

## The Analysis of Active Bribery in Positive Criminal Law of Germany and Austria

MILJO GALIOT

**Abstract** The criminal policy of preventing the commission of crimes, especially corruption and bribery, is of great importance for every regulated legal system. The success of the named policy depends largely on the overall political and economic development of each country. In support of the existing scientific debate, this paper analyses the positive criminal law regulation of the Federal Republic of Germany and the Republic of Austria with regard to the question of active bribery as one of the main forms of corrupt behaviour. The author will comparatively present the German and Austrian criminal systems, which, same as the Croatian, belong to European continental criminal legal system, and will thus address the fundamental similarities and differences between the legal regulations of active bribery within the named legislations.

**Keywords:** • benefit • corruption • active bribery • prosecution • punishment • criminal sanctions •

---

CORRESPONDENCE ADDRESS: Mijo Galiot, judge, Municipal Court Split, Dračevac bb., HR-21000 Split, Croatia, email: galiot1305@gmail.com; opcinski.sud@osst.pravosudje.hr.

DOI 10.18690/18557147.9.1.65-84(2017) UDC: 343.352(430:436)  
ISSN 1855-7147 Print / 1855-7155 On-line © 2017 LeXonomica (Maribor)  
Available at <http://journals.um.si/index.php/lexonomica>.

## **1 Introduction**

### **1.1 In principle**

Analysis of the legal protection systems utilised in the Federal Republic of Germany and the Republic of Austria to help confront and combat the fight against bribery were selected mainly since these systems at the international level are recognized as some of the most successful in the world.

German and Austrian criminal codes reflect the features which are typical for national criminal codes of European continental states. The main such feature would be the establishment of criminal legislation on a (written) criminal code (Novoselec, Bojanić, 2013: 63 and 67).

Both the German and the Austrian criminal legislation are based on criminal code which encompasses, as a fundamental principle, the principle of legality of criminal law. These observed systems pay particular attention to criminal offences of active (and passive) bribery, both in the public and private sector respectively, demonstrating similarities to national criminal justice system well.

### **1.2 Research objectives**

The main objective of the author was to provide an overview and analysis of the basic features of criminalisation and the criminal sanctioning of (active) bribery (corruption) in the (positive) German and Austrian criminal law.

Firstly, the phenomena of corruption and the criminalisation of active bribery are set out generally for each country. The analysis of the basic features of the criminal law protection against active bribery in the public and private sectors follows, subsequently drawing conclusions about these systems.

Furthermore, the focus of the analysis is “transferred” to the presentation of main determinants of doctrinal and judicial interpretation in relation to the regulated forms of the criminal offence of (active) bribery, after which the system of legally prescribed criminal sanctions for these crimes is presented.

Finally, the paper will discuss the basic comparative similarities and differences between the systems of criminal law protection against active bribery in the positive criminal law of Germany and Austria.

## **2 Bribery in Federal Republic of Germany**

### **2.1 General**

The Federal Republic of Germany, in Article 20 para. 2 of The Basic Law (Constitution), is defined as a democratic and social federal state.<sup>1</sup> This central European country covers

an area of 357,021 m<sup>2</sup> and consists of 80,620,000 inhabitants (Tomljanović, 2014: 44–45).

Relatively recent data on the presence of corruption lead to the conclusion that the situation in Germany, regarding its prospects in the fight against corruption, can be assessed as very satisfactory.

The annual CPI table of Transparency International, for example, positioned Germany, in the period from 2010 to 2013, between 12<sup>th</sup> and 15<sup>th</sup> place, while BPI table for 2011 ranks Germany's economy among the four least corrupt in the world (see Dragičević Prtenjača, 2014: 214).

In this respect, Fourth (final) GRECO Evaluation Report for Germany from 2014 starts with the statement that there is a worldwide attitude towards Germany as being one of the most successful countries in the fight against corruption, with good preventive and repressive measures. It continues with the statement that the public perception of the presence of corruption in Germany is significantly below the average values for the European Union. This is illustrated by the presentation of data on the public's perception of the presence of corruption from 2013. According to these figures, 49% of respondents in Germany expressed the belief that corruption is widespread among politicians, while the EU average is 56%. The difference is even more pronounced when it comes to belief in widespread corruption in the judiciary system. 16% of the respondents in Germany hold such a conviction, half the EU average, which is 32%.<sup>2</sup> Furthermore, 92% of German respondents do not personally feel affected by corruption in everyday life (the EU average is 70%); 59% of German respondents believe that corruption is widespread in their country (the EU average is 76%); less than 1% of German respondents were asked to bribe or have bribed in the last 12 months (the EU average is 4%); and 9% of German respondents personally know someone who has received a bribe (the EU average is 12%).<sup>3</sup>

The report of the Working Group of the OECD from 2011 attributed Germany the leading role in the investigation and prosecution of bribery cases with cross-border element. This is confirmed by the number of such cases in the period from 1999 to 2013, which are presented in the Report of the Working Group of the OECD from 2013. These data place Germany in second place with 88 such cases recorded, just behind the United States, which recorded 139 such cases. Only 7 such cases were reported in the United Kingdom. The information was also presented on 69 persons convicted for corruption crimes with cross-border element, 30 of which on the basis of judgment delivered after the hearing in the criminal proceedings, where a small number of cases (total of 10) refers to the bribery of foreign officials, while other cases involve cross-border bribery and other corruption offences in the private sector (Funk, 2014: 24–26; Saenz, 2015: 278–279).

Considering the investigation in criminal matters regarding corruption, according to the statistics of the German Federal Criminal Police, there were 46,795 cases of corruption recorded of which 1528 cases were under ongoing investigation in 2011.<sup>4</sup>

Several preventive and repressive measures of the German framework for the fight against corruption can be singled out.<sup>5</sup> First is education and raising the awareness of the rights and obligations, as well as professional ethics and responsibilities of public officials and businesses. Second, specific organizational preventive measures, which include: establishing an anti-corruption commissioner; application of the so called “four eyes” principle, i.e., the participation of at least two persons in the approval of important decisions; the adoption of written, internal anti-corruption guides and introducing their content to all employees; conducting unannounced control over random decision-making processes associated with higher risk of corruption; and identifying areas associated with greater risk of corruption.<sup>6</sup> Third, legal prescription of criminalisation and criminal sanctions. Fourth, the consequences of a conviction for corruption offences prescribed by civil service legislation of Federation and the Member States or provided for by working contracts of public servants (e.g. termination of service i.e. employment). Fifth, the totality of normative and non-normative acts of the Federation, the Member States and local governments on the implementation of preventive anti-corruption measures. Here, in addition to the normative acts on prevention of corruption, which directly create a legal obligation to introduce these normative acts provided for anti-corruption measures (e.g., aforementioned legal obligations of establishing an anti-corruption commissioners in all public bodies), there are also non-normative acts included. These non-normative acts, in themselves, are anti-corruption measures. Although the content of these non-normative acts is not directly legally binding, textually they refer to the legally binding content (e.g. regulations), because the purpose of these non-normative acts is for prevention purposes. In other words, they briefly and concisely familiarize the addressee with legally binding anti-corruption amenities, i.e., with the identification of behaviours that are legally sanctioned as corruptive, and which draw legal sanctions for this behaviour. Examples of these non-normative acts are written in internal anti-corruption guides. These guides also provide the reader with the contents of the relevant anti-corruption legislation, mainly in the field of criminal law, misdemeanour law, labour and civil service law. The most famous example of such a multilingual guide was issued by the Federal Ministry of the Interior. This guide was intended for both the private sector and the federal administration and provided, in the form of questions and answers, a detailed (39 pages) clarification about the scope of a general and absolute prohibition of receiving any gifts or other benefits, as well as the procedure in case of offering incentives and other benefits.<sup>7</sup> And the final, sixth, organization of the public prosecution and the police in the Member States, where 8 of the 16 member states, including Berlin, formed specialized anti-corruption departments within the State Attorney's Office and police.<sup>8</sup>

The principle of legality of criminal law, in a manner comparable to the provisions of Article 31 of the Croatian Constitution<sup>9</sup> and Article 2 of the Croatian Criminal Code<sup>10</sup> prescribes the provisions of Article 103, para. 2 of the GG and Article 1 of the German Criminal Code (StGB).<sup>11</sup> According to this principle, active bribery is criminalized and sanctioned by the relevant provisions of the special part of StGB.

Thus, criminal offences of active bribery of public officials, judges and arbitrars are located in head thirty (XXX) of StGB, entitled Criminal offences against the service. They are regulated by the provisions of Articles 333, 334 and 335 of StGB. Active bribery of

MPs and members of representative bodies is regulated by Article 108e and is included in the Head four of StGB along with crimes against constitutional bodies, the election and voting. This head also includes a separate criminal offence of bribery, called bribery of voters (Article 108 b. of StGB). Bribery in the private sector is regulated by Article 299 of the StGB called “bribery in business”, and Article 300 of StGB, regulates particularly serious cases of bribery in business. Both offences are included in the twenty-sixth head (XXVI) among the offences against the (market) competition (Dragičević Prtenjača, 2014: 214; Yu, 2012: 20 and 26).

## 2.2 Active bribery in public sector

Active bribery in the public sector is criminalized in its irregular and regular (previous and subsequent) form.

Irregular active bribery in the public sector is regulated by Article 333 of StGB, which is entitled “Providing benefits” (Vorteilsgewährung). Para. 1 of this Article stipulates that anyone who offers, promises or gives a benefit to an officer or another person who is authorized to carry out a public service or to a member of the armed forces, for themselves or a third person, for their services, will be punished by the imprisonment of up to three years<sup>12</sup> or with a fine.<sup>13, 14</sup> Para. 3 of this Article prescribes the reasons to excuse punishment for that offence under para. 1 of this Article. In particular, this para. prescribes that punishment may be excused if the competent public authority, within its authority, has previously approved receiving benefits from the recipient or approved receipt of benefits in the case when the recipient immediately reported receiving the benefit. Greater criminal punishment (imprisonment for a duration up to five years or a fine) is foreseen by para. 2 of this Article for one who offers, promises or gives a benefit to a judge or arbiter, for themselves or a third person, in return for judgement that was brought or would be brought<sup>15</sup> (Jovašević, 2008: 204).

The regular (pre and post) active bribery in the public sector is regulated by Article 334 of StGB, entitled “Offering a bribe” (Bestechung). Para. 1 of this Article stipulates that anyone who offers, promises or gives a benefit to an officer or another person who is authorized to carry out a public service or to a member of the armed forces, for themselves or a third person, as a counter service for services provided or for undertaking such future actions, violating their official duties will be punished by imprisonment of three months to five years, and in less serious cases by imprisonment for up to two years or a fine.<sup>16</sup> According to para. 2 of this Article, anyone who offers, promises or gives a benefit to a judge or arbiter, for themselves or a third person, as a counter-service, for bringing judgement in violation of their judicial office (Article 1), or will in the future judgement which would violate their judicial office (point 2), shall be punished in the cases referred to in point 1 with imprisonment of up three months to five years, and in the cases referred to in point 2 by imprisonment of six months to five years.<sup>17</sup> For such criminal offence, the provision of para. 2 of this Article prescribes punishment even for the attempt. Furthermore, para. 3 of this Article stipulates that, in cases where the perpetrator offers, promises or gives a benefit in return for future action, the provisions of paras 1 and 2 of this Article shall apply even where the perpetrator merely encouraged the other person to

violate his or her duties with the action (Article 1) and, to the extent that this action is within their discretionary powers, to allow themselves to fall under the influence of the benefit in the execution of these discretionary powers (Jovašević, 2008: 204 and 205).

The provision of Article 335 para. 1 of StGB prescribes punishment of particularly severe cases of active (and passive) bribery in the public sector, by imprisonment for one up to ten years. When it comes to active bribery, this refers to particularly severe cases of the offence of offering a bribe under Article 334 of StGB. Article 335 para. 2 of StGB offers the following cases as examples of serious cases of bribery: when committing the act is related to a substantial gain and control (point 1); when the perpetrator repeatedly receives the required benefit in return for undertaking future actions (point 2); and, when the perpetrator acts on economic grounds or as a gang member<sup>18</sup> whose purpose is to continually commit such crimes.

As for the act of committing the criminal offence, previously presented provisions should be interpreted in connection to the provision of Article 336 of StGB which equates the omission of the action to committing an (official or judicial) action.

The provision of Article 337 of the StGB, but for the purposes of criminalizing active and passive bribery in Articles 331 to 335 of StGB, specifies that the compensation for an arbiter will be considered a benefit in terms of criminalisation in the following cases: if the arbiter demands, or allows their promise, or accepts by one side without the knowledge of the other, or if one side offers, promises or gives without the knowledge of the other.

Certain terms of the previously presented legal descriptions should be interpreted by relating them to Article 11 para. 1 of StGB, which define the meaning of certain terms in the law, including the terms “employee”<sup>19</sup>, “judge”<sup>20</sup>, “a person who is authorized to perform public authority”.<sup>21</sup>

The concept of “benefit” is a pivotal concept of presented legal descriptions (essence) of criminal offences of active (and passive) bribery. This term is in its nomotechnical-legal nature a legal standard. This means that StGB, and any other regulation, does not contain a provision which defines the term, which is why the concretization of this concept is left to judicial interpretation (practice). In concert with this, the doctrine points out that the scopes of the (judicial) interpretation of the term limits the principle of social adequacy, according to which socially acceptable behaviour can not constitute a criminal offence of active (and passive) bribery, while socially acceptable behaviour in no way implies a socially acceptable corruptive behaviour (Bonsing, Bo Langsted, 2013: 179).

Despite these doctrinal discussions, the German jurisprudence, and the German positive law, including also the positive regulations of the civil service law, stands on the line of invariable condemnation of active (and passive) bribery. There is, accepted in case-law, an absolute and comprehensive ban for public officials to receive any gifts or benefits, regardless of the value, including the so-called courtesy gifts and benefits of (quite) small value.<sup>22</sup>

Two separate offences mentioned in the head four of StGB, which prescribes criminal offences against constitutional bodies, the election and voting, need to be included in the criminalisation of active bribery in the public sector. These are the criminal offences of bribery of voters (Article 108b StGB) and offering bribery to MPs (Article 108 StGB) (Yu, 2012: 73).

Active bribery of voters is criminalized by the provision of Article 108b para. 1 of StGB, prescribing that anyone who offers, promises or delivers a gift or another benefit for not voting or for voting in a certain manner will be punished by imprisonment for up to five years or with a fine.<sup>23</sup>

Active (and passive) bribery of MPs is criminalized by the provision of Article 108.e para. 1 of StGB, which prescribes that those who buy (or sell) vote of Members of the European Parliament or the Parliament of the Federation or a member State or a member of the representative body of local self-government will be punished by the imprisonment up to five years or a fine.

Active (and passive) bribery of MPs and members of representative bodies was not criminalized until 1993, when it entered the StGB under Article 108e. The need for the introduction of this specific criminalisation arose because of the widely accepted interpretation according to which MPs and members of representative bodies do not fall under the concept of (public) servants in terms of the previously presented criminalisation of active (and passive) bribery in the public sector. In the wake of this, the case-law developed legal opinion according to which members of representative bodies of local units fall under the concept of “public officials” only in the context of performing their administrative powers, but not when they are performing their legislative powers.<sup>24</sup> This criminalisation, since its introduction in 1993, was and still is the subject of constant and severe doctrinal criticism. The key arguments of the criticism are: that it is a criminalisation with inappropriately narrow scope, since it criminalizes only acts of buying (selling) votes; it does not prescribe sanctioning for attempts at bribery; that the long-standing insistence of this kind of criminalisation and its non-amendment prevents German ratification of the Convention against Corruption of the United Nations (UNCAC) and the Criminal Law Convention on Corruption of the Council of Europe (CLCOC); and that the above mentioned insistence is a result of “secret arrangements” of leading German political parties (CDU and SPD) and several criminal law experts related to these parties which persistently defend such criminalisation in public and expert discussions.<sup>25</sup>

As for specific criminal legislation, we should mention the International Anti-Bribery Act (Gesetz zur Bekämpfung internationaler Bestechung, hereinafter IntBestG) and the EU Bribery Act (EU Bestechungsgesetz, hereinafter EUBestG) (Yu: 2012: 32). IntBestG is based on the OECD Convention on bribery in 1997 and was adopted in 1998. By the provision in Article 2, para. 1 of the said Act, the equation of foreign judges, civil servants and soldiers, with the national ones, is limited only to the criminal offence of active bribery (Article 334. of StGB). Regarding the issue of bribery of members of foreign assemblies, only bribery of these persons is regulated, and only in situations when the

service is aimed at obtaining benefits in international business transactions. It prescribes the punishment of imprisonment not exceeding five years or a fine. Bribery is not sanctioned and members of the European Parliament are considered to be members of the national assembly (Dragičević, Prtenjača, 2014: 218–219).

EUBestG is based on the First Protocol to the Convention on the protection of the financial interests of the European Communities and the Convention on Combating Bribery of officials of the European Communities and officials of the Member States and was adopted in 1998. This Act extended the sanctioning for the criminal offences of active (and passive) bribery under Article 334 of StGB (and Article 332 of StGB) to public officials and judges of the European Union and EU member states. Although it applies to active and passive bribery, EuBestG, unlike IntBestG, has spatial validity and is thus limited to the territory of the European Union.<sup>26</sup>

### **2.3 Active bribery in private sector**

This form of bribery is regulated by Article 299 of the StGB's called "Bribery in business", and by the provision of Article 300 StGB, regulating especially severe cases of bribery in business. Both acts are included in the twenty-sixth head (XXVI) of StGB among offences against the (market) competition.

Thus, Article 299, para. 2 of StGB provides that, whoever, for competition gains, offers, promises or gives benefit to an employee or business contractor, for them personally or for a third person, in commercial transactions, in return for unfairly favouring them or another in trade goods or services, will be punished by imprisonment of up to three years or a fine.<sup>27</sup> Para. 3 of this Article, extends the criminality of active (and passive) bribery under para. (1 and) 2 of this Article to cases of cross-border competition.

Particularly severe cases of active (and passive) bribery in business are regulated by Article 300 of StGB, which for such cases foresee imprisonment of three months to five years. The following cases are examples of severe cases: a situation when this offence relates to the considerable benefit (Article 1), and a situation where the perpetrator acts on economic grounds or as a member of a gang which has joined up to continuously commit criminal offences (point 2). The German criminal justice system does not recognize criminal liability of legal persons (Funk, 2014: 24; Yu, 2012: 31).

### **2.4 Fundamental features of the German system of legal protection against active bribery**

Starting from the previously presented analysis of normative regulation of active bribery in the German legal system, seven basic features and conclusions can be generalized. First, active bribery is criminalized in both the public and private sectors. Second, irregular and regular (pre and post) active bribery is criminalized in the public sector. Third, the private sector also regulates cross-border sanctioning of active (and passive) bribery. Fourth, legal descriptions of criminal offences of active (and passive) bribery are based on the concept of "benefit" which is the legal standard. Fifth, the legal descriptions

of criminal offences of active bribery do not expressly provide for sanctioning of active bribery through intermediaries.<sup>28</sup> Sixth, with qualified forms of criminal offences of active (and passive) bribery in the public sector, qualificatory circumstances include the capacity of a judge and capacity of an arbiter and substantial benefit, the latter being a qualificatory circumstance with qualified forms of criminal offences of active (and passive) bribery in the private sector. Seventh, the legal policy of sanctioning is symmetrical, because it presupposes the same kind of measures and criminal sanctions for active and passive bribery, with the exception of the regular bribery in the public sector, that is sanctioned more severely in passive than in active form.

### **3 Republic of Austria**

#### **3.1 In principle about the phenomenon of corruption and the criminal justice system in the fight against active bribery**

Austria is, in Articles 1 and 2 of its Constitution, defined as a democratic republic and a federal state consisting of nine Member States, i.e. autonomous regions (Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna).<sup>29</sup> This central European country covers an area of 83,858 m<sup>2</sup> and has 8,430,000 inhabitants (Tomljanović, 2014: 12).

Newer data, discussed below, reflect the presence of corruption and the success of the fight against corruption in Austria.

Annual CPI table of Transparency International place Austria to 15th place out of 178 countries surveyed in 2010, to 25th place in 2012, to 23rd place out of 175 countries surveyed in 2014.<sup>30</sup>

Annex 20 of the EU report on the fight against corruption of 3 February 2014, which applies to Austria, refers to data of a special Eurobarometer survey on corruption in 2013 and Eurobarometer business research from 2013. Following data of a special Eurobarometer survey on corruption in 2013 were presented. In Austria 66% (the EU average is 76%) of respondents expressed the belief that corruption is widespread in their country. Giving benefits or gifts in exchange for public service was evaluated as acceptable behaviour by almost a third of Austrian respondents. It is relatively the highest score on this indicator among all Western European countries. 5% of Austrian respondents (EU average is 4%) found themselves in a situation in which they were asked for or expected to give a bribe in the past 12 months. Only 14% of Austrian respondents felt that corruption touches them in everyday life. This is well below the EU average (26%). The results of the Eurobarometer surveys of the business in 2013 were as follows: 38% of business representatives consider corruption to be an obstacle to business; 41% of them considered nepotism and protectionism problematic in this regard; 18% of those who in the last three years took part in public procurement procedures as bidders, considered corruption to be the reason for their offer to be refused in these proceedings, while 66% of them considered that the tender conditions in these proceedings are directly adjusted for certain subjects, which is above the EU average. 57% of Austrian respondents

believe complicity between bidders is a widespread practice in public procurement procedures; 45% of them pointed out the presence of a conflict of interest when considering the offer in these proceedings; and 35% of the criteria for consideration and selection offer is considered unclear.<sup>31</sup>

According to the official Austrian police and judicial statistics, open investigation of all corruption offences numbered 701 in 2011, 1,351 in 2013 and 1,359 in 2014. For the offences of active bribery in the public sector, there were 10 investigations in 2010 and 11 in 2011. Furthermore, there was 1 conviction in 2007, 3 in 2009, 1 in 2010 and 4 in 2011.<sup>32</sup> Increased risk of (active) bribery is associated with the areas of public procurement, sport, betting and casinos.<sup>33</sup>

As a component of the Austrian framework for the fight against corruption, the following preventive and repressive measures stand out.<sup>34</sup> First, preventive measures aimed at civil servants, the most important being the adoption of the Code of Conduct for the prevention of corruption. Second, preventive measures aimed at the organization of the state administration, including the total of 40 reform projects, relating to the implementation and maintenance of *e-government* services to citizens that are directly accessible from the Internet, in order to improve efficiency and serviceability, as well as the cost reductions in public administration. Third, measures at the federal parliament level, for example, the establishment of two parliamentary investigative commissions, which are exclusively responsible for investigating and dealing with corruption charges, and the establishment of two more such commissions, which are, among other things, responsible for the corruption issues. Fourth, organizational and institutional measures, such as the establishment of special police and public prosecutor bodies responsible for the prevention, investigation and prosecution of corruption criminal offences. These include the (police) department of the Federal Anti-Corruption Department (BAK<sup>35</sup>) and the (public prosecution) office for prosecution of economic and corruption offences (i.e. WKStA<sup>36</sup>). Both these bodies are responsible for the entire area of the Austrian Federation. BAK has jurisdiction over criminal offences of active bribery in the public and private sectors where the value exceeds 3,000.00 €, and offences of active bribery in the public sector where the value does not exceed 3,000.00 €, but there is a particular public interest given the importance of offences or suspects. WKStA has jurisdiction over all criminal offences of active bribery in the public sector.<sup>37</sup> Fifth, measures of supervision of senior officials, such as the legal obligation to submit declarations of assets of members of the federal government and the governments of the Member States and the secretaries of state every two years during the term of office and for three months after the expiration of the mandate and legal obligation of Parliament to report management positions within companies and the category that includes the amount of average monthly earnings which they receive. Sixth, the repressive measures directed at civil servants, of which the most important measure is the ending of civil service, either as a result of a conviction for a crime of corruption, or as a disciplinary sanction imposed in disciplinary proceedings. There is a distinction in informal, summary and formal disciplinary proceedings against a civil servant. In the informal procedure, the superior civil servant may impose a sanction of reprimand to lower civil servant. In summary proceedings, the disciplinary body may impose (a smaller) fine for minor disciplinary sanction. Two-stage formal disciplinary

proceedings are held for more severe disciplinary acts for which there may be imposed a reprimand or a fine or termination of employment. In relation to officers in the public service, who are under working contract, misconduct may result in sanctions including relocation or termination of service where legal protection is provided by work and social court. Seventh, a measure of access to bank accounts of the accused, by the proposal of the State Attorney's Office, when the information is necessary for "solving intentional criminal offence." Eighth, repressive order of confiscating material gain which has been illegally acquired by committing corruption criminal offence. Ninth, the legal prescription of criminalisation and criminal sanctions. The final, tenth, measures consist of specialised education of the court, public prosecution and police personnel. Thus, the five-month course "Business Law", which was organized for judges and prosecutors by the Federal Austrian Ministry of Justice for the period from June 2011 to May 2012, was completed by 74 participants. Higher State Attorney Office in Linz, conducted the course for prosecutors, "Economic criminal law in practice" in the period from April 2010 to March 2011. In October 2010, the Austrian Federal Ministry of Justice enabled judges and prosecutors to participate in the postgraduate study "Economic Studies for Lawyers" at Johannes Kepler University in Linz, completed by 16 participants. In cooperation of the named ministry and the Vienna University of Economics and Business, postgraduate studies "White-collar crime and law" has been established. Also, in cooperation with the Federal Academy for Security in the Federal Ministry of the Interior, and the University of Applied Sciences Wiener Neustadt, III-semester university course for investigators economic and financial crimes is being carried out.

In accordance with the principle of legality of criminal law, which is, in a way comparable to the provisions of Article 31 of the Croatian Constitution and Article 2 of the Croatian Criminal Code, stipulated in the provisions of Article 1 of the Austrian Criminal Code (StGB)<sup>38</sup>, active bribery is criminalized and sanctioned by appropriate provisions of the special part of the StGB.

In a separate part of StGB, the offences of active bribery in the public and private sector are in the twenty second head (XXII), entitled "Criminal offences against official duty, corruption and related offences." The offences of active bribery in the public sector are regulated by the provisions of Article 307 of the StGB, which is titled "Giving a bribe" (Bestechung), and the provisions of Article 307 of the StGB entitled "Providing benefits" (Vorteilzuwendung). Active (and passive) private sector bribery is criminalized by the provisions of Article 309, entitled "Acceptance of gifts and bribery of employees or agents" (Geschenkannahme und Bestechung von Bediensteten oder Beauftragten).<sup>39</sup>

Austrian positive frame of legal protection against active bribery, was established with the amendment of StGB in the period from 1964 to 2012. Amendments to the StGB of 1964 (so-called First anti-corruption law), for the first time introduced the provisions that criminalised bribery and other corruption offences. The result was that all corruption offences were regulated entirely in StGB. Subsequently, provisions of StGB were amended numerous times and new provisions were introduced through specific criminal legislation. Amendments of StGB followed in 1982 (i.e. Second anti-corruption law) and 1987 (i.e. The reform of the criminal legislation of 1987). In order to implement the

international standards of legal protection in this area, StGB was amended in 2008 (i.e. The reform of the criminal legislation of 2008) and 2009 (i.e. Changes to the anti-corruption legislation).<sup>40</sup>

The last amendment of StGB in this area, establishing a currently valid (positive) framework of legal protection against active bribery in Austria, was established by the Amendments to the StGB, which were published in the Federal Official Gazette No. 61/2012 and entered into force on 1<sup>st</sup> January 2013.<sup>41</sup>

In order to completely present the most basic features of the existing (positive) framework of legal protection against active bribery in Austria, it is necessary to mention that a federal law on the liability of entities for criminal offences came into force 2005.<sup>42</sup> The provisions of this Act presume that entities are also responsible for the offences of active bribery. This does not preclude a parallel responsibility for the same offence by a natural person who is the decision-maker or an employee of the entity. According to the provisions of Article 1, para. 3 of this Act, the following are not considered legal entities: inheritance after the deceased person, legal person of public law (state government, federal state, local or regional government), as well as church and religious legal entity. There are no convictions for the offence of active bribery in the case-law (yet) against the accused entity. Entity may be imposed to pay a fine ranging from 40 to 180 of daily income, i. e. in the amount of 1.8 million Euros.<sup>43</sup>

This introductory and general presentation of the phenomenon of corruption and the criminalisation of active bribery in Austria (point 1.1.), is followed first by showing the basic features of the Austrian system of legal protection against active bribery in the public (point 1.2.) and private (point 1.3.) sector. Then, on the basis of the fundamental features, the conclusions about the system are presented (point 1.4.). In the wake of these conclusions, finally a comparison of Austrian and German system of legal protection against active bribery (point 1.5.) is given.

### **3.2 About active bribery in the public sector**

Active bribery in the public sector is criminalized in the regular and irregular form. Regular active bribery in the public sector is regulated by Article 307 of StGB titled “Giving a bribe” (Bestechung). In Article 307, para. 1 StGB, first sentence, provides that the person who offers, promises or gives a benefit to a public official or an arbiter, for themselves or a third person, to commit or fail to commit an official act which violates their official duties will be punished by imprisonment of up to three years. The second sentence of this para., stipulates sanctions for one who offers, promises or gives a benefit to an expert (Article 304, para. 1), for themselves or a third person, and for giving incorrect evidence or expert opinion. In terms of the said Article 304, para. 1 StGB, it is the expert whom the court or administrative body chooses for the particular process.

According to Article 307, para. 2 of StGB, whoever commits this crime given the value of the benefits that exceed 3,000.00 € shall be punished by imprisonment of 6 months to

5 years, while the one who commits this crime given the value of the benefits that exceed 50,000.00 € will be punished by imprisonment of one to 10 years.<sup>44</sup>

From the above legal description of this crime, it follows that it is a (general) criminal offence which can be committed by anyone.

The act of committing such offence includes offering, promising or giving a benefit to a public official or an arbiter. According to the legal definition, the concept of a public official has a wide scope.<sup>45</sup> Thus, “public official” entails, selected (including parliament representatives), and appointed officials and servants in all government activities (legislative, administrative and judicial) and at all levels of government organizations (federations, members of the federation, the self-government) and in companies with major public ownership, regardless whether it is a migrant worker official or an official of another state or international organization. Such broad legal definition of a civil servant in the practice includes, for example, officials in public hospitals and public universities.<sup>46</sup>

The essential elements of this criminal offence include benefits and breach of official duty, because it requires a violation of official duty which is typical for the regular bribery, and according to the existing case-law, any benefit is criminalized by this act, regardless of whether they are tangible or intangible benefits. The value of the material used is not prescribed as an element of this criminal offence, but is specified as the decisive factor for the statutory measure of criminal sanctions, which is higher when the benefit is greater. This is the case due to an amendment of the StGB in 2009.<sup>47</sup>

This criminal offence (Article 307 StGB) has a cross-border spatial validity, since it is subject to prosecution under Austrian criminal law, regardless of the criminal law of the country where the offence was committed; in cases when the perpetrator at the time of committing the criminal offence is an Austrian citizen; or when the offence is committed for the benefit of the Austrian public officer or arbiter.<sup>48 49</sup>

Irregular active bribery in the public sector is regulated by Article 307 of StGB titled “Giving benefits” (*Vorteilzuwendung*). Article 307, para. 1 of the StGB, provides that the person who offers, promises or gives undue benefit (Article 305, para. 4) to a public official or an arbiter, for themselves or a third person and for committing or omission of an official act that is in accordance with his / her official duties will be punished by imprisonment of up to two years.

According to Article 307, para. 2 StGB, whoever commits this criminal offence given the value of the benefits that exceed 3,000.00 € shall be punished by imprisonment of 6 months to 5 years, while the one who commits this criminal offence given the value of the benefits that exceed 50,000.00 € will be punished by imprisonment of one to 10 years.<sup>50 51</sup>

Presented legal description of named criminal offence in Article 307 of the StGB, para. 1, refers to the provision of Article 305, para. 4 StGB, which gives a negative legal

definition of undue benefit. Thus, this provision provides that the following benefits will not be considered as undue:

- the benefits, acceptance of which is expressly prohibited by law, or has been approved as part of the event which is attended in the official capacity or for justified interest (subpara. 1);
- benefits for charitable purposes to which the use of a public official or arbiter has no effect (subpara. 2);
- If there is no legal act in the sense of subpara. 1, benefits of lesser value which are in accordance with local customs, unless the offence is committed on a professional level (point 3).<sup>52</sup>

As an example of subpara. 1, a legally prescribed possibility is presented that a pharmaceutical company covers all the costs of participation in the symposium to a doctor of public hospital who is chosen by the public hospitals, while the examples of subpara. 3 states less valuable gifts (pen, notebook and etc.).<sup>53</sup>

Everything discussed above relating to the circle of perpetrators and for cross-border spatial validity to a regular active bribery under Article 307 of the StGB, applies with equal force to irregular active bribery under Article 307 of the StGB.<sup>54</sup>

In addition to the general differences between these two forms of active bribery (at first it is an act of an official which is contrary to the official duty, and in the other the official action that is in accordance with civil service duties), a specific difference is the fact that the first form (Article 307. StGB) applies to any benefit while the other form (article 307 StGB) applies only to the benefit which is undue in the above sense.<sup>55</sup>

### **3.3 Active bribery in private sector**

Active and passive bribery in the private sector is regulated by Article 309 of StGB, entitled “Acceptance of gifts and giving bribery to employees or agents” (Geschenkannahme und Bestechung von Bediensteten oder Beauftragten), which in para. 1 provides a legal description of the passive form, in para. 2, provides a legal description of the active form, and in paras 1 and 3 determines the same type and an equal measure of criminal sanctions for both these forms.

According to this legal description, active bribery in the private sector, which is called giving bribe to employees or agents, is made by a person who in the course of business activity, offers, promises or gives a benefit to the employee or agent of the company for committing or omitting of legal action that is contrary to their duties.<sup>56</sup> Prescribed imprisonment: up to two years when it comes to values not exceeding 3,000.00 €, to three years in the case of a value exceeding 3,000.00 €, and 6 months to 5 years in terms of value exceeding 50.000,00 €. <sup>57</sup> From this legal description it can be seen that only regular form of active bribery in the private sector is punishable, because the employee’s (agent’s) committing or omitting to perform legal actions has to be contrary to his duties, which is the element of this criminal offence.

All that is abovementioned for the circle of perpetrators, for committing the offence, and for cross-border spatial validity for regular active bribery in the public sector under Article 307 of the StGB, applies to the active form of bribery in the private sector under Article 309 StGB.<sup>58</sup>

The legal standard “in the course of business activity” from the legal description of this criminal offence, is interpreted broadly by the case law so that it includes unpaid charity work, and the work for NGOs.<sup>59</sup>

### **3.4 Fundamental features of the Austrian system of legal protection against active bribery**

Starting from the previously presented analysis of the Austrian system of legal protection against active bribery, eight fundamental features or conclusions can be generalized, as follows.

First, active bribery is criminalized in both the public and private sector. Second, regular and irregular active bribery is criminalized in the public sector, while only regular in the private sector. Third, provisions on criminal offences of active bribery in both public and private sector have a cross-border spatial validity. Fourth, the legal descriptions of criminal offences of active bribery do not expressly provide for sanctioning of active bribery through intermediaries. Fifth, legal descriptions of criminal offences of regular active bribery in the public sector and active bribery in the private sector, based on the concept of “benefit”, which is the legal standard, and the legal description of the offence of irregular active bribery in the public sector is based on the concept of “undue benefit” for which a negative legal definition is given. Sixth, with the offence of regular active bribery in the public sector, the punishment is extended to active bribery of expert in judicial or other proceedings. Seventh, with active bribery in the public and private sector, the value of the material (undue) benefit is prescribed as a circumstance determinant for a legal measure of criminal sanctions (prison sentence) that is greater when this benefit is greater. Eighth, criminal investigation and prosecution of active bribery is the responsibility of the special police and public prosecution authority (BAK or WKStA).

## **4 Conclusion**

In conclusion, we present the basic comparative similarities and differences between the system of legal protection against active bribery in positive criminal law of Germany and Austria in respect of prescribed forms of criminal offence, perpetrators, committing acts and prescribed criminal sanction.

First of all, in both observed criminal systems the active bribery is criminalized in both the public and in the private sector, provided that in the public sector regular and irregular active bribery is legislatively regulated.

Second, the private sector in the German criminal law system regulates also the cross-border sanctioning of active (and passive) bribery. Meanwhile, the Austrian provisions

on criminal offences of active bribery, and public and private sector have a cross-border spatial validity.

Third, legal descriptions of criminal offences of active (and passive) bribery in the German legal system are based on the concept of “benefit” which is the legal standard. In contrast to this, in Austria the legal descriptions of criminal offences of regular active bribery in the public sector and active bribery in the private sector, are based on the concept of “benefit” which is the legal standard, while the legal description of irregular active bribery in the public sector is based on the concept of “undue advantage” for which the negative legal definition is given.

Fourth, the legal descriptions of criminal offences of active bribery, in both Germany and in Austria do not expressly provide for punishment of active bribery through intermediaries.<sup>60</sup>

Lastly, the value of benefit in active bribery is regulated as a decisive factor for the legally prescribed measure of criminal sanctions.

Although there are differences among German, Austrian, Croatian and other criminal systems belonging to European continental criminal legal system, these differences are not so fundamental. That leads to final conclusion, that successful fighting against corruption in Germany and Austria is not a consequence of specialty in legal regulation but of an effective institutional framework and preventative measures.

#### Notes:

<sup>1</sup> Grundgesetz für die Bundesrepublik Deutschland, (currently valid) The Basic Law (Constitution) of the Federal Republic of Germany, available at <https://www.gesetze-im-internet.de/gg/>; furthermore GG.

<sup>2</sup> See GRECO Fourth report for Germany (2014.), p. 3 and 6.

Available at:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4\(2014\)IGermayEN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2014)IGermayEN.pdf)

<sup>3</sup> See ANEX 5 (Germany) GRECO Fourth (final) report (2014), p. 3.

Available at:

[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_germany\\_chapter\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_germany_chapter_en.pdf)

<sup>4</sup> See ANEX 5 (Germany), op. cit. n. 3, p. 4.

<sup>5</sup> See Structure of institutions and social mechanisms for combating corruption – Experiences in European states, International workshop brochure, SOCRATES program of the European Commission, 2007, Hogeschool, Gent, Belgium, pp. 60 and 62.

<sup>6</sup> ANEX 5 (Germany), op. cit. n. 3., p. 3, is the following information about the results of tests conducted among the German public authorities concerning the implementation of the above-mentioned concrete organizational anti-corruption measures:

- 57% set by the anti-corruption commissioner;
- 99% shall apply the principle of “four eyes” in the approval of important decisions;
- 80% have written internal anti-corruption guides;

- 74% carried out unannounced inspections of randomly selected decision-making processes associated with a higher risk of corruption; and
- 62% of the identified areas associated with a higher risk of corruption.

<sup>7</sup> It is the (multilingual issued) guide named “Private sector/Federal administration anti-corruption initiative; Answers to frequently asked questions about accepting gifts, hospitality or other benefits” available in English language at: [http://www.bmi.bund.de/SharedDocs/Downloads/EN/Themen/OED\\_Verwaltung/Korruption/anti-corruption-initiative-questions-and-answers.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/EN/Themen/OED_Verwaltung/Korruption/anti-corruption-initiative-questions-and-answers.pdf?__blob=publicationFile)

<sup>8</sup> See ANEX 5 (Germany), op. cit. n. 3., p. 3.

<sup>9</sup> Official Journal (Croatia), 59/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 5/14.

<sup>10</sup> Official Journal (Croatia), 125/11, 144/12, 56/15, 61/15.

<sup>11</sup> Strafgesetzbuch, (currently valid) German Criminal law, available at <https://www.gesetze-im-internet.de/stgb/>; furthermore StGB.

<sup>12</sup> The general minimum sentence of imprisonment is one month (Article 38, para. 2, StGB).

<sup>13</sup> For a fine there is a mandated general minimum of five daily incomes and the general maximum of 360 daily incomes (Article 40 para. 1 StGB). Range of the amount of daily income of at least € 1 to a maximum of € 30,000.00 (Article 40, para. 2, StGB) is also regulated.

<sup>14</sup> For this the appropriate form of passive bribery is obstructed by the same kind of measures and criminal sanctions (Article 331 para. 1 StGB).

<sup>15</sup> For this the appropriate form of passive bribery is obstructed by the same kind of measures and criminal sanctions, but it provides punishment for attempt (Article 331, para. 2, StGB).

<sup>16</sup> A more severe punishment is prescribed for this appropriate form of passive bribery, and to imprisonment for a term of six months to five years, and in less serious cases imprisonment for a term not exceeding three years or a fine (Article 332, para. 1 StGB).

<sup>17</sup> A more severe punishment is prescribed for this appropriate form of passive bribery, and to imprisonment for a period of one to ten years, and in less serious cases imprisonment from six months to five years (Article 332, para. 2, StGB).

<sup>18</sup> The term “gang” includes at least three persons who have agreed to commit an act (Schönke, Schröder, Eser, Cramer, Lenckner, Stree, Perron, Sternberg-Lieben, Hecker, Eisele, Bosch, Schittenhelm, Heine, Kinzig, 2010: Vorteilsgewährung 2931, point 5). See also Dragičević Prtenjača (2014: 216).

<sup>19</sup> An officer is the person who is under German law a judge or a civil servant or otherwise performs public service duties or was appointed to uphold public office or is entrusted with administrative services, regardless of the organizational form in which they perform their duties (Article 11, para. 1, point 2 of StGB).

<sup>20</sup> The judge is the one who is under German law a professional judge or a juror (Article 11, para. 1, point 3 StGB).

<sup>21</sup> A person who is authorized to perform public authority is any person who, without being an official, is employed by or working for a public authority or a public agency or organization, company or other legal entity that has public authority (Article 11, para. 1, point 4 of StGB).

<sup>22</sup> See also Bonsing, Bo Langsted, 2013: 181; ANEX 5 (Germany), op. cit. n. 3., p. 2; Private sector/Federal administration anti-corruption initiative (op. cit. n. 8).

<sup>23</sup> The passive form of this criminal act of bribery is regulated by para. 2 of the same article, foreseeing same type and range of legal sanctions as well as for the active form in para. 1.

<sup>24</sup> The said legal opinion was expressed in the decisions of the Bundesgerichtshof's No. 5 p-435/05 of 9 May 2006 and 2 p. 557/05, dated July 12, 2007.

<sup>25</sup> See also Wolf, 2013: 1627–1629 and 1636.

<sup>26</sup> See also Funk, 2014: 24–25.

<sup>27</sup> The same kind of measures and criminal sanctions (Article 299 para. 1 StGB) are prescribed for passive bribery.

<sup>28</sup> See also ANEX 5 (Germany), *op. cit.* n. 3., p. 7, stating that the conduct is implicitly criminalized, because the German judicial practice subsumed it under the legal descriptions of other criminal offences.

<sup>29</sup> Bundes-Verfassungsgesetz, (currently valid) The Federal Constitution of Austria, available at [http://www.ris.bka.gv.at/Dokumente/Erv/ERV\\_1930\\_1/ERV\\_1930\\_1.pdf](http://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.pdf).

<sup>30</sup> See Austria – Bribery & Corruption 2016, 3. ed., point 5, available at:

<http://www.globallegalinsights.com/practice-areas/bribery-and-corruption/global-legal-insights---bribery-and-corruption/austria>;

Anticorruption laws – Legaling 2013 – Austria, point III., available at [www.fplp.at/en/component/itrfiler/?view=download&id=922](http://www.fplp.at/en/component/itrfiler/?view=download&id=922)

<sup>31</sup> See ANEX 20 (Austria) EU reports on the fight against corruption of 3 February 2014 (available in English language at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_austria\\_chapter\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_austria_chapter_en.pdf)), pp. 3–4.

<sup>32</sup> See Austria – Bribery & Corruption, *op. cit.* n. 30, point 2; ANEX 20 (Austria), *op. cit.* n. 31, p. 6; United Nations Office in Drugs and Crime (UNDOC) Country Review Report of Austria for the review cycle 2010–2015, pp. 18 and 20.

<sup>33</sup> See Austria Corruption Report Snapshot, Public Procurement, December 2015, (available in English language at:

<http://www.business-anti-corruption.com/country-profiles/austria>); see Austria – Bribery & Corruption, *op. cit.* n. 31, point 7.

<sup>34</sup> See UNDOC Country Review Report of Austria, *op. cit.* n. 33, p. 6, 7, 60, 61 and 89; ANEX 20 (Austria), *op. cit.* n. 31, pp. 2–4.

<sup>35</sup> BAK is the widely-accepted abbreviation of the official name of that body in the German language, which reads Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung. This body began its work on 1st January 2010.

<sup>36</sup> WKStA is the widely accepted abbreviation of the official name of that body in the German language, which reads Wirtschafts- und Korruptionsstaatsanwaltschaft. This body began its work on 1st September 2011.

<sup>37</sup> See also UNDOC Country Review Report of Austria, *op. cit.* n. 32, pp. 8–9, 15, and 84–88.

<sup>38</sup> Strafgesetzbuch, (currently valid) Austrian Criminal Code, available at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296>; furthermore: StGB.

<sup>39</sup> See also UNDOC Country Review Report of Austria, *op. cit.* n. 32, pp. 3–4; Anticorruption laws – Legaling 2013 – Austria, *op. cit.* n. 32, point II. (Anti-bribery laws); Austria – Bribery & Corruption 2016, *op. cit.* n. 30, point I.

; Austria's Anti-Corruption Laws – Evolution and International Standards, Status and Evaluation, Wirtschafts Universität Wien, p. 2. (History), available at [http://rai-see.org/wp-content/uploads/2015/07/Overview\\_of\\_Austrias\\_Framework\\_of\\_Anti-Corruption\\_Laws\\_Mag\\_Guenther\\_Hauss.pdf](http://rai-see.org/wp-content/uploads/2015/07/Overview_of_Austrias_Framework_of_Anti-Corruption_Laws_Mag_Guenther_Hauss.pdf)

<sup>41</sup> Korruptionsstrafrechtsänderungsgesetz, Bundesgesetzblatt Nr. 61/2012, available in German language at: [https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAuth&Dokumentnummer=BGBLA\\_2012\\_I\\_61](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAuth&Dokumentnummer=BGBLA_2012_I_61)

<sup>42</sup> Bundesgesetz über die Verantwortlichkeit von Verbänden für Straftaten (Verbandsverantwortlichkeitsgesetz – VbVG), (currently valid) Federal law on liability entities for criminal offences, in the German version available

at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004425>

<sup>43</sup> See UNDOC Country Review Report of Austria, op. cit. n. 32, pp. 5 and 41–44; Anticorruption laws – Legaling 2013 – Austria, op. cit. n. 30, point III. (Assessment); Austria – Bribery & Corruption 2016, op. cit. n. 30, point 1. and 6.

<sup>44</sup> The same type and equal measure of criminal sanction as the Article 307, para. 1 and 2 StGB, is prescribed for the appropriate passive bribery in Articles 304 para. 1 and 2 StGB.

<sup>45</sup> Article 74.

<sup>46</sup> See Anticorruption laws – Legaling 2013 – Austria, op. cit. n. 30, point II. (Public officials and foreign officials); UNDOC Country Review Report of Austria, op. cit. n. 32, p. 4.

<sup>47</sup> See Anticorruption laws – Legaling 2013 – Austria, op. cit. n. 30, point II. (Increased sanctions); UNDOC Country Review Report of Austria, op. cit. n. 32, pp. 3–4, 19 and 21.

<sup>48</sup> Article 64, para. 1, point 2 of the StGB.

<sup>49</sup> Anticorruption laws – Legaling 2013 – Austria, op. cit. n. 30, point II (Extraterritorial effect); Austria – Bribery & Corruption 2016, op. cit. n. 30, point 5.; GRECO RC –III (2013) 26E, Third Evaluation Round Compliance Report on Austria (English language version available at: [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)26\\_Austria\\_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)26_Austria_EN.pdf)), str. 10-11.

<sup>50</sup> StGB sanctions mildly irregular (imprisonment up to 2 years) from the regular (imprisonment up to 3 years) of active bribery when it comes to values not exceeding 3,000.00 €.

StGB, for regular and irregular active bribery, prescribes the same type and an equal measure of criminal sanctions, in the case of a value exceeding 3,000.00 € (imprisonment from 6 months to 5 years) and exceeding 50,000.00 € (penalty imprisonment of one to 10 years).

<sup>51</sup> StGB, active (in Article 307, para. 1 a) and passive (in article 305, para. 1) irregular bribery, prescribes the same type and an equal measure of criminal sanctions when it comes to values not exceeding 3,000.00 € (penalty imprisonment of up to two years).

StGB has milder sanctions for passive (imprisonment up to 3 years) from active (imprisonment from 6 months to 5 years) irregular bribery in the case of a value exceeding 3,000.00 €.

StGB sanctions mildly passive (imprisonment from 6 months to 5 years) over active (a prison sentence of one to 10 years) irregular bribery in the case of a value exceeding 50,000.00 €.

<sup>52</sup> See Austria – Bribery & Corruption 2016, op. cit. n. 30, point 3.

<sup>53</sup> So Anticorruption laws – Legaling 2013 – Austria, op. cit. n. 30, point II. (Passive bribery and undue advantage).

<sup>54</sup> See Article 307, Article 307 and Article 64, para. 1, point 2a all StGB.

<sup>55</sup> GRECO (2013), op. cit. n. 50, p. 3–4; Austria – Bribery & Corruption 2016, op. cit. n. 30, point 1; UNDOC Country Review Report of Austria, op. cit. n. 32, pp. 3–4.

<sup>56</sup> Article 309 para. 2 StGB.

<sup>57</sup> Article 309, para. 2 in conjunction with paras 1 and 3 of the same Article StGB.

<sup>58</sup> See Article 307, Article 309, para. 2, and Article 64, para. 1, point 2a all StGB.

<sup>59</sup> Also in UNDOC Country Review Report of Austria, op. cit. n. 32, pp. 4 and 30.

<sup>60</sup> See also Anex 5 (Germany), op. cit. n. 3., p. 7, stating that the conduct is criminalized implicitly, because it is the German judicial practice subsumed under the legal descriptions of other crimes.

## References

- Bonsing, S., Bo Langsted, L. (2013) “Undue” gifts for public employees: An Administrative and Criminal law analysis, *European journal of crime, criminal law and justice*, 21, pp. 161–184.
- Dragičević Prtenjača, M. (2014) *Kaznenopravni aspekti pasivnoga podmičivanja u hrvatskom pravnom sustavu*, doctoral dissertation (Zagreb: Faculty of Law University of Zagreb).
- Funk, T. M. (2014) *Germany’s Foreign Anti-Corruption Efforts: Second-Tier No More*, *Zeitschrift für Deutsches und Amerikanisches Recht (ZDAR)*, 1, pp. 24–28.

- Jovašević, D. (2008) Krivična dela korupcije u usporednom krivičnom zakonodavstvu, *Strani pravni život*, 3, pp. 179–212.
- Novoselec, P., Bojanić, I. (2013) *Opći dio kaznenog prava* (Zagreb: Pravni fakultet Sveučilišta u Zagrebu).
- Saenz, C. S. (2015) Explaining international variance in foreign bribery prosecution: A comparative case study, *Duke Journal of Comparative & International Law*, 26, pp. 271–298).
- Yu, G. (2012) *Towards More Reasonable and Effective Punishment Strategies for Bribery, A Comparative and Behavioral Study* (Hamburg: Verlag Dr. Kovač, Hamburg).
- Schönke, A., Schröder, H., Eser, A., Cramer, P., Lenckner, T., Stree, W., Perron, W., Sternberg-Lieben, D., Hecker, B., Eisele, J., Bosch, N., Schittenhelm, U., Heine, G., Kinzig, J. (2010) *Strafgesetzbuch: Kommentar* (München: C. H. Beck).
- Tomljanović, P. (ed.) (2014) *Leksikon država svijeta* (Rijeka: Extrade).
- Wolf, S. (2013) Political corruption as a regulatory problem in Germany, *German Law Journal*, 14(9), pp. 1627–1638.