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## The Electoral Corruption in the Reality of Unconsolidated Democracy

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# **THE ELECTORAL CORRUPTION IN THE REALITY OF UNCONSOLIDATED DEMOCRACY**

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## **ABSTRACT**

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The article is devoted to the problem of corruption in politics. The author presents the risks of corruption for the democratic system of the state and describes the anti-corruption legal regulations. Mechanisms of electoral corruption are presented and the involvement of the state and political parties in the anti-corruption programs is showed. It shows the necessity of anti-corruption education of society.

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Mentioned in the title of the article expressions: corruption, elections and democracy are not a modern product. Even in ancient times they were a part of methods of conducting politics. In the public discourse on the issue of corruption it is raised that it (corruption) is the domain of totalitarian regimes and economic systems situated on a centrally controlled economy. A fair analysis of this phenomenon reveals that this is only a part of the truth, because in democracy this image is also not strange. There are different mechanisms of corruption, its scale and en-

tities. But corrupt behavior always relates to abuse of delegated authority. In non-democratic systems the scale of it was included in the political and economic system and was caused by deficiency of goods which were available within the system. Corruption in democracy also relies on influencing decisions of officials and politicians but its image relates primarily to economic area. A common "value" of these systems, and for centuries it is political corruption, expressed among others by abuses during the elections.

#### ELECTIONS AND CORRUPTION

Election is a process of direct or indirect appointment of representatives to perform specific functions in the legislative and executive authorities<sup>1</sup>. The election is the most important political project on the basis of democracy because it is the basis for the creation of structures of authorities. An appointment of representatives of the executive in terms of free, democratic elections is a welcome tool for politics. Electing authorities according to the rules of the adopted electoral system is the essence of democracy. The appointment of representatives of the authorities and, under certain circumstances, the exchange is fair only if it is followed through elections and voluntary returning the positions by the current government. Candidates participating in parliamentary and local elections are representatives of different social groups. The election result in which a change of authority reflects the views of society and their needs. The elections are considered democratic if they are carried out according to established standards, according to which:

- there will be elected representatives who will have constitutional control over political decisions of the government,
- will be carried out with the right of free choice and will be proceeded in a fair manner,
- will be conducted with respect for universal suffrage,
- freedom of speech and the ability to be elected will be ensured,
- access to information will be enabled,
- the possibility of freedom of association will be ensured.

As already noted, the elections held in conditions of mature democracy are founded on legal regulations laid down by the legislation of the State. Control over the proper conduct of elections is entrusted to independent

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<sup>1</sup> A. Żukowski, *Wybory*, [in:] *Mały słownik politologii*, S. Opara (ed.), Toruń 2007, p. 189.

electoral authorities and the judiciary<sup>2</sup>. The elections are always accompanied by a struggle of at least two candidates, one of them is currently challenging the authority who acts. Following the elections, the ruling is being changed or the mandate is extended. But regardless what the outcome is there will always be a loser, which is impossible phenomenon in authoritarian systems<sup>3</sup>. One of the aforementioned principles associated with democratic elections is to conduct them fairly in compliance with the general electoral law. The author of this article would like to note that in common discourse of the proper conduct of the elections the issue of crimes related to corruption election is neglected.

It should be noted, however, that corruption accompanying the election is nothing new. As noted by P. Palka already at the end of the third and beginning of the second century BC they made the first criminalization of electoral fraud. The use of illegal means, in the form of bribery of the electorate, took place during the creation of the first state posts and at the first legislative procedures. Politicians have long been buying votes, in ancient times forms of bribes were expressed among others by giving out money, issuing public feasts, arranging the games at election time and buying up seats in theaters for the electorate. The first criminal act relating to election bribery was the Lex Cornelia Baebia, published as a part of Roman law in 181 BC. It referred in fact to the prohibition of distribution of money to voters. Roman regulations on anti-corruption during the elections were characterized by not only the gradual extension of the prohibition of acts deemed illegal but also provided penalties for their commission. In this regard, they foresaw penalty of ten years of exile, lifetime deprivation of passive voting rights, fines and banishment for life and confiscation of assets<sup>4</sup>. Incidents of corruption on the election also took place in Polish history. A. Holub aptly points out corrupt practices taking place during the interregnum. At the time, the French envoy of King Louis the fourteenth Melchior Polignac informed in his reports about the venality of Poles. The subject of the treatment of the French envoy was to make a pact with the magnates in order to obtain Polish crown

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<sup>2</sup> A. Żukowski, *Wybory*, [in:] *Podstawowe kategorie polityki*, S. Opara, D. Radziszewska-Szczepaniak, A. Żukowski (eds.), Olsztyn 2005, p. 273–274.

<sup>3</sup> A. Antoszewski, R. Herbut, *Systemy polityczne współczesnej Europy*, Warszawa 2006, p. 194.

<sup>4</sup> P. Palka, *Sprzedajne nadużycie funkcji publicznej. Studium z prawa karnego*, Olsztyn 2011, p. 90–92.

by Francois Louis de Bourbon, the Prince of Conti. Polignac decided to make contracts in which the parties committed themselves to favorable treatment of Conti's candidature. According to the undertaken arrangements the Primate of Polish Catholic Church was to receive 60 000 talars, Potocki had more than Jakub Sobieski had promised them, while Hieronim Lubomirski was valued at an amount equal to that which the Primate was to receive. In the next period Polignac continued the idea of buying the favor, which was reflected in the conclusion commitments with further representatives of the nobility, including Stanislaw Herakliusz Lubomirski. Polignac made the Poles promises to provide material benefits in the amount of the total sum of approx. 6 million francs. It should be noted that the French court was not especially impressed, because it was known that lords, the nobles and provincial governors were bribed<sup>5</sup>.

The electoral corruption is a criminal action, which in the most important negative way impacts on the quality of election decisions. It should be noted that individuals who earn the mandate of trust as a result of corrupt practices are involved in the lawmaking process at the same level of decision-making as candidates elected in accordance with the law. People supported during the election with non-democratic means, ie. the support of the electorate due to pressure from representatives of the criminal groups are forced into a debt repaid with eg. the "appropriate" lawmaking process. The votes of the electorate are treated as a commodity on the market of the political struggle. As noted by W. Jasinski this market is imperfect, because politicians are not able to reach with their offer to all voters and there are no tools to verify the transactions between the electorate and the politician. In addition, there are difficulties in determining the time of payment, which is caused by a distinct position in society, either a politician or voters<sup>6</sup>. Electoral corruption counteraction should be the domain of both the state apparatus as well as non-governmental organizations taking social control over the actions of politicians. One of the NGOs having social control over the behavior of politicians is the Anti-Corruption Coalition of Non-Governmental Organisations (AKOP). The aim of the mentioned organization

<sup>5</sup> A. Hołub, *Rola „czynników materialnych” w walce o tron państwa polskiego w końcu XVII wieku*, [in:] *Společno – prawne aspekty przeciwdziałania korupcji*, J. Bil, A. Wawrzusiszyn (eds.), Szczytno 2012, p. 163–173.

<sup>6</sup> W. Jasiński, *Osoby na eksponowanych stanowiskach politycznych. Przeciwdziałanie korupcji i praniu pieniędzy*, Warszawa 2012, p. 197–198.

is inter alia checking the fulfillment of election promises of representatives of political parties on the prevention of corruption<sup>7</sup>. During the tenure of representatives of organization they monitor compliance of politicians with standards of transparency and document the collected information in the form of summarizing reports<sup>8</sup>. An interesting project – having regard to the topic of this publication – was a contest conducted by AKOP entitled “The Competition Pork Barrel”. In 2007 they invited the electoral committees participating in the elections to the Parliament in 2007, asking them to respond to the following questions:

- What are in your opinion the biggest problems in the fight against corruption?
- How are you going to solve them?
- How can you see the future of the Central Anticorruption Bureau: whether and what needs to change?

Under this action it was proposed that every citizen could, using a website, judge whether submitted by political parties electoral declarations were reliable and reasonable. As it turned out proposals were submitted (in the opinion of AKOP) unreliable, which led to the contest to be closed<sup>9</sup>.

Incidents related to electoral corruption are extremely rarely revealed, and the law enforcement authorities receive information about the commission of this crime usually after many years, from politicians who failed to get the mandate of the public trust. The chance of obtaining the information about an offense of corruption during the election campaign, or during the the actual voting, is even more reduced. It should be noted that the offense of corruption of the election, just like any other variation of the crime of corruption, is an act that none of the parties is interested in the fact of its disclosure, which is why so incidentally, public opinion is informed of the practices of electoral corruption<sup>10</sup>.

Monitoring of crimes related to election corruption shows the two faces of the social and political pathologies. First, the action involving the handing and taking small sums of money in exchange for appropriate casting of votes while the other variant of that act are cases for offering

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<sup>7</sup> More information on anti-corruption election slogans see J. Bil, *Korupcja jako narzędzie uprawiania polityki*, „Przegląd Antykorupcyjny” 1A (4), Warszawa 2014.

<sup>8</sup> More information on AKOP activity see website [www.akop.pl](http://www.akop.pl).

<sup>9</sup> *Kiełbasa wyborcza*, [www.akop.pl/dzialania-akop/akcje.html](http://www.akop.pl/dzialania-akop/akcje.html) (accessed 05.02.2015).

<sup>10</sup> W. Jasiński, *Osoby na eksponowanych stanowiskach politycznych...*, p. 200.

high benefits and the use of mentioned mechanisms in the abuse of power. At this point it should be noted the duality of electoral corruption, due to its subjective scope. The discussed action can be committed both by the person applying for the mandate of trust and an official fighting for re-election. The character of both actions is quite different, although guided by the same goal – power. Applicants to obtain public office accuse those already enjoying “sinecure”, to commit during the election campaign a number of irregularities related to the abuse of power. The author of this study conducting an open lecture at the Faculty of Law and Administration, University of Warmia – Mazury in Olsztyn entitled “Election Corruption” on the eve of local elections in 2014, met with considerable opposition from people who for the first time ran for election to occupy certain positions of government, to the abuse of power by their rivals, occupying positions in the local government units. There was raised, inter alia, inequality in access to advertising surfaces used in the election campaign and investment projects taken over by rivals which were financed with public funds while the electoral struggle.

To illustrate the above-mentioned action it is accurate to recall “model” circumstances surrounding the electoral corruption. In the first case initiated by persons seeking mandate, and in the second event of public officials who are taking advantage of entitlements conferred on them resorting to abuse of office.

In preparation for the local elections, a candidate for the mayor in the municipality “X”, decided to undertake the actions “enhancing” the success of his choice. For this purpose he decided to give to so-called environmental pathology persons sums of money not exceeding the amount of 20 zł. or bottles of vodka in exchange for giving him votes. In the interest of the proper voting and ensuring a high attendance, he made an agreement with friends or family members who provided him with comprehensive assistance. The role of family and friends became so: to transfer a certain amount of money or a bottle of vodka, making instruction to vote and poll after leaving the premises of election “contractors” of the system, how they had voted. This criminal model does not raise the need for illustrating the mechanism of its commission. A slightly more complicated way of committing electoral corruption was accompanied by one of the candidates for mayor of the municipality “X” that had held the indicated position for two terms. This person using the powers

granted to him led an active campaign with violation of the law. During this period, the mayor held a series of discussions with entrepreneurs engaged in economic activities in the municipality, on which he inter alia proposed them reduction or exemption from taxes for land and real estate as well as building permits of certain buildings in exchange for an agreement of them and their employees (and their families) to vote on his person. In addition, he proposed entrepreneurs attractive contracts (settled by the Public Procurement Act) relating to the works financed from public funds<sup>11</sup>. It practices are only a selective case study and an accompanying array of electoral corruption is much richer.

In order to assess the scale of electoral corruption crime one must take into account the statistics relating to the crime. These indications are supplied with data from services entitled to the fight against crime corruption. However, you should ask whether on the basis of these data, are we informed about the real scale of the phenomenon? Well, no. According to the author basing only on statistics relating to the acts committed (electoral corruption) is a poor source of information. This is due to circumstances accompanying criminal corruption, which is a crime extremely hard to detect (none of the parties – either giving or taking a bribe are not interested in the fact disclosure of the act), which makes it not recognized in statistics the so-called dark number of crimes (crimes which law enforcement agencies not learned). Using data contained in the report “Map of Corruption” developed by the Central Anti-Corruption Bureau, we noted that:

- in 2011 144 acts of electoral corruption were committed,
- in 2012 40 crimes of electoral corruption were committed,
- in 2013 18 cases of electoral corruption offenses were recorded<sup>12</sup>.

Are these values likely to cause social unease? Considering the number of actions identified in cases of “clerical” corruption, which in 2013 about three thousands were committed<sup>13</sup>, there is no reason for concern. A careful analysis of the pathologies associated with electoral corruption, authorizes to conclude that the problem is a significant barrier to the functioning

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<sup>11</sup> The indicated electoral corruption cases relate to cases conducted/supervised by the author as part of his duties.

<sup>12</sup> *Mapa korupcji. Stan przestępczości korupcyjnej w Polsce w 2013 r.*, Centralne Biuro Antykorupcyjne, Warszawa 2014.

<sup>13</sup> More information on corruption crimes see *Mapa korupcji. Stan przestępczości korupcyjnej w Polsce w 2013 r.*, CBA 2014.

of a democratic state. First of all – statistics cover a period of consecutive years, so it is difficult to compare this kind of crime to “clerical” corruption, due to the fact that the elections are held every four years (municipal, parliamentary). Secondly – an army of bureaucracy is much greater than the number of candidates for the local government units or those aspiring to sit on the benches of parliament. Thirdly – universality and ease of bribery of the electorate does not require as many treatments as bribery of officials. Fourth – the most important, electing the representatives of the people using illegal procedures makes the policy makers of the local and central states are often indebted to people who have given their support in corrupting the electorate. This situation leads to other related pathologies inter alia exerting pressure on the representatives of the people knowing about their corrupt past (threatening the fact of its disclosure). So the interested strive to make contracts according to established rules of the game – to the detriment of the state, to obtain a permit for conducting economic activities in contravention of applicable rules, require the use of practices related to unfair competition and determine the shape of created legal norms. Thus, is electoral corruption a pathology that endangers the security of the democratic state? Definitely yes, despite the apparent lack of interest in such obvious limitations of events beyond a catalog of behaviors attributed to democratic states.

#### THE ELECTORAL CORRUPTION IN THE POLISH LEGAL SYSTEM

The State trying to counteract described practices introduced regulations which penalize corruption election. In the general scientific discourse on the issue of corruption they often point the so-called corruption novella, in which a number of anti-corruption regulations were implemented in 2003 to the Penal Code, including a regulation included in art. 250a P. K. – electoral corruption. Without taking the importance of this novella it should be noted that the regulation on electoral corruption existed in the Polish legislation since 1932. On the cards of that act active electoral corruption crime is laid down in art. 121 “Whoever gives or promises to provide material or personal benefit to a person entitled to vote or another person to exert influence on the voting behavior of the person entitled or to stop her from voting shall be punishable by imprisonment up to 5 years”<sup>14</sup>. Passive corruption election was placed

<sup>14</sup> Rozporządzenie Prezydenta Rzeczypospolitej z dnia 11 lipca 1932 roku, Kodeks karny.

in art. 122 of the Criminal Code of 1932, “Who, being entitled to vote, adopts financial or personal benefit for himself or another person for voting in a prearranged way or refrains from voting, or such benefit requests shall be subject to imprisonment up to 5 years”<sup>15</sup>. However, in art. 123 specifies that criminal liability is subject to the “who accepts financial or personal benefit for himself or another person to influence the voting behavior of the proprietor or stops him from voting, or requires the benefits shall be punished up to 5 years”<sup>16</sup>. Electoral corruption offenses have been included in Chapter XX of the Criminal Code of 1932 entitled “Offences against voting in public affairs”.

In the Penal Code of 1969 and Penal Code of 1997 (until 2003) the offense of electoral corruption did not find place. By implementing international regulations, Polish legislator introduced into Chapter XXIX, entitled “Offences against the elections and referendum” art. 250a – electoral corruption. In this article they included the causative behavior involving active and paid electoral corruption and in the third paragraph they referred to actions of lesser importance. An important to prevent electoral corruption is the regulation of paragraph four, pursuant to which perpetrator of the offense of passive corruption (taking advantage) uses the extraordinary leniency or may avoid its imposition, if he notifies the body responsible for the prosecution of the fact of the crime and the circumstances of its commission before that body had learned about it<sup>17</sup>.

In comparison with active and passive corruption as contained in art. 228 and 129 of the Penal Code, election corruption is keeping a lower degree of social harm, as evidenced by the degree of risk of imprisonment between 3 months to 5 years, while in the case of bribery and venality of public punishment is from 6 months to 8 years in the basic mode. The subject of the protection of electoral corruption offenses is the freedom of voting during elections and the referendum. The indicated regulation is to prevent the emergence and spread of a phenomenon associated with obtaining the mandate of the public trust by persons resorting to electoral corruption practices. This regulation protects the rules of conduct: elections to the Parliament, the Senate, for the President of the Republic of Poland, the European Parliament and to the local government

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<sup>15</sup> Ibidem.

<sup>16</sup> Ibidem.

<sup>17</sup> Ustawa z dnia 6 czerwca 1997 roku, Kodeks karny, Dz.U. 1997, nr 88, poz. 553.

and the referendum. An act of passive (election) corruption is an individual crime that can be committed only by a person entitled to vote, while awarding with benefits can commit every person. Acting of perpetrators of election venality is thus to: the adoption of financial or personal gain and requesting such benefits in exchange for voting in a certain way. In this regulation formula on the promise of financial or personal gain was omitted (in contrast to other regulations of corruption). Absence of this is not justified. Folded election promises are often unkept and the electorate certificates authorities in the next election. In addition, it must be noted that the submission of election promises is quite something different from submitting a promise to provide a financial benefit in exchange for a certain way of voting<sup>18</sup>.

Cited above issues distinguishing the election promises of promises relating to the submission of corruption proposals is not only a subject of theoretical considerations. The author of this study met the described situation in the discussion of candidates for a mandate of public trust in the local elections in 2014, during (the already mentioned) open lecture devoted to electoral corruption. The views presented by the candidates in the area of election promises and fears to take responsibility for their failure in the light of electoral corruption offenses forces to the view that in this matter there is widespread misunderstanding of the subject. It would seem that a person aspiring to hold important positions in local government administration should have at least symbolic training in lawful procedure. That is not so. Political struggle (because I have to call the project focused on the acquisition or maintenance of power) are accompanied by arguments based primarily on emotions which are far from reliable knowledge about the basics of election in a democratic state.

The Penal Code Act is not the only regulation containing regulations guarding the correctness of holding of elections. At this point, we should recall disposition of art. 497 § 3 of the Election Code, according to which criminal liability is subject to the one who gives or accepts a financial or personal benefit in return for collecting or signing a list of candidates or candidate<sup>19</sup>.

Electoral committees often accuse opponents of free transfer of certain articles during organized meetings with the electorate. The answer

<sup>18</sup> G. Łabuda, *Komentarz do art. 250a Kodeksu Karnego*, System Informacji Prawnej LEX.

<sup>19</sup> Ustawa Kodeks wyborczy z dnia 5 stycznia 2011 roku, Dz.U. 2011, nr 21, poz. 112 ze zm.

of legislators on this issue is the regulation of article 502 of Election Code, according to which a fine (from 5 000 to 50 000 zł) shall be given the one who in the elections, gives or delivers as part of electioneering, alcoholic beverages free of charge or selling prices net of value able to reach, not higher than purchase prices. Another regulation of Election Code, on the regularity of the election is the disposition of art. 507 of Election Code, according to which a fine (from 1 000 to 100 000 zł) will be imposed on the person who in connection with elections provides election committee or accepts on behalf of the financial benefit non-cash, other unpaid services to disseminate posters and election leaflets by individuals and help in the office provided by individuals<sup>20</sup>.

#### **THE ACTIVITY OF POLITICAL PARTIES IN THE LIGHT OF THE ANTI-CORRUPTION ACTIONS**

Political parties should also be the entities (except of the state) particularly interested in building transparent electoral processes and the creation of anti-corruption strategies aimed at transparency in public life and the fight against corruption. The issue of corruption began to be taken by politicians of the Democratic Left Alliance (SLD) in 2001–2005 (the first stage of the Anticorruption Strategy). In subsequent years, the fight against corruption declarations proclaimed the Law and Justice (PiS) and other political groups critical to SLD projects. During the early parliamentary elections, which were preceded by suspicions of corruption directed against the deputy prime minister in the government of Jarosław Kaczyński, this subject (corruption) was treated peripherally. Anti-corruption slogans appeared, however, in the programs of political parties. In 2007 the Civic Platform (PO) took the authority over, which did not introduce any significant actions aimed at eliminating corruption from public life. Identified anticorruption actions of the Civic Platform became the cancellation of nominated by the previous government Mariusz Kamiński – the head of the CBA. This party, however, did not take the reform of the Central Anticorruption Bureau but just the politicians of this party called for the de-politicization of the central institutions for fighting against corruption. During the reign of the Civic Platform there was established the position of the Government Plenipotentiary Studies Program for Prevention of Irregularities in Public Institutions in the rank

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<sup>20</sup> Ustawa Kodeks wyborczy z dnia 5 stycznia 2011 roku, Dz.U. 2011, nr 21, poz. 112, ze zm.

of secretary of state, who took Julia Pitera<sup>21</sup>. Actions of the office proved to be unnoticeable, and this position was liquidated. In addition, it should be noted that Julia Pitera in 2005 was the president of the Polish branch of Transparency International, which in 2011 was disbanded after the decision of the International Council of TI. This organization as a leading non-governmental entity with around 100 branches all over the world – in Poland does not work anymore. The reason of disbanding of the Polish Branch was a total lack of anti-corruption activity. From other sources, however, it shows that the organization earned on issuing “in a few tens of thousands it issues a certificate of morality for companies in troubles. Such a testimony was even given to a football club Widzew at the top of the corruption scandal”<sup>22</sup>. It is noticed that the fight against corruption in the actions of the current government coalition is not a priority point of political activity. It should be noted that in many election programs, both the coalition and the opposition, the fight against corruption was a perceptible postulate<sup>23</sup>.

(Intra-) anti-corruption initiative taken by political parties are carried out with different degrees of success. The Civic Platform in the fight against corruption and nepotism on electoral lists established the principle of the fact that in the elections of 2011 from one district could not compete related persons (this postulate, however, was inconsistently implemented). The Law and Justice introduced a regulation under which the membership of the party were to be deprived persons accused of the crime of corruption. Political declarations and reality are two different things. An example is the case of the Civic Platform politician (former President of Wałbrzych) who during the local elections committed a crime related to votes trading<sup>24</sup>.

## CONCLUSION

Practices of electoral corruption are the example of democratic immaturity. Election of authorities is a key element for conducting state policy

<sup>21</sup> *Partie polityczne*, [in:] *Mechanizmy przeciwdziałania korupcji w Polsce*. Raport z monitoringu, Instytut Spraw Publicznych, Warszawa 2012, p. 227.

<sup>22</sup> *Polski oddział Transparency International został rozwiązany*, <http://www.rp.pl/artykul/761764.html> (accessed 08.02.2015).

<sup>23</sup> More information on anti-corruption contents in election programs see J. Bil, *Korupcja jako narzędzie uprawiania polityki*, „Przegląd Antykorupcyjny” 1A (4), Warszawa 2014.

<sup>24</sup> *Partie polityczne*, [in:] *Mechanizmy przeciwdziałania korupcji w Polsce...*, p. 228.

and gaining the support of the electorate by means of bribes is unacceptable election tool. A worrying problem is the increasing impoverishment of society, manifested in lack of responsibility for the decisions taken. The legislator taking care of securing fundamental democratic values admitted citizens the opportunity to vote and stand in the process of selecting authorities. As reality shows, these powers are not used in accordance with the law. It is disturbing that the legitimacy of the governance can be transmitted by assets. Actions taken by politicians (especially the coalition) seem to take the form of pretense. Scandals involving people from political circles (not only) are redeemed or at the stage of trial the accused get acquittal. Introduced on 1 April 2014, another Anti-Corruption Strategy for 2014–2019 reflects the strategy of the second stage, and what's more in the proposed anti-corruption activities and areas at risk of corruption the sphere of politics was not mentioned. Apart from the projects related to the fight against corruption equally important are initiatives to prevent this pathology. One of the areas of prevention is certainly anti-corruption education. The state desiring to have sufficient political background must ensure political and civil education. These tasks are assigned primarily to the teachings of politics and security, which graduates are predestined to perform certain functions of local government and the wider public administration.

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