

## CORRUPTION

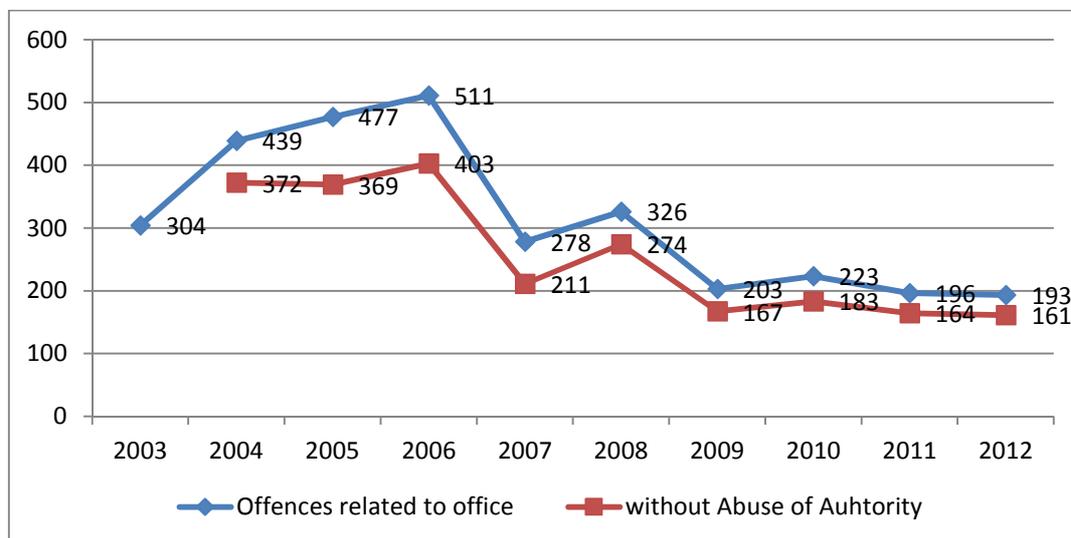
[Source: Kuritegevus Eestis. Kriminaalpoliitika uuringud 17. Justiitsministeerium.

<http://www.kriminaalpoliitika.ee/et/kuritegevus-eestis-2012>]

Pursuant to recent Eurobarometer survey, Estonia is one of the few European Union member states where people believe that other member states have more corruption than we do. Estonians also believe that corruption has decreased in many sectors in comparison with 2009. 5% of Estonian people admit that they have been recently requested a bribe, while the European Union average is 8%. The indicator was the highest in Romania – 31% – and the lowest in the Netherlands – 1%. (Special Eurobarometer 374, 2012)

According to the wide approach to corruption, pursuant to which corruption is the abuse of trust accompanying an office (Sutherland, 1940), for example embezzlement and fraud may be considered as corruption; according to a narrower approach, corruption involves the transaction having at least two parties where one party violates the official duties for a favour or compensation (Senior, 2004). In case of the latter, the corruption offences include predominantly bribe offences, incl. influence peddling which by its nature is one form of a bribe. This chapter has been written on the basis of wide definition of corruption and embezzlement and other offences have also been taken into consideration as corruption offences, if an official has violated the law. For the purpose of the Penal Code, an official of the public sector and the private sector, as well as an official of a foreign state may correspond to the characteristics of an official.

In recent years the number of corruption offences remained stable – in 2012, 193 corruption offences were registered which is 3 offences less than the year before. Leaving out possible incidents of abuse of authority (§ 291), the number of corruption offences is even smaller – 161 offences<sup>1</sup>.



**Chart 50. Registered Corruption Offences**

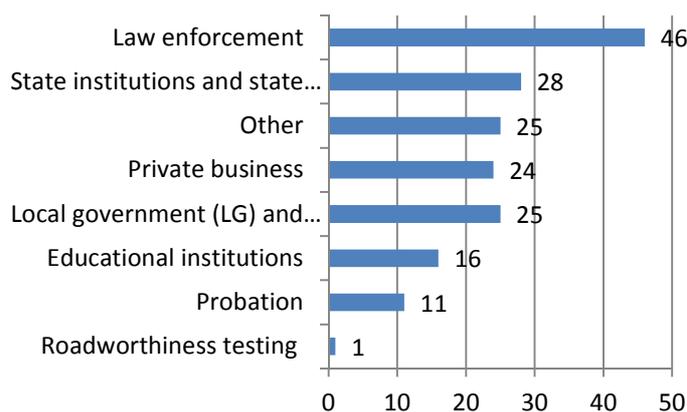
The last biggest change in the number of corruption offences occurred in 2007 when the Penal Code was amended and the misuse of official position and negligence related to office were abolished as separate necessary elements of a criminal offence. New necessary elements of a

<sup>1</sup> The figure does not reflect the offences related to the abuse of trust either (§ 217 (2), Penal Code), but § 201 (2) 3); § 209 (2) 1); §291 (1) until §300 (2) of the Penal Code have been included.

criminal offence were created instead of these, for example fraud committed by an official (§ 209 (2), 1<sup>1</sup>), embezzlement (§ 201 (2), 3)) and some others, however, fewer incidents of new necessary elements of a criminal offence have still been registered in comparison with old abuse of authority, etc. One reason why it was decided to abolish the abuse of authority from the Penal Code was the vagueness of its necessary elements which enabled to bring charges also for an act which conformity with the necessary elements of a criminal offence was not unambiguously clear (see explanatory note to the draft<sup>2</sup>). At the same time, the clarity is an important principle in the penal law which helps to exclude situations where a person is convicted of unintentional act or an act committed due to lack of knowledge.

The incidents of taking and giving a gratuity or a bribe form over half of corruption offences (total of 105 offences), there are also more cases of embezzlement (28) which typical examples are the heads of institutions or companies or accountants who embezzle the funds of the institution/ company.

By sectors, the highest number of corruption offences was registered in law enforcement – 46 incidents. Only one incident was registered in connection with roadworthiness testing and the sector has been separately pointed out because the state has paid a lot of attention to it in the recent years (e.g. anti-corruption measure upon roadworthiness testing included in the Anti-Corruption Strategy 2008-2012).



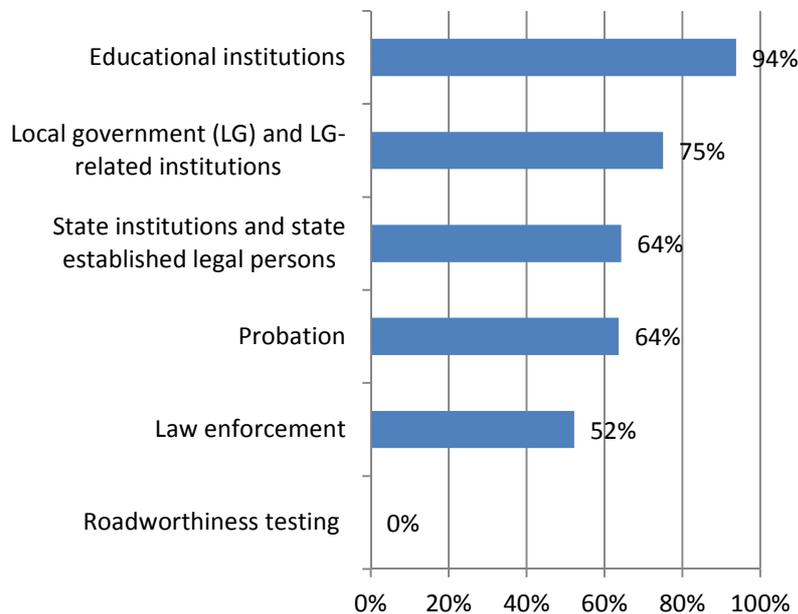
**Chart 51.** Corruption offences by sectors (incidents of abuse of authority (§ 291) are not included), but includes abuse of trust (§ 217 (2))

In case of corruption offences there are often two or more parties, involving both the persons offering the bribe and the intermediaries as well as others. Therefore, the overall figures which have been given by sectors need not show the level of corruption of the institutions concerned but primarily the forms of corruption that are common in the sector – whether this is a form of corruption involving one party, for example embezzlement, or a form of corruption involving two or more parties, for example a bribe. Estonian data give reason to believe that corruption involving one party is more common.

Offers of money or a favour need not be followed by acceptance thereof, wherefore it would be unfair to call the employees of some specific institution corrupt merely on the basis of statistics. Excluding private enterprises and “others”, the officials of public sector institutions were in the so-called role of a corruptor in 66% of the incidents and in the remaining incidents of corruption the other party to the corruption offence was a person not associated with this institution. The

<sup>2</sup> 931 SE: Explanatory note to the draft act on the amendment of the Copyright Act, the Patents Act, the Utility Models Act, the Industrial Design Protection Act, the Layout-Designs of Integrated Circuits Protection Act, the Money Laundering and Terrorist Financing Prevention Act, the Anti-Corruption Act, the Competition Act, the Penal Code, the Weapons Act, the Alcohol Act, the Taxation Act, the Code of Misdemeanour Procedure, the Penal Code Implementation Act and the Electricity Market Act [http://www.riigikogu.ee/?op=emsplain2&content\\_type=text/html&page=mgetdoc&itemid=061590005](http://www.riigikogu.ee/?op=emsplain2&content_type=text/html&page=mgetdoc&itemid=061590005) (26.03.2013).

corruption indicator of an institution was the highest in educational institutions where an educational institution employee was suspected in 94% of incidents, while this indicator was only 52% in case of law enforcements which means that in case of the remaining incidents the suspect was a person outside the law enforcement.



**Chart 52.** Share of cases, where suspect was public official (e.g. a policeman etc)

Corruption offences are often repeated acts committed by the same persons.

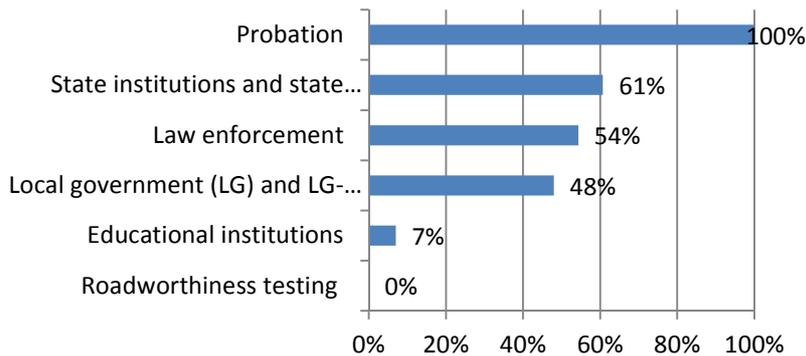
Probation supervision from 2012 can be brought here as an example where all 11 incidents were connected one and the same person.

*Probation supervisor V.H. helped for money the persons who had been punished pursuant to criminal procedure to abscond the community service, marking it down that the people who had been punished had performed the community service, even if no actual service took place. At least four persons who had been punished got away from the community service. The court punished the probation supervisor by 2 years' and 10 months' imprisonment. (Estonian Public Broadcasting)*

Security Police can be brought as another example which has not been represented in the statistics of corruption offences before but this time 12 corruption offences were registered because of one incident which forms a total of one fourth of all corruption incidents connected to law enforcement.

*Former leading specialist of the Security Police, Indrek Põder was convicted of accepting a bribe. Põder repeatedly received from several private persons a bribe in the total amount of at least EUR 276 198, from which EUR 178 358 directly went into his private use. In addition, Põder demanded more bribe from several private persons in the total amount of at least EUR 1 577 772. In return Põder promised to use his official position as a police officer in the interests of within-named persons. The court punished Põder by 4 years' imprisonment. This was an incident which was discovered by the Security Police (Security Police).*

The highest number of unique corruption incidents occurred in educational institutions – only 7% of incidents are connected to the same officials. In local governments there are slightly less than a half of such incidents – 48%.



**Chart 53.** Share of cases including repeat (the same) officials

### Law Enforcement

46 corruption offences were registered in connection with law enforcement (the police, the Tax and Customs Board and the Security Police), from these 41% (19) in connection with the police.

89% (41) corruption incidents of law enforcement were offences related to gratuities or a bribe, 9% (4) were offences of counterfeiting or falsification of documents by officials and 2% (1) was embezzlement.

24 incidents were connected to former officials of law enforcement itself: the investigator, the patrol officer, the tax auditor; in the remaining incidents the person giving gratuities or bribes or the intermediary came outside the law enforcement.

There were 25 unique incidents, the remaining incidents involved different acts performed by two persons or the acts associated with these persons.

### State Agencies

28 corruption offences were registered in connection with state agencies (ministries, inspectorates, boards, legal entities founded by the state, etc., however excluding the law enforcement authorities).

Similar with the law enforcement, 89% (25) corruption incidents of state agencies were offences related to gratuities or a bribe, the remaining were offences related to violation of requirements for public procurement, unlawful exercise of state supervision and abuse of trust.

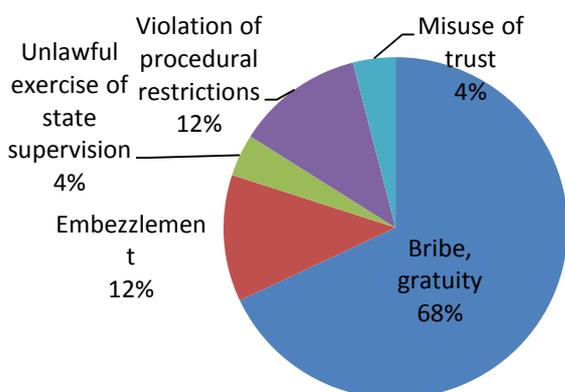
18 offences were connected to the employees of state agencies, for example, a few incidents involved procurement contracts in which upon the procurement of IT devices certain IT companies were preferred for compensation or service contracts were extended with enterprises for the right to use a car. There was also an incident related to European funds where one official provided information to one applicant of funds without having the right to do so. In return, the applicant organized a birthday party for the official and paid for the advertising of a sports event which was organized by the official's son.

There were all in all 11 unique incidents in state agencies. The biggest number of corruption incidents was related to the Environmental Inspectorate – 11 incidents, from which at least 6 episodes were connected to one person, more specifically an inspector who did not perform supervision for a compensation (See also *Postimees*, 2012).

### Local Governments

25 corruption offences were registered in local government which included the embezzlement of local government funds, corruption upon procurements and also other forms of corruption. When in case of state agencies and law enforcement authorities the corruption incidents were figuratively divided between 90:10 where nearly 90% of incidents were related to gratuities or a bribe, then in case of local governments the picture is more diverse where in addition to

gratuities and bribes (17 incidents), the violation of procedural restrictions (3), embezzlement (3) and other offences also occurred.



**Chart 54.** Types of corruption in local governments

Three-quarters (19) of the corruption offences were offences where the suspect was a local government official. In remaining incidents the person involved was some private person, for example a person giving a bribe who was not employed by local government. In case of 10 local governments from 11 local governments where the corruption offences were registered, the suspect was a local government official.

Corruption offences occurred most frequently in the region of the Southern District Prosecutor's Office (9), less frequently in the region of the Western Southern District Prosecutor's Office (4). Six incidents were registered in the area of both the Northern and the East-Viru districts. In terms of cities the highest number of incidents was registered in Tartu (7), Tallinn (5), Narva (4) and Pärnu (2).

**Table 31.** Local governments where suspects were officials of the local government

	An official as a suspect	Total No of Cases
Kallaste city	1	1
Lohusuu parish	1	1
Mooste parish	1	1
Narva city	4	4
Pärnu city	2	2
Sillamäe city	1	1
Sauga parish	1	1
Tallinn	3	5
Tapa parish	1	1
Tartu city	4	7
Viimsi parish	1	1

	19	25
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Approximately half (13) of the incidents were unique and other incidents were related to same persons. For example, in one incident a member of the Tartu City Council took a loan under favourable conditions from several persons which was qualified as gratuities and he was also suspected of fraud – thus, all in all 6 incidents.

### **Private Enterprises**

24 corruption offences were registered in connection with private enterprises most of which were the incidents involving abuse of trust (10), embezzlement (6) and fraud (5). It is difficult to specify the corruption in the private sector but the statistics of registered offences gives a hazy picture of one possible form of corruption in the private sector which is the abuse of trust (§ 217<sup>2</sup>). Within-named offences are predominantly the cases of the private sector, except for one incident. Typical incidents are such where a member of the management board abuses his/her authorities and enters into contracts on behalf of the enterprise and assumes obligations for the enterprise for which he/she has no authorities, thus causing damage to the enterprise. Three the so-called classical corruption incidents, i.e. granting of gratuities, were registered from which 2 were related to the representatives of a wholesale company who offered a bribe to the purchase manager of corporate chain for preferring the company products upon displaying the products (See also *Postimees*, 2013).

### **Educational Institutions**

In 2012, relatively many corruption incidents were registered in educational institutions – 16 incidents. For example, in comparison with 2010 when corruption offences were registered in connection with four schools (all in all 12 incidents), year 2012 differs in quite a large number of unique incidents – about one half of the incidents (7) were related to educational institutions, while 2 incidents accounted for the other half of corruption offences in educational institutions – respectively 7 and 2 episodes.

The majority of corruption offences in educational institutions – 12 – involved the embezzlement of school or nursery school funds. Three incidents involved counterfeiting and one accepting of gratuities. School officials' holiday trips abroad for the school funds, embezzlement of the rent for premises, acquiring a diploma for gratuities, etc. can be given as an example

### **Judicial Decisions**

43 persons were taken court being charged of corruption offences<sup>3</sup>, 5 from them were charged with several offences. In addition, the charges were brought against 5 legal entities. 11 judgements of acquittal and 44 judgements of conviction were made. In case of two persons, one judgement of acquittal and another judgement of conviction were made, i.e. the person was guilty of one offence and acquitted of another episode. In terms of legal entities 1 was acquitted and 4 were convicted.

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<sup>3</sup> Only these officials have been into account who have charged pursuant to §§ 293–300 and the offences of embezzlement, fraud and abuse of trust have been excluded.