

Corruption and Countermeasures in the Federal Republic of Germany*

김택(Kim, Taek)**

ABSTRACT

Corruption is, in its simplest terms, the abuse of power most often for personal gain or for the benefit of a group to which one owes allegiance. This paper achieves a balance between causes and remedies in Germany. It explores the interaction between corruption and anti-corruption. While the GRAND corruption are difficult to measure, some studies suggest that its COUNTERMEASURES would include

This article focuses on the following: Lessons learned with examples of good practice (Germany and Korea). The political and institutional approaches to anti-corruption efforts, with particular attention to the role of the public sector and civil society, including the legal regulation. Case studies on Germany party donation. Lessons learned indicate that an effective anticorruption strategy would be multifaceted, combining political reforms, and strengthening national integrity institutions. And political commitment would be key to sustaining this effort.

Key words : anti-corruption countermeasures, country studies, parliament corruption

* The work was supported by the Korean Research Foundation(KRF-2002)

** 한국정신문화연구원 연구교수

I. Introduction

For a long time controlling corruption efforts and strife for political reform, the political system of South Korea is still suffering from the aftermath of more than 30 years of authoritarian rule. The military governments that ruled South Korea from 1961 to 1993 left a legacy of tightly knit relationships between government and big business, represented by large family-owned industrial conglomerates, the chaebol. Political and economic exchanges were and, as is shown by the corruption scandals discussed later in this report, still are often based more on informal and personal relationships than on institutionalized market transactions. Together with cultural factors such as a strong focus on regional origin and membership in clan organizations, and further stimulated by a presidential system that concentrates decision-making power in the hands of a rather small political elite, the close relationship between big business and government can be seen as the main cause for corruption in South Korea. Bribery scandals are frequently disclosed in the South Korean media, and public trust in politicians and business leaders is perpetually low.(verna blechinger, 2000)

Under the former authoritarian regimes, businesses or interest groups that supported opposition parties or candidates were regularly reprimanded by the ruling party, causing reluctance on the business side to support the opposition. At the same time, the introduction of a "real-name banking system" was meant to ensure more transparency in political finance by outlawing banking deposits held under pseudonyms. Previously, businessmen and politicians had used bank accounts under false names to pass on bribes or to deposit illegal campaign contributions or other illegally received funds without detection (Lee and Sohn 1995; Beal and Yea 1997; *Far Eastern Economic Review* 30 November 1995).

So this article focused variably on the corruption and countermeasures in Germany political environments together with business groups which is to make an effort and a successful system.

German administration is not entirely free of corruption. It can sometimes occur within its regular functions, if the benefit is particularly high and the costs are low. Potential gain is high when administration encounters economic interests and when those who represent such interests can expect considerable advantage if the rules are not required to conform to a tight set of regulations. The temptation of resorting to corruption to achieve a rapid solution is particularly attractive for anyone choosing to give way to it. The construction industry is one of the main centres of corruption in Germany. (Seibel, 1997: 85)

The view that German administration is incorruptible may be in the main accurate and not a myth. Its past reputation for accuracy, dependability, efficiency and professionalism is only a little tarnished. No citizen need feel apprehensive about being treated any differently from any other. That is to say that the problem in Germany is more to do with high-level than with politicians. It is no accident that the worst scandals in Germany have been linked to party funding. Political parties and their most distinguished representatives appear to have acted on the view that corruption offered the greatest benefits and, taking *cosi fan tutte* as a motto, a very small risk of disclosure.

This at least holds true for Germany until 1989. (Seibel, 1997: 86)

When the government is buyer or a contractor, there are several reasons to pay off officials. First, a firm may pay to be included in the list of prequalified bidders and to restrict the size of the list. Second, it may pay for inside information. Third, bribes may induce officials to structure the bidding specifications so that the corrupt firm is the only qualified supplier.

Fourth, a firm may pay to be selected as the winning contractor. Fifth, once a firm has been selected as the contractor, it may pay to set inflated prices or to skimp on quality.(UNDP discussion paper 3,1997)

Corruption in contracting occurs in every country, even those at the high end of the honesty index ; , such as Singapore and new Zealand. A few example suggested the range of possibilities.

In Zimbabwe collusion between senior ministers in posts and telecommunications and a Swedish telecommunications company may have resulted in the circumvention of local tender board procedures. Kickbacks up to \$7.1 million have been alleged(economist intelligence unit, Zimbabwe quarterly report, june 1995). In an airplane deal between the republic of korea and several us companies, bribes were allegedly paid to ex-president roh tae woo. Multinational suppliers have been questioned, but deny involvement. Roh ,s national security advisor acknowledged receiving money from business hoping to get arms contracts. He is accused of accepting \$300,000 in in connection with fighter plane purchases. In particular, the head of a Korean conglomerate was accused of giving \$65,000 to the advisor. He admitted giving the money but said it was a gift(reuter business report ,sept.(1997)

Industrial countries have recently been involved in similar procurement scandals. In germany bribes were paid to win contracts worth 2.5 billion deutsche marks to build terminal 2 at Frankfurt airport. According to public prosecutor corruption led to an increase in prices of about 20-30%.

II. GRAND corruption : party financing scandals.

Party financing has become a central arena of corruption in the federal republic of germany. In particular , the type of party state, the methods of

party financing have developed over some thirty years, since the German constitution was enacted in 1949. This framework lends itself structurally to the influence of financial power on political decisionmaking. If political decisions are bought rather than arising from formally established rules and procedures of egalitarian institutions, no problems arise if the practice is considered legitimate. If it is not considered to be legitimate and can only be exerted covertly, then its uncovering lends itself to scandalizing. Scandals thus define what a political system considers to be corruption. (Erhard Blankenburg, 1997)

The scandalization of corruption depends essentially on two conditions: (a) that legal or moral norms guiding public life have been violated (the graver the potential for scandalization), and (b) that the institutional control mechanisms, the system of checks and balances, no longer fulfil their function for the political system: to safeguard and, if necessary, to restore public order. It is to point to the historical continuity of party financing by corporate business and to recall that corporate capital has a tradition of channelling party donations as an effective instrument of wielding power and influence. As this structure has played a prominent role in dooming the Weimar Republic party donations have remained a sensitive issue in Germany. (Erhard Blankenburg, 1997)

Generally speaking, there were two main protagonists involved in the evolution of the German party financing system, both of which contribute to its becoming a 'cause célèbre'. On the one hand, the constitutional court, invoking egalitarian-democratic principles of the Constitution, laid down in its 1958 and later decisions rather restrictive legal norms with regard to party financing. On the other hand, the major political parties, driven by ever-increasing financial desires, passed self-serving legislation. Since 1958 the history of party financing has been the history of a conflict over the division of powers and the role of political parties in a democratic state. (Erhard Blankenburg, 1997)

The Green party broke into the cartel of established parties at the beginning of the 1980s as a system opposition, with, however, more indirect than direct effects on the scene, the established parties have had difficulties in legitimising their position. But even before this outsider broke into the oligopoly, with traditional party allegiance of the voters loosening, election campaigns became the dominant factor in the parties' struggle for a greater share of the voter market and for political power. As a consequence, competition has grown more intense. (Erhard Blumberg, 1997)

At first, I want to let us know that reviewing German party donation and illegal treatment.

According to the Federal Constitutional Court donations to parties are not only permissible but even desirable – as a sign of voluntary and societal political commitment. Donations are part of the individual's rights to freely engage in parties' political activities. The parties' self-financing has to take precedence over state financing. The state remunerates citizens' active participation in party financing – in the case of small donations not exceeding DM 6,000 – by granting a further 50% of the sum donated. (Ulrich von Alemann, 2002)

But small donations by private citizens are not regarded as a big problem in the debate on party finance. The real problems start with major donations. They are, at any rate, sanctioned by not being tax deductible and by having to be publicised if exceeding DM 20,000. Equal opportunity, esteemed very highly in the Basic Law, might be impaired if the state were to "favour those who have a high income, thus also favouring those parties which appeal to high-income segments of the population" (Judgement of the Federal Constitutional Court, 9 April, 1992, in: NJW 1992, p. 2549). This might be considered a good reason to put some limits on major donations, usually made only to certain parties. But the Federal Constitutional Court did not take that stance; instead, equal opportunity is guarded only insofar as major donations (exceeding DM 6,000, DM 12,000 in the case of married

persons) are not tax deductible .

The financing of political parties is as controversial and volatile in Germany as everywhere else in the world. Originally the parties in the early Federal Republic financed themselves from two main sources: membership fees – especially important for the SPD as a party of mass integration – and donations, made in particular to the middle-class and bourgeois parties CDU/CSU and FDP, in essence then still parties of notable politicians. With the beginning of the '50s, donations began to be channelled through sponsoring institutions, the so-called “Staatsbürgerliche Vereinigungen” (“civic associations”). Tax benefits were implemented for the advancement of political aims of public interest. In 1958, however, the Federal Constitutional Court ruled these tax benefits to be unconstitutional because of their non-accordance with the principle of equal opportunity for all parties.

In 1982, prompted by the scandals and alarmed by a drastic drop in donations, the German President called a commission of experts to reorganise party financing. Two years later changes in the Basic Law, which now stipulated that parties have to account not only for their income but for expenses and property as well, along with changes in party laws and tax laws provided for a complete reorganisation.(Ulrich von Alemann,2000)

III. civil service and parliament corruption

although the percentage of civil servants sentenced for corruptness is extremely low the ideal image of the incorruptible civil servant shows gaps. In the period of the early federal republic, comparatively harmless incidents were vehemently discussed, focusing on minor advantages such as a car lent to a civil servant free- of- charge. Especially by the criticism of Theodor

eschenburg, the the kilb case has become part of the literature. That this became a topic of discussion resulted from the fact that the chancellor himself was aware that advantaged had been granted.

Several proceedings against employees and officers of the army,s supply office in koblenz were more serious. In the course of the rearmament of the federal republic after 1954, there was great temptation for german industry to influence the expanding military needs. More than 100 proceedings on bribery were taken against employees and civil servants of the procurement agency. The dimensions of these small scandals appear to be insignificant compared with the larger international cases of military corruption, such as the Lockheed affair, in which the federal republic peculiar involvement has never been clarified. As in the Lockheed case, millions in bribe money are said to have flowed to civil servants, and the former minister of defense, franz Josef strauss, is said to have been involved in both cases.

Beyond these speculative incidents which were revealed by the critical press, especially by der Spiegel, there have been many opportunities for corruption and civil service bribery at the local and regional levels. The construction industry in the communes has been especially susceptible to corruption. There are numerous examples of corruption of communal office beares by construction companies in regard to building enterprises and property speculators. In the cities of frankfurt, berlin. Hamburg, or the rhur district, some of the cases gained a broader publicity and political explosiveness. In smaller corruption growsns in places hard to find.

The most recent phenomenon of the 1980s was the uncovering of a large nest of corruption within the police that was heretofore hardly imaginable in germany. Entire department of the highway police had regularly demanded that truck drivers hand over goods; in return the police refrained from doing their routine checks. The public was baffled by such incidents of corruption among civil servants and was not sure whether to draw parallels to medieval robber barons or to highwaymen of the wild west in the unites states.(Ulrich von alemann, 855:866, 1997)

Moreover, bribery of members of parliament in Germany is a particularly difficult grey area, overlapping with the lobbying and pressure politics of the business interests. Can a member of parliament who wants to obtain an industrial enterprise for his constituency be called corrupt if this company parliament is a member of that company and has professional advantages? Not all policies or interests must necessarily be corrupt despite the fact that advantages were willingly granted.

The grey area of corruption begins only when illegal or unethical advantages are granted and hidden from the public. (Ulrich von Alemann, 1997)

IV. controlling corruption programs

1. Legislation proscribing corrupt activities and establishing sanctions

The German Penal Code provides imprisonment or fines for corrupt activities in the context of the offences of “bribery”, “receiving a bribe”, “granting of advantages” and “acceptance of advantages”. On 26 June 1997 the German Parliament adopted the “Anti-corruption Act”, which increases penalties, makes attempts to persuade a civil servant to do or refrain from doing anything in his official capacity for a consideration a punishable offence and provides the possibility of issuing judicial orders for extended forfeiture or the imposition of property penalties in order to confiscate illegal proceeds.

2. Other anti-corruption regulations or orders

It is forbidden for civil servants as well as for employees and workers in the federal public service to accept rewards or gifts in connection with the execution of their official duties. A violation of this rule constitutes a breach

of official duty that can be sanctioned by disciplinary action.

3. Oversight by the legislature or parliament (directly or through scrutiny committees)

At any time parliament are entitled to satisfy themselves of the lawfulness of an action taken by the administration. They also have the right to appoint committees of inquiry.

Permanent oversight instruments exist in the form of audit office, which, in addition to checking the lawful use of budget funds, also take care of cases of corruption. The audit offices submit their reports to the parliaments' audit committee.

4. Investigation systems or bodies with powers to investigate corrupt activity

The parliaments' audit committees referred to under item c) are charged with the examination of each individual case by the respective parliament, are vested with adequate powers— also to make investigations— and are completely independent of the executive.

In some branches of the administration, bodies that are independent of the administrative organisation to be examined have been established for clarifying any suspicion of corruption.

5. Supreme financial audit authority

Both the Federal Government and the Lander have audit offices/ courts of auditors for monitoring and ensuring a lawfully and properly managed system of public finance. When carrying out their reviews, they also pay attention to

cases of suspected corruption. They are vested with adequate powers, are independent of the executive and accountable to the respective parliament. The members of the audit offices are independent of the judiciary. As a rule, reports of the audit offices are published.

6. Ombudsman

The German Parliament has set up a committee on petitions to which any citizen can address his requests and complaints. Similar bodies exist in the Lander: Rhineland Palatinate, for instance, has a "citizens' commissioner", and Mecklenburg–Western–Pomerania a "commissioner for petitions and citizens". Such commissioners have also been appointed in many municipalities.

7. Bodies to enforce sanctions and prosecute corrupt activity, e. g. specialised prosecutors, investigators, courts, tribunals, etc

The prosecution of corrupt activity, just like the prosecution of other criminal offences, is up to the public prosecutors and the criminal police. The prosecution of criminal offences on principle is the responsibility of the Lander; if need be, they may set up specialised prosecutor's offices for the investigation of corrupt practices. Public prosecutors and the criminal police are bound by the law, but are subject to the supervision of the respective Land Ministry of justice.

8. The German chapter of Transparency International, which is an active member of GERMAN civil society and is dedicated to preventing and combating. TI Germany ascertain concrete suggestions:

○ Donations by a legal person and a natural person to a political party must be disclosed when the sum cumulatively, over the course of a year, exceeds (for legal persons, cumulatively for all members of a company

association)

- a. DM10,000 at a national level
- b. DM5,000 at a state level
- c. DM1,000 at a municipal level
- d. Violations of donation regulations must be sufficiently fortified by sanctions, namely:
 - e. The deliberate violation of party law regulations (such as covering up monies received and the movement of money; the unauthorised acceptance of cash and the use of illegal donations or bequests, and the use of hidden accounts and institutions) by party officials and other persons, should constitute a criminal offence under the Criminal Code.
 - f. The fine, according to §23a PartG, should be raised from double to ten times the amount.
 - g. In particularly severe cases of violation by party officials, the loss of political mandate and the stripping of eligibility for political office should be considered, in addition to the fine and prison sentence.
 - h. members of the Bundestag must, within the frame of committee consultations, declare when the discussion of individual points on the agenda touches upon their own career or other financial interests or that of any member of their family (e.g. involving their work for clubs and associations). If a committee member fails to follow the Obligation to Disclose the consultation result becomes invalid.
 - i. Members of the federal government, even if they are not members of Parliament, are subject to the same rules of disclosure as MPs. This also applies to political officials. The details that they must declare should also be published on the internet site of the federal government.
 - j. Parallel laws should also be introduced in the states. The interior minister should ensure that in all Landtage and state parliaments analogous regulations are drawn up. This should also be the case for the mayor and the heads of departments in the cities.

The present sanctions of the OECD Anti-Bribery Convention anticipate only some cases of the whole CDU scandal; they do so, however, in the four cases mentioned in the instructions for the investigative committee of the Bundestag. If German politicians – be they office holders (ministers, secretaries of state), members of parliament or party politicians – are found guilty of corruption, they are prosecuted under criminal law only as office holders. However, in the case of members of parliament or party politicians, the pressure of public opinion is usually strong enough to force them to resign. Furthermore, the politicians' party will feel the repercussions at the next election – which is what happened to the CDU as a consequence of the finance scandal.

Corruption is not seen as adequate social behaviour in German political culture. Apart from that, in Germany as elsewhere, it is always “the others” – the other party, the other organisation, some other state (Bundesland), people from abroad – who are corrupt. That is by no means a surprise.

V. conclusion

The history of political corruption in west Germany, long ignored or treated with benign neglect by social scientists, has yet to be written. Especially German authoritarian state tradition, public indifference may be attributed to a view that expects politicians to be corrupt anyway. It is based on the rather popular belief that politics is a dirty business, that power tends to corrupt, and that those above, the rich and mighty, can do what they want to and still get away with it. Rooted in the authoritarian tradition of the German state and political culture, this view of the world and the political apathy resulting from it is part of that civic privatism which has been the pendant of representative absolutism all along.

References

Corruption and Good Gervernance(1997),UNDP
Economist intelligence unit(1995), Zimbabwe quarterly report, june 1995
Erhard blankenburg(1997), P913, TI working papers
Far Eastern Economic Review(1995) 30 November
Fighting Corruption in Asia(2003), world scientific co., Singapore
Global Corruption Report(2003), TI, Germany
Herbert Von Arnim(2003), “Korruption in Politik und Verwaltung”, Muenchen:
Knaur, Germany
Interview with TI in Germany (2003)
Interview with H. Herbert Von Arnim Professor of Speyer University in Germany(2003)
Interview with Sommerman Director & Professor of Speyer University in
Germany(2003)
Martiny, Anke(2002), Transparenzmängel im Gesundheitswesen, TI working
papers.
Public Sector Corruption(2000), OECD, France
seibel(1997) p86, TI working papers
Taek Kim(2003),"Ethical Strategies in the Civil Service : Case of Korean
Public Administration KACS vol. 8-2
Ulrich von alemann(2002), Party Finance, Party Donations and Corruption, The
german case, TI workshop on corruption and political party funding in
La Pietra, Italy, *October 2000*

저자약력 : 저자 김택은 강원대학교에서 행정학 박사학위를 받고 미국 American University에
서 박사후과정(국비지원) 수료했고 그 후 독일 Speyer 행정대학원에서(국비지
원) 객원교수로 활동했다. 한국부패학회 부회장, 한국행정학회 운영이사, 한독사
회과학회 섭외이사를 역임하였다. 100여편의 부패관련 저서와 연구논문이 있으
며 한국부패학회의 창립부터 현재까지 학회를 발전시키는 견인차 역할을 했다.