechanisms [P7: 1149-1151] is a fact that testifies to Kohl’s antidemocratic attitudes.

For many MPs of the government coalition the difficulty to come to grips with the party financing scandal of the Kohl era comes down to defining the exact *demarcations between sanctionable corrupt conduct and exercise of influence generally*. This in turn proves for Conservatives and Liberals as well a welcome opportunity to mount their counter attack claiming that it this very same Social Democratic Party that controls over a huge print media imperium thus acting as an *economic agency* [P4: 259-262; P5: 491-503].

This accusation may of course not contribute substantially to fence off the allegations of the ruling parties the conservative Opposition practising systematically illegal party financing –

since having powerful connections to businessmen from the mass media sector [P11: 95-99] the Conservatives themselves cannot but be made accountable for what they otherwise level at the governing parties, i. e. *intermingling economic and political interests* –, but helps pinpoint the fact the Social Democratic Party itself being entangled in market strategies [P5: 553-556]. Besides, the Cologne corruption affair has shown clearly that *all the corruption criteria* are met: *criminal acts, fiscal frauds, personal enrichment* [P1: 750-753]. The somehow *nebulous notion of political corruption* is for the conservative Opposition an unwilling acknowledgement of the fact *that the illegal fundings committed during the Kohl era could not be shown by the parliamentary investigation committee to be the causes of certain political decision processes* [P1: 699-702]. Nevertheless the governing parties represented by the chairman of the investigation committee would like to insist upon corrupt conduct having taken place, albeit not in relation to the illegal fundings [P1: 2039-2041]. The whole scandal affair should rather be located in that *grey zone* between sanctionable corruption and general political exercise of influence [P1: 2077-207].

### *Evaluation of the Interrogation protocols of the Parliamentary Committee of Inquiry ‘Party Financing’*

#### *Evaluation Units*

Documents of evaluation are the stenographic protocol papers of the 1. Committee of Inquiry of the German Parliament [“Party Financing”]. The hearing protocols of the inquiry committee are not in digitalised form owing to certain regulations of the German law of data protection. In order to have direct access to the materials the German research team visited (28.-30.08) the Archive of the German Parliament [Berlin, Platz der Republik 1, Marie-Elisabeth-Lüders-Haus], where it was allowed to make copies of all the relevant interrogation protocols. Except the papers referring to the inquiry of the former accountant of the CDU, Horst Weyrauch, who facing already a prosecution process he had to refuse any statement, all other interrogation papers were put under examination.

#### *Interrogation Protocols*

At first were put to evaluation the statements the leading figure in this case, *Dr. Helmut Kohl* (Chancellor 1982-1998), made during the interrogation. He was inquired four times: In the 31<sup>st</sup> Plenary Session (29.06.2000) [Protocol Number 31, pp. 1-69], the 33<sup>rd</sup> Plenary Session (6.07.2000) [Protocol Number 33, pp. 36-143], the 57<sup>th</sup> Plenary Session (25.01.2001) [Protocol Number 57, pp. 37-131] and the 103<sup>rd</sup> Plenary Session (13.12.2001) [Protocol Number 103, pp. 1-36].

As a key figure in the ‘Kohl system’, the statements of the long-standing treasurer of the Party, *Dr. h. c. Walther Leisler Kiep* (Federal Treasurer of the Christian Democratic Union from 1971 to 1992), are of particular importance. Mr Kiep was also inquired four times: In the 19<sup>th</sup> Plenary Session (27.04.2000) [Protocol Number 19, pp. 1-14, 22-69], the 53<sup>rd</sup> Plenary Session (07.12.2000) [Protocol Number 53, pp. 113-117], the 87<sup>th</sup> Plenary Session (05.07.2001) [Protocol Number 87, pp. 1-5 and 34-68] and the 95<sup>th</sup> Plenary Session (18.10.2001) [Protocol Number 95, pp. 1-5].

Although not directly involved in the system of secret accounts and illegal donations, *Dr. Wolfgang Schäuble*, who in the 90’s served the party in various posts [as Minister for Special Tasks, head of the Chancellery (1984-1989), Minister of the Interior in Helmut Kohl’s Cabinet (1989 to 1991), Chairman of the CDU/CSU faction in the parliament (1991- 2000) and from 1998 to 2000 also CDU party chairman], was subjected to sharp criticism for receiving a

‘donation’ from an arms dealer. He was inquired three times: In the 16<sup>th</sup> Plenary Session (13.04.2000) [Protocol Number 16, pp. 1-62], the 35<sup>th</sup> Plenary Session (28.08-2000) [Protocol Number 35, pp. 66-101] and the 36<sup>th</sup> Plenary Session (29.08.2000) [Protocol Number 36, pp. 5-20].

Though also not involved in the ‘Kohl system’ the statements of Brigitte Baumeister, Federal Treasurer of the Christian Democratic Union – CDU (1992-1998), deserve careful evaluation for they help highlight certain aspects of the mechanisms of financing the party of the Christian Democrats. Mrs Baumeister testified four times: In the 17<sup>th</sup> Plenary Session (14.04.2000) [Protocol Number 17, pp. 5-79], the 35<sup>th</sup> Plenary Session (28.08.2000) [Protocol Number 35, pp. 102-139], the 36<sup>th</sup> Plenary Session (29.08.2000) [Protocol Number 36, pp. 5-20, 24-51] and the 119<sup>th</sup> Plenary Session (02.05.2002) [Protocol Number 119, pp. 1-32].

Because of the reconstruction of the course of events carried out on the basis of the statements of the persons mentioned above was sometimes quite strenuous the evaluation consulted as *Background Material* the following paper: “Final Recommendation and Report of the 1. Committee of Inquiry [§ 44 of the German Constitution]” (13.07.2002), German parliament, Print matter 14/9300 – the report is accessible in:

<http://dip.bundestag.de/btd/14/093/1409300.pdf>

#### *Dr. Helmut Kohl*

The ground tenor of Helmut Kohl’s stance to the investigation committee set up by the German parliament to examine to illegal party financing practices in the period 1991-1998 is obviously inimical: It is not transparency what the committee aims at, Kohl claims, but the *retrospective delegitimation* of his 16-years long government [P31: 4; P33: 97; P103: 7]\*, or, even worse, the political extermination [P33: 98] and criminalisation [P57: 39] of his person. Concomitant with this criticism of the parliamentary committee is the assertion Kohl’s that it functions as a pure instrument in the party struggle [P57: 37; P103: 6].

Even though the fact of receiving undeclared donors is not to be denied, Kohl insists that raising funds for the party in this way was unavoidable since the willingness of the donors to help was based on his discretion regarding naming these financial resources [P31: 9] – the confidential relationship that enabled the donations was premised on his *word of honour* [P31: 51]. Kohl seems at times to run the risk of consciously being misunderstood concerning the weight or impact his stance on the matter of honour had on the exercise of political power and consequently on the rules governing the political party life central among them being the laws of party financing. Asked whether he places his word of *honour above the law* requirements of party funding he responds equivocally with yes trying at the same time to expunge the insinuation of his interlocutors his practices being above the law [P33: 41]. Another difficulty he is confronted with consists in upholding the import of handling in terms of honour thus rendering it a moral principle of political conduct: If it were so, every citizen or politician would be able to feel unconstrained to trespass the rules calling simply upon his conscience of moral/honourable conduct [P33: 43].

Although this fund raising did not conform with the party financing laws – Kohl being ready to assume full responsibility [P31: 17; P33: 50; P57: 69] –, it was in a certain sense compulsory taking in account the necessity of observing the political rule of the *equality of chances* between the political parties [P31: 16]. In the face of the oppositional Social

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\* Since the session protocols of the parliamentary inquiry committee are only in print form the use of the atlas-ti was not possible. Therefore the pagination follows the original stenographic papers: In brackets the numbers of protocol and page. [Source: German National Parliament, Archive, 14<sup>th</sup> legislation period, 1. Inquiry Committee “Party donations”]

Democratic Party enjoying extensive financial support among others by the invested capital in the printing media sector and the trade unions the ruling Christian Democrats had on the contrary to take pains to compensate for this relative *drawback* [P103: 13]. Trying to catch up in financial terms with the Opposition the donations, though undeclared, were a crucial contribution to re-establishing a certain balance of power between the parties. In this way the allegation the illegal fundings represent an obvious case of political corruption is totally unfounded, since it was not *private benefits/private enrichment* that Kohl aimed at, but the economic well being of the party [P33: 51; P57: 41] – the secret accounts the existence of which he cannot deny were for the use of the party and not the individual(s) [P57: 54]. Furthermore the fact that the donations came from legally declared incomes allows him to have a clear conscience [P33: 123]. Therefore it is no surprise that Kohl while acknowledging the fact of illegal conduct nevertheless does not see why he should be made accountable for violating the constitution [P103: 14].

*Dr. h. c. Walther Leisler Kiep*

Testifying to the parliamentary inquiry committee Kiep denies right from the start that there have been any agreements between the Chancellor and the Treasurer of the Party authorising the latter to transactions dealing with donations from companies that wanted to exercise influence on certain economic policies of the government [P19: 3]. Furthermore, although it was part of his responsibilities to raise funds for the party, he was not involved in the management of the acquired money – for illicit accounts and financial manipulations the vice-treasurer, Dr. Lüthje, and the financial consultant/accountant, Weyrauch, should alone be blamed [P19: 4]. Should he nevertheless be made accountable for the conspiratorial bookkeeping, then only in the sense that he failed to exercise his control powers over his assistants depending on the *confidence* he had put in them [P19: 5-6].

This defensive argumentation bearing on the alleged restrictions of his *field of competence* becomes more explicit in the case of his being confronted with the scandal of the Christian Democratic Party in the federal state of Hessen in which his long-standing friend Horst Weyrauch was a key figure organising an intricate system of illegal party financing: Several million-mark donations were deposited temporarily in diverse bank accounts in Switzerland and Liechtenstein and then flew back to the party to finance election campaigns and other operations. Kiep buttresses his claim of being only partially able to supervise and control the activities of the party in Hessen pointing out that in contrast to the hierarchical structure of the Social Democratic Party the Treasurer of the Christian Democratic Party, which is organised federally, had only limited access to the value assets of the federal CDU these being largely at the disposal of the local party organisations in the various federal states [P19: 10]. In this way the value assets appearing in the party's books did not display the actual state of affairs regarding the financial resources of the federal party. Depending from the local party organisations for support the federal CDU was obliged to negotiate with them over even such matters as the amount of dues paid by party members to be put at its disposal – this negotiation process took often the form of a internal party *struggle* [ibid.].

Presumably under the need to *compensate* for this weakness, match the economic efficiency of the oppositional Social Democrats and most importantly keep the party functioning on national level [P19: 45] Kiep has functioned as go-between in various economic deals involving the state and multi-national corporations (Elf Aquitaine, Siemens, Volkswagen, General Motors), although in the framework of the parliamentary inquiry he denies that his 'mediating' role was connected with any fund raising for the party [P19: 26]. However, he was convicted for tax fraud and bribery (1999): Apparently as donation for the party he along

with chief accountant Weyrauch received 500,000 euros from arms dealer Karl-Heinz Schreiber as the spin-off from the sale of German tanks to Saudi Arabia (1991). Now, if one looks closely at the allegations about his ‘mediating’ activities on the one hand and his acknowledgement of committing the foolish deed of receiving a dubious fund from Schreiber [P87: 65] on the other, one cannot but detect a conspicuous contradiction: Although he denies any fund raising in connection with his contacts to the business world, he insists upon declaring the Schreiber bribery to be a donation for the party [P87: 4]. In this way he indirectly exposes the corruption liabilities in that *indeterminate space* (grey zone) between fund raising, ‘thank-giving’ donations/briberies and mediating between state party and big capital.

#### *Dr. Wolfgang Schäuble*

The greatest part of the parliamentary interrogation of Schäuble’s role in the affair centres on a DM100,000 donation he received from arms dealer Schreiber in 1994 and then allegedly handed over to the Treasurer of the party Brigitte Baumeister, who however till 1998 did not declare the cash contribution. At that time (1994) he could not have any objections to such a donation or even against the donor being resolutely committed to assist the party to overcome the financial *drawbacks* in relation to carrying out the electoral campaign as robustly as the SPD with its extensive recourses was in the position to do [P16: 51]. Furthermore confronted with a dangerous (that is financially strong) opponent the exigencies of the political struggle before the elections were too acute for the party – not being at all clear that the CDU would once more win the elections – to be over meticulous about whom the chairman of the parliamentary faction should address trying to win as many donations as possible [P16: 29]. But after he was informed about Schreiber being prosecuted for the bribery in 1991 he took pains to persuade Baumeister to retrospectively find a modality of both giving Schreiber a receipt for the donation and entering/declaring the fund in the official account. The fact neither he nor Baumeister denying that they received this donation the interrogation process evolves around the question of the *trustworthiness* of the account offered by him of how and when exactly the donation took place – Schäuble going that far to insinuate that the whole affair of scrutinising the modalities of Schreiber handing the money over to him boils down to a pure intrigue aiming at bringing him in discredit [P35: 93-94, 115]. Besides, the fact that a) Baumeister alone being responsible for the violation of the law of party financing [P16: 3] and b) the modalities of the money transfer being irrelevant to the core issue [P36: 4], can only mean that the inquiry process should be seen as a form of *party struggle* with other means [P35: 89]. Fighting to re-establish his credibility Schäuble does not hesitate to reassert his doubts about the righteousness of Kohl claiming that the names of his donors should not be given away due to principles of honour [P16: 11, 34]. Regarding the transfer of donation funds to the party and especially the way Kohl put them at the disposal of the various party committees he claims that he had no direct knowledge of the issue [P35: 75-77].

#### *Brigitte Baumeister*

The successor of Kiep in the treasury of the party, Baumeister, disputes vehemently the version Schäuble has given the inquiry committee claiming that it was she that received the donation, then handed over the envelope – which she did not open, but supposed to contain the donation in cash –, she had taken from Schreiber to Schäuble. Later she was given by the latter 100,000 DM that she then turned over to the office manager of the treasury, Schornack [P17: 7-9, P35: 99]. Trying to resolve the contradiction resulting from her statements before

the inquiry committee assumed its activities according to which Schäuble had taken the money direct from Schreiber she claims that she handled out of *loyalty* [P35: *ibid.*, P17: 8, 42] – Schäuble being the person who recommended her for the job in the treasury in the first place. Not being able to deny that the donation was not officially declared till spring 1998 she argues her way out asserting that a) after all she was not responsible for the management of the acquired funds<sup>4</sup> (for example donation receipts) this lying in the competence of the officials of the treasury [P17: 10]<sup>5</sup>, and b) she did not receive any explicit instructions from Schäuble to do so [P35: 112]. Furthermore, she acted on the *trustful assumption* – common among Kohl and the party leaders – that the donation came from legally declared income [P35: 119], although neither Schreiber demanded any receipt nor it was supposed to be registered in the account books [P17: 18]. Although she was aware of the fact that this donation was not law-conform, she did not return the money back to Schäuble, because a) she did not have the *courage* to stand up against her political patron and b) the party being always under funded<sup>6</sup> she *could not afford* to reject it [P17: 29]. Nevertheless, without having accepted any bribes or committed any corrupt conduct [P119: 23], she assumes responsibility for not acting in conformity with the party financing laws from 1994 till 1998 [P17: 20], the reason being that she was unable to act owing to the paralysing effect of a *moral dilemma* between the need to prove unconditionally loyal to the chairman of the parliamentary fraction, on the one hand, and the necessity of accounting for the reception of a donation in cash that she could not have known where it had come from and what consequences this would have in the perspective of an parliamentary inquiry, on the other [P36: 22]. Additionally she had put such an unconditioned *trust* in the official accountants of the party that she did not bother ask them if they had registered the fund at all [P17: 31] – she took it simply for granted that Schornack would give the money to Weyrauch who would then make the entry in the books [P17: 41].

### SPD-donation Affair in Cologne

#### *Evaluation Unit*

As evaluation unit was chosen one plenary session protocol of the Federal State Parliament of North Rhine-Westphalia [2000-2005, 13<sup>th</sup> legislation period]. The protocols of the plenary sessions are made available for scientific/public research by the on-line Documentation Service of the State Parliament. Access to the session protocols of the 13<sup>th</sup> legislation period can be obtained in:

[http://www.landtag.nrw.de/portal/WWW/GB\\_I/I.4/Landtagsdokumentation/landtagsdokumentation\\_13wp.jsp](http://www.landtag.nrw.de/portal/WWW/GB_I/I.4/Landtagsdokumentation/landtagsdokumentation_13wp.jsp). The stenographic protocol that was drawn upon in order to carry out the

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<sup>4</sup> In her field of competence and responsibility lay only the acquisition of donations. She undertook efforts to win as many donations from private persons as possible in order to achieve such a volume of funds that would enable the party not to be dependent on donations from economy and commerce [P119: 16].

<sup>5</sup> In this thematic context she recounts the arguments of Kiep regarding the loose organisational structure of the treasury of the Christian Democrats – the treasurer being only responsible for the acquisition of donations – in direct juxtaposition to the ‘hierarchical’ management of the party finances by the SPD [P36: 25-27 and P119: 12]. In addition she claims that her proposal to merge the domains of donations acquisition and accounting management was turned down by the Chancellor Kohl himself [P36: 28]. Not being responsible for the ways the party finances were disposed of is another reason for her not knowing anything about how the secret accounts were used among other things to supply various party committees with money securing in exchange their loyalty to the chairman of the party [P17: 27-29; P119: 12].

<sup>6</sup> She attributes the fact that by 1994 the volume of donations was drastically reduced to the negative (discouraging) effect the then new law of party financing – making all donations over 20.000 DM declarable –, had on the willingness of the possible donors [P17: 68].

evaluation of corruption perceptions held by members of the State Parliament is the plenary session protocol 13/2397 (22.03.2002) [pp. 5764-5782], accessible in:  
[http://www.landtag.nrw.de/portal/WWW/Webmaster/GB\\_I/I.4/Dokumentenarchiv/dokument.php?Id=MMP13%2F56++++&von=05764&bis=05784&quelle=alle&action=anzeigen&typ=N](http://www.landtag.nrw.de/portal/WWW/Webmaster/GB_I/I.4/Dokumentenarchiv/dokument.php?Id=MMP13%2F56++++&von=05764&bis=05784&quelle=alle&action=anzeigen&typ=N)

### *Characteristics of the Debate*

The parliamentary debate in North Rhine-Westphalia can in a certain way be regarded as the antipode to the debates in the German Parliament (Bundestag) relating to the party financing scandal of the former government of CDU led by Helmut Kohl. Here it is the Social Democratic Party that being the ruling party in the federal state of North Rhine-Westphalia is charged by the oppositional Christian Democrats of having been involved in an enormous corruption scandal that includes illegal party fundings and bribes. Keeping in mind the massive attacks the former ruling party of CDU was subject to it is of course a splendid opportunity for the conservatives in Cologne to insist upon *morally disqualifying* their opponents declaring them politically bankrupt [P1: 31-34]\*. In this situation the least the Social Democrats can do to fend off this denunciation of moral and political bankruptcy is to draw attention to the psychological driving forces behind the relentless criticism: detecting an intention of vengeance they plead for avoiding to *compensate* the violations of the party financing laws committed by the Conservatives *for* similar occurrences in Cologne [P1: 197-199]. Regarding the ‘similarity’ of the cases they must insist on it since regarding the one case as simply circumventing the legal rules regulating party funding and the other as outright corruption scandal is of course unacceptable [P1: 666-669] – in both cases trespassing the law must be sanctioned. For the Conservatives this argumentation establishing a homology between the two scandal cases is clearly besides the point, because the essential difference cannot be overlooked: In contrast to the Kohl scandal, in which only the leading figure of the party along with some party functionaries were involved and no sufficient evidence could be found Kohl political decisions having been influenced by the secret party funders, in the Cologne case one can observe a certain kind of ‘grass roots’ corruption with low rank party functionaries being evidentially bribed [P1: 964-969]. Highlighting this difference the Conservatives want indirectly to accentuate the motivation of Kohl’s behaviour, who in contrast to the local politicians of SPD in Cologne being motivated by pure material interests of private enrichment acted according the honour codex of treating the party donors (and possibly political friends) discreetly.

Confronted with the indisputably sustained evidence of corrupt conduct the Social Democrats embark on a strategy of detracting from the depressive situation, deploying essentially a twofold defensive argument:

- a) In its weak version it has recourse to the common sense attitude of holding corrupt/criminal conduct the product of ‘inviting’ situations, that is corruption being *contingent* [P1: 692-700]. Without denying the exigency of imposing hard sanctions on the responsible politicians and municipal civil servants it attempts to diffuse the propensity to corruption claiming it to be an ubiquitous ‘temptation’ that everyone can at some time succumb to. The diffusion argument can under circumstances be given a strong turn, especially if it is attached to certain socio-cultural observations according to which the *level of tolerance* regarding the attitudes of civil society towards deviations from law abiding behaviour is considerably high compared to other European countries (for

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\* The number of the protocol and the lines cited are created by the hermeneutic unit of analysis designated by the content-analytical software atlas-ti.

example Denmark, Great Britain and Norway). Thus the German society seems to be more tolerant confronted with cases of abuse of the welfare state and its social transfers, income tax evasions and corruption [P1: 864-870], this all being the result of a deep rooted possessive individualism whose value and orientation co-ordinates obviously run contrary to the ethics of heeding to the public good [P1: 886-888].

- b) The defence strategy can also be buttressed by the strong version of the argument that renders corruption cases transitive phenomena of the process of *political self-purification* [P1: 619-620]: Thus corruption cases function according to this argument as feed back incentives that help stabilise the ‘health’ of the political system [P1: 428-432] through developing and optimising the efficiency of prevention rules and procedures. Besides, in face of the societal legitimacy of politics eroding this political self-sustaining self-reflective criticism aiming at transparency is to the politicians’ own interest, then they naturally do not want to be permanently held conspicuously susceptible to corrupt conduct by both the public [P1: 488-493] and the academic experts [432-435]. Establishing anti-corruption prevention rules with long term efficiency stabilises the political system both ways: it increases the feed back of public legitimacy and decreases the frictions resulting out of deviations from the law due to corruption liabilities [P1: 550-555].

Although the Conservatives generally champion the cause of privatisation purporting to raise the ‘fitness’ of the state by relegating parts of the welfare civil services to the private sector and encouraging the PPCs (Public-Private Co-operations), they scold the local politicians’ management as too far gone. The co-operation between the public communal authorities and the private constructors of the waste incinerator has turned out to be a kind of self-renunciation of the managers of the City of Cologne: turning the public sphere of the communal infrastructure economy totally over to private hands they dispensed with their communal duties and acted as purely profit oriented entrepreneurs [P1: 103-109]. In their case the profit in question consisted of course in ‘thankful givings’ the system of which the Social Democrats have over the years perfected with astonishing criminal energy [P1: 345-348].

### *Evaluation of the Interrogation Protocols of the Parliamentary Committee of Inquiry on the SPD-donation Affair*

#### *Evaluation Units*

The documents of evaluation are the relevant stenographic protocol papers of the 1. Committee of Inquiry of the German Parliament.

#### *Interrogation Protocol Part 1*

As President of the Cologne district government (1978-1999) and SPD member *Dr. Franz-Josef-Antwerpes* provides unwillingly essential insights into the context of the dependencies local politics underlie regarding the economic management of communal affairs. He was inquired in the 115<sup>th</sup> Plenary Session (24.04.2002) [Protocol Number 115, pp. 1-34\*].

Although not direct involved in the ‘Cologne scandal’, i. e. the complex of ‘thank-giving’ bribes, donations broken down in small sums and several possible recipients of falsified SPD donation receipts, the inquiry committee concentrates on the role Antwerpes as president

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\* Since the session protocols of the parliamentary investigation commission are only in print form the use of the atlas-ti was not possible. Therefore the pagination follows the original stenographic papers: In brackets the numbers of protocol and page. [Source: German National Parliament, Archive]

of the district government Cologne played in connection with the decision making process on the issue of the city council inviting tenders for the construction of the waste incinerator. Sustaining his claim that he *could not have been* able to exercise any influence on the decision that run against the rules of competitive bidding he states that a) it was a pure municipal decision, and b) it violated the EU directives regulating such procedures [P115: 2].<sup>7</sup> In face of the fact that despite of being aware of that deciding for a construction company, or rather a consortium of companies, was quite non law-conforming the authorities acted in a manner that can reasonably be claimed to have been the cause of them later receiving ‘thank-giving’ donations<sup>8</sup>, the inquiry committee deems it necessary to raise the question whether and to what extent he *could have wanted* to see the decision be taken that way. Antwerpes does not conceal that on the grounds of the construction company that later proved to be the main source of the ‘donations’ a) being highly appropriate in terms of technical know-how and b) securing a considerable number of jobs in the region [P121: 8, 20, 32] he *recommended* it to City Council. Questioned on the reasons for the municipal officials of the SPD receiving bribes Antwerpes conjectures that being immersed in a power system that conferred them the feeling of omnipotence they were deprived of a certain sense for reality [P121: 13]. Incidentally the decision to keep the call of tenders short practically offering the construction contract to these particular companies did not have its origins only in the circles of the SPD, but was the product of a wide consensus between the SPD and CDU – a sort of clique that nevertheless did not act in the usual conspirative manner [P121: 19].

### *Interrogation Protocol Part 2*

Though not involved in the scandal the statements of *Franz Müntefering* as a leading figure in the party politics of North Rhine-Westphalia [from 1992 till 1998 Chairman of the SPD (Region: West Westphalia)] throw light on party financing practices in context of the political competition. He was inquired twice, in the 110<sup>th</sup> Plenary Session (21.03.2002) [Protocol Number 110, pp. 1-51\*] and the 121<sup>st</sup> Plenary Session (16.05.2002) [Protocol Number 121, pp. 1-35].

Another leading personality in the politics of this state, Harald Schartau, from 2000 to 2005 Minister of Minister for Labour, Social Affairs, Qualification and Technology in the government of North Rhine-Westphalia, and currently Chairman of the SDP in North Rhine-Westphalia, expands on the issue of the apparently unavoidable character of opaque party financing. He was inquired in the 121<sup>st</sup> Plenary Session (16.05.2002) [Protocol Number 121, pp. 51-66].

### *Franz Müntefering*

Defining corruption in terms of economical criminal conduct the former chief of the SPD in North Rhine-Westphalia endeavours to *cast off* the general suspicion put on donating

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<sup>7</sup> In this way he implies that if the government of the federal state of Nordrhein-Westfalen had in due time implemented the European laws for bidding the decision would have complied with the transparency principle and therefore there would be no ‘irregularities’ leading to corrupt conduct [ibid.].

<sup>8</sup> This reasoning draws upon the statements of Rütter, the chef of the parliamentary fraction of the SPD in Nordrhein-Westfalen, according to which regarding the acquisition of donation funds there existed the ‘golden rule’ of asking those companies for financial support that had in the past signed contracts with the city council [P121: 13].

\* Since the session protocols of the parliamentary investigation commission are only in print form the use of the atlas-ti was not possible. Therefore the pagination follows the original stenographic papers: In brackets the numbers of protocol and page. [Source: German National Parliament, Archive]

activities these being apart from member dues and state support indispensable for the parties in order to carry out their work [P110: 4].<sup>9</sup> Furthermore the amount of the funds received does not necessarily reflect the quality of their political work, but is intimately connected to the economic power of the donators: Hinting at the traditional affiliations of the CDU to industrial and finance capital he seems to imply that this party financing affair of the SPD *should not be overevaluated* since in contrast to the CDU a) half of the party's financial means come from members dues and b) throughout the 90's the donation volume the Christian Democrats were able to achieve exceeded by far the modest fund raising of the SPD [P110: 4]. Another reason the donation praxis should not be cast in generalised doubt is of course that the case under parliamentary inquiry has to do with briberies and not donations. The funds appearing misleadingly as donations for the party owes to the fact that the SPD in North Rhine-Westphalia had no means of its own depending for carrying out the electoral campaigns upon the support of the party cells and communal fractions in the various cities of this federal state. In this way it was for the local/communal politicians, for example in Cologne and Wuppertal, common praxis to '*transform*' the 'thank-giving' briberies in financial contributions [P110: 28] or loans for the party work of the SPD at the level of federal state politics. The other way round it was for the federal party as a whole impossible to exercise a supervising function over both political decisions and financial activities of the party fractions in the city councils because a) donations lay exclusively in the field of competence of the latter [P110: 6] and b) the management of the communal economics is *stricto sensu* not an issue a political party must come to grips with – it has neither the right nor the capacity [P110: 26] to do so. Things being so it does not cost Müntefering a great effort to *split* the complex of the whole affair in two parts: the dubious or apparently illegal financial practices of the local party authorities on the one hand, and the white-collar criminality – responsible for which can be only the general attorney [P110: 42] –, on the other.<sup>10</sup> As regards the former the party has in contrast to the CDU, which has not drawn any consequences either suing Kohl or demanding from the donors that they expose themselves, the SPD has taken all the necessary steps to clear up the case [P121: 13]. Nevertheless he cannot rule out that regarding the *motivation* of the persons involved a certain affinity can in principle be observed between the two cases of blatant violation of the party financing laws: In the same manner in which the 'system Kohl' established a mechanism of augmenting the influence upon and strengthening the control over the party instances thus securing and enhancing the undisputed authority of the power decisions of Kohl, the leading officials of the SPD in North Rhine-Westphalia may have deployed the 'donations' to draw advantages in terms of promoting their *political career* [P121: 29].

### *Harald Schartau*

The successor of Müntefering, Schartau, does not hesitate to describe the use of the acquired funds as a system of 'black accounts', splitting up the funds in small sums and false 'donation' receipts [P121: 54]. He is also more explicit regarding the case of the illegal donations in Wuppertal the general attorney investigating certain decisions of the mayor

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<sup>9</sup> Of course, when necessary, certain exceptions must be made: In case of the CDU party financing scandal all persons that were involved in receiving funds that they did not have the intention to declare in the party books must be objected to close scrutiny [P121: 15].

<sup>10</sup> This move is necessitated by the need to differentiate between briberies that the SPD officials in Cologne received for the waste incinerator deal – a criminal offence prosecuted by the general attorney –, and the funds other party officials received without naming the donors or camouflaging them by giving party members tax exemption receipts for these 'donations'. However, Müntefering cannot deny the interplay of the two cases since it was the corruption affair in connection with the construction of the incinerator in Cologne that threw light on some till then unexamined 'irregularities' in the party's fund raising elsewhere [P121: 26].

concerning the donation of a construct company. However, he does not deviate from the stance of the former chef of the SPD claiming that no reasonably asserted connection can be established between these practices and the indisputably corrupt conduct of the party members in the city council of Cologne [P121: 59]. Although on the issue of the necessity imposing resolutely strict monitoring and control mechanisms the attitudes of the two leading officials of the SPD coincide, Schartau is conspicuously *sceptical* about their efficiency. However tight the supervision of the party finances may in the future prove to be, surpassing existing legislations and party rules must be seen as *unavoidable*. This is predicated on the fact that a) the party financing rules are designed to regulate the “normal” states of affairs thus not being able to curtail in advance the possibility of ‘deviations’, and b) there can be no effective regulatory instruments deterring those purposefully determined to pursue their interests at all costs from circumventing the laws [P121: 59]. The only practicable measure promising a certain remedy in the long run would be to advance transparency by widening the radius of the party officials/members that have direct access to the information about whatever funds come in [P121: 60].

### 3.2 Target Group Judiciary

#### *Analysis of the Perception of Corruption in Judicial Sentencing*

##### *The Material*

The reconstruction of the perceptual patterns of corruption by judges and lawyers<sup>11</sup> finds its foundation in a court dossier on the so-called “Financial Scandal of Cologne’s SPD”. The Chief Senior Public Prosecutor presented in Cologne, for scientific evaluation, the lawsuit’s documents ( the Bills of Indictment, the Sentence of the District Court of Cologne and the Federal Court of Justice, the Minutes of meetings ) but without the sections subject to fiscal privacy regulations. The lawyers searching for relevant documents working on the research question, were, in fact, able to consult only a fraction of the extensive court files available.

The analysis is supported by the Bills of Indictment and Sentences in the Case against the former Caucus Leader of the SPD in the District of Cologne as well as the former Director of the Waste Management Company (AVD) in Cologne, who had been charged with the planning and building of the Waste Processing Plant (RMVA) because of bribery. The further charges such as Betrayal of Confidence, Tax Fraud, Violation of Party Laws and so on, some of which were the subject of separate trials, will only be taken into account in the analysis in so far as they have a direct connection with the corruption accusations or are relevant to the questions of the research project.

At the centre of the “Cologne Bribery Scandal” is the building of, in the beginning of the 90s, after years of discussion and recommendations, a residual waste incineration plant which began operations in 1998 and stands today as one of the most modern facilities in Europe. The facility became necessary due to a new waste recycling concept which resulted from the legally ordered closing of the land fill sites.

This became politically explosive, as illustrated by the charge, “largest construction project in Cologne since the Dombau” (Construction cost 792 Million DM) , not only because of the

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<sup>11</sup> In the following analysis there will be no distinction made between the pattern of perception (“definitions”) of corruption between Judges and Lawyers. However, a comparative analysis of Judges and Lawyers will be central focus in the execution and analysis of the interviews with experts in the second research phase.

anticipated public protest against the planned ‘dirtmonster’<sup>12</sup>, but also because of the ‘neo-liberal’ concept of ‘Private-Public-Partnership’ in place here. The CDU and SPD, one time coalition parties, fought in the municipal council over the possibility of “Privatisation” vs. “Publicly Operated Solution” to the cities waste recycling.

This resulted in two target points for corruption. At the political level, the decisions on form and extent of the private sector involvement in municipal waste management could be influenced; for this the Caucus Leader of the SPD was the ‘right’ man. At the administrative level it revolved around the companies participating in the awarding of contracts for the building project; for this the Director of the Waste Management Company (AVD) was the key decisive figure. A central point, for example, in relation to the repealing of the first sentence of the District Court of Cologne against the SPD Caucus Leader through the Federal Law Courts, related to the question of whether corruption in public office took place. This was controversial in both cases and therefore for the analysis of the perceived pattern of corruption held central significance. The material contains, as such, at least two contrasting types of corruption, which will become clearer to distinguish as we continue.

### *Analysis of the Bill of Indictment and Explanatory Memorandum to the Sentence Reconstruction of the Criminal Actions*

#### *Case 1: Bribery of a Politician*

The cause of the passive bribery of a SPD politician was the election of the Mayor of Cologne. In contrast to the CDU campaign heavily financed through the business community, the SPD didn’t have sufficient money to run a successful campaign for their not so popular candidate, the reigning Chief Municipal Director (and at that highest civil servant in Cologne). The SPD was threatened with losing their long time hegemony over Cologne through the change of the electoral laws. The newly instituted direct and personal election of the Mayor and the abolition of the ‘double head’ with a – within the ‘Grand Coalition’ – CDU Mayor as political power bearer and a SPD Chief Municipal Director, posed a difficult constellation for the SPD. This situation left the SPD no alternative but to nominate their Chief Municipal Director against the acting CDU Mayor for the position of Mayor.

In this climate the SPD candidate ordered his ‘political crony’ and Caucus Leader, whose main task was the acquisition of donations, to acquire such funds for his election campaign, in plain to address a business leader who has in the waste management field, according to district president von Antwerpes, a “mini-monopoly” (in the Cologne dialect: “Monopölchen”) and wanted to secure certain privileges in the privatisation of Cologne’s waste management. The donation could not be made officially since the businessman was a CDU member and his interests in Cologne were well known. As such the donation would be

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<sup>12</sup> This became a truly dangerous for the project only after the Green Party enters politics in the North Rhine-Westphalia region. The Green Party Environmental Minister Höhn was a committed adversary of Cologne’s Waste Incineration Plant and not only for the obvious ecological grounds but also economical and financial grounds. As had already become apparent in other municipalities, that had built oversized Waste Incineration Plants, more waste was needed for the economically viable operation than the municipalities them self produced. So that ‘imports’ were sought after heavily promising private companies large profits at the tax payers expense. An inquiry in Cologne’s Municipal Council into how much them scrapping of the project would cost at that time, was refuted solely by the argument that compensation in a triple digit million figure would have to be paid by the city.

perceived in the public eye as “vote buying”. Furthermore, as Municipal Director he would come under suspicion of “bribery in a public office”, if he were tied to illegal party donations.

The two fellow party members acted according to the District Court in an “error as to the illegal nature of their actions” (which could have been easily prevented by consulting the readily available laws and their commentaries) in the respect, that the two believed, that the Caucus Leader as City Council Member was a representative *and thereby* not holding public office in the sense of the civil service law. The District Court tried in a lengthy commentary to prove the civil servant of like status as the council member, which was discounted by the Federal Court of Justice in their revision sentence and made a basis for the repeal.

The more central question of our project is the second problem dealt with by the sentence of the municipal court, which is the modalities of the bribery payment, namely the fully consummated contract committed to by the giver and the receiver in the sense of an “accord of injustice”.

The Municipal Court attempted to prove in their sentence that the illegal donation, which the defendant reported himself and admitted to during the hearings and before the court, had to be regarded by both parties involved not simply as a “thankful donation”, as general political “landscape conservation” but as bribery in the sense of “impact donation”. The court argued that only by mutual silent agreement – the court wasn’t able to prove that it was talked about *expressis verbis*, that the donation was earmarked – did the payment for the giver make political and economic sense. This was concluded because of the timely and factual proximity of the payment to the decision on the waste incineration plant immediately after the election of the Mayor, for which the business man (as a CDU member) wanted to make the SPD candidate as well as the Caucus Leader (as the party whip) malleable.

If in fact, and in which form this payment and the “accord of injustice” actually influenced the decisions of the two SPD politicians is impossible to prove, and in regard to the accusation of passive corruptibility in both cases and assistance to bribery in the case of the Caucus Leader legally irrelevant. The elements of an offence of corruption are already fulfilled through the act of the “accord of injustice” and not first through the factual influencing of a decision. To prove the “accord of injustice”, a silent agreement sealed by the donation, is one, if not *the* central aim of the prosecutor and the court. According to the court, exactly at this point, the defendant tries to cloud not the facts of the case but the modalities. The purpose of this cover-up is served by the claim of an “error as to the illegal nature of their actions” whereby a council member is not a public officer and therefore can not be accused of corruptibility in office.

### Case 2: Bribery of an Administration Chief in a Municipal Company

The background of this corruption case is the public bidding on the building of a Waste Incineration Plant. Accused of passive corruptibility among other things is the Director of the Waste Management Company (AVG), a company founded according to the Private-Public-Partnership Model (50.1% City of Cologne, 24.8% City Works Cologne, 25.1% private investors), as awarding authority of the mega project. Also accused of bribery was the Director of the Private Plant Construction Company which acted as the general contractor.<sup>13</sup>

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<sup>13</sup> In both cases are negotiations on account of Suspicion of Betrayal of Confidence and Tax evasion.

At the time of the bidding, power plant building companies were in a state of crisis. For the size of the Cologne job only a handful of large companies could be considered as bidders. On one hand there were political interests ('economic development', 'local support'), to grant it to the local plant construction company. Personally the Director of the AVG was interested in finding a partner with the right "chemistry", since in a project of this size complications were to be expected, which could be resolved only when a more or less trusting relationship between client and contractor existed. As well it seemed that negotiations with a company, which was establishing itself with a "reference-" and "prestige project" in a new and seminal business field and thus securing its long term viability, would be easier than with an established company.

In the interest of the City and the tax payer the Director wanted above all high quality at a favourable price. He achieved this through a completely new concept of the bidding and project execution: the project was divided in tickets with separated job and price listings, so as to be able to choose the technically best solution for the best price. This way, to make a profit, the general contractor had to push down the prices of his crony companies. Third parties (on one hand the private investor in the AVG, on the other a well known SPD politician posing as a mediator) suggested to the Director the idea of bribery. Payments to the tune of 3 percent on the total building costs<sup>14</sup> are common in this sector and "one must consider one's future". Especially the last point caught the then accused AVG Director, who's joining the AVG kept him from becoming a civil servant and who now didn't know what would happen to him after the project.

Through the collusion and the bribery a secret community of mutually dependent accomplices evolved and a situation resulted, which caused the up till now honourable and spotless AVG Director to develop previously unknown criminal energy: he manipulated the bids by opening the sealed envelopes over steam and forwarded them to the actively bribing manager of the company that was supposed to become the general contractor, so he could adjust his bids.

### *Perception and interpretation patterns of corruption*

#### *Styles of judicial rhetoric*

In the Bill of Indictment and the Sentence two lines of argument stand out, which can be connected with certain perception and interpretation patterns of corruption. On one hand the jurists develop a description of the facts, reconstruction of acts, and judgements on the basis of laws, legal commentaries and sentences from 'precedent setting cases', on the other hand – in central parts of the prosecution and sentencing argument – with the help of 'common-sense' arguments, within which they regularly refer to 'real life'<sup>15</sup> context.

The arguments and rhetoric pleaded by the prosecutors and the judges is dominated by two rationalities: that of legalistic expertise, but also that of the daily experience of people or the everyday layman. In addition to this, references are made to political, fiscal, economic, social and other discourse, which implicates knowledge surmounting legal expertise in various fields.

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<sup>14</sup> In the case of the Waste Incineration Plant the bribes amounted to more than 24 million German Marks, 1 percent for the Director of the AVG and the Plant Construction Company each, as well as ½ percent for the political mediator and the private AVG shareholder who took care of Swiss bank accounts. How high these bribes are is shown by the comparison to the calculated profit of 5 percent of the total cost.

<sup>15</sup> An example for such an argument is given later on.

This is especially true in this bribery case, which took place in a highly complex context. The file reads like a crime novel, which tries to illuminate the broader social picture of the corruption scandal with all its social, political, economic and (psychological-) human facets and dimensions, in order to understand the incidents and behaviour of the persons involved and finally in order to find a just verdict.

### *Reconstruction of the Legal Semantics of Corruption*

Alongside these ‘stylistic’ expressions of the legal rhetoric one finds in the prosecution charges and sentencing argument also a classification of diverse incidents of bribery, so to say a *semantics of corruption*. Here, as well, the question is raised if it’s purely legal nature or if other rationalities are considered.

Fundamental is the differentiation between “active” and “passive” bribery. In the case of “passive bribery” the accused SPD Faction Leader, who acted on behalf of his fellow party member running in the race for mayor, has in the view of the court fulfilled the elements of the offence of “aid to bribery”.

Of important meaning in the present case is also the differentiation between “bribery in public office” in the sense of “vote buying” and “bribery in business interaction”. In the case of the accused SPD politician, a legal public donation would have been perceived as vote buying and bribery in public office. Thus an illegal transaction had to be initiated to obtain the necessary funds because of the financial distress (the SPD party didn’t have sufficient financial means to pay for the mayor’s electoral campaign). Bribery in public office is taken more seriously than bribery in business interactions and is punished more severely.

### *Reconstruction of a Legal Typology of Bribery*

Corruption is not a legal term. It is a too holistic and general expression for a variety of phenomena. Lawyers need define facts and therefore construct a legal typology. Crucial to the final determination of the fact of bribery and the severity of the sentence in the legal proceedings, aside from the objective criteria, are above all the subjective motives of the parties involved. Including consideration of the motive for corrupt behaviour the jurists developed finally a *typology of bribery* according to their findings in their investigations and witness statements.

There is discrimination in the files between the “tempting” of individual politicians and “political landscape conservation” of parties and factions. Both cases dealt with a regular payment generally of legal nature, which were entered in the financial statements. To be distinguished from that are so called “impact bribes”, extraordinarily high one time payments for a specific purpose, which, legally speaking, seals an “accord of injustice”, a fraudulent contract. Such “accords of injustice” are made in secrecy and silence, meaning in collusion (Director of the AVG) or (as in the present case of the SPD Faction Leader) as a silent agreement, without explicit discussion of the matter.

“Impact donations” aim to influence a decision in the future, “thank-you donations” (a new term created by the accused SPD Faction Leader) are less objectionable gifts for services rendered, as for example the cooperation in a public company or the awarding of a public bid.

They can be legal or illegal; as such they may be “landscape conservation” or a retroactively paid bribe in the sense of an impact donation. The defendant tried then with the help of the term “thank-you donation” to belittle the true character of the “impact donation” as mere “landscape conservation”.

Fundamental to a case of corruption is not, if the political decision was truly influenced by the bribe or not, but solely if the “accord of injustice” was agreed upon, be it in good or bad faith. Legally important is that the recipient of the donation is under the belief that decisions will be made in his favor; otherwise the donation would be for the giver pointless “money thrown out the window”. Any other explanation, according to the sentence argument would be a departure from “real life”.

The Case shows that the logic of corruption is not determined by the factuality of the decision being influenced (a connection difficult to objectify), but by a corrupt contract, in the sense that expectations are tied to a payment. The legal typology of corruption is constructed, according to the sociologist Max Weber, on the basis of “subjective intentions”, which the accessories connect with their actions<sup>16</sup>.

That the figures involved indeed operate within such constructs, is evident by their behavior in the court room. The accused SPD politician attempted to legitimize the practice of “hidden accounts”, by pretending not to want to incriminate his predecessor, who implemented this practice. Thereby he attempted to veil his own less noble intentions, namely to exert substantial power within the party and municipal council through unrestricted access to the “hidden accounts” and to extend this practice accordingly, argued the court. The same applies for the accused businessman, who tried to ordain his bribes to the SPD politician with a reference to the dishonorable intention to support a particular (economic-) political position (“privatization”), even though he had clearly self-serving economic interests, according to which the court judged his behavior eventually.

One finds in the files, depending on the circumstances and situations, such varying motives as power and influence, career, economic and business success, securing/expansion of a company, setup/securing of a monopoly, cartel or network, continuation of a practice (the “hidden accounts”), ambition, self-enrichment, greed, but also social motives such as loyalty, peer pressure, political, and economic dependency, political goals (power maintenance of the party or implementation of political intentions / programs), Opportunity (“makes thieves”).

### **3.3 Target Group Police**

#### *Analysis of the Perception of Corruption in Police Investigations*

##### *The Materials*

The reconstruction of the perceptual patterns of corruption among the criminal prosecution authorities is based on the investigation files in two cases of corruption. The files were made available for scientific evaluation by the Head of the Department for Special Cases of Organised Criminality at the State Police Headquarters in Freiburg – the highest-ranking

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<sup>16</sup> One must formulate precisely: the ‘subjectively intended meaning’ of an ideal type, constructed by the researcher, the rational protagonist.

criminal investigator of the State of Baden-Württemberg and a respected expert on the field throughout Germany.<sup>17</sup>

The choice of the cases followed the principle of maximum contrast. The first case of corruption dealt with “active bribery” in private industry, the second with “passive bribery” involving an official of the city’s Aliens Office. The first case analysed, from the building trade, is a “classic example” from a branch of industry in which corruption is virtually “common practice”, which is made light of in good middle-class circles as a “gentleman’s crime”. In contrast to this case involving people of „better social standing“, the second case stems from the immigrant milieu, from the marginalised sector of society. Corruption occurred here in connection with the activities of a people-smuggling ring, in which an official of the Aliens Office played a key role.

In both cases the corruption occurred at the sensitive point of intersection between private industry and offices of the local government. In both cases there is a “stringpuller” who is later the main suspect. In the first case the investigation is centred upon a successful building contractor, in the second upon an employee of a city’s Aliens Office and his “friendly connections” to his friends from Ex-Yugoslavia. These friends operate people-smuggling organisations disguised as artists agencies, to which the official issued illegal residence permits.

The material analysed is in the form of bureaucratic files which only contain documents officially placed “on record” in accordance with the institutionalised rules of a modern bureaucratic organisation. The data analysed is thus the product of a formal process of reduction and not a “realistic” record of the investigative process, a fact clearly expressed in the highly formalised structural organisation and artificial language of the documents.

Although it can be assumed that the information acquired in the course of investigation is more comprehensive than the facts registered in the investigation files, the actual aim of the investigative process is to collect material which will stand up in a court of law. The basis for action in the investigative process is the code of criminal procedure. The aim of the investigation is ultimately the acquisition of knowledge which can be used in court, i.e. circumstantial evidence and proofs. “Early grounds for suspicion” or “preliminary findings” are not in themselves sufficient for the opening of an investigation. The public prosecutor will only take action if there is a probability that investigation by the police will lead to the acquisition of circumstantial evidence and proofs which can corroborate the “early grounds for suspicion” in a court of law.

An investigative process is only opened if all the authorities concerned are of the opinion that it will lead to a prosecution with prospects of success. The logic behind the documentary form of the official records and the employability of the data in legal procedure thus determine both the form and the content of the investigation files. The analysis of the documents can, therefore, only cover this formal aspect of the investigative process, but not the structure of the actual practice of the police in their investigations. For the questions posed by the research project this means that the analysis of the documents can only be concerned with those perceptual patterns of corruption guiding the investigative work of the police which are (pre) determined by the “documentary form” and its “employability in courts of law”. The perceptual patterns sedimented in implicit or “tacit knowledge” and their influence on the

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<sup>17</sup> After a discussion lasting several hours with the Head of the Department and two of his staff the files were handed over to the research group, which was thus able to gain a first insight into the work of the anti-corruption officers.

actions of the police officials cannot be reconstructed with the help of a documentary analysis. This is planned for the second phase of the research on the basis of interviews with experts. However, the results of the documentary analysis of the investigation files will to a substantial degree determine the problems dealt with in the second phase of research and will influence the construction of the questionnaires which are to be developed for the interviews with experts.

Although the police investigation files are the basis for the public prosecutor's indictment and the subsequent court case and the investigative work is ultimately shaped by the "documentary form" and its "employability in court", the investigative activities of the police and the perceptual patterns behind them differ from the perceptions and actions of the public prosecutors and the judges (as will be shown in a separate investigation; see the results of the document analysis for the *target group* Judiciary)

### *Analysis of the Investigation Files*

#### *Case 1 (Building Trade)*

The investigative process in the case from the building trade was initiated after a tax officer carrying out a routine tax inspection in a big construction company discovered an impersonal account for "non-deductible commissions" and corresponding substantial payments without any "record of the recipient" and after the questioning of the main suspect failed to throw light on the case. The tax officer had reasonable grounds to suspect a corruption offence in which an employee of the local authority was presumably also involved. The tax officer informed the prosecuting authority, i.e. the public prosecutors office responsible for the matter, which examined the charge and initiated an investigation on account of suspicion of active and passive bribery. The police were then instructed to carry out the investigation.

This brings up a number of questions for the analysis: How did the suspicion of bribery arise? What were the criteria for the justification of the suspicion which led to the initiation of the investigation? And, finally, how were the police investigators to procure evidence and what rules were they to follow in the process? The analysis will show that the proceedings took a different course in each of the two cases. It will then be necessary to examine whether different perceptual patterns guided the actions of the officials involved and to ask how this can possibly be explained.

In the first case the investigation was preceded by a tax inspection in the offices of the entrepreneur who was later suspected of bribery. In the course of the inspection the tax officer concerned established that in the holding of the construction company which was responsible for acquisitions and the settlement of accounts there was an account for "non-deductible commissions" without any "record of the recipients" It was also impossible to relate them to any contract. The "turnover list for clients" of the holding company mainly contained contact-placing authorities and private corporations of the public sector. The "non-deductible operating expenses" amounted to over 1 Million German marks spread continuously over a period of six years. When the investigation was then extended to cover 9 years the amount of bribes increased to almost 2 Million German marks. On being questioned by the Finance Office, the person responsible – and the later suspect – placed on record that in this branch such payments were necessary and customary.

For the tax official this statement and the facts of the case „permitted no other logical conclusion“ other than that the "non-deductible commissions" had been used as bribes for

projects of the public authorities. Elsewhere he states the situation more precisely: “This procedure only makes sense economically if these payments were made as sweeteners or bribes in order to win the corresponding contracts and so achieve an economic advantage for the company.” In other words: from the point of view of the tax official “non-deductible costs” which reduce the profits a company only make economic sense if they lead to an economic advantage, for example by reaching agreements or enjoying preferential treatment in the placing of publicly advertised contracts.

Secret commissions or payments of salaries are also conceivable, as in most cases payments were made from the cash office to interim accounts or private offset accounts of the main suspects. The payments of salaries, fees, commissions, pension commitments and travel expenses were all approved and controlled by the other companies belonging to the corporation and confirmed by an external auditor, thus ensuring “transparency”. This suggests that the “non-deductible costs” were operational outlays. This is also indicated by the fact that the abbreviations used for clients in the “turnover list of clients” at least reveals that these were employed in the public authorities or in private companies of the public sector. A detailed evaluation would only be possible, however, on the basis of the company records, which would have to be confiscated in a house search by the police.

The tax officer whose tax inspection triggered off the investigative process is not a mere informant from the public. He is a state official whose task it is to check the correctness and legality of the actions carried out by “citizens as tax payers” and who is obliged in the event of violations of the law to report his suspicions to the public prosecutor’s office. The actions of officials, including their reports of suspicions to the public prosecutor’s office, are subject to formal and institutionalised rules. The official is only *allowed* to make a report if his suspicions are *well-grounded*, in which case he is also officially obliged to do so. In all other cases in which the suspicions *cannot be grounded* he is forbidden to make a report. For this reason the interrogation of a tax official by the police, for example, requires the approval of the official’s superior. This superior can free his official of his “duty to observe official secrecy” but not from his “duty to observe tax secrecy”, which is one of the fundamental rights of a free citizen. There are, therefore, limits to what a tax official and submit to the investigating authority as a justification of his suspicion. He cannot and may not submit everything he knows. In spite of the legal regulations, or even as a consequence of them, the official has discretionary powers. He must weigh up the interests of the state (of the “general public”) against the interests and rights of the individual “citizen as a tax payer”.

This problem does not come up in the files. But for a reconstruction of the interactions between the various authorities and the guiding perceptual patterns (problem definitions) of the employees involved in the case it is absolutely essential to determine in an ideal-typical fashion the given, institutionalised behavioural rationalities. Only then is a meaningful empirical analysis possible.

The presentation dictated by the „documentary form“ reveals that the tax officer observes the formal criteria and stipulations of a legally regulated procedure. The impression is given that a well-grounded suspicion automatically leads to a report. But, in fact, this is not the case. The decisive point is the grounding of the suspicion, in which, as has been shown, the officer has discretionary powers. And these powers seem greater than might be expected in view of the legal rules regulating the actions of an official. The documents of the case fail to reveal a point which the officials investigating the case communicated to the research team as contextual knowledge, namely the empirical fact that not all tax officers draw the same

conclusion from the same facts as stated in the files or only have a secret suspicion which they do not report to the public prosecutor's office.

In this context it is important to know that the tax officer concerned had been entrusted with the tax inspection in this corporation for the first time. In other words, his first tax inspection in the company gave rise to the well-grounded suspicion of corruption. The question then automatically arises whether the corrupt practices of the company occurred for the first time in the period to be covered by the inspection of this official. The statement of the entrepreneur who was under suspicion that such a practice was necessary and customary in the branch suggests that it was not the case. This leads to the further question why there had been no objection to irregularities in earlier tax inspections. It is striking that the tax officer now involved describes the suspicion that bribes had been paid as an obvious fact. The records of the interrogation state: "From his point of view there were no other comprehensible grounds for the payments." This view is supported by the fact that the suspect himself made virtually no effort to conceal the payments and that his statement on the customary practice of the branch virtually amounted to a confession. Although, as the official files state, the suspected and subsequently accused person "was aware of the tax problems involved", he seems to have had no awareness of having done something wrong: Nor – and this is more important – does he seem to have reckoned with the possibility of criminal proceedings. From his point of view his actions were within the boundaries of what is usual, i.e. what is normal. During the interrogation he avoided the term "bribes" and tried to give the payments an aura of correctness by assuring that they had always been dealt with "correctly in matters of taxation" He could even find confirmation for this viewpoint in the earlier tax inspections.

The behaviour of the tax officers who carried out the earlier tax inspections seems at least questionable. But the files contain no indication that investigations were undertaken in this direction. This digression, which goes beyond the analysis of the documents and makes use of contextual knowledge deriving from the discussions with the experts, clearly demonstrates that the documents reveal a different meaning depending on the context in which they are set. It turns out that the analysis of the documents alone provides only preliminary results which must be tested, supplemented and deepened in the second phase of research which is based on the knowledge of the experts.

### Case 2 („People-smuggling ring“)

In the second case the investigative process was initiated after a night control on the motorway by the police gave rise to the suspicion that three persons of foreign origin in a car could be involved in people-smuggling. Subsequent investigations strengthened the suspicion of an offence against the immigration law, namely the attempt to obtain residence permits under false pretences. In this context a German family of Yugoslav origin was at first suspected of operating a gang involved in people-smuggling for commercial purposes. During house searches in the home and the business offices of the family documents were confiscated which provided evidence of the crime, among other things indications of regular contacts with an employee of the Aliens Office, who was then accused of passive corrupt practices. Clues from the interrogation of this official led the police to further people-smugglers.

The accused official of the Aliens Office concealed the illegal approval of residence permits with an all too obvious trick. According to German immigration law self-employed artists can be given a residence permit without a work permit. This is usually only done in the case of artists of international renown, who are (relatively) wealthy. The accused official applied this

regulation to persons who did not fulfil these conditions, but were bound by contracts to artists agencies. The text of these agency contracts revealed, furthermore, that the “artists” were in fact dependent employees. An expert even evaluated these agency contracts as “oppressive contracts” which forbade any kind of independent employment.

Although the unusual and, in part, obviously illegal behaviour of the official had on several occasions attracted the attention of his fellow workers in the Aliens Office and of other officials in other places – in one case the accused had approved a visa application although it had previously been turned down by the Aliens Office of another town – there was no or scarcely any sustained investigation of the activities of this “colleague”. The direct superior of the accused was satisfied with his assurance that missing documents would be procured elsewhere. Subsequent verification, for example in the form of an inspection of the records, did not take place. As in the case in the building trade the offences were perfectly obvious and yet the official was not punished. This leads to the conclusion that there were gaps in the control measures undertaken by the authority, whatever the reason might be. Possibly other offences are involved, including the chief officer’s neglect of his supervisory duties in regard to the employees of the office.

The final report on the investigations in this case of corruption in connection with “people-smuggling by gangs for commercial purposes” contains a detailed account of the investigations and the measures taken. The findings led to several distinct proceedings, only one of which, the case against the official of the Aliens Office for passive corruption, is dealt with here.

### *The Comparison of Cases 1 and 2*

In both cases the initial suspicion derived from doubts as to the correctness of a document, either a tax return or a residence permit. In the case from the building trade the determination of the problematic statements and the justification of the suspicion are only possible on the basis of financial expertise.

In the first case the tax officer entrusted with the tax inspection must be seen as the central figure in the investigation. As the documents show, the tax officer does not merely function as an “informer”, but also provides a justification which is “employable in court” (see the accounts attached to the file). The justification of his suspicion in his written statement and in the records of his interrogation by the police serve the police as a guidelines for their own investigations, the public prosecutor as the justification for the charges brought and, finally, the court as the basis of the criminal proceedings. It is the task of the police to procure direct and circumstantial evidence, to reconstruct the facts of the case and the motives of the actors, and to present them in a report. To this end they undertake various measures, such as house searches, questioning of witnesses, etc.

In the second case of corruption in connection with the smuggling of aliens into the country the investigation is almost entirely in the hands of the police. The initial suspicion was the outcome of a police control. The routine application of technical administrative means (for example comparison of data by computer) led to the identification of a document as a probable forgery. Subsequent police investigations strengthened the initial suspicion.

As a result of these findings searches were undertaken in the homes and businesses of the accused and documents and other pieces of evidence impounded. In cooperation with the

public prosecutor preliminary investigative proceedings were initiated: the police investigators were instructed to present the findings in a suitable form for the official files and to hand them over to the public prosecutor for the initiation of a judicial inquiry.

In contrast to the case from the building trade, the justification of the suspicion, the initiation of proceedings and the procurement of evidence were exclusively in the hands of members of the police force. What gave rise to the initial suspicion is not clear from the records (Was something wrong with the identity papers?). How was the initiation of proceedings justified to the public prosecutor? Are there differences in comparison with the activities of the tax officials? What distinguishes co-operation between the finance offices and the police from the co-operation between the various police authorities (patrol duty on the motorways, office duties/investigators, criminal investigation department, special departments ...?). Who participated in the special commission (Did it include the public prosecutor?).

### *Perceptual and Interpretative Patterns of Corruption.*

The perceptual and interpretative patterns guiding the investigative activities of the officials can be deduced from the direction which the investigation takes. For the officials involved corruption is of course legally a clearly defined fact. Nonetheless, the measures taken to reconstruct the crime, the milieu in which it occurred and the motives behind it in particular are highly informative for an understanding of the attitudes and the perceptions of corruption which influence the investigative process. There are certain images of the typical course of a crime, offender profiles and the criminal milieu "in the heads of the investigating officers" by which they are guided in their work. These images or perceptual patterns are based on professional experience, but also on social prejudices. At least some traces of this can be found in the investigation files, although this is not true of the tax officer carrying out the tax inspection in the building company, who was guided by his knowledge of the financial issues involved in the case.

On the basis of the measures taken, the reconstructions of the course of the crime and the motives behind it, it is possible to extrapolate by thought-experimental reasoning the following prejudicial structures, which, as it turns out, are not typical of the police alone but are of a general social kind.

In the case from the building trade we are dealing, from a social standpoint, with a "gentleman's crime" in the grey area of socially tolerated activities. The social standing resulting from business success and possibly even political connections provide the suspect with a kind of protective cordon, which the investigators have to break through. The investigation and, above all, the subsequent court case can destroy a "middle-class life". This places the investigators, who have to take this possibility into account, under an emotional strain.

It can be assumed that this problem does not arise in the second case. Here the suspects are social climbers of working class or petit bourgeois origin, who come in part from an immigrant milieu. The main suspects live under precarious familial conditions (divorced, social isolation) which are as unfathomable as the "useful connections" to friends, whereby the border between private and business friends remains unclear.

In the case from the building trade the motive is not so much personal enrichment as the pursuit of entrepreneurial success in a branch of industry which is strongly marked by

corruption. The entirely legitimate search for economic advantages which characterizes entrepreneurial activities in this particular case releases “high criminal energy”, whereby it can be assumed that this is not a single or an exceptional case.

In the case of the people-smuggling ring we are obviously dealing with the illegal activities of a commercial gang motivated by the desire for personal enrichment. If the illegal gains of the married couple engaged in people-smuggling were to flow, for example, into real estate, the economic advantages achieved by corruption would primarily serve the consolidation and development of the “business empire” and the satisfaction of personal strivings for power and property would thus only be a secondary aim. This perhaps explains the social tolerance towards such practices in industry and the scandal resulting from their discovery, as opposed to the reaction towards the activities of people-smugglers, which are regarded from the outset as totally criminal.

In the case of the accused official of the Aliens Office material and financial motives were also in the foreground. By means of his illegal activities he attempted to improve his standard of living, as he was in a precarious financial situation following his divorce and was also socially isolated. He attempted to compensate for both misfortunes with the help of his foreign “friends”.

This official thus reveals the „classic“ criminal profile of the passive corruptibility of suspects or accused persons: Employment in public service with contacts to the general public, the issue of permits, personal financial problems (for example as the result of divorce), precarious familial situation, acceptance of small presents, invitations to dinner, travel, emotional attachment linked with material dependence and the complicity of others in his breach of duty ( which places him „in the hands of“ the persons practising „active bribery“).

The presentation of the institutional and social context in which the investigative proceedings take place is a precondition for the uncovering of the (informal) perceptual patterns of the investigators. In the case of police officers we are dealing with “institutional” actors who are subject to strict formal rules of action which have a fundamental effect on their perceptions, for example, of the phenomenon of corruption. In each case the institutionalised rules of action in the field can completely reshape everyday perceptual patterns. We assume that this is the “ideal-typical” case for the “ideal” professional German (investigating) officials. Vice versa, the traditional everyday perceptual patterns can also determine the institutionalised rules of action, which we take to be the ideal typical case for the “South East European” official. (See Project Application). In principle, however, in all cases both types of perceptual pattern, the traditional “everyday-world” and the “institutionalised” definitions of corruption, play their part and it is possible that in certain situations they cannot be harmonised but stand in conflict with one another.

The “bureaucratic spirit” (“emphasis on written materials”, “documentary form”, objectivity”) is after all an important element of modern Western culture and an expression of its fundamental rationalism. The reconstruction of the bureaucratic habitus of state officials is of central significance, particularly for cultural comparison, as we assume that the mentality and habitus of state officials from different European countries reveal cultural differences which also leave their mark on their perceptual patterns in regard to corruption.

### *General Concluding Remarks*

It is in principle the case that corruption always occurs in connection with other criminal acts such as fraud, breach of duty etc. or that it results in them. The investigation of corruption is then normally only a part of a more widely defined interrogative process. In both of the cases examined here the expenditure of time and energy during years of investigation permits the conclusion that the investigating authorities, here the Special Anti-Corruption Department, showed a high level of commitment to their work. In the planned second phase of research, based upon interviews with experts, this attitude towards professional activity will be more closely examined, as it is of great importance for the effectivity of the struggle against corruption and probably correlates closely with the corresponding perceptual patterns.

### **3.4 Target Group Media**

#### A. *Corruption as a theme in the print media*

##### *On the material*

##### *Selection and collection of the data material*

The analysis of patterns how corruption is perceived in the print media was conducted on the basis of editorials, commentaries and analyses from two national daily newspapers. Analogously to the left-right structure, the “Süddeutsche Zeitung”, which is published in Munich, and the “Frankfurter Allgemeine Zeitung” were selected. The “Frankfurter Allgemeine Zeitung” demonstrates a politically conservative profile, while the “Süddeutsche Zeitung” tends to be liberal. Thus, these two print media cover the various political fractions in an ideal-typical manner.

These two national, so-called quality newspapers, which – along with several others – can be attested a certain guiding function as opinion makers and thus under this assumption can be regarded as representative for the press media and the German media landscape as a whole. The themes that these two newspapers deal with are usually also addressed by other print media. Along with that, these two print media not only generate public debates or are at least authoritative in such debates, rather – and even more importantly – they are recognised by the political decisions-makers as important voices along with the mass-circulation paper “Bild”. Hence, these two print media make an essential contribution to the political effectiveness of public discourse.

In terms of content, two case studies were selected: the CDU funding scandal following the discovery of the so-called ‘hidden accounts’ of the CDU’s federal party and the Hessian CDU as well as the SPD donation scandal during the construction of a waste incineration plant in Cologne. The period for the collection of material was determined on the basis of one of the reconstructions of the sequence of events for both cases carried out by the research group. The respective research departments of both newspapers were entrusted with the task of collecting the material. For the first case (‘secret accounts of the CDU’) there were 207 articles for the specified time frame in the first case and for the second case (‘waste incineration plant in Cologne’) there were altogether 25 articles, which were drawn on in the analysis. The clear difference in the number of articles on the first and second case of corruption in both newspapers for the analysis is not based on a pre-selection by the researchers. It reflects the actual focus in the coverage of the mentioned newspapers on both cases in the period from December 1999 through November 2004. The quantitative difference thus illustrates a

significant difference in the perception of both funding scandals, which will be further elaborated on in the thorough analysis below.

### *On the formal characteristics of the material*

In line with the defined research objective to outline the patterns of perception of corruption in the German print media, the research group limited itself to examining the editorials, commentaries, and corresponding background reports, in which judgmental statements could be expected. Thus, the research group refrained from an analysis of the 'objective' coverage of both cases of corruption in the mentioned newspapers.

The material was delivered to the researchers from the research department of both newspapers on a CD-Rom. Despite being in electronic form, the format of the supplied articles turned out to be problematic – in fact unusable – for computer-based analysis. They consisted of scanned copies of the newspaper pages, whose image format could not be converted into a format which could be read by the document processing program Atlas.ti without loss of information and an unpredictable error ratio. Due to these reasons, the analysis had to be carried out in the traditional manner from a technical perspective. The principles of qualitative content-analytical reconstruction of meanings of argumentative patterns on the basis of an open or inductive coding upon which the entire project was based were thus not affected by this (for details on the methodological procedure, see the general introduction to this general report).

Both cases of corruption could not be dealt with separately in the analysis, because references were regularly made to the respective other case in the articles of the newspapers. The motive for this is, firstly, that both cases of corruption, in which the two main German parties were involved were revealed and discussed in public at the same time. Secondly and more importantly for the present analysis from a systematic standpoint is the situation that one newspaper described as such: "CDU and SPD are in a sort of scandal wrestling match with one another. Wrestlers fight close up against each other and are thus particularly intertwined in one another". The scandalisation of political corruption is evolving into a means of elevating one's prominence in the political battle within the individual parties, but also above all within the parties among each other. In methodological terms, the material forces an immediate direct comparative analysis on social researchers.

### *Patterns of perceiving corruption*

As already mentioned, there is a noticeable difference in the coverage in the two examined print media with regard to the first and second case of analysis. They illustrate the varying political significance which is respectively attributed to the cases by the media. The SPD donation scandal in NRW is linked to a public mandate to construct non-profit industrial facilities. The fact that bribe-money for this public contract landed in the pockets of local politicians seemingly hardly surprises the reporters: in their eyes, corruption is a feature inherent to the system of awarding contracts, including the German construction branch, where it is practically regarded as normal. The actual case of corruption in North-Rhine-Westphalia thus primarily serves to confirm long-harboured assumptions. The coverage generally restricts itself to informing the public in regular intervals on the latest developments in the corruption scandal. The fact that local politicians enriched themselves in the most audacious manner indeed does get people stirred up, but is primarily a subject of ridicule in the press, which is then spilled out on the local party leaders. However, the journalists avoid generalising the case and accusing politicians as a whole of corruption. Corruption appears as

a looming and systematic danger looming in certain areas of activity, which individual politicians have succumbed to. Accordingly they only address the appeal to the responsible politicians of the SPD's federal party to provide for a country-wide investigation – in particular, because the SPD governing at the federal level at that time called for a rigorous clarification of the CDU donation scandal “independently of the persons involved in it”.

The type of coverage of the CDU donation scandal initially made it clear that even representatives of the press were indeed surprised by the dimensions of the scandal. Unlike the case of corruption in North-Rhine Westphalia, where their own already existing knowledge on the relationship between the construction branch and local politicians seemed to be confirmed to a certain extent, concerns over the political system and legal order in Germany become apparent in this case. The CDU donation scandal can no longer be written off as a local farce<sup>18</sup>. It hits the heart of the German understanding of the state among politicians and citizens. The recurring question whether Germany has sunk to the level of a bribable “banana republic” sheds light on fundamental issues that go far beyond any potential mockery that downplays the problem. In contrast to the more limited local case of corruption in the SPD, the main focus during the CDU donation scandal is not so much the problematic behaviour of the politicians and party operatives involved in the scandal, thus the human weaknesses of seemingly honourable men, rather the disquieting danger of a national crisis.

This tendency is more pronounced in the coverage by the ‘Süddeutsche Zeitung’ than the ‘Frankfurter Allgemeine Zeitung’, which can be viewed as confirmation of the ‘political and ideological criteria’, upon which the selection of the newspapers for the collection of the empirical material was based. The coverage of these cases in the ‘Frankfurter Allgemeine Zeitung’ does not place the main emphasis on the consequences of the political corruption scandal for the legal order and democracy in Germany, rather the clarification and personnel strategy with which the CDU attempts to minimise the damage and manoeuvre out of the crisis. A “breakdown of morals in the CDU” is the general diagnosis. A distinction in the coverage can be made between overcoming a national crisis and overcoming an internal party crisis. In purely statistical terms, approx. 1/4 of the total of 96 articles, which the research department of the newspaper provided, referred to the first category (“national crisis”) and approx. 3/4 of the articles to the second category (“internal party crisis”). Within the coverage and analysis which belong to the second category (“internal party crisis”), the internal investigation and personnel conflict in the party are described in the most accurate manner, in order to then call for consequences “without respect of person”. This pertains above all to the initiator and main responsible person for the ‘illegal account’ system of the CDU which had existed for years, the former Federal Chancellor Helmut Kohl. Despite the recognition of his accomplishments for German re-unification and for European integration, they initially assert that the fundamental principles of the rule of law apply to him as they do to any other citizen. Kohl's stubborn refusal to name the names of the donators of the funds which he personally accepted due to a personal ‘word of honour’ is interpreted as a clear violation of the principle of rule of law. On this basis, they then analyse what the behaviour of Helmut Kohl means for his party if he were to continue to refuse to provide information and not contribute to the complete clarification of the facts and what strategic measures the new CDU party leadership accordingly must take to guide the party out of the crisis. The inevitable consequence will then be the separation of the CDU from its former chairman and former Federal Chancellor. Under these circumstances Kohl is no longer presented or celebrated as the ‘Chancellor of German unification’, rather as the “patriarch” or – to use the German term – “Übervater”, which the new party leadership led by “Kohl's grandchildren” Wolfgang Schäuble and Angela Merkel had to dispose of once and for all in Oedipus-like manner. In this respect

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<sup>18</sup> See Erwin K. und Ute Scheuch: Cliques, Klüngel und Karrieren. Über den Verfall der politischen Parteien – eine Studie, Reinbek, Rowohlt, Reihe rororo Aktuell No. 12599, 1992

similar arguments can indeed be found in both newspapers. The evaluations provided significantly vary between both newspapers though. At the 'Frankfurter Allgemeine Zeitung' the CDU donation scandal is viewed as a kind of 'accident at work' for the party, which is only attributed a temporary negative impact for the situation of the state and society, because the German constitutional state has time-tested self-cleansing mechanisms in order to successfully confront this dark side of political activity (and genuinely human weaknesses), which can never be fully abolished. Therefore, no thoughts are made whether and how the case of corruption could affect the state founded on the rule of law and what consequences could be drawn from this for the German party system. The latter should be left up to the voters as politically mature citizens. Against this background (and before it is too late for the party), the 'Frankfurter Allgemeine' asserts that the party should actively participate in the clarification of the case, free itself from its "self-inflicted immaturity" and rise again like a phoenix, thus assume responsibility towards the country and society – and in particular towards Europe – in a refined and strengthened manner. In somewhat poignant terms, the demand for restoring 'business as usual' is derived from the trust placed in the "self-cleansing forces" of German democracy. And it is precisely here that the 'Süddeutsche Zeitung' detects a danger: "They say that all institutions are operating normally and as always. But this is exactly what is disturbing: the government is governing as if nothing had occurred. And the Parliament meets just as it always meets."

As for the role of the investigation committee which was set up to examine both cases of corruption, the line of argument in both newspaper is sober and without any illusions. Above all, a reference is made to the nature of such committees, which are not part of a criminal procedure, for example, rather instruments of political competition. Not only do the investigation committees – acting as legislative bodies – often assume judicial functions, which complicate their institutional status. The negotiations of the investigation committees are also perceived by the public as show trials. An investigation committee no longer fulfils the function of bringing the truth to the light, rather it is enacted like an inquisition that determines "who are the good and – by virtue of original sin – the bad in politics".

With regard to the interpretation of the political significance of the CDU finance scandal in the 'Frankfurter Allgemeine Zeitung', one should particularly bear in mind the following: the fundamental concern over Germany's loss of image in Europe is expressed 'between the lines', which cannot be without consequences for the role of Germany among its partners. Unlike the so-called 'Flick Affair', which shook the country in the 1980s, the Federal Republic is no longer the interim arrangement à la Bonn, the 'Village on the Rhine' at the (geographical and political) periphery, rather from now on the re-united 'Berlin Republic' with a core political role in Europe (and the world). The expectations placed in the re-united Germany were those of a model and symbol of a new European order. Due to its current experiences and above all its active support not only for the re-unification of Germany, rather the return of the East to Europe under Helmut Kohl, Germany was granted the political and above all moral legitimacy as the motor of a United Europe.

Once frowned upon German virtues, in particular the correctness of the political elite and the conservation of western European constitutional and democratic values were declared to be the moral foundation of the Republic. This moral foundation was disavowed by the CDU donation scandal and the political culture of Germany was disillusioned. The CDU donation scandal made it all too clear that the notion cultivated in particular since the beginning of the 1990s that forthright politicians characterised by loyalty to the law, integrity and honesty are the privilege of the German political culture was an ideology, which had misled not only the German, but above all the European public. According to the FAZ, the moral failure of the

CDU, embodied by Kohl, entails a loss of reputation for the whole country. The deterioration of the new image of Germany by its own creator could potentially have the effect that Germany loses its new role in Europe and the world.

Viewed from this angle, it is understandable why the journalists made an effort in their assessment of the situation to not only present the case as the disclosure of the weaknesses of the political culture and the party system, but to also minimise the political damage to the greatest possible extent – and indeed to make the best of the crisis. The crisis was reinterpreted as the catalyst of the self-healing forces of the political and party system. Under these auspices, the political crisis in Germany that was triggered by the discovery of corruption did not have the same dramatic consequences as those in the case of the Democrazia Christiana in Italy.

As already mentioned, the line of argument in the ‘Süddeutsche Zeitung’ was similar. Once again, the main tenor here is: to call the main culprits of both cases of corruption to account “without respect of person” and punish them accordingly. In the case of the CDU donation scandal, the accusation that Helmut Kohl’s conduct was not in accordance with the rule of law does not aim to propose ways which could lead the CDU out of the crisis. This stood in contrast to the position of the FAZ. The articles in the ‘Süddeutsche Zeitung’ attempt to deliberate about the damage for the constitutional state and democracy, which was caused by the conduct of Helmut Kohl. Ultimately, the view is advocated that this case of corruption was not merely equivalent to the wrongdoing of just a few politicians and party operatives, rather a crisis of the German party system. This wrongdoing is primarily the product of the “arrogance of power” which comes to bear when a governing party is given the possibility of equating itself with the state or even putting its own political and party interests above those of the state. In Helmut Kohl’s case the wrongdoing was the consequence of the conviction that “governmental power also means proprietorship over what is governed”. The tenor of the line of argument in the “Süddeutsche Zeitung” is the grievance that the immoral conduct of the political class which came to play during the cases of corruption endangers the stability of the democratic system in Germany.

In its background reports and political analyses the ‘Süddeutsche Zeitung’ also criticises the judicial branch, and specifically the public prosecution service in Bonn which investigated Helmut Kohl for corruption in office and whose primary task would be to clarify the facts in their entirety and punish the guilty. Particular criticism is directed towards the decision of the public prosecution service to terminate the proceedings against the former Federal Chancellor, because it had no evidence on corruption with regard to political decisions. Furthermore, the public prosecution service is criticised for its lack of determination to investigate the sale of the eastern German Leuna factories to the French company ‘Elf Aquitaine’ despite sufficient suspicious facts with regard to corruption, because “the crisis of the party state can only be overcome when at least the judicial branch is above doubt.”

The party law is also targeted. Although the party law is regarded as a pure “self-commitment” of the parties represented in the Bundestag, clearly stricter measures to regulate party funding are still demanded despite this. This not only emanates from an unworldly or even idealist attitude that the influence of the economy on politics is under control by virtue of laws. On the contrary – one is fully convinced that there will always be several politicians at the interfaces between the economy and politics that are tempted to use corrupt methods. Since offences against the party law are not criminal offences, the paper draws the conclusion that the threat of punishment must be increased in the party law in order to effectively combat violations of the party funding rules. While the ‘Frankfurter Allgemeine Zeitung’ continually

expresses concerns over the status of Germany in Europe, the ‘Süddeutsche Zeitung’ advocates the more disillusioned view that both cases of political corruption show that Germany has arrived in Europe in a figurative sense. “The history of the Kohl era is not only the history of great political successes. It is also an era in which things illegal have become a part of everyday events.”

### B. Corruption as a theme in political television shows

#### *On the material*

##### *Selection, collection and formal structure of the data material*

Two political talk shows from the programs of the public television stations have been selected for the analysis of how corruption is dealt with in the television media: the ‘Sabine Christiansen’ show on the topic: ‘Politics – A business without morals?’ on ARD on December 5, 1999 and the show ‘Hart aber fair’ (Hard but fair) on the topic: ‘Never-ending corruption as a contested topic?’ on WDR on March 20, 2002. The guests of the show are: Peter Hintze (former General Secretary of the CDU), Peter Struck (Parliamentary Party Chairman of the SPD), Eberhard von Brauchitsch (former Flick Manager), Christian Wulff (Deputy Chairman of the CDU), Hans-Christian Ströbele (Member of the Parliamentary Investigation Committee, The Greens), Klaus Wirtgen (Journalist, Stern). The guests of the second show are: Hans-Christian Ströbele (Member of the Parliamentary Investigation Committee, The Greens), Michael Groscheck (SPD General Secretary in North-Rhine Westphalia), Anke Martini (Transparency International), Herbert Reul (CDU General Secretary in North-Rhine Westphalia), Dieter Wedel (Director).

‘Sabine Christiansen’ and ‘Hart aber fair’ are live broadcasts and are directed by a moderator. Representatives of political parties, public institutions and the media are invited as guests; they speak and answer questions, provide statements and debate in a very controversial matter in front of a public, which spontaneously comments on and evaluates their statements with strong or weak applause. Both shows begin with introductory remarks by the hosts: they greet the public and a rather short introduction to the topic follows, which is then succeeded by the introduction of the guests of the evening. On ‘Sabine Christiansen’ this opening ritual is followed by the announcement and presentation of a film, which once again addresses the topic in the form of a short television report, before the final and largest segment of the show begins: the group discussion. The structure of ‘Hart aber fair’, in contrast, is less clear and stringent at first sight. After the introduction of the guests, the discussion immediately begins, which is then interrupted at least nine times - sometimes for longer periods of time - by films, contributions from the viewers (directly by telephone or by fax and email) and individual interviews with experts. The discussion is then reanimated and shifted in another direction. The following interpretation singles out the main arguments of the *group discussion*.

#### *Argumentative patterns in the group discussions*

Due to the large amount of time which the group discussions take in both shows, the main viewpoints can and should only be dealt with in bundled and excursive fashion in the following.

An outstanding moment in the show ‘Sabine Christiansen’ is the question about the (joint) knowledge of Kohl’s ‘grandchildren’ about the practices of their party boss and the existence

of the so-called secret accounts. The personally addressed actors (in particular the then CDU party secretary Hintze, but also the then leader of the opposition in the state parliament and later Prime Minister of the state of Lower Saxony Wulff) assure that they acted in accordance with the ordinance of their party in all financial matters and complied with all formal bureaucratic guidelines (writing accountability reports, compliance with the compulsory period of record-keeping etc.) and therefore always assumed that there were no unofficial financial activities. On the one hand, the argument is brought against this assessment and statement that every member of the leadership of a formal organisation that bears responsibility must be informed of the origin and use of the funds, because they otherwise would violate their obligatory supervision and be out of place (according to the former Flick manager von Brauchitsch who was convicted of political bribery). The representatives of the media (Christiansen, Wirtgen) emphasise that their coverage decidedly documented and publicly revealed the wrongdoing time and time again. However, here as in all other manners, the responsible persons allegedly followed the guidelines of their party bosses, ignored the media hostile to them – and consequently the fourth branch of power in the country – and not only self-sacrificingly accepted altogether Kohl's sole claim to power, but added to it with their hasty obedience.

Thus, several fundamental features of corruption are apparent in the concrete example of the Kohl government. The discussants recognise the first main motive in the unconditional obedience towards the hierarchy and thus the dependence of the politicians on the party leadership and its leader. Secondly, in his absolute claim to power this leader brings together all authority and decisions within himself and unrestrictedly uses, enjoys and protects his privileges. Thirdly, there is ultimately also consensus that the notion of “looking away” and participating, which is motivated by these two aspects, is a fundamental violation of commitments made.

Consensus also prevails among the discussion parties with regard to refraining from general accusations towards politics or individual parties as a whole. In order to avoid damage to democracy, it is stressed that one must neither “lump together everything” (Wulff) nor shed doubt on the integrity of politically active people and their parties in general. The accusation of dishonesty purportedly applies at best to the already proverbial “black sheep” who can be found time and time again everywhere.

The means of fighting corruption continually mentioned in the discussion span from demands for the “total clarification of the facts” and “restoration and maintenance of transparency” to assuming “personal and political responsibility” onto the proposal for continual mutual “control and inspection”. In the middle of these statements, which are often viewed as superficial lip service, the moderator drops the question whether “we need a change of the laws or a change in consciousness”. Peter Struck answers her with a list of three items: firstly, a discussion of the laws is in order, e.g. a change of the compulsory period of record-keeping. Secondly, punitive sanctions for incorrect accountability reports must be defined. Thirdly, independent institutions must be established to examine those very accounting reports of the parties. This answer by Struck reveals an additional fundamental problem with corruption: since a comprehensive change in the consciousness of all responsible persons would certainly be desirable, but difficult to implement and ultimately fatuous, the only practicable change that can be rationally planned and concretely implemented is the enhancement and expansion of the societal control and sanction mechanisms within clearly defined areas of political action.

Except for the fear and warning about general condemnations of all democratic parties and politicians as well as the reassurances that it is “the small number of people who act

improperly, and act in a criminal manner” (Reul), which were recited almost like a mantra (Reul), there are hardly any parallels between the content of the discussions by ‘Sabine Christiansen’ and ‘Hart aber fair’. Unlike the concrete explanation of the sequence of events in the Kohl case on “Sabine Christiansen”, the discussion on ‘Hart aber fair’ begins with a more general declarative statement “that everybody is now acting as if they just woke up from a bad dream” (Martini) and that “one certainly was already aware that people make mistakes and are corrupt” (Wedel). Politicians are at the most “perhaps somewhat more seducible, because they deal with power after all. And power is a tremendously seductive means for corruption” (Martini).

Besides not further defined “rules and laws”, above all the creation and preservation of “transparency” as the antidote to the “quagmire” are demanded as steps to limit and combat corruption. Such demands are the standard program for the organisation ‘Transparency International’: the representative calls for publicly viewable lists with all illegal donators and donation recipients for the sake of deterrence. Along the same lines, one should aim to word the rules, which are not further explicated, “so that they have a deterrent effect” (Reul). Altogether, deterrence and reprimand by means of painful sanctions along with the repeatedly stated appeal for a fundamental change in attitude (“to do so, one might have to change the climate in a society that is starting to increasingly define profit as the standard of all success”, Wedel) appear to be adequate approaches, in order to not immediately give in and not act at all.

After listening to the viewers, who in the meantime mostly have come to believe that they live in a “banana republic” and who – along with the emerging trend towards fatalism (“many southern European countries function wonderfully even with corruption) and blatant media criticism (“they cannibalise the topic and in four weeks nobody talks about it anymore” – view draconian punishments as appropriate (“corrupt politicians should immediately be kicked out of politics and put away and lose their pension”), the participants of the discussion round also tempted to make exuberant demands. At the end of the show their proposals span from establishing “a kind of permanent committee that has investigative authority” (Ströbele) to ideas that come very close to institutionalised denunciation (“Distrust towards public administration and politics is correct. The citizens should focus their attention on this, and when they do find out something, they should address the proper authorities. That means that I encourage everyone to be distrustful, show that they are aware, and report such issues”) asserted Ströbele. “A hotline, yes a hotline, a communal hotline where one may anonymously report suspicious facts”, says Martini).

In contrast with the agreement expressed by all discussion participants not to condemn all politicians in general, at the end of the discussion the moderator does not refrain from pulling the curtain down the way he started the show by letting the citizens have their word during a kind of collective statement so that they could collectively deal a “low blow” to politics altogether and its representatives in particular: “We have received many, many emails, telephone calls, and faxes and they are all of the same tenor: I will not vote anymore on 22 September – Do your dirty tricks alone”.

Generally, it appears that while the discussion partners on Sabine Christiansen’ favour a more differentiated analysis of the internal party structures and processes as well as objective deliberations over regulated control and sanction measures, arguments bolstered by catchwords predominate on ‘Hart aber fair’. Accordingly, the vehement moral demarcation between the counter-worlds presented at the very beginning of the show and continually displayed is maintained and proposals for extensive surveillance measures and massive

punishments are made. The refusal to vote in the next election, which is expressed by the moderator in clear words in colourful dialect and viewed as like combining what is incompatible – a confirmation of the consistently like-minded politicians and an endorsement of their essentially equal practices – once again emphasises this more or less populist attitude.

### *Basic patterns in the line of argument in the political media formats*

The insights on how corruption is dealt with publicly gained from the evaluation of the two political shows can be roughly summarised under three aspects. By means of comparison and synopsis they clearly shed light on the tense relationships which pervade the phenomenon.

Firstly, there is the *protection of societal constructions of normality by stipulating dichotomous categories*. The demarcation and designation of two incompatible counter-worlds and types of action takes place through the identification and denunciation of the condemned practices, persons, and organisations, which is indeed done in a qualitatively different, yet consistent manner for both programs. Displaying practices, persons and organisations primarily serves the purpose of mutually assuring the applicable values, norms and notions of morality which are intersubjectively shared or supposed to be shared.

The second aspect concerns the *nature of man and the cycle of corruption*. The probably least significant differences between both shows lie in the agreement on the permanence of the phenomenon due to the propensities and weaknesses inherent to humans as well as in the astonishment that none of the previous societal solutions have been able to have a long-lasting influence on the irrationalities reflected by corruption. Corruption is – like ‘Sex and Crime’ – a “sensitive issue” in a manifold sense. Pervaded by the recurring structure of wrongdoing and cover-up, disclosure and denial, revelation and condemnation, corruption is abhorrent and enticing at the same time and thus entertaining as a media-compatible theme in two ways: as a “serial long-running issue” it contributes to the livelihood of the media and provides the at least indirectly affected public again and again material to view, to become disgusted over and discuss, that is essentially always the same but newly enriched time and time again in terms of form and content.

*The measures to fight corruption* are also an indispensable component of the coverage and debate. Parallel to the indeed understandable – in light of the second aspect mentioned above –, but not acceptable alternatives of resignation and refusal due to the first aspect also mentioned above lies the range of potential means of action between partial corrections (increasing controls and punishment) and the stimulus for a far-reaching change in attitude (change in consciousness). The greatest differences between both shows as well as among the discussion participants emerge in the assessment of the appropriateness of the measures and subsequently with regard to how they are negotiated. The broad repertoire of the strict controls and long-term sanctions on suspicious or guilty actors called for by the majority ranks above the only weekly represented, pragmatic and sober appeal for individual modification and the meditative, but utopian support for a (moral) “change in climate”, which was also only advocated by a minority. This circumstance may be explained in turn in view of the initially addressed necessity to safeguard the societal constructions of normality, but it stands in striking contradiction to the second aspect: on the nature of man and the infinite cycle of corruption which is apparently linked to it.

### *Results of the print and television media analyses*

According to a few famous words by the German sociologist Niklas Luhmann, “We know what we know about our society, and indeed about the world in which we live through the mass media.”<sup>19</sup> The media convey knowledge – and not necessarily taken from ‘preserves’, but indeed then second-hand. Nonetheless, the communication in print media differs from that in television media. In a newspaper article a journalist presents his/her opinion or that of the editorial staff or newspaper. On television, especially in the talk show format selected here, a moderator is at the centre of the debate and spreads an array of opinions. The television becomes a potentially interactive media (this is at least the self-conception and claim of the “media producers”). Unlike the opinions which appear in ‘black on white’ in the print media and may include longer background reports, the information spread by the television media are considered to be more cursory; however they can be ‘taken from preserves’ and very effectively presented at a later point in time, in order to expose an opportunistic politician or one who has breached his/her promise, for example.

The political significance of the media for democratic systems consists in the public which they help to create. The media enact the democratic principle of the visibility of power, which is worn away by the ‘foul play’ involved in corruption. Therefore the theme corruption not only has an entertainment value for the media.

If the print media present more individual opinions (of the journalist, the editorial staff or the newspaper), something similar to a public opinion is at least fragmentarily formed in the analysed television formats. Through group discussions, public and expert surveys live or by telephone, fax, etc., television at least attempts to generate the fiction of a ‘democratic media’. Even the viewers at home feel as if they were directly part of the action. This participation of the people can be realised in at least two forms: like on ‘Christiansen’, which tends to be more elitist with a sophisticated round of talks with experts, and on ‘Hart aber fair’ which is more like a populist barometer for the ‘voice of the people’.

Politicians held (jointly) accountable in the round of discussions on ‘Christiansen’ retreat to the standpoint of formal control and compliance with applicable rules. A business representative previously convicted of a relevant offence regards this to be insufficient and a gross misunderstanding: one who bears responsibility in business or politics must do more than just comply with the ‘bureaucratic’ rules; he must master the process of “having everything under control and a grip on everything”. Leadership requires commitment. On the other hand, those who endorse this “sole claim to power”, like in the case of Helmut Kohl, or at least show wilful blindness to it in order not to endanger their career allow the democratic controls in the parliament and party to be undermined and the parliament and parties to be reduced to an instrument for personal careers. This *privatisation of the political system* creates the breeding ground for political corruption, from which those who allegedly adhere to the rules also profit.

While the function and the behaviour of the political elite is at the heart of the debate between different elite factions in the ‘Christiansen’ show, which is enacted somewhat like a elitary circle of experts, the voice of the people is reflected in the less ‘selective’ broadcasting format ‘Hart aber fair’. However, the alleged pluralism is vested within a uniform populist opinion. Corruption is regarded to be a problem of ‘those up there’. Stricter rules and punishments in the cases of violation are demanded. For instance, not more democratic control is called for to

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<sup>19</sup> Niklas Luhmann: Die Realität der Massenmedien, Wiesbaden, VS Verlag für Sozialwissenschaften, 3rd Edition 2004, p. 9

effectively combat and prevent corruption, rather *self-correction by the elites*. This display of the public opinion in this ‘populist’ television format therewith comes closer to the more ‘conservative’ ideas, which can be found in the “Frankfurter Allgemeinen Zeitung” on the topic of corruption and combating it.

With regard to preventing and combating political corruption the “Frankfurter Allgemeine Zeitung” focuses on the trust placed in the *self-healing powers of the political system and party system*, and sees the causes of corruption more in the weaknesses of human nature, and thus mobilises a stereotypically conservative view of humans. The “Süddeutsche Zeitung” which perceives itself to be liberal focuses more on the rule of law, democratic order and the control of individual power to combat and prevent corruption. It thus criticises not only the Germany party system, rather the German judicial branch as well, which proved to be too weak against political influences. It calls for more independence, in particular from the public prosecution service, vis-à-vis politics and government.

Altogether, a *continuous pattern of interpretation* can be detected in how the issue of corruption is dealt with both in the articles of the examined print media as well as in the talk shows. The discussion always revolves around the question whether corruption should be primarily regarded as a breach of trust *in terms of human morality* or more in technical terms as a *control problem*. Fundamental questions concerning political culture in a democracy are concealed within this: What distinguishes the political practice of a democracy from that of a non-democratic system? Is it primarily marked by an attitude towards certain *values* or by certain *technical procedures* of exercising power? In both cases, it is ultimately about the legitimacy of the acquisition, the exercise and the control of power in a community. Corruption is then understood to be an indicator of the misuse of power (violation of the ‘spirit of the constitution’, ‘nuisance’) and as a failure of the institutionalised procedures of the political system. Is corruption an expression of human weaknesses (‘The spirit is willing, but the flesh is weak’) or structural construction error in the political sphere, in particular the party system?

Corruption gives the media the opportunity to act out its purported role as the ‘fourth branch of power in the state’ and as the representative societal control of the political system and enforce democratic values vis-à-vis the representatives of the political system. It is evident in the perceived role of the media that moral and system-technical aspects do not necessarily exclude each other, rather could merge into a pattern of interpretation.

### **3.5 Target Group Civil Society**

#### Part 1

##### *Evaluation units*

As evaluation documents were chosen 5 texts from the leading anti-corruption NGO, Transparency International (TI). The first two policy papers lay down the standards on party financing TI holds fundamental for any regulatory work in the field:

1.) *TI policy position, No. 01/2005 Standards on political funding and favours*, download:

[http://www.transparency.org/content/download/1918/11221/file/01policy\\_brief\\_standards\\_political\\_funding\\_favours.pdf](http://www.transparency.org/content/download/1918/11221/file/01policy_brief_standards_political_funding_favours.pdf) and

2.) *TI policy position, No. 2/2005 Political finance regulations: Bridging the enforcement gap*, download:

[http://www.transparency.org/policy\\_research/policy\\_working\\_paper/political\\_finance\\_and\\_funding](http://www.transparency.org/policy_research/policy_working_paper/political_finance_and_funding)

3.) In summary form the standards are also laid down in: *Box 1.2: Transparency International's Standards on Political Finance and Favours*, accessible in:

[http://www.transparency.org/content/download/5468/31897/file/standards\\_eng.pdf](http://www.transparency.org/content/download/5468/31897/file/standards_eng.pdf).

4.) More closely to the German party financing regulations the 4<sup>th</sup> text under examination despite being somehow outdated (14.02.2000) makes proposals to anti-corruption fighting that in the face of the actual regulations in Germany prove far-sighted. The text (in German) carries the title: *Transparency Internationals Vorschläge für die Reform der Parteienfinanzierung*, accessible in: <http://www.transparency.de/Vorschlaege-fuer-Reform-der-Pa.91.0.html> 5.)

Owing to the importance of the ALAC's [Advocacy and Legal Advice Centers] the research and evaluation work has concentrated on the way TI has designed and developed these "grass-roots" anti-corruption instances in the civil society. Consequently we draw upon a paper Mrs Jana Mittermaier (TI, International Secretariat) put to the disposal of the German project team during a visit in Berlin (28.08.2006). During this visit the project team had a constructive discussion with the TI Regional Director for Europe and Central Asia, Dr. Miklos Marschall, in which lines of co-operation were laid down. The text under evaluation is entitled: *Advocacy and Legal Advice Centers. Project Brief* and is also on-line accessible:

[http://www.transparency.org/regional\\_pages/europe\\_central\\_asia/priority\\_issues/alac](http://www.transparency.org/regional_pages/europe_central_asia/priority_issues/alac)

As parts of the Hermeneutical Unit (EU) in the Atlas-ti data analysis software these five documents are listed respectively: P1, P2, P3, P5, P6.

### *Principles and standards*

The tenets Transparency International defends regarding party financing rest upon a two-track argumentation bearing on the one hand on institutional-systemic and on the other hand on rather subjective, civil societal aspects of party funding control mechanisms. The *bottom-up and top-down drivers of change* [P6: 134]\* are jointly considered efficient to tackle the twofold negativities resulting from illegal conduct: where law-conforming political funding is violated both a) the political system suffers under disfunctionality the fair competition between the political parties being distorted owing to an unequal access to and use of financial resources [P1: 4-7] and b) the public legitimacy of the political rule decreases the voters observing the political class paying off their illegal funded ascent to power [P1: 18-20].

Looking at the systemic role party competition plays in a democratically legitimised political order controlling party financing aims at a) *reducing inequalities or promoting equal chances* [P1: 159-161, 228-235] and b) *staving off* blatant intrusions of the business logic into the political sphere [P2: 6-7] this being particularly acute in the context of the media campaigns [P1: 346-351]. In this way overseeing and controlling the funding flows of the parties function as steering mechanisms ensuring law abiding, democratically legitimate political work. There are systemic reasons though that impede the efficient exercise of these mechanisms the most important of which should be located in certain *imbalances* between in-put regulations and (out-put) effectiveness (supervision): Trying to raise the efficiency of funding control through introducing additional rules does not necessarily enhance the chances of curbing law deviating conduct for the more complicated the control mechanisms become the less adequately they can be enforced because a) the oversight instances are not appropriately

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\* The number of the protocol and the lines cited are created by the hermeneutic unit of analysis designated by the content-analytical software Atlas.ti.

equipped to handle them, b) the rules themselves are too complicated to be efficiently put to force, c) their enforcement need not automatically imply the political will to back them up [P1: 301-312], d) the control investigations often confine themselves to tracking only procedural irregularities, failing to probe behind the figures the parties declare in their accounts, and e) the control instances themselves lack the independence of action [P2: 10-11]. The other way round observing a *proportionate relation* between the need for regulatory rules and the need for effective supervision means for example that if spending limits are set too low then this will have a counterproductive effect politicians trying to circumvent them searching for additional, presumably not quite legal party fundings [P2: 131-137]. The requirement of proportionality between means and effectiveness should also be observed in the case of sanctions [P2: 225-234], but also in all those cases where a possible infringement of individual rights cannot be ruled out. This can occur when the party funding rules *run counter* to what is in a given societal context generally perceived to belong to the alienable rights as for example in the United States the right to donate being equated with the right of free speech. The same effect of regulation rules colliding with the sense of individual freedom can be observed in cases in which the eagerness to impose an ever tightening instrumentation of control functions results in a kind of *regulation overkill* that is perceived as threatening the freedom of action of both parties and politicians [P2: 118-120] – against the possibility of generating an atmosphere of generalised suspicion rule setting should thus not overgrow certain limits that although not strictly defined nevertheless lie at the heart of the *sense of human rights*. Attuning the regulatory work to the ethical norms and cultural specificities of the country involved means inversely that anti-corruption law enforcement will work out if the *political culture* is characterised by a low level of law-obeying dispositions [85-91].

Setting down standards for party funding Transparency International supplements the systemic approach of viewing the financial aspects of political parties acting in the framework of democratic rules with a “*bottom-up*” approach that pinpoints the subjective, citizen oriented in-put factors [P6: 75-77]. To begin with such an approach is brought to bear as the external corrective to the functionalist view the latter meaning that as such regulation rules could easily be considered as purely internal checks that enable the party apparatuses to avoid certain ‘excesses’, that is to put under control the inevitable dispositions of the parties under conditions of political power struggle to misuse party funding. Furthermore under the functionalist point of view the immanence of the regulatory work is self evident since those responsible for designing the funding rules are the same instances/persons that are called to put them to effect. This line of reasoning can be extended to all supervising instances: in a kind of *second grade monitoring* the regulatory instances should themselves underlie independent supervision [P2: 256-259]. Therefore to protect against this political-regulatory short circuit it is necessary not only to draw upon the civil society as external control instance [P1: 410-418, P2: 13-16], but to let all relevant actors in the field (NGO’s, monitoring bodies, lawyers, the press and the academics) participate in the law-making processes [P2: 126-129 and P3: 58-61].

#### *Alac’s (Advocacy and Legal Advice Centres)*

The “*bottom-up*” approach Transparency International upholds as indispensable supplement to the institutional regulatory rules relies on developing and optimising the work of the Alac’s that in turn a) bears upon and promotes societal initiatives from groups or individuals against what is perceived as illegal conduct, but also in cases of victims of corruption b) supports them undertake concrete steps to articulate their complaints and reclaim their rights. Despite the *grass-roots* orientation [P6: 14-16] the work of the Alac’s is crucial in tracking down the

‘soft points’, that is particular legal and administrative loopholes which often prove to be nourishing grounds for law violating attitudes. This need not necessarily mean that the impact of their work cannot increase in scale or expand in depth, for the greater the volume of complaints they generate the greater the momentum they can develop bringing about an ever growing capacity of social actors to set the agenda the anti-corruption agenda [P6: 46-49] – indeed, the uniqueness of the Alac’s consists in their ability to build up case specific, but also comprehensive expertise and professionalism in the area [P6: 58-60].

## Part 2

### *Evaluation Units*

As was pointed out in the evaluations of the parliamentary debate and the inquiry process of the parliamentary investigation committee in the context of the corruption scandal in Cologne at the grass-roots of the affair lay the decision of the public contracting authority, in this case the city administration, to deliberately ignore the rules of an open, competitive bidding process. Therefore it was found necessary that the initiative of TI to set down some rules flanking the public contract procedures be also evaluated. We examined documents of TI that state in a programmatic way the framework rules every contracting procedure involving the public sector must comply with. Such a framework called Integrity Pact is provided in the document of the Transparency International Germany:

<http://www.transparency.de/Integritaetspakt.80.0.html>.

How the pact can function in concrete terms shows the procurement of the integrity contract designed for the Airport Berlin Brandenburg International (11.02.2005) – see:

[http://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/05-02-11\\_Integrit\\_tsvertragFBS\\_fin.pdf](http://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/05-02-11_Integrit_tsvertragFBS_fin.pdf).

Drawn upon in our evaluation is also another short document dealing with general standards TI Germany wants to see applied in cases of public procurement procedures – see:

[http://www.transparency.de/Vergabewesen.81.0.html?&no\\_cache=1&sword\\_list\[\]=integrit%E4tspakt](http://www.transparency.de/Vergabewesen.81.0.html?&no_cache=1&sword_list[]=integrit%E4tspakt).

Especially useful for our purposes was also a document of TI that combines the principles and standards found in the aforementioned texts with practical proposals how they should be implemented. The text refers to the experiences gathered in various countries from putting the Integrity Pact to effect and taking account the peculiarities of the German law system points out a number of cases in which in Germany the pact was adopted (for example the garbage recycling company Rhein-Sieg) or taken as model for designing procurement contracts (for example the contracts signed between the German Railways and construction companies) – see:

[http://www.transparency.de/Konzept-und-moegliche-Anwendun.697.0.html?&no\\_cache=1&sword\\_list\[\]=integrit%E4tspakt&sword\\_list\[\]=konzept](http://www.transparency.de/Konzept-und-moegliche-Anwendun.697.0.html?&no_cache=1&sword_list[]=integrit%E4tspakt&sword_list[]=konzept)

Last but not least we had recourse on a press release of TI (16.03.2005) that presents the essentials of the Integrity Pact (TI standards for Public Contracting) – see:

[http://www.transparency.de/GCR-2005-english-press-release.707.0.html?&no\\_cache=1&sword\\_list\[\]=integrity&sword\\_list\[\]=pact](http://www.transparency.de/GCR-2005-english-press-release.707.0.html?&no_cache=1&sword_list[]=integrity&sword_list[]=pact)

As parts of the Hermeneutical Unit (EU) in the Atlas-ti data analysis software these five documents are listed respectively: P1, P4, P5, P8, P9.

*Transparency International: Principles and standards of public procurement*

The ‘Integrity Pact’ TI launched last year containing minimum standards for public procurement strives to build into the mechanisms of public contract procedures certain transparency and reliability guarantees. The goal of securing the integrity of all actors involved in such procedures is considered by TI indispensable since the normal mechanisms of competition in the framework of market economies do not apparently guarantee the *fair play of forces*: Stating that one of the central aims is to bind the competitors to rule observing conduct, the pact in a somehow gloomy assessment of the strategies the competitors are presumably prone to deploy seeks to establish the security that all refrain from gaining competition advantages through corrupt methods [P1: 12-14]. Contriving to dispel any propensity to undermine the rules of fair competition – apparently on the grounds that it cannot from the start be expected the actors involved perceiving the integrity of the procedure as matter of high priority [P8: 53-54] –, the pact wants to extend the scope of prevention securities calling upon the civil servants to avoid or thwart any attempt to exercise influence on their decisions deploying fraudulent means [P4: 90-96]. In sum the Integrity Pact (IP) is ruled by the imperative issued to all contract partners *to dispose of* the capability to act not according to the script of the market mechanisms of free competition. The IP is furthermore called upon to function supplementary to the laws of contract filling up the ‘loopholes’ concerning the quality and application of the existing law regulations [P8: 24-26]. Both objectives are particularly suitable for such countries, for example Germany, in which despite being in effect the numerous regulations are not capable of guaranteeing a law-conforming conduct [P8: 49-52]. Therefore it seems that an underlying assumption of the pact is that laying down integrity regulations can *develop a motivational force* that enables the contract partners to pay no heed to the allures of law deviating, but money-making action.

Besides the prevention measures securing equal chances of competition the Integrity Pact purports to minimise the damage caused by rule violations [P1: 19-20], but apart from recording the impact the financial costs the lack of transparency in large-scale projects can have on economic developments it does not specify what should concretely be done pointing instead to a) the fact corrupt contracting processes leaving developing countries burdened with sub-standard infrastructure, but also b) to the large-scale infrastructural investment in Cologne that does not quite fit the scheme though [P9: 63-65]. Furthermore keeping in mind that one of the main reasons for the city administration of Cologne to favour certain construction companies was the concern of securing jobs, it is somehow difficult to claim for sure that the participation of civil society organisations TI urgently calls for [P8: 182-186] can except raising transparency ensure that the whole procedure will be totally free from ‘thank-giving’ transactions.

### **3.6 Target Group Economy**

In order to analyse the perceived pattern of corruption in German industry, publically accessible data obtained from the two most important players in industry was used. This comprised official statements and publications from the Federation of German Trade Unions (Deutscher Gewerkschaftsbund/DGB) and the Federation of German Industries (Bundesverband der Deutschen Industrie/BDI).

#### A. Corruption as the Federation of German Trade Unions (DGB) sees it

*Source Material*

Data from two sources formed the basis of the analysis of the DGB's perception of and attitude towards corruption: one being the guidelines and recommendations which can be accessed publically via the Internet homepage of the DGB. These include the DGB's general recommendations on fighting corruption in industry. Alongside this key source as regards sociological investigation, a brochure commissioned by the trade unions' own Hans-Böckler Foundation (Hans-Böckler-Stiftung) on the topic of whistleblowing was evaluated. Penned by a lawyer who is a specialist in this field, it constitutes a sort of handbook, which offers suggestions on how to proceed – mainly from the point of view of the (employment) law – to those employees who are in any way involved in or aware of corrupt practices in their workplace and wish to expose them. An article on this subject was included in the trade union newspaper 'Mitbestimmung' as well.

No further information has been forthcoming from the DGB, either via its PR representative, or the Hans-Böckler Foundation, despite direct and continued attempts at communication with both. This was much to the surprise of the researchers, yet in itself represents a significant detail!

The DGB training centre in Hattingen ran a training seminar for its members on the subject of 'Political scandals – "black money"- members' salaries: social norms, private moral and the significance of scandals'. We were not able to obtain details of content and participants, or other events of this nature.

### *The Analysis*

In its official statement on the subject, the DGB maintains that more and more German companies find themselves under suspicion of corruption. Like tax evasion, corruption seems to be commonly accepted as a peccadillo. The DGB takes the position that this view is in urgent need of correction. Both tax evasion and corruption should hitherto be more effectively combated, also in terms of prevention, and carry heavier penalties. Anti-corruption needs to become an issue for the whole of society, to be given the highest priority in every organisation. With this in mind, the DGB has drawn up a list of recommendations for combating corruption in organisations:

- 1) Those in management positions should see themselves as role models.
- 2) Anti-corruption measures should appear on the agenda of the supervisory board at least once a year.
- 3) An annual corruption report by the management board and the supervisory board would show that the issue was being seriously addressed.
- 4) A publicly-accessible corruption register, which lists organisations which have been guilty of corruption, to prevent them being awarded public contracts.
- 5) An external anti-corruption official and a ruling concerning whistleblowing are also of importance, the latter containing a clear stipulation that no employee who reports possible corruption be liable to prosecution under employment law.

With these recommendations, the DGB has defined two lines of attack in combating industrial corruption. One is concerned with improving the control structures in organisations, the other with strengthening the sensitive business ethics on the subject of corruption.

Leaving aside the demand for employees' rights, the failure, or at least hesitation, of the DGB to call for legally binding rules is evident. The DGB also appears to view ethical commitment and trust-building measures (see whistleblowing) as sufficient or in any case, the most effective ways to prevent corruption.

## *Whistleblowing as the DGB's strategy for anti-corruption in German companies*

Whistleblowing denotes the conduct of an employee who points out gross malpractice in his/her organisation. Not every employee who reports something is necessarily a whistleblower in the true sense. Certain very specific conditions need to be fulfilled before this is the case. Whoever points out such a problem, according to the DGB booklet, initially merely sets a damage limitation process in motion. Only once the information has been steadfastly ignored by his/her line manager and the employee goes further up the company hierarchy or even to the media, is there a case of whistleblowing.

The debate is relatively new, and not just in Germany. The concept originates in the USA and many German companies have had to take on board the subject of whistleblowing since 2002 – at the latest when they go public on the US stock exchange or want to own publicly quoted US subsidiaries.

Since the Sarbanes Oxley Act of 2002, managers can face a 10 years' maximum jail sentence if they do not systematically follow up tip-offs or if they even go so far as to allow retaliatory measures to be taken against the informant. The passing of this law has been accelerated by the recent scandal over the *Enron* energy corporation: a female employee alerted her superiors to serious anomalies in the accounts. But not only was the information not followed up, but, probably because the employee waited too long, for fear of unpleasant personal consequences, it came too late to prevent the company's collapse. In Germany, too, there are scandals time and again, which could have been avoided by successful whistleblowing. The brochure describes in more detail the form whistleblowing takes in practice in German companies.

The DGB booklet outlines the current situation in many German companies as such that up to now, company management has not reacted to such tip-offs. This causes some whistleblowers to bypass the company hierarchy to get their concerns heard. Many large organisations explicitly forbid this kind of internal whistleblowing, it is never welcomed, inevitably leads to conflict between the individual and the organisation and always carries the risk of dismissal.

External whistleblowing causes special conflicts when the employee turns to the authorities outside his/her company as a final resort. Such a case represents a breach of the employment contract or even of penal law.

DGB booklet goes on to say that in Germany, the act of whistleblowing is tainted with the stigma of denunciation. Company employees who refuse to turn a blind eye to corruption in their workplace and pass on information with unselfish motives are in danger of being mobbed or sacked. Legal verdicts in connection with whistleblowing thus nearly always apply to issues of employment law. Even if an employee wins a case, thus helping protect people and organisations by their action, they are inevitably ostracised. If a conflict already exists between an informant and their superiors, any help the works committee can offer usually comes too late.

The basic problem with whistleblowing is that it both conflicts with the formal communications and reporting structures of the organisation and irreparably damages informal mutual trust. From both the employee's and the organisation's point of view, risk minimising preconditions must be established order for whistleblowing to succeed. There are two possible ways to achieve this.

One answer would be to enable whistleblowers to report anonymously. This could be done using web-based systems which could support anonymous, untraceable tip-offs. The DGB suggests the new 'Deutsche Prüfstelle für Rechnungslegung' (DPR e.V.) as a possible address to which such anonymous tip-offs could be sent. In addition to its focus area of accounts manipulation, the DPR could receive and pass on anonymous information concerning dangerous production conditions, dangerous products, product liability cases and moreover, so-called secrecy crimes as corruption, falsifying of accounts and serious industrial crime. A

solution based within the organisation is also worth considering. Members of the workforce should be able to address in confidence either their line manager or an office set up within the company for that specific purpose. A prerequisite here would be an agreement between workforce and management. This way, the organisational status quo would not suffer due to contempt of the hierarchy. This process would turn from a brave, spontaneous act into one firmly rooted within the organisation. It would also rule out activities such as stigmatisation and mobbing to start with. This solution in particular shows that whistleblowing does not operate against the interests of the company. On the contrary, it contributes to increased productivity and a stable organisation.

The DGB sees the works committee taking on an important function within an institutionalised whistleblowing process. By assisting “in the formation of a culture within the organisation which enables colleagues to pass on information internally and stop serious malpractice and risks”.

The DGB sees the works committee’s goal as allowing for the creation of alternatives to a culture of silence. In its booklet, it suggests the following measures to achieve this end:

1. Allow anonymous tip-offs via email
2. Point out areas where deviation from official channels is acceptable
3. Specify which external authority can be informed and under what conditions
4. Ensure that tip-offs are processed and replied to
5. Name a contact person for unsatisfied employees who give tip-offs
6. Specify the role of the staff association
7. Arrange protection from discrimination for whistleblowers
8. Align disciplinary rules and whistleblowing rules

The DGB emphasises in its booklet that it is in total accord with Transparency International (TI) and employers’ federations on the subject of whistleblowing. Like them, it is in favour of companies using the services of ombudsmen/women who can investigate tip-offs. The following contact centres already exist in Germany, independently of industry or trade union federations:

- a) The criminal investigation authorities in the state of *Niedersachsen* have a practice which allows for the protection of identity when more information is required.
- b) *Fairness-Stiftung gGmbH* offers advice on the most important points of this subject.

### *Interpretative pattern of corruption as seen by the Trade Unions*

The official opinion and recommendations of the DGB centre almost exclusively on the immediate risks corruption represents both inside and for the company, in particular for the workforce. This explains the significance the DGB assigns whistleblowing within companies. The DGB addresses the intra-organisational problems of corruption and tackling corruption, less the social and political problems. This view of corruption is understandable when one considers that the DGB is the body which represents its members, whose interests it recognises and protects. It fails to tackle the problem of the damage done to society as a whole, in particular in view of the fact that employers are also taxpayers who in the long run have to suffer for the damage done. In the light of this, the DGB’s perception of corruption seems restrictive. The important social and political dimensions of corrupt practices are being excluded.

## B. Corruption as the German Employers' Federations see it

### *Source Material*

The analysis of the perception of corruption as seen by the German Employers' Federations (Deutschen Arbeitgeberverbänden) is based on the recommendations and opinions of the Federation of German Industries, (Bundesverband der Deutschen Industrie, BDI).

The following documents were used:

- 1). 'Prevent corruption – BDI recommendations' (Korruption verhindern – Empfehlungen des BDI, 2nd edition 2002))
- 2). 'Statement on: draft of law dealing with the creation of a register of untrustworthy companies' (Stellungnahme: Entwurf eines Gesetzes zur Einrichtung eines Registers über unzuverlässige Unternehmen, 21. August 2002)
- 3). 'Statement on draft of a law on new rulings of the public procurement law of 29. 03. 2005' (Stellungnahme zum Entwurf eines Gesetzes zur Neuregelung des Vergaberechts vom 29. 03. 2005, 13. April 2005)

For the purposes of comparison and the analysis of synergies in tackling corruption among German companies, political and non-governmental organisations dedicated to fighting corruption, the following documents were also used:

- 1). 'Law on the introduction and maintenance of a register of conspicuously corrupt companies in Berlin' (Gesetz zu Errichtung und Führung eines Registers über korruptionsauffälligen Unternehmen in Berlin“ (Korruptionsregistergesetz – KRG), “Land Parliament Berlin, 19. April 2006)

- 2). Statement from Transparency International (TI) Germany on the Federal Ministry of Economics and Technology's draft of new rulings on public procurement law.

Further press statements from TI Deutschland on public procurement law, corruption registers and integrity pacts were also used. The BDI documents used can be viewed and accessed via its homepage. On request, the documents were also made available to the research team in electronic form by the relevant staff member of the BDI. All other documents were taken from the homepage of Transparency International Germany.

### *The Analysis*

Like the DGB, the BDI states that “combating all forms of bribery and corruption remains a task of the highest priority. Social market economies – based on fair competition, strict compliance with the law, and the balancing of interests among different social groups – cannot tolerate corrupt behaviour because such practices contradict legal, regulatory and ethical principles, which equally apply to companies”. Understandably, the BDI is interested in particular in the negative effects which corruption can have on companies. In this respect, it sees damage done to the basic principle of a liberal economy and ultimately the duty to public welfare of commercial enterprise, the promotion of public welfare through economic prosperity: “corruption distorts competition to the detriment of all companies in a way that is particularly intransparent, leads to higher costs, undermines clients' and suppliers' confidence and injures the reputation of German industry as a whole”. The BDI declares its approval of the passing of a series of laws designed to tackle corruption and the ratification of international conventions with this common purpose.

Some of the most relevant are:

1. The 'OECD Convention on Combating Bribery of Foreign Public Officials' of 17. 12. 1997, which makes the bribing of foreign public officials a criminal offence.

2. A change in income tax law which prohibits write-offs against tax for so-called 'advantage pecuniaries'.
3. A change in the public procurement law in 1999, which provided for more transparency in the control of public procurement.

The principles outlined by the BDI in its document are intended as a basis for nationwide introduction of internal regulatory systems and organisational measures designed to tackle corruption, which have already been initiated in a number of companies. The basic principles are as follows:

1. Generally speaking, the BDI calls upon companies and particularly their managers to adhere both here and abroad to the laws and other regulations and to ensure that this also happens inside the company. Any breach of these laws and regulations will result in the imposition of a catalogue of measures ranging from instant dismissal to criminal proceedings.
2. Company management is seen as a role model in the prevention and fight against corruption. The BDI's second priority would thus appear to be of a moral nature. What should happen in practice, if the call to company management should fall on deaf ears, has been significantly left open to suggestion.
3. Selection of and dealings with subcontractors and buyers should be carried out on the basis of competitive criteria as a matter of principle.
4. It is recommended that gifts and other donations be turned down as a matter of principle, as they create a relationship of dependence and obligation between client and contractor, suppliers and customers.
5. Business and private affairs should be kept separate.
6. In business relationships, a strict line should be drawn and maintained between business and private interests in order to prevent a conflict of interests from the outset.
7. In contrast to the conflicts arising from mixing business and private interests, the conflict of interests and their prevention where secondary employment and employees' shareholdings arise are highlighted. This passage deals in essence with the protection of a company's confidential inside information.
8. Involvement of agents (advisors, agents, sponsors, etc.): payments to agents for services rendered should be prevented from being diverted for the purpose of bribery. Payments made to agents should be made in a realistic relation to their services.
9. Donations to political parties and politicians: in this sensitive field, the requirement is that donations to political parties and politicians only be made if they are in line with the law and they must satisfy all requirements concerning declaration and transparency.

The BDI suggestions for internal corruption prevention measures are:

1. As a key to preventing combat intracompany corruption, education and training measures should be carried out by the company, in addition to formal instruction of employees. Every employee should sign a binding clause which, if broken, would enable criminal proceedings to be taken in the event of corrupt practices.
2. Company departments at risk of corruption, such as those involved in sales and distribution, should operate a regularly changing rota system for their staff.
3. A further preventive measure is the adoption of the dual control procedure, (whereby two employees are required to perform a specific task) and the separation of processing and verification as well as unbroken documentation

4. In their dealings with contractors/suppliers, companies should avoid one-sided dependency, which could lead to corruption.
5. According to the BDI, thorough and transparent accounting and an independent checking system are among the most effective measures for tackling corruption in companies.
6. Regarding the debate on the introduction and form of a separate reporting system, the BDI offered its own vision of whistleblowing, also suggested by the DGB. The recommendations more or less match the demands and suggestions put forward by both the DGB and TI, in particular those concerning companies employing an ombudsman.
7. In the BDI's opinion, organisational anti-corruption measures and validity of the relevant code of conduct can only be successful if they are accompanied by the relevant control measures. These measures may range from random sampling controls to specific rules of internal revision.

*Interpretative patterns of corruption from the German Federation of Industry*

The basic principles and measures for preventing and tackling corruption presented here as recommended by the BDI are directed towards the possible damage that corrupt behaviour can result in. Corruption distorts and compromises competition in a market economy and therefore must be systematically combated. The measures suggested here refer to the manipulation or breach of existing norms which corruption causes and which can therefore be prosecuted on the basis of valid penal laws. Yet what is missing from the BDI's position and the catalogue of measures are strategies dealing with possible new risks and forms of corruption which may emerge in the wake of globalisation.

If one compares the BDI's statement regarding the 'Draft of a law dealing with the creation of a register of untrustworthy companies' (21. August 2002) and the 'Draft of a law revising the public procurement law, 29. 03. 2005' (13. April 2005), which also deals with anti-corruption in organisations, with the relevant guidelines and recommendations from TI and the 'Law on the introduction and maintenance of a register of conspicuously corrupt companies in Berlin' (19. April 2006) passed by the federal state of Berlin, it becomes evident that the demands of both the BDI and Transparency International have, to a large extent, found their way into the anti-corruption laws of the state of Berlin. The names of companies for who sufficient grounds for suspicion exist or who have been convicted of corruption will be entered in a register and, depending on the severity of the crime, these companies will be excluded from bidding for public contracts for a set period of time.

The BDI shares the general opinion, in particular of those involved in tackling corruption, that the so-called 'black list' is one of the most effective deterrents in the fight against corruption. There is also a general consensus that corruption in the field of public procurement leads to a sizeable increase in costs and that improved transparency in using public funds is essential if tax revenue entrusted to the state is to be handled cost-effectively and responsibly. One of the BDI's main recommendations has been taken into account by the legislature: that a company can be excluded from public procurement on the basis of a detailed account of the facts of the corruption case. In addition, the legal conviction of a company can be based on a detailed, factual account or other, incontrovertible, objective criteria. A third main recommendation of the BDI has also found its way into the law: a company's name may be erased from the "black list" of it is in a position to prove that satisfactory measures have been taken effectively prevent a repetition.

Merely perceiving the quantitative ‘meagreness’ of the documents produced by the interested parties of ‘labour and capital’ on the subject of corruption, the scientific observer is forced to reach the conclusion that this is not a subject “close to the heart” of the officials and also appears not to be given top priority. Closer analysis only confirms this impression. Even at a ‘qualitative’ level the result is seemingly modest. From this, one can deduce that the subject was more or less imposed from ‘outside’.

This interpretation is supported by the degree of interest which the subject of whistleblowing receives in particular, but not exclusively, from the trade unions. It does indeed seem plausible that the DGB has its sights set on the protection of workers and their rights, but the subject and rhetoric of whistleblowing are doubtless ‘American imports’. Whether it amounts to more than a fashion can only be established by analysis based on interviews with experts in the field, as planned for the second research phase in 2007.

One result of the document analysis can be put on record: that the subject does not enjoy a particularly high priority among the federations; if one considers the last big corruption scandals in the German car industry, in which both workforce and management were implicated, the passivity of the federations concerning prevention of and fight against corruption should come as no surprise. Given the political significance enjoyed by workers’ unions and management associations, such restraint vis-à-vis the subject of corruption as documented in the analysis can only be viewed as very problematic.

The official statements of the Federation of German Trade Unions (Deutscher Gewerkschaftsbund/DGB) and the Federation of German Industries (Bundesverband der Deutschen Industrie/BDI) containing their recommendations for tackling corruption offer two lines of attack: on one hand, improving structures of control in the workplace, on the other, strengthening the sensitive business ethics on the subject of corruption.

As regards the DGB, however, this ‘double strategy’ implies a structural conflict of aims. Seen from an employment point of view, the interests of capital and work are irreconcilable and their relationship tends to be conflicting; the trade union steps in here to protect the employee against the employer. This is made clear in cases of whistleblowing where the union prioritises support of the employee. In terms of the organisation and the whole industry, employers and the workforce are all ‘in the same boat’. Both sides have a common interest in a thriving industry and macro-economy. This is reflected in the efforts to which the representatives of both capital and workforce go to put in place corporate structures and in the symbolism of the rhetoric of industrial ethics.

Both federations consider legal rulings and institutional provisions as absolutely vital but inadequate. Indeed, even the instigation of an internal reporting system (whistleblowing) and a state monitoring system is conditional on trust-building measures and a general code of conduct. Structural and ethical measures, strengthening of controls and moral should not be seen as alternatives, rather as complimentary. An analysis of the attempts to focus attention on the problem of whistleblowing has shown that this debate, imported and adopted from the USA, has been foisted on the German system in the form of corporatism (or ‘Rhineland capitalism’), in other words it reproduces a pattern of perception and action that is both traditional and informed by business ethics. A comparison with data from politics and NGOs as well shows that industrial corporatism blends into a culture of consensus within society as a whole. The alliance between capital and labour is flanked by a balance of interests and process of accommodation between both civil society and the state.

#### **4. Conclusions**

## Target Group Politics

### Case study I: Party financing (The Kohl affair)

Looking at first at the context in which the parliamentary debates on the illegal party financing the ex-chancellor and leading party officials of the Christian Democratic Party were involved in and bearing in mind that at the same time the bribes leading party officials of the Social Democratic party in Cologne received, it comes as no surprise that the fundamental attitude or that essential stance that informs the perceptions and argumentations of the political actors is one of

- *mutual discredit*. Striving to cast off the odium of being exposed as ruthless violators of the party financing regulations the main political formations outbid each other raising continuously the claim the opponent, being himself morally disqualified or lacking the integrity, can by no means have the right to castigate the wrong-doings of the other side. Posing in this way parliamentary criticism under the generalised suspicion of arrogant preposterousness has the counter-productive effect of the political class as a whole *delegitimizing* itself. [See also Report Media: “state crisis”].

Against the background of mutual denigration must be seen both the deprecation, or even worse, outright denial of transparency procedures such as the parliamentary inquiry committee the latter being perceived as a continuation of *party struggle with other means*. Besides assumed to be an instrument of delegitimizing or criminalising the political opponents a resolute transparency undermines the very fundamentals of a

- *fair party competition* exposing the financial transactions to the gaze of the political enemy eager to draw advantages. Besides the very fact that some political parties often act as economic agencies thus not being dependable on donations and consequently more competitive increasing the pressure to widen the scope of fund raising is perceived as means to re-establish the balances of forces, or rather secure the *equality of chances*. The argument of violating the rules of fair play instrumentalising the transparency procedures can however cut both ways political parties often trespassing the regulations of party financing in order to a) attain or secure a hegemonic role in the political landscape and b) establish and maintain a strong hierarchic party structure meant indispensable in terms of a fierce ‘block confrontation’ between the political formations.

Besides the contestation on the question of to what extent violations of the party funding regulations interrelate with and exert a negative impact on the rules of equal competition between the political parties the illegal donations of the Kohl era raise the question of whether the whole affair should be subsumed under the notion of *political corruption*. Taking into account the definition of TI, corruption being “the misuse of entrusted power for private gain, whether in the public or private sector, in the scope of satisfying some personal or group interests”, it is far from clear that the ‘system’ of secret accounts Kohl could establish over the years testifies beyond doubt to the fact of politically corrupt conduct. The reason for this lies both in the fact that

- *no private benefits* were intended or factually gained. Undoubtedly the illegal donations were deposited in secret accounts and never officially declared in the party books, but under the assumption/perception the party being structurally underfinanced in comparison to the Social Democrats they were subsequently rechannelled into the party to finance election campaigns or the work of various party committees. Of course one can argue that the group interests the TI definition speaks of should be extended to include the party interests as well, but in this case that would mean that illegal funding served the party interests without there being sufficient indication for a misuse of entrusted power in connection with fund raising though. Trying to fit the TI definition the other way round, that is starting from the misuse of power, could be however more promising, for it was the

hegemonic position in the party or state apparatus that enabled Kohl a) to attract various donations and b) to put himself above the democratic procedures of account giving *reversing the priorities* of the ethical conduct politicians are normally supposed to observe, that is preferring to uphold the (somehow outmoded) private ethic of personal loyalty, or better, reliability in terms of the ‘word of honour’ to the law-conforming ethic of public accountability.

and

- no sufficient evidence could be delivered that receiving the donations was causally connected to the political decision process. If they were anyway deployed in order to exert political influence, this seems apparently to have happened not between donors and politicians, but rather as a means to keep the party organism under the authoritarian rule of Kohl. The private benefits of the TI definition can therefore in this case be interpreted as political assets invested in keeping the party in line. In a sense one may naturally claim that this art of fund deployment is not far away from power misuse. Nevertheless referring primarily to the mechanism of party leadership and control it does not quite help fit the TI corruption definition conferring the case a certain *indeterminacy* oscillating sanctionable corruption and general political exercise of influence.

#### *Case study II: Party financing (The Cologne affair)*

The corruption scandal in Cologne involving party officials of the Social Democratic Party (SPD) who received bribes after the deal to build a waste incinerator was struck revolved essentially on the violation of the rules of open and public procurement procedures. Circumventing existing regulations in the field was perceived by the local authorities in the state of North Rhine-Westphalia as unavoidable since they a) *relied* on the economic efficiency the technical know-how of the construction companies guaranteed and b) *were keen on* securing a considerable number of jobs in the region. Additionally blame is put on the funding and finance management of the party allowing the *transformation* of ‘thank-giving’ bribes in financial contributions. Certain parallels are also drawn to the ‘Kohl system’ in that the local officials of the SPD having been monetarily gratified for their decision deployed the bribes to foster the political career planning. In the face of the overwhelming last resting on and the damage caused to the party resulting from this ‘grass root’ corruption affair a certain stance to the whole affair can even assume the character of a *fatalist acquiescence* to the inevitability of corrupt conduct for neither can the party financing regulations wipe out ‘deviant’ conduct nor can they ever deter those determined to pursue their interests with criminal energy. Enforcing sanctions and transparency measures must nevertheless be seen compulsory since it puts the capacity of the political system to *self-purification* to test.

#### *Target Group Judiciary*

The analysis of the perceptual patterns of corruption by judges and lawyers is based on a court dossier on the so-called “Financial Scandal of Cologne’s SPD”, that happened during the project development for a waste incineration plant in the 1990’s.

Accused of passive corruptibility among other things had been the Faction Leader of the SPD in Cologne and, in a second legal procedure, his party-comrade, the Director of the Waste Management Company that was founded according to the Private-Public-Partnership Model as awarding authority of the mega project. In contrast to the suspected SPD politician, who presented the illegal donation simply as a “thankful donation”, or political “landscape

conservation”, the Municipal Court attempts to prove that the donation has to be regarded by both parties involved as bribery in the sense of “impact donation”. The court argues that only by mutual silent agreement the payment can ever make for the giver political and economic sense. If and to what extent this payment and the “accord of injustice” actually influenced the decisions of the two SPD politicians is impossible to prove, and in regard to the accusation of passive corruptibility in both cases and assistance to bribery in the case of the Caucus Leader legally irrelevant. The elements of an offence of corruption are already fulfilled through the act of the “accord of injustice” and not first through the factual influencing of a decision. The defendant tries to cloud not the facts of the case but the modalities. The purpose of this cover-up is served by the claim of an “error as to the illegal nature of their actions” because a council member is not a public officer and therefore can not be accused of corruptibility in office. This was the main count of indictment in the second case, too.

In the Bill of Indictment and the Sentence two lines of argument stand out, which can be connected with certain perception and interpretation patterns of corruption. On one hand the judges develop a description of the facts and a reconstruction of acts, and issue judgements on the basis of laws, legal commentaries and sentences from ‘precedent setting cases’, on the other hand – in central parts of the prosecution and sentencing argument – they make use of ‘common-sense’ arguments, referring regularly to the ‘real life’ context.

The arguments and rhetoric deployed by the prosecutors and the judges is dominated by two rationalities: that of legalistic expertise, but also that of the daily experience of people or the everyday layman. In addition to this, references are made to political, fiscal, economic, social and other discourses, which implicates knowledge drawing upon legal expertise in various fields. Alongside the ‘stylistic’ expressions of the legal rhetoric one also finds a classification of diverse incidents of bribery, so to say a *semantics of corruption*. Fundamental is the differentiation between “active” and “passive” bribery. A special case is “aid to bribery”. Of important meaning in the present case is also the differentiation between “bribery in public office” in the sense of “vote buying” and “bribery in business interaction”. Bribery in public office is taken more seriously than bribery in business interactions and is punished more severely.

Crucial to the final determination of the fact of bribery and the severity of the sentence in the legal proceedings, aside from the objective criteria, are above all the subjective motives of the parties involved. Under consideration of the motives for corrupt behaviour the jurists develop a *typology of bribery* according to their findings in their investigations and witness statements. There is differentiation in the files between the “tempting” of individual politicians and the “political landscape conservation” of parties and factions. To be distinguished from that are so called “impact bribes”, extraordinarily high one time payments for a specific purpose, which, legally speaking, seal an “accord of injustice”, a fraudulent contract. Such “accords of injustice” are made in secrecy and silence, meaning in collusion or as a silent agreement, without explicit discussion of the matter.

“Impact donations” aim to influence a decision in the future, “thank-you donations” are less objectionable gifts for services rendered, as for example the cooperation in a public company or the awarding of a public bid. They can be legal or illegal; as such they may be “landscape conservation” or a retroactively paid bribe in the sense of an impact donation. The defendants try then with the help of the term “thank-you donation” to belittle the true character of the “impact donation” as mere “landscape conservation”.

Fundamental to a case of corruption is not, if the political decision was truly influenced by the bribe or not, but solely if the “accord of injustice” was agreed upon, be it in good or bad faith. Legally important is that the recipient of the donation is under the belief that decisions will be taken in his favor; otherwise the donation would be for the giver pointless “money thrown out the window”. Any other explanation, according to this argument would be a departure from “real life”.

The case shows that in the eyes of judges and lawyers the logic of corruption is not determined by the fact of the decision being influenced (a connection difficult to objectify), but by a corrupt contract, in the sense that expectations are tied to a payment. The legal typology of corruption is constructed, according to the sociologist Max Weber, on the basis of “subjective intentions”, which the individuals acting try to realize, such as gaining power and influence, career-orientation, economic and business success, self-enrichment, greed, but also social motives such as loyalty, peer pressure, political, and economic dependency, power maintenance of the party or implementation of political intentions / programs or, simply, opportunity (“makes thieves”).

### *Target Group Police*

The reconstruction of the perceptual patterns of corruption among the criminal prosecution authorities is based on the investigation files from the Department for Special Cases of Organised Criminality at the State Police Headquarters in Freiburg, Baden-Württemberg, Germany dealing with two cases of corruption, both occurring at the sensitive point of intersection between private industry and offices of the local government.

The first case of corruption deals with “active bribery” in German constructing industry, an economical branch in which corruption is virtually “common practice”, the second with “passive bribery” involving an official of the city’s Aliens Office, who played a key role in a people-smuggling ring.

The perceptual patterns of corruption among the criminal prosecution authorities are shaped by the formal procedures, they are obliged to follow by law. For the officials involved corruption is of course legally a clearly defined fact. Nonetheless, the measures taken to reconstruct the crime, the milieu in which it occurred and the motives behind it in particular are highly informative for an understanding of the attitudes and the perceptions of corruption which influence the investigative process. There are certain images of the typical course of a crime, offender profiles and the criminal milieu “in the heads of the investigating officers” by which they are guided in their work.

In the case of the “gentleman’s crime” in a branch of industry which is strongly marked by corruption, the motive presented in the file is not so much personal enrichment as the pursuit of entrepreneurial success. The economic advantages achieved by corruption would primarily serve the consolidation and development of the “business empire” and the satisfaction of personal strivings for power and property would thus only be a secondary aim. This perhaps explains the social tolerance towards such practices in industry, as opposed to the reaction towards the activities of people-smugglers, obviously dealing with the illegal activities of a commercial gang motivated by the desire for personal enrichment. The suspected official from the aliens office reveals the „classic“ characteristics of passive corruptibility: Employment in public service with contacts to the general public, the complicated issue of legal residence, personal financial problems, precarious familial situation, acceptance of small

presents, invitations to dinner, travel, emotional attachment linked with material dependence and the complicity of others in his breach of duty (which places him „in the hands of“ the persons practising „active bribery“).

These images or perceptual patterns that could be reconstructed in the files are based on *professional expertise, experience* in the field, but also on social *prejudices*. Professional expertise is the dominating perspective in the phase of providing evidence for the charge. To find out the motivation for the crime reference to a broader set of knowledge and experience is usual. Social prejudices then play an eminent role.

### *Target Group Media*

The social and political significance of print and electronic media for democratic systems consists in the public which they create by generating public debate and contributing to the political effectiveness of public discourse. The analyses make evident that media in Germany take upon their democratic role as the so-called ‘fourth branch of power’ in the state acting towards societal control of the political system and enforcing democratic values vis-à-vis the representatives of the political system. Summing up their activity within the socio-political frame one could argue that the media consider securing the guarantee of visibility of power as their main task. Especially in cases of corrupt conduct in politics the media in Germany do not normally misuse corruption for entertainment purposes.

However, especially regarding television formats such as political shows the self-performance of media as the people’s voice accusing deviant political behaviour on the one hand or creating a fictitious democratic community of control on the other are elements to be underlined. Whereas within the first discourse a self-correction by the elites along with stricter rules and punishments are demanded, in the second one causes of political corruption are located both in the privatisation of the political system and in the failure of formal control and compliance with applicable rules.

With regard to the two print media analysed one can assume that the central pattern of corruption discerned in the ‘Frankfurter Allgemeine Zeitung’ refers to the belief of the self-healing powers of the political and party system. The crisis related to the so-called ‘black-accounts’ of the CDU party is by no means perceived as a state crisis but at least as a leadership crisis of a single party. The ‘Süddeutsche Zeitung’ on the other hand focuses more on the rule of law, democratic order and the control of individual power to combat and prevent corruption. Its criticism goes beyond the party system in Germany even accusing the judiciary being weak against political influences.

There are in common two continuous patterns of perception of corruption both in the articles of the examined print media as well as in the talk shows which not exclude each other but rather merge into a pattern of interpretation: corruption as a problem of breach of trust in terms of human morality and corruption as a control problem in technical terms. These two patterns of perception by the media are related on the one hand to certain values and to technical procedures of exercising power within a democratic community on the other. Corruption is accordingly understood both as a failure of the institutionalised procedures of the political system and an expression of human weaknesses.

### *Target Group Civil Society*

In awareness of the it playing a crucial role in the reduction of inequalities or the promotion of equal chances in the party competition – the normal mechanisms of competition in the framework of market economies apparently not guaranteeing a fair play of forces –, but also in minimising the intrusion of the economic exchange logic into the political sphere, Transparency International declares party financing to be one of the most central steering mechanisms of lawful and transparent party work. However a certain cautiousness should be observed on the issue of *balancing* in-put regulations and out-put effectiveness/supervision complying with the requirement of proportionality between means and results – regulatory overdrive may run counter to societal perceptions of human rights. As supplementary rule setting strategy to ensure the law conformity of economic transactions (for example in cases of public procurement) the TI has launched the Integrity Pact planned to function as containment of ‘deviant’ dispositions. At the core of TI’s “bottom-up” approach in fighting corruption lies the network of ALACs (Advocacy and Legal Advice Centres) in various countries promoting societal initiatives from groups or individuals to articulate their complaints against what is perceived as corrupt conduct, helping them at the same time to reclaim their rights.

### *Target Group Economy*

The analysed data from the Federation of German Trade Unions (DGB) make in general evident that important social and political dimensions of corrupt practices are not subject to consideration by the Federation. The perception of the DGB seems to be a rather restrictive one. The anti-corruption strategy of the DGB centres almost exclusively on the immediate risks corruption represents for the company, and in particular for the workforce. This explains the significance the DGB assigns to institutionalising and implementing concrete measures against the so-called whistle-blowing within companies.

Though this anti-corruption strategy is common between trade unions on the one hand and employers’ federations on the other the later underline at first the extend to which corruption distorts competition in a market economy. Especially regarding the regulations of public contracting and the establishment of a corruption register (at least at the level of the federal states in Germany) it is observed that synergy effects are developing between the activities of politicians, NGOs and the business world. If one compares the claims raised by industry and TI and addressed at politics, then one can easily observe the existence of a broad co-operation between politics, economy and civil society aimed at fighting corruption.

However, there are two main facts that lead to the assumption that combating corruption does not belong to the high priorities of ‘labour and capital’ organisations. The first one is the quantitative ‘meagreness’ of the documents produced by them, the second one the ‘qualitative’ lack of the documents. In general, the recommendations of both organisations to fight corruption within companies in principle refer to a double strategy: improving structures of control in the workplace and strengthening the sensitive business ethics on the subject of corruption. Although the interests of capital and work are irreconcilable and their relationship tends to be conflicting, it is nevertheless obvious that corporate structures in the sense of the so-called ‘Rhineland capitalism’ on the one hand and the rhetoric of industrial ethics on the other are the very core of the frame within which labour and capital perceive corruption and anti-corruption measures in Germany. Both of them concentrate on structural and ethical measures, i.e. strengthening of controls and moral complementary elements of anti-corruption. Moreover, the corporate alliance between capital and labour is additionally

flanked by a balance of interests and the process of accommodation between both civil society and the state.

## Appendix A. – Documents Collected by Target Groups

### 1. Target Group Politics

#### 1.1 CDU-donation Affair

##### *Deutscher Bundestag (German Parliament)*

###### *Evaluated Units*

Plenary session protocol, 14/76 (02.12.1999), [6976 A -6989 C<sup>♦</sup>],

<http://dip.bundestag.de/btp/14/14076.pdf>

Plenary session protocol 14/87 (17.02.2000), [8048 C – 8063 A]

<http://dip.bundestag.de/btp/14/14087.pdf>

Plenary session protocol, 14/92 (15.03.2000), [8257 D – 8546 A],

<http://dip.bundestag.de/btp/14/14087.pdf>

Plenary session protocol 14/100 (14.04.2000), [9417 A – 9422 A],

<http://dip.bundestag.de/btp/14/14092.pdf>

Plenary session protocol, 14/115 (07.07.2000), [10998 C -11012 B]

<http://dip.bundestag.de/btp/14/14115.pdf>

Plenary session protocol 14/151 (14.02.2001) [14782 B – 14797 C],

<http://dip.bundestag.de/btp/14/14151.pdf>

Plenary session protocol 14/209 (14.12.2001), [20763 C – 20772 A],

<http://dip.bundestag.de/btp/14/14209.pdf>

Plenary session protocol 14/231 (19.04.2002) [22971 A – 22987 C],

<http://dip.bundestag.de/btp/14/14231.pdf>

Plenary session protocol 14/248 (04.07.2002), [25097 B – 25129 A],

<http://dip.bundestag.de/btp/14/14248.pdf>

Plenary session protocol 15/9 (13.11.2002), [505 D-523 C],

<http://dip.bundestag.de/btp/15/15009.pdf>

##### *Archive of the German Parliament*

##### *Parliamentary Committee of Inquiry of the German Parliament*

##### *Interrogation Protocols*

###### *Dr. Helmut Kohl (Chancellor 1982-1998)*

31<sup>st</sup> Plenary Session (29.06.2000) [Protocol Number 31, pp. 1-69]

33<sup>rd</sup> Plenary Session (6.07.2000) [Protocol Number 33, pp. 36-143]

57<sup>th</sup> Plenary Session (25.01.2001) [Protocol Number 57, pp. 37-131]

103<sup>rd</sup> Plenary Session (13.12.2001) [Protocol Number 103, pp. 1-36]

###### *Dr. h. c. Walther Leisler Kiep (Federal Treasurer of the Christian Democratic Union from 1971 to 1992)*

19<sup>th</sup> Plenary Session (27.04.2000) [Protocol Number 19, pp. 1-14, 22-69]

53<sup>rd</sup> Plenary Session (07.12.2000) [Protocol Number 53, pp. 113-117]

87<sup>th</sup> Plenary Session (05.07.2001) [Protocol Number 87, pp. 1-5 and 34-68]

95<sup>th</sup> Plenary Session (18.10.2001) [Protocol Number 95, pp. 1-5]

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<sup>♦</sup> The numbers/capital letters refer to the original pagination of the stenographic protocols [pdf-format].

*Dr. Wolfgang Schäuble*, [Minister for Special Tasks, head of the Chancellery (1984- 1989), Minister of the Interior in Helmut Kohl's Cabinet (1989 to 1991), Chairman of the CDU/CSU faction in the parliament (1991- 2000) and from 1998 to 2000 also CDU party chairman]

16<sup>th</sup> Plenary Session (13.04.2000) [Protocol Number 16, pp. 1-62]

35<sup>th</sup> Plenary Session (28.08.2000) [Protocol Number 35, pp. 66-101]

36<sup>th</sup> Plenary Session (29.08.2000) [Protocol Number 36, pp. 5-20]

*Brigitte Baumeister* [Federal Treasurer of the Christian Democratic Union – CDU (1992-1998)]

17<sup>th</sup> Plenary Session (14.04.2000) [Protocol Number 17, pp. 5-79]

35<sup>th</sup> Plenary Session (28.08.2000) [Protocol Number 35, pp. 102-139]

36<sup>th</sup> Plenary Session (29.08.2000) [Protocol Number 36, pp. 5-20, 24-51]

119<sup>th</sup> Plenary Session (02.05.2002) [Protocol Number 119, pp. 1-32].

### *Background Material*

1. “Final Recommendation and Report of the 1. Committee of Inquiry [§ 44 of the German Constitution]” (13.07.2002), German Parliament, Print Matter 14/9300 <http://dip.bundestag.de/btd/14/093/1409300.pdf>

#### 1.2 SPD-donation Affair in Cologne

### *Federal State Parliament of North Rhine-Westphalia [2000-2005, 13<sup>th</sup> legislation period]*

Plenary session protocol

[http://www.landtag.nrw.de/portal/WWW/GB\\_I/I.4/Landtagsdokumentation/landtagsdokumentation\\_13wp.jsp](http://www.landtag.nrw.de/portal/WWW/GB_I/I.4/Landtagsdokumentation/landtagsdokumentation_13wp.jsp).

Plenary session protocol 13/2397 (22.03.2002) [pp. 5764-5782]

[http://www.landtag.nrw.de/portal/WWW/Webmaster/GB\\_I/I.4/Dokumentenarchiv/dokument.php?Id=MMP13%2F56++++&von=05764&bis=05784&quelle=alle&action=anzeigen&typ=N](http://www.landtag.nrw.de/portal/WWW/Webmaster/GB_I/I.4/Dokumentenarchiv/dokument.php?Id=MMP13%2F56++++&von=05764&bis=05784&quelle=alle&action=anzeigen&typ=N)

### *Interrogation Protocols of the Parliamentary Committee of Inquiry on the SPD-donation Affair*

*Dr. Franz-Josef-Antwerpes* [Head of the Cologne government (1978-1999) and SPD member]

115<sup>th</sup> Plenary Session (24.04.2002) [Protocol Number 115, pp. 1-34]

*Franz Müntefering* [from 1992 till 1998 Chairman of the SPD (Region: West Westphalia)]

110<sup>th</sup> Plenary Session (21.03.2002) [Protocol Number 110, pp. 1-51]

121<sup>st</sup> Plenary Session (16.05.2002) [Protocol Number 121, pp. 1-35]

### *Council of the City of Cologne*

Session Protocol, 41<sup>st</sup> Session, 16<sup>th</sup> July 2002

## 2. Target Group Judiciary

Land Nordrhein-Westfalen, Staatsanwaltschaft Köln, Akten zum Fall ‚Müllverbrennungsanlage‘

(Public Prosecutor’s Office of the Federal State of North Rhine-Westphalia, Cologne. Verdict acts on the ‘waste incinerator’-case).

## 3. Target Group Police

Landespolizeidirektion Baden-Württemberg, Freiburg. Abteilung Polizeiliche Aufgaben, Dezernat Sonderfälle/Organisierte Kriminalität

Ermittlungsakten: 1. ‚Korruption und Schleusung‘,  
2. ‚Bauwirtschaft‘

(Police Headquarters of the Federal State of Baden-Wuerttemberg, Freiburg. Division for Police Tasks. Department for Special Cases/Organised Crime.

Investigation Acts: 1. ‘Corruption and ‘People-smuggling’  
2. ‘Construction Sector’

## 4. Target Group Media

### 1.1. Print Media

*Frankfurter Allgemeine Zeitung*

96 Articles on the CDU- and SPD-donation Affair (December 1999-November 2004)

*Süddeutsche Zeitung*

111 Articles on the CDU- and SPD-donation Affair (December 1999-November 2004)

### 1.2 Electronic Media

1. Talk-Show ‚Sabine Christiansen‘: ‚Politik – Ein Geschäft ohne Moral?’ in: ARD (First German Broadcasting), December 5th,1999 (Videocassette)

2. Talk-Show ‚Hart aber fair‘: ‚Reizthema: Korruption ohne Ende? in WDR (Broadcasting of the Federal State of North Rhine-Westphalia), March 20<sup>th</sup>, 2002 (Videocassette)

## 5. Target Group Civil Society

1. TI policy position, No. 01/2005 Standards on political funding and favours:

[http://www.transparency.org/content/download/1918/11221/file/01policy\\_brief\\_standards\\_political\\_funding\\_favours.pdf](http://www.transparency.org/content/download/1918/11221/file/01policy_brief_standards_political_funding_favours.pdf) and

2. TI policy position, No. 2/2005 Political finance regulations: Bridging the enforcement gap, [http://www.transparency.org/policy\\_research/policy\\_working\\_paper/political\\_finance\\_and\\_funding](http://www.transparency.org/policy_research/policy_working_paper/political_finance_and_funding)

3. Box 1.2: Transparency International’s Standards on Political Finance and Favours, [http://www.transparency.org/content/download/5468/31897/file/standards\\_eng.pdf](http://www.transparency.org/content/download/5468/31897/file/standards_eng.pdf).

4. *Transparency Internationals Vorschläge für die Reform der Parteienfinanzierung*, <http://www.transparency.de/Vorschlaege-fuer-Reform-der-Pa.91.0.html> 5.)
5. *Advocacy and Legal Advice Centers. Project Brief*, [http://www.transparency.org/regional\\_pages/europe\\_central\\_asia/priority\\_issues/alac](http://www.transparency.org/regional_pages/europe_central_asia/priority_issues/alac)
6. Integrity Pact Transparency International Germany, <http://www.transparency.de/Integritaetspakt.80.0.html>.
7. Procurement of the integrity contract designed for the Airport Berlin Brandenburg International, [http://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/05-02-1\\_Integrit\\_tsvertragFBS\\_fin.pdf](http://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/05-02-1_Integrit_tsvertragFBS_fin.pdf).
8. General standards of public procurement procedures TI Germany, [http://www.transparency.de/Vergabewesen.81.0.html?&no\\_cache=1&sword\\_list\[\]=integrit%E4tspakt](http://www.transparency.de/Vergabewesen.81.0.html?&no_cache=1&sword_list[]=integrit%E4tspakt).
9. Integrity Pact TI Germany, [http://www.transparency.de/Konzept-und-moegliche-Anwendun.697.0.html?&no\\_cache=1&sword\\_list\[\]=integrit%E4tspakt&sword\\_list\[\]=konzept](http://www.transparency.de/Konzept-und-moegliche-Anwendun.697.0.html?&no_cache=1&sword_list[]=integrit%E4tspakt&sword_list[]=konzept)
10. TI standards for Public Contracting, [http://www.transparency.de/GCR-2005-english-press-release.707.0.html?&no\\_cache=1&sword\\_list\[\]=integrity&sword\\_list\[\]=pact](http://www.transparency.de/GCR-2005-english-press-release.707.0.html?&no_cache=1&sword_list[]=integrity&sword_list[]=pact)

## **6. Target Group Economy**

### 1.1 DGB (German Trade Unions Association)

1. DGB Impuls: Betriebsvereinbarungen. Die Warner mit der Trillerpfeife, July 7<sup>th</sup>, 2006
2. Björn Rhode-Liebenau: Whistleblowing. Beitrag der Mitarbeiter zur Risikokommunikation, Edition der Hans-Böckler-Stiftung, 159
3. Hans-Böckler-Stiftung: Arbeitshilfe Risikokommunikation und Whistleblowing, Halbjahr 2005
4. Matthias Müller: Trendbegriff Whistleblower, in: Mitbestimmung 1-2/2004, S. 64-66

### 1.2 BDI (German Industries Association)

#### *Core Material*

1. BDI: Korruption verhindern – Empfehlungen des BDI (2. Auflage 2002)
2. BDI: Stellungnahme: Entwurf eines Gesetzes zur Einrichtung eines Registers über unzuverlässige Unternehmen (21. August 2002)
3. BDI: Stellungnahme zum Entwurf eines Gesetzes zur Neuregelung des Vergaberechts vom 29. 03. 2005 (13. April 2005)

#### *Comparison Material*

1. Parliament of the German Federal State of Berlin: Gesetz zu Errichtung und Führung eines Registers über korruptionsauffälligen Unternehmen in Berlin (Korruptionsregistergesetz – KRG), Landesparlament Berlin (April 19th, 2006)
2. Transparency International, German Chapter: Stellungnahme zum Arbeitsentwurf des BMWA zur Neuregelung des Vergaberechts, in: [www.transparency.de](http://www.transparency.de)

Press Releases of Transparency International, German Chapter on: Vergaberecht, Korruptionsregister und Integritätspakt, in: [www.transparency.de](http://www.transparency.de)

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