CORRUPTION AND LOBBYISM: THE DANISH EXPERIENCE [КОРРУПЦИЯ И ЛОББИЗМ: ОПЫТ ДАНИИ]

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Автор исследует причины, а также последствия коррупции и лоббизма в современной Дании. Пытаясь разграничить эти два явления, он выделяет как общие для них признаки, так и отличающие их друг от друга. В статье изложен материал, связанный с изучением исторических, общественных и иных предпосылок коррупционно-лоббистских проявлений в Дании. Безусловный интерес представляют сведения о том, какие приемы используют коррупционеры и лоббисты для достижения своих корыстных целей. Статья снабжена выводами, имеющими неоднозначный характер, что свидетельствует о сложности решения этой социальной проблемы. Кроме того, автор ссылается на данные, приведенные в ежегодном антикоррупционном докладе Европейской комиссии Европейскому совету и Европейскому парламенту за 2014 год. На основе этой информации дан сравнительный анализ уровня коррумпированности в европейских государствах. Показан средний уровень коррумпированности чиновников по всей объединенной Европе в таких сферах деятельности, как государственная власть, бизнес и общественное самоуправление. Автор, демонстрируя компаративистский подход к рассмотрению исследуемой проблематики, дает собственную оценку содержанию недавно введенных в правовую лексику терминов «хорошо осуществляемое производство», «правомерный лоббизм» и др. Приведены мнения авторитетных ученых по проблеме коррупции и лоббизма.

Ключевые слова: коррупция, лоббизм, уголовный кодекс, опыт, гражданский служащий, наказание, преступление, правонарушение, влияние, исполнители, международные организации, цель, предназначение, деятельность, деньги.

CORRUPTION AND LOBBYISM: THE DANISH EXPERIENCE

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The presented article is devoted to the analysis of the results of the researches, arranged and held in order to discover the origin, the background, the consequences and the reasons for either the corruption or the lobbism in the modern Denmark. The author is eager to elaborate an essential attempt to separate these two phenomena from each other, underlining those their features, which, on one hand, show their familiarity, and on the other hand, display the difference. In the article there is the information, which is dedicated to the research of the historical, social and the other preconditions for the corruptional — lobbyist manifestations in Denmark. It is quite obvious to say that there is no any doubt about the interest towards the presented data of different techniques, used by the corruption and lobbism performers, for gaining their mercenary targets. The article is provided with the discussable conclusions, aimed to demonstrate an extremely sophisticated way of solving this social problem. Besides the said, in the article there is the information, taken from the Annual Anti-Corruption Report of the European Commission to the European Council and to the European Parliament, composed and delivered in 2014. Looking through this information, the readers can get acquainted with the comparative corruption rate analysis throughout all the European countries. In the article it is indicated what the average level of the corruption among all the civil servants in Europe is, especially in such spheres of activity, as: state power, business and local authorities. The author considers this phenomenon comparatively. Moreover, the author gives his own estimation and interpretation of the newly inserted terminology, which has become a part of a contemporary juridical lexicon. These new terms are: “Good-Doing Industry”, “Legal Lobbyism” and some others. The doctrinal viewpoints of the well-known scientists on corruption and lobbyism are also highlighted in the article.

Keywords: corruption, lobbism, criminal code, experience, civil servant, punishment, crime, violation, influence, performers, international institutions, target, aim, activity, money.

DOI: 10.12737/16133

1. Corruption

Denmark is (one of) the most uncorrupt countries in the world¹.

The word "corruption" has no absolutely objective definition on the international scene². In Denmark, it is usually understood as "abuse of entrusted authority as a counterbalance to a gain for the abuser"³. It implies i.a. the acquisition of advantages in the form of payment or other benefits so as to counterbalance "extra" possibly outright illegal services or pure abuse of entrusted money. It could easily be not only simple nepotism but also an undeniable criminal behaviour — bribery, embezzlement or forgery. Public employees for example could be corrupt i.a. by receiving money for public services which are formally free of charge, by distorting the rules applied for such services or by unlawful certification and falsification of public documents.

1.1. History. In the beginning of the 19th century, corruption became a major problem in Denmark due to the economic collapse in the wake of the Napoleonic wars and the following impoverishment of public servants. The sovereign King Frederik VI considered this to be a deadly threat to the social order of the time. It should be mentioned that his power as a Sovereign was formally based upon a meeting of so-called estates ("stænder") — representatives of nobility, clergy, citizens and peasants — in 1660 and the following passing of an Act on the Kings ("Kongeloven") in 1665. Before that the Kings were formally elected. So not least in the wake of the French revolution, the formally unamendable 1665-Act might nevertheless be reverted. It should be mentioned that by the time the courts had ruled, that a political decision of a political assembly could never be binding upon a later such assembly.

Therefore Frederik VI launched a very fierce fight against corruption in the public sector of the time, involving imprisonment for what was in reality lifetime — on hard conditions — of corrupt public servants. It was what we would today call a no-tolerance policy.

Over the years this approach proved to be counterproductive in some cases. So in 1840 the Penal Code was changed in order to meet experience gained in the field: penalties on minor criminal acts were mitigated in order to motivate a sinner not just to proceed in his criminal behavior because punishment would be the same anyway.

By the Constitution of 1849 the King lost his sovereign power and thereby his right to decide which public

servants should have an old-age pension — this right now being a universal right for all public servants, so that there was no motive for them to put money "aside" for their old age.

And in 1861 a new Act on Pay of Public Servants ("Crown Servants") secured them all a fixed pay so that temporary variations in the economic trends would not hit them as hard as it did at the start of the century. Moreover, Crown Servants could not be fired only by a discretionary decision: if such an employee was fired without his own "fault" he was entitled to have his pension.

This brought an end to virtually all corruption in Denmark. One might also guess that the standards of behaviour created among the Crown Servants and other public employees formed a model of behavior even among private employees. Another guess would be the role played by a small society such as the Danish one: if you exceed the moral or ethical borders within such a society, you so to say exclude yourself from that society and will have a very hard time living in it. Being known as corrupt in such a society means that nobody there will trust you and it will be impossible for you to enter into normal human or commercial relationships.

1.2. Today. Whatever the reason might be, even if punishment for corruption today is not at all as harsh as in the 19th Century, it is regarded socially unacceptable to a degree which has a very strong preventive effect.

This implies not only receiving, but also giving bribes in any form. Today such crimes are sanctioned by imprisonment (Penal Act § 122, 144, 299 and 304 a). These statutes encompass anyone who gives promises to or offers a public servant or a person performing a public task a gift or other advantage in order to make him do or not do something in his capacity as well as the public servant or holder of a public task himself. In the same way it is punishable for privates who handle matters of capital or assets of others unduly to receive, ask for or take gifts or other advantages as well as unduly giving such gifts or advantages. The sanction is up to six respectively four years imprisonment.

As will be seen also so-called facilitating payments are punishable (i.e. financial payment made to a public or government official with the intention of expediting an administrative process or service to which the payer is legally entitled even without making such a payment).

As a result by 2014 EU-observers note in the European Anti-Corruption Report⁴ that Denmark is among the top EU performers in terms of transparency, integrity and control of corruption, even if some room for improvement remains, especially with regards to the financing of political parties and the framework for prosecuting corporations on grounds of bribery in foreign countries. Therefore the European Commission has suggested

¹ URL: <http://www.transparency.org/cpi2013/results>.

² Se i.a. the UN convention against Corruption. URL: https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

³ Transparency International, Denmark. URL: http://transparency.dk/?page_id=224 and the Danish Foreign Department; <http://um.dk/da/danida/resultater/bekaempelse-af-svindel/hvad-er-svindel-og-korruption>.

⁴ Summaries of the National Chapters from the European Anti-Corruption Report 3 February 2014. URL: http://europa.eu/rapid/press-release_MEMO-14-67_en.htm.

to further improve the transparency and supervisory mechanisms of the financing of political parties and individual candidates. Likewise the Commission is also suggesting that further efforts are undertaken to fight foreign bribery, by, for example, raising the level of fines for corporations.

The European Commission has presented two extensive opinion polls on the problem. The main result is that even if more than three quarters of European citizens agree that corruption is widespread in their home country, amongst the Danes, that number is only 20 percent. Moreover: less than one percent of Danish citizens have been asked or expected to pay a bribe in the past year (compared to the EU average of four percent).

More details may be read in the above mentioned 2014 EU-report⁵:

According to the special Eurobarometer on corruption in 2013, only 3% of the Danish respondents felt personally affected by corruption in their daily life (EU average: 26%). 12% say they personally know someone who has taken bribes (EU average: 12%). It is also noted that according to a Eurobarometer survey, 19% of responding Danish managers believe that favouritism and corruption hamper business competition in Denmark (EU average: 73%). Only 4% of the Danish businesses believe that corruption is a problem for their company when doing business (EU average: 43%). In the area of public procurement, according to the 2013 Eurobarometer business survey on corruption, 14% of respondents consider that corruption is widespread in public procurement managed by national authorities and 20% in public procurement managed by local authorities (the EU average is 56% and 60%).

2. Lobbyism

2.1. The problem. Thus the most oppressing problem of today is not corruption in its key-form but rather to define the borderline between illegal corruption and legal lobbyism — the latter understood as the practice of influencing decision-makers, particularly legislators in order to favor special interests by legal means. The reason is that the tools of lobbyism are indeed often *very* close to pure corruption. A recent example: in April 2015 it was revealed that the managing directors of the huge wage-earner fund “Lønmodtagernes Dyrtdidsfond” and a wage-earner pension fund PKA and their spouses went on a four-day skiing holiday in the French Alps — including only one and a half hours professional “networking” — paid by the British capital fund Triton where the two

funds have invested huge sums of money.⁶ Moreover, there are a lot of completely legal methods of influencing others which are illegitimate in a moral sense and have potentially disastrous consequences for others. Examples: it is today an established fact that the present completely unsustainable Danish immigration policy was cast by the lobbyists of the so-called “Good-Doing Industry” (i.e. private organisations working for public money to support “refugees”, “human rights” etc.). “Lobbyism” by obscure channels was presumably also a decisive factor behind Danish support to the so-called Kosovo-War launched upon Serbia in 1999, which was a violation of international law.

2.2. Usability. Pure lobbying is not regulated by law in Denmark, and there is no specific obligation either to register or report contacts between public officials and known lobbyists. The reason is that lobbying is regarded a natural and integrated part of the democratic system. Therefore the hazards involved in lobby-activities is neglected. As a consequence politicians and other targets of such activities are vulnerable to the sophisticated lobbying. In particular as for the political scene the Danish political system in itself as such leaves ample room for influencing events in a direction which is not relevant to the voters or which might even be directly against voters’ interests. Under this it leaves room in particular for resolute interest groups to take the lead and adapt or even create the political agenda on the local as well as on the national level. Nevertheless, also organised lobbying activities by such groups are accepted as a respectable tool.

Thus it has become common practice to influence decision making by Danish public servants, politicians and even private cooperations, funds, individuals etc. (the “target”) in directions favourable to a lobbyist himself or his originator. The accepted tools in this context is not only open deliverance of “objective information” and “reasoned arguments” but also the gently pulling of the target by way of friendly contacts, subtle persuasion, small “gifts”, payment of “necessary” expenses, travelling costs, conference fees etc. given under coverage of being objective/reasoned “support” or necessary compensation connected to the control of the donor’s activity, the goods he delivers or the like.

2.3. Performers of lobbyism. Lobbyism may in Denmark be exercised by special bureaus (marketing enterprises) or interest-associations or organisations formed and paid by the one who wishes to exercise this kind of influence, or he may himself have directly employed lobbyists. It might also be exercised by state agencies (such as embassies and open or covert representatives of foreign powers). Even individual idealists — knowing or unknowing about the role the real lobbyist has conferred to him/her — or volunteers working for personal gain may act as helpers. Thus lobbyism

⁵ Report from the Commission to the Council and the European Parliament (EU Anti-Corruption Report, 3.2.2014 COM(2014) 38 final. URL: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf). See in particular *Annex 4, Denmark*. URL: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_denmark_chapter_en.pdf.

⁶ URL: <http://www.dr.dk/Nyheder/Penge/2015/04/09/103914.htm> and http://finanswatch.dk/Finansnyt/Forsikring___Pension/article7614319.ece.

might be exercised directly or indirectly — the latter for example by members of an interest-organisation presenting themselves through what seems to be “independent” individuals and not representatives of the organisation. In some cases the lobbyist might even form a formal front-organisation or interest group. Moreover, as a fact many interest organisations are according to law “heard” by routine on upcoming matters in parliament within their field of work or they are sitting in permanent advisory boards and committees set up within the legislative field where they operate.

2.4. Technique. In order to achieve his goal the lobbyist will monitor what is published within his field of interest and what the general opinion is of the actors on that stage. On this basis he will identify the active persons and qualify them as being positive, negative or neutral, and among them select the ones who seem most vulnerable to his persuasion or “information”. Of course he will also register new developments in the circles of interest to him in order to be able to exercise influence at the right time and in the most effective way.

After having identified the relevant target(s) the lobbyist will try to create and preserve relations to it. So the lobbyist should be able to create and preserve credibility and on this basis to exchange information and views.

Lobbyism might be exercised by direct contact to the chosen target person(s), which might be a politician, minister, a public servant relevant in the context, a spokesman of the relevant political parties, the party itself, EU-and other international institutions, public or private boards or whatever the most appropriate target is in the concrete context. However, contact could also be made to the ones who feed the primary target with advice or information, i.a. the public servants serving the target politician(s). Thus influence might also be exercised by indirect means, for example by involving the press. In such cases attention of the lobbyist may initially be directed to relevant journalists or upon editors who are gatekeepers of a relevant agenda in the public debate.

So the lobbyist’s information or arguments may be injected in the direct or indirect target not only by ordinary social contacts, it may also be exercised in the form of contributions to the public debate in the media, through press-releases, press-meetings, advertisements or by publication of — possibly twisted — “research” results and analyses, staging of information on the internet, conferences, seminars, public demonstrations etc.

2.5. Research on lobbyism. Over the last decades lobbyism has played an increasingly important part in policy making⁷. Recently research⁸ has shown that

nine⁹ Danish special interest organisations out of 1.700 in all wield 1/3 of the exercise of political influence in Denmark. They spend fortunes on lobby-activities and — in return — expect to influence Danish legislation directly by doing so¹⁰. The ones who have more financial resources are better placed to influence policy. Moreover, this study shows that interaction between politicians and the organisations is taking place on initiative of the organisations, not the politicians.

The researchers conclude that it becomes a democratic problem when such a small group of organisations sits on so much influence. However, these organisations “represent different types of interests, employees and employers, consumers and industry, and they are so broad that they have to give at least some consideration to society’s interests as a whole in furthering their own interests”. However, it is unfortunately not always so. For example the heavily subsidized humanitarian, environmental and international NGOs have almost no official opponents so what we have here is a totally one-sided lobby-activity. Moreover, the book only investigates the formal organisations not influence of foreign powers for instance. Such lobbyism has greatly distorted decision-making in important areas.

2.6. Conclusion. In the view of the present author, over the years lobbyism has become a major problem to the functioning of the political system itself. He therefore fully agrees with the points made by dr. Nina Kolosova in her lecture at Aarhus University last year when she pointed out the problems involved in drawing the borderline between corruption and lobbyism.

In a democracy there is nothing wrong with trying to influence others in one’s own favour — that is part of the democratic system so to speak. However, it becomes a problem if this influence is concealed and therefore perhaps remains without any relevant contradiction and without attracting information alternative to that of the lobbyist. Likewise it is a problem if there is no organised

in Politics), 2014. The study monitors these interest organisations activities in relation to the public administration, the parliament and the medias.

⁹ Dansk Industri, Dansk Erhverv (the Danish Chamber of Commerce), Landbrug & Fødevarer (the Danish Agriculture and Food Council), LO (The Danish Confederation of Trade Unions), the trade union 3F; the trade union FOA, KL (Local Government Denmark), Dansk Regioner (Danish Regions) and the consumer organisation Forbrugerrådet.

¹⁰ The researchers note that “interest organisations use a lot of resources on membership of councils and committees, contacting civil servants, getting their organisation’s views covered in the media and, in many cases, liaising with members of parliament and parliamentary committees. They wouldn’t invest this kind of money if they weren’t getting something in return — in other words influencing the political agenda and political and administrative decisions”. Cf. presentation in The Copenhagen Post, March 12, 2014.

⁷ Se i.a. Peter Munk Christiansen and Hilmar Rommetvedt, *From Corporatism to Lobbyism? Parliaments, Executives, and Organized Interests in Denmark and Norway*, LOS-senter, Notat 9905 (1999).

⁸ Anne Skorkjær Binderkrantz, Peter Munk Christiansen and Helene Helboe Pedersen, *Organisationer i politik* (Organisations

opponent to the lobbyist at all to complete or correct the picture he creates in the eye-balls of the decision-maker. Furthermore, it becomes a problem if the lobbyist's influence is exercised by using disloyal methods such as direct lies of a kind difficult to uncover or by neutralization of undesirable individuals, organisations or information, or by purely psychological means. Rather disgraceful examples of this kind have in fact been revealed on several occasions over the last decades. This includes inter alia a de facto expulsion from Denmark of a seriously working scholar and critic of the present climate-policy and the hysteria about the so-called greenhouse-effect as well as falsely presenting of ex-partisans of WW II and survivors from Nazi Concentration Camps as "Nazis" and "racists" because they have opposed the present Danish immigration policy.

Since it is not possible to define in a precisely what loyal respectively disloyal methods are within the art of influencing others and even less to prevent the use of methods assessed to be disloyal, the result is that Danish decision makers are in fact affected by means which are not all suited for being seen in daylight. The lobbyist himself will of course talk about legitimate "information", "objective" or "reasoned" "advice" and the like. However, since the influence of the lobbyist is not exercised openly and since it is usually based upon a hidden agenda, others

might easily feel that what is going on is manipulation or pure cheating. In the same way, well-informed outsiders will note that arguments and "facts" presented by the lobbyist are adjusted according to the interests of the lobbyist and do not necessarily serve the overall-goal of his target (i.a. the public interest). Therefore people outside will tend to feel that the lobbyist removes and creates power against socially accepted rules and — in case the target is politicians — that the lobbyist even body-blows a democracy where everyone regardless of his resources ought to have equal opportunities to influence things.

So influence from lobbyists is always a dangerous parameter for decision making. Of course the groups represented in this way must have their interests taken care of also. But when professional lobbying is involved, this will easily happen at the cost of others who do not have the same intellectual or economic strength or the necessary contacts to have their need put on the political agenda. This is in particular risky when part of the lobbying-process is to suppress such interests and neutralize undesirable opponents. In such cases even key issues might even be totally whipped out as factors to be attended to. So the outcome of lobby activities might easily be a distorted basis of the running of society.

No solution to this dilemma has so far been found in Denmark.

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