

# LOBBYING AND PAID FAVOURITISM OFFENCE – ANALYSIS OF THE PROBLEM IN THE LIGHT OF THE PROVISIONS OF THE POLISH PENAL CODE

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*This publication is focused on functioning and legal regulation of lobbying in Poland and covers negative and positive aspects of the phenomenon in question. Particular attention will also be paid to studying the corruptive nature of lobbying and requirements provided for by the legal regulations which may be used for the control purposes or in order to make a hidden lobbying revealed.*

## Introduction

The article is concentrated on legal regulation and functioning of lobbying. The particular nature of lobbying results, first of all from the fact that on the one hand lobbying is recognized as the effective and irreplaceable tool of democracy, but on the other hand in the absence of reliable legal regulation free from the loopholes, lobbyists' activity may feature in corruption activity which is similar to bribery or paid favouritism and as such may result in criminal responsibility. This double nature of lobbying causes problems while one tries to determine its functioning framework.

This publication includes also a definition of lobbying (as the appropriate definition of that activity affects its appropriate regulation) and a definition of paid favouritism offence. Then, negative and positive aspects of lobbying as well as those of them which should be reflected in the legal regulation are discussed. Finally, a brief analysis of the Polish lobbying regulation is presented.

## 1. Lobbying and paid favouritism

Corruption offences such as corruption, bribery, paid favouritism as well as dishonest lobbying and nepotism are one of the most serious problems existing in almost

every country in the world. Corruption hits in the principles of democratic countries, eliminates the principle of equality of citizens before the law, and therefore in the broader sense it strikes the public interest, weakens citizens' trust in public institutions as well as decelerates and hampers economic growth. The consequence of corruption present in legislative bodies is an inequitable distribution of goods and services.

According to the national polls, the Polish society is convinced that the corruption is a serious problem in Poland and approximately three fourth of Poles believe that politicians use public money for their own parties<sup>1</sup>.

The severity of the problem is proved in reports on polls which had been carried out in 2004 by Transparency International in 146 countries focused on Corruption Perception Rate. Poland was ranked 67<sup>th</sup>, while the first positions were taken by less corrupt countries (Finland, New Zealand and Denmark), and last ones were taken by those most corrupt ones (starting from the end: Haiti, Bangladesh and Nigeria)<sup>2</sup>. Poland ranks 70<sup>th</sup><sup>3</sup> amongst 159 countries,

according to the poll carried out in 2005 on the same subject.

In our country corruption affects first of all economic and political spheres and it is mainly connected with privatization process, public procurement, assignment of lands, collection of taxes and duties, granting licenses and credits, assignment of grants and subventions as well as appointment for governmental and territorial self-government positions<sup>4</sup>. Politics, in the broad sense of the term, was indicated by the respondents on the first place (among different spheres of life) as the most corrupt sphere. Over 61% of Poles polled claim that just politicians, party activists, members of the Polish parliament and councillors are the most corrupt group<sup>5</sup>. Over two third of respondents (69%) claim that in Poland an act can be passed or amended for money and only every tenth

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<sup>4</sup> cf. Internal Security Agency (ABW) Report: *Corruption in Poland – an attempt to analyse the phenomenon*, Warsaw 2004 ([http://www.abw.gov.pl/Raporty/R\\_Korupcja.htm](http://www.abw.gov.pl/Raporty/R_Korupcja.htm)).

cf. also: Magdalena Środa in the introduction to the Polish edition of S. Rose – Ackerman's book: *Corruption and government*, Stefan Batory Foundation and Sic! publishing house 2001, p. 6.

cf. also *Citizen Anti-corruption Card*, p. 2–3 – materials from the Regional Public Prosecutor's Office in Szczecin ([http://www.prokuratura.walbrzych.pl/kor\\_proj.pdf](http://www.prokuratura.walbrzych.pl/kor_proj.pdf)).

<sup>5</sup> cf. Kubiak, A. *Public opinion and prosecutors about corruption*. Study report. Warsaw 2005, p. 3

According to studies '*Poles about corruption, lobbying and paying off the acts*' (CBOS 2003) carried out by M. Falkowska most of respondents (73%) is of the opinion that contracts and public procurments are often performed in Poland under pressure from particular lobby group (e.g. business circle, producer, companies etc.), and one in three (34%) estimates that such cases take place very often. Nearly 60% of respondents claim that in our country one can influence upon adoption or amendment of law by giving a bribe to the Member of the Parliament or other politicians, and 22% of those respondents express their opinion in a robust way.

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<sup>1</sup> According to CBOS (Public Opinion Research Center) poll called "Recent problems and developments" carried out from 5 to 8 December 2003 on the representative random group numbered 1000 of adult residents of Poland, currently approximately two third (65%) of respondents claimed that the corruption was very serious problem, and one fourth (25%) claimed that it was rather serious problem. Only a few of them (3%) were of the opinion that it was not a significant problem.

cf. CBOS poll from 2004, Wenzel, M: *Nepotism, corruption and dishonest lobbying*, Warszawa 2004, p. 5.

([http://www.cbos.pl/SPISKOM.POL/2004/K\\_002\\_04.PDF](http://www.cbos.pl/SPISKOM.POL/2004/K_002_04.PDF))

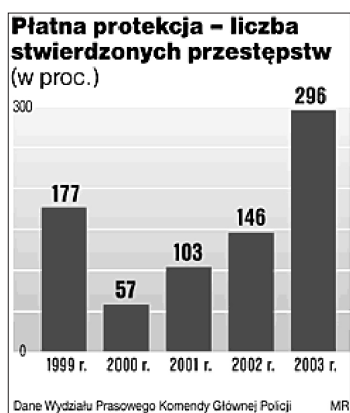
<sup>2</sup> <http://www.transparency.org/cpi/2004/cpi2004.en.html#cpi2004>

<sup>3</sup> <http://www.infoplease.com/ipa/A0781359.html>

Table 1. Number of offences

	Art. 228 § 1–4	Art. 228 § 5	Art. 228 § 6	Art. 229 § 1–2	Art. 229 § 3–4	Art. 229 § 5	Art. 230	Art. 231 § 1–3
1999	287	3		206	268		177	408
2000	487	4		281	513		57	557
2001	612	1	0	310	749	2	103	554
2002	520	6	0	366	509	0	146	861
2003	626	3	0	441	732	0	296	1392
2004	940	5	0	458	938	1	42	1505

Table 2. Paid favouritism – number of detected offences



person (10% of respondents) believes that it is not possible<sup>6</sup>.

The above statistics are based upon respondents' subjective opinions, but in case of corruption just those anonymous answers of citizens are the significant source of knowledge about that phenomenon (the more so because in the case of corruption offences both sides – the one who promises a benefit and the other one who accepts it are generally want to conceal their actions). Moreover, social perception concerning the importance of the problem proved in the representatives of the public

prosecutor's office and criminality statistics prepared by the police.

According to study carried out by the police concerning paid favouritism offence – which is discussed here – and statistics concerned the number of those offences increased at a fast rate until 2004 and in the last year 2004 their number decreased (see table no 1 and 2)<sup>7</sup>. The growth of those offences being committed proves indirectly that the phenomenon of lobbying activity is also spreading. Actions taken by paid intermediaries and lobbyists are strictly connected with each other, as in the absence of legal regulation on lobbying a borderline between the lobbying and paid favouritism offence was very unclear and lobbying was associated with corruption activity. One should consider the definitions of lobbying and paid favouritism in order to make a division between them.

According Article 230 paragraph 1 of the Polish Penal Code, 1997<sup>8</sup> the offence of paid favouritism is committed by whoever, claiming to have influence on a state or local government, international organisations or national or foreign organisation-

<sup>6</sup> cf. Wenzel, M.: *Nepotism, corruption and dishonest lobbying* "Warsaw 2004, p. 5 and the following.

<sup>7</sup> Data derived from the statistics of the National Police Headquarters (<http://www.kgp.gov.pl/>).

<sup>8</sup> The Act of 6 July 1997 Penal Code (Journal of Laws of 2 August 1997 No. 88, item 533).

al unit having at their disposal public funds or evoking other person's conviction or confirming him/her in his/her belief about the existence of such influence, undertakes to intercede in the settling of a matter in exchange for a material or personal benefit or for a promise of thereof.

This provision protects first of all appropriate and disinterested functioning of public institutions and local self-government bodies, but also authority and good reputation of thereof<sup>9</sup>.

Paid favouritism is a two-act offence. The first action consists in three activities listed alternatively in the above-mentioned provision: *claiming* to have influence on particular institutions, organisational unit having at its disposal public funds, *evoking* conviction about the existence of such influence and *confirming this* conviction of recipient, who accepted the offer, of having such influences. Whereas the second part of the paid favouritism offence consists in *undertaking* to intercede in the settling of a matter in exchange for a material or personal benefit or for a promise of thereof<sup>10</sup>.

A matter in which paid intermediary is ready to intercede may be every object of endeavours one could take<sup>11</sup>. Therefore, law-making process (e.g. adoption of particular act) or granting permits or licences should not be excluded from the actions an intermediary may influence upon.

Analysing definitions of lobbying in the Polish specialist literature one can

note that the borderline between lobbying and paid favouritism is very floating and unclear. Those notions are identified with advocacy of interests and this in turn means influence upon public authorities' decision-making process<sup>12</sup>. P. Bielawski indicates that lobbying is an activity which aims at affecting not only public and self-government decisions but also attitudes of ruling bodies (i.e. non-governmental organisations, scientific circles – authorities in given branch, union leaders etc.) that means persons who can support or hamper achieving particular goals.

E. Karpowicz building a definition of lobbying indicated 3 basic criteria which should be met in order to recognise given action as the lobbying activity:

1. existence of the goal which consists in influencing upon authorities' decisions;
2. existence of intention to exert such influence;
3. existence of intermediary between citizen and authority<sup>13</sup>.

Comparing particular elements of causative activity of the crime provided by Article 230 paragraph 1 of the Polish Penal Code to elements of lobbying laid down in the above definitions, one can arrive at the conclusion that an action of lobbyist bears attributes of the offence of paid favouritism because:

1. lobbyist undertakes to intercede in the settlement of a matter,

<sup>9</sup> cf. Wąsek, A.: *Penal Code. Special Part. Commentary. Volume II*, Warszawa 2004, p. 73.

<sup>10</sup> cf. Wąsek, A.: *Penal Code. Special Part. Commentary. Volume II*, Warszawa 2004, p. 74 and the following.

<sup>11</sup> cf. Zoll, A.: *Penal Code. Special Part. Commentary to articles 117–277. Volume II*, Zakamycze 1999.

<sup>12</sup> cf. Jasiecki, K., Kołoda – Zdziech, M., Karczewska, U.: *Lobbying*, Kraków 2000, p. 17.

<sup>13</sup> cf. Karpowicz, E.: *Lobbying in the modern world – an outline of legal conditions and practice*, Bureau of Studies and Expert Reports of the Chancellery of the Sejm, 1999, report no. 167, p. 2.

2. generally it is done in exchange for gaining benefit,
3. a matter is settled by someone who pulls the strings or intends to pull the strings.

What's more, lobbyists' activity obviously may be aimed not only at law-making process, but also all decisions issued by public authorities i.e. granting privileges (e.g. licences, exemptions from public obligations, granting allocations) and formulation of the state policy or government programme, conclusion of contracts with the State Treasury.

Indicating types of interest groups from the point of view of stakeholders who may be represented by the lobbyists one can distinguish: collective interests, local interests and national interests. Whereas, considering a nature of actions taken by given interest group one can distinguish:

- economic lobby (industrial, trade groups),
- social-administrative lobby (e.g. representing interests of given city),
- social-economic lobby (e.g. consumer or employers associations etc.),
- social-cultural lobby (e.g. environmental movements).

Obviously single natural or legal persons may also use lobbyists' favours apart from collective interest groups.

## 2. Positive and negative aspects of lobbying

Such variety of pressure groups may cause problems (risks) resulting from using lobbyists' favours. One can easily imagine that lobbyists will take actions conflicting

with interests of remaining groups, which in turn may cause that given influential group will impose solutions which conflicting with the general interest (interest of majority). In this connection decisions taken under the influence of one interest group (and sometimes also single persons) and problems solved without consideration other standpoints, may lead to inappropriate distribution of goods and unjustified privilege of lobbyists. Moreover, uncontrolled lobbyists' activity often takes latent character which means that other stakeholders do not know that decisions significantly affecting them are being taken and they are deprived of the possibility to influence upon the substance of settlements. Besides there is a significant risks that only a few (i.e. strong and influential groups with political or economic support) would be able to represent their interest in an effective way, whereas needs of the others will be ignored<sup>14</sup>. Moreover, the opponents of advocacy of interests emphasise that lobbyists often exert influence which exceeds its social importance and the number of the group which interests they represent<sup>15</sup>. Lobbying critics also say that contacts between lobbyists may cause that politicians become dependent on pressure groups which may lead to lack of sovereignty and objectivity of public authorities' actions.

Moreover, one should not forget about the fact that in Poland (according to (Ar-

<sup>14</sup> cf. Jasiński, K., Kołęda-Zdziech, M., Karczewska, U.: 'Lobbing', p. 22–24.

<sup>15</sup> cf. Karpowicz, E.: *Lobbing in the modern world – an outline of legal conditions and practice*, Bureau of Studies and Expert Reports of the Chancellery of the Sejm, 1999, report no. 167, p. 1.

ticle 63 of the Constitution of the Republic of Poland)<sup>16</sup> everyone has the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person – with his consent in order to influence upon decisions of public authorities.

The above reasons indicate that there is a need to oppose lobbying activity and not legalize it. However, it should be pointed out that the absence of legal regulation concerning influencing of interest groups upon decisions of public authorities caused that lobbying activity was ‘demoted’ to criminal activity sphere, because it fulfilled attributes of paid favouritism crime.

However, on the other hand it is hardly possible that lobbying would be totally excluded from political and economic life of the country, because it is at present recognised as one of the basic tools of democracy. Lobbying is considered to be a cause of creation of a new sphere of contacts between the government and representatives from outside politics. Among positive aspects of lobbying one can mention that it is a new method of valuable exchange of information between government and citizens which results in:

1. on the one hand – drawing politicians attention to their voters’ affairs. Lobbyists activity forces to solve problems of particular social or trade groups etc. Competitive activity of lobbyists who represent contradictory interests in turn gives decision-makers a possibility to form a comprehensive opinion on given issue and take a decision which takes into consideration

not only vested interests but is in compliance with the interests of other pressure groups (and therefore taking into account so called public interest).

2. on the other hand – the increase of citizens’ activity, because lobbying gives people who do not exercise power a possibility to influence upon public affairs<sup>17</sup>.

Moreover, one of the sources of lobbying – that is those interested in lobbyists favours, initiators of their own interest advocacy – are also worth mentioning, while dealing with that phenomenon. Because it is obvious that in democratic country there are different pressure groups pursuing their often conflicting goals. The interests of those circles may be represented by different social organisations, associations or trade unions. Opinions and needs of individual citizens or particular groups may be reflected in political parties’ programme and politicians’ parliamentary activity. However, those interested in influencing upon political and economic decisions first of all resort to use influential people favours. Although the effectiveness of such practice often results from the fact that lobbyists acted half-legally, expected benefits cover the questionable method of gaining them as regards the honesty of those actions. Lobbying as the tool of effective action still gains popularity just because of variety of interest groups and their needs.

Bearing in mind the above consideration, lobbying as a multi-faceted phenomenon (it possesses many positive aspects, but also brings risks) should be regulated

<sup>16</sup> cf. *Constitution of the Republic of Poland Konstytucja RP*, 2 IV 1997, Journal of Laws No. 78, item 483.

<sup>17</sup> cf. Jasiecki, K., Kołęda – Zdziech, M., Karczewska, U.: ‘*Lobbying*’, p. 22–4.



in details which enable its disclosure and control.

### 3. Requirements for the appropriate regulation of lobbying<sup>18</sup>

Firstly, it is very important to determine properly a subject of lobbying, but unfortunately the Polish legislator did not so in the lobbying regulation<sup>19</sup>.

The name of the Act – The act on lobbying in law-making process – itself indicates that the subject of regulation was limited only to lobbyists activity which influence upon law-making process<sup>20</sup>. Therefore, the Polish act does not regulate activity consisting in influencing upon the state policy concerning granting privileges (e.g. licences, permits, allowances, remissions, guarantees, exemptions from public obligations, granting allocations, grants and subventions as well as limitation or exemption from public and private duties) and conclusion with the State Treasury. While according to surveys on corruption discussed at the beginning<sup>21</sup> this

phenomenon is associated in our country mainly with the above-mentioned spheres of economic and political life. Decisions concerning those different “privileges” are made by public authorities and often become a subject of corruption activity which bear the attributes of bribery or paid favouritism. Therefore, leaving that sphere not regulated by law was a serious legislator’s mistake.

Also Lithuanian act on lobbying activity has a similar scope of application as regards the subject of regulation. According to that act ‘lobbying activity’ means lobbyists paid actions that influence upon the amendment, supplement and derogation or passing the new legal acts<sup>22</sup>.

While it seems much more appropriate to determine the subject of lobbying activity broader such as it was done by the American and Canadian legislators considering ‘a lobbyist’ to be among others a person who attempts to exert influence upon strategies or governmental programmes, granting subventions, conclusion of contracts, nomination to the federal posts and also persons working full-time in private enterprises in departments responsible for relations with the government, persons employed in non-profit organisations, agencies that carry out advertising campaigns and special agencies that carry out

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<sup>18</sup> More information on this issue in: Łukomska, M.: Act on lobbying activity in the law-making process (selected issues) – an attempt to analyse the Polish regulation under the selected foreign legislation on lobbying’ in print.

<sup>19</sup> cf. Act of 7 July 2005 on lobbying activity in the law-making process (Journal of Laws of 2005 No. 169, item 1414), which has entered into force on 7 March 2006.

<sup>20</sup> According to Article 2 paragraph 1 of the Act ‘lobbying activity’ shall mean any action carried out in accordance with law that aims at exerting influence upon public authorities in the law-making process. Professional lobbying activity shall mean any activity carried out on behalf of third persons in order to consider their interests in the law-making process (Article 2 paragraph 2).

<sup>21</sup> cf. Internal Security Agency (ABW) Report: Corruption in Poland – an attempt to analyse the phe-

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nomenon, Warsaw 2004, ([http://www.abw.gov.pl/Raporty/R\\_Korupcja.htm](http://www.abw.gov.pl/Raporty/R_Korupcja.htm)). And also cf. Citizen Anti-Corruption Charter, p. 2–3 – materials from Regional Public Prosecutor’s Office in Szczecin ([http://www.prokuratura.walbrzych.pl/kor\\_proj.pdf](http://www.prokuratura.walbrzych.pl/kor_proj.pdf)).

<sup>22</sup> cf. Article 2 paragraph 2 of the Act of the Republic of Lithuania no. VII of 27 June 2000 on lobbying activity (in Legal Booklets of the Bureau of Studies and Expert Reports of the Chancellery of the Sejm, 1 (5) 2005, p. 156).

lobbying activities for government and parliament<sup>23</sup>.

Secondly, regulation shall provide that some actions which would meet the requirements of the definition of lobbying activity shall however fall outside the scope of that definition with regard to the purpose and as such shall not be qualified as lobbying activity. Such exemptions are provided for *inter alia* in the American and Lithuanian legislation, and they are lacking in the Polish act.

The following actions fall outside the scope of definition of lobbying activity under the Lithuanian law: activity carried out by the owner of media; publishers of legal instruments and drafts of thereof; natural persons, enterprises and organisations that acting by public authorities' or self-government bodies' order, for payment of free of charge take part in expressing opinions and providing clarification on drafts of legal acts; politicians and civil servants authorised by public authorities or self government bodies while initiation, preparation, consideration, adoption and clarification of acts or other legal provisions; organisations acting for free if they represent the interests of their members (...) and scientists (...)<sup>24</sup>. Similarly, in the American act the notion "lobbying contact" does not cover communication of information:

- by clerk acting officially;
- by representatives of media if the purpose of communication is col-

lection and spreading messages and information among society,

- in speech, article, publication or other material distributed or made available to the public or on the radio, television, cable television or other mass media;
- on behalf of foreign government or political party which was disclosed in compliance with American law.

First of all the Polish regulation is lacking the exemptions ensuring the execution of civil rights strictly connected with lobbying which are guaranteed in the Constitution i.e. the right to submit petitions, proposals and complaints that may be lodged with public authorities (Article 63 of the Constitution of the Republic of Poland). It refers also to activity of non-governmental organisations which act in the public interest such as e.g. foundations<sup>25</sup> (that to date took part in drafting and consulting of the content of legal acts, often on their own initiative, but also to order of executive or legislative authorities (parliamentary or governmental commissions). The currently binding act does not regulate the above-mentioned activities which are done at the legislator's request. The act is also lacking solutions that exclude communication between members of government or members of parliament and representatives of public institutions (e.g. Ombudsman for Human Rights), concerning legal acts drafting. There is also no exclusion concerning the activity which aims at influencing law-making process which is however carried

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<sup>23</sup> cf. Karpowicz, E.: *Lobbying in the modern world...*, p. 4-5.

<sup>24</sup> cf. Act of the Republic of Lithuania no. VII of 27 June 2000 on lobbying activity (in *Legal Booklets of the Bureau of Studies and Expert Reports of the Chancellery of the Sejm*, 1 (5) 2005, p. 156).

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<sup>25</sup> E.g. Helsinki Foundation for Human Rights or Stefan Batory Foundation.



out in media (i.e. articles in the press and scientific publications).

Thirdly, regulation of lobbying should lay down rights and obligations of lobbyists.

The Lithuanian act clearly vests lobbyist with the right to take part in drafting legal acts, make his/her own expertise of legal acts being already in force, organise and finance meetings of legislators with the representatives who order a lobbyist assistance, organise and finance shaping of public opinion, organise and finance meetings of politicians and civil servants with the general public as regards the adoption of legal acts<sup>26</sup>.

The Polish act is lacking indication of such rights and obligations (with the exception of the obligation to register). The only right rising out of registration of lobbying activity (Article 14) consists in the right to perform lobbying activity also in the seat of the office that serves public authorities by the entity that professionally carries out lobbying activity. Director of such office shall be obliged to ensure access to that office in order to enable appropriate representation of beneficiaries' interests.

The fact that there is no indication of persons who cannot use lobbyists' favours in the Polish act should also lead to a negative assessment. The Lithuanian act lays down that lobbyist favours cannot be ordered by: national politicians, civil servants, institutions and state and self-government offices, state-owned enterprises.

Fourthly, introduction of mechanisms

ensuring transparency and control of lobbying is of the crucial importance here. The rules concerning transparency of work provided for in Chapter 2 of the Polish act are referred only to activity carried out for the Council of Ministers (Article 3) – as regards drafting acts and for the Council of Ministers and the President of the Council of Ministers and ministers (Article 4) – as regards drafting regulations.

According to the act 'public hearing' (Article 8) shall guarantee the transparency of lobbying activity. Such public hearing may be carried when the draft act is submitted to the Parliament. However, the rules governing public hearing are not laid down in the act. Moreover, the act does not guarantee any additional rights accompanying public hearing, for persons who are involved in lobbying activity. Participation in public hearing concerning work on draft act or regulation is possible only at the parliamentary stage (in the lower chamber of the Polish Parliament – Sejm). The current regulation does not provide for any form of lobbyists' participation at the earlier (parliamentary commission) or later stage of legislative work continued in the Senate (upper chamber), i.e. when the draft act is adopted by the Sejm.

Preparation of draft acts by the President and group of citizens falls outside the scope of the act in question. The act also does not provide any solutions concerning transparency of work on draft regulation being prepared by the National Broadcasting Council. It does not regulate neither procedure of showing interest in legislative work nor procedure of public hearing concerning draft regulations. Those issues are to be regulated by regulation of the

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<sup>26</sup> cf. Act of the Republic of Lithuania on lobbying activity (in *Legal Booklets of the Bureau of Studies and Expert Reports of the Chancellery of the Sejm*, (5) 2005, p. 156).

Council of Ministers. Moreover, that act is lacking procedure enhancing transparency of actions being taken in the law-making process at the local level.

Finally, sanctions provided for by the Polish law for lobbying activity being carried out against the law should be criticised as being too mild. Sanctions for administrative offence are provided for by the act (Article 19) in the case where lobbying activity is conducted without notification of this activity to registration. This penalty is imposed by the means of administrative decision issued by the minister responsible for public administration at the maximum amount of PLN 50.000. It is hard to consider such amount to be severe and effective for many entities and individuals conducting lobbying activity and did not meet the requirement to notify their activity to lobbyists register. It is doubtful that such penalty would act as a deterrent e.g. for those who try to use lobbying favour in order to influence upon the introduction or amendment that would in turn result in beneficial development of their economic activity. For comparison, the American law provide for up to 50.000 dollars penalty for similar offence.

On the one hand, there are no significant privileges for the lobbyists who complied with the obligation to register. On the other hand a low degree of penalty's severity may result in numerous breaches of the act.

By the way, one may add that entity or individual who conducts lobbying activity which is not properly registered and bears the attributes of paid favouritism offence shall be liable to criminal responsibility.

## Conclusions

The purpose of the act discussed here was to determine legal framework of lobbying in Poland. Lobbyists' actions had so far a corrupted nature and were identified with paid favouritism offence, in the absence of rules for activity being conducted in order to influence upon public authorities decisions. The determination of rules for conducting lobbying activity was aimed at bringing lobbyists actions from the criminal area and therefore disclosing and controlling them.

However, many provisions of the Polish act on lobbying discussed above do not foster the enforcement of the intended purposes as that regulation is only fragmentary. Lobbying activity<sup>27</sup> not connected with law-making process still does not fall within the scope of regulation (it refers also to Lithuanian act). Therefore, an activity conducted in order to influence upon decisions on granting privileges (licenses and permits) remains uncontrolled. Such actions being undertaken against remuneration will remain in 'the twilight zone', bearing the attributes of paid favouritism.

Moreover, one shall bear in mind that lobbying is a complex and multi-faceted phenomenon – covering very different stakeholders (interested party and lobbyist) and fields of actions (decision-making process of public authorities and not only law-making process in the Parliament) – and as such it is particularly difficult to become regulated. Therefore, the Polish act including short content and lacking detailed solutions is not comprehensive regu-

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<sup>27</sup> Lobbying in the broad meaning considered as the action of exerting influence upon decisions of public authorities through other person in the sphere which does not fall within the scope of the law-making process.

lation and should be properly amended. It should indicate (as e.g. the Lithuanian act does) in detail the obligations and privileges of lobbyists. Its definition should also cover activity that goes beyond law-making process. It should also determine exemptions which do not fall within the scope of definition of lobbying activity such as actions which consist in influencing upon public authorities' decisions but are not taken with the view to realise

particular interests (e.g. opinion-forming activity conducted by scientists, media, foundations and associations). The procedure of lobbyists' participation in legislative work should be precisely defined within the framework of legislative initiative and work of the Council of Ministers, ministers and the Parliament.

The lack of the above provisions causes that lobbyists' activity in Poland will still be of corrupt nature.

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## LOBIZMAS IR PAPIRKIMAS – PROBLEMOS ANALIZĖ, REMIANTIS LENKIJOS RESPUBLIKOS BAUDŽIAMOJO KODEKSO NUOSTATOMIS

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Santrauka

Straipsnyje pristatomi įvairių institucijų 2004 m. atlikti korupcijos lygio Lenkijoje tyrimų rezultatai, atskleidžiamas lobizmo, kaip demokratinėje visuomenėje teigiamai vertintino proceso, ir papirkimo – nusikalstamos veikos, numatytos Lenkijos Respublikos baudžiamojo kodekso 230 straipsnio 1 paragrafe, santykis, pateikiant pagrindinius nusikalstamos veikos – papirkimo – sudėties požymius bei skirtingas Lenkijos teisininkų mokslininkų pozicijas dėl lobizmo esmės.

Straipsnyje kritikuojamas Lenkijos lobizmo procesus reguliuojantis įstatymas pirmiausia dėl nustatytos per siauros lobizmo sampratos (lobizmas siejamas tik su tam tikrų socialinių grupių įtaka įstatymų

leidymui), pavyzdiniu pripažįstamas Jungtinių Amerikos Valstijų ir Kanados lobizmo reglamentavimo apibrėžimas. Lenkijos lobizmo įstatymas kritikuojamas ir dėl to, kad jame *expressis verbis* nenurodomi veiksmai, nors ir formaliai atitinkantys lobizmo sampratą, tačiau nelaikytini lobizmu (remiantis Jungtinių Amerikos Valstijų ir Lietuvos teisinio reglamentavimo pavyzdžiais, nurodoma, kad tai yra visuomenės informavimo priemonių savininkų, mokslininkų etc. veikla). Taip pat pažymima, kad Lenkijos lobizmą reglamentuojantis įstatymas nenurodo lobistų teisių ir pareigų, taip pat asmenų, negalinčių būti lobistais, sąrašo; pabrėžiama ir tai, kad nustatytos pernelyg švelnios sankcijos už neteisėtą lobizmo veiklą.

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