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Department of Internal Investigations
- Fighting Corruption in Hamburg -

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1 Introduction

Corruption is an ever-increasing threat to the social and democratic order of our society by violating the principles of equality in the eyes of the law, impartiality in the performance of duties in public administration as well as fair competition in free enterprise and by encouraging a non-transparent economic system based on privileges.

At ever-shorter intervals, we are receiving news of corrupt conduct in almost all sectors of public, economic and political life. Faith in honest and fair coexistence is dwindling. Corrupt and hence criminal conduct is substantially more prevalent than has become known so far. As with an iceberg, only a fraction extends above the surface and is visible. The actual damage or loss is tremendous; the damage caused to the confidence placed in the administration, the economy and politics is unforeseeable.

Thus, the **Dezernat Interne Ermittlungen** (D.I.E.) [Department of Internal Investigations] carried out investigations in 1993 in 22 , in 1994 in 30, in 1995 in 79, in 1996 in 109, in 1997 in 129, in 1998 in 302, in 1999 in 169, in 2000 in 150, in 2001 in 191, in 2002 in 225 and in 2003 in 259 cases of corruption charges.

Corruption occurs primarily in secret. Offences are rarely reported, particularly because corrupting and corrupted parties are each perpetrators united by the common interest in keeping the matter secret. Witnesses fail to disclose information for fear of retaliation, possibly of losing their vocational basis or livelihood. Often they have already been compelled by the perpetrator to keep silent. The result of such situation is that corruption largely escapes prosecution and may become even more rampant.

Nor should it be ignored in this context that citizens and the state are often faced with a double burden as a result of the considerable damage caused to them by offences of corruption: primarily, by the improper use of tax money and secondarily, by increased resultant costs that have to be incurred to cover "costs of corruption".

As far as that goes, it is mutually understood and agreed that corruption as a whole must be countered consistently - both in a remedial and a preventive manner. This applies to public administration just as it does to the provinces of the economy and politics. However, this does not mean that there is a general atmosphere of suspicion involving those provinces.

For a long time, corruption had been a taboo subject in Germany. Only over the past few years has a change made itself felt here, not least because the media gave an increased deal of attention to this issue pregnant with scandal and people in politics and public administration also came to realize the need for appropriate action.

Even if meanwhile corruption is being reflected on by the public much more thoroughly, one cannot ignore the fact that in the absence of reliable information predominantly two opinions have formed ranging from minimization and ignorance on the one hand to dramatization and an assumed comprehensive decline in the value system on the other hand. The following presentation of the intelligence and experience of corruption gathered in Hamburg by the Department of Internal Investigations and a description of current counter-measures are designed to contribute to the objectification of the discussion of this phenomenon of delinquency.

2 On the origin of the Department of Internal Investigations

In the spring of 1992, the at that time head of the State Criminal Investigation Department and later Deputy Head of the Hamburg Police Department, Wolfgang SIELAFF, presented his views on "*weak points in professional ethics of the police*". His arguments and demands caused a sensation throughout the Federal Republic of Germany. However, at that time his views did not meet with universal approval. SIELAFF said, inter alia:

"It should be considered whether even an organizational unit "Internal Investigations" is required which makes investigations on suspicion of official misconduct, particularly in cases of corruption." It "...must be taken into account that in cases of suspected corruption there is often no professional reaction. The superior of the suspect official

is caught between his duty in respect of care and supervision, service regulations and criminal law and is often subject to excessive demands. He lacks the instruments to put a probable cause into concrete form. Who is to make the necessary 'discreet investigations' that might include a deliberate observation of the official concerned, his environment, his contacts and his behaviour?"

SIELAFF's thoughts ultimately led up to the concept of the Department of Internal Investigations even if on the surface its emergence was spurred by other circumstances.

2.1 Development since 1982

The past history of dealing with offences committed by public officials and police matters in Hamburg begins as early as in 1982.

Until such time, that subject matter - in addition to other duties - came within the competence of a central agency which primarily dealt with white-collar crimes. Inter alia, as a result of intelligence gathered by a special commission of the public prosecutor's office, which in the area of organized crime was investigating relationships between members of the criminal world and the police, competence for that type of offence was reorganized. A totally new investigation agency of the detective police was created which was attached as an independent section to the presidential staff (Ps 3) of the Head of the Hamburg Police Department. It was thus directly subordinate to the Head of the Police Department.

Its duties on the one hand included combating offences committed by public officials, i.e. offences of all Hamburg officials which were committed by them as office holders, and on the other hand dealing with police matters, i.e. occurrences where the capacity of police officer was of importance regarding the person charged. That related in particular to offences committed in the discharge of duties or in connection therewith. In addition to processing the matters involved, the duties of that agency also included prevention within its sphere of responsibility.

The "Ps 3" agency for several years had a constant payroll of 12 employees. Right from the start its head was a member of the administrative service class which, just as its attachment, emphasizes the importance of that agency. There was yet another background aspect to the organizational attachment: It was meant to guarantee and evidence both externally and internally performance of tasks largely uninfluenced by the general police hierarchy.

To that end, the agency was also housed separately from all other police and administrative agencies in a neutral office building in the Hamburg urban region. This was designed to afford visitors the opportunity to call on the agency "unobserved" and to ensure special "confidentiality".

At that time the agency did not yet have an operative staff of its own to attend to surveillance jobs. In case of need, recourse had to be had to the regular units of the Hamburg police force, such as the mobile task force.

The prevailing offence was bodily injury caused by an officer of the law, followed at a clear distance by obstruction of criminal prosecution by an official, unlawful detention, etc. Proceedings based on offences of corruption in the narrower sense were quite rare then.

In terms of organization, there was only one major change in the development of the agency: in 1991, due to the temporary abolition of the function of Head of Police Department with otherwise unchanged attachment, the agency was subordinated directly to the Staatsrat¹ [state councillor] of the Authority of the Interior - i.e. the deputy of the Senator² [senator] - in so far as he was given the "right of control" over the agency.

Drastic changes occurred though in 1994 in chronological order in reaction to the so-called Hamburg police scandal. By scandal are meant in particular the - unjustified - charges brought against officers of the Hamburg police force regarding ill-treatment of foreigners and cited by the then Hamburg Senator of the Interior in support of his resignation in September 1994.

Those charges were not investigated by the actually competent police agency but by an investigating force of the public prosecutor's office specifically established for the purpose. Moreover, a parliamentary investigating committee "police" was set up which investigated individual facts or charges in addition to the question of whether there were incidents of xenophobic behaviour among the police.

Independently thereof a task force set up by the judiciary reviewed a plurality of preliminary proceedings against police officers in which the charges had been dropped. That review

¹ Corresponds to a state secretary in other federal Länder

² Corresponds to a minister in other federal Länder

resulted in clear criticism levelled against both the way how the proceedings were determined by the head of the special department in charge of police matters at the public prosecutor's office and against the working method of the police. It included, inter alia, the incrimination of investigations generally being pursued not vigorously enough and the lack of distance between the persons in charge in the police force and the police officers charged.

In the autumn of 1994, the restructuring of the agency began, which ultimately in February 1995 resulted in the dissolution of the old agency and the establishment of the "Department of Internal Investigations".

2.2 Competence and Staff

Subject matter competence - police matters and offences committed by public officials - was retained in the D.I.E. as was the organizational attachment as an investigating agency of the detective police which is subordinate to the right of control of the State Councillor in the Authority of the Interior. Irrespective of this special order of authority, which does not provide for any influence by the State Councillor - that is of the political level - on individual investigative acts, the Section is integrated into continuous rounds of meetings in order to ensure the required exchange of information with the "general" police force at management level.

Along with the reorganization the focus of activities was clearly put on

- suspected offences by police officers in connection with the general world of criminals ("involvement in the world of criminals") and
- combating corruption in the administration in general.

In addition, the evaluation of existing intelligence targeted specifically at prevention was intensified.

The present staffing level of 56 employees shows a marked increase compared with the predecessor agency. The previous practice of individual employees being in charge of particular matters characterized by largely rigid demarcations of competence was discontinued in favour of the setting up of flexible investigative teams.

In the selection of staff, efficient police detectives are relied on commanding the most different special knowledge - including specialists in white-collar crimes as well as tax

investigators. Voluntariness and personal integrity are particularly important criteria. All officers of the D.I.E. are subject to rotation which means that after five years in charge of offences committed by police officers and after eight years in charge of offences of corruption they leave the D.I.E. and return to the "regular" detective police departments. This rotation system, for one thing, is to counter routine processes and, for another, to make it quite clear that work with the "internal investigators" is not a blemish precluding renewed assignment to the general police service.

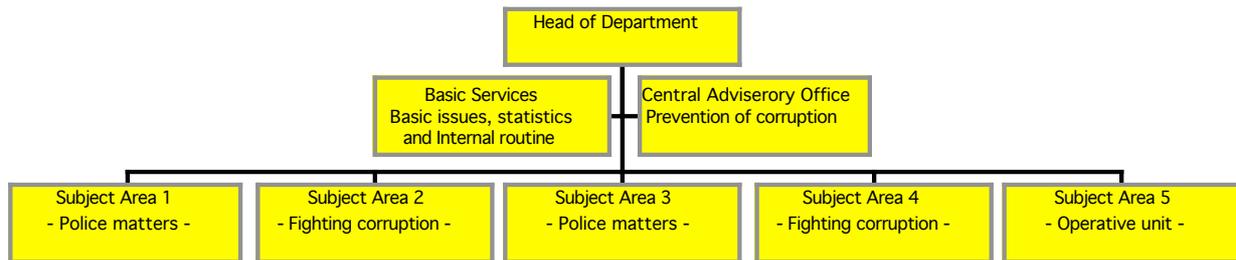
Since March 1996, the Section has had its own surveillance unit. The background to that decision was that the D.I.E. in its field of responsibility had such a great number of cases involving appropriate operative requirements that there was no doubt that such a unit would be used to capacity. The assignment of tasks to surveillance units such as the mobile task force or other investigative units of the police, at least in the case of police matters, is always no optimum solution because of the insufficient compartmentalization of those agencies and the degree to which their employees and their technical equipment and vehicles are known within the police force.

The remedial tasks of the D.I.E. include carrying out criminal investigations as well as - in the actual case - investigations during the run-up to a criminal offence ("grey area cases"). Disciplinary investigations deliberately and intentionally come within the competence of the D.I.E. just as little as the processing of complaints without any recognizable relevance to criminal law. Basically, those functions come within the competence of the (disciplinary) superiors of the respective agencies. In this connection a constant flow of information from the agencies - particularly the superiors - to the D.I.E. is indispensable though - especially in the light of "grey area cases".

Conversely, information about preliminary investigations conducted by the D.I.E. involving public servants is generally furnished only after a decision by the competent public prosecutor's office.

This strict separation of processing complaints and conducting disciplinary investigations on the one hand from criminal investigations on the other - in addition to the principle of unprejudiced conduct of investigations - resulted in widespread acceptance of the D.I.E. among police officers.

2.3 Organization



Organigram of the D.I.E.

The D.I.E. now includes a total of seven subject areas. Subject Areas 1 and 3 deal with the processing of "police matters" - i.e. offences allegedly committed by police officers while on or off duty. However, in the latter case only if the offence is likely to substantially damage the reputation of the police. Subject Areas 2 and 4 deal with cases of corruption in which employees of the Hamburg administration may be involved. This relates in particular to offences such as accepting an advantage and granting an undue advantage by a public official, bribery and corruptibility (also in business dealings) as well as in parallel therewith the concomitant offences of an official aiding the perpetrator of an offence after the fact, fraud, fraudulently obtaining subsidies, criminal breach of trust, forgery of documents, competition-restraining agreements in the case of public tenders, false certification by public officer or violation of official secrets.

The operative unit of the D.I.E., which is predominantly entrusted with surveillance jobs from Subject Areas 1 - 4, is housed in external offices at an undisclosed location. The employees working there operate analogously to the undercover units of the State Criminal Investigation Department.

In addition to the Subject Areas, which are above all responsible for investigative activities, the D.I.E. has a Basic Services Office and a Central Advisory Office. The Basic Services Office is competent to deal with basic issues, replies to requests for information and inquiries, preparation of analyses, statistics and annual reports, presentation of the agency internally and externally as well as to ensure the smooth following of the entire internal routine. Moreover, here major operations of the Section are prepared and their implementation coordinated.

3 Prevention

To fight corruption, the Hamburg administration has decided on a so-called three-pillar approach comprising a package of three corresponding measures:

- (1) Creating abuse-resistant administrative processes to be firmly entrenched in intra-authority monitoring and control devices and to be improved on a continuing basis (Controlling and Internal Auditing),
- (2) regularly making people sensitive to corruption indicators by further training of employees and superiors and information of the public,
- (3) as well as consistently prosecuting offences under criminal law and service regulations and imposing sanctions on cases of corruption. In addition to that three-pillar approach, the intensive preventive activities of the D.I.E. are based mainly on three mainstays:

1. the Central Advisory Office
2. the Antikorruptionskonferenz (AKK) [anti-corruption conference]
3. the Discussion Group Corruption

3.1 The Central Advisory Office

The Central Advisory Office to fight corruption at the Department of Internal Investigations was established in 1997 by resolution of the Anti-corruption Conference. It is available as a contact for issues of the preventive and remedial fight against corruption to all salaried civil servants but also to private individuals.

Based on the realization that corruption is a conspiratorial offence and that parties providing a lead or witnesses are very rarely available, the Central Advisory Office's own activities were also greatly intensified. Hence that Office has since more than a year organized external prevention events on the subject of corruption in authorities and companies, special importance being attached to information about the punishability and consequences of corruption. Especially in the case of events involving superiors, made a subject of discussion is how to identify and deal with corruption indicators. In addition, the Central Advisory Office is integrated into training and advanced training programmes of the authorities and is at the disposal of every citizen and employee in the authorities as a contact. Moreover, twice a year a three-day administrative workshop is held about identification and prevention of corruption.

Due to the presence of the Advisory Office as an office embracing several authorities, the inhibition threshold for employees in the authorities to contact the D.I.E. about possible corruptive practices is distinctly lowered. The Central Advisory Office's work is supported by the obligation on all Hamburg authority employees to notify the criminal prosecution authorities upon identification of any suspected corruption.

The intensification of the Central Advisory Office's activity has brought about a marked increase in leads and resultant criminal proceedings.

3.2 The Antikorruptionskonferenz (AKK)

The interauthority *Anti-corruption Conference* was constituted on 28 August 1997 on the recommendation of the *working party Fight against Corruption* as an institution to improve interauthority cooperation in Hamburg.

Its function essentially is to supervise the implementation of the recommendations presented by the *working party Fight against Corruption* in the *Concept to Fight Corruption in Hamburg* and to coordinate discussion requirements.

Participants in the AKK are senior representatives of the individual Hamburg specialist authorities, inter alia, the public prosecutor's office, the section for white-collar crimes at the State Criminal Investigation Office, the judicial authority, the audit office, the Authority for Economic Affairs and Labour, the human resources office, the Revenue Authority as well as the Internal Investigations Section whose head at the same time chairs the AKK.

At conferences held almost every month current aspects of corruption are discussed and measures embracing several authorities initiated. The individual recommendations worked out by the AKK are on the one hand conveyed to the individual authorities by conference participants and their implementation in practice initiated there. On the other hand, the recommendations lead to resolutions adopted by the senate, thus being binding on all Hamburg authorities.

So the AKK has, for instance initiated and adopted measures concerning personnel rotation, training and further training measures on the subject of corruption, duties to report suspected

corruption, measures to counter exclusivity stipulations, acceptance of gifts and rewards or obligations of experts as well as architects' and engineering offices.

3.3 The "Discussion Group Corruption"

In April 1999, the *Discussion Group Corruption* was set up at the D.I.E., in which employees of the Department of Internal Investigations and of the agency of the Hamburg public prosecutor's office competent to deal with corruption proceedings participate. This body, which meets about every four weeks or as required, exchanges actual experience gained in the conduct of investigations, discusses legal issues and current proceedings as well as their contemplated continuation.

4 Outlook

A factor of prime importance to the efficient fight against corruption is the political will to effectively take action against corruption. That means that the political decision-makers must make their own contribution to this subject and consider it a personal concern.

The close attachment of the D.I.E. to the State Secretary in the Authority of the Interior guarantees that the Section is appropriately equipped in terms of human and technical resources to meet demands. In addition, the concerns of the fight against corruption are forcefully emphasized in a way embracing several authorities. The result thereof was, for instance, that the senate of the Free and Hanseatic City of Hamburg last year adopted resolutions on extensive measures to improve the fight against corruption - such as, for instance, improving and increasing human and material resources of the D.I.E., providing a free of charge "citizen telephone", increasing personnel and means of the public prosecutor's office in charge of offences of corruption, intensifying cooperation between the criminal prosecution authorities and other authorities, supporting the D.I.E. by tax auditors of the revenue authorities (e.g. as in Schleswig-Holstein), carrying out checks irrespective of any suspicion in order to identify corruption through internal audits, initiating a Freedom of Information Act, broadening the offer of information and extending training measures in sectors other than the authorities.

In addition, employees in public service who themselves are involved in corruption charges are to be promised by their employers that disciplinary or labour consequences may be dispensed with if they actively cooperate or cooperated in the detection of the offences. An appropriate provision which does not affect the state's right to punishment would sufficiently encourage a potential informer to make full disclosure of his knowledge and possibly create for him the opportunity to back out of existing situations of blackmail.

The main ingredient of effectively fighting corruption continues to be obtaining information about corrupt acts. Due to the manner of commission being based on conspiracy and an often noticed tendency to publicly dismiss witnesses and parties providing a lead as informers, attempting to denounce them as the actually morally guilty parties, corruption largely escapes criminal prosecution. To improve that situation therefore is given priority at the AKK and the D.I.E.

In line with those considerations, the Pro Honore Association - supported by the Hamburg Chambers of Commerce and Handicrafts and by the Vereinigung eines ehrbaren Kaufmanns zu Hamburg [Association of an Honourable Businessman at Hamburg] - established last year an external "fiduciary liaison body". The tasks of such body are attended to by a lawyer's office collecting, evaluating and, should the occasion arise, passing on to the criminal prosecution authorities information from parties providing leads. This is to enable preliminary investigations protecting the party providing leads in the actual case from unjustified discrimination by co-workers, superiors or competitors and guaranteeing that such party's identity will be kept anonymous up to the trial.