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Editor-in-chief: Valts Kalniņš

Authors in alphabetical order: Linda Austere
Jānis Ikstens
Inese Voika

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Contents

Tables

Abbreviations

CC – Criminal Code
CL – Criminal Law
CPC – Criminal Procedure Code
CPCB – Corruption Prevention and Combating Bureau
NDI – National Data Inspectorate
OSI – Open Society Institute
SC – Supreme Court
SRS – State Revenue Service
TI – Transparency International
WB – World Bank
WEC – World Economic Forum

Preface

Where corruption is concerned, in mid-2006 Latvia still found itself in the shadow of the Jūrmala bribery scandal. Two important questions remained unanswered: Will at least some of those involved in the affair receive their deserved punishment? Will the political parties associated with corruption be held politically accountable in the elections to the 9th *Saeima*? The answer to the first question is largely in the hands of the judiciary. The question of corruption in the political parties, however – its causes in Latvia, and the chances of reducing it by way of elections – lends itself much better to analysis.

2006 is a *Saeima* election year. It is therefore important that voters understand how to use their vote in the elections to 9th *Saeima* to force political parties and their leaders to more integrity in the future. There are no major political parties in Latvia which have not been involved in corruption or whose politicians (at least some) have not come under a greater or smaller shadow of suspicion. This is why, in these elections, it will unfortunately be impossible for the voter to apply a simple guideline: not to vote for parties suspected of corruption, but for those whose reputation does not raise the slightest bit of doubt. The voter whose main concern is less corruption will be faced with a more complicated task, will have to try to establish which party has the greater number of candidates whose integrity cannot be questioned.

In this issue of *Corruption ºC*, Inese Voika takes a look at the practical chances of reducing corruption in a broader context. She concludes: "In order to prevent a crisis of trust between the people and the administration, it is necessary to continue the reforms initiated by the government and CPCB to reduce political corruption. However, attention should also be paid to those areas of public life over which the public administration has no direct authority: for example, the media, non-governmental organizations and the private sector. Surveys should also be done on the elite to determine the attitudes of politicians to their role in society. The possibility that individual politicians might change the overall picture of political corruption in Latvia by taking well-considered, professional steps that do not rule out public participation cannot be excluded from the "menu" of political changes." These politicians are the ones whom the voters will have to pick out from the array of candidates running for election in October.

Political accountability potential is also linked to causes, which could explain the relatively high level of corruptibility among political parties in Latvia. Widespread political corruption is probably not caused by the simple fact that the "wrong" person has managed to get appointed to a certain position, or that one or the other law has certain flaws. Explanations must also be sought in the political system, the structure of the economy and society in general. Other factors that play a role in Latvia are limited political competition, the insufficient capacity of companies to compete in the global market, and the incapacity of law enforcers and the public to force political parties to comply with party funding regulations. These are the factors that Jānis Ikstens analyzes in this report.

As usual, *Corruption ºC* not only looks at the new developments of the past six months, it also explores corruption trends over a longer period of time and signs of systemic changes in administration and politics which are important for the prevention of corruption. One of the most important instruments in the fight against corruption in public institutions is transparency. However, implementation of this seemingly simple principle is confronted with a series of difficulties at a time when the functions of public administration are being increasingly delegated to the private sector and the obligation to ensure transparency includes making information about private individuals accessible to the public. These legally complex problems which are nevertheless important for the prevention of corruption are analyzed by Linda Austere.

Valts Kalniņš
Corruption ºC, Editor-in-chief

1. Combating Corruption. Facts: the First Six Months of 2006

This chapter summarizes the major developments connected with prevention or combating of corruption. In the first half of 2006, the loudest incidents were the scandals over publication of the transcripts of telephone conversations about bribery in connection with the election of the Jūrmala mayor and a lawyer's explanations about the need to give bribes to various officials in the judicial system. At the same time, legislators in Latvia have been unusually active in improving existing laws and regulations and drafting new bills that directly or indirectly affect corruption prevention.

During the period under review, relations between CPCB Director Aleksejs Loskutovs and the Bureau's overseer Minister President Aigars Kalvītis remained tense. On April 18, A. Kalvītis imposed a disciplinary sanction – a reprimand – against A. Loskutovs for hesitating to carry out the Minister President's orders to reinstate the head of the CPCB Investigations Department, Ilmārs Bode. A. Loskutovs has filed an appeal against the sanction. At the end of June, A. Kalvītis again initiated disciplinary action against the CPCB director following a complaint from prosecutor Aldis Pundurs at the Major Cases Division of the Prosecutor General's Office that CPCB had persistently neglected to act on a request for information from the Prosecutor General's Office.

On April 24, CPCB made public the results of its audit of the 2005 municipal election declarations submitted by the political parties, concluding that several parties had failed to observe the requirements of the law. The 2005 municipal elections were the first ones to take place after the Law on Financing of Political Organizations (Parties) had prohibited donations to political parties from legal persons and set limits on campaign expenses. The main violations disclosed by CPCB were:

- of the 52 political parties that ran in the 2005 municipal elections, nine had exceeded the limits on campaign expenditures for a total of 105,482.95 LVL;
- administrative action was taken against 25 political parties for providing false information in their declarations (against 9 of these, for also failing to

comply with limits on campaign expenditures), and fines for a total amount of 42,810.39 LVL were imposed;

- administrative action was taken against 11 political parties for failing to submit their declarations in due time, and fines for a total of 3,100 LVL were imposed.

The remainder of this chapter lists the criminal investigation materials that CPCB has handed over to the prosecution in the first six months of 2006 for initiation of criminal proceedings. It also lists the information released by the Prosecutor's Office on the indictment of public officials for criminal offenses committed in office and on criminal cases that have been committed for trial. The chapter concludes with new developments in legislation (including CPCB initiatives, and Cabinet and *Saeima* resolutions).

Materials submitted by CPCB for initiation of criminal proceedings[1]

This section lists only the investigations of criminal offenses committed by public officials which have been carried out by CPCB; it should be kept in mind, however, that other law enforcement authorities also process such cases.

January 4. Materials on a criminal case initiated on May 17, 2005 against a Riga Traffic Police official for abuse of office and a State Agency for Addiction employee for forgery of documents in connection with an alcohol test were handed over to the Prosecutor's Office for criminal prosecution.

March 3. Investigation materials were handed over to the Prosecutor General's Office for criminal prosecution of a businessman for bribery and a private individual for intermediation in bribery. The businessman had offered a bribe of 50,000 LVL to a CPCB official for illegitimately intervening on his behalf in a criminal case being processed by another law enforcement agency and for making sure that CPCB would do nothing to disclose the criminal offenses committed by the businessman. The businessman had been apprehended after delivering part of the bribe – 10,000 LVL.

March 8. Investigation materials were handed over to the Prosecutor General's Office for criminal prosecution of a private individual for misappropriation of a bribe. The individual had solicited the bribe, allegedly on behalf of a public official (a certified bailiff, in order that the bailiff refrain from performing his duties), but had then kept the bribe for himself.

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[1] This information has been taken from a report prepared by CPCB for the Cabinet of Ministers and the *Saeima* on the activities of the Corruption Prevention and Combating Bureau in the period from January 1 – June 30, 2006. By the time that *Corruption ºC* is published, the full report will probably be available on the Internet.

March 9. Investigation materials were handed over to the Prosecutor's Office for criminal prosecution of a private individual for misappropriation of a bribe. Person O. had placed an ad on the Internet, offering to act as intermediary in the unlawful procurement of a driver's license for a payment of 600 LVL. The bribe was allegedly intended for a public official, but O. had in fact kept the bribe for himself. O. was apprehended after receiving part of the bribe – 300 LVL.

March 17. Investigation materials were handed over to the Prosecutor General's Office in connection with the lease of real estate in Mežaparks, currently in the possession of the Ministry of Education and Science. The CPCB investigator has advised prosecution of the former Ministry of Education and Science state secretary for abuse of functions and prosecution of the ministry's jurist for inaction. In December 2004, the ministry's former state secretary had signed a contract with *SIA Studiju Centrs* for lease of the state-owned property in Mežaparks for a sum clearly disadvantageous to the state and in disregard of regulatory enactments on determining rental rates.

March 20. Materials from a criminal investigation that was launched on December 30, 2005 were handed over to the Prosecutor's Office for the initiation of criminal proceedings against three persons in connection with bribery. The CPCB investigator has advised prosecution of two Riga City Police Department officials – a head of department at the Economic Police Department for soliciting and attempting to accept a large bribe, and the senior desk officer at the Administrative Department for intermediation and attempting to accept a bribe – as well as prosecution of an attorney – at law for intermediation and misappropriation of a bribe. A bribe of 19,500 LVL was demanded from a company through the attorney for allowing it to dispose unhindered of "frozen" (blocked) financial assets in the amount of 64,000 LVL. The attorney had been one of the intermediaries in the bribery. He had kept part of the bribe for himself and handed over the remainder to the other intermediary, the police official.

April 11. Materials from a criminal investigation launched in October 2005 were handed over to the Prosecutor General's Office for prosecution of three persons in connection with a bribery case at the Valmiera Naturalization Board (NB). An NB official had committed abuse of office by facilitating a favorable decision regarding the results of a test taken by M. to obtain Latvian citizenship by naturalization and had received illegal remuneration for this through two intermediaries. The chief of staff of the Riga Municipal Police (RMP) had offered to take the naturalization test at the Valmiera NB in place of M. for a payment of 500 LVL. The RMP chief of staff and a private individual had acted as intermediaries in delivering the bribe to the NB official, each keeping part of the money intended for the NB official. CPCB has advised prosecution of the Valmiera NB official for acceptance of a bribe, the RMP chief of staff and the private individual for intermediation in bribery and misappropriation of part of the bribe.

April 28. Materials from a criminal investigation launched in early April 2006 were handed over to the Prosecutor's Office for prosecution of a Riga City Police Criminal Investigations Department inspector for soliciting and accepting a

bribe. The inspector had demanded a 2,000 LVL bribe for ending a criminal investigation into a traffic accident. The inspector was apprehended after receiving part (500 LVL) of the bribe.

May 3. Materials from a criminal investigation launched on March 24, 2006 into the bribery of a criminal inspector were handed over to the Prosecutor's Office for initiation of criminal proceedings. During a police investigation, private individual L. had offered and subsequently delivered a 400 LVL bribe to a Riga City Police Criminal Investigations Department inspector for acting in violation of the law in the interests of the briber. KNAB has advised prosecution of the private individual for bribery.

May 12. A criminal case initiated on June 6, 2005 under CL Section 320 (Passive bribery), Paragraph 1; Section 323 (Active bribery), Paragraph 1; Section 322 (Intermediation of a bribe), Paragraph 1 was handed over to the Prosecutor's Office for the initiation of criminal proceedings for unlawful acts committed by the head of the Alcohol and Drug Screening Department at the State Agency for Addiction when testing a driver for alcohol, and for delivering a bribe to a Riga Traffic Police officer.

May 12. Investigation materials were handed over to the Prosecutor's Office for initiation of criminal proceedings against a former *Vaivari* National Rehabilitation Centre chairman of the board for violation of restrictions imposed on public officials and abuse of functions. From January 2001 to October 2005, the suspect had acted in violation of the law, singly making decisions in regard to his own person, i.e., issuing orders and giving himself a bonus salary over and above his regular salary, thus causing damages to the State in the amount of 82,204.60 LVL. As to the abuse of functions: in December 2004, at a shareholders' meeting of *SIA Sportrehs*, he had voted for increasing the private company's share capital, thus diminishing the value of the National Rehabilitation Centre's shares.

May 17. CBCP handed materials over to the Prosecutor General's Office for the initiation of criminal proceedings against the chairman of the Ventspils City Council and chairman of the board of the Ventspils Freeport Authority. As a public official in a responsible position, he had abused his office and the authority granted him by the Law on Local Governments, i.e., had acted against the public interest by deliberately and purposely failing to carry out the Cabinet's Instruction on the Appointment of O. Grīnbergs as Member of the Board of the Ventspils Port Authority.

May 19. Investigation materials were handed over to the Prosecutor General's Office for initiation of criminal proceedings against a certified bailiff working with the Riga Regional Court for abuse of office. The bailiff had committed deliberate abuse of office by seizing the movable property (money in bank accounts) of a third person in violation of the Law on Civil Procedure and the Commercial Law. This has had serious consequences for a third person, a joint-stock company, i.e., financial losses of over 7,000 LVL have been inflicted and the company's rights and interests have been injured.

June 2. Investigation materials were handed over to the prosecutor's office for the initiation of criminal proceedings against a private individual at the Central Prison for the illegal possession of narcotics.

June 5. CPCB advised that legal action be taken against a Ministry of the Interior official and a company official for criminal offenses committed in connection with public procurement for the needs of the Ministry of the Interior in 2001. Uniforms made of fabric that failed to meet the requirements set out in the tender documents had been purchased for the agencies under the jurisdiction of the ministry. A company official, abusing his powers and using false documents, had with avaricious intent deceived the ministry's officials. It had come to the knowledge of the tender commission's chairman that the test results for the fabric submitted by the company had been manipulated. Nevertheless, he had done nothing to forestall the damage. The CPCB investigator advised that the Ministry of the Interior official be prosecuted under CL Section 319 (Inaction of a public official), Paragraph 1, and the company official under CL Section 275 (Forgery of a document, seal or stamp, and sale or use of a forged document, seal or stamp), Paragraph 2, and CL section 196 (Abuse and overstepping of powers), Paragraph 2.

June 12. Investigation materials were handed over to the Prosecutor's Office for initiation of criminal proceedings against a bailiff working with the Riga Regional Court for abuse of office. The bailiff had taken action against a debtor in the territory of another precinct, i.e., a territory beyond the precinct served by the bailiff, thus violating the rules set out in a number of legal enactments on carrying out professional functions in precincts that do not correspond to the address of the debtor. This had had serious consequences: damage exceeding 80,000 LVL and infringement of the debtor's interests and rights.

Information Released by the Republic of Latvia Prosecutor's Office on the Progress of Corruption Cases (Indictment, Committal for Trial)[2]

The information provided here is only the information that can be found on the Internet website of the Prosecutor's Office. This information does not give a comprehensive picture of the situation as regards all indictments and cases taken to court for criminal offenses committed in the public service during the period under review.

February. The prosecutor of the Major Cases Division of the Criminal Justice Department at the Prosecutor General's Office has completed pretrial investigation and committed for trial a criminal case initiated for bribery of a public official – a Jūrmala councilman. The prosecutor has initiated criminal prosecution of four persons: Germans Milušs, Leonīds Lasmanis, Juris Hlevickis and Gvido

[2] Data taken from the Internet website of the Republic of Latvia Prosecutor's Office.

Harijs Volbrugs, charging them with active bribery committed in a group, by previous agreement.

March. The prosecutor of the Major Cases Division at the Prosecutor General's Office has charged Valērijs Vasiļjevs under CL Section 323, Paragraph 1, with offering a 50,000 LVL bribe to a public official – a CPCB employee – for putting an end to a criminal investigation conducted by CPCB and a criminal investigation conducted by the Office of the Special Prosecutor for Organized and Other Crimes. V. Vasiļjevs was apprehended on January 25, 2006 after having handed over part of the bribe – 10,000 LVL – to the CPCB employee (see also March 3 on page 8).

March. The prosecutor of the Major Cases Division at the Prosecutor General's Office has committed to the Riga Centre District Court a criminal case in which the jurist of the Riga City Council, Ilona Seipulova, is charged with inaction in legal proceedings over property rights to the *Ave Sol* Concert Hall, which has resulted in serious consequences for the Riga City Council.

May 25. The prosecutor of the Major Cases Division at the Prosecutor General's Office has brought charges against former Latgale District Court judge, Diāna Mašina, for knowingly making unlawful decisions and for abuse of office.

May 26. The prosecutor of the Major Cases Division of the Criminal Justice Department at the Prosecutor General's Office made a decision to prosecute the chairman of the Ventspils City Council, Aivars Lembergs, for criminal offenses under CL section 318, Paragraph 2, and CL Section 298, Paragraph 2 (the so-called case of the appointment of O. Grīnbergs, see also May 17 on page 10).

June. The prosecutor of the Major Cases Division at the Prosecutor General's Office has initiated criminal proceedings against certified bailiff Guntis Pukjans under CL Section 318, Paragraph 2, for abuse of office: as a public official, G. Pukjans had deliberately performed acts inconsistent with the interests of public service, thereby causing substantial financial losses and other severe damage to personal rights and interests which are protected by law.

June. The prosecutor of the Major Cases Division at the Prosecutor General's Office has brought charges against two persons for performing illegal acts in connection with a tender for the procurement of uniforms for Ministry of the Interior agencies. In order to obtain a public contract, the director and sole owner of a company had committed criminal offenses under CL Section 196, Paragraph 2, and CL Section 275, Paragraph 2. Charges have also been brought against the head of the Ministry of the Interior Facilities Management and Procurement Department for failure to perform official duties (CL Section 319, Paragraph 2). Said person had been neglectful of his duties in connection with the tender: had carelessly checked the documents submitted by the bidders and carelessly supervised the work of the tender commission. Due to careless examination of the tender documents, the commission had failed to establish during evaluation of the bids that the bidder had submitted false documents (see also June 5 on page 11).

Legislation

February 16. In its final reading, the *Saeima* adopted amendments to the Criminal Law, which allow criminal punishment for the acceptance of undue advantages by, for example, doctors and teachers, including those employed in the private sector. The new wording of CL Section 198 (Acceptance of undue advantages), Paragraph 1 prescribes liability for corruptly (i.e., deliberately and with improper motive) soliciting and accepting advantages of financial or other nature when this is done in abuse of authority by the employee of a company or organization, or through an intermediary, or by such person as is authorized by law or legal document to deal with the affairs of another person, for acting or refraining to act in the interests of a person promising such advantages, regardless of whether the accepted advantages are intended for this or any other person. The prescribed punishment is confinement for a term of up to three years, community service, or a fine of up to 80 minimum salaries. The new CL Section 326 also establishes as a criminal offense the illicit solicitation and acceptance of an undue advantage by a government or local government employee who is not a public official.

March 2. The *Saeima* adopted amendments to the Standing Orders of the *Saeima*, which supplement this document with a code of ethics for parliamentary deputies. The purpose of the code is to set high standards of conduct and to thus increase public confidence in the *Saeima*. The code comprises 20 rules: for example, in public statements a deputy shall avoid words, gestures or other actions that could be offensive and shall not express himself in a way that is insulting or unworthy of the Saeima; a deputy shall not permit conflicts of personal and public interest and avoid situations that could raise suspicions about the existence of such conflicts, etc.

March 9. The Meeting of State Secretaries reviewed and resolved to forward the CPCB draft of the Law on Leasing of State and Local Government Property. At present, this is not regulated by a special law: there are no clear rules of procedure, no transparency principles, and no criteria for selecting contenders. The purpose of the law is to establish clear regulations. It will set out the rules for leasing state and local government property: methods of granting leasehold rights, procedure for reaching decisions on leasing of property, posting of information about property and leasing conditions, principal requirements for potential bidders, identification of the persons in charge of leasing properties, and restrictions on members of the leasing committee.

April 6. The *Saeima* adopted the Law on Public Procurement. In an anticorruption context, this is an important law because public procurement must be considered as one of the major corruption risk zones. During parliamentary debates on the bill, concern was expressed over the fact that the provisions of the law would only be applied to procurements valued over 10,000 LVL. This would increase the risk of corruption in the case of purchases which are individually lower in value, but which add up to substantial amounts. The law adopted in the final reading empowers the Cabinet of Ministers to lay down the rules for

procurement of goods and services for amounts of less than 10,000 LVL, but more than 1,000 LVL.

April 13. The Meeting of State Secretaries announced the Bill on the Prevention of Conflicts of Interest drafted by CPCB, which is supposed to replace the current Law on Prevention of Conflicts of Interest in the Acts of Public Officials. According to the official annotation, the new law anticipates clearer definition of the terms used in the law: the term "office," for example, has been more precisely defined. The law has been supplemented with new terms: e.g., the term "work of a pedagogue" is explained. Restrictions on decisions made or action taken by public officials in respect of relatives have been supplemented to include in-laws with the argument that a public official's personal interests as regards a spouse's parents, grandparents, brothers and sisters cannot be considered as lesser than an official's interests as regards his or her own relatives. In the new law, the conditions under which a public official may hold more than one job have also been amended, allowing any public official to combine public office with a job in an association, foundation, political or religious organization and the Home Guard, provided this is not in conflict with other restrictions prescribed by the law. The term "gifts" that a public official is allowed to accept has been more precisely defined, as are the cases in which gifts may be accepted. The new law includes provisions that will make it the clearly stated obligation of every public official to report possible conflicts of interest and other cases of corruption. It also anticipates a system for protecting public officials who report such cases.

April 13. The Meeting of State Secretaries announced rules drafted by CPCB for accepting, registering, evaluating, using and redeeming gifts that a public official is allowed to accept. These Cabinet of Ministers regulations should be adopted in concordance with the Law on Prevention of Conflicts of Interest. The Cabinet regulations would lay down the rules for accepting, registering, using, and redeeming the gifts permitted by the Law on Prevention of Conflicts of Interest, for dealing with gifts unlawfully accepted by public officials, and for securing the work of ethics committees to monitor adherence to restrictions on the acceptance of gifts.

April 20. The Meeting of State Secretaries announced amendments drafted by CPCB to the Administrative Offenses Code, which anticipate a new wording for the section on Administrative Offences in Corruption Prevention. The amendments prescribe the liability of public officials for failing to report the conflicts of interest of other officials, and the liability of the heads of public institutions or the persons or institutions authorized by such for failing to guarantee the protection of officials reporting the conflicts of interest of other officials.

May 11. The *Saeima* rejected amendments to the Law on Campaigning for *Saeima* and European Parliament Elections. The initial intention was to prohibit political campaigning and advertising by political organizations, associations of political organizations, or individual candidates during a period of 90 days prior to elections. Inasmuch as the Law on Election Campaigning that was passed in the first reading on September 8, 2005 has not yet been adopted, there are still

a large number of unresolved issues: the regulation of hidden advertising, disclosure of advertising rates for campaign advertising, campaigning financed by third parties, etc.

May 11. The *Saeima* referred the draft Law on Service Pensions for Corruption Prevention and Combating Bureau Officials to the parliamentary committees. The reason for the law is that CPCB officials, unlike those employed by other law enforcement agencies, are not entitled to service pensions, which places them at a disadvantage. The draft law entitles CPCB officials to service pensions and prescribes how such pensions are to be granted, calculated and paid.

May 18. The *Saeima* adopted an amendment to the Law on Financing of Political Organizations (Parties), which anticipates deterring sanctions against parties which have exceeded the campaign expenditure limit set out in the law. The CPCB director must now require such political organizations to pay to the state budget the amount by which they have exceeded the limit on campaign expenditures.

May 29. The Cabinet Committee endorsed the draft of the Framework Document on Changes in the Application of Conditional Sentencing. The purpose of this document is to precisely define in the Criminal Law the cases in which conditional sentences may be applied. Although this policy document does not directly affect corruption prevention and combating, the problem of conditional sentencing has been highlighted in connection with the comparatively large number of conditional sentences being given for criminal offences committed by public officials, such as accepting bribes, giving bribes, abuse of office, etc.

June 15. The *Saeima* adopted the Law on the Additional Protocol to the Council of Europe Criminal Law Convention on Corruption. The additional protocol places every Member State under a duty to ensure that bribery of national and foreign arbiters and bribery of national and foreign jurors and lay judges is qualified as a criminal offence.

June 20. The Cabinet of Ministers endorsed the Report on a Concept for Improvement of Personal Income Monitoring. This concept anticipates introduction of the so-called initial declaration in Latvia and a subsequent system for monitoring changes in the assets of natural persons. The Cabinet has asked the ministries to give their appraisals of the Law on the Declaration of Assets of Natural Persons drafted in accordance with the report, and their proposals for amendments to a number of other laws.

2. The Practical Chances of Reducing Political Corruption: an Overview in the Run-Up to the 9th Saeima Elections

Inese Voika[1]

In the spring of 2006, news about the details of the corruption scandal surrounding the Jūrmala City Council elections exposed the rotten morals of the political elite and confirmed that political corruption is flourishing in Latvia. However, this scandal had a positively mobilizing effect on the media and the public. The first question raised by the scandal was typical (but not, on that account, less justified) for an Eastern European state in transition: what is wrong with our system, why can bribery occur, which laws should be changed? The second question, and one that revealed a growing understanding of democracy in Latvia, was about what society could do to prevent a repetition of such cases.

This is why, in this chapter, the author takes a look at the chances of reducing political corruption within the framework of traditional anticorruption policies and seeks long-term solutions in a broader, quality of democracy context. Both questions are important in the run-up to the 9th *Saeima* elections, and they offer good-willed voters and politicians possible ways of improving the situation.

The end of the 20th century in Latvia saw a surge of public rhetoric about the phenomenon of corruption. The World Bank (WB) and Transparency International (TI) published first statistics on corruption in Latvia. These showed a disturbingly high perception of corruption in public institutions, ranking Latvia among the worst countries in Eastern Europe.[2]

In 1997 and 1998, Latvia went down in the history of global corruption prevention as one of the first countries in the world to respond to the World Bank's new approach: to tackle corruption problems with the help of a wide-scale preventive program, contrary to the centuries-old practice of turning a blind eye to corruption as a phenomenon and sentencing only those who are caught after the fact. The leading international anticorruption organization, Transparency International, also created a model called the National Integrity System, which antici-

pates that corruption can be successfully combated by creating preventive mechanisms in the public administration.[3]

For the first time, in a 2000 survey on corruption in the former communist bloc (Eastern Europe and the former USSR), the World Bank ranked corruption not by extent, but by type, dividing it into administrative and political corruption, which WB called "state capture." In regard to "state capture," the methodology applied by WB placed Latvia at the head of the most corrupt countries.[4]

Homework Assignments Completed in Part

The Open Society Institute (OSI) anticorruption policy monitoring report prior to EU accession in 2002 recommended steps that Latvia should take to reduce "state capture" and political corruption: set up an anticorruption agency, carry out an analysis of lobbyism and "the phenomenon of state capture," reform the judicial system to ensure its independence and professionalism, and implement a comprehensive information transparency policy.[5]

The first of the recommendations has been carried out commendably. The basis for the work of the Corruption Prevention and Combating Bureau and its performance in the first three years must be judged positively, with high hopes for the future.[6] From the aspect of potential for systematic changes, high marks must also be given to the *Saeima* Supervisory Committee for Preventing and Combating Corruption, Contraband, and Organized Crime, which was set up in the past legislation period. However, for two whole years, the committee was not entitled to submit bills to the *Saeima*, and when it finally was, other Saeima committees would not refer anticorruption issues to this committee. For example, the draft law on election campaigning which was closely linked to questions involving party funding remained with the Public Administration and Local Government Affairs Committee.

A look at development of the judicial system in the past four years shows structural changes that serve to reduce corruption. Transparency in court administration is increasing, and courts are introducing the system of random assignment of cases. In the past few years, a disciplinary panel has punished and removed a number of judges from the bench. The judicial system was thoroughly analysed prior to EU accession,[7] but a new analysis would allow an assessment of the changes that have taken place in the meantime and the improvements that must still be made.

The consistent information transparency policy that OSI called for in its 2002 report has not found a prominent place on the political agenda. As the use of electronic information in the public administration increases, access to different types of information has been facilitated. Nevertheless, the situation remains unclear in cases where public officials wish to hide information. Transparency International Latvia (*Delna*) made public two such cases, and legal action was initiated in one. In the run-up to the elections, *Delna* was unable to obtain

information on certain government and local government administrative expenditures in the Ventspils City Council (on costs of publications in the media) and in the *Saeima* Chancellery (on use of motor vehicles).[8] A strict information transparency policy would undeniably improve public trust in the government and the public administration and, in individual cases, would serve as a deterrent to criminal offences. However, this question is not directly and exclusively linked to reducing political corruption in Latvia.

A System for Reducing Political Corruption

All further recommendations are based on the National Integrity System and other global sources.[9] This was done because the National Program for Preventing and Combating Corruption 2004–2008 has just a few points on political party funding and only one on lobbying, but questions of political corruption call for a much broader approach.[10] What is also important is regulation that promotes healthy and transparent conduct by "players" not connected with the state. It is in the power of precisely these "players" to balance and impact the conduct of the political powers. It is in this context that the TI National Integrity System speaks of the media, NGOs, the private sector, and international organizations.[11]

Political Party Funding

Foreign experts say that the reforms carried out since 2002 in regard to monitoring and regulation of party finances have been successful because they were effected gradually. A number of steps have been taken: monitoring of party incomes and expenditures has been improved and limits imposed not only on donations, but also on party expenditures (this has earlier been reported in *Corruption ºC*[12]). The monitoring function of CPCB and its successful implementation is particularly important from a corruption prevention aspect, as is the requirement that all donations to political parties must be declared in good time and made public.

The main element of the changes introduced in 2004 – the campaign expenditure ceiling – was aimed at reducing the influence of money on election campaigns. The second aim was to bring the pre-election process closer to the voter, who was in a position of having to elect the *Saeima* mainly on the basis of nicely "packaged" TV commercials, but without even an inkling of what was actually being offered by the parties.

For the monitoring of party finances to be effective, it is extremely important that laws not only be enacted, but that they also be enforced. A measure that is theoretically very good, but difficult to enforce can do greater damage than a measure that is somewhat weaker, but easy to introduce, carry out and monitor.[13] So, for example, the 2005 municipal elections and the 2006 *Saeima* election

campaign, which had already started at the time of the writing of this paper, have highlighted a number of things that must urgently be done if there is to have been any point to the reform.

Regulation of Third Party Activities

The introduction of a limit on the campaign expenditures of political parties and growing voter activity have made it extremely important to find a way to control the activities of third parties not directly connected with political parties. The clearly evident possibilities of circumventing restrictions, or pumping money of unknown origin into the political battle with the help of third parties, turns the regulation of party funding into a farce.

Proof of this is the commercials that appeared on TV in July 2006. In these clips, well-known people in Latvia speak about the positive things that the government ministers of one political party have accomplished. Moreover, those who have placed the clips refuse to provide information about their sources of funding. At the time of the writing of this article, speculations were being voiced that the flattering commercials had been funded with money intended for the public relations campaign of the Riga Eastern Hospital.[14]

The 2006 election campaign also includes a negative campaign against one politician carried out by a third party: with ads in the media and in the streets, the foundation *Pasaulei un pilsētai* draws attention to the, possibly, negative past of Aivars Lembergs, who is the candidate for prime minister of the Union of Greens and Farmers.

In this situation, CPCB has announced that it is resuming work on the Law on Election Campaigning which, although passed by the *Saeima* in the first reading in September 2005, has not been pushed on. The draft law anticipates restrictions on the amounts that third persons may spend on election campaigns; it also anticipates disclosure of the sources of such funding.[15] The new law has been supported by public organizations.[16] The law will define and ban hidden advertising; it will also increase funding for broadcasting organizations in the pre-election period.

An example that could be applied in Latvia is that of Canada, where the election commission has laid down the rules for third-party election advertising, demanding registration, declaration of sources of income, and submission of audited statements. It is important to know that these restrictions on freedom of speech were found by the Supreme Court of Canada to be legitimate for the sake of election quality and the development of democracy.[17]

Appropriate Sanctions for Financial Violations

Although in May 2006 the *Saeima* prescribed that political parties would be ordered to pay to the state budget sums corresponding to the sums by which

parties had exceeded campaign expenditure limits, this is not enough to keep parties from deliberately violating the law in order to win more votes. Work must therefore be continued on a system of sanctions, taking into account the experience gained from the 9th *Saeima* election campaign.

Since 2002, CPCB has proved its effectiveness as a monitor of party finances. This is partly evidenced by the sums that many political parties – including government coalition parties – have been required to return as unlawfully received donations. Up to 2005, CPCB had ordered political parties to pay a total of 315,550 LVL to the state budget.[18] In 2005, the total amount of unlawful donations decreased almost eight times compared with previous years, and parties have started to get used to having their finances monitored.

The 2005 municipal elections called attention to a new problem in a situation where a ceiling had been set on campaign expenditures, and political parties might have had more motivation than in previous years to violate these restrictions for the sake of better results. It was clear that the maximum penalty fixed by the law – 5,000 LVL – was inadequate in this new situation.

For example, after the 2005 elections, CPCB found that one of the government coalition parties (Latvia's First Party) had spent 51.7 thousand lats more than was allowed, but could only impose a fine that was 10 times less than this amount. Even more disturbing was that the sum which the party had actually spent was possibly more than 200,000 LVL over the limit, as indicated by PROVIDUS' monitoring of campaign expenditures.[19]

The aforementioned amendments to the party financing law that were adopted in May anticipate that political parties which exceed the expenditure limit (ca. 280,000 LVL for parties running in all electoral districts) will have to pay to the state budget precisely the sum by which they have exceeded the limit.

The CPCB initiative to make both party and donor criminally liable for keeping a "slush fund" is positive.[20] Currently, the Criminal Law prescribes criminal liability only for funding of political parties via an intermediary or for the intermediation of very large sums. However, other damaging offences linked to party funding, such as the acceptance of financial resources in contravention of the law or violation of bookkeeping and other financial regulations, are not considered criminal offences.

State Funding for Political Parties

Latvia is one of the few countries in Europe that does not have direct state funding for political parties.[21] In view of the insufficient transparency and poor monitoring of party finances, until now experts have seen this as something positive rather than negative.

As transparency has increased and CPCB monitoring improved over the past four years, there has been more talk of state funding for political parties. This

question has remained in the shadows of the political agenda since 2000, when the government adopted the Framework Document on the Prevention of Corruption and set up a working group to draft a new law on party financing.[22] Minister President Einars Repše brought the question up again in 2003.[23] Before the elections to the 9th *Saeima*, politicians from different political parties are speaking about this. NGO representatives, too, have voiced demands for reasonable state funding.

Although state funding has been introduced in many transition economies under the catchword of corruption containment, experience has shown that state subsidies for politics do not significantly alter corruption levels. Recent experience, for example, in Italy and Germany, clearly shows that corruption linked to party finances has existed alongside generous state funding.[24]

The main argument currently being put forward in Latvia is: to lessen the dependence of political parties on private sponsors. Other arguments in favour of party funding from the national budget might be fairer distribution of funds throughout the party spectrum than is possible with just private funding, as well as the chance to improve party organization and, accordingly, to increase the number of party members.

Among the arguments "against" is the reasoning that the majority of funds would go to government or parliamentary parties and would therefore not ensure equal chances; also, the fact that party leadership, which controls these funds, could feel less responsible to its members who would otherwise wield influence as potential sponsors or solicitors of such. One argument that has played an important role in Latvia is also the negative attitude of society at large against state funding of political parties.

In view of the aforementioned factors, Latvia should create a process that includes studies on and calculation of:

- the optimum amount of funding;
- criteria for calculating this amount;
- forms of funding (e.g., what will be financed: party infrastructure or election campaigns?);
- the circle of potential recipients (e.g., only parties represented in the *Saeima* or, taking into consideration, for example, the 3% hurdle in the last *Saeima* elections, regional parties as well);
- forms of keeping and checking financial records (e.g., checking the use of government subsidies and private donations together or checking them separately).

Use of Administrative Resources

The need to prevent the use of administrative resources to the advantage of political parties not only in election campaigns, but also in the work of a party is pointed out more and more frequently by local and international experts.[25] Signs of political corruption can be seen when examining the donation lists of the major parties, where 6% to 20% of the revenues of political parties in Latvia are made up of donations from board members of state-owned or municipal enterprises. This type of revenue structure indicates that membership on the boards of state-owned enterprises is based mainly on the political affiliation of the contenders and not on their professional qualities. The persons who are appointed as board members of state-owned and municipal enterprises are usually persons who stand close to political parties and who are most often not experts in the given business sector.[26]

Since this type of politicization of the boards of state-owned and municipal enterprises is in conflict with the law, which says that a board is the controlling institution of a business enterprise and represents the interests of the shareholders (i.e., the interests of the state or the local government, not political parties), an end should be put to this practice. After the elections to the 9th *Saeima*, membership on company boards should be based on transparent criteria and professional qualities.

Another thing that should be discussed: special rules for public officials and politicians on the use of public resources and public office during election campaigns.

Lobbying

It has been clear for several years now that improvement of the political lobbying process would be a significant contribution to reducing corruption in Latvia. However, only small steps have been taken so far, mainly in the area of research, to do something about this question. The main reason is lack of understanding. This is why one of the first steps should be active pursuit of a solution, with the involvement of those who are affected.

Studies, on the one hand, point out the difficulties that arise when attempting to regulate lobbying in Latvia. The *Delna* study says: "The introduction of a lobbying law is made difficult by the informal character of lobbying."[27] "In the majority of cases, things are arranged with the help of connections. … It is possible for almost anyone to approach legislators without middlemen and to make sure that the views of an interest group are placed on the political agenda."[28] Valts Kalniņš points out that the majority of people associate lobbying with something negative, with favours for friends, with corruption.[29] In one survey, 66% of politicians and 62.5% of businesspersons conceded that lobbying has negative connotations, and only 31% found them to be positive.[30]

On the other hand, there is also the desire of those who are involved to regulate lobbying. 84% of politicians say that they feel a need for this.[31] Discussions with representatives of professional lobbying firms showed that they were positively disposed to the idea of self-regulation and implementation of a code of conduct in return for better access to information and officials on behalf of their clients.[32]

Because the majority of people fail to understand that lobbying is not a criminal offence – on the contrary, the right of every person in a democratic country – at present, experts advise against the adoption of a special law to regulate lobbying. Instead, attention should be focused on making the current legislative procedure more transparent and on work with the lobbyists themselves.

The recommendations of NGO representatives on making the work of the *Saeima* more transparent should also be considered. NGOs demand early access to information on the work of the committees, a regular information and document flow from the committees, complete information about the assistants of deputies, answers to recommendations and applications, publication of the transcripts of committee meetings on the Internet[33]. Here, it should be pointed out that a good deal of information about the work of the *Saeima* is already available on the Internet (www.saeima.lv).

The second group of recommendations has to do with greater public involvement during the drafting of legislation. The introduction of open hearings should be considered, with the participation of all interested parties – not as it is now, where only those who have no other opportunities to influence the views of deputies are publicly active. In regard to the government, this process has been worked out more explicitly, and NGO representatives have better opportunities to legitimately influence decisions. A special NGO representative follows lawmaking initiatives and informs the organizations active in the respective sector. To reduce political corruption, it would be important to concentrate on making the work of the *Saeima* more transparent and accessible where lobbying is concerned.

The third group of recommendations calls for broader legislative amendments, which would make it possible for the general public, especially civil society and the media, to follow the work of politicians, e.g., through more open voting both at the local government and the *Saeima* level. There have also been calls for fundamental changes in the election system to avoid fragmentation and increase the accountability of councilmen and deputies. However, the author feels that accountability and cooperation among political parties can be accomplished by taking better advantage of the opportunities afforded by existing legislation, since part of the problem lies in the public's lack of skill and politicians' lack of will to take advantage of these opportunities.

The Media

The quality and legal regulation of the media are important for the development of democracy and just as much for containment of the phenomenon of political

corruption. Although Latvia is recognized as a country with a relatively free press,[34] the lack of transparency about media ownership and insufficient protection of journalists affect the role of the media where corruption is concerned.

In the Transparency International National Integrity System, the media, which can function as society's "eyes and ears" and serve as an important source of information about the activities of politicians and public officials, is described as follows: free, independent, responsible and ethical, protected in its status by the law, and not influenced by a political or otherwise opportunistic management.[35] For effective functioning of a civil society, a free press is an important precondition for promoting transparent and responsible work of the government.[36]

The policy document prepared by Transparency International Latvia (*Delna*) after the Jūrmala corruption scandal in the spring of 2006 says: "Corruption in the media is one of the main factors contributing to the distortion of Latvia's political environment. The high level of corruptibility of certain media casts a shadow on the media as a whole, which is why even independent journalists who work in the political arena are not seen as free champions of public interests.[37]

Transparency in Regard to Media Ownership

It is necessary to achieve complete transparency in Latvia about the owners of the media, which due to its impact on society differs from other forms of entrepreneurship. Since the media traditionally enjoy a high degree of public trust, readers, viewers and listeners are entitled to know who editors and individual journalists represent. This is particularly important before elections and other important political events.

Updating of Legal Norms

Delna finds that "Latvia's media are regulated by outdated legal norms, which are not in keeping with present-day principles of editorial autonomy, media ethics and self-regulation."[38] Politicians who are concerned about the development of democracy and a free fourth estate must take the initiative in creating an appropriate media policy. The media have so far been neglected by policymakers, as evidenced by the dates on the laws that are currently in effect. The media are currently regulated by the Law on the Press and Other Mass Media (adopted in 1990) and the Law on Radio and Television (adopted in 1995).

Funding and Independent Supervision of Public Broadcasting Organizations

National television and radio are called public broadcasting organizations, although they are completely dependent on the funding allocated each year by

the *Saeima*. These financial resources are not sufficient to give viewers and listeners first-rate and exhaustive information about current processes. TV and radio are supervised by the National Radio and Television Council, whose members are nominated by the political parties, but approved by the *Saeima*. An impartial supervision system, independent of party politics and political manipulations, would be preferable.

Self-Regulation and Protection

In Latvia, individual media have their own codes of ethics, however, "in a North European context, Latvia is unique in that it does not have a national organization or structure that monitors how journalists and media enterprises observe a media or press code of ethics. In other counties, there is immediate reaction if a journalist or media enterprise does anything that could be seen as a violation of the code of ethics."[39] An ethics panel with members from various sectors is needed to judge violations.

Protection of journalism as a profession is minimal or non-existent in Latvia. To keep their jobs, journalists frequently have to sacrifice quality or yield to corrupt orders from the management.[40] The Journalists Association functions in name only and is incapable of acting as a powerful instrument capable of promoting the development of journalism and influencing government policy.

Civil Society – Transparency and Funding

Recent literature no longer sees corruption as transaction between just two parties, e.g., the state and the recipient of services or money. Now it also speaks of a third party – the injured party, which is usually society at large.[41] This means that public organizations, as the most active part of society, become active "players" with an interest in monitoring, challenging and changing the principles by which a corrupt system functions.[42] At the same time, it is acknowledged that NGOs themselves are not immune to corruption and may be used as a link in the chain, as accomplices in the abuse of authority for personal advantage.

When involving civil society in decision making, the state, too, must establish criteria for cooperation. "The principle for such cooperation must be that NGOs may not demand higher standards of governance from the government than they are willing to apply to their own activities."[43]

This is why Transparency International has voluntarily introduced a number of governance documents aimed at the promotion of integrity and accountability within the organization. Among these are: publication of annual reports, regulation of conflicts of interest, a code of ethics, mandatory declaration of payments made to board members, accreditation policy for branches throughout the world.

Transparency International Latvia also abides by these principles. At the global level, there are a number of projects currently underway in which the large NGOs are attempting to negotiate common principles that must be observed in internal operations, mutual cooperation, and relations with national and international structures.

In Latvia, it is important to promote the transparency of NGOs, particularly public benefit NGOs. The current law already requires all public benefit organizations to submit activity reports to the Ministry of Finance and anticipates their publication on the Internet.[44]

Another important question is NGO funding that guarantees independence of action. The greater part of the funding for NGOs in Latvia comes from global funds which will become increasingly inaccessible as democracy gains strength. The role of local donors is therefore increasing. The Law on Public Benefit Organizations provides for an 85% income tax rebate on donations to public benefit organizations, which must be seen as a positive measure. However, unofficial information received from NGOs suggests that companies take advantage of this provision to corrupt NGOs and demand that a donation be used to finance the company's public relations activities, leaving only a small part of the donated sum at the disposal of the NGO.

The government should consider possibilities of diversifying NGO funding; for example, earmarking 1% of personal income tax revenues for this purpose, as is done in a number of other European countries.[45] It should also be examined how corporate tax revenues are used and what changes should be made to improve the situation.

The Private Sector

In recent years, the private sector has taken giant steps to introduce voluntary anticorruption standards. For example, within the framework of the UN Global Compact, companies undertake to refrain from corrupt transactions. Global companies spend millions on introducing ethics and accountability programs in their structures worldwide.

The purpose of this paper is not to analyse the possibilities and duties of the private sector to fight corruption; however, this sector is of vital importance for the containment of corruption in Latvia. Global trends could serve as an impulse for the industry's internal dialogue about new standards, which would accelerate a reduction of political corruption.

System-External Options

In the latest Eurobarometer study on trust in the public administration, Latvia had one of the lowest rankings among the European countries: 90% of the popu-

lation distrust political parties and 70% distrust the government.[46] An earlier study showed that 55% of high-ranking officials agreed with the statement "public officials are more concerned with personal advantages than with public interests."[47]

Studies also show a dual attitude to corruption in the post-communist region. Politicians as well as the population will sometimes decry and sometimes justify corruption, depending on the type of corruption and the audience.[48] Corruption is deeply rooted in behaviour, attitude and public discourse. This is why the path chosen by the Latvian government to fight corruption in the public administration with institutional and legislative changes alone will not be wholly effective.

The needed reforms mentioned earlier in this paper already show this to some extent: to curb the proliferation of political corruption, it is necessary to influence the sectors that are not under the direct control of the government – media, NGOs and business. Attitudes to policymaking must be changed by changing those who make policy.

The code of ethics for *Saeima* deputies adopted in 2006 is one more document whose importance will depend on the way that this code is put into practice. Furthermore, it will also be important to establish and prove violations of the code.[49] The feeling of immunity harboured by those in positions of power is part of what allows political corruption in Latvia to prevail in an extremely open and cynical form.

Professor Rasma Kārkliņa sees corruption as a social phenomenon that works as a spiral: the greater the number of people who believe that corruption is possible, the greater the chances for corruption to continue, and the greater the perception that little can be done to reverse this spiral.[50] The downward spiral of corruption can, however, be reversed if more and more people succeed in demonstrating that positive changes are possible.

One of the sources for elimination of political corruption which has rarely been explored in Latvia is transformation of the political elite itself, with the appearance of new political actors who show a positive example and create an upwards spiral within the political elite.

One of the more forceful examples of politically responsible behaviour was the resignation of Defence Minister Einars Repše following political attacks over his real estate transactions. This first precedent encouraged society to demand the resignation of Transportation Minister Ainars Šlesers a few months later, when he was caught talking to a businessperson charged with corruption before and after the crime. A. Šlesers' conduct showed what a huge difference there is between political responsibility that is assumed by a politician who understands and regrets what he has done and responsibility that is assumed under pressure. A. Šlesers returned to the *Saeima* as a deputy and assumed chairmanship of the Budget and Finance (Tax) Committee.

With every statement about questions connected with corruption, the majority of the political parties demonstrate their lack of interest and understanding. For example, in answer to a question about the use of third-party advertising to circumvent the law – of which two of the coalition parties are suspected – the third coalition partner said: "It isn't hard to set up that kind of organization – if others can do it, why can't we."[51] Another party leader calls the New Era party's appeal to voluntarily refrain from using third parties in the election campaign populistic, an appeal "that will fall on deaf ears, because the stakes connected with the elections are extremely high, and the restrictions are an additional factor that encourages hidden and third-party advertising."[52]

Politicians who wish to create positive precedents must take extra care to make sure that their words correspond with their deeds, because even the slightest hint of corruption will be a weapon in the hands of their opponents. They must work efficiently and professionally in making and managing policy, and they must know how to seek partners even among seeming opponents. One way of doing this is to establish political fair-play principles that are acceptable to anyone and everyone, regardless of political affiliation.

What is also needed is a study on the attitude of Latvia's politicians to their work and to the goals and tasks that they see before them. Then, it would be easier for society to reach an understanding with politicians about honest and responsible politics.

As Aristotle has said, virtues such as honesty and justice are acquired by practicing them.[53] This is why the road to honest politics takes much longer than does the simple enactment of laws.

[1] Inese Voika is a corruption expert and a Transparency International Latvia (*Delna*) board member. She graduated from the University of Latvia with a bachelor's degree in Communications in 1995 and with a master's degree in Public Administration from the John F. Kennedy School of Government at Harvard in 2005. From 1998 to 2004, I. Voika was head of Transparency International Latvia (*Delna*) and turned this organization into the first socio-political NGO in Latvia. I. Voika has worked in Eastern Europe in collaboration with the World Bank, OECD, the Public Policy Institute, and other organizations.

[2] In the Transparency International Corruption Perceptions Index, Latvia's first results in 1998 were 2.7 points of possible 10, which showed that corruption is considered to be a serious problem in Latvia.
See: http://www.transparency.org/policy_research/surveys_indices/cpi Last accessed on July 18, 2006. Similar conclusions were drawn by the World Bank from the results of comprehensive survey on Latvia in 1998. *Corruption in Latvia: Survey Evidence*. http://www.worldbank.org/wbi/governance/pdf/guide_pdfs/latvia.pdf Last accessed on July 18, 2006.

[3] See: http://www.transparency.org/policy_research/nis/about_nis Last accessed on July 18, 2006

[4] *Anticorruption in Transition: A Contribution to the Policy Debate.* The World Bank, 2000, p. 104.

[5] *Corruption and Anticorruption Policy in Latvia.* OSI, 2002, pp. 289–343.

http://www.eumap.org/topics/corruption/reports/international/sections/latvia/2002_c_latvia.pdf Last accessed on July 18, 2006.

[6] CPCB's performance is analysed in more detail in *Corruption ºC,* 2005. Second semiannum. http://www.politika.lv/index.php?id=4385 Last accessed on July 18, 2006.

[7] The Open Society Institute has published two reports on Latvia's judicial system: *Monitoring of the EU Accession Process: Judicial Independence*. 2001 (http://www.politika.lv/index.php?id=4330) and *Monitoring of the EU Accession Process: Judicial Capacity*. 2002 (http://www.politika.lv/index.php?id=4339); EU PHARE support was provided for the Ministry of Justice report: *Tiesu sistēmas informācijas caurredzamība [Transparency of judicial information].* 2002 (http://www.politika.lv/index.php?id=4333).

[8] "*Delna* Augstākajā tiesā pārsūdz spriedumu Ventspils informācijas pieejamības lietā [*Delna* appeals to Supreme Court against ruling in Ventspils information accessibility case]." June 12, 2006. http://www.delna.lv/?q=ful&story=1591&sec=90 "*Delna*: Saeimas kanceleja rīkojas pretī informācijas atklātības principiem [*Delna*: *Saeima* Chancellery acting against transparency of information principle]." July 10, 2006. http://www.delfi.lv/news/national/politics/article.php?id=14909325 Both last accessed on July 18, 2006.

[9] *TI National Integrity System* (http://www.transparency.org/policy_research/nis/about_nis); Utstein Anti-Corruption Resource Centre (http://www.u4.no); Karklins, R. *The System Made Me Do it: Corruption in Post-Communist Societies*. M. E. Sharpe, 2005, p. 219; Pardo, I. (ed.) *Between Morality and the Law: Corruption, Anthropology and Comparative Society*. Ashgate, 2004, p. 187.

[10] National Program for Preventing and Combating Corruption 2004–2008. http://www.knab.gov.lv/uploads/pdf/Valsts_programma.pdf Last accessed on July 18, 2006.

[11] *TI National Integrity System* http://www.transparency.org/policy_research/nis/about_nis Last accessed on July 18, 2006.

[12] See: Čigāne, L., and Austere, L. "Election Campaign Expenditure Limits – the Baptism of Fire." In: *Corruption ºC*, 2005. First semiannum. Public Policy Centre PROVIDUS, 2005. http://www.politika.lv/index.php?id=4382 Last accessed on July 18, 2006.

[13] Pinto-Dushinsky, M. Handbook on funding of parties and election campaigns. Unpublished translation into Latvian, p. 1.

[14] "Mūrniece: Tautas partija veselības budžetu izmanto nelegālā kampaņā [Mūrniece: People's Party using health budget for unlawful campaign]." LETA, July 12, 2006.

[15] "Nepieņemot Priekšvēlēšanu aģitācijas likumprojektu, ir zaudēta iespēja kontrolēt trešo personu īstenotās kampaņas [Failure to adopt the Law on Election Campaigning means a forfeited opportunity to monitor third persons]." CPCB press release, July 13, 2006.

[16] For example, adoption of the draft law was supported by the Public Policy Centre PROVIDUS. See: Arāja, D. "Reklāmistu sāktās kampaņas padara tēriņu griestus bezjēdzīgus [Campaigns launched by advertisers make limits on expenditures pointless]." *Diena*, July 14, 2006.

[17] "Chief Electoral Officer Announces Application of Supreme Court Decision on Third Parties." Press release of the Canadian Election Commission, May 18, 2004.

[18] CPCB public reports for 2003–2005. http://www.knab.lv/publication/reviews/ Last accessed on July 18, 2006.

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[47] Steen, A. "How Elites View Corruption and Trust." *Global Corruption Report*, 2004. Transparency International, 2004, p. 323.
[48] Karklins, R. *The System Made Me Do it: Corruption in Post-Communist Societies*. M. E. Sharpe, 2005, p. 61.
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[50] Karklins, R. *The System Made Me Do it: Corruption in Post-Communist Societies*. M. E. Sharpe, 2005, p. 162.
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3. Political Parties and Corruption in Latvia: Structural Factors

Jānis Ikstens[1]

The 2005 municipal elections and the events surrounding these elections once again showed the political parties in an unfavorable light. The court proceedings over the buying of votes in Rēzekne as well as those over bribery in connection with the election of the Jūrmala City Council chairman have reinforced the image of political parties as through and through corrupt organizations.

The year 2000 can be considered as the watershed, when political parties were for the first time linked to corruption. This was the year that the World Bank published the results of its study on 22 post-Soviet countries, analyzing corruption in this region.[2] The study introduced the term "state capture" to describe high level political corruption, as a result of which a country's laws and policies are made to serve the interests of the companies that have captured the state. Although it was a well known fact that corruption levels were heightened in Latvia (since 1998, when the Transparency International (TI) corruption perception index ranked Latvia among countries with a high level of corruption[3]), the ranking of Latvia in one group together with countries such as Azerbaijan, Moldova and Russia evoked loud protests from Latvia's politicians. The phenomenon that these countries had in common was a high level of "state capture."[4]

This internationally resounding conclusion was indirectly confirmed by the UNDP 2000/2001 Human Development Report on Latvia. The document focused on decision making mechanisms in Latvia and came to the conclusion that Latvia had a closed policymaking model in which political parties and the business elite played leading roles, but civil society had little or no influence.[5]

Ties between politics and business, which were not flattering, were also pointed out in a study on party funding in Latvia for which in-depth, structured interviews were conducted with several senior party officials. The majority of the politicians conceded that businesspeople frequently expected certain favors from politicians in return for donations to a political party.[6] Recent studies suggest that parties have not simply played the role of humble petitioners, but using their influence

in state-owned or municipal enterprises have been active players in the fundraising process, coming dangerously close to violation of the law.[7]

Studies as well as information in the media suggest that political parties should not just be seen as organizations that operate in a high corruption risk zone, but also as organizations that are actually affected by corruption. The purpose of this paper is to take a look at a number of structural factors that could affect the incidence of corruptive behavior among political parties and in this way to stimulate a discussion on ways of reducing political corruption.

For the purpose of structuring thoughts, the conceptual base will be the assumption that, in a short-term perspective, a corrupt act is mutually advantageous – both for the patron (e.g., the politician who controls resources) as for the client (e.g., the entrepreneur who wishes to acquire some of the resources controlled by the politician).[8] An advantage presents itself when the individualized costs of a corrupt act are lower than the individualized advantages. This is why it is useful to take a look at the stimuli that encourage both patrons (usually, parties or party representatives) and clients (usually, businesspersons) to become involved in corruption.

Client Stimuli

Size of Government

As the role of government increases, opportunities for corruption in many areas also increase. One reason for this is the growing range of questions that require a political solution; another, the growing financial resources at the disposal of the state. Moreover, these resources are distributed using political methods, not market mechanisms.[9] To determine the role of the government in the national economy and describe the size of government in Latvia, indicators such as government final consumption expenditure,[10] tax burden, and budget to GDP ratio will be used.

The report of the Canadian Frazer Institute, *Economic Freedom of the World*, which examines the situation in 127 countries, shows the size of government in Latvia as being average (ranked 62nd).[11] Moreover, after an upward trend in the years 2000–2003, in the past two years government final consumption expenditure has showed a downward trend.[12] According to Eurostat data, Latvia's budget expenditure in 2005 represented 36.2% of GDP. This is one of the lowest indicators in the European Union, and it is considerably lower than the indicators for the EU-15 or Eurozone (47.6% of GDP). What is more, Latvia has the second lowest tax burden in the EU: according to Eurostat, 28% of GDP. These data suggest that there are considerable financial resources available to the public sector; however, they are smaller than those in many developed countries – and these are countries in which the corruption perception index is lower than it is in Latvia.

Economic Competitiveness

This means that other explanations must be sought for the relatively high corruption perception index in Latvia, from the client stimuli angle. One of the explanations could be connected with competitiveness of the economy. The World Economic Forum (WEF) has for several years been preparing two indexes for competitiveness, which WEF defines as: all of the factors, policies and institutions that determine a country's level of productivity, which in turn determines the level of prosperity that can be achieved in the given economy.[13] In the WEF 2005 Growth Competitiveness Index, Latvia is ranked 44th. Only two EU Member States were ranked lower than Latvia: Italy and Greece (47th and 46th, respectively).[14] In the WEF 2005 Business Competitiveness Index, Latvia is ranked 48th, lowest of the EU Member States.[15] This relatively low assessment of the competitiveness of Latvia's economy and its businesses leads to the assumption that, being unable to compete on the global markets, companies are increasingly attempting to secure resources that are more easily acquired – government and local government resources. This is inevitably connected with political decisions and an increasingly intensive influence on these. Moreover, this is happening in a situation that is advantageous to the client – a situation in which public officials receive relatively low salaries.

Administrative Obstacles

Another consideration that could prompt the client to turn to the patron for non-legal forms of help is the difficulty in dealing with various administrative obstacles, including obstacles to business activities. Following appeals from foreign investors, the World Bank has carried out a number of projects in an effort to reduce administrative obstacles in Latvia. However, as WB figures indicate, with limited success. There are still relatively many such obstacles in Latvia, and this creates conditions that encourage dishonest behavior. What is more, this is taking place in conditions where the public service is extremely politicized.

Level of Centralization

From the viewpoint of the client, the efficiency of corruptive activities is improved if questions can be resolved involving as few patrons as possible, and this can reduce the amount of resources required for such activities. This implies that corruptive behavior should be more widespread in political regimes with a high degree of centralization. There is, however, the risk that a client might then be required to pay a price that is higher than the hoped-for advantage because in centralized systems there are fewer opportunities to receive the same or a very similar product/service from a "competing" decision maker.[16]

Latvia's Constitution models a fairly centralized state structure, in which the parliament is – at least formally – the central component. Almost all public administration agencies are placed under the authority of the Cabinet of Ministers

(Section 58), which, in turn, is dependent on the support of the *Saeima*. Although local governments are elected directly by the people, their freedom of action is significantly affected not only by the principles according to which their budgets are prepared and by limited access to capital markets, but also by *Saeima* and Cabinet control over the decisions of local governments and insufficient funding for their municipal functions.[17] Especially this last point seems to play a particularly big role in promoting politicization and patronage in Latvia's local governments.[18] The centralized character of Latvia's public administration has also come to the attention of those who make regional comparisons.[19]

Politicization of the Administration

If a client acts corruptly in dealings with public administration employees, this does not automatically indicate a connection between political parties and corruption. What is important here is the administration's level of politicization, this being understood as the infiltration of representatives of political parties into the public administration.

From the legal aspect, a fairly clear distinction is made in Latvia between politicians and public servants. Some authors find that the relationship between politicians and public servants in Latvia comes under the so-called functional model, which is characterized by similar value orientation and interests in both groups.[20] However, relations between both groups are described as tense.[21] To some extent, this stems from efforts to transfer responsibility for the consequences of political decisions,[22] but it can also be attributed to politicization trends among senior public officials. Politicization and merging of the functions of politicians and senior officials is pointed out in empiric studies.[23]

Patron Stimuli

Salaries

Low salaries are a classic reason for the corruptibility of politicians and public servants. Low salaries seemingly encourage the use of easily accessible resources for personal gain. It would therefore seem logical to suspect a link between deputies' salaries and the incidence of corruption. The author's calculations for the year 2004 show that there is a strong and statistically significant (–0.595) connection between Transparency International corruption perception index ratings and the correlation between the salaries of parliamentarians in the 24 EU Member States and the average salaries in their countries[24]: countries with higher deputy salaries (compared with the country's average salary) have higher levels of corruption perception. This suggests that low salaries alone cannot be considered as the cause of corruption.

It must be underlined that the TI index does not actually measure political corruption, but there is a certain statistical link between these ratings and the level

of "state capture" that was established in the World Bank surveys. It must also be pointed out that the basic salaries of Latvia's parliamentarians significantly diverge from the country's average salary. In 2004, a *Saeima* deputy received a basic salary (not including benefits and compensations) that was 3.33 times higher than the average salary. The only countries with greater differences in salaries were Poland (4.56), Greece (4.41), Estonia (3.91) and Slovenia (3.66). The countries with the lowest indicators were Malta (1.29), Hungary (1.36) and Denmark (1.56).[25] There is therefore no reason to see the basic salaries of Latvia's parliamentarians as comparatively low.

The situation in Latvia's local governments can differ greatly from municipality to municipality, depending on the financial means of each local government. The main difference, however, is that local government deputies can keep their former jobs even after being elected, as long as they are not elected to a position that is a full-time job (e.g., mayor, committee chairman, etc.). Together with the salaries from their principal place of employment, they also receive remuneration or compensation from the local government. Unlike *Saeima* deputies or government ministers, local government deputies may also serve on the boards of municipal enterprises, which gives them additional income.

Electoral System

It is already tradition for discussions about the *Saeima* electoral system to escalate every four years before the parliamentary elections. Popular opinion says that the current system has many flaws: that it promotes politicians' lack of accountability, that it fails to ensure adequate communication between the people and their deputies, that it serves to fragmentize the parliament.[26] It can therefore not be ruled out that changing the electoral system could also improve the financial situation of the political parties. Nevertheless, a number of authors find that the proportional system with closed party lists is the least conducive to honest politics inasmuch as it has the weakest political accountability component.[27] Other authors point to greater corruption in systems with electoral districts that have a large number of mandates; furthermore, corruption is more widespread in proportional systems with rearrangeable lists if one electoral district has no less than 15 mandates.[28] The reason for this tendency is said to be the growing desire of politicians to accumulate increasingly greater resources (including resources of illegal origin) in the run against rivals in their own parties in situations where party lists can be rearranged.[29]

Latvia has rearrangeable party lists. This seemingly allows the voter to give a concrete assessment of each politician's performance, but only the Kurzeme electoral district has less than 15 mandates, which could raise doubts about the contribution that the current system can make to containment of corruption. However, there are indications that a certain division of labor is taking place in the political parties: party functionaries who are active in one of the areas most exposed to the risk of corruption rarely run in the elections and even more rarely conduct individual election campaigns.[30] It is also not clear what the over-

all advantage of changing the electoral system might be because, with the multiethnic structure of Latvia's electorate, high voter volatility, and threat of a fragmentized parliament, the transition to a first-past-the-post system could be a fairly risky move.[31]

Intensity of Political Competition

A frequently mentioned anticorruption instrument is the promotion of competition. Application of this principle to political parties requires an analysis of the intensity of political competition in Latvia's party system. Fierce competition would encourage parties to abstain from dishonest behavior, since disclosure of corruption would seriously jeopardize a party's chances in the struggle for power.

If party rivalry in Latvia is examined from a quantitative aspect, there is not much reason for concern. In June 2006, there were 70 registered political parties. In 2002, deputies from six lists, representing nine political organizations, were elected to the *Saeima*. In May 2006, there were 10 parties represented in parliament. According to Laakso-Taagepera's Effective Number of Parties indicators,[32] the indicator for the *Saeima* at the beginning of the 8th legislature period was 5.01.

However, one particular characteristic of society in Latvia invites extremely serious doubts about whether quantitative indicators can provide a true picture of the situation in regard to competition between political parties. Some studies indicate that ethnic background must be seen as the major political divide in Latvia, i.e., the absolute majority of Latvians vote for the so-called Latvian parties and the absolute majority of Eastern Slavs for the so-called Russian parties. The governing coalitions, however, have usually been formed by the Latvian parties and there is not much rotation. In addition, Latvia has never undergone a complete replacement of the coalition members (as, for example has Lithuania). This means that voters are actually presented with a very narrow choice, that competition between parties has in reality been weakened, and that the accountability of parties for their work is diminished by voters' ethnic allegiances.

The Party Funding System

Many in Latvia believe that participation in elections and the costs that are involved, combined with lack of support from the state, forces parties to become involved in questionable transactions that embody the risk of corruption. From this follows that the current party and campaign funding system could be seen as one of the sources of political corruption. However, quantitative studies on a possible connection between the amount of support from the state and the level of corruption do not provide clear proof of this. It cannot be denied, however, that there is a statistically significant connection between these two quantities in the new democracies of Eastern Europe: the countries with greater state support have lower corruption perception indicators. Moreover, there is some reason

to believe that "state capture" could also be less widespread in countries with more generous state support for political parties.[33]

Although this is an important conclusion, it should be kept in mind that it applies only to Eastern Europe. A statistically significant connection between corruption and state support for political parties has not been observed elsewhere. Furthermore, a study carried out by Visvaldis Valtenbergs showing this connection does not analyze the causes of the phenomenon. It would therefore be premature to consider that it is precisely state support which has helped to contain corruption. But it is even more important to answer – at least theoretically – the question of whether in a situation where a plutocratic party funding model has consolidated itself with manifestations of corruption, state subsidies or some other form of financial state support can significantly change this model.

Discussions about the need for state subsidization of political parties address the parties' relatively limited sources of funding. There is reason to believe that the lion's share of money comes from a fairly narrow circle of persons. This is evidenced not only by the cases of donation intermediation disclosed by CPCB, but also by the parties' annual financial statements. This has generated the popular term "pocket party," which points to the strong dependency of political parties on their most open-handed financial supporters. This is why, in modern-day democracies, limited sources of revenue are among the main factors having a negative impact on the work of parties.

However, there are other aspects of the current party and campaign funding system that could promote party involvement in dubious or even illegal transactions. Although the prohibition for legal persons to donate money to political organizations has definitely made the work of CPCB easier, it has certainly not in any way increased the transparency of political funding. In combination with the unrealistically low campaign expenditure ceiling, this restriction only encourages the continued existence of party "slush funds," which, as several members of the power elite claim, exist in all major political organizations[34] and this is typical not only for Latvia.[35] The money in these "slush funds" can come from undeclared cash sums that are handed over to the party, intermediation in the solicitation of donations, or even illegal payments from companies for successful bids in public procurement tenders.

The Corruption Prevention and Combating Bureau must be lauded for making a major contribution to monitoring of party finances and disclosure of violations. Nevertheless, the effectiveness of CPCB's work is undermined by the insignificant fines that offenders are required to pay. Although illegal donations must be paid in full to the state treasury, the fines for exceeding campaign expenditure limits have been small (no more than 5,000 LVL) and have not stimulated an honorable attitude to these limits on part of the wealthier parties. It is true that in May 2006 the *Saeima* amended legislation, requiring parties not only to pay the fine, but also the whole sum by which the expenditure limit has been exceeded. However, practice shows that CPCB does not as yet have a method for conclusively proving that expenditure limits have been exceeded.

Undeclared money or money that is not paid to a party's account can be used to make undocumented purchases of goods and services to unlawfully improve a party's chances in elections. Among the services most often purchased for undisclosed resources are advertising and public relations services. In Latvia, this can most frequently be observed in the form of hidden advertising or extremely favorable conditions for the placement of political advertising in the media.

Hidden Advertising

The results of campaign monitoring projects carried out by the Centre for Public Policy PROVIDUS suggest that hidden advertising is a very serious problem in Latvia's media and that it is more pronounced in the Russian-language media.[36] Although the incidence of hidden advertising in the Russian-language media is usually explained with differing principles of journalism, and there is no reliable information about the use of "slush funds" for hidden advertising, there have been rumors circulating in the media about special rates for commissioned articles and reports prior to the elections.[37]

The widespread use of hidden advertising, the corruptibility of the media and its incapacity to function as a protector of public interests is promoted not only by legal or illegal payments, but by other factors as well. The Freedom House organization has rated freedom of the press in Latvia highly, ranking it in 24th place in the world. This ranking was based on an analysis of the political, economic and legal aspects of the work of the media. However, Ainārs Dimants points to problems with the observance of editorial autonomy in Latvia's press, which increases the influence of publishers/owners on the work of editors.[38] Inta Brikše, on the other hand, criticizes the incapacity of journalists to organize themselves, their inability to accept a professional code of ethics that would apply to the whole industry, to prevent the unethical behavior of fellow journalists, and to resist pressure from publishers.[39]

NGO Influence

Ten years after the renewal of independence, Latvia's politicians were criticized for cultivating a closed public policy in which some representatives of the business sector were invited to participate, but in which a great part of the NGO sector was marginalized.[40] Although in 2002 the non-governmental sector was involved through chosen representatives in the drafting of bills prepared by government ministries, it is difficult to make a precise assessment of NGO influence on decision making in this segment. However, cooperation with political parties appears to prevail as the privilege of professional associations – a situation that clearly arises from the shortage of politically relevant resources (numbers of members, financial resources, reputation, etc.) at the disposal of many other non-governmental organizations.[41] This suggests that, despite a number of spectacular episodes (for example, the activities of some NGOs when Ingrīda Ūdre was running for European commissioner), the capacity of NGOs (with the

exception of professional associations) to monitor policymaking is limited and does not serve as a significant anticorruption factor. This situation is symbolized by the participation of Transparency International Latvia (*Delna*) in monitoring of the Latvian Shipping privatization process, which did not bring the certainty that this privatization was aboveboard.

Mutual Stimuli

Attitudes to Corruption and Interest in Politics

Public attitudes to politics and corruption are considered a significant structural factor of corruption. Public indulgence of dishonest, corruptive activities lower the standards that politicians must be asked to observe in a given society. On the other hand, general lack of public interest in politics makes it possible to reduce attention or altogether escape attention that might be paid to the dubious activities of politicians.[42]

The interest of Latvia's population in politics cannot be considered particularly high. A survey conducted in 1999 showed that 38% of the respondents were highly or fairly highly interested in politics, 45% had little interest, and 17% had no interest at all.[43] In April 2006, 8.6% of the Latvian citizens who were interviewed claimed to be highly interested in politics, 31.4% were generally interested, 38.7% had little interest, and 18.8% of Latvia's citizens had no interest at all in politics.[44]

Over a number of years, Transparency International data have shown the public to perceive corruption as being widespread in Latvia.[45] Alongside the customs and the traffic police, the *Saeima*, the local governments and the government of Latvia are perceived as fairly dishonest. Likewise, an absolute majority of the population finds corruption to have a negative effect on welfare and development of the nation. However, two-thirds of the population in Latvia sees corruption as a dishonest but unavoidable method, prescribed by the total corruptibility of the public administration system. One-third thinks that corruption can be justified because without it not even perfectly legitimate questions can be resolved; and 37% of the respondents do not object to cheating on the state, being as the state does not provide the necessary social benefits. Almost half of Latvia's adult population would be willing to pay a bribe if they had difficulties in dealing with a problem.[46]

The Difficulty in Exposing Corruption

Another mutual stimulus that comes to mind is the difficulty in exposing cases of corruption, which derives from mutual interest of the parties involved and transfer of the financial burden of a transaction to third parties (in the case of corruption, usually to society at large). A further stimulus is inability to prove the criminal involvement of high-ranking officials in dishonest transactions

even when such transactions have been uncovered (for example, in the so-called Latvenergo three-million case). Special attention should be paid to the fact that courts have thus far been extremely lenient, giving persons charged with giving or taking bribes relatively light sentences.[47]

The above data lead to the conclusion that, when weighing the possible political or personal consequences of dishonest behavior, neither patrons (representatives of parties) nor clients see big risks because, although society is concerned about corruption and its negative effects, it is also rather tolerant of corrupt acts committed to solve personal problems.

Conclusions

Examination of structural factors that could affect the incidence of corruption in Latvia's political parties has led to a number of conclusions.

A high degree of government involvement in various political, economic and administrative processes is frequently seen as a factor that promotes corruption. However, the situation in Latvia is rather contradictory. On the one hand, there is not a lot of government involvement in the economy, as indicated by statistical data on the tax burden, government final consumption, and budget to GDP ratio. On the other hand, the administration system is extremely centralized and also politicized. These two factors obviously gain importance in a situation where Latvia's businesses find it hard to compete globally, which apparently stimulates their interest in gaining access to public resources at a time when the buying power of most of the population is low.

Neither the *Saeima* nor the municipal electoral systems can be considered as corruption promoting since rearrangeable lists give voters a wider choice and stimulate inner-party competition. However, Latvia has serious problems with inter-party competition, which is weakened by the clear divide between Latvian and Eastern Slav parties. As a result, there are few shuffles within the coalition and, consequently, little risk that dishonest behavior could have legal consequences. Party and campaign funding regulations formally ensure party equality and promote competition, but in reality the parties that are members of the *Saeima* and/or local government coalitions have great advantages. Participation in a coalition helps to increase the visible as well as the publicly invisible part of party revenue, which can be and to some extent is spent on election campaigns. Moreover, neither existing law enforcement agencies nor professional organizations are able to effectively curb the illegal use of these resources.

Although the low salaries of public employees are often mentioned to explain and to some degree justify cases of corruption, a comparison of statistical data shows that *Saeima* deputies are relatively well paid and that deputies in many of the larger local governments are in a similar situation. There are therefore no grounds to claim that the low salaries of Latvia's deputies are a major stimulus for corruption. However, it would be important to examine this problem from

the aspect of the expectations of elected officials, their value orientation and life styles. This would give a better understanding of where salaries stand in the structure of corruption factors in Latvia.

Society's dual attitude to corruption should also be seen as a factor that stimulates corruption. Although corruption is condemned and its negative impact on national development widely recognized, many individuals are ready to engage in dishonest activities to achieve satisfaction of their needs/interests, and to morally justify such behavior. Furthermore, public interest in politics cannot be described as great, and this does not in any way promote responsible policy-making.

[1] University of Latvia associated professor. J. Ikstens' academic interests encompass political parties, party systems, party and campaign funding, voter behavior.
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[33] Valtenbergs, V. "Vai partiju valstiskais finansējums palīdz cīņā ar korupciju [Does state funding for political parties help to combat corruption?]." In: Ikstens, J. (ed.) *Partiju finansēšana: Latvijas pieredze pasaules kontekstā [Party funding: Latvia's experience in a global context].* Riga, 2003, pp. 65–69.
[34] On May 30, 2001, in the TV program "Kas notiek Latvijā [What is going on in Latvia]?" businessman Viesturs Koziols came out with the allegation that all political parties in

Latvia have the so-called "slush funds." Although the Prosecutor General's Office did not see grounds for launching a criminal investigation into this problem, V. Koziols has continued to stick to his view. In 2002, *Saeima* deputy Imants Burvis said he was convinced that the Latvian Social Democratic Workers' Party had a "slush fund." The existence of "slush funds" was also indirectly confirmed by the author's interviews with Latvia's politicians in 2000 and 2006.

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[36] Centre for Public Policy PROVIDUS. *Iespējamo slēptās reklāmas gadījumu analīze medijos pirms 2005. gada pašvaldību vēlēšanām [Analysis of possible cases of hidden advertising in the media prior to the 2005 municipal elections].* Riga, 2005. http://www.politika.lv/index.php?f=554 Last accessed on May 15, 2006. Centre for Public Policy PROVIDUS. *Iespējamās slēptās reklāmas gadījumu analīze medijos pirms 8. Saeimas vēlēšanām [Analysis of possible cases of hidden advertising in the media prior to the 8th Saeima elections].* Riga, 2002. http://www.politika.lv/index.php?f=106 Last accessed on May 15, 2006.

[37] One of the earliest and most direct disclosures was made by Andris Jakubāns. Circene, M. "Tikai Jakubāns, tikai Maigai [Only Jakubāns, only for Maiga]." *Mediju Ziņas*, No. 16, November 29, 1995, p. 6.

[38] Dimants, A. *Pašcenzūra pret paškontroli Latvijas presē [Self-censorship against self-supervision in Latvia's press].* Valmiera, 2004, p. 114.

[39] Brikše, I. "Latvijas mediji: izaicinājumi, ieguvumi un draudi (1997–2000) [Latvia's media: challenges, gains and threats (1997–2000)]." In: Jaunzems, A. (ed.) *Sociālekonomiskā trajektorija Latvijā laikā no 1985. gada līdz 2002. gadam. Kur tā ved Latviju? [The socio-economic trajectory in Latvia in the period from 1985–2000. Where is it leading Latvia?].* A scientific study. Ventspils University College, 2002, pp. 294–306.

[40] UNDP Human Development Report 2000–2001. Riga, 2001, pp. 16–42.

[41] Ikstens, J. "Partiju un NVO savstarpējās attiecības racionalitātes spogulī [Party and NGO relations in the mirror of rationalism]." Paper presented at the conference "Kurp ej, demokrātija Latvijā [Where to, democracy in Latvia]?" in Riga, April 1, 2006.

[42] LaPalombara, J. "Structural and Institutional Aspects of Corruption." *Social Research*, 1994, Vol. 61, No. 2, pp. 325–350.

[43] *Dzīves apstākļu apsekojums Latvijā 1999. gadā: informatīvs biļetens [Newsletter on social conditions in Latvia in 1999]*, Riga, 2000, p. 161.

[44] *SKDS* data. Representative survey of 2002 respondents throughout Latvia, aged 18 to 74.

[45] See: Transparency International yearly corruption perception indices.

[46] "Attieksme pret korupciju. Latvijas iedzīvotāju aptauja 2005. gada janvārī [Attitudes to corruption. Public survey in January 2005]." Riga, *SKDS*, 2005. http://www.politika.lv/index.php?id=4378 Last accessed on June 14, 2006.

[47] Judins, A. "Tiesu prakse kriminālllietās par kukuļņemšanu [Court practice in criminal cases involving bribery]." In: Kalniņš, V. (ed.) *Corruption ºC. Report on Corruption and Anticorruption Policy in Latvia. 2005, Second semiannum.* Riga, 2006, p. 33.

4. The Tide of Access to Information. In Expectation of the Ebb

Linda Austere[1]

The "global explosion" of access to information laws adopted in different countries over the past two decades[2] inevitably raises the question of whether more is also more transparent? The answer depends in part on whether or not the basic principles of an access to information law address the challenges posed by reform of the public administration. One of these is the question of whether and to what extent private persons who are assuming increasingly greater administrative functions as the result of reorganization of the public administration are subject to public scrutiny under the rules of access to information. Along with growing demands for access to information, the discussion about where transparency ends and protection of personal privacy begins has gained new strength.[3] To what extent does public interest in monitoring the public administration and assuming its functions permit an infringement of personal privacy?

This paper will touch on theory and practice, but it will focus mainly on the situation in Latvia as regards the rights and duties of the private individual under the Access to Information Law and on problems and practice regarding the reciprocal effect of the Access to Information Law (AIL) and the Law on Protection of the Data of Natural Persons when making information publicly accessible.

Smaller Government – More Secrets?

Since the mid-1990s, reform of the public administration has set a new course for development: according to public administration experts, governments should now be manning the rudder and not the oars.[4] The principal role of governments is to define goals, shape public policy and come up with sufficient funding to carry it out – not to provide public services.

However, when functions are transferred to agencies that act in accordance with the government's commission and under its supervision, when functions are entrusted to quasi autonomous entities governed by private law, when public

resources are invested in the share capital of private companies or specific functions delegated to legal persons governed by private or public law, there are many questions that arise. Primarily about responsibility and institutional control mechanisms. For example, whether and how effectively legal regulation of access to public information covers the performance of public administration functions and tasks? What are the arguments that justify inclusion of this sector in AIL and *opening* of the private sector to information requests under AIL regime? After all, if we applaud the increasing transparency of public administration institutions (and there is undoubtedly reason to do so), but at the same time keep in mind the increasingly decentralized character of public administration functions, do we not in reality find ourselves on an ebbing tide of access to information, in a situation where the Access to Information Law covers only a fraction of those whose actions affect vital public interests?

Arguments for Transparency

Two arguments are usually voiced for why and when service providers or institutions that are not under direct or indirect government control should be included among those to whom AIL is applied. One of these arguments has to do with the source of functions or tasks, the other with the public element in their performance. Some authors also mention a third argument: the public interest.

Source of functions or tasks. If a public administration function or task that has been delegated to a private person has initially been or would be subject to access to information regulations were it in the hands of the public administration, there is no reason to assume that privatization *per se* rules this out. At the same time, this argument is considered valid only in cases where it is possible to establish that functions which primarily involve public competence or are performed in accordance with public sector regulations (e.g., education, public utilities) are identical or very similar to those provided by the public administration. For example, there would be no reason to assume that when secondary education is entrusted to a private school there is no longer a need to account for the quality of the service that is provided or for the use of public resources. This kind of "reporting to the public" must be separated from the duty prescribed by the law to observe public safety requirements (quality) and to account for them, particularly in regard to personal safety, etc., which is binding in many areas governed by private law, including those in which there is otherwise no government involvement.

The weakness of the argument lies in its basic lack of reasoning. If only historical considerations are taken into account, a situation is theoretically possible where public agencies can present arguments for less transparency on the grounds that a function has previously been performed by the private sector. Such argumentation is particularly possible when public and private sectors compete in providing the same service.

The public element in the work of agencies. The second argument is based on aspects of performance and supervision that are common to both the public

and the private sectors. It is presumed that if the functions performed by an agency are directly subject to the regulatory framework of the public administration, if they receive public funding regardless of the size of their contribution, they must observe the access to information regulations pertaining to public administration regardless of whether their boards are formed on the basis of administrative or political decisions.

Admittedly, this, too, is a fairly abstract argument and does not give a real answer to the question: why should transparency requirements be applied in the same way to agencies which cannot be structurally compared with and which are not directly subordinate to central public administration institutions. The simple argument that there are sufficient and justified reasons to demand transparency in the central administration and that these reasons should therefore be applied in the same way to agencies that are, so to say, in the *grey zone* will hardly serve to convince opponents.[5]

Public interest.[6] A conceptual motivation for broadening the scope of AIL can be found in the quintessence of the law itself: to guarantee independent supervision of whether administration acts in the public interest. The right to information, regardless of which institution enforces this right, is a permanent and inalienable element of an individual's basic rights.[7] Assessment of how a concrete agency observes public interests could mean that in the *grey zone* the right to information must **always** be recognized if it can be proved that an agency's closed character in general and refusal to provide information about its activities in particular negatively impacts basic rights and causes damage. The right to information about a private agency – as about a public agency – can make it possible to establish, define and prevent such damage.

Latvia's reality

In Latvia, the duty to provide information that has been requested is binding – for every public agency and every person performing public functions or tasks – only insofar as this information is connected with the functions or tasks being performed.[8]

Unlike the situation in many other countries, in Latvia there is not much controversy over the transfer of administrative functions to public agencies and the delegation to persons governed by private law of tasks that may be connected with the private person's specific knowledge or possibilities.[9] An agency's functions and competence – therewith, the scope of the law – are defined in either the agency's bylaw[10] or in a contract on the delegation of functions.[11] If the rules for delegating functions and tasks that are laid down by the law are observed, there is sufficient reason to believe that a clear distinction can be made between a person's conduct in private or in public interests. At the same time, the duties and rights that derive from the performance of these functions can also be clearly distinguished – among them: informing the public and responding to requests for information for the purpose of AIL.

However, the implementation of access to information has not only theoretical but also practical aspects – questions involving organization, capacity and costs. Acting on requests for information in due time and manner can take time and involve costs. On the other hand, it is not clear whether government subsidies that are granted for the performance of public functions, especially specific tasks, include compensation for the cost of providing information as required by law. Insufficient government funding (not just for private agencies, but for the implementation of information policy in general[12]) promotes a situation not in keeping with the Access to Information Law, where information becomes either one of the services provided by the agency at a charge (and not an integral part of a person's basic rights), or where it can be denied for administrative reasons and not for reasons pertaining to its content.

On entity to which AIL cannot unquestionably be applied is a corporate enterprise in which the state or the local government is a majority shareholder.[13] Cases in which the operations of a business enterprise are not connected with the implementation of government policy in a specific sector must be set apart from situations in which the specific nature of a company's operations qualifies it as an agency.[14] A curious alternative way for the public to acquire information about the work of a business enterprise is pointed out: the public exercises supervision through the controlling institution, which includes the politically appointed board members of the company for whom, in accordance with the chain of responsibility in the administration, the government minister of the concrete sector bears political responsibility.[15]

Courts say: public task – greater responsibility. The frequently used argument about the interests of taxpayers regarding the use of public resources can be and is **correctly** applied by both sides – those demanding and those holding information. On the one hand, anyone is entitled to receive information about the use of public resources[16] (which means that this cannot be restricted access information); on the other hand, in accordance with the Commercial Law, the public resources invested in a corporate enterprise shall be considered the property of the enterprise – not public property.[17] Moreover, in the use of resources, it is actually impossible to separate public from private resources. In practice – and this includes court judgements – the argumentation that is usually applied to decide such cases is connected with those functions of a business enterprise which are carried out in accordance with public regulation. The source of the functions is also analyzed to some extent.

For example, after analyzing the share of public functions in the energy sector, the company's supervisory mechanism, and the procedure for contesting the decisions[18] of the institution that oversees the work of the defendant (the Regulator[19]), the Supreme Court Senate found that in its dealings with private persons the Latvenergo joint-stock company was an agency, as defined by the Law on Administrative Procedure. From this follows that the company is also governed by the Access to Information Law. The position of the court as regards the role in the national economy and the public nature of the functions performed by the company is supported by the practice of corporate enterprises

themselves in their response to requests for information.[20] The public supervision argument can also be found in regulatory enactments connected with the subjection of state-controlled companies to legislation on prevention of the misappropriation of state and local government property,[21] which comprises a series of restrictions on the use of such property by corporate enterprises, making no distinction between the public and private share of such property,[22] but holding that state or local government majority control is sufficient argument to justify the application of an administrative control mechanism. Admittedly, this solves the problem of an institution's status, i.e., the question of the formal scope of AIL, but it does not address the main issue: the question of content and amount of the accessible information.

The secretive charm of business secrets. The most frequently heard argument against information transparency in regard to business enterprises is the protection of business secrets. The Access to Information Law is very clear on this point: information that is connected with the performance of public administration functions or tasks cannot be a business secret. In accordance with rulings of the Supreme Court, the status of business secret cannot be applied to information that is connected with the provision of services that ensure the implementation of government policy in a specific sector of the economy, regardless of the legal status of the service provider.[23] Moreover, it cannot be denied that the business activities of an "agency" are at the same time a public service, so that when making decisions about the right to access information it is necessary to seek a way of determining the extent to which the observance of public interests compensates for restrictions on the rights of a business enterprise and the uncharacteristic legal onus. Other authors point out: "The public private distinction can create a kind of discretion that courts need to differentiate between FOIA requests that further the goals of the statute and those that seek only to advance private, litigation strategies."[24] The quintessence of the problem and at the same time its solution lies both in the nature of the information that is requested (whether this is connected with the performance of public functions) and in the motivation of the applicant.

In addition to the five criteria set out in the Commercial Law,[25] which describe nature, use and safekeeping of such information, one of the characteristic features of a business secret under both the Commercial Law and the Access to Information Law (admittedly, setting it apart as a separate business secret category alongside that identified as such by the entrepreneur) is loss of or damage to the competitiveness of a business enterprise, the nature and probability of which is estimated by the enterprise.

Public control and supervision of the operations of a business enterprise means that (any!) information held or generated by a company and not classified as a business secret is at the disposal of the supervisory body. Thought should therefore be given to finding a solution to the question of making such documented information, intended for internal agency use, but connected with the performance of functions delegated by a state/local government agency, available to third parties. The author of such information should logically have the right to

assume that the information will be adequately protected, but, in accordance with the Access to Information Law, does not have the right to presume that disclosure of such information can be completely ruled out. A decision to disclose such information compels an agency to weigh the impact of the disclosure on the business interests of the enterprise. It is clear that the likelihood of damage (both the Access to Information and Commercial Law say that it "is likely to occur") or the nature of such damage cannot be presumed without first hearing the views of the entrepreneur and without giving a detailed justification for the decision.[26] In a similar case concerning damage incurred by the disclosure of information by an agency, when interpreting the meaning of the word "likely" a court in the United Kingdom pointed out: "'likely' ... does not mean more probable than not. But on the other hand, it must connote a significantly greater degree of probability than merely 'more than fanciable'."[27] From this follows that it is the nature of the damage and not the possibility of damage that is of consequence.

In cases involving requests for information, the decisions of Latvia's administrative courts on the question of whether or not restricted access status can be applied to specific information do not, so far, allow conclusions about the criteria applied by judges for assessing the extent of damage. Nor do they make it clear whether courts tend to justify the classification of information in cases where information has been requested from a business enterprise or a private person, and not a public agency.

Another debatable question in the same context is connected with "subjection" of companies founded by corporate enterprises to the Access to Information Law.

Is Data Protection a Universal Tool against Information Transparency?

A conflict exists between the right of access to information and personal data protection, or the inviolability of a natural person's privacy.[28] Traditionally, when making decisions on requests for information, the rights of the person about whom information is requested are judged as having precedence. This has almost become a universal "excuse" for refusing information. Experience shows that data protection as an argument for refusing information is used in Latvia in almost all situations where the information that has been requested contains data about a natural person or points to such person – even when it is possible to apply other restrictions imposed by the Access to Information Law.[29] When can data protection curtail the right of the public to be informed about and judge the work of the public administration? In Latvia, analysis of this problem produces interesting and – in comparison with other countries – rather bold conclusions about the nature of the public interest protected by AIL and application thereof in cases where personal data impose restrictions on the goal of the law – to ensure transparency of the public administration by dispelling doubts about the legality and integrity of the acts of public officials. In Latvia's court practice, protection of the data of natural persons is one of the frequently explored restrictions on the principle of information transparency.

Information Contains Personal Data. Period?

The fact alone that information held by an agency contains personal data is not sufficient reason for refusing such information. This means: the period should be replaced with a comma, which should be followed by an explanation. Theory is unanimous: restrictions apply only to such personal data, the disclosure of which is likely to infringe on the rights of the person to whom this data pertains. More precisely: the disclosure of information *per se* cannot be considered a violation of Article 96 of the Constitution or other human rights documents binding on Latvia.[30]

The simultaneous application of both laws can be fairly simply illustrated:

- Firstly, it is necessary to establish whether the request for information affects such personal data which, if disclosed, would mean violation of a person's right to privacy (the rights protected by Article 96 of the Constitution). Another criterion: whether the information contains facts that would normally be considered information of a personal or private nature.

- Secondly, similarly as when qualifying information as a business secret, it is necessary to establish whether the disclosure of this information in fact violates the rights of a person. If it can affect a person's rights only hypothetically or superficially, it cannot be considered a violation for the purpose of AIL. The agency must be able to explain how the disclosure of information can be the cause of eventual damage and assess the likelihood of such damage.

- Thirdly, it is necessary to establish whether it is not possible to satisfy a request for information without disclosing personal data (which meet the aforementioned criteria), providing only the publicly accessible part of the information. If a person's data are disclosed, this cannot be done in contravention of the principles of data protection. Under the Law on Protection of the Data of Natural Persons,[31] personal data may be disclosed only if such a possibility is provided for by law; furthermore, the disclosure may not be in contradiction with other provisions of the Data Protection Law and the therein anchored principles for handling of personal data.[32]

A more complex and better substantiated assessment is required in cases where the applicant is directly interested in obtaining personal data. Such situations call for an *ad hoc* solution: the interests of the parties involved in the case or the public interest as represented by one or both of the parties must be weighed.

The Data Protection Threshold of Public Officials. Lower?

The most precise answer to the question in heading can be found by analyzing the aforementioned concept of "public interest" in the context of reciprocal application of the Law on Protection of the Data of Natural Persons and the Access to Information Law.

A broader explanation was given by the Regional Administrative Court and the Supreme Court of Latvia: information about a public official, which is connected with the discharge of official duties, cannot be classified as restricted access information on grounds of personal data protection. The court was asked to decide on a request for information submitted to the Prosecutor General's Office by Transparency International Latvia (*Delna*), in which *Delna* had asked for information (decisions) about the termination of criminal investigations against a number of public officials. It was pointed out in the request that *Delna* did not need information which contained restricted access data, but only that part of the information which showed how concrete officials had acted in the situation that had been investigated.

The request was denied, and one of the reasons given for the denial was that this type of information was generally classified as restricted access information because, in accordance with Latvia's Criminal Procedure Code (CPC), a decision could be made known only to the directly interested parties, so that disclosure of such information to third parties was not permissible. According to the Prosecutor General's Office, the purpose of the restriction was protection of the reputation of the persons under investigation and the necessity to rule out the possibility that confidential information might be disclosed. After considering the reciprocal effect of personal data protection interests and the right to access information in cases where third parties were interested in material on a closed case, the Regional Administrative Court[33] took the following position:

Firstly, when analyzing whether the information requested by *Delna* would affect the rights of the persons to whom this information pertains and the inviolability of their privacy, the court refers to the need to consider the difference between a person's conduct in a private and in a public capacity, pointing out that *Delna* does not wish to obtain personal data about the public officials who were investigated, but only that part of the information (decision) which involves their conduct in a public capacity. The court concludes that the Law on Protection of the Personal Data of Natural Persons does not contain restrictions that prohibit receiving of information on the conduct of concrete public officials in the discharge of their official duties.[34] At the same time, citing international court practice, courts in Latvia too have acknowledged that a public official's private interests cannot be associated with his or her conduct in a public capacity.

Secondly, the court analyzes the public interest aspect in the disclosure of such information, pointing out that it is necessary to distinguish between the different stages of criminal procedure and to define the purpose of information protection (restrictions) and the applicable measures in each of the stages. It is necessary to separate the time of the investigation from the time after the investigation has been closed. In such cases, the initial purpose of data protection is to ensure protection of the rights of persons under investigation during the investigation, in order to reach the desired goal. During this stage of criminal procedure, information is protected as confidential investigation material by provisions on criminal procedure. Once a case has been closed (keeping in mind that neither CPC nor the Law on Criminal Procedure that is currently in force have

any special regulations on this), the question of disclosing information about a criminal case must be decided in accordance with the Access to Information Law, which prescribes – among other things – the duty to guarantee protection of personal privacy. The Regional Administrative Court therefore finds[35] that, contrary to the reigning view that the materials in a criminal case are accessible only to the persons involved, once a case is closed the handling of these materials by law enforcement authorities is subject to the Access to Information Law and therefore the control of the Administrative Court.

Why Personal Data Do Not "Cancel" Transparency in the Use of Public Resources

Shortly after adoption of the Access to Information Law, the Constitutional Court of Latvia pointed out that information about the use of national budget resources cannot be restricted access information, regardless of the conditions of their use (in accordance with a law or contract).[36] General jurisdiction and court practice in this question provide a bold, but not very well supported view about a trade-off between protection of personal data and the protection of public interests guaranteed by AIL in such cases where a public official's private life may be injured by the disclosure of information about the use of public resources.

For illustration, two cases that received quite a bit of public attention. Both have to do with the disclosure of bonuses paid by the Riga City Council in connection with a request not only for prosaic details about position of the employee and size of the bonus, but also for full name and surname of each concrete official, which would make it possible to clearly identify the recipient of a bonus.

The first of the cases began at the end of 2003, when the Riga City Council refused to give journalists information about bonuses received by concrete city council officials and employees, using protection of personal data as an excuse. Following intervention from the responsible ministry and the access to information watchdog, the National Data Inspectorate (NDI), the information was made public. However, one of the city council employees affected by the disclosure filed a complaint, claiming that the NDI decision (which can only have the form of a recommendation) was unlawful.

The court of first instance pointed out that processing of personal data – including disclosure to third parties – was acceptable only when this was directly permitted by law and the information was necessary for protection of public interest. Restrictions on the disclosure of information were not justified "if the applicant is able to prove the existence of a regulatory enactment whose purpose it is to protect public interests."[37]

In regard to transparency in the use of public resources, this would be the Law on National Secrets, which provides that information on the use of public resources, including information on the salaries and benefits paid to public officials and employees, is publicly accessible information. It should be noted that

the court has not dwelt in length on, but has also not rejected the arguments of the defendant about an exception to the ban on processing personal data if this is required for journalistic purposes. Nor did the court analyze why transparency regarding "additional benefits" (which could just as well be seen as information on expenditures in these overall categories, or expenditures in a specific structural unit) would be implemented only if information was disclosed not only on expenditures, but also on personal data. Moreover, if the court quotes *public interest* – which in itself is part of the regulation and comprised in the Law on Protection of the Data of Natural Persons as one of the mandatory preconditions for disclosure[38] – as the grounds for its decision that data must be disclosed, the court must, in its reference to this term, also expound on it, so that it may serve as a guideline for other law enforcers. Since there is no such explanation, the model of action that follows from the judgement is difficult to justify.[39]

The interpretation of *public interest* given, or, more precisely, not given by the Riga Centre District Court, which purely formally linked its interpretation to regulatory enactments that allow processing of data – including disclosure to third parties – makes it difficult for Latvia to provide a well-argued explanation for why it finds that a significantly lower privacy protection threshold should be applied to every (!) public official as soon as the question is connected with payments from the national budget. It should be pointed out that in the majority of countries in which courts have expressed themselves on this point a higher standard of transparency is commonly applied only to senior public officials and to such persons whose duties are connected with key public interests and – consequently – greater responsibility.

The second case – identical in circumstances, but heard this time by the Regional Administrative Court from the perspective of the applicant. The question involved the legitimacy of a refusal to give information about the size of bonuses paid to certain employees of the Riga City Council,[40] including name, surname, position and job description. The applicant[41] contested the decision of the city council – a partial refusal to provide information: the council revealed position of the recipient and size of the bonus, but refused to indicate each person's name and surname, explaining that this (generally accessible) information had already been made public and could be found on the city council's website. By separating the requested information, which taken together is restricted access information, into two groups of generally accessible information, of which one group (names and surnames of employees) is freely accessible on the Internet website (this is sufficient reason for refusing to provide such information in written form), the Riga City Council has tried to solve the problem illustrated earlier in quite an original way.[42]

From the court's judgement follows that, after assessment of the compliance of an administrative act with requirements of the law, what is important is not the way in which the requested information has reached the applicant (in one piece or in separate parts), but rather the content of the information provided *in toto* – how precisely it allows implementation of the information transparency goal set out in AIL. By circumventing the Law on Protection of the Data of Natural Persons

and avoiding a decision on disclosure of all of the requested information in one piece, and by analyzing the potential damage to an individual's right to privacy, the city council had actually created a situation in which, with a minimum of effort, private persons were able to gain access to the information anyway.[43] This fact is conceded in explanations to the court by the defendant himself, who points out that the entirety of the requested information contains precise information about the income of a concrete and identifiable natural person, which must therefore be considered as personal data.[44] When judging whether such conduct can be seen as adequate satisfaction of a request for information, the court points out: it cannot be disputed that information about an official's name, surname and position is publicly accessible on the city council's website; however, in view of the fact that this data does not contain all of the information that has been requested, it cannot be considered as a response to the request for information, for the purpose of the law.

Referring to the implementation of such public interests which the Law on National Secrets protects by prohibiting classification of certain categories of information, the court points out that "the size of a bonus paid to an official is not restricted access information in connection with this specific official."[45] Although the court's argument is indisputable, this judgement, too, fails to separate and analyze two of the provisions for processing data, which are comprised in the Law on Protection of the Data of Natural Persons: 1) a situation in which this is demanded or permitted by another regulatory enactment, and 2) a case where this is necessary to protect public interests in a wider sense.

In the opinion of the court, full disclosure of personal data in this specific case can be justified not only with the public interest in monitoring the way in which the local government spends public resources, but also with the interest of the person to whom these data pertain in having it presented correctly. Some city council institutions have several employees with an identical job title, but the size of the bonuses that they have received differs. This means that "it is not possible to clearly establish which bonus was paid to which person …. Such information is incomplete, and use of such information comprises the risk of error."[46]

Summary and Recommendations

Since adoption of the Access to Information Law in October 1998, implementation of the Law on the Public Administration System and particularly the Law on Administrative Procedure, the accent in Latvia has been placed on a functional rather than institutional interpretation of the term *administrative agency*. Furthermore, amendments made to AIL at the end of 2005 have significantly and – what is even more important – incontestably broadened the scope of the right of access to public information in Latvia. This has made it possible to avoid discussions about whether information transparency requirements apply only to central administration agencies, or whether the law also applies to local governments, their agencies and municipal enterprises. On the other hand, there is

more and more debate about interpretation of the content of the restrictions prescribed by AIL.

However, broadening the scope of the law has not solved serious problems connected with application of the law and interpretation of the restrictions in "new territories," such as organization of the way in which information is used and funding of information transparency, which are particularly important to those for whom the rights and obligations prescribed by AIL are new. If these questions fail to find an answer in policy and legislation, it can almost with certainty be said that the tide of access to information in Latvia is an illusion because transparency is fully applied to only a narrow circle of persons (the administration in the institutional sense).

Firstly, there are no common guidelines for competent application of AIL to every natural or legal person who is carrying out an administrative task or performing functions of an administrative nature. At least minimum requirements should be considered for organization of the give-and-take of information among the persons governed by this law (what cannot be found, cannot be taken), the funding of information transparency (including user fees for information), recording of information requests, etc.

Secondly, the question of how to interpret AIL in regard to corporate enterprises in which the state or the local government has a majority share is still an issue. Law and court practice in Latvia say that at least some of these institutions whose goals are inseparable from the socio-economic goals of the state must be subjected to general public supervision and the obligation of information transparency. At the same time, in view of the primary interests of each and every business enterprise (competitiveness, profit, etc.), the most important thing for ensuring the effectiveness of this regulation is finding a conceptual solution to the question of form, content and amount of information that must be made accessible. A sensible solution would make it possible to achieve sufficient transparency to ensure safeguarding of public interests in the work of such institutions, at the same time avoiding as much as possible the negative effect of transparency on competitiveness of the enterprise.

While dealing with the above, it is possible to prepare guidelines on those aspects of the operations of such corporate enterprises which should be subjected to public as well as political supervision, in order to facilitate *ad hoc* decisions on each request for information. In a similar way, Latvia's courts currently decide the question of equating public corporate enterprises with agencies as defined by the Law on Administrative Procedure insomuch as they perform public functions and their freedom of entrepreneurial action is restricted by regulations governing the public administration. The alternative would be to broaden the scope of AIL in regard to certain categories of questions concerning private persons, which are of significant public interest. This could be compared to the duty of the overseer of the processing system for data on natural persons to provide a certain type of information, or the duty of every person – those governed by private law as well as those governed by public law – to ensure access to information on the condition of the environment.[47]

Thirdly, the problem of simultaneous application of the Law on Protection of the Data of Natural Persons and AIL in Latvia is characterized mainly by insufficient understanding of the concept *data of natural persons*. It is interpreted too broadly and it is wrongly presumed that it has priority over other, closely related rights and interests. In consideration of the fact that the scope of AIL has been considerably broadened – also in regard to persons who are not institutionally linked to the administration – it can be expected that requests for information will continue to raise questions about protection of the privacy of natural persons and make it necessary to analyze more and more new aspects, particularly in regard to protection of vital public interests.

In practice, one of the most serious problems in connection with exploration of the *grey zone* between information transparency and data protection is the absence of effective law enforcement monitoring in Latvia. This absence results primarily from the legal status of the National Data Inspectorate: it is still under the supervision of the Ministry of Justice, it still has limited competence as regards implementation of AIL, and it has, in fact, no resources for performing the functions currently within its competence.[48] In this context, it is necessary to continue work that has been initiated at the conceptual level on a new and independent institution, or several institutions, which would monitor implementation of AIL and the Law on Protection of the Data of Natural Persons, which would be endowed with sufficient resources for timely resolution of conflicts and sufficient competence (comparable to the current situation in regard to the data of legal persons) to allow effective implementation of decisions. The weakness of the monitoring mechanism for enforcement of AIL makes it impossible to take proactive measures to improve use and management of information, and does not ensure supervision of the actions of either the administration or a wider circle of legal and natural persons governed by AIL.

[1] Linda Austere – University of Latvia *dipl. iur*. Continuing studies for a master's degree at the Central European University. Since 2002, has worked with questions related to public sector information transparency and anticorruption policy. Since 2005, has been working at the Centre for Public Policy PROVIDUS.

[2] Twenty years ago, only 20 countries had enacted legislation that entitled private persons to receive information that is generated in the performance of public administration functions. Ackerman, J. M., and Sandoval-Ballestros, I. E. "The Global Explosion of Freedom of Information Laws." *Administrative Law Review*, Vol. 85, 2006, pp. 85–130.

[3] According to data collected in countries that register and analyze requests for information and answers to such requests, the protection of personal privacy is one of the most widespread reasons for refusing information.

[4] Osborne, D., and Gaebler, T. *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*. Plume, 1992.

[5] For sources and detailed analysis, see: Roberts, A. "Structural Pluralism and the Right to Information." http://www.aroberts.us/documents/chapters/Roberts_sprti_odac_2002.pdf Last accessed on June 29, 2006.

[6] Roberts, A. "Structural Pluralism and the Right to Information." http://www.aroberts.us/documents/chapters/Roberts_sprti_odac_2002.pdf Last accessed on June 29, 2006.

[7] See: Report of the Special Rapporteur. *Promotion and Protection of the Right to Freedom of Opinion and Expression.* UN doc. E/CN. 4/2000/63, April 5, 2000.
[8] Access to Information Law, Section 1, Paragraph 4, with amendments adopted on December 22, 2005. October 5, 2005 judgement of the Supreme Court Senate's Department of Administrative Affairs in Case No. SKA-162, on the scope of the Transparency Law.
[9] The overall scope of the law and special exceptions thereto are one of the central topics of discussion in a global context. See, for example: Ackerman, J. M., and Sandoval-Ballestros, I. E. "The Global Explosion of Freedom of Information Laws." *Administrative Law Review*, Vol. 58, No. 1, 2006, pp. 85–130.
[10] Law on Public Agencies, Section 8, Paragraph 3. *Latvijas Vēstnesis,* April 11, 2001.
[11] Law on the Public Administration System, Section 46. *Latvijas Vēstnesis*, June 21, 2002.
[12] For example, local governments charge a fee for providing information (June 28, 2005 Cabinet of Ministers Regulations No. 480. Rules on Charging Municipal Fees. *Latvijas Vēstnesis*, July 1, 2005). The service fee policy that is planned in Latvia, both in general and in regard to those affected by the Access to Information Law, indicates that the government is not prepared to invest resources to guarantee such services. Instead, the individual requesting information will be called upon not only to pay for the technical expenses of this service, but also to cover the agency's personnel and administrative costs. In a global context, this is seen as one of the most abortive models of service fee policy (draft of the Regulations on Information User Fees, Rebates and Exemptions, and the Payment of Such Fees.) See: http://www.mk.gov.lv/mk/tap/?pid=30249685 Last accessed on July 13, 2006.
[13] According to the Law on Prevention of the Misappropriation of State and Local Government Financial Resources and Property, Section 3 (*Latvijas Vēstnesis*, August 2, 1995), restrictions on the use of public resources should be applied to such companies in particular, and the activities of their officials as to the legitimate use of public resources monitored by the Corruption Prevention and Combating Bureau.
[14] Since both the Regional Administrative Court and the Administrative Affairs Department of the Supreme Court Senate, citing the two-stage theory for differentiating between regulation of the public sector and that of the private sector (Briede, J. "Administratīvais akts." *Latvijas Vēstnesis*, 2003, pp. 102–105), found that, in view of its functions and tasks, the Latvenergo joint-stock company was an agency as defined by the Public Agency Law.
[15] Political responsibility and control in the hands of the political party responsible for a sector is one of the arguments typical for the discussion on the advantages of this form of supervision over a system based on professional capacity. (For example, E. Jaunups' argumentation in the discussion organized on June 14, 2006 by Transparency International Latvia (*Delna*) on an interim report on the study "Donations Made by the Board Members of State and Municipal Enterprises."
[16] For comparison: the Public Agency Law clearly stipulates that information about the accounts of agencies shall be considered as public.
[17] Commercial Law, Sections 136, 137, 182. *Latvijas Vēstnesis*, April 10, 2000.
[18] January 25, 2005 judgement of the Administrative Affairs Department of the Supreme Court Senate in Case No. SKA-87. See point 9. The Senate's argumentation is based on the Energy Law, according to which energy policy is part of the national economic policy. This makes it the obligation of the government to provide electric power for the consumer. The Senate also refers to the control mechanism of companies that supply electric power: their operations are regulated by the Law on Public Utilities Regulators.
[19] The validity of this argumentation is also in part confirmed by the *Saeima* debates (*PCTVL* proposal for amendments to the Law on Public Utilities Regulators) on the need to disclose the methodology and justification for fixing the tariff rates submitted by service providers, drawing parallels with a landlord's obligation to itemize rental costs. The proposal was rejected.

[20] The state controls 51% of Lattelecom shares. The provision of telecommunications is linked to the implementation of government policy. The income statements of the company's directors are submitted to the State Revenue Service, as prescribed by law, and are available to the public on the Internet. The state controls 52.6% of Air Baltic shares. However, the salaries of the company's board members were not disclosed, under the pretence of confidentiality, even to the shareholders – the Ministry of Transportation.

[21] Law on Prevention of the Misappropriation of State and Local Government Property. *Latvijas Vēstnesis*, August 2, 1995.

[22] The argument about the impossibility of separating the public from the private share of capital – which also means the impossibility of establishing which functions were performed using public resources and which using private resources – is used less frequently than other arguments when refusing to give information about any of the functions performed by a corporate enterprise, and particularly about the costs involved.

[23] January 25, 2005 ruling of the Supreme Court Senate's Department of Administrative Affairs in Case No. SKA-87.

[24] Aman, A. C. Jr. "Information, Privacy and Technology." In: Beatson, J., and Cripps (eds.) *Freedom of Expression and Information. Essays in Honor of Sir David Williams.* Oxford University Press, 2000, p. 334.

[25] Section 19, Paragraphs 1 and 2 of the Commercial Law (*Latvijas Vēstnesis*, May 4, 2005) stipulate that a business enterprise can apply the status of business secret to such information of economic, technical or scientific nature …, in written or other form, which meets **all** of the following criteria: it involves the company or is directly connected with the company; it is not freely accessible to third parties; it is or can be a financial or non-financial asset; in the hands of a third party, it can create losses for the enterprise; the enterprise has taken the appropriate measures for safeguarding such information.

[26] Although such obligation is not directly prescribed by either the Access to Information Law or the Law on Public Agencies (to provide information, it is not required to consult a third party whose interests may be affected), this follows from the principle that rights – including those of a business enterprise – must be observed. It should be added that legislation in many countries, particularly the Anglo-Saxon countries, makes it an obligation to consult with the author of such information, as in cases when an agency decides to disclose information about a natural person to a third party.

[27] Information Tribunal. Words of Mr. Justice Munby in R. (on the application of Lord) v. Secretary of State for the Home Office. (2003) EWHC 2073 (Admin.).

[28] Clayton, R., and Tomlinson, H. *Privacy and Freedom of Expression.* Oxford University Press, 2001, pp. 36–40.

[29] Plato, D. "Jūrmalas dome jau mēnesi nesniedz ziņas par zemes ieguvējiem [Jūrmala City Council has been refusing information about new landowners for over a month]." *Diena*, June 29, 2006. Refusing to give information about the new owners of land sold at auction before confirmation of the auction outcome, the Jūrmala City Council quoted personal data protection rules, failing to consider the fact that the Access to Information Law provides a legitimate and justifiable reason for refusing information in such cases by prescribing restricted access to information intended for internal use.

[30] "Public Access to Documents and Data Protection." European Data Protection Supervisor. *Background Paper Series.* July 2005, No. 1, pp. 34. It is important that this conclusion cannot be reached without hearing the views of the person to whom such data pertains, regardless of whether this is done while collecting data about the person or at the moment when the agency is preparing to make a decision about taking actual action (disclosing information) or resorting to an administrative act restricting the right of a third party to information.

[31] Law on Protection of the Data of Natural Persons. *Latvijas Vēstnesis*, April 6, 2000.

[32] "Public Access to Documents and Data Protection." European Data Protection Supervisor. *Background Paper Series*. July 2005, No. 1, pp. 32–33.
[33] January 17, 2005 judgement of the Regional Administrative Court in case No. C27197802 (Transparency International Latvia (*Delna*) v. the Republic of Latvia Prosecutor General's Office). The September 16, 2005 judgement of the Supreme Court Senate's Administrative Affairs Department in case No. SKA-162 also considers these arguments to be justified.
[34] January 17, 2005 judgement of the Regional Administrative Court in case No. C27197802, parts 22 and 25.
[35] After hearing the defendant's cassation appeal, this was also the decision of the Senate of the Supreme Court in its September 16, 2006 judgement in case No. SKA-162 (Transparency International Latvia (*Delna*) v. the Republic of Latvia Prosecutor General's Office).
[36] July 6, 1999 Republic of Latvia Constitutional Court judgement in case No. 04-02(99) (Management contract), Part 3.
[37] May 13, 2004 judgement of the Riga Centre District Court in case No. C-27085004 (Dzintars Zaļūksnis v. the National Data Inspectorate).
[38] Section 7, Paragraph 5 says: processing of data is permissible only if this is necessary to ensure observance of public interests.
[39] Public access to the financial declarations of public officials can be considered as one of the attempts to explain and apply the tern "public interests" as the basis for disclosing data on natural persons. See: "Valsts amatpersonas iebilst pret deklarāciju publicēšanu internetā [Public officials object to publication of declarations on the Internet]." LETA July 7, 2005. See also: Kalniņš, V. "Making Declarations Effective." In: *Corruption ºC. Report on Corruption and Anticorruption Policy in Latvia*. Second semiannum, 2005. Centre for Public Policy PROVIDUS, 2006, pp. 47–57.
[40] November 30, 2005 judgement of the Regional Administrative Court in case No. A42232205 (*Diena* v. Riga City Council).
[41] Views on the content of the judgement: Zālīte, Z. "Tiesa: ziņas nedrīkst būt slepenas [Court says: information may not be confidential]." *Diena*, December 15, 2005.
[42] The institution's caution in the use of argumentation connected with protection of the data of natural persons is evidenced by the fact that this argument is included only in the institution's explanation to the court and not in the contested refusal itself, which the court could therefore not take into consideration when deciding whether or not the refusal was justified. (see Section 250 of the Law on Administrative Procedure).
[43] November 30, 2005 judgement of the Regional Administrative Court in case No. A42232205 (*Diena* v. Riga City Council). Clause 11, Paragraph 5 of the judgement.
[44] Ibid. Clauses 4.2 and 4.7 of the judgement.
[45] Ibid. Clause 12 of the judgement.
[46] Ibid. Clause 11 of the judgement.
[47] For more on competitiveness, powers of attorney regulated by administrative law, and the concept of public interests see: Craig, P. P. *Administrative Law*. 5th edition. London, Sweet & Maxwell, 2003, pp. 325–344.
[48] The last three national budgets granted the National Data Inspectorate minimum resources for monitoring implementation of the Access to Information Law and in 2006, no resources at all.

5. Appendix. Combating Corruption: a Quantitative Overview

This appendix provides, as far as possible, a systematic look at trends in Latvia's effort to combat corruption. Although this issue of *Corruption ºC* covers primarily the first six months of 2006, the processing of statistical information requires more time. This is why this section does not include data from 2006 (with the exception of information about convicted persons), but provides information on the previous years.

The information comprises data on the number of criminal offenses registered in the public service and the number of criminal cases that have been initiated (in the first nine months of 2005), the number of persons charged (2003, 2004, 2005), the number of persons convicted and the form of punishment (2004, 2005, first semiannum of 2006). It should be kept in mind that the indicators cannot be correlated, because, for example, the criminal cases initiated in one year are not necessarily those in which charges have been brought.

Table 5.1.
Criminal offenses registered in the public service in the first nine months of 2005, and their distribution among criminal cases

CL Section	No. of criminal offenses registered in the 1st 9 months of 2005/No. of criminal cases	Incl. criminal offenses connected with cases initiated in 2005	Incl. criminal offenses connected with earlier criminal cases
317. Abuse of functions	13/13	13/13	0
318. Abuse of office	37/24	23/22	14/2
319. Inaction of a public official	26/22	18/18	8/4
320. Acceptance of a bribe	24/19	19/18	5/1

321. Misappropriation of a bribe	2/2	2/2	0
322. Intermediation in bribery	4/4	4/4	0
323. Active bribery	16/16	15/15	1/1
325. Violation of restrictions imposed on public officials	2/2	2/2	0
326. Unlawful participation in property transactions	0	0	0
326.[1] Trading in influence	0	0	0
327. Forgery of official documents	14/13	13/12	1/1
328. False official report	0	0	0
329. Disclosure of confidential information	1/1	0/0	1/1
330. Disclosure of confidential information after leaving office	0	0	0
Total	**139/111**	**109/102**	**30/9**

Source: Corruption Prevention and Combating Bureau. The total number of criminal cases does not correspond to the total indicated at the bottom of the column. This is because some of the criminal cases involve offences committed under several sections of the Criminal Law. For example, one criminal case can involve two criminal offenses, one being acceptance of a bribe and the other, abuse of office. In such cases, the same criminal case is indicated in two different rows.

Table 5.2.
Number of persons charged with criminal offenses (principal offense*)

CL Section	Persons		
	2003	2004	2005
317. Abuse of functions	18	21	6
318. Abuse of office	31	19	14
319. Inaction of a public official	16	14	19
320. Acceptance of a bribe	23	21	19
321. Misappropriation of a bribe	4	4	1
322. Intermediation in bribery	8	5	5
323. Active bribery	9	20	14

325. Violation of restrictions imposed on public officials	–	1	1
326. Unlawful participation in property transactions	–	–	–
326.[1] Trading in influence	–	–	–
327. Forgery of official documents	12	9	3
328. False official report	–	–	–
329. Disclosure of confidential information	–	–	–
330. Disclosure of confidential information after leaving office	–	–	–
Total	**121**	**114**	**82**

Source: Ministry of the Interior Information Centre and CPCB.
*This table includes only the charges for the principal offense. This can be either the first offense for which a criminal case has been initiated or the most serious of the offenses – the principle according to which a criminal offense is classified as a so-called principal offense is not quite clear. Persons who have been charged under these sections of the Criminal Law can also be charged under other sections of the law which do not appear in this table. Likewise, persons who have been charged with other principal offenses can also be charged with criminal offenses committed in public service. These cases also do not appear in table 5.2.

Table 5.3.
Persons convicted of criminal offenses committed in public service and forms of punishment (2004)

CL Section	Total number	Principal punishment – imprisonment				Other forms of principal punishment		Waiver of punishment	Compulsory medical treatment
		Up to 1 year	1–3 years (inclusive)	3–5 years (inclusive)	Conditional	Payment of fine	Incl. conditional fine		
317. Abuse of functions	5	0	0	0	3	2	0	0	0
318. Abuse of office	14	0	0	0	8	6	0	0	0
319. Inaction of a public official	7	0	0	0	5	2	0	0	0
320. Acceptance of a bribe	27	0	6	2	18	1	0	0	0
321. Misappropriation of a bribe	2	0	0	0	1	1	1	0	0

322. Intermediation in bribery	4	0	1	0	2	0	0	1	0
323. Active bribery	12	0	0	0	9	1	0	2	1
325. Violation of restrictions imposed on public officials	0	0	0	0	0	0	0	0	0
326. Unlawful participation in property transactions	0	0	0	0	0	0	0	0	0
326.[1] Trading in influence	0	0	0	0	0	0	0	0	0
327. Forgery of official documents	0	0	0	0	0	0	0	0	0
328. False official report	0	0	0	0	0	0	0	0	0
329. Disclosure of confidential information	0	0	0	0	0	0	0	0	0
330. Disclosure of confidential information after leaving office	0	0	0	0	0	0	0	0	0

Source: Court Administration.

Table 5.4.
Persons convicted of criminal offenses committed in public service and forms of punishment (2005)

CL Section	Total number	Principal punishment – imprisonment					Other forms of principal punishment		Waiver of punishment
		Up to 1 year	1–3 years (inclusive)	3–5 years (inclusive)	5–10 years (inclusive)	Conditional	Payment of fine	Incl. conditional fine	
317. Abuse of functions	10	1	2	0	0	4	3	0	0
318. Abuse of office	5	0	1	0	0	2	1	0	1
319. Inaction of a public official	5	0	0	0	0	1	3	1	1
320. Acceptance of a bribe	25	0	2	1	1	21	0	0	0
321. Misappropriation of a bribe	4	1	1	0	0	2	0	0	0
322. Intermediation of a bribe	5	0	0	0	0	5	0	0	0
323. Active bribery	14	1	1	1	0	9	2	0	0
325. Violation of restrictions imposed on public officials	0	0	0	0	0	0	0	0	0

326. Unlawful participation in property transactions	0	0	0	0	0	0	0	0	0
326.[1] Trading in influence	0	0	0	0	0	0	0	0	0
327. Forgery of official documents	1	0	0	0	0	0	1	1	0
328. False official information	0	0	0	0	0	0	0	0	0
329. Disclosure of confidential information	0	0	0	0	0	0	0	0	0
330. Disclosure of confidential information after leaving office	0	0	0	0	0	0	0	0	0

Source: Court Information System.

Table 5.5.
Persons convicted of criminal offenses committed in public service and forms of punishment (January 1 to June 30, 2006)

CL Section	Total number	Principal punishment – imprisonment					Other forms of principal punishment		
		Up to 1 year	1–3 years (inclusive)	3–5 years (inclusive)	5–10 years (inclusive)	Conditional	Payment of fine	Incl. conditional fine	Community service
317. Abuse of functions	5	0	0	0	0	4	1	1	0
318. Abuse of office	1	0	0	0	0	0	1	0	0
319. Inaction of a public official	3	0	0	0	0	1	1	0	1
320. Acceptance of a bribe	17	0	0	2	1	11	3	1	1
321. Misappropriation of a bribe	2	0	1	0	0	1	0	0	0
322. Intermediation in bribery	2	0	0	0	0	2	0	0	0
323. Active bribery	9	0	0	0	0	8	1	0	0
325. Violation of restrictions imposed on public officials	0	0	0	0	0	0	0	0	0
326. Unlawful participation in property transactions	0	0	0	0	0	0	0	0	0

326.[1] Trading in influence	0	0	0	0	0	0	0	0	0
327. Forgery of official documents	0	0	0	0	0	0	0	0	0
328. False official information	0	0	0	0	0	0	0	0	0
329. Disclosure of confidential information	0	0	0	0	0	0	0	0	0
330. Disclosure of confidential information after leaving office	0	0	0	0	0	0	0	0	0

Source: Court Information System.

Table 5.6.
Percentage of persons convicted of criminal offenses committed in public service and sentenced to imprisonment in the years 2003, 2004, 2005, and the first six months of 2006

Year	Total number of persons convicted	Persons sentenced to imprisonment	
		Number of persons	Percentage of total
2003	**54**	**12**	**22%**
2004	**71**	**9**	**13%**
2005	**69**	**13**	**19%**
2006 (first 6 months)	**39**	**4**	**10%**

Raw data sources: Ministry of Justice, Court Administration, Court Information System.