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**RESEARCH REPORT GERMANY:**

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

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## 1. Introduction

In the last years the country has been exposed to a wave of corruption scandals. Although a few years ago it seemed that the new legislation on party financing had given an end to the grand scale corruption evolving around the illegal party financial practices of the major political parties, the recent corruption scandals in which some pillars of the economic system of the country (i.e. companies like VW and Siemens) were involved, have brought the issue of structural corruption back to the fore. Given the scale of the economic power these two corporations exercise in the German and European economy, but also a number of minor scandals (Deutsche Bank, Infineon), the question has been posed once again in the public whether the notion of widespread corruption should not after all be considered true, despite the fact that Transparency International rates the country among the top 20 countries worldwide for the openness and honesty of economic activities. The two most prominent corruption affairs reveal that in the corporatist economic model of Germany ('Rhein capitalism') there are deep entrenched mechanisms that favour corruption liabilities.

In the case of Siemens it was revealed that high-level management knew of or even was directly involved in setting up a system of secret accounts abroad that were deployed to pay bribes for contracts. Although at first the state prosecutors assumed that the amount of company money deposited in slush funds in Switzerland and Austria amounted to 200 million Euros, it is according to an internal audit now estimated to have been as much as 420 million Euros. Two other aspects of the system of corrupt practices also deserve mention: Firstly, although Siemens introduced in 2001 the *Business Conduct Guidelines and Code of Ethics* to ensure binding standards for law-abiding behavior and precise rules regarding compliance with applicable fair competition and anticorruption laws and in addition has an internal anti-corruption department, the money transfer went apparently unnoticed. Secondly, the company has over the years transferred millions of Euros to finance a so-called independent labor association that was meant to act as a counterweight to IG Metall, Germany's powerful trade union.

The case of VW is no less representative of corruption originating in the corporate structure of German big business. Like the Siemens scandal the corruption affair in VW has two aspects: Firstly, acting apparently to secure foreign contracts two former VW executives siphoned corporate funds into a web of phony companies to defraud authorities and enrich themselves. Secondly, managers and members of the general works council received illegal privileges i.e. bribes they spent on personal travel, jewels, alcohol and sex.

Beyond the conviction of the main actors involved the VW corruption affair has triggered off a discussion on whether the strong interdependencies between management and labour under Germany's consensus-style codetermination management system that gives workers' representatives 50% of the seats on the supervisory boards of all large companies should not be cut down to a moderate level thus reducing the influence of the employee works councils on key corporate decisions. A similar criticism of corporatist interdependencies was formulated in the case of the Siemens scandal and in addition it was claimed that another source of corrupt liabilities lie in the function of supervisory boards. Although initially praised for its stability, the two-tier system of management and supervisory board does not function properly according to the critics, because the boards fail to exercise their supervisory function.



## 2. Methodology

### *General outline*

The methodological framework of the analysis of the interviews conducted in the second research phase was the *Grounded Theory* developed by Glaser and Strauss. The qualitative approach of the Grounded Theory to the research data had proved more fruitful in this phase than in the preceding, for it is particularly suited to the purpose of reconstructing the utterances of the interviewees in a way that patterns of attitudes and dispositions become visible. This qualitative reconstruction of attitudes has facilitated the research approach to the specificities of understanding and action in the different target groups under examination. This was all the more important considering the overall methodological design of the research project that starts from the assumption of ‘bottom-up’ perceptions underlying ‘everyday theories’ of corruption and corruption prevention.

### *Data generation*

In the second research phase the data generation process consisted in conducting interviews with experts from six target groups: politics, judiciary, police, media, civil society and economy. Regarding the target group economy the research group has encountered serious difficulties in conducting interviews with representatives from the Business and Trade Unions. The leading managers and functionaries that were asked for an interview were not prepared to state their opinion on the issue of economic corruption in Germany. This can be explained by the fact of the numerous economic scandals that have preoccupied the German public in the recent years.

### *Interviews*

The interviews were conducted in the period from December 2006 to August 2007. Each interview was conducted by at least two members of the research group and transcribed soon thereafter. Each interview lasted one and a half hours. The interviews always began with the interviewees introducing themselves and then followed an account of their experiences with corruption (cases). Since no strict scheme of the steps the interview should follow was in advance laid down, the discussion was able to make various re-entries on the issue of how to ‘elicit’ from the interviewees their understanding of corruption. Regarding the number of the interviews the research group has not followed a strict rule. When considered necessary or unavoidable the decision was taken to deviate from the number of two interviewees from each target group. In this way it was considered necessary to conduct three interviews from the target group politics, focussing on the political scandals of party financing that dominated the German political landscape from the middle of the 90’s until the early years of new century. Concerning each of the other target groups although two interviews were conducted with experts from *civil society, police and judiciary*, it was not possible to carry out more than one interview in the field of the *economy* and the *media*. As regards the latter it turned out that the interview was so contentful as to meet the demands of the research group in a satisfactory manner. For reasons that are explained in the introduction to the evaluation of *economy* the research group has decided to focus attention on a case of corrupt conduct in which private business is the victim of the abuse of power of public office. Before conducting the interview



all the interviewees were informed about the nature of the research project. However, the research group has not set any particular topics to be discussed in advance.

### *Interviewees*

The interviewees were selected on the basis of their professional experiences with corruption and fighting corruption.

<b>Target group</b>	<b>Interviewees</b>
<i>Politics</i>	ex-MP of the Social Democratic Party, MP of the Christian Democratic Party MP of the Green Party
<i>Judiciary</i>	General Attorney Judge (retired)
<i>Police</i>	Department Special Cases, Organised Crime, Police Head Office of the Federal State of Baden-Württemberg, in Freiburg Department of Criminal Investigations of the Federal State of Baden-Württemberg
<i>Civil Society</i>	A member of an anti-corruption NGO A member of an anti-corruption NGO
<i>Media</i>	Journalist, political scientist
<i>Economy</i>	Businessman

### *Data analysis*

Once transcribed the interviews were grouped together in hermeneutic units (on the basis of the qualitative data analysis software Atlas-ti) according to the six target groups under examination. At the first level of the analysis of these units coding proceeded to the most extent in an ‘open’ manner trying to keep the semantic import of the codes close to the manifest content of the text. At the second level of analysis the research group started joining the codes together in order to set up a structured account of the attitudes and positions found scattered in the hermeneutic unit. Following the essentially circular character of the relation between document analysis and coding the first-level codes were reflected back to the document in order to find out if they could legitimately function as variables of which the attitudes/propositions in the document could be seen as instances. In this process moving ‘back and forth’ the first-level codes were given a broader semantic scope as to cover aspects of the content of the document that went beyond the semantic range of the first-level codes. Deploying this progressive-retrogressive method the research group came up with a structured set of codes that not only enabled an exhaustive interpretation of the documents, but helped shed light on latent aspects of the documents as well, for example inconsistencies, ambivalent attitudes, etc.



### 3. Perceptions of Corruption

#### 3.1 Target Group Politics

##### *Outline*

The evaluation of the interviews from the target group *politics* does not focus on corruption as a criminal act. Following the belief that the phenomenon is much wider than what penal law foresees it to be rather draws attention to those areas of illegitimate action that are (perceived to be) or can give rise to corrupt conduct. The general interrelations between politics and economics, but also the narrow domain of party financing are considered to be such areas. Under the assumption of these interrelations being exchange relations the analysis delineates fields of exchange actions that can be considered as spaces of illegitimate conduct. On the basis of certain recurring types of exchange relations taking the form of granting/receiving advantages the notion of political corruption can be extended to include illegitimate action consisting in the transfer of knowledge/experience resources from the public to the private domain. As far as economy in its exchange relations with politics is concerned illegitimate conduct should be seen embedded in the context of those strategies with which the economic sphere tries to influence state politics to comply with private interests. In the political parties illegitimate conduct can among other things take the forms of violating inner-party democracy or financial issues.

##### *Analysis*

In order to explain the systemic nature of corrupt conduct in the realm of politics one has to take one step back and identify the nature of the action involved. Undoubtedly, what every act of political corruption originates in is *granting advantages* [P2: 272-273], which need not necessarily be of monetary nature. The nature of the action of granting advantages can in turn be traced back to the social relations of exchange. Taking this for granted means that exchange relations taking place between the social spheres of economy and politics may prove the grounds of corrupt conduct. This is particularly true in the case of political actors that become involved as managers or consultant experts for the private economy after quitting politics. As such this type of employment change does not suffice to qualify the relation between politics and economy as an exchange one with corruption implications. Nevertheless, if one takes into account the numerous cases of politicians instrumentalising knowledge and know-how from public administration for the advancement of private career purposes, it can function as an indicator of the existence of exchange relations that violate certain rules. Now, regardless of what form these rules may have, it is certain that corrupt conduct as a type of exchange relation cannot be confounded with that segment of rule-violating exchange relations that is explicitly sanctioned by the penal law. For it pertains to exchange practices that despite being perceived as *illegitimate* do not as such fall under penal jurisdiction [P2: 1496-1501]. Therefore

- (1) (political) corrupt conduct includes both the dimensions of prosecutable in a penal sense and what is perceived as (social-ethical) illegitimate action.



Of course the question arises to what extent this (social-ethical) illegitimacy can be grasped more concretely by narrowing the range of exchange relations exclusively to those suspected of obeying to or complying with the logic of granting/receiving advantages, but falling short of being downright criminal in judicial sense. One way to do this is to analyse the rationality or types of rationality underlying the exchange relations between state/politics and the economy from the perspective of the actors involved. Taking politics/politicians as the starting point (perceived of as) illegitimate, but not yet sanctionably granting advantages, e. g. political corruption in a wide sense of the term, may take three forms:

- There is a transfer of knowledge and administrative know-how from the public to the private sector. Politicians switching to managerial functions in private corporations [P2: 274-280] help accrue the relative advantages needed for both in terms of sectoral business competition or public contracting. Viewed the other way around, switching to the private sector means that the politician receives advantages (i.e. often very well remunerated posts) on the grounds of bringing in knowledge or public relations capital. Seen from this perspective, the difference between illegality/illegitimacy regarding corrupt conduct is obvious: whereas the former is rent-seeking in office, the latter is private employment that draws upon the prior advantages from having been in office.
- If the politician changes to a public stock corporation he sometimes does not even need to deliver any knowledge capital: it suffices that in his previous ministerial function he took a ‘friendly attitude’ to the company in question [P2: 317-319]. Particularly evident is this type of “ex post” political corruption in which politicians act strategically, that is design their political career in such a way they already meet some indispensable qualifications for getting the future job in the private sector prior to their withdrawal from politics [P2: 287-291].
- Except for these types of state-private sector exchange relations where jobs are exchanged for advantages through transfer of insider knowledge there is an other kind of interlinkage between politics and business, which raises suspicion of illegitimate action. Although in this case no such transfer seems to take place at first sight, the phenomenon of members of parliament exercising a profession in addition to their parliamentary function permits certain doubts regarding the nature of remuneration flowing from private business activities [P3: 1014-1017; P4: 567-574]. What raises mistrust is the obvious contradiction in this case of double occupation: Either is the MP fully busy exercising his parliamentary mandate – which normally should be the case – and consequently has no time and energy for other (business) activities. Or the two can be made compatible in the sense that additional jobs by no means interfere with the political function – as they require neither time nor energy. But if this holds true, it is not easy to legitimately account for the additional income resources. Ergo: it is more than justified to ask what purpose the latter serves. Usually they are for all sorts of consulting services [P2: 1236-1241] and the crucial thing to know is not so much the amount of money received, but what kind of firms paid for these services. An unmistakable indicator of political corruption in the sense of illegitimate interweavement of political and economic activities is the commitment certain MPs show in the law-making process regarding for example private insurance policies: more often than not they function as mouthpieces of the insurance companies; i.e. they act as the missionaries of capital in the centre of the legislative process [P2: 753-782].

The issue of MPs splitting up working life between parliamentary functions and private interests has in the meantime initiated legislative action purporting to *expose dependencies*.



These laws require politicians to declare additional income. Nevertheless the intention to curb illegitimate (e. g. political corrupt) conduct and curtail the possibility of dependencies as a source of indirect influence raises some questions:

- For one thing it is not sufficiently clear whether declaring this income leads to the desired transparency. The reason for this is that declaring additional incomes does not necessarily mean exposing illegitimate incomes [P2: 679-682].
- Some dependencies just result from the previous job of the politician and should not be considered illegitimate as such. Demanding transparency at all costs disregards sometimes certain habitualised practices that are not illegitimate action, although it appears that dependency relations are transferred [P2: 687-694].
- Certain difficulties are also associated with the modalities of declaring incomes not originating in the political sphere. Notwithstanding these problems, one should consider not so much the amount of extra revenues received as their source [P2: 708]. This is all the more important in such cases where the amount of money MPs are paid for delivering speeches is such that the suspicion arises whether it is not an 'ex-post' remuneration for future consulting services, that is granting advantages [P4: 583-585].
- Every legislative initiative that targets dependencies of MPs resulting from donations is confronted with the difficult situation of the need of sanctions on the one hand and the independence of political function on the other. The fact that the latter includes the right to receive donations either for the party or parliamentary activity blurs distinctions between the legitimate and the sanctionable [P4: 397-404].
- Last but not least, the aim to curtail the dependencies politicians come into as they exercise private professions can prove to be counterproductive. This is the case when the politician or MP, cut off from his previous profession, becomes more dependent on politics [P3: 1009-1014; 1024-1027] – or, worse still, on the will of the party leadership [P2: 654-662]. For example, this might be because the way young politicians are recruited only serves to secure the control of the party over them. The replacement of one dependency with another by these means will not do.

Drawing a tentative conclusion from the aforementioned three forms of exchange relations between politics and economy, the perception of political corruption in the broader sense of the term can be defined as

(2) illegitimate action based on the misuse of knowledge/experience resources pertaining to public administration for private gain.

Taking the second part of this exchange relation, e. g. the economy, as starting point, we also observe a realm of what is perceived of as illegitimate action, although it is either more diffuse than that of private sector politics, or it constitutes an institutionalised sphere (e. g. lobbying) that cannot immediately raise suspicions of feeding corrupt conduct. This - so to speak - asymmetry in regard to corrupt liabilities is of course a consequence of the difference between the interests motivating action: whereas the public perceptions of politics are guided by the notion that the interests motivating political action serve the public, the economy is in a trivial way bound to the realisation of private interests in capitalist societies. What is by no means trivial though are the ways the pursuit of private interests is embedded in or made to fit into the overall framework of advancing the national public good.



Thus looking at how business interests are integrated into public governance helps us pinpoint certain types of action that - in analogy to what obtains regarding illegitimate political action - can prove to be the nourishing grounds for illegitimate conduct. For one thing and prior to any concrete acts involving political actors, the overall conditions enabling exchange relations must be "positive". To this end certain segments of the economy develop strategies to optimise the means of *tending to the political landscape* [P2: 355-358]. To begin with, this means creating a favourable 'climate' in which no direct exercise of influence is aimed at, rather politics is motivated to take a generally favourable stance to potential large-scale projects planned by big business. Motivating such a favourable stance normally takes the form of donations. The fact that all major governing or oppositional parties are (or have been) the recipients of such 'diversified' donations is evidence of the fact that no particular aims need be associated with them initially [P2: 332-335].

Given this systemic *interweavement* of economics and politics that as such is normally not thought of as excessive exercise of influence [P3: 1387-1393] the question arises at what point donating or any other art of manifestation of 'good will' should start to be perceived as illegitimate, let alone illegal.

- An indicator of such illegitimacy – as in the case in Germany – the political landscape is tended to in a one-dimensional manner, e.g. a particular, normally governing political party is disproportionately favoured. This is perceived as a violation of the independence of the political parties or political party competition [P4: 135-143]. The perceptions concerning when donation activities start to become dangerous for political life vary of course from country to country, but also in historical terms. In Germany for instance it was well into the 80s common practice and therefore not considered illegitimate for all major parties to be catered to by businesses [P2: 372-377]. And only when this practice became one sided did awareness increase that certain unwritten laws had been exceeded. This case substantiates among others the claim that corruption perceptions often depend upon and originate in the awareness that one's own position in a competitive game is disadvantaged.
- Another form of interweavement of economy and politics that more often than not fosters corruption is that of lobbyism. The various business associations and lobbies have naturally their own methods of "tending" to the political landscape, the most important of which regarding the issue of illegitimate conduct being public relations and information campaigns. As such, part of the democratic rights of collective articulation of interests the PR events the various lobbies organise are nevertheless often the social space in which economic interests exercise direct influence on political will, e.g. potential legislative action [P4: 729-735]. This exercise of influence takes, among other things, the apparently harmless form of all sorts of presents [P2: 1700-1715]. Now, given the *escalation logic* [P2: 1463-1470] that characterises all such ex-post thank-giving activities, i.e. the recipients at first accepting seemingly innocent invitations only to end up admitting that receiving presents has become a habit, it is not surprising to find here the seeds of illegitimate (or potentially downright criminal) action.
- Except for the recent strange development of ministries sponsored by business associations, one observes nowadays a transfer of know-how analogous to the aforementioned one, albeit the other way around this time, that is ministries hiring experts from the private sector. The ministerial bureaucracy strives to back this curious practice with the argument that it does not dispose of the qualified personnel needed to carry out the task of formulating law drafts that demand a high level of expertise [P3: 871-882]. Under the pretence of objectivity, that is deploying expert knowledge [P3: 909-914], the state apparatus by these means creates a basis of illegitimate intrusion of private interests in the very sphere of law-making processes. For



one can reasonably surmise that certain business interests seep into the apparent objective expertise and the professionalism of formulating law paragraphs.

- Although not directly a component of the interweavement of politics and economy one more aspect of illegitimate action should be mentioned: bribes made abroad. But why are they only (perceived as) illegitimate and not just simply and downright criminal? The reason for this lies in two interdependent facts: For one thing illegitimate conduct can appeal to certain practices in foreign countries that should objectively and without doubt be castigated as corrupt. Nevertheless they represent habitualised regularities that every businessman must take account of if he wants to see his interests realised [P2: 108-115]. Moreover illegitimacy need not be perceived as such at all: after all it is unwarranted to transfer corruption perceptions from one country to another in view of different *penal law cultures* [P4: 440-448].

Thus if one leaves aside the last und most probably overt method of directly influencing legislation and under the perspective of exchange relations in democratic societies it is clear that taking the economy as a starting point

- (3) illegitimate action can (or more poignantly: is bound to) arise since the way private interests insert themselves in the state management of public affairs is not possible without *systematically tending to the political landscape* conducive of corrupt conduct.

Looking now at illegitimate action that is situated in political party life one form exchange relations can take in this domain is that of *party financial management as control over the party apparatus* [P2: 585-586] – financial resources being exchanged for loyalty. This represents a typical case of political corrupt conduct in the sense of distortion of inner party democracy for the sake of maintaining power over the party [P2: 1225-1226; 1249-1252; P3: 375-380]. The latter is of course not per se illegitimate, but the way of canalising financial resources is sometimes deployed to secure a hegemonic position in the party hierarchy surely is. Seen from this perspective the argument that the corruption and violation of inner party democracy should be kept apart [P3: 371-373] is to be sure flawless on formal, judicial grounds – nevertheless it tends to willingly ignore the fact that corrupt conduct is double-sided (1). Besides, the argument loses every credibility once it is clear that the awareness of illegitimate conduct having taken place has raised the sensibility for violations of democratic rules in party life [P3: 399-403].

Power-money-control: This art of exchange relations inside the party organisations is not the only or by far the most important space in which illegitimate conduct occurs. More often than not it revolves around issues of party financing in the context of what the political parties perceive as being permanently underfinanced. One way to illustrate this is to look at the practises of financing electoral campaigns or party conferences. As far as the former is concerned one observes a kind of *financial speculation* [P2: 528-532]: In the expectation that the state will reimburse them a certain percentage of the electoral costs, political parties are at pains to raise that level – speculating on these future inflows spurs the propensity to spend more than an electoral campaign normally demands for [P3: 285-286]. This attitude underlies campaigns modelled on the advertising practices of private business: the stronger the presence in the media landscape [P4: 474-478], the better the product, e.g. the results of the elections. Politics that slavishly follow the dictates of media presence can also be observed in the organisation of party conventions.



### *Conclusions (regarding prevention)*

Granting/receiving advantages, either in the illegitimate forms discussed above, or in the sense of prosecutable criminal action, is rooted in the exchange relations that make up the fabric of societies based on market economy. Therefore and according to (1) there will unavoidably always be spaces of exchanges that cannot be covered by the regulating instruments of law and penal sanction. Nevertheless the fact that there are more or less clear societal perceptions and claims of what can reasonably be considered illegitimate helps sharpen the sensibilities about wrong-doing, thus providing a workable basis for prevention policies in the sense of rendering the illegitimate either illegal or very difficult to be carried on with. Now, if one looks at the exchanges with the economy politicians are willing to become involved in and keeping in mind (2), some suggestions could be made regarding how things considered illegitimate can be avoided and prevention made more effective.

- For one thing politicians switching to private business immediately after quitting or retiring from politics should not be taken for something normal. A possible approach would be to prolong the transition time up to two years [P3: 327-329], although that would probably go against certain human rights.
- The plan to set up an anti corruption register again can be put on the agenda of legislative action [P4: 263-268; 292-299]. Given that certain requirements of data (privacy) protection are met there are no excuses delaying its introduction to parliament.
- There should be a better coordination regarding the prosecution process between politics and the judiciary. Deficiencies in prosecution often result from the unwillingness of the courts to follow the line of and sanction corrupt conduct all the way up to the top, for example of big business, lest the economic damage for the region involved or the country's economy at large proves too high [P2: 230-235].
- Raising the awareness that corruption means damage: once it is certain that the image damage for the company involved is high, this could function as a deterrent [P2: 196-203].
- Transparency: It is the principle par excellence of preventing corrupt conduct. Though under all circumstances, e.g. whether relevant to criminal prosecution or not, required [P2: 602-606], transparency by itself does not mean that it does not need specification. Some of the areas in which it is absolutely necessary to be observed are:
  - Shuffling with jobs and posts in the party apparatus [P2: 592-602]. This is more often than not a sign of favouritism, power machinations, granting advantages and corruption.
  - All those cases in which forms of interlinkages of politics and private interests are perceived to be illegitimate. This also holds true for the communal management of public affairs [P3: 1141-1143].
  - When the ministerial bureaucracy makes use of external experts in formulating legislative proposals [P4: 679-691; 707-711]. It is no surprise then that the suspicion of illegitimate intrusion of private interests in state legislation is more than reasonable.
  - Overspending during elections campaigns.
  - Exposing all additional revenues the MPs draw from other occupations. The exposure does not target primarily the level of income, but rather where it comes from.
  - Donations to MPs.

Last but not least: Since almost all of the cases discussed belong to that space of corrupt conduct that is perceived to be merely illegitimate, not immediately criminal, and therefore exactly the field of habits, perceptions, attitudes and actions prevention is supposed to aim at,



it is worth mentioning that ultimately prevention means and is based on a certain human quality: decency [P2: 1617].

### 3.2 Target Group Judiciary

#### *Outline*

The evaluation of the interviews from the target group *justice* concentrates on those aspects of corrupt conduct that can be considered as its antecedents. Except the temporal dimension the focus on preconditions means essentially pinpointing the fact that corrupt conduct is, in the initial stages and before it can fall under penal jurisdiction, necessarily the result of experienced perception. Regarding the investigation/prosecution authorities this means the process of raising initial suspicion. This in turn takes its bearings from the systematic observation of conspicuous regularities. Therefore the analysis examines at first a) how the process of raising suspicion looks like in the framework of the investigation activities of general attorneys, but also b) what can count as suspicious regularity deserving critical attention. The issue of preconditions refers additionally to those qualifications attorneys and judges must dispose of in order to carry out the job of tracing the (potentially) criminal act back to its antecedents. Thus the analysis continues by giving a profile of such qualifications. On the basis of the notion of preconditions examined under these two aspects it then moves on to show what this all means regarding prevention: raising public awareness and intensifying controlling observation.

#### *Analysis*

##### *I. On preconditions*

In judicial praxis corruption is deployed as a notion under which offences codified in criminal law are subsumed. Nevertheless, although predicated of determinate issues in fact, corruption is also used in a wider sense, since its meaning *extends beyond the clearly delineated radius of criminal acts*. Thus the objects to which the judicial notion refers to do not coincide with what the semantic of the word circumscribes: in other words the semantics of the term overspill its pragmatic dimension, e.g. its use in the judicial discourse – it “shades off”. Therefore the ‘hard (judicial) core’ of the notion should rather be taken along with its surrounding items, that is all those *gradual stages of action* that lead to the criminal offence: bad behaviour that sooner or later becomes corruption and thus falls under penal jurisdiction [P1: 730-741].

Given this distinction the task of the prosecuting authority, i.e. in this case of the general attorney, is to *correlate the ‘core’ of the judicially graspable with the ‘shadowy’ dimension*, e.g. the margin field (‘grey zone’), filling it up with (prosecution) relevant aspects [P1: 1149]. The one procedure would be

- to make the judicial terminus fit corrupt conduct as a multifaceted phenomenon – tracking down, so to speak, for the (universal) notion the suitable particulars.

Or, the other way round,



- one begins with the particulars, e.g. the factual state – whatever that may be (e. g. initial suspicion) –, and then tries to fit it into the judicial scheme either through ‘overstretching’ its semantic-judicial import or cutting all irrelevant aspects off [P1: 1155-1159].

Even if both investigative approaches ('top-down' and 'bottom-up') fail to deliver the desirable results, it should be of no great concern, since the nature of the task itself, that is delineating the extension of the 'grey zone', lies in the discretionary powers of the investigating general attorney. Besides, it is not something that pertains exclusively to the domain of corrupt conduct, but can also be met in other fields of penal law (for example marriage law, law of contract), in which judicial notions more often than not do not have from clear-cut (that is fully delimited and determined) objects of reference the start. Accordingly it would be not erroneous to claim that the law traditions in continental Europe and England or the USA do not differ that much since both in continental law and Common Law there are cases of initially indeterminate notions that are instantiated in the course of judicial praxis – the particulars of the universal notion (e. g. the possible application cases) are successively established in court practice.

Taking as a point of departure this fact of (the necessity of) approaching corrupt conduct with the means of *reflective judgements* that match the judicial notion with the facts, the question what these latter – always with regard to the 'grey zone', e.g. the still not yet judicially tangible 'antecedents' – can be in the first place. However, because these facts do not just lie out there ready to be picked up, but depend essentially on the prosecutor's perception of what can be relevant or not [P1: 682-684], the question should be reworded: How far does the initial suspicion reach [P1: 400-401]?

- Before everything else this aspect has a procedural significance: No matter how fruitful the initial suspicion may prove to be in (re-)constructing the course of corrupt conduct, it can always be turned down by higher instance courts on the grounds of some human and constitutional rights possibly being violated [P1: 403-404]. This so-to-speak in-built friction between spheres of jurisdiction originates in the character of investigative work based on the necessity of preventively seeking prior causes for possible corruption offences: Because the field of initial suspicion consists mainly of social facts that are not illegal, but all the same give rise to suspicion, the general attorney – for example when he permits domiciliary visits –, operates in some sense contrary to the law by ordaining that nobody is guilty unless convicted, or, in a weaker version, he is prone to disregard certain human rights for the sake of a contra-factual assumption of wrongdoing.
- Besides, the fact that 'useful expenses' are exempted from income tax depraves the investigation authorities of the possibility to find out who their recipients are. Thus although 'useful expenses' are often a label to cover bribes or granting advantages, the legal restraints do not allow for scrutinising what they are made for [P1: 320-234]. They are just considered as unavoidable costs.
- Moreover it is sometimes the case that the interlinkage of private economic and public interests appears in institutional form, thus proving to be a real challenge for the investigation of causes of corrupt conduct. Take for example the research cooperation between industry and universities: It is not unusual to find that the very same professors that conduct research, let us say in the field of chemistry or pharmacy, are also employed or even take leading positions in the relevant firms that finance the research work. Against this background, it is indeed difficult to estimate where the demarcation line between corruption and fund raising lies [P2: 659-667].



- Some other domains, in which suspicion raising certainly does not go far enough and therefore deserve critical attention are:
  - a) Communal politicians that at the same time are members of the board of directors of public utility companies [P2: 755-757];
  - b) (Corrupt) Networks between adjacent work branches consisting of individuals that share common, decisive backgrounds of experience [P2: 695-701].
  - c) A conspicuous selectivity regarding the individuals, or rather their social status, being brought to court [P2: 561-566]. Sometimes doubts arise here whether prosecution works impartially, that is whether some high-standing persons are deliberately let out.
  - d) Politicians switching to managerial functions in private corporations, or just becoming members of the board of directors after quitting politics [P2: 491-492; 822-828].
  - e) The conspicuous influence of lobbyism on politics [P2: 795-800].

Keeping all this and the empirical nature of reflective judgements in mind the scope of initial suspicion cannot be but indeterminate. However, this does not mean that there are not sufficient grounds for initial suspicion:

- For one thing observing *conspicuous regularities* can sustain initial suspicion.
- The fact for example that in many professions young people often do exactly the same job as their parents with the result that the employment criterion seems to follow the hereditary principle in certain segments of the public sector [P1: 768-775; 785-788; 828-832] can be taken as an indicator of favouritism.
- Those cases should also be conspicuous in which after a successful career in a very short time some people in the public (for example communal) administration are disposed to instrumentalise their leading administrative positions in order to exert power [P1: 994-996]. Or the mere fact *how* certain people can climb up to the top so quickly should generally raise suspicion [P1: 1026-1027]. As concerns the former it need not originate exclusively in an individual quest for more power, but results at times from the economic logic of raising efficiency and performance that communal administration is increasingly subjected to. Making the latter fit for economic competition means fostering an art of coercion to comply at all costs with the demands of success-oriented action that is in turn not impervious to resorting to ... ‘deviating’ methods in order to maintain and raise the level of the achieved accomplishments [P1: 606-611].
- The economic coercion to successful performance [P1: 1102-1103] is however not only a source of corruption liabilities in the administrative sector: In addition and in regard to societal stances at large an essential factor seems to be the mentality that fuelled by continuous consumerism stakes that leads to ever increasing demands [P2: 1322-1324]. If the purchasing performance of the individual fails to meet the ever expanding needs of status consumption, the tendency to achieve the desired through ... other channels increase accordingly.
- Besides, vulnerability to corrupt conduct rest not only upon achieving/maintaining certain consumption standards. Accepting invitations to dinner, vacation offers and all sorts of ‘care presents’ – as is the case with doctors being ‘spoiled’ by pharmaceutical companies [P2: 636-644] – are among those conspicuous issues that are worth considering as grounds for initial suspicion.

It goes without saying that the precondition for perceiving conspicuous recurrences as grounds for raising initial suspicion is to keep observation constant, as corruption as a developing process forces investigative prosecution to keep up with the need to permanently



fill the gaps left by current codified jurisdiction [P2: 1180-1185]. Raising suspicion for its part requires the investigating individual to have certain qualifications. The most important of these are:

- *Experience.* Experience in perceiving immediately that the matter under observation can and must be made relevant for opening up a corruption case is a cornerstone in the prosecution procedure in relations between both criminal investigators and general attorneys and between the latter and the judges as well. Just like the case in which a general attorney lacking experience cannot adequately ascertain the import of the initial moments of suspicion that the criminal police investigator delivers him, an inexperienced judge can prove to be an obstacle to following the prosecution suggestions of the general attorney any further [P2: 206-209]. However, the factor of experience does not confine itself to the initial stages of judicial prosecution, for it is even more important during the court procedure. In court the judge with his experience – like a good chess player or a clever boxer [P2: 2335-2339] – must make the best out of the case: trying to reconstruct the course of events and the motivations of the actors involved is an intellectual challenge [P2: 2335-2339]. Moreover, since judges and general attorneys determine how large the scope of investigations shall be, prosecuting economic or corruption offences demands strong characters and personalities [P2: 221-227].
- Apart from experience there is another fact or precondition general attorneys and judges alike must take account of and integrate into the investigation process: As substantiating initial suspicion is *a strenuous, cumbersome activity* sometimes spanning over years, the prosecution authorities/individuals working in the field of economic crime must have the *character strength* [P2: 2346-2347] and *assiduousness* to carry out a job that only becomes apparent in the very last stage, e. g. in court [P2: 231-237]. While there are shorter intervals between investigation and prosecution in common criminal offences, in corruption cases part of the investigation activities, that is low-profile part of fighting corruption, makes up more than ninety percent of the whole process. One consequence of this is of course that the investigating individuals are in a way obliged to stick to the case for an extraordinary long time no matter what this may mean for their careers. Therefore the individuals working on prosecution should have some kind of Protestant work ethic, that is, work for the sake of work[P2: 1832-1834].
- Now, regarding the court performance of judges to the aforementioned qualities must also include the ability to draw up a social-psychological profile of the accused, e.g. his motivations and the social context. Thus he should be informed from the very start that the judges have conscientiously studied the dossiers and therefore there is not much chance for him to mislead the court [P2: 2319-2327]. As trivial as this requirement may appear at first sight, it bears significance beyond the usual dexterities associated with leading a court process.

For one thing it brings to bear and substantiates on the judicial level the efforts of the investigation authorities in determining the causes of the observed conspicuous activities. From this standpoint, it can be regarded as a “live recapitulation” of the ‘reconstruction’ work carried out by criminal officers and attorneys. To do this the judge is essentially assisted by the fact that he can carry out a cross-examination that helps provide an overall picture of the course of events [P2: 2356-2366]. Thus he has an advantage over the general attorney who can question only the accused or the witness at a time.

Secondly helps put *formal jurisdiction and situative justice in a proportionate relationship* [P2: 257-259]. The latter becomes all the more important in such cases where for example punishing the management hard for corrupt conduct results in great damage for the whole



company that in turn means that people lose their jobs [P2: 2039-2048]. In addition, a character profile and an overall picture of the working life of the person accused contribute to establishing a balance between law and justice [P2: 2121-2131]. The same approach that observes certain proportions should also apply in the domain in which corrupt conduct has taken place: officials and public servants should be punished the hardest [P2: 1150-1152] – followed by managers [P2: 1063-1069]. In the latter case except the economic damage some individual attitudes (for example audacity) must also be taken into account. On the other hand justice should also avoid giving the impression that top managers can evade being punished the way law foresees [P2: 344-348] because of certain ‘considerations’. In the private sphere sanctions need not be so strict.

## *II. On prevention*

Given the gravity that both investigation and prosecution authorities confer upon the issue of antecedent conditions of corruption, it is self-evident that focus is placed on prevention. Prior to all prosecution efforts it should be considered as fundamental that because corrupt conduct is essentially a confidential relationship [P2: 504-508], prevention boils down to alert *observation* [P2:509-512; 1185]. This means depraving the actors involved of that sense of privacy, in which the public good is substituted for personal interests. This need not necessarily amount to systematic surveillance, although in certain cases the state must take the initiative to make observation mechanisms more effective [P2: 1835-1836]. Observation should be rather considered a wider social issue regarding everyday perceptions: All it essentially calls for is continuous awareness of certain conspicuous matters in the public and economic spheres deserving closer attention so that aspects of corrupt conduct do not go unnoticed. What could aspects of raising such awareness be?

- Because initial suspicion must not be confined to the professional activities of the investigative instances, it is crucial *to sharpen public consciousness of the everyday life roots of corrupt conduct*. Just like the public becomes disgruntled over the misuse of power by certain economic monopolies in the energy sector, it should also be brought to show intolerance through research and information in the face of suspicious conspicuous activities [P2: 516-523]. In this sense no legislation can be effective without public awareness of and intolerance towards corruption inductive practices [P2: 625-626].
- Raising public awareness can of course not be sustained without establishing certain control regularities that ensure that conspicuous events are put under observation. Although it is difficult to determine from the start what *controls* [P1: 1026] could be, as their concrete form varies from case to case, one thing is clear, namely that they contribute to subjecting occurrences to critical scrutiny that are otherwise neglected in the everyday routine.
- Raising public awareness either through *a)* increasing intolerance towards illegitimate (corrupt) conduct, or *b)* regular observation, no matter how necessary, nevertheless may not go deep enough as forms of prevention. This is not surprising given the fact that the motivational setup of corrupt conduct contains much more than the usual explanations focussing on the quest for money or power make us believe. They fall short of giving an account of the *values* underlying such money/power-oriented stances. Therefore any prevention strategy aiming to widen the scope of its effectiveness should include considerations on *moral culture*.
- Crucial to the make up of the latter is the way certain values are transmitted in the educational system. Or one must talk about how traditional educational goals anchored in the humanist value system are presently disregarded in favour of a narrow utilitarian approach that



reduces education to a purely success-oriented, pragmatic attitude towards knowledge [P1: 1076-1078]. The absence of values that transcend the merely instrumental perceptions of what counts as successful action can also be felt in the private sphere as families often fail transmit *exemplary behavioural patterns* [P2: 1453-1461].

- Secondly the prevailing attitudes on economic or social success have a corrosive effect on the moral fabric of culture. *Ethical rules of action are only observed if they comply with or do not decisively go against the logic of economic performance* [P1: 1118-1120]. Raising public awareness on the everyday roots of corrupt behaviour means in this context focussing on the contradictions arising from the double moral standards that individuals are subjected to, when they split up behaviour between observing certain rules obtaining in the sphere of private or public ethic on the one hand, and rule deviating, corrupt conduct the other.

### 3.3 Target Group Police

#### *Outline*

The evaluation of the interviews will be carried out in the following steps: Beginning with a discussion of the complexity of corruption, that is its complex socio-cultural nature going beyond what the penal law sanctions, emphasis is then placed on the importance for the criminal police work of investigations bearing on the ‘environment’ of the ‘case’: the various rationalities underlying corrupt conduct. After drawing attention to the most important of them the analysis focuses on two cornerstones of a structural investigative approach that takes into account the social-ethical aspects of the phenomenon: raising initial suspicion and seeking probable causes. After that the analysis moves on to point out certain requirements police investigators must have in order to meet the challenges in view of how cumbersome investigation procedures in the field of fighting corruption usually are. Personal qualities like passion, tenacity, skills to reconstruct the ‘logic’ on the basis of common sense raise the effectiveness of corruption prevention for they help to a) focus on the ‘incubation phase’ of the case and b) deliver the general attorney plausible accounts of and utilisable material for the case to be prosecuted.

#### *Analysis*

Contrary to what the existing anti-corruption law seems to refer to, there is no ‘corruption’ as a technical term designating a determinate offence in the work of criminologists and the police investigation officers. In contrast to the everyday use of the word, everybody having a vague notion of what corruption consists in, the experts in the field of prosecution restrain it to prosecutable offences like bribery, accepting or granting (undue) advantages etc. [P1: 127-134]. However, this does not mean that the criminal prosecution authorities are not aware that the everyday notion of corruption as a *collective term* can be deployed to widen the scope of criminal facts. This is possible in two ways:

- a) Although not a judicial term itself it can help discern probably criminal facts attached to the ‘core’ offences of bribery, etc. [P1: 182-185], and
- b) Despite its vagueness it may substantially contribute to reconstructing the criminal case by drawing attention to activities that usually are necessary or sufficient preconditions of criminal action [P2: 410-416].



Either way the term ‘corruption’ supplements in a certain sense the targeted prosecution of criminal offences for it *broadens the field of investigative attention* to either other sanctionable aspects of the case or the ‘environment’ that substantiates corrupt conduct. The latter in turn has various facets:

1. For one thing ‘environmental’ grounds refer to those capacities and dispositions (cleverness, strategic thinking, the power to assert oneself, etc.) that underlie efficient and success-oriented economic action [P2: 499-501 and 512-515]. Of course such subjective abilities for economic success do not *per se* provide necessary preconditions for the possibility of corrupt conduct. What must be added in order to raise the factor of necessity in the relation between economic action and corruption propensities is a certain *habitus* that adopts the economic logic: the commitment to permanently raising efficiency. The unwavering compliance with the demands of relentlessly optimising performance data seems to deliver a useful criterion for distinguishing petty from large-scale corruption: while the former is situated in (everyday, situative) exchange relations, the latter presupposes behavioural patterns demanded by the entrepreneurial ethics of extended accumulation. Thus for example in large corporations career advancement is almost concomitant with character qualities or professional status in which the internalised imperatives of optimisation combined with a cunning power of self-assertion can initiate rule-violating conduct [P2: 554-571].

Nevertheless it is not always discernible to what extent such subjective motivational factors can be dissociated from the economic imperatives of optimising efficiency und raising performance, if at all [P2: 343-349]. Regarding large-scale corporations it is not unusual to find cases in which the personal identification with the management objectives can function as a legitimate reason for the drift to corrupt conduct, for example when secret accounts are kept for potential briberies of foreign companies or officials. In such cases the subjective motives of acting unlawfully appeal to the long-term economic interests of the corporation, the positive effects on employment foreign investments will have for the company home and the benefits for the country as a whole in global competition – the end justifies the means or *corruption for the sake of...* [P2: 214-222; 389-393; 672-678]. Regarding the ends, the latter need not always appeal to the pressure of meeting performance criteria: it suffices, if it legitimises itself by pointing out the inescapability in order to keep business going [P1: 438-441]. Moreover, in cases of large-scale corruption it is not easy to pin down exactly those moments of the whole process that instantiate sanctionable wrong-doing or show beyond doubt that certain laws were violated [P2: 262-265]. The reason for this lies in the fact that corrupt conduct is part and parcel of the organisational system of doing business [P2: 342-349].

2. The motivational grounds of corrupt conduct need not necessarily be considered inseparable from the economic logic of performance optimisation at all costs. In the field of experience of police investigation work there is another way of seeing the motivation to corruption as being sustained by a certain ‘logic’. This time it is not the internalised demands of the economic ethics of efficiency, rather a self-sustaining process that once set in motion gains increasingly momentum – like an avalanche [P1: 379-393]. What is otherwise regarded as belonging to the sphere of large-scale corruption regains its everyday character, because in this case the motivation is rooted in certain basic behavioural patterns. By the latter is meant that self-sustaining mechanism that can also simply be called *addiction*. Compared to the art of economic causation previously discussed, this way of attributing corrupt conduct to certain traits of human nature [P1: 401-405] has the advantage that it helps explain cases of rule-



trespassing behaviour that cannot be seen as necessitated by the demands of raising economic performance. Seen from this perspective the morals of individual action can de dissociated even from the usual motives of money-making. As certain corruption cases with the involvement of higher ranked managers clearly show that personal enrichment or even simply becoming richer do not play any role in deciding to continue or partake in corrupt action. What in such cases often matters though is the feeling of exercising power [P2: 648-658].

3. Last but not least, to the ‘environment’ of corruption offences include not only the motivations of the individuals involved, but also the *societal perceptions* of to what extent or even whether corruption takes place at all. In northern European countries like Germany corruption was still considered well into the 90s to be something that had to do with the cultural mentalities in southern Europe pertained only of the cultural-political mentalities obtaining for example in south Europe [P1: 57-59]. Although there was an awareness of situative, petty corruption taking place, the dominant mode of perception restrained it to being a problem mainly with foreigners thus ignoring the structural causes of home-grown, large-scale corruption.

Taking all these ‘informal’ or ‘environmental’ factors into account that determines what can and must be criminally prosecuted means for the police anti-corruption work to set up a *structural investigative approach* [P1: 221-230]. This shall take into account to the strategies deployed in fighting organised crime in that it focuses on crime as culture, i.e. rooted in socio-cultural milieus and following certain socio-ethical patterns. Fighting corruption should combine the criminal with the ethical aspects of the phenomenon [P1: 556-558]. Furthermore such an approach can meet the challenge posed by the diagnostics of corrupt conduct as motivationally intertwined with either the economic logic optimising efficiency at all costs or aspects of human behaviour such as creed, insatiability, addiction, and the like. Because more often than not the criminal police concentrate on facts that are as such objects of juridical prosecution the structural approach helps compensate for this so to speak ‘factual positivism’ by tracking down the *processuality* of corrupt conduct.

The process of which the outcome is the concrete offence/crime must of course be reconstructed. Therefore the question around which the structural approach first revolves is to pin down some moments of the (potential) case of corruption that warrant suspicion. Thus *raising initial suspicion* [P1: 219-222] proves to be a cornerstone for both the investigation of the motivational causes of corrupt conduct and the effective prevention as well. At the same time the focus on initial suspicion highlights another aspect of (tackling) corruption that is closely connected with the aforementioned societal perceptions of the phenomenon: Raising initial suspicion means that *the way the actors working in the field of criminal investigation perceive corrupt conduct taking place is instrumental for a potential corruption ‘case’ that is subsequently taken up by the prosecution authorities*. What counts as a suspicious moment depends essentially on the investigating person perceiving some events/actions as necessarily being followed up by criminal offences. Besides, raising public sensibility to perceive suspicious conduct also is among the tasks of the structural approach. Thus the work of the criminal police should be accompanied by a kind of public enlightenment [P1: 460-470], that is continuous publicity work.

The factor of perceiving some facts as suspicious, i.e. susceptible to criminal investigation, proves frequently all the more obvious, particularly when one considers the relations between the criminal police investigation and the judicial prosecution carried out by the general



attorneys. Here more often than not the question revolves around the issue whether the suspicious moments picked out by the investigating officer can be acknowledged by the attorney as *substantial evidence* necessitating the opening of corruption proceedings [P1: 238-244; P2: 147-151]. In this way the perception of some facts as deserving investigation and prosecution is in the view of the police anti-corruption work inextricably connected with an analogous perception of the judicial authority that is accordingly willing to see sufficient evidence in these facts.

The question of how to start from (police investigation) or how substantial the initial suspicion can be from a judicial standpoint can only be answered on a case to case basis. Nevertheless there seems to be a criterion that qualifies certain events as deserving police and judicial attention: *conspicuous regularity* [P1: 322-328]. When for example the rules of an open call for tenders are conspicuously ignored in communal economic management, i.e. certain local contractors are regularly favoured, then such facts can substantiate the initial suspicion – though as such they do not immediately call for penal prosecution. Such cases validate the insight that because corruption is a social phenomenon that transcends codified laws it is up to the investigating individuals to perceptively grasp and detect what ‘stands out’, thus making it relevant for criminal investigation. Since the general attorney often turns down investigation procedures due to *lack of substantial evidence* the sensibility attending to such ‘outstanding’ conspicuous events demands more than just observing the rules of investigation. What is called for and what can have a persuasive impact on the prosecution authorities is to meet the (apparent) lack of evidence through a reasonable account of the probable causes underlying conspicuous matters. For the criminal police work this means reconstructing their rationality on the basis of *common sense knowledge and experience* [P1: 1146-1155].

As the facts of corrupt conduct are saturated with social perceptions and follow various rationalities (for example of economic ethics, or certain behavioural patterns) they can be accounted for by an investigative approach that takes its bearings from common sense experience. This has of course immediate consequences for both the cooperation between the investigation and prosecution authorities and the work of the criminal police itself as well. As regards the former, the tensions that sometimes occur refer to the fact that the initial suspicion either

- a) cannot be backed up by a persuasive account of probable causes or
- b) proves to be a too strong basis for the attorney to call for institutional action.

This need not only appear objectively unavoidable given the lack of evidence, but can have subjective causes in the sense that the attorney himself/herself does not have the experience required to discern a sufficient basis to start with in the proof material supplied by the criminal investigator [P1: 1197-1203]. In this way what holds true for the criminal investigator, should also be valid in the case of the general attorneys: *they must both be able to embed their perceptions of corrupt conduct in the legal framework and, conversely, widen the scope of applicability of the latter in view of the former*.

As concerns the investigative work of the criminal police itself tensions arise at various points. For one thing fighting corruption is the most laborious and cumbersome of all criminal investigations [P1: 1104-1105]. Furthermore, owing to the complexity and long duration of prosecuting economic criminality it is often the case that the relation between input (investigation, judicial prosecution, court proceedings) and output (verdict, sanctions) is so disproportionate that one cannot but think that justice is not always the final result [P2: 135-140]. Moreover, another fact also has certain consequences on the work ethic of the criminal



investigators. In connection with an evaluation system that favours quantitative outcomes thus reminding us of the economic imperatives of raising efficiency, the investigators are increasingly coming under pressure to 'deliver the goods'. Against the background of the cumbersome investigation process this may lead to frustration [P2: 891-897; 912-921].

In view of all this and keeping in mind the necessity of a structural investigative approach the tensions accompanying fighting corruption can be summed up in the need to bring together

- a) what is perceived to be sufficient evidence in the institutional framework of investigation/prosecution procedures, and
- b) the human resources required to stand up to the institutional demands of (detecting and) preventing corruption.

This latter demand follows immediately from the strenuous character of the criminal investigations by the police. Nevertheless, despite all the complexities and the long duration it is clear from a the structural anti-corruption approach that the demand of efficient prevention can be fulfilled only through the specific qualities of the human resources invested in the investigation/prosecution processes. Apart from the aforementioned ability to use common sense experience in order to identify the 'logic' of the case [P1: 811-814; 1566-1570] two of the indispensable qualities investigation officers must have are:

- a) *Commitment*. As the structural approach demands a great amount of time and persistent energy, the individuals involved must be resolutely willing to carry out the laborious task of low profile detection and subsequently reconstruction of the case to be submitted to the general attorney [P1: 1571-1577]. Identifying oneself with the strenuous duties arising from investigations that span over years goes beyond the purely professional commitment. What is additionally called for is
- b) *Passion*. A passionate attitude is necessary not only regarding the creativity needed in order to set together the pieces of the 'puzzle' (structural approach, meticulous reconstruction), but also in view of the fact that in no other field of criminal investigations is there so much denial of wrong-doing. Here the persistence to prove the contrary can only be sustained by passion [P1: 1449].

### *Conclusion*

*Detection of probable causes, experience requirements, special skills to reconstruct the 'logic' of the case:* All point to and comply with the notion of corruption transcending what is merely codified as a legally sanctionable offence. If corruption encompasses various types of social action and individual motivation, then accounting for it means in regard to police investigation work that the institutional actors owe to strive to translate their common sense experience of suspicious regularities in operationalisable material evidence of wrong-doing, so that this can be a sufficient evidence basis for the prosecution authorities. If one adds to that the tenacity and passion that should be invested in the investigation work, it becomes obvious that what is called for is a certain supplementation of the institutional role playing by skills that bear upon a type of knowledge not directly emerging from the groundwork of the procedures of investigation/prosecution.



### 3.4 Target Group Media

#### Outline

The analysis of the interview conducted with a journalist specialising in corruption cases focuses on the way journalistic research is able to shed light on the social roots of corrupt conduct. Tracing the latter back to forms of spontaneous social co-operation helps account for the fact that corruption is a much wider notion than the offences designated in penal law. Journalistic work is best suited to illustrate the difference between the narrow judicial prosecution of (corruption) offences and the broader, moral-political criticism of illegitimate action. It can also pinpoint certain prosecution deficits, and especially the difficulties encountered by journalists in gaining access to information. Last but not least journalist work can be situated between the judicial reconstruction of criminal action and the efforts by lawyers to present a law-conforming course of events.

#### Analysis

##### I. Journalism and corruption

Journalism's approach to corruption can be considered multi-layered, because investigating into corruption cases – a laborious task also involving research on and reconstruction of the social milieus and cultures, in which corrupt conduct thrives –, means taking into account different patterns and rationalities of action: social, cultural, economical, police/judicial. However, one fact that obtains across the various aspects and types of action that make up the profile of a case of corruption including prosecution aspects consists of drawing a line between what counts as such according to penal law and a broader notion: in other words the difference between *judicially sanctionable and moral-politically criticisable* action [P1: 120-121]. This divergence can be sometimes a complementary, sometimes a disjunctive relationship, the latter being the case when certain actions may by all means be castigated as corrupt, although this has nothing to do with penal legislation. This of course leaves the possibility aside that penal law can play a role in this case, albeit in the sense that the person (e.g. the journalist) raising the claim of corrupt conduct can be accused of slander. One main reason for the divergence lies in the fact that the notion of corruption is not a technical term in penal law. Furthermore, due to certain shortcomings in penal law the most important of which being the prescription of five years, corruption cases cannot be appropriately examined. As a result, one can only criticise the illegitimacy of the whole affair [P1: 114-119].

Now in one sense ‘corruption’ as a notion will never be incorporated into the penal law terminology, because it is a too general or too *elusive* term to be able to provide a well demarcated field of law application. The other way round, the existing codified offences of active and passive bribery, giving/taking advantages, fraud etc. clear-cut defined as they are, cannot live up to the notion, because corruption involves much more than what they designate. Journalists working in the field know all too well that an “essentialist” reading of the term is sure to reduce the phenomenon to a ‘hard core’ issue of facts susceptible to penal sanction, but tends to ignore or minimise the transitive moments or fluctuating conditions from corrupt conduct results in full-blown form (in a judicial sense). Therefore the question that preoccupies journalist work is where to set a demarcation line between merely



'antecedent' on the one hand and sufficient (from a legal point of view) conditions of corrupt conduct on the other [P1: 105-108].

No matter how this issue is coped with and the demarcation line drawn there is one thing journalist investigation is firmly convinced of: there are some tracks of corruption that *protrude too deeply into the sphere of everyday communicative and co-operative action* for the prosecution authorities to tackle [P1: 200-204]. Even if not everybody subscribed to the belief that corruption should be regarded as a deeply entrenched human phenomenon unavoidably cropping up some time or another in life, the fact that it is rooted in everyday co-operation or exchange activities is indisputably obvious. It is also not easy to deny the observation that as far as concerns the subjective dispositions to corrupt conduct the socialisation of the individual can play a definitive role in terms of virtues and moral standards transmitted to him [P2: 1631-1634; 1650-1653].

Seeing corrupt conduct rooted in ordinary action can mean a 'bottom-up' approach that starts from everyday co-operation and works all the way up to manifest criminal conduct. Such an approach could take the form of a three-layered scheme or pyramid [P1: 64-65] that does not purport to supply necessary, causal conditions of corrupt conduct, but only such conduct without which it can hardly be conceived:

- At the lowest level or the broad basis of the pyramid we find all those forms of situative co-operation, the most common of which being mutual help in the neighbourhood or local communities. This need not occur for any particular purpose. It suffices that a certain atmosphere of solidarity among the people exists. Nor for that matter should the fact that the person who has helped receiving an invitation, let us say for a drink, be considered as a token of gratitude akin to ... bribery for further private 'services'.
- The story normally ends there, although sometimes it occurs that on the basis of mutual acquaintance or even friendship to be of help acquires a new quality. This is the case when
  - a) The need for assistance becomes regular or assumes dimensions that go far beyond just wanting to be helped out and
  - b) The person in need of help is aware that signs of gratitude must be raised to a 'new level'. This new art of dependency, but also the knowledge that things are going to "taken care of" through the use of certain tokens of gratitude turn the initial ad hoc assistance into *habitualised co-operation or network* [P1:102].
- The network puts the situative co-operation of the first two levels on a stable basis. It must also be regarded as a necessary (not sufficient!) precondition for the emergence of corruption. The latter differentiation must be made because the network represents a basic form of social interdependence or reciprocity and for this reason is not immediately conducive of corrupt conduct. The crux of the difficulty of tracing corruption back to determinate causes lies right here: Such a form of reciprocity can or often leads to, but is not necessarily the cause of corrupt conduct. Therefore the difference between judicially sanctionable and morally and politically criticisable action will ineradicably remain.

This in turn means that transforming the latter into the former will always be a difficult process especially for judicial prosecution. For one thing, when attempting to reconstruct the case the judge may well discern the moments of wrong-doing clearly, but this does not automatically imply that he is able to make this wrong-doing fit into the penal scheme [P1: 302-306]. This accounts also for the fact, that although sometimes there is broad public discontent about what is perceived as obvious corruption, justice is extremely slow in coming



up with an effective prosecution [P1: 327-332]. In addition, the prosecutor is confronted with yet another difficulty: While he must take pains to judicially sustain the claim of illegal action, there are very competent lawyers that are often surprisingly successful in proving the contrary, because they reconstruct the case not only in such a way that there seems to be no ... case at all, but they also stave off any claims of their clients' involvement in any criminal action [P1: 299-308]. The latter naturally has grave consequences for journalistic investigations, because journalists are thus deterred from uttering anything that could raise the impression that corrupt conduct has evidentially taken place [P1: 313-314].

Thus the elusiveness of corrupt creates a field of indeterminacy, in which the efforts of the prosecuting authorities *to construct the illegality of action* collides with the strategies of the defence *to present an account of the matter at all in conformity with existing legal regulations* [P1: 265-269]. For example, as regards bribery it proves possible every now and again for the defence to downplay the event, presenting it as a kind of personal assistance. Worse still, the defence can even exert influence on the prosecution authorities (judges and general attorneys) not to give the journalists any information concerning the case, lest the rights of their clients be violated [P1: 376-381]. Against this background all the journalists investigating corruption cases can hope for there to still be general attorneys who do not let themselves be intimidated by lawyers [P1: 407-409], thus supporting the right of the press to have access to relevant information [P1: 376-381; 421-426].

But it is not only the aggressive stance of expert lawyers in the field of corruption that works against prosecution thus obstructing the efforts to achieve transparency. There are home-grown deficits in the judicial prosecution itself as well that prove to be an obstacle to effectively sanctioning corruption .

- The prosecuting instances being overloaded the time to unfold/reconstruct such complex cases as those of corruption is lacking [P1: 145-146; 569-573].
- Additionally, sometimes whole departments dealing with corruption prosecution are closed down [455-459] the result being that other instances bestowed with such duties raise an accusation, but are not able to bring the case to court quickly. This is of course a splendid opportunity for the lawyers to mount a counter offensive claiming that their clients are unlawfully being accused and human rights violated [P1: 464-470].
- The court indictments fall sometimes short of what is widely perceived as justified punishment [P1: 1160-1164]. To be sure some are convicted to prison, but more often than not and contrary to the expectations the sanctions are mild. Furthermore, since the verdicts are often issued many years after the criminal offence, they fail to have the hoped effect of deterrence [P1: 480-482].
- As a result of the first two points the court procedures take much too much time, sometimes with the outcome that the case is closed according to certain paragraphs of the penal code [P1: 1351-1355]. This is of crucial importance since corruption is among those criminal offences that must be quickly handled, if there is to be any effective sanctioning at all [P1: 471-484].

## *II. On fighting corruption*

Due to the investigative capacity to trace corrupt conduct down to its social aspects, or conversely to follow the course of co-operative action from the 'bottom' up till it manifests criminal dimensions, journalistic work is essential in fighting corruption. However, access to



required information is not always easy, especially since expert lawyers deploy legal means to block off further investigations concerning their clients, but also to deter the prosecution authorities from co-operating with the press by supplying it with information. Therefore one thing that journalists working in the field of investigating corruption cases hope for is that

- General attorneys will not let themselves be intimidated and will hold the communication channels to the press upright.

Although not directly connected to the work of journalist research there are also some prosecution shortcomings that *need be removed*, to make sanctioning corrupt conduct more effective. They include:

- a) The long time it takes to bring a case to court,
- b) Convictions not being hard enough,
- c) Overburdened prosecution personal, and
- d) Prescription times not being conform with the fact that corruption cases demand long processing times.

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

#### *Outline*

The analysis of the interviews with officials of TI focuses on two dimensions of the organisation. At first attention is paid to the embeddedness of the anti-corruption organisation in the civil society movement of the last two decades. The contribution of TI rests not only upon its success in setting corruption on the agenda of governmental policies, but also in creating an economic space, in which various institutional actors are involved. In this way TI has triggered a development that spans far beyond the commitments of civil society action. The second dimension analysed refers to the way TI implemented its ‘bottom-up’ approach, that is, to help the people directly become involved in fighting corruption, by creating the *Advocacy and Legal Advice Centres* (ALACs) as a missing link between institutional, legislative action and everyday perceptions of corruption. Particular emphasis is put on the role the ALACs have so far played in anchoring the issue of fighting corruption in society, but also on organisational aspects of their relation to TI, and questions of further developing co-operation as well.

#### *Analysis*

##### *I. On Civil Society and Transparency International*

Like all social circumstances corruption cannot be dissociated from or rather coincides with what in the society is taken to be as such, that is, it is essentially constituted as a social fact by being perceived as something to account with or react upon. Thus it comes as no surprise that *creating* (innovating, “inventing”) that social-perceptual field in which corruption must necessarily be regarded as something that must be dealt with was the innovative move of the grounding circle of Transparency International as it succeeded in making corruption an issue of public concern [P1: 209-213].



However, ‘inventing’ corruption does not imply free-floating construction. Not matter how innovative the idea may be under certain circumstances, ‘corruption’ will not be raised as an issue needing urgently be tackled in terms of broad social awareness unless it is perceived as somehow dysfunctional or particularly disrupting in times of socio-political transformation [P1: 681-688]. This in turn is most likely to be the case, when the stability of the social whole is disturbed – or on the contrary, where society is perceived as stable, – as for example in Sweden – corruption, though existing, will not be thought of as ‘that bad’, since everything else is in place and works. The former socialist countries could be considered as stable and thus in a paradoxical way somehow impervious to the criticism of corruption (as necessarily being something evil) because in the stifling rigidity of bureaucratic all-round control – the whole itself being highly corrupt [P1: 441-445] –corrupt ‘deviation’ was the only way for the citizens to get through, survive, or even to turn the tables around on the system [P1: 546-552]. Instability is of course an insignium par excellence of transition societies, in which the course of modernisation is bound to be accompanied by a mismatch between society and power [P1: 660-667]. Accordingly, the perception of corruption taking place *and* being dysfunctional will not arise by itself, but only in the context of a broader public awareness of structural frictions, deeply affecting socio-political problems [P1: 698-700] and the necessity of radical reforms [P1: 429-432]. The sifting power constellations characteristic of societies engulfed in the socio-economic upheavals of the transition period however need not be the only cause of the increased and broader awareness of corruption. Accompanying the ongoing globalisation process and the concomitant restructuring of the international institutional regulatory framework there is obviously a *control deficit* to the extent that the institutions steering and monitoring global interdependencies are still on the making thus leaving gaps to be filled by a kind of emerging global sovereignty. Due to this control and sovereignty deficit the present global transition period has except for widening the field of transnational action also facilitated corruption [P1: 361-364].

Coming now to the trajectory of Transparency International, it goes without saying that setting up the idea of corruption as being a state of affairs needed be coped with by society at large was only the initial stage of bringing and establishing the issue in the realm of public affairs. Societal significance could be attained only to the extent that the corruption discourse could be made that issue upon and in terms of which a determinate social stance could be articulated. Hence the need not only

- a) to provide for the prerequisites of the anti-corruption stance being anchored in an articulate social group action (“movement”),  
but also subsequently of
- b) making the movement be heard, that is, through the exercise of social influence bring about wider public awareness and institutional change, and
- c) Controlling institutional implementation through a monitoring process that tests whether changes are substantial and standards are met [P1: 213-219].

Socially situated stances like this one bearing upon and carried by an articulate group action are of course part and parcel of civil society: private group action for public good. Raising sensibility for and helping establish mechanisms against corruption or any other issue perceived as a socially relevant field of action originates in that sphere that in contrast to the institutional complex of public-state governance is called private. However, as regards both the mobilisation radius and the institutional change this private initiative can effect it can also be seen as component of the process of advancing the public good or extending democratic participation. Contrary to the wide-spread notion of investing them with powers that they cannot dispose of, it can by no means be supported – as some activists usually do falling into



a short of civil society fundamentalism [P1: 120] – that the organisations of civil society are somehow empowered by an unified entity-body called “civil society” to come to negotiations with the central state power [P1: 163-169]. In this sense it is important to distinguish two layers of enacting democratic procedures: representative and participative democracy [P1: 170-177]. Whereas the former mediates the articulation of private interests by means of party politics, the latter lends itself organisation forms of direct interest articulation.

This in turn should not be taken that unmediated, because the “sparkling” idea? (innovation [P1: 205]) originates in a private initiative, although the way it is widely taken up, that is, how it comes about being perceived as a sound/legitimate reason of a broader social engagement and worth fighting for, is not that straightforward. In a certain sense it resembles the way an innovative product idea strikes roots in a market place [P1: 176-177] or an intellectual market place [P1: 129-130]. Under this light civil society organisations like Transparency International should not at all be thought of as organs of representation: As the market-place metaphor suggests the legitimacy does not consist of articulating ‘pre-existing’ interests, but *succeeding* in establishing the issue they stand for as a social state of affairs deserving public attention, organised action and institutional policy making. Since they do not represent any clear-cut segment of the societal whole, let alone being elected from anybody, the only way of supplying the warrant of the claim to pursue a valid issue is public resonance, effective dissemination, inducing institutional action. Thus legitimacy boils down to success and this in turn is like in business [P1: 140-145; 181].

This of course goes against the grain of what civil society organisations usually believe their engagement is up to. Nevertheless, considered the other way round – that is, taking as starting point not the supposedly good-minded notion that the ‘good cause’ will prevail solely on account of its civil society origins, but merely the fact of civil society organisations having the freedom to raise up issues that may prove to be of wide societal significance –, it helps bring in a more pragmatic attitude. As a rule in the life of competitive markets goes, civil society organisations should always bear in mind: cherish or perish [P1: 180]. It is the market of public perceptions, opinions and attitudes that in the last instance decides on the validity of any innovative idea.

Things being that way Transparency International and other NGOs are confronted not so much with a legitimisation – this having been decided upon and secured by public acceptance –, but rather an accountability deficit [P1: 376]: Being neither elected nor private companies it seems at first sight that NGOs are accountable to nobody else but themselves. This in turn casts their work and especially that of Transparency International in a peculiar light: Since legitimacy based solely on success does obviously not suffice to satisfy the requirement of accountability organised civil society engagement must be grounded on *transparency* as legitimisation source [P1: 374-382]. Because it does not represent any prior existing interests, action in terms of civil society organisation is a self-sustaining process that needs draw legitimisation from its own resources thus becoming self-reflective: Standing for transparency means in the first place transparent self-organisation, financing and work.

This self-reflection [P1: 489-490] as indispensable component of, or even legitimisation ground for independent civil society engagement is all the more important in the face of certain side-effects establishing the anti-corruption agenda (among other issues) as major social concern has brought about.



- For one thing there is the phenomenon of the *anti-corruption industry* [P1: 492-493; 504-508]. Having successfully pushed through the issue of corruption and transparency as social values pertaining to the very substance of how attending to the public good should be practised Transparency International finds itself confronted with a number of organisations that to be sure share the same aim, albeit in the form of profit business, consulting companies, projects sponsored by international organisations (for example World Bank) etc. – in short an almost hundred and fifty million US Dollar annual anti-corruption market [P1: 504-505]. Paradoxically, the success of Transparency International, based as it were on a business-like notion, has caused the rise of a sort of market economy where transparency seems to function like business as usual and which of course TI cannot want to get into, lest it disavows its character as civil society organisation.
- In addition, another rather negative side-effect of the success of the anti-corruption agenda consists of its being instrumentalised by all sorts of political populism: *riding the anti-corruption ticket* has become a steady factor in politics for example in Eastern Central Europe [P1: 524-530].
- Establishing the social relevance of issues raised by civil society organisations meant from the start inducing institutional change. Now, putting transparency and anti-corruption (and other civil society issues as well) on the agenda of good governance and rule-conforming economic behaviour has indeed caused institutional action, albeit in the form of a *counter-revolution* from above [P1: 226-236]: As a response to the revolutionary impetus of the rise and spread of ‘grass-roots’ organisation forms in the transition societies of East Europe in the eighties and nineties the state in Europe and the USA has introduced a new framework of rules and regulations in which civil society organisations can operate. This of course restrains in a way their freedom of action, since their major competitive advantages consists in the ability to act swiftly and not to be bound by rules [P1: 152-154].
- With the break-down of the bipolar block confrontation of the post-war international order and the rapid increase of interdependencies (‘globalisation’) civil society and NG Organisations have gained new freedoms and expanded the radius of transnational agitation work and action. However, on the same grounds of international, intercontinental operation there have also developed new possibilities for organised crime, illicit trade and international terrorism. Paradoxically (and ironically), as regards some criteria of independent civil society engagement, e. g. ‘grass-root’ activism, non-governmental action, innovative ideas to promote, such networks such as the terrorist Al-Qaida do not seem to differ all that much from the mainstream of NGO action [P1: 241-244].

## II. TI and ALACs (Advocacy and Legal Advice Centres)

The initial impulse for setting up the ALACs was based on the awareness that, since corruption has become an issue needed to be accounted for in governmental policies, there was a *link missing to connect preventive policies and implementation* [P2: 308-315]. In addition, as initially TI and other organisations working against corruption were rather expert fields, civil society came to be seen as an indispensable factor in order to make intervention sustainable, because it did not only help anchoring corruption prevention policies. Furthermore, the ALACs as form of organised societal intervention and, simultaneously, a result of the ‘bottom-up’ approach of TI, have indeed proved to be a source of information and knowledge about what every preventive policy must be aware of and able to deal with: *how corruption works in practice* [P2: 353-357; 341-345]. Not the least of the merits that commitment in the work of an ALAC involves is the work with individuals which in turn



fosters the understanding of how canny for example officials frequently behave when devising schemes and plans in order to bypass existing legislation and get bribes [P2: 297-300]. This is obviously even more true with people being confronted with and tormented by corruption on a daily basis [P2: 72-75].

Of course, people turn to the Centres for help (e.g. using the hotlines, seeking advisory and legal assistance, etc.) but this is only the one side of reacting to the fact that corruption is being rooted in everyday life. Even more important though regarding the need to deepen the understanding of corruption by using concrete action, is the effort to evaluate incoming information by transforming it into action motivating knowledge, that is, know-how as a prerequisite of and reason for structural change [P2: 394-401]. However, the ALACs are not only a focus point in the sense of providing an institution in order to perceive how corrupt conduct is experienced in everyday life. Through the composition of their organisation they also *reflect* certain cultural characteristics of the countries in which they operate [P2: 639-640] – for example, the Rumanian ALAC with its rules-based, systematic work seems to reflect some bureaucratic mentalities in the country.

The reflection of social-cultural realities applies to the national chapters of TI in general, as well as the wide range of motivations, backing up the commitment to work on the fight against corruption that attest to the manifold nature of the phenomenon. Whereas for some people anti-corruption is an essential part of social activism, others consider it to be a necessary step to clear up the economic field of disturbing influences thus creating new opportunities for economic action. If one additionally takes into account all the academics, ex-politicians, professional managers, etc. involved in the work of the national chapters of TI, then it is easy to observe the variety of social backgrounds and reasons motivating anti-corruption commitment [P2: 883-890].

This diversity may as well be linked to the fact that the relation between ‘centre’ and ‘periphery’, that is, TI being located in Berlin and the national chapters or for the ALACs is in contrast to such NGOs as Green Peace not one of centralised leadership [P2: 744-745], because the latter enjoy great autonomy which they are unsurprisingly at pains to safeguard [P2: 219-221]. This of course sparks off a number of issues concerning the degree of effective co-operation:

- First of all there is the need to *standardise* the way incoming information has to be processed in order to yield a uniform basis of data collection (e.g. ‘generic database’) with all issues passing through a central instance [P2: 253-255]. Although in some cases there do exist contractual relations between the ‘Centre’ and the national ALACs, thus forcing them to comply with certain technical requirements, in others there are no such contractual bonds. In those cases the only thing the ‘Centre’ can do is to try to persuade the ALACs in question to adopt the database system thus functioning as a service provider [P2: 723-731]. Additionally, TI still does not have the financial resources to run such a database system that requires a number of full-time employees to do that.
- The fact that *decentralisation and centralised monitoring* inevitably leads to frictions concerning effective co-operation. Since a central management on a daily basis is neither possible nor desired, TI confines itself to the task of making sure that the ALACs, which of course must already use the appropriate staff, have the infrastructure needed (e.g. hotlines, advertisement, financial reporting, and pragmatic reporting) [P2: 632-634]. For this reason, professionalisation need not contradict the missionary spirit of social activism, as especially



around financial management there can be only one rule to keep in mind: keep the quality standards (transparency!) high [P2: 848-855; 830-834]. That is the reason why TI can combine the idealism of fighting for the right principle with a technocratic attitude towards the organisation of this fight [P2: 1184-1191].

- Along with the issue, that over the years, every organisation develops bureaucratic traits, arises the question to what extent TI plays an essential role, meaning enforcing a uniform policy to be followed by all ALACs/national chapters. Based on experience and far from imposing stream-lined rules and objectives, it was the national chapters themselves that called for the ‘Centre’ to apply monitoring procedures in order to *keep quality standards* [P2: 733-741]. Furthermore, in some cases the initiative to set agendas came from ‘below’, as some chapters took over the leadership on certain issues, for example, environmental corruption [P2: 750-757]. Additionally, another quite important reason for TI to assume a different, more active and civil society based character over the years has been, except participating in the meeting of the world social forum, the way the ALACs have propagated the cause of transparency.

Addressing the question of how effective the work of the ALACs has been so far, there are, apart from the actual advisory and legal help provided, possibly two controversial views. First of all, effectiveness can be assessed in relation to whether the work of the centres contributes to *structural changes* in terms of initiating reforms in penal legislation. This means that the amount of incoming information delivered by citizens that contact the centres, when statistically processed by TI, can be transformed into target knowledge about the respective penal laws that need to be changed. Thus individual cases, when appropriately bundled so that they are subsumable in the form of definite law paragraphs, can bring about penal reforms as, for example, it was the case in Rumania and Bosnia [P2: 408-417]. Of course no one can expect every individual case to be resolved. One reason for this is that the innovative work of the centres cannot automatically lead to institutional change – least of all this can be implemented in most of the countries where ALACs operate, namely countries in which the state has never been challenged by citizens in such a way [P2: 483-487].

In view of this, any percentage of cases however small it may be at first, that is registered by the police or judicial authorities can be considered a success. Additionally, the transformation of individual cases into *statistically quantitative phenomena* helps to make them observable in the first place, or even better, social facts of some relevance that can trigger institutional action. This is all the more important considering that more often than not governments react or act upon corrupt conduct only once they begin to perceive it as phenomenon having *systematic causes* [P2: 492-494]. If this does not happen, the government may take care of the complaints of the ALAC or the individual himself, ‘putting things right’, but this remains an individual case without any other consequences [P2: 504-506]. *Secondly*, but compared with the aforementioned of less importance, another way to assess the effectiveness is to look at how many people have been convicted based on the information delivered by the ALACs. This is of course extremely difficult to prove, as it is generally to trace back, or even better, to see prosecution being affected by any individual case of corrupt conduct ‘dropped in’ the pool of information of the ALAC in question [P2: 472-475].



### III. TI, ALACs, fighting corruption

From early on it has been the dominant belief of those who set the stage for the anti-corruption agenda that trying to confront the phenomenon head-on would not give any results, at least not in the long run. It should rather be seen as part of a reform process, which dimensions should be both institutional transformation and a change of socio-cultural mentalities. Now, over the last ten years at least, a considerable institutional shift towards addressing corruption as a structural problem has undoubtedly taken place. If one adds the phenomenon of an expanding anti-corruption industry, then it is clear that fighting corruption on this level does not show the deficits deplored a few years ago.

An issue of great urgency, however, remains the approach to the second dimension of fighting corruption as part of an on-going reform, that is, the effort to implement it in socio-cultural attitudes, which boils down to committing people to it: In other words, to ensure that things *are grounded in people's perceptions* [P2: 1019-1026]. The setup of the ALACs TI has been an important step towards raising the chances of such a commitment, while at the same time facilitating the wider and more active commitment of the population. Therefore, strengthening them must be seen as an indispensable move towards the rise of sensibilities and the participation of citizens. This in turn implies the following:

- First of all, since the TI struggles for its own economic sustainability, further funding should be ensured;
- As the missing link between institutional reforms and changes of everyday attitudes, the system of ALACs should be consolidated and expanded in other countries;
- As far as the cooperation between TI and ALACs is concerned and in view of decentralisation, the demand for the systematisation of the evaluation of incoming information should be met;
- Furthermore, the centralised database for the collection of statistics should be used more frequently;
- This is all the more important in the face of the fact that centralised data processing leads to targeted knowledge and this in turn leads to concrete intervention steps regarding changes in the penal law.

### 3.6 Target Group Economy

#### *Introductory remarks*

The research group has met numerous difficulties in securing interview partners from the target group *economy (including trade unions)*. Evaluating the documents of the first research phase the group was led to an assumption that now in the second phase has proved to be well-founded: The disinterestedness and secrecy relating to talking about corruption are nowhere more acute than in the sphere of economy, industry and trade unions. Even leading figures in the economic life of Germany that otherwise make all sorts of statements to the economic policies of the government and the course of economic developments in general were not prepared to give an interview. Although the group stated right from the start that it was interested in how leading managers think of their responsibilities regarding transparent



economic activities, the persons asked for an interview apparently did not want to make any statements on the issue.

For this reason the research group decided to focus on a specific case of corrupt contact that is one that is scarcely present in the corruption research or the public awareness. It involves economic actors (i.e. private businessmen), albeit not as perpetrators of corruption, but its victims. This is the case when they fall prey to the abuse of power in the public sector – most notably in tax offices. The individual case in question can be reconstructed in such way as to show that abuse of power by civil servants does not represent an exception in the management of public services, but has structural reasons. Some of them can be located in the recent reforms in the public sector that purport to transform public offices into enterprises that function according to the rules of private business and the public into “customers”. Accordingly, civil servants are supposed to act in such a manner as to develop performance through increasing the revenues received for the delivery of services. Thus some public offices have begun to function like public-private partnerships managing their financial resources in the business-like manner of the private sector.

### *Outline of the interview*

The evaluation of the interview of the target group economy does not deal with corruption as the term is normally used. To the extent that from the interview a corruption case can be reconstructed, it relates to those aspects of the relation between public offices and private business in which a certain kind of abuse of power can be observed. This abuse of invested power, however, does not primarily aim at gaining financial benefits, but must be seen as a kind of harassment of private business. The way various public offices work, that is, the efficiency and performance criteria they observe, is sometimes extremely inimical to private economic activity.

### *Analysis*

Corrupt conduct need not necessarily take the form of misuse of power or abuse of public offices for private benefits. Although misuse of power normally functions as a means to attain a monetary goal, it can sometimes happen that power itself can lead to corruption, when it is exercised for its own sake. In such cases as the one under examination, the corrupt conduct of *civil servants* does not aim at gaining financial advantages, but rather results from an excessive use of prerogatives of power that public office confers upon them [P1: 311-313]. Regarding the relation between state institutions and private business this entails that in a certain way a reversal of the terms obtaining in the usual corruption scheme: Instead of deploying bribes to influence institutional decisions in favour of economic interests, businessmen are on the contrary subjected to a kind of coercion by different bodies in the public services.

Considering the possible factors determining this abuse of power that willingly functions detrimental to the economic interests of private business it is obvious that one of the main causes are over regulation and red tape. Especially in connection with the application and enforcement of tax legislation by the administration, private business is often confronted with a situation that can be characterized as systematic *harassment* [P1: 1363]. Given the



bureaucratic mechanisms private businessmen as tax payers always have to cope and struggle with, it is not an exaggeration to claim that the institutional incorporated obstacles represent a kind of corruption [P1: ibid]. This of course does not outright involve intentions of private enrichment, but is rather perceived as an arbitrary exercise of power that can be equated with corruption [P1: 1054].

To perceive over regulation as a form of *corrupt harassment* of private economic interests nevertheless does not mean that the motives of public servants rest solely upon discharging of official duties that often have a stifling effect on economic activity. Although in the order of causation, bureaucratic rule-following may be the prime factor that puts unjustified restraints on private business, some other factors need to be taken into consideration, too. First of all, it is generally true that public servants working in tax and revenue offices are more inclined towards corrupt conduct the less satisfied they are with their pay levels or with the chances of career development and financial incentive schemes. Given this fact that what on the one hand private business perceives as undue and excessive exercise of control and power, is on the other hand considered to be rule-conform action that enhances the performance of public servants thus entitling them to financial gratifications or promotion. This is all the more true in the case of public procurement offices where the pattern of cutting down expenses functions as performance value indicating the degree of entitlement to promotion [P1: 938-940]. Reducing expenses by all means , or in the case of tax offices, increasing the amount of taxes to be paid, can sometimes go as far as to violate existing obligations and directly damage private businesses [P1: 1086].

There is still another aspect that has to be kept in mind if one wants to give full account of the ways public offices are often perceived, namely as abusing invested powers and acting systematically against private business. This aspect is closely connected to the gratification and promotion scheme that is nowadays exercised in various public offices and functions as a basis for evaluation not only of individual, but of collective performance as well. The methods of estimating the latter are increasingly being made to approximate the economic pattern that governs private business, that is, to calculate efficiency according to extent running costs are kept low or certain goals regarding the amount of taxes to be collected are met. This way various public offices are run according to the principle of cost management [P1: 1076-1077; 1081-1083].

However, making public offices work on the basis of maximizing operational efficiency in terms of cost reduction is not the only way how the state can negatively affect private business. Looking more closely to what can be characterized as corrupt conduct, abuse of invested power also occurs in cases where private business is being overtaxed [P1: 957-959]. Although not a typical case, excessive taxation of private business may be called a kind of corrupt conduct in which the offices of tax and revenue aim at maximizing financial input.