

Britta Bannenberg

## Preventing and Combating Corruption in Germany

Corruption is perceived most clearly when “scandals” — that is, cases involving corruption by well-known names and companies — are publicized by the media. In the first half of 2005 the suspicion of corrupt activities by several well-known companies (VW, Infineon, BMW) became public knowledge. However, everyday corruption in the private sector is also becoming increasingly visible even if the national media do not publicize it. This is because cases of bribery of employees, which have been defined as criminal acts since 1997 according to §§ 299, 300 of the Criminal Code (StGB), lead to criminal prosecution. Accordingly, investigations by public prosecutors continue to play an important role in exposing cases of corruption. Internal investigations in administrative bodies and companies are rare. What's more, state prosecutors are not informed even if an internal investigation reveals corruption and leads to consequences. The state prosecutors receive the information that leads to their investigations from other criminal proceedings and primarily from anonymous accusations. Information gathered in investigations of tax evasion (§ 4 V No. 10 EStG) is also often passed on to the criminal prosecution authorities.

In Germany, what causes concern is the structures of repeated long-term corruption, rather than the so-called everyday or opportunistic cases of corruption by people who bribe another person in an isolated case and then never meet that person again. This is due to the German administrative structures, which basically function properly and, as a rule, provide administrative services to citizens without bribes being added to the employees' salaries. Equally unknown are cases where violent organized crime (such as the drug trade) is intertwined with the judicial system, the political system or public administration. However, we must also realize that exposure would be particularly difficult here if the corruption consisted of the exchange of personal favors through personal connections. The situation is different with long-term relationships connected with the awarding of contracts and services (corporate corruption). In this area there is tremendous potential for corruptible relationships. This potential is not limited to the construction sector; no sector can call itself entirely free of corruption. The increasing degree of privatization does not solve the problem. In many areas of business, corruption is part of business policy.

In both public administration and the business sector, the perpetrators are in many cases ambitious and competent employees who are professionally oriented and have a certain degree of freedom of action and decision-making authority. In public administration, they are noticeably supervisors who abuse their power but seem to be particularly law-abiding to external observers. These perpetrators use strategies of justification and neutralization in order to draw attention away from their violations of the law, and they do not regard themselves as people who commit criminal acts. When these criminal acts are exposed, the perpetrators as a rule show no awareness whatsoever of having acted improperly. But the main problem is the institutional structures that promote corruption. It is only the fact that the risk of discovery is very small that enables the perpetrators to continue their criminal activities, in some cases for many years.

In public administration as in the business sector, the prevention of corruption is not adequate. The anti-corruption officials that have been appointed in many cities will not be able to solve the problem, because they are often left on their own to carry out their tasks without any previous preparation. In particular, there is no overall concept of monitoring that provides for

a professional reaction to the anti-corruption official's reports. The promising solution (or promising, in any case, for the administrations of large cities and large administrative units) of creating an anti-corruption bureau (ideally with mobile groups of investigators) is being put into practice in only a very small number of locations. The efforts to prevent corruption are too frequently limited to a ban on the acceptance of gifts, and in most cases they focus on impracticable rotation processes and the principle of confidentiality. In any case, these measures generally exist only on paper rather than in reality. Effective measures such as barring companies from participating in calls for tender, penalties for breach of contract, consistent claims for compensation after cases of criminal behavior become known, as well as active internal monitoring are used only rarely. Whistleblowers are unjustifiably regarded in a negative way as informers. For this reason, there are few confidential lawyers whose job it is to receive anonymous tips from individuals.

Some initial hesitant changes can be felt as a result of public awareness — a phenomenon that is at least growing. Since 2005, the business sector has been putting this issue more frequently on the agenda of internal informational events. The companies listed on the New York Stock Exchange are subject to US law as a result of the Sarbanes-Oxley Act, and that is generating careful efforts to carry out analyses of the status quo and corruption prevention in the business sector. Public administrations can also cite some very positive examples, such as the efforts made in the Rhein-Sieg district to restructure the waste management business, which are supported by systematic claims for compensation, exclusion from calls for tender and penalties for breach of contract. According to reports, the result is that waste management fees in the district have decreased by 30%.

The criminal prosecution authorities are in need of further structural improvements through an increase in the number of well-qualified and experienced personnel, for example through state prosecutors' offices that focus on particular issues. It is very difficult for the criminal prosecution authorities to conduct investigations — and these difficulties are basically known to us from cases of criminal prosecution of businesses: huge mountains of files accumulate in a short period of time; a few initial cases of suspected criminal behavior quickly grow into a large number of cases; and, as a rule, the accused parties are represented by capable lawyers or they know how to throw a cover of darkness over the accusations. Repression is an important method of putting pressure on internal monitoring in administrative structures and companies. Only if prevention is truly desired can the climate of secretiveness change and reduce the structures that encourage opportunities for self-enrichment.