

4. WHITE-COLLAR CRIME

4.1. Corruption offences

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According to the prevailing definition, corruption is misuse of office for personal use, however, there is no such definition to be found in the Estonian Penal Code. Instead, the Penal Code sets out offences related to office and a number of corruption provisions. It is worth noting that not all offences related to office automatically constitute corruption. For example, abuse of authority which is dealt with more specifically below is not a classical corruption offence, as it does not involve any misuse of office for personal use. It should be also borne in mind that all offences related to office do not automatically reflect the misuse of public authority or officials because, for example, the persons granting gratuities or bribe are often ordinary citizens and trust is abused by the employees of private businesses and consequently corruption offences also concern the private sector.

In this chapter the criminal offences specified in 201 (2), 3), § 209 (2), 1¹) and §§ 289–300² of the Penal Code are included among the corruption offences – these are also indicated on Figure 31. In addition, § 217² of the Penal Code – abuse of trust by an official – can also be considered as corruption offences; however, these offences are not indicated on this Figure and are dealt with separately in the text. Both these and other differences have been separately referred to in the text. In addition, offences related to elections and political parties concern corruption which have also been briefly dealt with in the end of the chapter.

In 2009, 203 criminal offences related to office were registered which is 38% less when compared to 2008. Offences related to office formed 1% of the total crime.

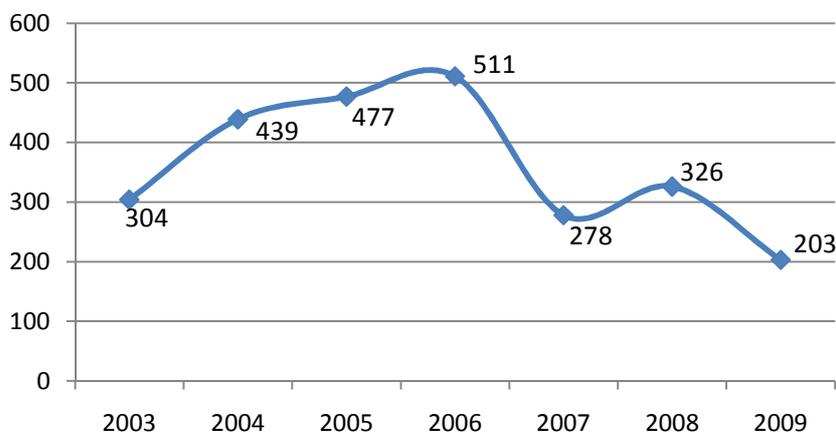


Figure 31. Number of registered corruption offences

The decrease in the number of offences related to accepting of gratuities (-41 offences), giving bribes (-32 offences) and arranging bribes (-24 offences) has influenced the total number of corruption offences the most. While in 2008, a total of 224 offences related to bribe and gratuities were registered, then in 2009 the number was 106 – which is half less. The number of offences related to bribe and gratuities often reflects criminal offences committed by the same persons. This is also proved by the ratio of criminal matters and criminal offences – there is approximately 50% less criminal matters than criminal offences, or in other words, two criminal offences are on the average related to one criminal matter. This means that proceedings are often conducted in the offences related to bribe and gratuities which are connected to one person, although bribe/gratuities were offered and accepted repeatedly. In 2009, 52 criminal matters related to bribe or gratuities were registered, whereas 48 criminal offences were connected to 3 criminal matters, totally forming 45% of all offences related to bribe and

gratuities. In 2008, 63 criminal matters were registered, from these 5 criminal matters were connected to 145 criminal offences, thus forming 65% of criminal offences.

Besides criminal offences related to bribe and gratuities 97 other offences related to office were registered in 2009 from which a large proportion was formed by abuse of authority (17% of all corruption offences), embezzlement (14%) and counterfeiting or falsification (10%). In addition 29 criminal offences of abuse of trust (§ 217²) were registered in 2009 from which in five offences the abuser was an official of public sector, in case of remaining offences the representatives of companies were the offenders.

25 persons prosecuted in corruption offences were convicted, 7 persons were acquitted and in case of 3 persons the proceedings were terminate for reasons of expediency. In criminal offences related to bribe and gratuities 9 persons were convicted and 6 persons were acquitted. At the same time, 98 persons were prosecuted in 2009 who were accused of some offence related to office, several of them in many criminal offences – the highest number of prosecuted persons were accused of giving bribe (39 persons) and accepting bribe (18 persons).

Corruption by sectors

The highest number of offences related to office was registered in connection with the police (35), local governments (33) and technical inspection (33) (Figure 32). According to the 2009 Eurobarometer survey which compared the experience and opinions of the EU member state citizens in connection with corruption, the state politicians (57% of respondents), the officials involved in public procurements (52%) and the officials issuing building permits (51%) were found to be most corrupt. In the Estonians' opinion the top three is the same, although in a different order: the officials issuing building permits (57%) were found to be most corrupt, followed by the state politicians (56%) and the officials involved in public procurements (55%). According to the survey, the local government politicians and police officers were on the 4th and on the 5th place – in both cases 51% of Estonian inhabitants thought that they were corrupt. At the same time, it should not be concluded considering the specific features of these criminal offences, as if corruption in these sectors is disproportionately high because usually the people's actual experience and assessments concerning the spread of corruption are not in conformity – the latter is being substantially influenced by the press and what is heard elsewhere. The figure presents an overview of the most common registered corruption offences by sectors.

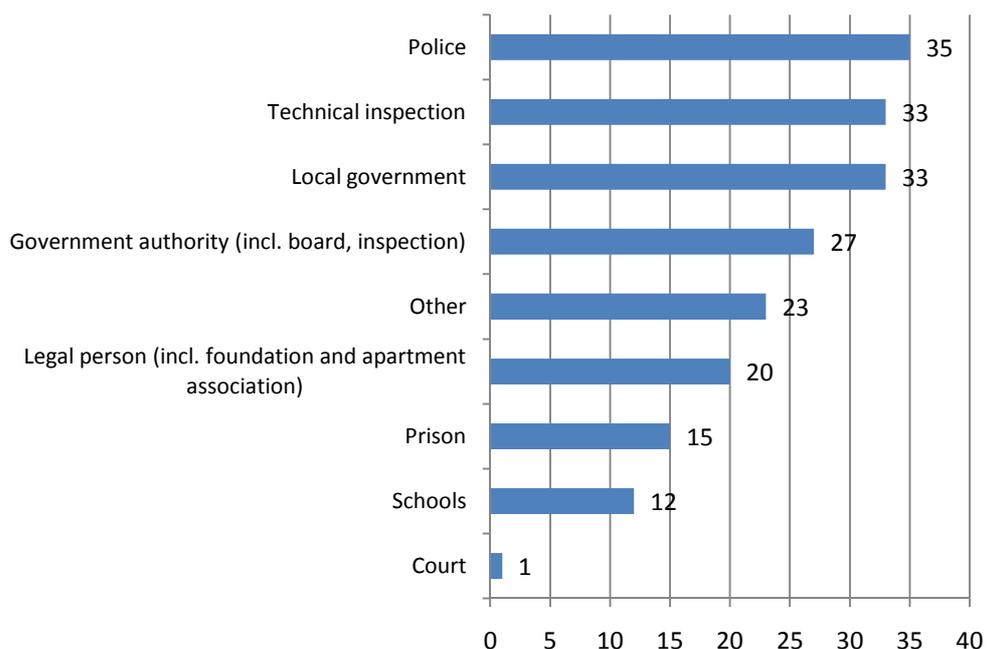


Figure 32. Occurrence of corruption offences by sectors in 2009

The Police

The predominant proportion of criminal offences connected to the police were formed by cases related to abuse of authority (21) and embezzlement (9), the remaining criminal offences were registered seldom. All in all, there were 7 cases related to bribe or gratuities from which on four occasions bribe had been offered to the police officers and the police officers had filed the criminal offence report themselves.¹

In case of abuse of authority the abuser is either a security guard, police officer or prison officer (mostly a guard), whereas in most cases the complaint is filed namely against a police officer. 36 offences related to abuse of authority were registered, in case of 21 offences from these the complaint was filed against a police officer, in 6 cases against a security guard and in 6 cases against a prison officer; in one case both against a security guard and a police officer.² Most of these cases are terminated due to lack of elements of criminal offences (on the basis of § 200 of the Code of Criminal Procedure), which means that in these matters a victim has filed a report thoughtlessly and probably in a state of exasperation, yet no actual abuse of authority did occur. For example, in 2009, the Prosecutor's Office made 47 final procedural decisions concerning the cases of abuse of authority from which in case 33 decisions criminal proceedings were terminated upon occurrence of circumstances precluding criminal proceedings and only one case was sent to court.

From embezzlement offences 8 were related to the so-called Otsalt case in the Southern Police Prefecture which was extensively covered by the media where the police chiefs and officials embezzled the fuel and other property of the Police Prefecture.

Local governments, except schools

In 2009, 33 corruption offences³ (only these cases have been considered in which one suspect was a local government official) related to local governments were registered from which 13 were connected to Tallinn, 7 to Narva, 4 to Kohtla-Järve and 2 to Pärnu. One corruption offence was registered in each remaining six local governments. Besides these offences, also 4 cases related to abuse of trust by local government officials were registered in 2009⁴.

The majority of local government corruption offences were formed by cases related to bribe or gratuities (23), which in the above-mentioned local governments concerned the same local government officials. For example, a criminal offence related to 8 officials of Tallinn was related to one and the same official who had accepted bribe from several persons (every case of granting bribe by a separate person constitutes a separate criminal offence). Although these acts were committed in 2008, however, in connection with the degree of complexity of these cases they were registered only in 2009 and thus are reflected in the 2009 statistics. Six cases from the Narva offences were also related to the same case in which different persons paid bribe to a city official in order to conclude contracts for services (e.g. for building playgrounds, etc.). Also the offences of Kohtla-Järve were related to one and the same person accepting bribe, one intermediary and two persons granting bribe; the criminal offences of Pärnu were also related to one and the same official.

As for other corruption offences, also two cases of embezzlement were committed in local governments. In one embezzlement case the humanitarian affairs adviser of rural municipality used the money belonging to a person under guardianship (approx. 60 000 kroons) for his own use. In another embezzlement case the health centre manager of rural municipality put his own bank account number on the health centre patient's income tax return for return purpose (approx. 3500 kroons).

The following corruption offences were additionally committed in local governments: unlawful exercise of state supervision, influence peddling, counterfeiting or falsification, violation of requirements for public procurement and violation of procedural restrictions – all 1

¹ These four criminal offences have not been included in the 35 offences indicated on Figure 32.

² On two occasions the position was not indicated.

³ Only these cases have been considered in which one suspect was a local government official.

⁴ These have not been included in the within-named 33 criminal offences.

offence. The last offence - violation of procedural restrictions – is punishable both pursuant to the misdemeanour and criminal procedure, depending on the extent of violation.

About violation of procedural restrictions in local governments

Violations of procedural restrictions committed on a large-scale basis are punishable as criminal offences. The extent of violation of procedural restrictions is assessed to be large, if the volume of transactions or decisions exceeds one hundred times the established minimum monthly wage. Procedural restrictions are specified in the Anti-corruption Act and the restrictions are established for such activities which enable to receive income derived from corrupt practices. The most frequent example is the conclusion of transactions with oneself on behalf of administrative agency or one's own company or non-profit association the operation of which the official controls. The National Audit Office identified in course of the 2009 audit prohibited transaction in 6 local governments (15 local governments were audited). According to the audit, for example, the Jõgeva Rural Municipality Government ordered design works and office supplies from a private limited company which shareholder and member of management board was the Jõgeva Rural Municipality Mayor (approx. 70 000 kroons); the Pärsti Rural Municipality Mayor accepted invoices from the Viljandi Consumer Association for food commodities and consumer goods, while being a member of the supervisory board of the Consumer Association (approx. 36 000 kroons), etc.

In case of a criminal offence of procedural restriction, the rural municipality mayor authorized the rural municipality environmental adviser to conclude a contract for snow control with a private limited company which sole owner was the environmental adviser himself and his wife was the member of management board. During two years, this company was paid at least 160 000 kroons.

Schools

All cases related to schools concerned the municipal schools. Offences related to office were registered in 4 schools from which a case related to one Tallinn vocational school influenced the total number of criminal offences the most, where the head of in-service training department issued fictitious certificates thanks to which 3 persons were granted fictitious school-leaving certificates. Also, the head of in-service training department issued 2 fictitious electric and gas welding certificates and 3 locksmith certificates. Another case concerned a school in the Tallinn city centre where the managing director used the school money for personal use and also accepted bribe through an intermediary (3 criminal offences were registered in connection with this case).

Thus, if the offences related to abuse of trust and also cases related to municipal schools are included, 49 corruption offences were registered in local governments, from these 23 in Tallinn, 8 in Narva and 3 in Pärnu; all in all 13 corruption offences related to local government officials.

Technical inspections sites of vehicles

Criminal offences related to bribe and gratuities connected to technical inspection of vehicles form a separate group in connection with which 117 criminal offences were registered in 2008 and 2009, however, from which 92 offences were all connected to one technical inspection facility in Tartu and the remaining 25 with one technical inspection facility in Tallinn. All offences were committed in 2008 but some of these (33) offences were registered in 2009 and therefore are reflected in the statistics later.

All cases had a similar scheme: in most cases an intermediary was used for granting bribe, on rare occasions the vehicle owner directly approached the inspector. The average inspection price was 1000 kroons which was divided in three parts – the inspector, the intermediary and the company all received their share. At the same time, the price of official technical inspection according to official price list is 200–700 kroons (the inspection of passenger car costs approx. 500 kroons). Upon these cases the roadworthiness of a vehicle remained in the background and vehicles which were not in good technical conditions passed technical inspection. Often, one and the same person was both the intermediary and the inspector; for example, in one case a person was an intermediary in 70 offences, in another case in 20 offences and in the third case at least in 17 offences.

Other state agencies⁵

From the cases related to state agencies 7 were related to the Estonian Motor Vehicle Registration Centre, 7 to an inspection or board, 4 to ministries and the remaining to agencies of some other type. The predominant part of criminal offences was formed by the cases related to bribe or gratuities (20), also 4 cases related to counterfeiting or falsification and 2 cases related to unlawful exercise of state supervision were registered.

The cases related to the Estonian Motor Vehicle Registration Centre were connected to the pre-registration inspection of vehicles in Tallinn (2), Narva (2) and Saue (1). In one case EMVRC itself filed the report of criminal offence⁶: a person had wanted in exchange for gratuity to be allowed to take a traffic examination in Jõhvi.

The cases related to the ministries, boards and inspections were related to falsifying signatures, influence peddling and bribes and gratuities. On five occasions, the cases concerned the area of administration of the Ministry of Agriculture. There are several examples: in one case an employee of the board requested a gratuity for the approval of a catering establishment; in another case an official preferred certain companies in course of public procurement (in the last case the amount exceeded 100 000 kroons). In the influence peddling case the adviser of the Ministry of Agriculture organized the proceeding with matter so that the state support would be granted to his Danish business partner for establishing a fish farm in Estonia.

Prisons

In connection with prisons 7 cases related to bribes and gratuities, 6 related to abuse of authority and 1 case related to counterfeiting or falsification were registered. From these cases 5 were related to the officials of the Tartu Prison, 5 to the Viru Prison, 3 to the Murru Prison and 1 to the Tallinn Prison.

In addition, the criminal offences registered on the basis of § 325 of the Penal Code (unlawful delivery of substance or object in custodial institution) may also be related to the corruption of prisons of which 7 offences were registered in 2009. Usually this means that mobile telephones, narcotic drugs or cigarettes are thrown on the prison territory – in this case this does not constitute in any way corruption, as these are mostly prisoners' acquaintances who try to deliver prohibited objects into the prison. Sometimes prison officers bring these objects to the prison, often receiving money or a favour (in 2009, 1 criminal offence was registered on the basis of § 325 (2), 2) of the Penal Code⁷). It becomes evident based on the decisions which have entered into force with respect to corruption offences committed by prison officers in 2003 – 2008 (a total of 9 cases were analyzed) that in most cases predominantly middle-aged men were the offenders from whom the majority were employed as guards during the violation. Often, the corrupt prison officers were employees with a long service and the violations were characterized by a system of mutual favours which had developed as a result of long-term relationship between a prisoner and a prison officer.

Legal persons

Here the legal persons mean private limited companies, public limited companies and apartment associations. The corruption in the private sector is mainly discussed in connection with giving bribes or gratuities, however, such a restrictions is not justified – this is a considerably wider phenomena which also includes, for example, the abuse of trust, embezzlement and other criminal offences. The corruption in the private sector may also be expressed in the payment of a bribe by an employee of one company to an employee of another company in order to win subcontracting, or to receive some service under favourable conditions. No such cases have been registered in Estonia yet. A draft Act is currently in the legislative proceeding of the Riigikogu

⁵ Under state agencies all governmental authorities and boards are meant, exc. the police and prisons which have been separately referred to.

⁶ Has not been taken into consideration as the EMVRC criminal offence.

⁷ At the same time, three more such acts were registered as offences related to gratuities/bribe.

which would extend the definition of an official and in this case would enable to hold persons more easily liable for corruption in the private sector (SE 539). The anti-corruption monitoring body of the Council of Europe GRECO has also provided a recommendation to Estonia to bring the Estonian Penal Code with this respect into compliance with the Criminal Law Convention on Corruption (2008).

In 2009, 20 offences related to office in connection with legal persons were registered (incl. 2 connected to foundations and 2 with apartment associations) which predominantly concerned in addition to abuse of authority (incidents related to security guards) the cases of embezzlement – respectively 7 and 6. Two cases were related to bribery offences and one case to the violation of requirements for public procurement by a public limited company, the owner of which is the city. In case of embezzlement the company employees embezzled the company money (for example, a shortage between goods and cash more than 100 000 kroons was discovered in course of inventory of the store. In case of criminal offences related to apartment associations the members of management board embezzled the apartment association funds (in one case approx. 51 000 kroons and in another case approx. 25 000 kroons).

Besides the 20 offences related to office, 24 cases of abuse of trust in companies were registered where one abuser was a bank employee. In these cases, for example, the necessary documents were not executed, money was forwarded from the company account to the person's own account, detrimental transaction for a company were performed, etc.

Judges

In 2009, one bribery offence related to a judge (Mihhail Komtšatnikov) was registered (initially registered as gratuity but was requalified later). From 2003 up to the beginning of 2010, 4 bribery or gratuity offences related to judges have been registered, from whom 3 have been convicted by the time of writing this compilation. In all cases the judges have been imposed actual imprisonment from 2 to 3.5 years.

Corruption cases involving judges

In 2003, the Tallinn City Court Judge Ain Truu was convicted of accepting a bribe, who was imposed 2 years of imprisonment as punishment and who was prematurely released from prison. The judge received a bribe for rendering an accused a less severe court judgement in the court case in which he was conducting proceedings.

In 2008, the Harju County Court Judge Ardi Šuvalov was convicted of accepting a bribe who was imposed 3.5 years of imprisonment as punishment. In return for bribe the judge promised to render favourable judgements for the accused at trial in course of judicial proceedings and a judgement of acquittal. In 2009, A. Šuvalov requested from the court to be prematurely released which was not granted. The court substantiated this with the inadmissibility of judge's behaviour: "Judge's dishonesty, the more so criminal dishonesty seriously invades trust for impartial administration of justice and the state as a whole".

In 2010, the Viru County Court Judge Mihhail Komtšatnikov was convicted of accepting a bribe who was imposed 2 years of imprisonment as punishment. In December 2009, the judge agreed to accept a bribe of 100 000 kroons in order to release against a security a person who was accused of manslaughter in whose court case he was conducting proceedings. The person who intermediated the bribe Sergei Gromov (conditional punishment of 3 months and 3 days with an 18-month probationary period) and Vassili Satšuk (pecuniary punishment of 15 5000 kroons) were convicted together with the judge.