

FIGHTING CORRUPTION IN POLISH AND CZECH LEGAL CULTURES

BARBARA MUSZYŃSKA, PETRA NOVÁKOVÁ, AND WIBO VAN ROSSUM*

I. INTRODUCTION

Corruption remains a serious problem in today's world, despite the worldwide attention it gets for some time.¹ It undermines democracy and the rule of law in many states. How to fight corruption is debated at the regional, national and international level. The problem of corruption not only exists in the so-called developing countries, but also in modern states. Especially in the Central and Eastern European countries (CEE) fighting corruption is on the agenda for quite some time. Establishing the rule of law and democracy took priority after 1989, and together with the establishment of free market mechanisms were among the main conditions for accession to the European Union. Part and parcel of that package was to take up seriously the combat of corruption.

In this article we will concentrate on the level of and the fight against corruption in two CEE countries, namely Poland and the Czech Republic. The comparison is interesting because there is a significant difference in the level of detected corruption between these two countries, despite the fact that both are situated in Central Europe, have a common communist history and are now members of the European Union. Our hypothesis is that we may understand the difference between the two countries in terms of legal culture. This means we will also address the question what 'legal culture' is and how the concept may be useful in legal analysis. For our concept of legal culture, we will make use of the indexes of national cultures as defined in the research of Hofstede, Hofstede and Minkov *Cultures and Organizations: Software of the Mind*.²

* Barbara Muszyńska is a PhD student at University of Lodz, Poland, Faculty of Law, Department of Labour Law and is employed in a law firm (e-mail barbaramusz@gmail.com). Petra Nováková is a master student of the Faculty of Law of the Charles University in Prague (e-mail novakov.petra@gmail.com). Wibo van Rossum is a lecturer in legal theory at Utrecht University Law School (e-mail w.vanrossum@uu.nl, website www.wibovanrossum.nl).

¹ Transparency International, July 14, 2011. <http://www.transparency.org/>.

² Hofstede, G. G. J. Hofstede & M. Minkov, eds. *Cultures and Organizations: Software of the Mind*. New York: McGraw-Hill. 3rd edition, 2010.

The structure of our article is as follows. The next paragraph (§ 2) contains the description of the legal regulations related to combating corruption, the level of corruption in the two countries, and the people's perception of and attitudes toward corruption. We do that comparatively in order to identify similarities and differences between the two countries. In the next part of the article (§ 3) we will describe several factors explaining the high level of corruption and the perception of it in CEE countries. In the final substantive paragraph (§ 4) we will discuss the concept of legal culture and will examine if we can understand the difference in the level of corruption between Poland and the Czech Republic from that perspective. We close with a short conclusion.

II. COMPARING CORRUPTION IN POLAND AND IN THE CZECH REPUBLIC

II.1 DEFINITIONS OF CORRUPTION

Corruption is a broad phenomenon that comprises a wide range of diverse activities and behaviours. Probably because of this there is no central definition of corruption in Polish law. There is one definition in article 1 of the Act from 9 June 2006 on the Central Anticorruption Bureau (CBA). According to this article 'corruption is promising, offering, giving, requesting, receiving by any person, directly or indirectly, any undue economic, personal or other benefits, for themselves or any other person, or accepting a proposal or promise of such benefits, in return for the act or omission in the exercise of public duties or in the course of business'. This definition is binding only for the above Act and therefore not valid for other situations.³ There are many other legal regulations in various legal fields (for example in administrative law, constitutional law, election law, commercial law and criminal law) that relate to (combating) corruption, but they lack clear definitions and only circumscribe corruption in more or less precise terms, depending on the issue.

As in Poland, the Czech Republic does not have a single and final legal definition of corruption. Corruption is also not defined as a crime in the Criminal Code. Only

³ Urbańska, A. *Definicje pojęcia 'korupcja'* (Definitions of the notion of 'corruption' – our translation), Transparency International Polska, July 14, 2011 http://www.transparency.pl/ti/definicje_korupcji/opracowanie_a_urbanska.

bribery⁴ is defined and regulated, and some other crimes that may be connected with corrupt practices.⁵ We could maybe regard the description presented on the website of the Ministry of Interior: ‘abuse of an office, connected with the violation of the principle of impartiality during the decision making process, motivated by a drive for profit’, as a generally recognised definition of corruption.⁶ The regulation of corrupt behaviours can not only be found in criminal law but also in constitutional law, administrative law, commercial law and in private law. For example, there are regulations on the conflict of interests, or property declarations prepared every year by politicians and officials in public authorities etc.⁷

Thus, corruption in both countries is regarded as a serious problem and regulations occur in a wide range of legal acts. We can find anti-corruption legislation not only in the field of criminal law but also in other fields of law. Neither Poland nor the Czech Republic has a generally binding, legally stated definition of the term ‘corruption’. This should not be a surprise. The notion of ‘corruption’ should be understood as a social phenomenon that escapes strict definitions, and is more an ‘everyday life concept’ rather than a legal term.⁸

II.2 CRIMINAL LAWS ON CORRUPTION – GENERAL INTRODUCTION

The Polish legislator apparently believes that corruption should be prosecuted once it occurred but also needs to be prevented. The law is an instrument to achieve this objective. As a result, Polish law is rich in regulations concerning both types of fighting against corruption: *ex ante*, e.g. rules prohibiting persons with public functions (e.g. judges) to carry out political activities, and *ex post*, in criminal regulations. Since it is often extremely difficult to prove the guilt of offenders of corrupt conduct because of the specific and strong ties of confidentiality between

⁴ Article 331-333 of the Criminal Code.

⁵ Like article 248 pertaining to violating rules in competition law, article 256 pertaining to contracting in public auction, etc.

⁶ 2005 and 2006 Report on *Corruption in the Czech Republic* and on *Meeting the Updated Governmental Programme for Combating Corruption* on the websites of Ministry of Interior of the Czech Republic. July 14, 2011 <http://web.mvcr.cz/archiv2008/dokument/2007/korupce06en.pdf>.

⁷ The Act No. 159/2006 Coll, about the conflict of interests.

⁸ Anders, G. & Nuijten, M. „Corruption and the Secret of Law: An Introduction.” *Corruption and the Secret of Law. A Legal Anthropological Perspective*. Eds. Nuijten, M. & Anders, G. Aldershot: Ashgate, 2007, pp. 1-24, esp. pp 6-8.

them, certain rules were laid down in order to break their solidarity. These rules for example concern crown witnesses, anonymous witnesses, and controlled bribe. Just to give an idea of the legal regulations in this matter, we will below (§ 2.2.1) describe the crime of bribery (art. 228-229 Criminal Code), which is the most common understanding of corruption and, moreover, it is well described and regulated in terms of legal institutions. The Criminal Code (CC)⁹ recognises ten types of corrupt crimes all together¹⁰, however their regulation is generally modelled on the regulation of bribery. These are, among others: pay favouritism (which can be also called indirect bribery, art. 230 and 230[a] CC), abuse of power (art. 231 CC), corruption in business (art. 296[a] CC) or obstruction of the public auction (art. 305 CC). Regulations on these crimes are not grouped together but are scattered throughout the Code, depending on the values or goods they are a threat to.

Although the term ‘corruption’ is not defined in the Czech criminal provisions as an individual offence, there are certain crimes that may be applied to corrupt conduct: first of all bribery (art. 331-333 CC) and abuse of power by a public official (art. 329 CC), but also breaches of the duty to administer another’s property (art. 220 CC), misappropriation of information within business relations (art. 255 CC), fraudulent manipulation of public tenders and public auctions (art. 256) and some others. For the purposes of this paper we will concentrate especially on the crime of bribery.

The Czech Republic adopted a new Criminal Code in 2009, which came into force on the first of January 2010.¹¹ The Act amends the existing Criminal Code from 1961¹² and it is the biggest amendment of the criminal law since 1989. The new Code sets higher minimum and maximum penalties on corrupt actions.

In both countries corrupt conduct is regulated especially by criminal law. Recent amendments in the Criminal Codes of Poland (1997) and the Czech Republic (2010) did not alter the situation that corruption in both countries is based on the crime of bribery. In both Criminal Codes crimes ‘connected to corruption’ are scattered throughout the codes. These crimes are substantially the same in both countries, but

⁹ Criminal Code, act from 6.06.1997. (Dz. U. 1997 No 88 item 553)

¹⁰ Krajniak, O. *Korupcja a prawo*, (Corruption and law – our translation), Centrum Edukacji Obywatelskiej, July 14, 2011 http://www.ceo.org.pl/portal/mpk_uczestnicy_schemat?docId=37019.

¹¹ Act No. 40/2009 Coll.

¹² Act No 140/1961 Coll.

their names may differ. One example is ‘fraudulent manipulation of public tenders and public auctions’ in the Czech Republic and ‘obstruction of the public auction’ in Poland.

II.2.1 THE EXAMPLE OF BRIBERY

Polish criminal law has two main forms of bribery, namely passive bribery (art. 228 CC) committed by a person who is corrupted by another person, and active bribery (art. 229 CC) committed by a person who is corrupting somebody else. Not every unfair or dishonest behaviour can be qualified as bribery. The provisions that have to be fulfilled to convict a person of a crime under one of the articles 228 or 229 CC¹³ are that the person corrupted must be a person who performs a public function,¹⁴ accepts (passive bribery) or hands in or offers (active bribery) a benefit or a promise of a benefit, economic or personal, and the bribery is related with a function of the person corrupted. In 2003 the crime of bribery in sport was introduced to the Criminal Code.¹⁵ Related to bribery is indirect bribery, in Poland called ‘pay favouritism’, which is criminalized in articles 230 and 230(a) CC. The main difference in respect to regular bribery is the occurrence of a mediator between the corrupting person and a public official.¹⁶

Bribery can be punished from six months up to eight years of imprisonment. There are also so-called ‘qualified’ as well as ‘privileged’ types of bribery that are punishable respectively with higher or lower penalties, because of some special characteristics of the offender’s behaviour. As a consequence the minimum penalty may be a fine while the maximum could be twelve years of imprisonment.

¹³ A. Marek, A. „Komentarz do art. 228 kodeksu karnego, Komentarz do art. 229 kodeksu karnego.” *Kodeks karny. Komentarz*. Ed. Marek, A. LEX, 2007.

¹⁴ This not only encompasses persons who perform public functions in the Polish state and local administration etc., but also persons holding public office in a foreign country or international organization. These provisions were added to the Criminal Code in 2000 in order to fulfill an obligation from the ratification of the OECD Convention of 17 December 1997 on “Combating Bribery of Foreign Public Officials in International Business Transactions.”

¹⁵ It was some time after the famous ‘Rywingate’ when media and politicians started to talk loudly about corruption and the society became angry about it. This affair about corruption in football started in 2004 when some media started to write about some irregularities. Then police and prosecutors started to examine this stories and it all ended in the enormous amount of accusations. July 14, 2011 <http://www.sport.pl/pilka/0,95642.html> for cases of corruption in sport.

¹⁶ Marek, A. „Komentarz do art. 230 kodeksu karnego”, „Komentarz do art. 230(a) kodeksu karnego”. (Criminal Code. Comment – our translation), LEX (2007).

The provisions of the crime of bribery in the criminal code of the Czech Republic are almost the same. It also knows passive and active bribery, and there is the special type of indirect bribery. Passive bribery¹⁷ ('bribe acceptance') is committed by a person who himself/herself or through another person accepts or requests for a bribe or who accepts a promise of a bribe for himself/herself or for another person. A person who provides, offers or promises a bribe to another or for another person commits active bribery.¹⁸ Bribery has to be committed in conjunction with the exercise of matters of general interest or in connection with business activity. In one of its decisions the Czech Supreme Court has stated that football is also a matter of general interest¹⁹ and that the bribing of football referees can be classified as a crime of bribery according to the Criminal Code. Indirect bribery²⁰ is committed by a person who requests or accepts a bribe for an action by which he/she will influence the exercise of power by a public official or a person who provides, offers or promises a bribe for such an action.

The penalty for bribery depends on the case and on the seriousness of the action. Imprisonment may range from six months up to twelve years. Like in Poland, the Czech Criminal Code has 'qualified' as well as 'privileged' types of bribery, which are punishable respectively with higher or lower penalties. A qualification for example is when the perpetrator is a public official or he/she committed bribery to provide him/herself or somebody else extensive profit.²¹

Both countries distinguish passive and active bribery, for which more or less the same conditions need to be fulfilled. A difference is that while in the Czech Republic indirect bribery is defined as a special type of bribery, in Poland the crime of pay favouritism is treated separately. In fact, these are analogical crimes, only the names are different. In both countries the level of punishment depends on the seriousness and other circumstances of the case. The minimum and maximum penalties are

¹⁷ Art §331, Act No. 40/2009 Coll.

¹⁸ Art §332, Act No. 40/2009 Coll.

¹⁹ The decision of the Supreme Court of the Czech Republic from 17 October 2007, sp. zn. 3 Tdo 510/2007.

²⁰ Art §333, Act No. 40/2009 Coll.

²¹ That is according article 138(1) CC Kč 500.000 (Czech crowns) and more, that is \pm € 20.000 and more

almost identical and quite severe. All in all we interpret these criminal provisions as a serious legal attempt to combat corrupt conduct.

II.2.2 EXEMPTION FROM PUNISHMENT

An interesting feature of the regulations discussed are the rules related to the possibility of exemption from punishment. An offender of a corruption crime in Poland will not be punished if he or she has informed the law enforcement authorities about the acceptance of a (promise of a) bribe by a public official. What is notable is the fact that the only person who is allowed to invoke this 'impunity clause' is an offender of active forms of corrupt crimes, never of passive ones. These provisions are relatively new (from 2003).²² The purpose of the new provisions was to break the conspiracy of silence between the person corrupted and the one who is corrupting.²³ In the opinion of some, however, this solution is rather radical since it may lead to provocations of bribery.²⁴

The old Criminal Code of the Czech Republic knew a provision on 'effective repentance'²⁵, meaning that in a case in which an offender provided or promised a bribe for the sole reason that he or she was asked for it and under the condition that he or she immediately and voluntarily notified the fact to a public prosecutor or to the police, such an offender was exempted from punishment. However, the provision of effective repentance has been removed from the new 2010 Code, which was motivated with its seldom usage. This removal was criticised by police²⁶ and experts²⁷ who point

²² No data are available whether the exemption clause is used and if so, how often. See the official list of the police used for statistics on <http://www.policja.pl/portal/pol/154/6501/ZARZADZENIE_NR_350_KGP_z_dnia_1_lipca_2003_r_w_sprawie_zbierania_gromadzenia_prz.html>. The list does not include the articles with the exemption clauses (last visited July 14, 2011).

²³ So far there does not seem to be a significant increase of detected corruption crimes related to the exemption clause. See Szymanski, J. „The national prosecutor's office. A few comments on the practical application of new regulations in the field of corruption” on www.batory.org.pl/doc/prok-jerzy-szymanski.doc (last visited July 14, 2011).

²⁴ Marek, A. „Komentarz do art. 229 kodeksu karnego.” Nowak, C. „Dostosowanie prawa polskiego do instrumentów międzynarodowych dotyczących korupcji. Raport” ('Adjustment of Polish law to the international instruments on corruption. Report'; our translation), Instytut Nauk Prawnych PAN, 2004, p. 51 July 14, 2011. http://www.batory.org.pl/doc/kor_instr.pdf. The police does not register possible cases of provocations, so we know nothing about occurrences let alone statistics.

²⁵ Art. §163 Act No. 140/1961 Coll.

²⁶ Website http://www.rozhlas.cz/zpravy/spolecnost/_zprava/663116 (last visited July 14, 2011).

out effective repentance was an important and effective instrument in the fight against corruption. The actual effect of the removal remains to be seen.

It is interesting to see that both countries know or have known rules related to the exemption from punishment. The impunity clause and the rules regarding effective repentance were meant to have the same material effect, namely to offer the possibility of avoiding punishment for bribery in exchange for cooperation with the law enforcement agencies. It is therefore striking that Poland enacted the impunity clause in 2003, while the Czech Republic abolished the rules related to effective repentance in 2010.

II.3 LEVELS OF CORRUPTION

How serious is corruption in Poland and the Czech Republic? It is not easy task to answer this question unequivocally. However, it is usually said and believed that corruption is, indeed, a serious problem. We will look for an answer to the question by presenting some objective statistics (§ 2.3.1) of, as well as more subjective views (§ 2.3.2) in Polish and Czech society.

II.3.1 CORRUPTION IN POLAND AND THE CZECH REPUBLIC

For sure corruption is a frequent topic in the Polish media as well as in everyday conversations, especially because of the numerous affairs disclosed in recent years.²⁸

Just to give an impression of these publicly debated cases:

- the 'land affair' of 2007, which involved an offer of pay favouritism to re-qualify a type of land from 'agricultural' into 'industrial', which was essential to start investments; a consequence of this affair was the dismissal of Deputy Prime Minister, a split in the ruling coalition, with new elections as a result of that split;
- the 'starachowicka affair' of 2003, in which there was strong suspicion about connections between parliamentarians, local authorities in the town of Starachowice,

²⁷ Horník, J. "What is new in the field of corruption and bribery." Website of the Ministry of Interior, July 14, 2011. <http://www.mvcr.cz/clanek/co-je-bude-a-mohlo-byt-noveho-v-oblasti-potirani-korupce-a-uplatkarstvi.aspx>.

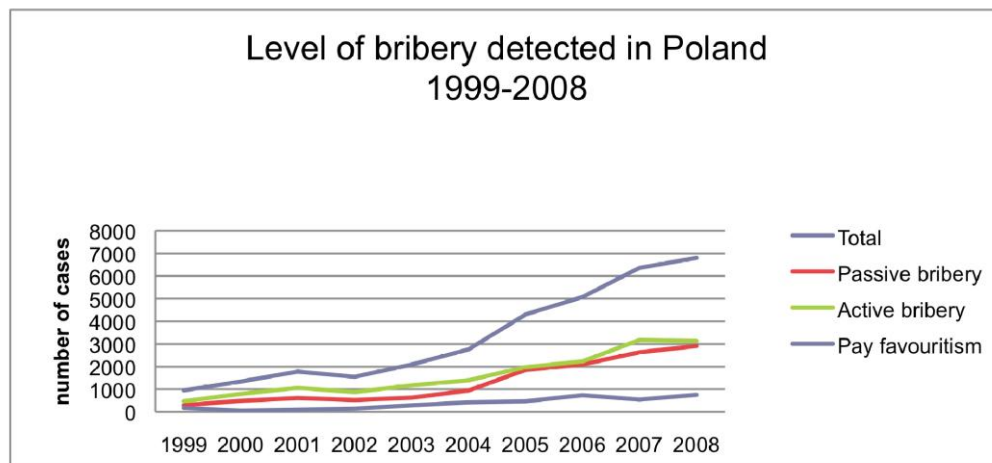
²⁸ Kojder, A. „Korupcja i poczucie moralne Polaków.” p. 239, (Corruption and moral sense of Poles – our translation). July 14, 2011. <http://www2.wpia.uw.edu.pl/files/Korupcja.pdf?short=>.

and local criminals (secret information about planned police action was leaked to criminal organizations);

- the ‘corruption affair in football’, which is about the range of irregularities and crimes committed by referees, players, coaches, club workers and professional observers in Polish football; 300 people were interrogated, 52 football clubs occurred to be involved in the affair and a number of court cases are still in process.

It is extremely difficult to establish the exact level of corruption in a country, especially for the reason that there is a special relation of confidentiality between both parties of corrupt crimes since they both have an interest in keeping the fact secret.²⁹ What is more, conducted investigations apply only to those forms of corrupt activities that are penalized in the Criminal Code but since corruption is a very complex and broad term, it consist of behaviours that exceeds Criminal Code regulations. Therefore we must assume that the level of detected corruption is only the top of an iceberg.³⁰

Nevertheless, we present the number of detected crimes of bribery (since they are the most numerous corrupt crimes) in Poland over the years 1999-2008. The figure below is based on police statistics.³¹



²⁹ See for a classic on the problems related to ‘victimless crimes’ Schur, E. M. and Bedau, H. A. *Victimless Crimes. Two Sides of a Controversy*. Englewood Cliffs, N.J.: Prentice-Hall, 1974.

³⁰ Kojder, A. „Korupcja i poczucie moralne Polaków.” p. 238 (see note 29)

³¹ Police statistics on corruption crimes see <http://www.policja.pl/portal/pol/4/309/Korupcja.html> (last visited October 18, 2010). These figures are crimes detected by the police and sent to the prosecutor for further processing. These are not figures on convicted defendants.

The figure shows an increasing level of detected crimes of bribery in Poland, especially after 2003-2004.³² Experts confirm that the level of bribery in Poland has increased. Calculations on earlier data for example show that between 1992 and 1998 the number of crimes of bribery in which public officials were involved has doubled.³³ Even if guesses on ‘dark numbers’ always are risky, we have to assume that not only the level of detected bribery increased, but also the level of bribery itself. A low average income contributes to the corruption.³⁴ We come back to this in § 3 and § 4.

We initially thought that the rise of detected bribery after 2004 might be related to the new crime of bribery related to sports. However, this is not so. The rise after 2004 is in largest part due to the rise of detected active and passive bribery, pay favouritism and abuse of power.³⁵

In available studies made by independent institutions, the Czech Republic is evaluated as a state with the highest rate of corruption within EU. For example, according to the study developed by the World Bank, the Czech Republic occupies the first place as regards to the growth of corruption in the field of public procurement among all Central and Eastern European countries.³⁶ Bribes are quite usual and, for many people, even a natural part of everyday life. As evidence can serve the following sayings: “Everybody is corrupt, it depends only on the amount of the bids and the circumstances under which it is offered”, or: “Everybody has his

³² Up to 2005 the level of corruption in Poland does not seem to be very different from that of other CEE countries. See Anderson, J. H. & Gray, C. W. *Anticorruption in Transition 3. Who is Succeeding and why?* Washington, D. C.: The World Bank, 2006, esp. pp 11, 18, 34, 36, 46, 5760, and 66.

³³ Kojder, A. *Korupcja i poczucie moralne Polaków*, p. 239 (see note 29); Szymański, J. *Kilka uwag o stosowaniu nowych uregulowań prawnych w zakresie korupcji* (A few comments on the practical application of new regulations in the field of corruption – our translation); from www.batory.org.pl/doc/prok-jerzy-szymanski.doc (last visited July 14, 2011).

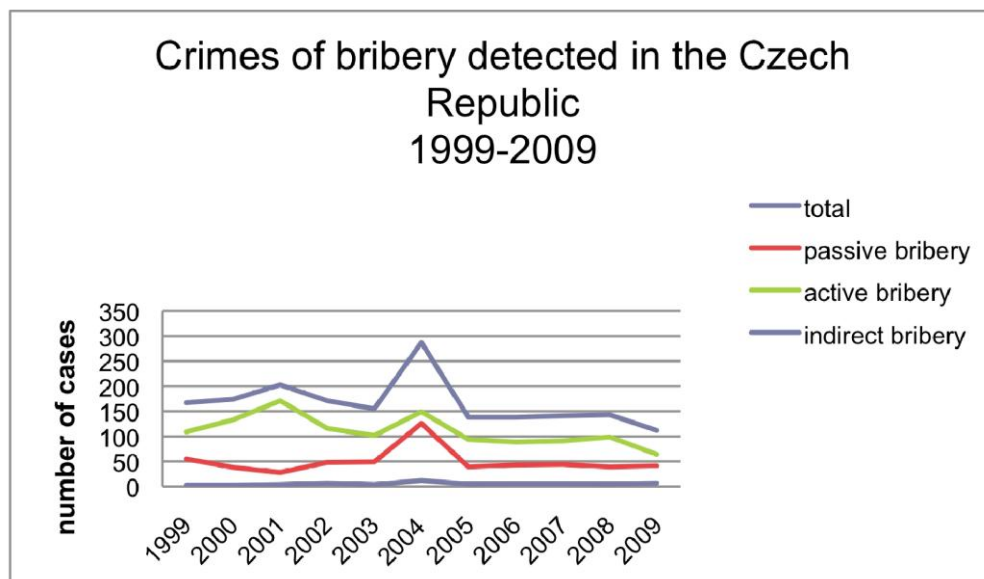
³⁴ According to Polish police statistics the general level of detection of crimes has increased significantly. With a decreasing amount of crimes from almost 1.4 million in 2002 to 1.1 million in 2009, the percentage of detected crimes went from 54,9% to 67.1%. See http://www.statystyka.policja.pl/portal/st/842/47682/Postepowania_wszczete_przestepstwa_stwierdzone_i_wykrywalnosc_w_latach_19992009.html?search=6867. (last visited October 14, 2010).

³⁵ See statistics at <http://www.statystyka.policja.pl/portal/st/szukaj/Wyszukiwarka.html?search=271015&sort=3&order=1&ile=20>. (last visited July 14, 2011).

³⁶ Report on Meeting Tasks Resulting from the Government Strategy for Combating Corruption 2006 – 2007 Prague on the websites of Ministry of Interior of the Czech Republic: <http://www.mvcr.cz/mvcren/docDetail.aspx?docid=25605&docType=&chnum=5>. (last visited July 14, 2011).

price”.³⁷ Sometimes people even do not perceive certain actions as bribery – such as giving a bottle of wine or flowers to a doctor or to an official in for example the Building Authority. It is often believed that such gifts are the manifestation of politeness and in some areas it is part of local culture.

If we look at official statistics, we can see some dynamics in the development of detected crimes of bribery from 1999 to 2009. But apart from a sudden rise in 2004, we assess a stable pattern and a slow but general decline.³⁸



According to the above statistics from 2006 onwards the number of detected crimes decreased considerably. Unfortunately we are not able to say that the decline is caused by the lower actual occurrence of bribery and the effective fight against it. The dark number is unknown and depends not only on law enforcement and the problems of gathering sufficient evidence, but also on the willingness of the people involved to report on bribes. The claim that almost all detected crimes are solved, thus does not say anything on the actual level of corruption.

³⁷ Horník, J. “What is new in the field of corruption and bribery.” Websites of the Ministry of Interior: <http://www.mvcr.cz/clanek/co-je-bude-a-mohlo-by-byt-noveho-v-oblasti-potirani-korupce-a-uplatk-arstvi.aspx>. (last visited July 14, 2011).

³⁸ See for the source of our statistics the website of the Ministry of the Interior at <http://www.mvcr.cz/mvcren/docDetail.aspx?docid=25605&docType=&chnum=5>. (last visited July 15, 2011). Like with the Polish statistics, ‘detected’ in this figure means crimes discovered and in which the file is received by the prosecution office for further processing.

We would like to show in some detail one affair of corrupt conduct that was hotly discussed in the media in the autumn of 2009. The case shows that corruption does not only happen in politics or within state administration, but also in institutions such as universities. This ‘academic scandal’ took place in September 2009 at the University of West Bohemia’s Law School in Plzen. It started when a student of the university discovered plagiarism in the thesis of a high academic staff member of the Law Faculty. This discovery not only led to more cases of plagiarism being discovered, but also to evidence of corrupt conduct at the Faculty as organisation. Investigation made clear that many ‘students’ got the master degree in law in only a few months, instead of after a regular study period of five years. Some of these so-called ‘fast students’ managed to finish the law study in only two months over the faculty’s summer holidays.³⁹ It appeared that the admission and exam procedures lacked transparency. Some thesis and dissertations (which perhaps had never existed) were never deposited in the faculty’s library, as is required. Certain students miraculously passed exams in subjects they had never attended.⁴⁰ In some of the most doubtful cases the Law Faculty had ‘lost’ the copies of students’ final dissertations. Among those who are involved in this case is the mayor of the town of Chomutov, who has said that she cannot remember any of the names of her alleged teachers, and the mayor of Prague.⁴¹ Many other politicians, high police officers and state officials have got their degree at the Law Faculty in Plzen. Currently anti-corruption police investigates the case. The accused politicians argue that it is a ‘non-case’ and politically motivated because of local and national elections.⁴² Some have sued the Plzen faculty for libel. The fear is that the whole affair will be swept under the carpet, because up until today only two cases of plagiarism were prosecuted.⁴³ The University Act has not been amended. All of the

³⁹ The Article in the daily Mladá fronta Dnes, website: July 15, 2011. http://zpravy.idnes.cz/prava-v-plzni-sla-vystudovat-i-za-dva-mesice-fakulte-hrozi-trestni-stihani-1u1-/studium.asp?c=A091006_112254_studium_pje.

⁴⁰ The Article in the internet press, website: July 15, 2011. <http://www.tol.org/client/article/21039-scandal-in-bohemia.html>.

⁴¹ The article at the website of Český rozhlas: July 15, 2011. <http://www.radio.cz/en/article/121011>.

⁴² In may 2010 were the election to the Chamber of deputies of the House of Parliament, in October were communal election for the municipal councils and the election for one third of the Senate of the House of Parliament.

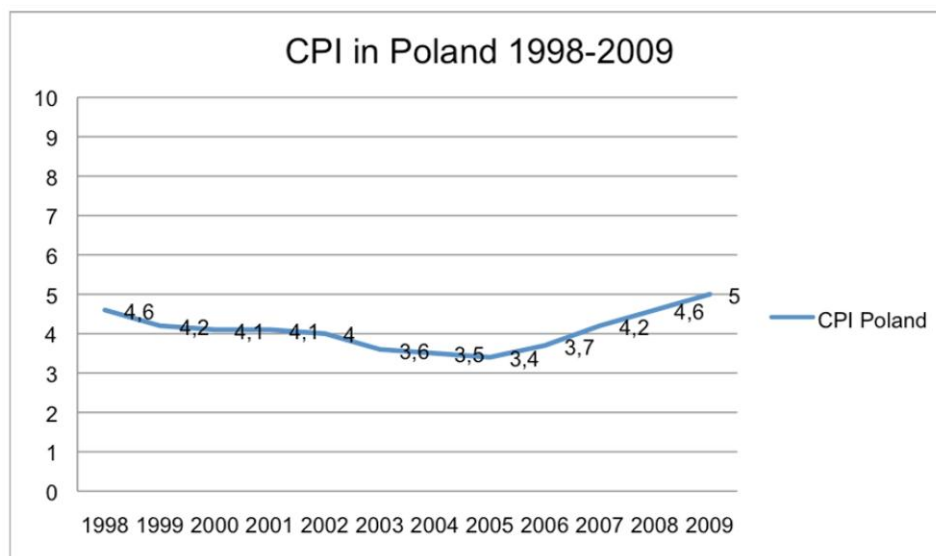
⁴³ One of these was the case of a high police official who had copied the bachelor thesis from his former superior. This case had to be adjourned, because the period of limitation had passed – the

actors of the Plzen affair still have their university degree. The new management of the law school improved on working transparently.

II.3.2 SUBJECTIVE PERCEPTION OF CORRUPTION

Apart from objective statistical information about the level of detected corruption in a country, we may also learn about corruption by looking at opinions and impressions of corruption by members of society. We refer to the Corruption Perception Index (CPI) developed by Transparency International (TI).⁴⁴ The CPI measures the perceived level of public-sector corruption around the world. The higher a country scores in the CPI, the less corrupted it is in the opinion of its citizens. Lower scores indicate more significant level of corruption in a country.

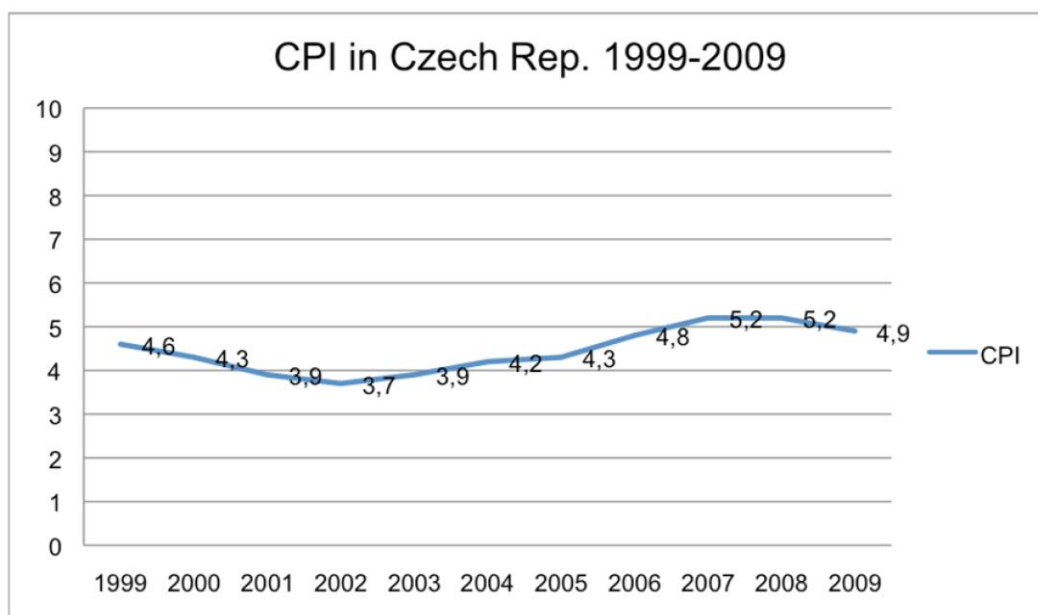
In the year 2009 Poland scored 5.0, which situates it in the middle of the 10-points scale, on the 49th rank, together with countries like Jordan and Bhutan. In the same year the Czech Republic scored 4.9, which also situates it in the middle on the 52nd rank. Both countries got behind other Western European countries like Germany, France and the Netherlands, but remain above countries like Italy, Rumania, Greece, and Bulgaria.⁴⁵



crime was lapsed. In the second case the former vice dean of the faculty copied the largest part of his dissertation. This case is still waiting for prosecution. See daily Mladá fronta Dnes at http://zpravy.idnes.cz/kauza-plzenska-prava-konci-po-roce-pod-kobercem-potrestan-nebyl-nikdo-1ke-/studium.asp?c=A100922_092936_plzen-zpravy_alt. (last visited 15 July 2011).

⁴⁴ July 15, 2011. http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results.

⁴⁵ Transparency International – Czech Republic, Websites: <http://www.transparency.cz/index.php?lan=cz&id=11>. (last visited July 15, 2011).

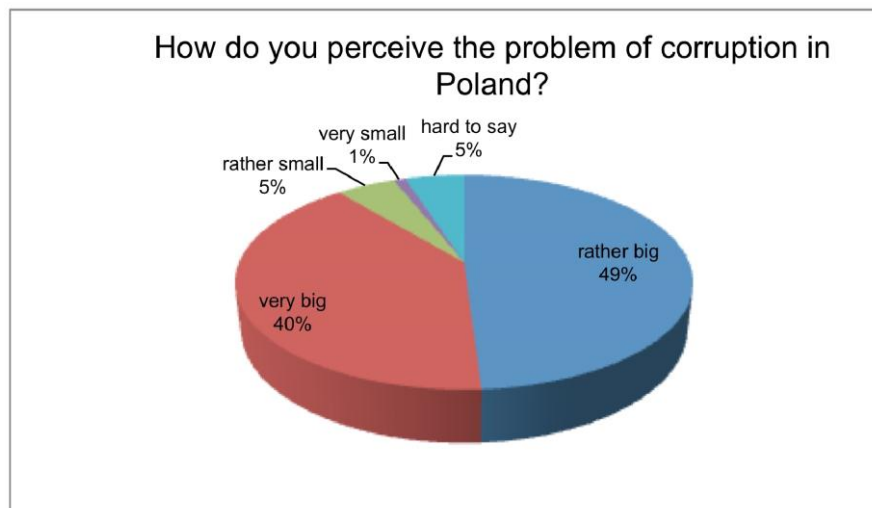


Comparing the level of corruption and the perception of it in both countries is not an easy task. We do know that corruption is a frequent topic in the media and that bribery is quite common in both countries. If we compare the amount of detected crimes of bribery, we can see that while in Poland the number of detected crimes is extremely increasing, the Czech Republic shows a converse tendency. Even if we take into consideration that Poland has four times more inhabitants than the Czech Republic, the difference is still obvious, namely 15 times as high. Even more striking however is the fact that despite the difference in the actual level of detected bribery the perception of corruption in both countries is at the same level. We would expect that the higher level of bribery in Poland also would mean that the perception of corruption would be higher. We will come back to this observation in our analysis.

The CPI measures the perception of corruption in comparison with other countries, but it does not say anything on how people actually perceive the problem of corruption. For this we use other data in order to gain a different insight in the subjective experiences of corruption in the two countries. The data are derived from public opinion surveys. We can distinguish between three main possible attitudes toward corruption: acceptance, acquiescence and disapproval.⁴⁶ Experts rightly state

⁴⁶ Kojder, A. „Korupcja i poczucie moralne Polaków.” p. 242 (see note 29).

that the attitude of Poles is ambiguous. They give their consent to so-called ‘soft’ forms of corruption, such as minor bribes (‘tokens of gratitude’) or favouritism, but they strongly reject ‘hard’ forms of corruption, for instance bribery and abuse of power. Statistics seem to confirm this ambiguous attitude.⁴⁷ On the one hand, 4/5 of respondents (82%) believe that bribery is morally wrong in every case and 3/4 (77%) that both parties involved in corrupt behaviour should be equally disapproved. At the same time however, almost half of the Poles (49%) claim that the situation nowadays forces people into corrupt behaviour and even more people (66%) consider giving gifts in return for a favour a sign of respect and kindness rather than a bribe. In recent years however, there has been a decrease in the opinion that specific situations ‘require’ bribery and that ‘giving presents’ as token of gratitude has its roots in people’s mentality. Most of the Poles (89 %) today believe that corruption is a serious problem in their country.⁴⁸ Although there is no big difference in social opinion in comparison with recent years that corruption is a big problem, there is a significant decrease (by 27%) in the opinion that it is a very big problem.

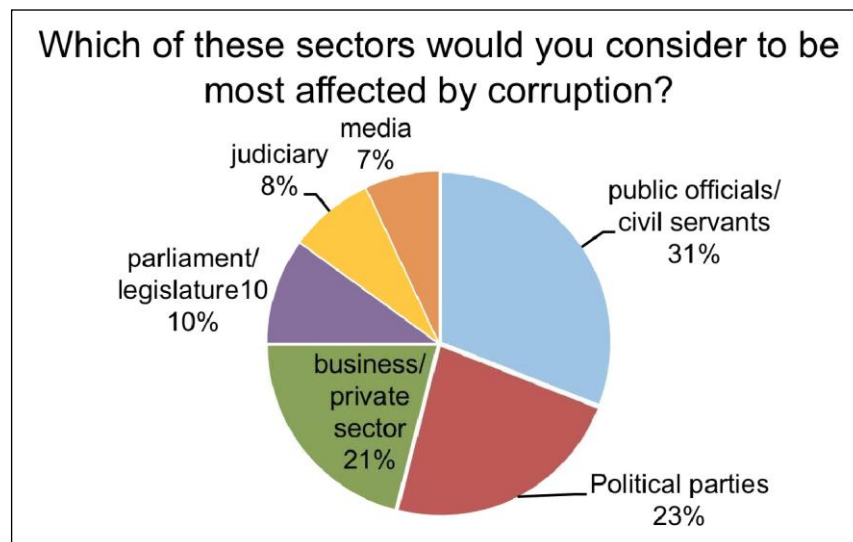


⁴⁷ Public Opinion Research Center, Korupcyjne doświadczenia Polaków oraz ich stosunek do łapownictwa (Corrupt experience of Poles and their attitude towards bribery – our translation), report BS/69/2009 from May 2009; from http://www.batory.org.pl/doc/K069_09-1_cz2.pdf. (last visited July 15, 2011).

⁴⁸ Public Opinion Research Center, Opinia społeczna o korupcji w Polsce (Public opinion on corruption in Poland – own translation), report BS/62/2009 from April 2009, from http://www.cbos.pl/SPISKOM.POL/2009/K_062_09.PDF. (last visited July 15, 2011).

An interesting indicator of the level of corruption is also 'personal experience' in this matter.⁴⁹ 15% of Poles declare they personally know somebody who takes bribes; only 7 % admit that someone tried to hand them a bribe and 9 % found themselves in a situation in which they had to give a bribe. All percentages have decreased over the last years.⁵⁰

According to Polish surveys people believe that the most corrupted fields of social life today is politics (55 %) and health service (54 %).⁵¹ The first place for politics corresponds more or less with the outcome of the survey prepared for Transparency International, in which respondents had to choose the most corrupted sectors in their country from a list of six.⁵²



Summarizing, personal experience of corruption in Poland is much lower than a perception of this problem.

⁴⁹ Public Opinion Research Center, *Korupcyjne doświadczenia Polaków oraz ich stosunek do łapownictwa* (see note 48).

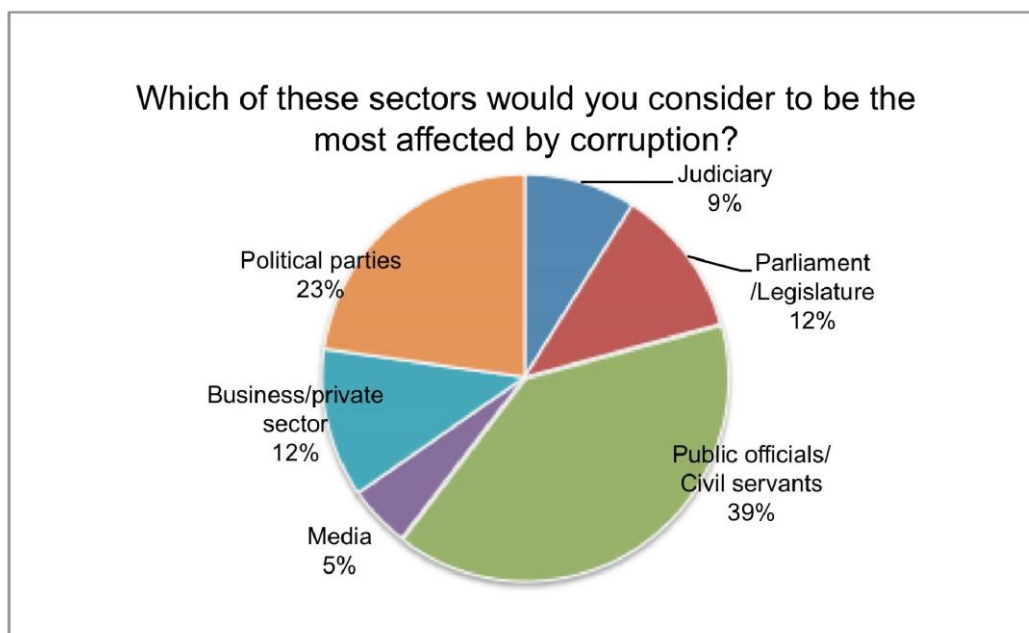
⁵⁰ The index of persons who admit they hand in bribes is stable over the last few years, and much lower than the levels of the 1990s and the beginning of the 21st century. Source Public Opinion Research Center, *Korupcyjne doświadczenia Polaków oraz ich stosunek do łapownictwa* (see note 48).

⁵¹ Public Opinion Research Center, *Opinia społeczna o korupcji w Polsce* (see note 49). Percentages in this survey do not equal 100 because respondents had a possibility to point out more than one corrupted fields.

⁵² See Global Corruption Barometer 2010 at http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results. (last visited July 15, 2011).

As regards figures of subjective perception of corruption for the Czech Republic, in the survey by Transparency International conducted in 2009 11% of Czech respondents admitted they have provided a bribe during the last year and also more than 11% indicated they were approached for a bribe. 95% of the respondents did not take any action (like notifying the police for example). They motivated their inaction by explaining that it would not help or that they were afraid of possible negative consequences.

The majority of Czechs consider the public administration (39%) and political parties (23%) to be the most corrupted sectors in their country. 9% found that the judiciary was the most corrupted, while 12% thought so about parliament and related actors.⁵³



Transparency International in 2009 conducted a large survey in the Czech Republic on 'Health without Bribes'.⁵⁴ 70% of respondents stated that they did not provide a bribe to a doctor in the last five years nor were they asked for a bribe. 30% of the respondents admitted that they provided a bribe to a doctor. In the majority of cases

⁵³ Website of Transparency International <http://www.transparency.cz/cpi-2009/>. (last visited July 15, 2011).

⁵⁴ The Press release from 2.12.2009 by Transparency International, http://www.transparency.cz/index.php?lan=cz&id=16&pom_id=89. (last visited July 15, 2011).

these were small presents and of little value (such as chocolates, flowers, or a bottle of alcohol) but there were also cases when people bribed with a serious amount of money.⁵⁵ In 3/4 of the cases a bribe was given voluntarily but in a quarter it was more or less required. The survey thus also showed that the tradition of giving small presents to doctors is still alive in the Czech Republic. 27% of the people believe that bribes in the health service are common and 21% that personal health depends on bribes.

Citizens are well informed about corruption statistics and affairs by the media and most of the people have personal experience with bribes. It is no wonder therefore that corruption is perceived as a big problem in Czech political culture and in society in general. At the same time people seem to be sceptical about the possibilities to change the situation.

II.3.3 COMPARING POLAND AND THE CZECH REPUBLIC

Both Czechs and Poles indicated public administration and political parties as the most corrupted fields while most trusted were media. We can also see that both societies consider corruption a serious threat. We also observe that there is a common problem of increasing corruption in the health service. In Poland we notice a small positive change in people's 'corruption consciousness'. Most interesting however is the fact that the subjective perception of corruption in both countries by and large is the same, while the objective level of detected bribery shows a significant difference.⁵⁶ This difference is significant not only in absolute terms, but also relatively. Even taking into account the difference in size of population (10,5 million in Czech Republic and almost 38,5 million in Poland), Poland knows more than fifteen times detected bribery crimes. Of course we do not know if this figure is analogous for other corruption crimes.

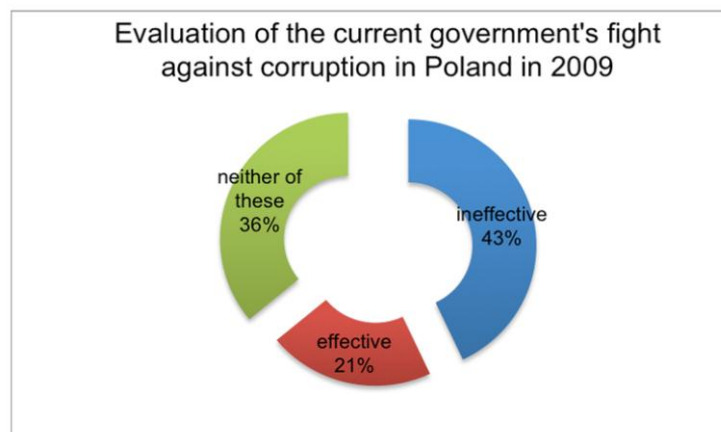
⁵⁵ 50.000 Czech crowns (CZK) = ca € 2000.

⁵⁶ We are not able to investigate this interesting finding any further in this article. We may expect that subjective perceptions in part depend on objective levels of corruption. The objective level however cannot be deduced from detected crimes of corruption. The amount of detected crimes may be related to the amount of actual corruption, but may just as well relate to the level of enforcement. We may also expect that subjective perceptions in part depend on media attention. But does more media attention for success in fighting corruption lead to the perception that corruption is high, or to the perception that it is low (because apparently many crimes are detected)?

II. 4 EVALUATIONS OF THE FIGHT AGAINST CORRUPTION

The fight against corruption is a hot topic in Polish politics. In relation with terms such as ‘affair’ or ‘scandal’ it often becomes a political weapon⁵⁷, especially in election campaigns. For example, in 2007 the strongly right-wing party ‘Law and Justice’⁵⁸ was campaigning under the banner ‘We will eliminate corruption’.⁵⁹ Since it is such a ‘successful’ topic, different governments over the past years contributed to anti-corruption initiatives. The most important ones were the establishment of special anti-corruption departments in the police force in 2004⁶⁰, the Central Anticorruption Bureau (CBA) in 2006 (a special agency called to fight corruption especially in public institutions)⁶¹, and in 2007 a government representative to fight irregularities in the public administration.⁶²

How do people evaluate these efforts of the state? We can see in different statistics that these opinions are diverse but generally not really favourable. According to the Global Corruption Barometer 2009 only 21% of the Poles think that the fight against corruption in their country is effective.⁶³



⁵⁷ Walorek, J. „Zjawisko korupcji politycznej w Polsce w latach 2000-2007“ (The phenomenon of political corruption in Poland in the years 2000-2007 – our translation). In *Raport o korupcji* (The report on corruption), p. 227 (2007); from <http://www.transparency.pl/>. (last visited July 15, 2011).

⁵⁸ „Prawo i sprawiedliwość” (PiS).

⁵⁹ PiS: Zlikwidujemy korupcję, Money.pl (14.09.2007); however, the party lost in that election.

⁶⁰ Walczą z korupcją i na wyniki, rp.pl (22.12.2009)

⁶¹ Walorek, J. „Zjawisko korupcji politycznej w Polsce w latach 2000-2007.” In *Raport o korupcji*, p. 243-245 (2007) (see note 58).

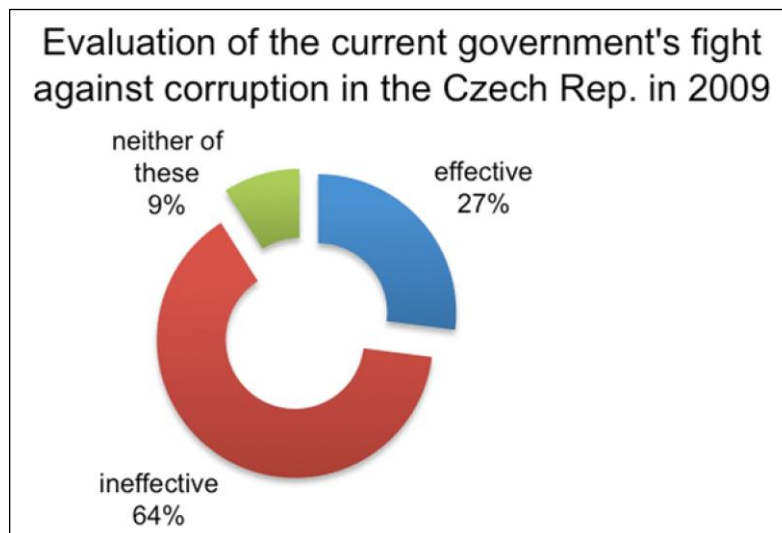
⁶² Pitera, J. *Nie mam walczyć z korupcją* (I do not have to fight against corruption – our translation), Dziennik.pl (15.10.2009), from http://dziennik.pl/polityka/article458961/Pitera_Nie_mam_walczyć_z_korupcja.html. (last visited July 15, 2011).

⁶³ See <http://www.transparency.org>.

The Czech Republic recently began a special programme based on the Government's Strategy on the fight against corruption for the period 2006-2011. This programme is based on three pillars: prevention, transparency and punishment. However, creating a strategy is one thing and calling it into action is another. The main achievement of the government in this matter so far was the adoption of the new Criminal Code. Currently some amendments are under way to improve the law and to link it with the anticorruption programme, as with for example the institution of a 'crown witness' or a 'anti-corruption agent provocateur'.⁶⁴

Furthermore there are some special institutions intended to fight corruption such as the special anti-corruption department of the police and an anti-corruption phone line that provides basic legal advice and qualified help to persons who are affected by corruption.

Despite the measures adopted to fight corruption, the situation has not changed considerably. According to the Global Corruption Barometer 2009, 27% of the Czech respondents (6% more than the Poles) think the measures are effective. However 64% of the Czech respondents (as against 43% of the Poles) are convinced that the anti-corruption measures are ineffective.

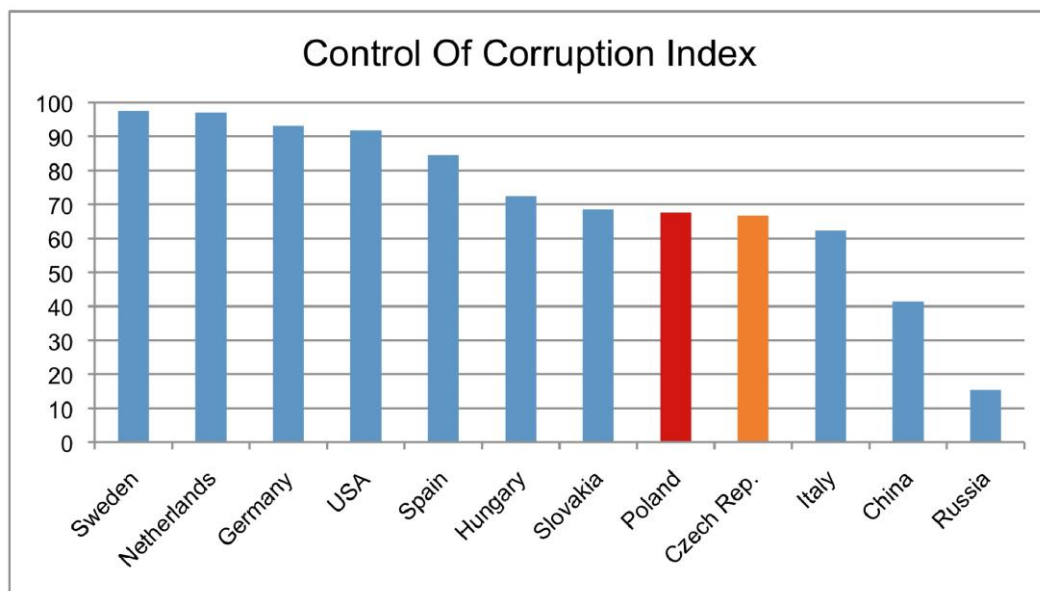


⁶⁴ The Article on the website of Ministry of Interior of the Czech Republic: July 15, 2011. <http://www.mvcr.cz/clanek/vlada-schvalila-protikorupcni-balicek.aspx>.

As in Poland, most political parties in the Czech Republic mention the fight against corruption in their election programmes. Corruption is an important argument in political dispute and Czech politicians present themselves as important fighters for a world without corruption. Unfortunately, in many corruption affairs politicians are involved.

II.4.1 THE WORLD BANK INDEX OF CONTROL OF CORRUPTION (WBI)

The World Bank has developed the Control of Corruption Index, which shows to what extent the phenomenon of corruption is dealt with in a country. In this index Poland scores 67,6 out of 100 while 100 means perfect control of corruption and 0 lack of this control. The Czech Republic has 66,7 points.⁶⁵ It means that both countries score a comparable index and that in both countries there still is a large sphere of corruption outside of the control of the state. However, their results exceed the average for their (common) income category, which is 59,9. To give a broader view, we present a comparison of Control of Corruption Index across selected countries.



⁶⁵ The website of the Word Bank: July 15, 2011. http://info.worldbank.org/governance/wgi/mc_countries.asp.

II.4.2 COMPARING POLAND AND THE CZECH REPUBLIC

Both Poland and the Czech Republic have instituted anti-corruption measures like special departments in the police (in both countries), anti-corruption phone line (in the Czech Republic) or a Central Anticorruption Bureau (in Poland). While in Poland legal institutions such as crown witnesses and the ‘controlled bribe (agent provocateur)’ already belong to the criminal law, in the Czech Republic their introduction is currently debated. In both countries the problem of corruption is widely exploited in pre-election fights among political parties. According to the researches developed by the World Bank, the level of the Control of Corruption is quite similar and not satisfactory. Finally, only 20 to 25% of the Poles and Czechs are optimistic about the effectiveness of anti-corruption measures undertaken by the authorities.

III. UNDERSTANDING THE HIGH LEVEL OF CORRUPTION

Above we have presented our findings on corruption in Poland and the Czech Republic and we have concluded that the legal regulation regarding corruption, the established institutions that fight corruption, the people’s perceptions of corruption, and the fight against corruption are by and large similar. The one difference that stands out between the two countries is the level of corruption, specifically bribery, itself. Corrected for the difference in population size, the level of bribery crimes in Poland is more than fifteen times as high as that in the Czech Republic. In § 4 we will try to find an explanation for this interesting and puzzling finding. In this paragraph however we will address the issue of the general high level of corruption in Poland and the Czech Republic. Since the actual level of corruption is empirically different from the perception of corruption, we distinguish the factors that contribute to both levels.⁶⁶

III.1. COMMON FACTORS CONTRIBUTING TO A HIGH LEVEL OF CORRUPTION

Among factors that conduce corruption and occur both in Poland and in The Czech Republic we have found especially the following: 1. almost fifty years of communism,

⁶⁶ McManus-Czubińska, C. et al. „Why is corruption in Poland “a serious cause for concern?”“ *Crime, Law and Social Change*. 41 (2004): 107-132.

2. political and economic transformation, 3. low average income, 4. mentality and tradition, 5. badly functioning laws and state institutions

Although these factors can be distinguished analytically, in reality they intermingle. Most of the time they reinforce each other. We describe them shortly in the next sections.

“A comparison of international data shows that the threat of bribery in Poland, like in the Czech Republic, is a few times higher than in Western countries, but significantly lower than in the former Soviet Union (except Estonia). Generally speaking, the post-communist countries are characterised by high level of corruption.”⁶⁷ Stalin and his disciples, usually against the will of the citizens in Russia’s satellite countries, enforced Communism as a political and economic system in half of Europe after the Second World War. Undergoing the power of this highly dysfunctional system for almost fifty years (1945-1989) had a great impact not only on economic development (which at the end of 1980s was catastrophic), but also on the mentality of the population. For instance, in the 1980s it was extremely difficult due to the bad economic situation, to obtain the most ordinary goods. Shops were empty. Therefore citizens learned that if they really wanted to get certain things, they must cope with this by themselves. As a result the black market prospered, as the network of unofficial relations did.⁶⁸ It was the same for other spheres of life during the communist period. Limited and centralised distribution made it necessary for people to have connections with members of the communistic party, to pay a bribe or ‘give a present’ to a clerk or public official, because it was often the only way to get an apartment, a grant for holidays, necessary documents, and more.⁶⁹ The communist period left its traces in the functioning of institutions and the mentality of the population. On the other hand, we would like to mention some other

⁶⁷ Kojder, A. *Korupcja i poczucie moralne Polaków*, p. 240 (see note 29); 4; MONITOROVACÍ PROGRAM OPEN SOCIETY INSTITUTE v rámci přípravy vstupu do EU, Monitoring procesu vstupu do EU: Korupce a protikorupční politika, OSI/EU Accession Monitoring Program, Praha, pp. 12, 16, 28 (2002).

⁶⁸ Klicperová-Baker, M. *Životní styl a kultura každodennosti v pozdním komunismu* (Lifestyle(s) and the Culture of Everyday life under Late Communism) The Czech Institute for the study of Totalitarian Regimes, <http://www.20yearsafter.eu/cs/> (last visited November 24, 2011).

⁶⁹ Tarkowski, J. „A centralized system and corruption: the case of Poland.“ *Asian Journal of Public Administration*. 10 (1988): 48-70.

common historical facts for the two countries. Both countries were not independent in the 18th and 19th century, but were part of larger empires (Poland of Russia, Bohemia of the Austrian and later Austrian-Hungarian Empire). Both states were also occupied by Germans during World War II. Finally, both accepted Christianity from the Roman Catholic Church. This prevented them from very formal and hierarchical relations both in religious and social structure that are described as contributors to dysfunctional, autocratic relations in Russia.⁷⁰

Political and economic transformation, as all periods of rapid change, brings instability and sometimes chaos, which function as accelerators of corrupt practices. The beginning of this period of transformation from communism to democracy and the liberal market ideology was characterized by a lack of criminal regulations concerning 'new' dishonest behaviour that started to occur in the new reality of free market, such as infringement of fair trading, different kinds of fraud, loan forgery etc.⁷¹ Above all, the process of privatisation of national companies seemed to be full of irregularities. There are some allegations that many 'irregularities' took place in the grey area of not-yet-regulated-yet not-fully-legal practices, which led to the formation of the network of corrupt connections between politicians, public officials, businessmen and even criminals that some people say exist until today. This also led to the blurring of boundaries between public and private sphere in post-communist states.⁷² Furthermore there was the lack of sufficient control and a tolerance of irregularities in the workings of the new state administration and public offices.

Poland and the Czech Republic are both countries with relatively low annual total personal income per capita in comparison with countries in Western Europe. Income statistics however show a relevant difference between the two countries. Poland scores US \$ 18.936 (in 2010), while the Czech Republic scores US \$ 24.896 in (2010).⁷³

⁷⁰ Kurkchiyan, M. „The Impact of the Transition on the Role of Law in Russia.“ *Explorations in Legal Cultures*. Eds. Bruinsma F. & D. Nelken. Amsterdam: Elsevier Juridisch, Reed Business, 2007, 75-94.

⁷¹ FRIČ, P. a kol. *Korupce na český způsob*, 1. vydání, G plus G, Praha, 1999, 124.

⁷² Kojder, A. *Korupce a pochybnosti morální Poláků*, p. 237 - 241 (see note 29).

⁷³ <http://www.imf.org/external/pubs/ft/weo/2011/01/weodata/weorept.aspx?pr.x=51&pr.y=11&sy=2008&ey=2011&scsm=1&ssd=1&sort=country&ds=.&br=1&c=935&s=NGDPD%2CNGDPDPC%2CPPPGDP%2CPPPPC%2CLP&grp=0&a=.and> <http://www.imf.org/external/pubs/ft/weo/2011/01/weodata/weorept.aspx?sy=2008&ey=2011&scsm=1&ssd=1&sort=country&ds=.&br=1&c>

Research shows that a low rate of national income positively correlates with high levels of corruption and that low living standards cause an increase in corruption-perception.⁷⁴

Although it is rather a vague term, researchers of Poland and the Czech Republic often refer to particular 'mentalities' of those societies and a tradition of certain 'doubtful' behaviours, such as giving 'presents' in return for a favour. Such mentality nurtures a social climate in which corruption feels at ease.⁷⁵ How deeply this mentality is rooted in people's mind shows a famous, controversial statement made by the former Polish Ombudsman, Janusz Kochanowski, in a radio interview in 2008. The Ombudsman declared: "Flowers or cognac is a gift out of gratitude for the doctor. This is a custom that exists in society. I gave one myself when my mother had an operation. I gave a Rosenthal cup because the doctor liked China."⁷⁶

The last important factor that conduce corruption in Poland and the Czech Republic are badly functioning laws and state institutions. An example of the first is the wide range of discretionary power in the hands of public officials.⁷⁷ This brings about all kinds of fraudulent behaviour by the population in order to obtain a desired administrative decision. An example of badly functioning state institutions is the Health Service in both countries. In these young democracies there is only one kind of national insurance which, in addition to insufficient financial measures, causes extremely long waiting lists to obtain the help of a doctor and all kinds of difficulties in obtaining proper medical care. It corresponds with the outcomes of statistics that show that health care is considered to be one of the most corrupted fields of social life.⁷⁸

=964&s=NGDPD%2CNGDPDPC%2CPPPGDP%2CPPPPC%2CLP&grp=0&a=&pr.x=59&pr.y=12. (last visited 24 November 2011).

⁷⁴ Hofstede, G., G. J. Hofstede & M. Minkov, eds. *Cultures and Organizations: Software of the Mind*. 3rd edition. New York: McGraw-Hill, 2010, 221-222.

⁷⁵ Kojder, A. *Korupcja i poczucie moralne Polaków*, p. 245 (see note 29). Public Opinion Research Center, *Korupcyjne doświadczenia Polaków oraz ich stosunek do łapownictwa*.

⁷⁶ *Janusz Kochanowski oburzył filiżanką Rosenthala*, www.tvn24.pl. (interview 9 January 2008; search for Kochanowski).

⁷⁷ FRIČ, P. a kol. *Korupce na český způsob*, 1. vydání, G plus G, Praha, 1999, 226.

⁷⁸ Izdebski, H. *Prawo administracyjne i konstytucyjne a korupcja*, Kojder, A. *Korupcja i poczucie moralne Polaków*, p. 237-238 (see note 29); The Article in the daily *Mladá Fronta Dnes* http://zpravy.idnes.cz/polovina-lidi-uplaci-lekare-nekteri-proto-aby-vubec-dostali-luzko-1ck-/brno.asp?c=A090824_1245696_brno_jag. (last visited July 15, 2011).

III. 2 FACTORS LEADING TO A PERCEPTION OF A HIGH LEVEL OF CORRUPTION

All factors mentioned above result in distrust of state institutions, public administration, public officials and politicians. There is still a conviction that one cannot do anything or settle one's case without having connections.⁷⁹ One of the consequence of this distrust is that there is also the perception of 'the problem of corruption' in Poland and the Czech Republic,⁸⁰ as was already shown in § 2. Other than the above factors we have found the following aspects to contribute to a perception of a high level of corruption: 1. problems with understanding the notion of 'corruption', 2. legal disinformation, 3. common impression that corruptive persons were not held responsible for their actions, mostly due to media coverage, 4. accession to the EU.

As is clear from § 2, corruption is an extremely broad and complex social phenomenon that comprises a wide range of different behaviours.⁸¹ This might be one of the reasons for ordinary people to misunderstand what exactly corruption entails, while for cultural reasons some behaviour is excluded from that categorization. For instance, a majority of Poles identify 'corruption' with bribery, while quite a large part of them is either unable to explain what 'corruption' means or they misinterpret the term. We believe that misunderstandings of what corruption entails may lead - together with other factors - to the perception that corruption is really a big problem.

Since Poland and the Czech Republic are still so-called young democracies, people's legal consciousness in these countries is still on a rather low level. This is not only caused by the past experience of the totalitarian system, but also by the lack of proper legal information provided to citizens. Some researchers specify for example: unclear and too complicated written information, lack of competent persons in public institutions to provide oral information, insufficient co-operation between

⁷⁹ Krzemień, M. *Wpływ dezinformacji na opinię publiczną w przedmiocie postrzegania zjawiska korupcji*. In: Raport o korupcji (2007)

⁸⁰ McManus-Czubińska, C. et al. „Why is corruption in Poland “a serious cause for concern”?”“ cit., 107-132.

⁸¹ e.g. *Co to jest korupcja?* Lokalna Grupa Społeczna OBYWATELE PRZECIW KORUPCJI; Tarkowski, J. *A centralized system and corruption: the case of Poland* (see note 70); FAQ about corruption, Transparency International website.

judicial authorities and NGO's. All these result in people feeling legally insecure, which adds to the perception of a high level of corruption.⁸²

The common impression is that corrupt persons, such as powerful businessmen and politicians, were not held responsible for their actions. Several factors may have lead to this impression. Usually only the beginnings of investigations and court trials are reported extensively by the media, while the process of the trials get much less attention. Further, many people do not know and understand the complicated legal procedures, trials are protracted and lose public attention, and finally corruption is difficult to prove while acquittals do set the tone that 'people get away with it'. This may also add to the impression that corruption must be ubiquitous.

We finally have a look on the relation between accession to the EU and the perception of a high level of corruption. Poland and the Czech Republic joined EU on the same date in 2004. What is interesting, while membership in EU may lead to an actual decrease in the level of corruption, its external moralising, the controls issued, and the publishing of corruption statistics (in which Poland and the Czech Republic do not score positively) can paradoxically cause an increase in 'perceptions, suspicions, and allegations of corruption'.⁸³

IV. UNDERSTANDING THE DIFFERENCE BETWEEN POLISH AND CZECH LEVELS OF CORRUPTION BY WAY OF LEGAL CULTURE

In § 3 we have indicated and described the most important factors we think relevant for understanding the level of corruption in CEE countries like Poland and the Czech Republic, and the popular impression that corruption is a real problem to be addressed. In this paragraph we will investigate whether it makes sense to distinguish the Polish from the Czech legal culture, and to analyse whether differences in legal culture may make the difference in the level of bribery understandable.

⁸² Krzemień, M. *Wpływ dezinformacji na opinię publiczną w przedmiocie postrzegania zjawiska korupcji*. In *Raport o korupcji* (2007); FRIČ, P. a kol. *Korupce na český způsob*, 1. vydání, G plus G, Praha, p. 151 (1999).

⁸³ McManus-Czubińska, C. et al. „Why is corruption in Poland “a serious cause for concern”?”“ cit., 107-132.

IV. 1 THE CONCEPT OF LEGAL CULTURE

Lawrence Friedman coined the concept of legal culture in 1975 and ever since it generated much discussion.⁸⁴ He defined it as ‘the ideas, values, attitudes and opinions, people in some society hold with regard to law and the legal system’ and loosely distinguished an ‘internal’ from an ‘external’ legal culture. Internal he called those ideas values etcetera ‘of those working as professionals in the magic circle of the law’; while the external legal culture can be found with the general lay public. For some research this analytical distinction is relevant, for example when legal professionals in some instances differ in values and practices compared to the general public and they have a chance to further these values and practices in the law and lawmaking process.

As said, the concept of ‘legal culture’ is not unproblematic. David Nelken, a specialist scholar on the concept of legal culture, defines legal culture as “relatively stable patterns of legally oriented social behaviour and attitudes”.⁸⁵ Nelken identifies at least three problems. First is the question of the unit to look at, for example the nation state, a local group, the global scale etcetera. A ‘cultural unit’ always needs to be demarcated and this inevitably has empirical consequences. Second is the problem of internal coherence of practices and values in that demarcated unit. No one unit is ever fully coherent; there are always ‘outsiders’ or groups of people with a different opinion etcetera. The analytical problem is to treat the unit as a ‘culturally consistent whole’ while at the same time accepting, within certain limits, internal differentiation in value orientation. The third problem is whether the concept of legal culture can be used as explanatory, begging the question what the explanation may entail other than “ideas, values, attitudes and opinions”. In other words, are we using the concept in such a way that the legal culture explains the legal cultural traits of a particular cultural unit? In our view, the concept of legal culture has much more value in using it in the interpretative tradition of sociology. We understand the concept of legal culture as a holistic, interpretative focus that takes seriously the rules, principles and

⁸⁴ Friedman, L. M. *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation, 1975.

⁸⁵ Nelken, D. „Three Problems in Employing the Concept of Legal Culture.” *Explorations in Legal Cultures*. Eds. Bruinsma F. & David Nelken. Amsterdam: Elsevier Juridisch, Reed Business, 2007, 11.

values of a legal system, the patterns of behaviour supportive or subvertive of that system, and the attitudes toward that system and those patterns of behaviour. For us legal culture directs attention to the 'holistic whole' of a unit's law and legally relevant behaviour. It is a way to be more inclusive than a narrow focus on just the legal system, while eschewing the sociological tradition of the 'gap' between law in the books and law in action. The focus is more like in anthropology to understand 'from the inside out' or 'holistically' what a legal culture 'is about', its 'worldview' so to speak.⁸⁶ Since most data on corruption is on countries, we take the nation states of Poland and the Czech Republic as our units of analysis. This pragmatic choice is in line with the research of Hofstede, Hofstede and Minkov that we use for the cultural dimensions of nation states.⁸⁷ We realize that national cultures are not internally homogenous and will address that problem when necessary. We do assume that somehow, despite internal differences and contests over values and practices, a legal culture 'hangs together' and the parts in certain ways can be seen to make up a 'whole'. For example, despite many similarities most people recognize and acknowledge that there are differences between a French and a Dutch way of dealing with law.

IV. 2 DIMENSIONS OF CULTURES IN THE CONCEPT OF LEGAL CULTURE

We have defined our concept of legal culture as a holistic, interpretative focus that takes seriously the rules, principles and values of a legal system, the patterns of behaviour supportive or subvertive of that system, and the attitudes toward that system and those patterns of behaviour. In this article we have 'filled' it with information concerning corruption, especially bribery: We have described the rules, principles and values of both country's legal systems, and we have described the patterns of behaviour supportive or subvertive of that system by having assessed the levels of bribery and also the perceptions of corruption. We have also, on the level of CEE countries in general, described the cultural attitudes toward the legal system and the patterns of behaviour concerning corruption, and the historical and economic factors that contribute to a relatively high level of corruption. To analyse the

⁸⁶ See Geertz, C. *Local knowledge: further essays in interpretive anthropology*. New York: Basic Books, 1983.

⁸⁷ Hofstede, G., G. J. Hofstede & M. Minkov, eds. *Cultures and Organizations: Software of the Mind*. 3rd edition. New York: McGraw-Hill, 2010.

differences in the level of bribery between the two countries we want to look at national differences in attitudes between Poland and the Czech Republic. For this we will use the research of national cultural differences been done by Hofstede, Hofstede and Minkov. Since the third edition they distinguish six cultural dimensions. These dimensions relate to national differences. The empirical research for these dimensions is based on survey questions to a sample group of people that were similar in social class and employment position. The sample group worked at IBM, and only differed in their nationality.⁸⁸ Analysis of the surveys showed that six dimensions of national cultures stood out: the power distance index (PDI), the individualism vs. collectivism index (IDV), the masculinity-femininity index (MAS), the uncertainty avoidance index (UAI), the long term vs. short term orientation index (LTO), and the indulgence vs. restraint index (IVR).

When we take a look at the indexes for Poland and the Czech Republic, we find the following:

- The power distance index (PDI) for Poland is 68 (rank 27-29 out of 76 countries), while for the Czech Republic it is 57 (rank 43-44). The PDI refers to “the extent to which the less powerful members of institutions and organizations within a country expect and accept that power is distributed unequally”.⁸⁹ We conclude that both countries accept unequal power divisions and that the PDI does not differ significantly to use it to explain national differences in the level of bribery.

- The individualism index (IDV) for Poland is 60 (rank 23-26 out of 76 countries), while for the Czech Republic it is 58 (rank 28). The index refers to the individualism side to “societies in which the ties between individuals are loose: everyone is expected to look after him- or herself and his or her immediate family”. The collectivism side refers to “societies in which people from birth onwards are integrated into strong, cohesive in-groups, which throughout people’s lifetime continue to protect them in exchange for unquestioning loyalty”.⁹⁰ Both countries are on the upper half of individualist countries. Again we have to conclude that the IDV

⁸⁸ Actually the IBM research was the starting point. Later on other surveys like the Chinese Value Survey were included. See HHM 2010, chapter 2 and chapter 7.

⁸⁹ Hofstede, G., G. J. Hofstede & M. Minkov, eds. *Cultures and Organizations: Software of the Mind*. cit., 58, 61.

⁹⁰ See note 90, p. 92, 96.

differences between Poland and the Czech Republic are not significant, and thus cannot be part of the explanation.

- The masculinity index (MAS) for Poland is 64 (rank 14-16 out of 76 countries), while for the Czech Republic it is 57 (rank 25-27). The MAS index refers to societies being masculine “when emotional gender roles are clearly distinct: men are supposed to be assertive, tough, and focused on material success whereas women are supposed to be more modest, tender, and concerned with the quality of life. A society is called feminine when emotional gender roles overlap”.⁹¹ Poland is a slightly more masculine society as compared to the Czech Republic. The difference however is not that large.
- The uncertainty avoidance index (UAI) for Poland is 93 (rank 9-10 out of 76 countries), while for the Czech Republic it is 74 (rank 34). The UAI refers to “the extent to which the members of a culture feel threatened by ambiguous or unknown situations”.⁹² This time, we feel the difference between the two countries is not insignificant. The difference means that people in Poland compared to people in the Czech Republic feel relatively more nervous stress and have more need for predictability in the form of written and unwritten rules.
- The long-term orientation index (LTO) for Poland is 38 (rank 51-54 out of 93 countries), while for the Czech Republic it is 70 (rank 18-19). “Long term orientation stands for the fostering of virtues oriented toward future rewards - in particular, perseverance and thrift. It’s opposite pole, short-term orientation, stands for the fostering of virtues related to the past and present - in particular, respect for tradition, preservation of ‘face’, and fulfilling social obligations.”⁹³ Again, the difference between the countries is significant. The difference means that people in Poland (being more short-term oriented) compared to people in the Czech Republic (being more long-term oriented) tend less to take context and circumstances into account when assessing ‘good’ versus ‘evil’ behaviour. The poles tend to believe stronger in universal guidelines, tend to value prison sentences over rehabilitation, and tend to be more fundamental (as opposed to pragmatic) in law and legal practice.⁹⁴

⁹¹ See note 90, p. 140-143.

⁹² See note 90, p. 191-194.

⁹³ See note 90, p. 239.

⁹⁴ See note 90, p. 248, 275.

- The sixth and final is the indulgence versus restraint index (IVR). Poland and the Czech Republic both score 29 (rank 67-69 out of 93 countries). "Indulgence stands for a tendency to allow a relatively free gratification of basic and natural human desires related to enjoying life and having fun. Its opposite pole, restraint, reflects a conviction that such gratification needs to be curbed and regulated by strict social norms."⁹⁵ People in both countries tend to have a similar 'regulating' attitude toward having and showing fun and enjoyment.

IV. 3 UNDERSTANDING DIFFERENCES IN THE LEVEL OF BRIBERY IN RELATION TO THE INDEXES

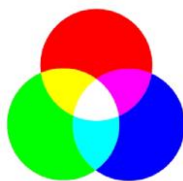
Interestingly, the indexes of Hofstede, Hofstede and Minkov for the two countries show that only the uncertainty avoidance index and the long-term orientation index are different. We have noticed that the level of bribery crimes in Poland is more than fifteen times as high as that of the Czech Republic. Poles in comparison to Czechs tend to like clearer rules and unambiguous rule application and enforcement (UAI), and tend to be more fundamental and strict in assessing the rights and wrongs of behaviour ('rules are rules') while disregarding the context and circumstances (LTO). We believe that the difference in value attached to the nature of legal rules and their application and the value difference concerning context and circumstances, to account for the difference in the level of detected bribery.

We do not mean to say that we should only focus on these two indexes in order to understand the differences in bribery, and that these indexes always and unequivocally point in one direction. We firstly need always look at the combination of the indexes for a country to assess the overall culture and legal culture of that country. Indexes after all may partly work against each other, cancel each other out, or to the contrary reinforce each other. For example, the Netherlands show a high index for Individualism and a very low index for Masculinity, meaning the value of individual rights and taking care of oneself go hand in hand with the value of care for others and the environment. In the Netherlands this tension between values may have resulted in the social welfare state, but only because other circumstances were

⁹⁵ See note 90, p. 281.

also supportive to that development. In the case of Poland and the Czech Republic with their scores for UAI and LTO, both indexes reinforced each other.

Second, other cultural and historical factors also need to be taken into account. For CEE countries, these are the factors and circumstances that we have described in § 3. Especially the difference in economic wealth, Poland being the poorer country of the two, may contribute to a higher level of corruption (though not 15 times as high). Together with the values and tendencies of the indexes, they ‘drive’ a legal culture into a certain direction. Metaphorically speaking the indexes in our view work as a sort of ‘black holes’ or ‘gravitation fields’ that ‘pull’ a legal rule or the application of it into its direction. But since there are several of these gravitation fields around, of different strength, the pulling force of one field over another may differ, while that force also depends on all the other (cultural and historical) objects around. Another metaphor that according to us catches the meaning of the indexes of the work of Hofstede, Hofstede and Minkov is that of the Red-Green-Blue chart for colours.



The mix of certain amounts of ink or paint of the three basic colours, makes for a specific ink or paint as end result, same as the specific mix of indexes of a country together with other cultural and historical circumstances, makes for a specific legal culture in which certain legal practices tend to fit in better than in other legal cultures. In the case of the higher level of bribery in Poland compared to the Czech Republic, we conclude that it does ‘fit in’ with Polish legal culture. In Polish legal culture the application in practice of the legal rules concerning corruption is more strict, less ambiguous, more fundamental, and less with an eye for context and circumstances. This general cultural trait leads to law enforcement officers that adhere stricter to the law, and thus to a higher level of detected bribery compared to the Czech Republic.⁹⁶

⁹⁶ Qualitative research would be necessary, especially (participant) observation in law enforcement agencies and in depth interviews with key players in the field, to validate this explanation.

V. CONCLUSION

Our socio-legal research made clear that Poland and the Czech Republic – not surprisingly when we consider the common historical and cultural background – share a lot of features when it comes to corruption. The general level of corruption in Central and Eastern European states is higher than in the western parts of Europe. CEE countries like Poland and the Czech Republic, certainly after the fall of the wall in 1989 and with the prospect of entering the European Union, took the fight against corruption seriously. New laws were enacted, new campaigns were set up, and the fight against corruption was taken up with vigour. Both nations have a similar socio-cultural history. Their origin goes back several hundreds of years, they were part of a larger empire after the 18th century, they were part of the communist block in the 20th century, they were occupied by Germany during the Second World War, and both made the transition to capitalism after the fall of the Berlin wall in 1989.

The level of detected bribery crimes however differs greatly. Corrected for population size, Poland has a fifteen times higher level of detected bribery than the Czech Republic. There may be different explanations for this divergence. It may be that Poland shows a higher level of bribery crimes, so it would make sense that more crimes are detected. However, the perception of corruption does not differ greatly, so it is safer to assume that the actual level of bribery crimes does not differ that much. Another explanation is that the crime of bribery is registered differently in the Czech Republic, so that many bribery crimes end up under a different heading. We have found no signs however that this might be the case. According to us, a reasonable explanation for the high level of detected bribery in Poland compared to the Czech Republic is that enforcement agencies deal with it in a different, more serious, fundamental, and strict way. They do this because this kind of enforcement fits in with Polish legal culture, of which the general cultural traits of Polish culture regarding uncertainty avoidance and long-term orientation are part and parcel.