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RĪGAS STRADIŅA
UNIVERSITĀTE

Anatolijs Kriviņš

**PREVENTING AND COMBATING
CORRUPTION IN PUBLIC
PROCUREMENT**

Compendium of the Doctoral Thesis
to obtain a Doctoral degree in the Law science discipline
Sub-discipline: Criminal Law

Rīga, 2014



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The Doctoral Thesis was developed in Rīga Stradiņš University

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The Doctoral Thesis may be reviewed in the Library of the RSU and home page of the RSU: www.rsu.lv

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INTRODUCTION

Topicality of the Selected Theme and Novelty of Research

Interests of public and private sector meet in several spheres, still the most topical is the illegal cooperation of public and private sector in the field of public procurements and exercising influence over procurement results. According to statistics provided by the Procurement Monitoring Bureau, total contract prices for year 2012 as indicated in publications was 2 407 892 993 Ls without VAT. This is an indicative of large sums of current assets concentrated in the procurement systems and as a consequence – an intense interest of applicants in acquisition of the resources.

According to results of the population survey of the Republic of Latvia (data of year 2012) conducted in the framework of the doctoral thesis 69.1% of respondents evaluate the level of corruption in government procurements as high or very high, 67% of the surveyed evaluate the level of corruption in municipal procurements as high or very high. Thus credibility level of an official which is determined by connection to society's interests versus personal gain is constantly decreasing.

In such a complicated situation information that may be interpreted as suspicion of potential corruption in the sphere of public procurement (publications in the local press, publications of current events of the Corruption Prevention and Combating Bureau, conclusions of the National Audit Bureau) regularly appears in the public space of the Republic of Latvia. It shall be noted that process of handling and evaluation the aforesaid data in the respective institutions takes years and years. Furthermore, in the great majority of instances these are police officers, customs officers, Land Register office judges who are brought to trial for taking of bribes, i.e. persons who are engaged in the corrupt activities of the low, primitive level. Whereas the public

procurement sector with much bigger value of transactions for various reasons have been left almost untouched.

Despite the great significance of the issue, no proper analysis of this problem has been done in scientific research: in the Republic of Latvia this topic has been reviewed only in publications, there is almost no monographic literature devoted to this theme. Analysis is necessary for development of corruption prevention and combating mechanism as well as for anti-corruption development of public procurement mechanism. The aforesaid is indicative of problems in legal and other fields. Solving of these problems has a great scientific and practical importance that testifies to the topicality of the research topic.

This dissertation is the first scientific study in Latvia that carries conceptual analysis of corruption problem in Republic of Latvia public procurement domain, as well as offers effective solutions to corruption prevention and combat. Corruption prevention and combat issues have always been the subject of Latvian legal research, however, corruption in public procurement was not perceived as an object of complex generalization. Previous studies have been fragmented, for instance, study of Valts Kalnins "Latvian Corruption Prevention Policy: Problems and Prospects" (2001) – there is a separate chapter assigned to corruption in public procurement called "Public Procurement" on extent of only 20 pages.

Taking into account existing theoretical and regulatory–legal material while critically analyzing the system of preventing and combating corruption in public procurement, the author brings out the individual elements of the system, determining their level of development and efficiency perspective.

The novelty of the doctoral thesis is defined also by the fact that finely nuanced mechanism of public procurement (from anti-corruption point of view) has been analysed by the author not only on theoretical level, but also by applying 8 year practical work experience at Daugavpils city council, that has

been related to public procurements – organising and supervising of public procurements for European Union-funded projects, controlling of public procurement compliance with the regulatory enactments, representing interests of municipality at the Procurement Monitoring Bureau and court. The author of the present doctoral thesis has participated as a member of procurement commission in more than 300 public procurements. As a result of the aforesaid procurements the total sum of concluded procurement contracts is more than 32 million lats.

The goal of the doctoral thesis – complex investigation of corruption prevention and combating problems in the sphere of public procurements, by studying the rate of expansion of corruption, determinative and coefficient factors as well as exploring its prevention opportunities in Latvia.

Tasks of the doctoral thesis

1. To examine the essence of corruption, its causes and effects.
2. To explore specifics and mechanisms of public procurements, to get acquainted with international experience in performing of procurements.
3. To gather information about the state of corruption in the sphere of public procurements in modern Latvia.
4. To explore forms and kinds of corruption in the sphere of public procurement by focusing on historical aspects of corruption development, its typology and potential risk factors.
5. To inquire into the notion of corruption prevention and combating, principles, methods and techniques in the Republic of Latvia and abroad.
6. To evaluate effectiveness of corruption prevention and combating in the sphere of public procurement.
7. To determine stage of anti-corruption development of regulatory framework for performing of public procurements in the Republic of

Latvia and to suggest proposals for further anti–corruption development of regulatory framework for performing of public procurements.

8. To prepare a summary of general social proposals for reducing of corruption in public procurements of the Republic of Latvia.
9. To summarize and analyse information on detected instances of corruption in the sphere of public procurement, practical experience of public and municipal institutions in prevention of corruption and revealed instances of corruption, as well as developing of proposals for eliminating the detected deficiencies.
10. To analyse regulatory enactments and draft regulatory enactments, to prepare proposals for development of regulatory framework in the field of public procurement.

Dissertation research questions: 1) prevalence of corruption in contemporary Latvia public procurement domain; 2) corruption determining factors and prevention opportunities in public procurement process.

Outline of the methods applied in the research

For fulfilling the tasks of the doctoral thesis and achieve the goal of the research, the author studied general theoretical and special bibliographic sources on prevention and combating of corruption and problems of public procurement sphere. The following methods of data collection have been applied while elaboration of the doctoral thesis: 1) analysis and synthesis – court statistics, press review, analysis of discourse, international corruption indices; 2) survey (interviews, personal conversations, expressed attitudes, expert opinions); 3) analysis of legal literature; 4) modelling (theoretical modelling of situations); 5) observation (observations performed at daily work).

Approbation of the research results

35 scientific publications on the topic of the research by the author have been published in the USA, Great Britain, Germany, Poland, Lithuania

and Latvia. Part of the published articles have been included in scientific data bases, for example, *EBSCO Publishing, Inc., International Index Copernicus, C.E.E.O.L., ULRICH'S, Scopus, Gesis*. The results of the research have been included in registers of local and foreign libraries (including *Central and Eastern European Online Library, Deutsche national bibliothek*). The results of the doctoral thesis have been presented at 38 scientific conferences – in Paris (France), Rome (Italy), Vienna (Austria), Muenchen and Stuttgart (Germany), Nalenchov (Poland), Rīga, Daugavpils, Rēzekne (Latvia), 33 out of 38 conferences are international.

Publications

1. Krivinsh A. Preventing and combating corruption in public procurement. *The Baltic Journal of Law*, 2010. No.2 (20), pp. 111–116. ISSN: 1691–0702.
2. Krivinsh A. Experience of Foreign Countries in Prevention and Fight against Corruption. *Administrative and Criminal Justice*, 2011. No.2/3 (55/56), pp. 42–47. ISSN: 1407–2971.
3. Krivinsh A. Prevention and Fight against Corruption in Aspect of the Policy of Criminal Punishments. *Administrative and Criminal Justice*, 2011. No.4 (57), pp. 30–34. ISSN: 1407–2971.
4. Krivinsh A. An expert in public procurement. *The Baltic Journal of Law*, 2011. No.1 (22), pp. 63–67. ISSN: 1691–0702.
5. Krivinsh A. Development of anti–corruption law in the context of social convergence. Higher School of Social Technologies. 4th International Scientific–Practical Conference „Development of international and national law in modern times” Devoted to the 20 year anniversary of HSST. Collected articles. Riga: Higher School of Social Technologies, 2011, pp. 56–58. ISBN: 978–9984–748–38–2.
6. Krivinsh A. Corruption in public procurement in the perspective of typology. International scientific–practical conference of young

- scientists and students „Time of challenges and opportunities: problems, solutions and perspectives”. Collected articles. Rezekne: BSA, RA, LMA LF, 2011, pp. 342–344. ISBN: 978–9984–47–048–1.
7. A.Krivinsh. Corruption issue in public procurement. Daugavpils university Faculty of Social Sciences. International scientific conference „Current problems of State and Law”. Collected articles. Daugavpils: Daugavpils university, Academic Publishing House "Saule", 2011, pp. 121–127. ISBN: 978–9984–14–543–3.
 8. Krivinsh A. The concept of anti–corruption in public procurement process. We in time, space and development: Student Scientific Conference Collection, May 12, 2011. Rezekne: Rezekne Higher Education Institution, 2012, pp.112–118. ISBN: 978–9984–44–094–1.
 9. Krivinsh A. Public procurement and corruption: human security aspect. I International Conference of State police college “Legal, Sociological and Psychological Aspects of Human Security” collection. Riga: State Police College, 2012, pp. 86–91. ISBN: 978–9984–49–797–6.
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 11. Krivinsh A. Financial crisis and corruption issue: the mutual correlation. „Financial Crisis – its course and socioeconomic consequences in Central and Eastern Europe”. Lublin: Wydawnictwo KUL, 2012, pp. 904–909. ISBN: 978–83–7702–416–4.
 12. Krivinsh A. Professionalism of the public procurement practitioners from the perspective of fight against corruption. Humanities and Social Sciences Review, 2012. Vol. 01, No. 04, pp. 403–412. ISSN: 2165–6258.

13. Krivinsh A. Uncorrupted public purchases as the factor of sustainability of business. Proceedings of the Conference of the School of Business Administration Turiba XIII International Scientific Conference Sustainable business under changing economic conditions. Riga: Turiba, 2012, pp. 233–241. ISSN: 1691–6069.
14. Krivinsh A. Procurement Commission in anti–corruption perspective: EU and U.S. legal practice integration. Daugavpils university Faculty of Social Sciences. International scientific conference „Social and Economic Dimension of European Integration: Problems, Solutions, Perspectives”. Collected articles. Part II, Current problems of state and law. Daugavpils: Daugavpils university, Academic Publishing House "Saule", 2012, pp. 116–122. ISBN: 978–9984–14–585–3.
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22. Krivinsh A. Issue of defining the anti–corruption concept (public procurement aspect). We in time, space and development: Student Scientific Conference Collection, May 10, 2012. Rezekne: Rezekne Higher Education Institution, 2013, pp. 233–240. ISBN: 978–9984–44–114–6.
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24. Krivinsh A. The Anticorruptional Development of the Public Procurement Mechanism. *Humanities and Social Sciences Review*, 2013. Volume 02, No.01, pp. 229–240. ISSN: 2165–6258.
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29. Krivinsh A. Nature, causes and consequences of corruption. Daugavpils university Faculty of Social Sciences. 7th International Scientific Conference „Social sciences for regional development 2012: impact of the financial capital on the region’s economic competitiveness”. Daugavpils: Daugavpils university. Article is accepted for publication.

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31. Krivinsh A. Anti-corruption authorities and legal basis of their performance. III International Conference of State Police College. Collected articles. Riga: State Police College. Article is accepted for publication.
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33. Krivinsh A. The Analysis of the State of Corruption in the Public Procurements of the Republic of Latvia. International Journal of Multidisciplinary Thought, 2013. Volume 03, No.02, pp.399–403. ISSN: 2156–6992.
34. Krivinsh A. Latvian Republic public procurement anti-corruption legislation development assessment. Daugavpils university, Daugavpils university Association of young researchers. The 55th International scientific conference of Daugavpils university. Daugavpils: Daugavpils university. Article is accepted for publication.
35. Krivinsh A. Anticorruptional improvement of regulatory framework of public procurement execution in the Republic of Latvia. International Journal of Business and Management Studies, 2013. Volume 02, Nr.02, pp.427–432. ISSN: 2158–1479.

International Conferences

1. Participation and presentation in the IV International Scientific and Practical Conference „Theoretical and Practical Aspects of Expert

Investigation” arranged by LNEA and The Baltic Journal of Law on 25 and 26 November 2010 in Riga (Latvia). Presentation topic: „An expert in public procurement”. Report published in full in the edition „The Baltic Journal of Law”.

2. Participation and presentation in the International scientific Conference „Current problems of State and Law” arranged by Daugavpils university Faculty of Social Sciences on 26 and 27 November 2010 in Daugavpils (Latvia). Presentation topic: „Corruption issue in public procurement”. Report published in full in the Conference collected articles.
3. Participation and presentation in the International Scientific Conference „Organized Crime and Criminal Organizations: theoretical and organizational–tactical challenges. The current phenomenon and trends” arranged by Riga Stradins University Faculty of Law (Latvia), The Baltic Strategic Research Center of Latvian Academy of Sciences, Central Criminal Police Department of the State Police (Latvia), Mykolas Romeris University (Lithuania), Security and Policy Development Institute (Sweden) on 1 December 2010 in Riga (Latvia). Presentation topic: „Corruption problems in public procurements in the context of fight against organised crime”.
4. Participation and presentation in the I International Scientific Conference „Legal, sociological and psychological aspects of the Human safety” arranged by State Police College on 28 January 2011 in Riga (Latvia). Presentation topic: „Public Purchases and Corruption: the Aspect of Human Safety”. Report published in full in the Conference collected articles.
5. Participation and presentation in the International Interdisciplinary Scientific Conference „Crisis and its Management Capabilities” arranged by Riga Teacher Training and Educational Management

- Academy and Riga Stradins University Rehabilitation Faculty and Faculty of Law on 4 and 5 March 2011 in Riga (Latvia). Presentation topic: „Influence of crisis on corruption in public purchases”.
6. Participation and presentation in the 4th International Scientific–Practical Conference „Development of international and national law in modern times” Devoted to the 20 year anniversary of HSST arranged by Higher School of Social Technologies on 15 and 16 April 2011 in Riga (Latvia). Presentation topic: „Development of anti–corruption law in the context of social convergence.”. Report published in full in the Conference collected articles.
 7. Participation and presentation in the International Scientific and Practical Conference „Society. Human. Security. 2011.” arranged by Baltic International Academy and *Society for Baltic Security* on 15 and 16 April 2011 in Riga (Latvia). Presentation topic: „Experience of Foreign Countries in Prevention and Fight against Corruption”. Report published in full in the edition „Administrative and Criminal Justice”.
 8. Participation and presentation in the International Scientific Conference „International scientific–practical conference of young scientists and students „Time of challenges and opportunities: problems, solutions and perspectives” arranged by Baltic International Academy, Rezekne Higher Education Institution and Art Academy of Latvia on 26 and 28 May 2011 in Rezekne (Latvia). Presentation topic: „Corruption in public procurement in the perspective of typology”. Report published in full in the Conference collected articles.
 9. Participation and presentation in the International Scientific Conference „Role and Possibilities of Law Enforcement Authorities and Police in Ensuring Public Security” arranged by Riga Stradins University Faculty of Law (Latvia), State Police of Latvian Ministry

of the Interior, The Baltic Strategic Research Center of Latvian Academy of Sciences, Mykolas Romeris University (Lithuania), Security and Policy Development Institute (Sweden) on 28 September 2011 in Riga (Latvia). Presentation topic: „The problem of effectiveness of fight against corruption in the sphere of public procurement”.

10. Participation and presentation in the International scientific conference „Social and Economic Dimension of European Integration: Problems, Solutions, Perspectives” arranged by Daugavpils university Faculty of Social Sciences on 3 and 5 November 2011 in Daugavpils (Latvia). Presentation topic: „Procurement Commission in anti–corruption perspective: EU and U.S. legal practice integration”. Report published in full in the Conference collected articles.
11. Participation and presentation in the XII International scientific conference “Sustainable Business in Changing Economic Conditions” arranged by *School of Business Administration Turība* on 30 March 2012 in Riga (Latvia). Presentation topic: „Uncorrupted public purchases as the factor of sustainability of business”. Report published in full in the Conference collected articles.
12. Participation and presentation in the International Conference for Academic Disciplines „Vienna, Slovakia&Hungary MULTIDISCIPLINARY CONFERENCE” arranged by International Journal of Arts and Sciences on 1 and 5 April 2012 in Vienna (Austria). Presentation topic: „Professionalism of the public procurement practitioners from the perspective of fight against corruption”. Report published in full in the edition „Humanities and Social Sciences Review”.
13. Participation and presentation in the 54th International scientific conference of Daugavpils university arranged by Daugavpils

- university, Daugavpils university Association of young researchers on 18 and 20 April 2012 in Daugavpils (Latvia). Presentation topic: „Corruption prevention principles, methods and techniques in modern Latvia”. Report published in full in the Conference collected articles.
14. Participation and presentation in the II International Scientific Conference „Recent developments in preventing and combating crime in the world and Latvia” arranged by State Police College on 24 and 25 April 2012 in Riga (Latvia). Presentation topic: „A. Corruption coping principles, methods and techniques in modern Latvia”. Report published in full in the Conference collected articles.
 15. Participation and presentation in the International Scientific and Practical Conference „Society. Human. Security. 2012.” arranged by Baltic International Academy and *Society for Baltic Security* on 27 and 28 April 2012 in Riga (Latvia). Presentation topic: „Distribution of the Burden of Proof and Legal Presumptions within the Anticorruption Perspective”. Report published in full in the edition „Administrative and Criminal Justice”.
 16. Participation and presentation in the II International scientific–practical conference of young scientists and students „Time of challenges and opportunities: problems, solutions and perspectives” arranged by Baltic International Academy, Rezekne Higher Education Institution and Art Academy of Latvia on 17 and 18 May 2012 in Rezekne (Latvia). Presentation topic: „Corruption mechanism and risk characterization in public procurement”. Report published in full in the Conference collected articles.
 17. Participation and presentation in the 5th international scientific–practical conference „Theoretical and practical problems of the development of modern law” arranged by Higher School of Social Technologies on 18 and 19 May 2012 in Riga (Latvia). Presentation

- topic: „Legal and organizational framework of anti–corruption bodies”. Report published in full in the Conference collected articles.
18. Participation and presentation in the International Scientific Conference „The XIII international scientific conference „Financial Crisis –its course and socioeconomic consequences in Central and Eastern Europe” arranged by The John Paul II Catholic University of Lublin, Warsaw School of Economics, Pope John Paul II State Higher Vocational School in Biala Podlaska on 21 and 23 May 2012 in Nalencov (Poland). Presentation topic: „Financial crisis and corruption issue: the mutual correlation”. Report published in full in the Conference collected articles.
 19. Participation and presentation in the III International scientific and practical conference „Prospects and possibilities of psychology, business and social work in modern Europe” arranged by Baltic Psychology and Management University College, Baltic International Academy, College of Accounting and finance, Social and Humanitarian Research Center on 24 and 25 May 2012 in Riga (Latvia). Presentation topic: „Corruption level in public procurement in modern Latvia”. Report published in full in the Conference collected articles.
 20. Participation and presentation in the XXXIV International Research and Practice Conference „Solution of a social requirements and objective reality issues in economical and juridical sciences” arranged by International Academy of Sciences and Higher Education on 11 and 16 November 2012 in London (Great Britain). Presentation topic: „Subjects of corruption on an example of public procurement”. Report published in full in the Conference collected articles.
 21. Participation and presentation in the International Conference for Academic Disciplines „Rome 2012: International Conference for

- Academic Disciplines 2012” arranged by International Journal of Arts and Sciences on 29 October and 1 November 2012 in Rome (Italy). Presentation topic: „Anticorruptonal development of public procurement mechanism”. Report published in full in the edition „Humanities and Social Sciences Review”.
22. Participation and presentation in the 7th International Scientific Conference „Social sciences for regional development 2012: impact of the financial capital on the region’s economic competitiveness” arranged by Daugavpils university Faculty of Social Sciences and Regional Studies Association on 8 and 11 April 2012 in Daugavpils (Latvia). Presentation topic: „Nature, causes and consequences of corruption”. Report accepted for publication in the Conference collected articles.
 23. Participation and presentation in the 4th International Interdisciplinary Scientific Conference „Society. Health. Welfare. Intergenerational Solidarity: Problems and Solutions, Reality and Perspectives” arranged by Riga Stradins University on 23 November 2012 in Daugavpils (Latvia). Presentation topic: „The prevention of corruption in the sphere of public purchases”. Report accepted for publication in the Conference collected articles.
 24. Participation and presentation in the International scientific and practical conference „The transformation process of law, the regional economy and economic policy” arranged by Baltic International Academy, Daugavpils University, Riga Stradins University, Uniwersitet Przyrodniczo–Humanistyczny w Siedlcach and ISMA on 7 December 2012 in Riga (Latvia). Presentation topic: „Concept and mechanism of public procurement”. Report published in full in the Conference collected articles.

25. Participation and presentation in the 1st International Scientific Conference “European Applied Sciences: modern approaches in scientific researches” arranged by *ORT Publishing, The Center For Social and Political Studies „Premier”* on 17 and 19 December 2012 in Stuttgart (Deutschland). Presentation topic: „Proposals for preventing of corruption at the stage of elaboration of the procurement documents”. Report published in full in the Conference collected articles.
26. Participation and presentation in the III International Scientific Conference „The role of law enforcement bodies in ensuring of public order and security” arranged by State Police College on 24 and 25 April 2013 in Riga (Latvia). Presentation topic: „Anti–corruption authorities and legal basis of their performance”. Report accepted for publication in the Conference collected articles.
27. Participation and presentation in the V International Scientific and Practical Conference „Theoretical and Practical Aspects of Expert Investigation” arranged by LNEA and The Baltic Journal of Law on 15 and 16 March 2013 in Riga (Latvia). Presentation topic: „The role of experts in criminal proceedings related to corruption”. Report accepted for publication in the Conference collected articles.
28. Participation and presentation in the International Conference „Paris 2013: Euro–American Conference for Academic Disciplines” arranged by International Journal of Arts and Sciences on 8 and 11 April 2013 in Paris (France). Presentation topic: „The Analysis of the State of Corruption in the Public Procurements of the Republic of Latvia”. Report accepted for publication in the edition „International Journal of Arts and Sciences”.
29. Participation and presentation in the 55th International scientific conference of Daugavpils university arranged by Daugavpils

- university, Daugavpils university Association of young researchers on 10 and 12 April 2013 in Daugavpils (Latvia). Presentation topic: „Latvian Republic public procurement anti–corruption legislation development assessment”. Report accepted for publication in the Conference collected articles.
30. Participation and presentation in the International Scientific Conference „Topical Problems of Innovation Law” arranged by Riga Stradins University Faculty of Law (Latvia), Tallinn University Law School (Estonia), Mykolas Romeris University (Lithuania), Security and Policy Development Institute (Sweden) on 25 April 2013 in Riga (Latvia). Presentation topic: „Methodology of exploration of corruption in the sphere of public procurement”.
 31. Participation and presentation in the International scientific and practical conference „development of Law in Contemporary Society” arranged by Higher School of Social Technologies on 24 and 25 May 2013 in Riga (Latvia). Presentation topic: „About Concept of Corruption”. Report published in full in the Conference collected articles.
 32. Participation and presentation in the III International scientific–practical conference of young scientists and students „Time of challenges and opportunities: problems, solutions and perspectives” arranged by Baltic International Academy, Art Academy of Latvia, Baltic Psychology and Management University College, VSAA and ARPC on 16 and 18 May 2013 in Rezekne (Latvia). Presentation topic: „Corruption in public procurement in aspect of historical development”. Report published in full in the Conference collected articles.
 33. Participation and presentation in the International Conference „Munich 2013: End–of–Academic–Year Multidisciplinary

Conference” arranged by International Journal of Arts and Sciences on 23 and 26 June 2013 in Munich (Deutschland). Presentation topic: „Anticorruptional improvement of regulatory framework of public procurement execution in the Republic of Latvia”. Report accepted for publication in the edition „International Journal of Arts and Sciences”.

Local Conferences

34. Participation and presentation in the Local Conference „The annual RSU Scientific Conference 2011” arranged by Riga Stradins University on 14 and 15 April 2011 in Riga (Latvia). Presentation topic: „Transformation of mechanism of Latvian public procurements in the 21st century in the context of corruption prevention”.
35. Participation and presentation in the Local Conference 15th Student’s International scientific conference “We in space, time, development” arranged by Rezekne Higher Education Institution (Faculty of Humanities and Law) on 12 May 2011 in Rezekne (Latvia). Presentation topic: „The notion of corruption prevention in the field of public procurement”. Report published in full in the Conference collected articles.
36. Participation and presentation in the Local Conference „The annual RSU Scientific Conference 2012” arranged by Riga Stradins University on 29 and 30 March 2012 in Riga (Latvia). Presentation topic: „Theoretical and methodological basics of public procurement execution”.
37. Participation and presentation in the Local Conference Student’s International scientific conference “We in space, time, development” arranged by Rezekne Higher Education Institution (Faculty of Humanities and Law) on 10 and 12 May 2012 in Rezekne (Latvia). Presentation topic: „The notion of corruption combating in the sphere

of public procurement”. Report published in full in the Conference collected articles.

38. Participation and presentation in the Local Conference „The annual RSU Scientific Conference 2013” arranged by Riga Stradins University on 21 and 22 March 2013 in Riga (Latvia). Presentation topic: „Evaluation of effectiveness of fight against corruption in the sphere of public procurement in the modern Republic of Latvia”.

The Doctoral Theses has been presented at the meeting of the promotion council of Riga Stradins University. The paper consists of an introduction, 5 chapters, a summary, abstracts, list of bibliography and appendices.

A comprehensive scope of monographic literature, scientific articles and sociological research has been used to conduct a research and prepare the doctoral thesis. 546 sources have been used, including regulatory enactments, practice materials, judgements of courts and decisions of the Complaints’ examination commission of the Procurement Monitoring Bureau.

1. RECAPITULATIVE LAYOUT OF THE DOCTORAL THESIS

1.1. Theoretical Basis of the Research

Monographies and articles of the world-renowned scientists – theoreticians of corruption, such as Robert Klitgaard, Susan Rose-Ackerman, Michael Johnston, Paolo Mauro, Edwin Sutherland, as well as works of other experts, for example András Sajó, professor Vitaly Nomokonov (Номоконов В.А.), professor Boris Volzhenkin (Волженкин Б.В.), professor Viktor Lunejev (Лунеев В.В.), professor Natalya Lopashenko (Лопашенко Н.А.), professor Pavel Kabanov (Кабанов П.А.) professor Andrejs Vilks, researcher of the Latvia's leading corruption research centre –Valts Kalninsh etc. have been used by the author to create a scientific discussion¹.

¹ Klitgaard R., Maclean-Abaroa R., Parris H. L. *Corrupt Cities: A Practical Guide to Cure and Prevention.* – Oakland, CA: ICS Press, 2000; Волженкин Б.В. *Коррупция. Серия "Современные стандарты в уголовном праве и в уголовном процессе".* – СПб.: Санкт-Петербургский институт Генеральной прокуратуры РФ, 1998. – с. 8; Кабанов П.А. *Коррупция и взяточничество в России: исторические, криминологические и уголовно-правовые аспекты.* – Нижнекамск: Гузель, 1995; Klitgaard R. *Controlling Corruption.* Berkeley: University of California Press, 1988; Rose-Ackerman S. *Corruption and Government: Causes, Consequences, and Reform.* – Cambridge: Cambridge University Press, 1999; Johnston M. *Corruption as a Process.* In: Punch, M. Et al (ed.). *Coping with Corruption in a Borderless World.* Deventer: Kluwer Law and Taxation Publishers, 1993, p.52; Mauro P. *Corruption and growth // Quarterly Journal of Economics,* 1995; 110 (3): 681-712; Sutherland, Edwin H., Sellin, Thorsten. *Prisons of Tomorrow.* — Philadelphia, 1931; Sik E. *The Bad, the Worse and the Worst: Guesstimating the Level of Corruption.* *Political Corruption in Transition: A Skeptic's Handbook // Stephen Kotkin and Andras Sajo, Eds.* – Budapest, 2002; p.91-113; Nomokonov V. *On Strategies for Combating Corruption in Russia // Demokratizatsiya,* 2000; 8 (1): 124; Лунеев В. В. *Уголовное законодательство и общественно опасные реалии // Государство и право на рубеже веков / Материалы Всероссийской конференции).* Криминология. Уголовное право. Судебное право. – М, 2001. с.82-85; Лопашенко Н.А. *Противодействие российской коррупции: обоснованность и достаточность уголовно-правовых мер // [http://sartracc.ru/print.php?print_file=Pub/lopashenko\(18-03\).htm](http://sartracc.ru/print.php?print_file=Pub/lopashenko(18-03).htm) (sk.20.12.2013); Vilks A. *Aspects of organized transnational crime in countries of transition // NSFKS 43rd Research Seminar “Social Change and Crime in Scandinavian and Baltic Region” (Jurmala, Latvia; 2001): Scandinavian Research Council for Criminology,* 2002, p100-102; Kalniņš V. *Parlamentārā lobēšana starp pilsoņa tiesībām un korupciju.* Rīga: Providus, 2005.*

A substantial scope of national (The Republic of Latvia), foreign and international normative documentation, judgements of courts of the Republic of Latvia and international courts as well as decisions of the Complaints' Examination commission of the Procurement Monitoring Bureau have been analysed within the framework of the research.

1.2. Methods Used in the Research

For fulfilling the tasks of the doctoral thesis the following research methods have been applied: analysis and synthesis – court statistics, press review, analysis of discourse, international corruption indices; survey (interviews, personal conversations, expressed attitudes, expert opinions); analysis of legal literature; modelling (theoretical modelling of situations); observation (observations performed at daily work).

1.3. Main Results of the Research

Goal of the thesis is to explore corruption prevention and combating issues in public procurement sphere, to identify the prevalence rates, determinants and contributing factors and prevention opportunities in Latvia.

In the first chapter the author analyzes theoretical aspects of understanding corruption in public procurement, with particular emphasis on corruption definition problem, its nature, causes and consequences. A separate section is dedicated to the public procurement concept, mechanism and legal framework. In the first part of this work the author presents cognitive methodology of corruption in public procurement field, based on which the author has carried out an analysis of corruption situation in public procurement in Republic of Latvia.

In the second chapter of the thesis the author analyzes the problem of corruption in public procurement, including its historical aspects, typology and classification of corruption subjects involved, corruption risk elements in public procurement and their identification. During the development of the second chapter author's practical experience in public procurements was widely used.

The third and fourth chapter deals with issues related to the prevention and combating corruption in public procurement, namely the operation of the concept, principles, methods and techniques, subjects in Republic of Latvia, as well as an analysis of foreign experience in preventing and combating corruption.

The fifth chapter is devoted to the corruption prevention and combating perspectives and their assessment. In this chapter the author has made the evaluation of corruption prevention and combating measures efficiency in Republic of Latvia, assessment of anti-corruption legislation development stage in public procurement field in Latvia.

At the end the author summarizes the results of the study: presents conclusions of the thesis and proposals to reduce corruption in public procurement in Republic of Latvia. The main text is laid out on 276 pages, illustrated with 18 tables. In the literature review there are 546 sources.

1.3.1. Theoretical aspect of understanding of corruption

Having analysed etymology of the term ‘corruption’², doctrinal definitions of corruption³, concept of corruption within the meaning of

² Lat. „*corruptio*”.

³ Ford H.J. Municipal corruption // *Political Science Quarterly*, 1904; 19 (4): 673-686; Brooks R.C. Corruption in American politics and life. – New York: Dodd, Mead and Co, 1910; Sutherland, Edwin H., Sellin, Thorsten. Prisons of Tomorrow. — Philadelphia, 1931; Abueva J.V. The Contribution of Nepotism, Spoils and Graft to Political Development // *East-West Center Review*, 1966; (3): 45-54.; Bayley D.H. The Effects of Corruption in a Developing Nation // *Western Political Quarterly*, 1966; 19 (4): 719-732.; Leff N.H. Economic Development through Bureaucratic Corruption // *American Behavioral Scientist*, 1964; 8 (3): 8-14.; Leys C. What is the Problem About Corruption? // *Journal of Modern African Studies*, 1965; 3 (2): 215-230; Friedrich C.J. The Pathology of Politics: Violence, Betrayal, Corruption, Secrecy, and Propaganda. – New York: Harper & Row, 1972; Антонян Ю.М. Типология коррупции и коррупционного поведения // *Социология коррупции. Материалы научно-практической конференции.* – М., 2003. – С.37; Борзенков Г.Н. Уголовно-правовые меры борьбы с коррупцией. // *Вестник Московского университета*, 1993; 11 (1): 30; Комиссаров В.С. Уголовно-правовые аспекты борьбы с коррупцией. // *Вестник Московского университета*, 1993; 11 (1): 28; Кузнецова Н.Ф. Коррупция в системе уголовных преступлений // *Вестник Московского университета*, 1993; 11 (1): 21;

international legal terminology, as well as definitions of corruption in the regulatory enactments of certain countries, the author came to conclusion that definition of corruption has been integrated into regulatory enactments of several countries– both in criminal law and other regulatory enactments.

Thus, for example in the Republic of Latvia definition of corruption has been included in the Law on Corruption Prevention and Combating Bureau, which interprets corruption as a bribery or any other action by a public official intended to gain an unmerited benefit for himself or herself or other persons through the use of his or her position, powers thereof or by exceeding them.

Within the context of the doctoral theses the author interprets corruption as an abuse of entrusted public resources for the purpose of satisfying personal interests. The ‘narrow’ definition of corruption which associates this phenomenon merely with the third parties’ influence upon the official, manifesting itself as buying the public official, shall not be supported. Semantics and origin of the term ‘corruption’ shows that decomposition of power may appear by itself as a result of degradation of public sector officials.

The very core of the corruption is treachery of entrusted public interests in exchange for personal interests. The author holds a view that the basic reason of such conduct is a conflict between the public and the private, i.e. conflict between the collective and the individual. Effectiveness of influence of encouraging internal factors for officials to engage in corrupt activities in its turn depends not on quality or intensity of these factors, but on personal traits and awareness of the individual.

Three studies focusing on detection of the level of corruption in the sphere of public procurement in modern Latvia have been conducted by the author in the framework of the doctoral thesis: structural interviews with 10

Максимов С.В. Коррупция. Закон. Ответственность. – М.: АО "Центр ЮрИнфоР", 2000. – с. 9.

experts; survey of the residents of the Republic of Latvia (504 respondents); survey of 100 entrepreneurs.

1.3.2. The results of the structured interviews with experts

10 experts were asked to give a reply to identical questions concerning problems of the research, additional questions were also asked if needed, the answers were accurately recorded. The interviews have been conducted in 12 months period – from February 2, 2011 till January 11, 2012. Participants of the interviews were experts with rich experience (from 7 till 20 years) – highly skilled professionals in the field of their activity.

Expert judgement. It shall be concluded that absolutely all experts shared the opinion, that problem of corruption in the field of public procurement of Latvia is essential. Secondly, absolutely all experts indicated that violations take place in the sphere of public procurement in Latvia.

In response to the question on legal framework for performing of public procurements 7 experts hold a view that the existing legal framework (for performing of public procurements in Latvia) is not sufficient for effective prevention of corruption risks. 2 experts indicated that the aforesaid regulation is sufficient; 1 expert did not give a definite answer.

The following judgements of the experts were received as an answer to question – What kind of violations take place in public procurements and what the frequency of their occurrence is:

Entrepreneur holds a view that deliberate or unintentional violations of public procurement procedures take place every day. As a result the honest entrepreneurs fail to receive the expected profit and the entrepreneurs' trust and confidence in the state reduces.

The head of city council classifies the violations into ill-intentioned violations and inadvertent violations. He indicates that in case of violations the commissioning party may fail to receive the best tender and fail to conclude the most advantageous contract.

Member of the Saeima Committee on Defence, Internal Affairs and Corruption Prevention, the former head of the Corruption Prevention and Combating bureau (KNAB) states that violations in public procurements (including elaboration of the public procurement documentation in favour of the particular applicant, revealing of confidential information) are quite common and widespread. The expert expresses his concern about corruption offences that result in overpaid funds from the budget, the decrease of entrepreneurs' trust and confidence in the state and threats to fair competition.

The head of the Procurement Monitoring Bureau suggests that the number of complaints received by the Procurement Monitoring Bureau serves as an indicative of the frequency of violations taking place in the sphere of the public procurement. Generally it pertains to elaboration of procurement documentation containing discriminative norms. The complaint regarding the procurement documentation discharged by the Procurement Monitoring Bureau causes the necessity to suspend the announced procurement procedure and to eliminate violations. If violations have appeared at the tender evaluation stage, the commissioning party is obliged to reevaluate the submitted tenders.

The head of the Latvian Builders Association indicates that a failure to prepare the procurement documentation in good quality causes financial damages to tax-payers.

Senior researcher of the Latvia's leading corruption research centre, emphasizes procedural violations which result in reduction of the number of applicants. Which in its turn leads to increasing of commissioning party's costs, reduction of the quality of the procurement's subject matter, the commissioning party's failure to ensure the necessary control over quality of the contract execution?

When performing audits the State Audit Office frequently concludes that funds have been spent not for the intended purpose, management of the

funds have failed to be efficient and rational, no factors of quality have been defined for evaluation of the achieved results.

The deputy director of the State Police names elaboration of public procurement documentation in favour of the particular entrepreneur as the basic problem of the field; she considers that violations take place in approximately 30% of procurements. This is the cause for the rise in prices and purchases of non-competitive products.

The procurement expert claims that a prior agreement on public procurement results takes place in approximately 90% of procurements, therefore the quality of the public procurements is weak and hardships appear during execution of the contracts.

The deputy director of the Corruption Prevention and Combating Bureau distinguishes corruptive and non-corruptive offences and indicates that indiscriminately of kind of the offence they distort the market, reduce competition and increase the price of the subject matter of the procurement. Moreover corruptive offences are interrelated with receiving of illegal income and money laundering.

In response to the question **‘Which fields of public procurement are exposed to violations most of all?’** the experts shared a view that these are fields, where it is difficult to verify the pricing or check the actually achieved result, such as: construction (8 experts), IT – information technologies (5 experts), service procurements, security service, non-standard equipment, communication technologies, observation systems, public transport, consultations, public relations maintenance service.

Majority of the experts did not give definite answers to the question **‘How do you evaluate the spread of corruption in public procurements of Latvia?’** Most often the experts substantiated their difficulties to give a definite answer by the absence of statistics or lack of scientific research in the field.

Two experts, who gave their evaluation of level of corruption in percents, are convinced that the level of corruption in the field of public procurement is '35%' and 'more than 50%'.

In response to the question **'Is corruption in public procurements usually caused by actions of individuals or by groups of persons?'** expert opinions divided: 5 experts pointed out that corrupt actions are mostly performed by groups of persons; 2 experts shared the idea that corrupt activities are performed by individuals; 1 expert expressed the view concerning only the small procurements (corrupt actions are performed by individuals); 1 expert spoke only on big procurements (corrupt activities are performed by groups of persons), 1 expert did not give an answer to the question.

When discussing **the motivation of officials for performing corrupt activities in public procurements**, the experts mainly focused on greed of the officials, their wish to derive additional income, money, material wealth or personal gains. Three experts named political dependence as one of the motives for corruption.

Senior researcher of the corruption research centre provided the most extensive analysis of motivation for corruption of officials. The researcher indicated that besides such motive as the greed there may be other reasons for engaging of an official in corrupt activities, like – a wish to retain the power, gaining of funding for political parties, demonstrating obedience to the boss, in order to satisfy other passions.

In response to the question **'What is the main motive for performing corrupt activities in public procurements?'** the majority of experts indicated that the central motive is 'to derive higher profit'. Some experts expressed the belief that businessmen engage in corrupt activities in order to get status of the privileged and to develop their business; to obtain the procurement – for profit or to retain the business; to get the job and survive the crisis; to escape from bankruptcy.

Experts have different opinions on the issue— **who usually exercise influence over decisions regarding the winner of the procurement most of all** (procurement commission, administration of the commissioning party or businessmen): 4 experts emphasized the role of the commissioning party’s administration; 2 experts indicated that the decision is influenced by all three subjects simultaneously; 1 expert stated that according to the norms of the Public Procurement Law, the decision on the winner of the procurement shall be taken by the procurement commission; 1 expert commented on businessmen influence; 1 expert suggested that unlawful decisions are taken mainly due to influence of administration of the commissioning party and businessmen; 1 expert did not comment on the matter.

In response to the question **‘What liability shall be imposed on members of procurement commissions for offenses (if they do not pertain to bribe taking) in the field of public procurement?’** most of the experts suggested to impose administrative or disciplinary liability. Sometimes they proposed to intensify one or another punishment by imposing financial sanctions. One of the experts suggested imposing of criminal liability for such offenses if they concern the large–value procurements.

It is worthy of note that two experts expressed the opinion that imposing of real punishments on members of the procurement commission would result in inability of the commissioning party to establish the procurement commission (employees of the commissioning party will refuse to work in procurement commissions).

Summary of expert judgements.

Representatives of all groups under study (commissioning parties, the Public Procurement Monitoring Bureau, the Corruption Prevention and Combating Bureau, the State Police of Latvia, entrepreneurs, researchers who study the issue of corruption, the State Audit Office, legislators, public procurement executors) indicate that problem of corruption in the field of

public procurement of Latvia is essential. The experts share a view that violations take place in such fields of public procurement as construction, IT – information technologies, service procurements, security service, non–standard equipment, communication technologies, observation systems, public transport, consultations, public relations maintenance service.

In response to the question ‘How do you evaluate the spread of corruption in public procurements of Latvia?’ the majority of the experts indicated the necessity of statistic data and scientific research in the field for giving an exact answer to the question. Unfortunately the respondents could not substantiate their opinions with statistic data due to the absence of such information. The majority of experts (7 out of 10) hold a view that the existing legal framework for performing of public procurements in Latvia is not sufficient for effective prevention of corruption risks.

All experts (10) have suggested solutions for solving the problem of corruption in the field of public procurement.

1.3.3. Results of survey of the residents of the Republic of Latvia

In the framework of the doctoral thesis survey of the residents of the Republic of Latvia (504 respondents) has been conducted. The residents expressed their opinions regarding the level of corruption in the country.

Table 1.1.

Answers of the respondents to the question No 1: What in your opinion is the level of corruption in the Republic of Latvia in the following fields?

| # | Corruption in this area (sphere): (Percentage of respondents) | Corruption | | | | | Total: |
|---|--|------------|------------|-------------|-------------|--------------|--------|
| | | No | Is low | Is medium | Is high | Is very high | |
| 1.1. | The traffic police: | 1.2 | 6.3 | 28.2 | 43.9 | 20.4 | 100 |
| 1.2. | Prosecution service: | 4.4 | 27.4 | 36.1 | 25.2 | 6.9 | 100 |
| 1.3. | Law–courts: | 5.2 | 26 | 34.1 | 24.4 | 10.3 | 100 |
| 1.4. | Public (government) procurements: | 1.6 | 6.7 | 22.6 | 41.1 | 28 | 100 |
| 1.5. | Municipal procurements: | 3.4 | 5.8 | 23.8 | 41.3 | 25.7 | 100 |
| 1.6. | Medical institutions: | 1.2 | 10.1 | 26 | 41.9 | 20.8 | 100 |
| 1.7. | Institutions of higher education: | 5.4 | 32.3 | 34.1 | 21.8 | 6.4 | 100 |
| 1.8. | Institutions of general education: | 18.7 | 34.5 | 30.1 | 13.9 | 2.8 | 100 |
| 1.9. | Sstate revenue service: | 7.3 | 22.4 | 30.8 | 28.4 | 11.1 | 100 |
| The average percentage in nine areas (spheres): | | 5.4 | 19 | 29.6 | 31.3 | 14.7 | 100 |

Table 1.2.

**Answers of the respondents to question No 2:
What is your idea about the level of corruption in these spheres?**

| # | Corruption in this area (sphere): (Percentage of respondents) | Personal experience | Through conversations with acquaintances | Through mass media | Other | Total |
|---|--|---------------------|--|--------------------|------------|------------|
| 1.1. | The traffic police: | 42.3 | 34.1 | 20 | 3.6 | 100 |
| 1.2. | Prosecution service: | 11.9 | 23.8 | 54.8 | 9.5 | 100 |
| 1.3. | Law–courts: | 13.1 | 26.8 | 52.2 | 7.9 | 100 |
| 1.4. | Public (government) procurements: | 9.5 | 24.4 | 61.9 | 4.2 | 100 |
| 1.5. | Municipal procurements: | 10.3 | 33.1 | 51 | 5.6 | 100 |
| 1.6. | Medical institutions: | 29.6 | 36.1 | 31.1 | 3.2 | 100 |
| 1.7. | Institutions of higher education: | 11.3 | 39.3 | 39.9 | 9.5 | 100 |
| 1.8. | Institutions of general education: | 8.7 | 28.2 | 46.6 | 16.5 | 100 |
| 1.9. | State revenue service: | 13.7 | 15.7 | 55.9 | 14.7 | 100 |
| The average percentage in nine areas (spheres): | | 16.7 | 29.1 | 45.9 | 8.3 | 100 |

Table 1.3.

**Respondent answers to question No 3:
How important in your opinion is the problem of corruption in the
Republic of Latvia?**

| Answer/ number of respondent s in percents | Total | Riga | Vidzeme | Kurze me | Zemgale | Latgale |
|--|-------------|------|---------|-------------|---------|---------|
| Such a problem does not exist | 0 | 0 | 0 | 0 | 0 | 0 |
| Problem of minor importance | 2.6 | 2 | 5.3 | 2.6 | 2.6 | 1.3 |
| Problem of secondary importance | 9.9 | 7 | 10.5 | 13.2 | 13.2 | 10.7 |
| Important problem | 23.2 | 23.9 | 21.1 | 21.1 | 23.7 | 25.3 |
| Very important problem | 26.8 | 26.8 | 26.3 | 23.7 | 28.9 | 28 |
| One of the most essential problems of the country | 36.3 | 40.3 | 36.8 | 36.8 | 29 | 32 |
| It is difficult to evaluate | 1.2 | 0 | 0 | 2.6 | 2.6 | 2.7 |
| Total: | 100 | 100 | 100 | 100 | 100 | 100 |

The following important conclusions can be drawn from the results of the present study:

1. The residents of the Republic of Latvia hold a view that the level of corruption in the government and municipal procurements of Latvia is higher than the average level of corruption in nine fields under study (corruption in the Road Police, corruption in the Prosecutor's Office, corruption in the courts, corruption in government procurements, corruption in municipal procurements, corruption in medical institutions, corruption in the institutions of higher education, corruption in institutions of general education, corruption in the State Revenue Service).
2. When evaluating the level of corruption in the government and municipal procurements the residents more often than in evaluating of other fields chose the answer 'the level of corruption is high' and 'the level of corruption is very high'. Namely, **69.1% of respondents evaluate the level of corruption in government procurements as high or very high; 67% of the surveyed evaluate the level of corruption in municipal procurements as high or very high;** corruption in the Road Police is evaluated as high or very high by 64.3% of the respondents; 62.7% of the participants of the survey concern the level of corruption in medical institutions as high or very high; the corruption in the State Revenue Centre is evaluated as high or very high by 39.5% of the respondents; 34.7% of the surveyed evaluate the level of corruption in the courts as high or very high; 32,1% of the participants of the survey evaluate the level of corruption in the Prosecutor's office as high or very high; the level of corruption in the institutions of higher education is evaluated as high or very high by 28,2% of the respondents; 16.7% of the surveyed evaluate the level of corruption in institutions of general education as high or very high.

3. The results of this study did not show any significant difference in respondents' perception of corruption level in government or municipal procurements.
4. When the respondents were asked to answer the question 'How your view of corruption level in these fields has formed?' they were allowed to select **only one variant** of answer: 'personal experience', 'through conversations with the acquaintances', 'through mass media', 'other'. This approach separated real manifestations of corruption from the probable manifestations of corruption (the answer 'personal experience' and other responses). The findings accord with the earlier prognosis made before the survey, that highest indications of personal interaction occur in the fields where the respondents interact with the public sector, namely– the Road Police (42.3%) and medical institutions (29.6%). In regard to government procurements this index is 9.5% and in regard to municipal procurements – 10.3%. The variant of reply 'view of corruption level has formed as a result of conversations with acquaintances' was chosen by 29.1% of respondents (government procurements – 24.4%, municipal procurements – 33.1%).
5. The main factor that influenced the respondents' view of corruption level in the field of government and municipal procurement was information from mass media (this was indicated by 61.9% and 51% of respondents).
6. Corruption is defined as a significant and a very serious problem or as one of the most essential problems by 86.3% of respondents, which indicates that society perceives the problem of corruption and realizes the seriousness of the issue. This index does not differ significantly in the regions of Latvia (Vidzeme – 84,2%, Kurzeme – 81,6%, Zemgale

– 81,6%, Latgale – 85,3%), whereas the number of such respondents in Riga is– 91%.

7. Nobody of 504 respondents doubted the existence of corruption problem in the Republic of Latvia.

1.3.4. The results of the entrepreneurs' survey

The research sample was made by entrepreneurs (N=100), who have participated in public procurements in the Republic of Latvia in the last two years. Research and control group was formed by using the free access information at the home page of the Procurement Monitoring Bureau and home pages of the commissioning parties. One of the latest technologies for conducting the research – the on–line survey (on–line mode) was applied in order to find out the opinions of the entrepreneurs.

Participants of the survey were entrepreneurs, the majority of whom take part in public procurements regularly: 80% from the respondents participate in public procurements almost every month; 9% – approximately once in a quarter; 8% – several times a year, and only 3% from the respondents participate in public procurements not more than once in a year.

41% of the surveyed entrepreneurs offer mainly services to commissioning parties; 34% of respondents offer goods and 25% of respondents offer construction work. The proportion mentioned above corresponds to current situation on the public procurement market of the Republic of Latvia.

Division of respondents according to their legal status (Ltd (limited liability company) – 87%; JSC (joint stock company) – 10%; individual entrepreneur – 2%; other – 1%) corresponds to real facts of the procurement sphere. Respondents – entrepreneurs according to the company's registration territory: Riga – 59%; Vidzeme – 13%; Kurzeme – 9%; Zemgale – 14%; Latgale – 5%.

The number of employees in the companies of the surveyed entrepreneurs: 1 = 1%; 2–5 = 8%; 6–15 = 26%; 16–50 = 32%; 51–100 = 9%; more than 100 employees = 23%.

Respondents according to the parameter ‘how many years does your company operate on the market?’: more than 10 years – 65% respondents; 4–10 years – 28%; 2–3 years – 5%; less than a year – 2% respondents.

43% of the entrepreneurs who participated in the survey indicated, that the level of corruption in the public procurements of the Republic of Latvia is high or very high (correspondingly 29% and 14%); 33% of the surveyed reported that the level of corruption is medium; 16% of respondents said that the level of corruption in the field of public procurement is low; 8% of the surveyed entrepreneurs expressed the belief that corruption in this sector does not exist.

In response to the question, if the commissioning parties always apply the principle of equal treatment in regard to all applicants, the surveyed entrepreneurs gave the following answers: always apply – 5%; usually apply – 27%; apply in approximately a half of procurements – 34%; usually do not apply – 27%; never apply 7%. The results of this survey show that commissioning parties while performing of the public procurements most probably apply the principle of equal treatment in regard of applicants in approximately half of procurements. This point of view is supported by the majority of respondents’ answers (34%), and the fact that opposite views (always apply and never apply) have been supported by similar number of respondents. None of these opposite views have received the preference.

Only 9% of those surveyed reported that while participating in public procurements they have never felt that the commissioning party has been influenced by another applicant. Very seldom such an impression had 11% of the respondents; sometimes – 39%; often – 27%, almost always – 14% of respondents. The obtained data show that 81% of the surveyed entrepreneurs

had an impression that the commissioning party has been influenced by another applicant.

Although 44% of respondents indicated that action of commissioning party while performing public procurement never suggested that representatives of the commissioning party tried to force the applicant to give a bribe to the commissioning party, still 56% of respondents had such an impression (including 29%– very seldom; sometimes–19%; often– 7%; almost always – 1%). Only 45% of entrepreneurs are not ready to offer any benefits to the commissioning party, if such an action would allow becoming the winner of the public procurement. Unequivocally positive response was given by 4% of respondents; 5% gave answer ‘more ‘yes’ than ‘no’; 9% of the surveyed answered ‘more ‘no’ than ‘yes’; 14% of the respondents replied that their readiness to offer some benefit depends of the significance of the procurement; 23% of the surveyed entrepreneurs indicated that it depends from the situation or other circumstances.

When evaluating readiness of commissioning party’s representatives to receive special benefits, 32% of respondents hold a view that such benefits would be accepted depending on situation or other circumstances; 23% of respondents assume that benefits would be accepted sometimes; 18% of the surveyed consider that benefits would be accepted often; 12% of respondents indicated that representatives of the commissioning party would never accept the benefits; 8% of the surveyed assume that representatives of the commissioning party would accept the benefits almost always; 7% of respondents hold a view that representatives of the commissioning party would accept the benefits very seldom.

In response to the question if the Complaints Examination Commission of the Procurement Monitoring Bureau is independent in taking decisions and always takes grounded decisions when examining the complaints of the applicants, 39% of the respondents replied with affirmative; 30% of the

surveyed replied 'no' and 31% of the respondents indicated that they have never come into contact with the commission.

Only 4% of the respondents consider that the existing legal framework for performing of public procurements prevents the commissioning parties from implementing of corruptive schemes. 59% of the surveyed indicated that commissioning parties have an opportunity to implement corruptive schemes while applying the existing legal framework for performing of public procurements. The reply 'it is difficult give an evaluation' has been chosen by 37% of the respondents.

96% of the respondents indicated that the sphere of public procurement in the Republic of Latvia is politically influenced. In response to the question 'Do you think that public procurements in the Republic of Latvia are politically influenced?' 21% of the surveyed replied in the affirmative; the answer 'More 'yes' than 'no'' was chosen by 30% of the respondents; the reply 'It depends on the significance of the procurement' was chosen by 33% of the surveyed; 'More 'yes' than 'no'' was chosen by 12% of the respondents; only 4% of the participants of the survey expressed the belief that no political influence is exerted upon public procurements in the Republic of Latvia.

Important results have been acquired by summarizing the replies of the respondents to the question 'How many (in percents) public procurements in the Republic of Latvia in your opinion have been performed in bad faith?' The weighted average evaluation shows that 41% of public procurements have been performed in bad faith. In response to the question 'What you propose for solving the problem of corruption in the sphere of public procurement?' 73 out of 100 respondents gave their suggestions, which is a good indicator and evidence that entrepreneurs are interested in such researches. 27 respondents did not give any suggestions.

The entrepreneurs' survey allowed to detect the weak points in the public procurement mechanism and to pay more attention to them.

2. MAIN CONCLUSIONS AND PROPOSALS

As a result of the conducted research the author brings forward the following conclusions for defence:

1. Within the frames of dissertation research, the author interprets corruption as an abuse of entrusted public resources for the purpose of satisfying personal interests. The ‘narrow’ definition of corruption which associates this phenomenon merely with the third parties’ influence upon the official, manifesting itself as buying the public official, shall not be supported. Semantics and origin of the word ‘corruption’ shows that decomposition of power may appear by itself as a result of degradation of public sector officials.

2. The very core of the corruption in public procurements is treachery of entrusted public interests in exchange for personal interests. The basic reason of such conduct is a conflict between the public and the private, i.e. conflict between the collective and the individual. Effectiveness of influence of encouraging internal factors for officials to engage in corrupt activities in its turn depends not on quality or intensity of these factors, but on personal traits and awareness of the individual. It is necessary to reduce both the person’s willingness and practical opportunities to engage in corrupt activities in order to prevent potential instances of corruption.

3. As regards level of corruption in public procurements (i.e. during purchase of goods, services or construction work from the third parties performed by the public sector or its authorized person by using public funds) in the modern Republic of Latvia– analysis of several available sources, as well as results of the research conducted by the author of doctoral thesis (interviews with experts, population survey, entrepreneurs’ survey) enable to draw the following conclusions:

- Corruption is a significant problem in the field of public procurement of Latvia;

- Currently, the level of corruption in public procurements of Latvia is high;
- 69.1% of respondents evaluate the level of corruption in government procurements of Latvia as high or very high. The level of corruption in municipal procurements as high or very high has been evaluated by 67% of the surveyed (n=504 residents of Latvia);
- The level of corruption in the government and municipal procurements of Latvia is higher than the average level of corruption in the country;
- The society recognizes the corruption problem and is aware of its seriousness, but is not always ready to participate in solving of the problem.

4. The author distinguishes two groups of subjects of corruption in public procurements: an obligatory subject (without it corrupt activities cannot take place) and facultative subjects. Considering that corrupt activities can be implemented either as a result of interaction of two subjects (bribe taker and bribe giver), or by acting of one person, the bribe givers shall be considered as facultative, non-obligatory subjects of corruption. The obligatory subject of corruption in public procurements is not obligatory an official, it can be any person who has some connection to public resource to such an extent that it enables the use of the public resource for personal interests. Composition of subjects of corruption in the field of public procurement shall be examined more extensively, by comprising not only officials, other persons who are in charge of public resources and bribe givers, accomplices, but also such subjects as ‘covering group’ and groups that protect webs of corruption.

5. The method of theoretical modelling enables detection of definite actions that may be indicative of corruption taking place in the particular public procurement. Corruption can arise at absolutely every stage of public procurement (including stage of procurement planning, stage of selection of personnel involved into execution of public procurement, stage of elaboration

of the procurement procedure documents, stage of performing of public procurement, stage of contract implementation).

6. The corruption prevention politics of the Republic of Latvia has resulted in formally revised regulatory framework, establishment of a specialised institution – Corruption Prevention and Combating Bureau, and gradual education of society as well. Every year the number of respondents who are intolerant of corruption steadily grows. At the same time the careful and uncertain actions of the state in regard to fight against corruption leads also to increase in number of respondents who are ready to engage in corrupt activities. The main achievements in the sphere of corruption prevention in years 1995 – 2012 is regulatory framework in the sphere of fight against corruption that complies with the requirements of the EU and an increasingly rapid polarization of society in regard to issues of anti–corruption: the number of people who are condemning corruption increases, the same tendency refers to supporters of corruption. Such corruption prevention policy cannot be considered as effective. Special attention shall be paid to the fact that from 2005 to 2012 the number of respondents who are not ready to inform the authorities about instances of corruption at all (neither openly, nor anonymously) has almost doubled. In 2012 the number of such respondents has reached 42.1%. The rate mentioned above indicates that considerable proportion of residents do not trust public institutions if it regards counteraction to corruption. The issues of public procurement and corruption prevention opportunities in this segment have not become a subject of systemic research in the Republic of Latvia, even though the corruption risks in the sphere of public procurement in years 2009 – 2011 have increased considerably. Counteraction to corruption in public procurements in the Republic of Latvia is still treated as a part of the general context of corruption problem. In the field of corruption prevention the Republic of Latvia shall minimise influence of local oligarchs; it shall achieve also that unselfishness,

contentment, openheartedness and honesty play due role in the system of values of Latvian officials.

7. Indicators for evaluation of effectiveness of combating corruption are: the number of initiated criminal proceedings regarding corruption in public procurements (percentage of initiated criminal proceedings regarding corruption in public procurements against total number of instances of corruption including latent corruption); the number of court judgements and number of convicts (in percents against the number of initiated criminal proceedings); amount of the illegally obtained money that has been recovered (in percents against the total (including latent) amount of illegally obtained money that pertains to corruption in public procurements). In fact – the bigger number of initiated criminal proceedings and court judgements against the actual level of corruption in public procurements, the more effective is fight against corruption in the sphere of public procurements. Even the very modest assumptions regarding the level of latent corruption in the public procurements in the Republic of Latvia (20% from the total number of procurements performed in 2012) indicate sharp disproportion between the total number of potentially corrupt procurements (3380) and number of the initiated criminal proceedings. The aforesaid fact clearly shows that fight against corruption in the field of public procurements in the Republic of Latvia is still ineffective.

8. The conclusion regarding ineffectiveness of fight against corruption is also confirmed by the fact that the state frequently attempts to substitute real fight against corruption by imposing punishments for conducting other violations of law that are easier to investigate and are proveable. Thus, in 2010 when realizing that public procurements operate as a vital mechanism of utilizing of public funds, which is entailed in Latvia with high risks of corruption, the Corruption Prevention and Combating Bureau (KNAB) proposed *'to bring to responsibility persons for violations of laws in the field of public procurement and eventually to appoint an institution that will supervise*

this sphere'. Moreover the Corruption Prevention and Combating Bureau considers that administrative liability shall be imposed on officials by the Procurement Monitoring Bureau in order to reduce corruption in the sphere of public procurement. It shall be concluded, that unfortunately the excellent ability of the Corruption Prevention and Combating Bureau to understand risks of corruption in the sphere of public procurement is not enforced by the ability to anticipate and ensure correct and effective solutions of the problem. The second sphere of activity of public institutions is implementation of the conception 'punish without catching in the act' basing on the legal presumption and transference of burden of proving the guilt, as well as enforcing the initial property declaration – the so-called 'zero declaration', which in fact substitutes real combating of corruption by fight against consequences of corruption.

9. Having examined and evaluated methods and techniques of fight against corruption, the author comes to conclusion that in order to increase effectiveness of combating of corruption in the Republic of Latvia more frequent appliance of the operational experiment (with a prior improvement of its legal regulation) is necessary, i.e. to conduct preventive operational experiments to check and determine reaction of every official to an offer of a bribe or other gain as well as bring to criminal responsibility those officials, who would accept such offers. Criminal law shall prescribe liability for such corrupt activities as protectionism, favouritism, ungrounded granting of tax allowances etc. The principle of unavoidability of liability shall be implemented consequently – a person shall be held liable irrespectively of his/her material wealth or social status.

10. National legislation of the Republic of Latvia regulating the field of public procurement tolerates implementing of corrupt schemes by persons engaged in performing of public procurements. The objective of anti-corruptional development of the public procurement mechanism shall be fulfilled in four basic directions: A) reducing of the discreet power (monopoly

of power); B) applying of innovative anti–corruptional solutions in the process of public procurement performing; C) effective and professional control over the process of procurement; D) clear, strict and unavoidable liability.

11. None of the proposed methods and techniques will give the desirable result if it will be applied alone (outside the context of other methods). Every anti–corruptional method shall be intensified by correct attitude and patriotism of society, by of infusing the next generation with high moral standards. The aforesaid shows that applying of a complex approach is prerequisite for prevention of corruption.

Having done the research the author brings forward the following proposals for defence and implementation in order to reduce the level of corruption in the sphere of public procurement in the Republic of Latvia:

1. Anti–corruptional examination of every regulatory enactment that refers to the sphere of public procurement

Regulatory enactments of the Republic of Latvia and the European Union which regulate procurement implementation procedure do not specify the principle of prevention and combating of corruption as one of the basic principles of the procurement system operation, the main emphasis has been put on non–discrimination and free competition. The express analysis of the Public Procurement law performed by the author (see chapter ‘Assessment of Anticorruptional improvement of regulatory framework for public procurement execution in the Republic of Latvia’ of the doctoral thesis) proves that regulatory enactment contains norms that are dangerous from perspective of fight against corruption. In order to reduce risks of corruption anti–corruptional examination of all regulatory enactments pertaining to the sphere of public procurement shall be performed. Basing on the results of the examination appropriate amendments shall be introduced in regulatory enactments that will reduce opportunities to perform corrupt activities in the sphere of public procurement.

2. Limiting of freedom of action of public officials

Corruption appears and develops in the spheres where an official has a freedom to take decisions to his/her own judgement. Rather wide powers of procurement practitioners while organizing public procurements and selecting the winner of the procurements highlight one of the major potential sources of corruption risk in public procurements. Thus, for instance, while elaborating of documentation of the procurement procedure the commissioning party may achieve recognizing the commissioning party's favoured applicant as the winner of the procurement and exclusion of 'unwanted' applicants. The author proposes three solutions for limiting freedom of action of public officials: 1) obligatory applying of standard procurement documentation; 2) clear and unambiguous listing in regulatory enactments of factors that can be taken in consideration in case of applying criterion for selection of economically most advantageous tender; 3) approval of the supervising authority before applying of procedures sensitive to corruption (a single source purchasing, a closed competition, a price quotation, a negotiated procedure).

3. Applying of electronic tendering system and enhancing of openness

Applying of electronic tendering system (submitting of tenders and other required documents, announcing of results of procurements by electronic means) would minimize the number of direct contacts between representatives of the commissioning party and representatives of the suppliers, thus minimizing risks of corruption as well. Applying of electronic tendering system provides broad opportunities for ensuring of openness – by publishing of submitted documents and decisions taken. Minimizing of corruption risks implies renunciation of confidentiality of tenders. When participating in public procurements the applicants shall sign a statement confirming that submitted information is not a business secret. Such a solution would enable electronic publishing of the submitted tenders at the home page of the executer of the

public procurement and would encourage society's control. Besides, minutes of the procurement commission's meetings and reports shall be published on the internet as well. The state shall develop a united registry of public procurements that will ensure availability of all procurement agreements and their amendments to general public.

4. Centralization of procurements

From the perspective of fight against corruption preference shall be given to centralization of procurements and not decentralization. The potential negative effects of centralization (probable enlargement of amount of a bribe, increasing competition among 'big players' etc.) will be compensated by positive tendencies (better quality of procurements, more experienced professionals with wider knowledge, more effective performance of control).

A united centralized institution shall be established for performing of public procurements. The head of this institution shall be appointed by Saeima at the suggestion of the Cabinet of Ministers. Applicants are selected by the Cabinet of Ministers by means of competition. Municipalities establish joint regional centralized institutions upon a mutual agreement for performing municipal procurements. Such institutions operate in compliance with the regulations approved by the respective municipalities. The head of the regional centralized institution is appointed at the meeting of representatives of the municipalities.

In order to ensure operational effectiveness of the newly-established autonomous subjects, the number of such subjects shall be small. Namely, a single centralized institution for administration of public procurements and 5–10 regional centralized institutions for administration of municipal purchases shall be established.

5. Certification of members of procurement commissions

First of all, certification would set limits to a group of persons who would have rights to perform public procurement procedures. Secondly, certification would make this limited group transparent and easily controllable. It also would

ensure professionalism and quality of procurement practitioners, it would also increase prestige of the profession. Certification of the procurement specialists would prevent persons with doubtful reputation from involving into public procurement procedures. Due to the mechanisms mentioned above certification of the procurement specialists would strengthen the professionalism of the bureaucracy and would reduce the corruption risks in the sphere of public procurement.

The well-weighted mechanism of certification ensures effective ascertaining of presence of at least three anti-corruptional components in the personality of the procurement specialist: competence, experience and ethical standards. By combining eventual requirements of the certification exams, it is possible to reach the desirable proportion of the parameters as well as determine cases, when issuing of the certificate is denied.

Certification of the procurement specialists offers other advantages as well, thus strengthening the anti-corruptional effect of this solution. Thus, for example, certification improves the integrity of the procurement sector and competitiveness of the professionals; ensures the relevant training, trustworthiness and loyalty to one's profession; increases capacity and integrity of the institution and faithfulness of the employees. Although the author is aware of the fact that certification may not give the anticipated effect in countries with relatively high level of corruption, as the certification process itself may be intransparent and probably corrupt, still the author advocates the idea that due to the certification of the procurement practitioners the issue of the professionalism can become the focus of attention, thus causing a significant reduction of the corruption level in the sphere of the public procurement. The certification shall be performed in line with the nomenclature for the levels of competence introduced by Dreyfus and Dreyfus (1980) (Novice, Experienced Beginner, Practitioner, Knowledgeable practitioner, Expert). This gradation according levels of competence, confers each level the

right to perform procurements of one or another kind or participate in this process as an assistant only. Revocation of the certificate in case of tolerating malicious violations serves as an additional mechanism for reducing of corruption risks.

Rights to perform certification of procurement practitioners shall be granted to non-governmental organisation – the Association of Procurement Practitioners. A certification commission shall be comprised of procurement professionals who are practicing in Latvia, foreign experts and representatives of society (with rights of observer).

6. Procurer's Freedom from influence

It is necessary to delegate performing of public procurements to procurement specialists, who are free from influence of the commissioning party in order to minimise the political influence in the sphere of public procurement (including commissioning party's administration's influence upon the members of the procurement commission). For this purpose the author proposes to develop system that would increase independence of the members of the procurement commission. Namely, procurement practitioners shall be separated from influence of the commissioning party by delegating performing of public procurements to centralized institutions that are established for this purpose. Regulatory enactments shall prescribe that the heads of the centralized institution for administrating of public procurements and regional centralized institutions for administrating of municipal procurements are independent in performing of the specified functions and decision taking, they also bear responsibility for lawfulness of their actions. Regulatory enactments shall also contain provision specifying that the head of the centralized institution cannot be displaced during term of his/her office except in certain, known in advance cases. The head of the institution shall have powers to establish the organizational structure required for performing of functions. All

meetings of members of the procurement commission of the centralized institution shall be open, all the documents shall be available for public.

7. Separating of functions

Establishing of the centralized procurement institutions will enable reforming of the existing practice when several functions at a time – elaboration of a technical specification, specifying of requirements to the applicants, evaluating of tenders, awarding of rights to enter into procurement contract and in some cases even monitoring of the execution of the contract are performed by the same group of persons, namely, the procurement commission. After transferring the rights of performing procurement and decision taking to an independent procurement institution, the commissioning party will have the following functions: 1) formulation of requirements (elaboration of technical specification); 2) refusal of entering into procurement contract in case there are objective reasons (lack of funding; case when the need for the subject–matter of the procurement has lost topicality etc.); 3) monitoring of the contract execution, imposing sanctions for failure to fulfil contractual liabilities etc. The commissioning party will be able to control the course of the procurement procedure with the help of available information regarding the performed procurement. Regulatory enactments shall ensure the commissioning party’s rights to appeal the real action or decision of the central procurement institution effectively and quickly.

8. Development of control mechanism

The existing mechanism of control shall be developed in order to reach the following three basic objectives: 1) timeliness of control; 2) good quality of control; 3) adequate costs of control. The regulatory enactments shall prescribe that basic control must be done at the stage prior to concluding of the procurement contract. *Post factum* control shall be applied only in case of receiving of the relevant complaint or there is a real suspicion of violations. The persons in charge of implementing control shall be certified as experts in

the field of public procurement performing in order to ensure the quality of the control.

Considering that gain from total audit of procurements will be less than expenditure of resources, performing of control in the Republic of Latvia shall be done by a single institution, namely the Procurement Monitoring Bureau. Basing on the estimated contract price, specificity of the procurement, territorial belonging, existence of complaints and other factors the Procurement Monitoring Bureau shall decide upon including of the respective procurement procedure into register of public procurements under control.

9. Division of responsibility

When implementing the conception of the centralized procurement institutions, responsibility for the necessity to purchase the subject matter of the procurement as such, elaboration of non-discriminating technical specification and supervision of execution of the procurement contract shall be imposed on the administration of the commissioning party. The responsibility for lawfulness of the procurement procedure and the decision taken in its turn shall be imposed on the head of the centralized procurement institution. Practice when the responsibility for action of the institution has been imposed on the head of the institution and not on the non-management employees, will provide stimuli to the head of the institution for developing of the mechanisms of the inner control or performing personal control over the course of the procurement procedure, it will also force the head of the institution to keep and reinforce lawfulness during implementation of procurement procedures, besides it will significantly reduce the willingness of the head of the institution to exert political influence to change the results of the fulfilled procurement. Liability shall be imposed upon the non-management members of the procurement commission only in cases, when indications of criminal actions can be detected in their actions.

10. Encouraging of professional ethics

Professional ethics is the most effective means against corruption, because the official who does not violate ethical standards does not need an outer monitoring, even in conditions that are highly sensitive to corruption he/she will not engage in unlawful deals. An obligation to monitor observance of code of ethics by certified specialists during examination of complaints of the entrepreneurs, commissioning parties and other interested persons shall be imposed upon the Association of Procurement Practitioners along with rights to perform obligatory certification of members of procurement commissions. In instances of severe violation of the code of ethics by procurement practitioner, the Association of Procurement Practitioners shall have right to perform revocation of the issued certificate. Decision on revocation of the certificate shall be reversible.

11. Development of appellation mechanism

Opportunity to submit *actio popularis* complaint shall be provided for in the national legislation of the Republic of Latvia, which means that the obligation to examine complaints submitted by public organizations, associations or other persons, who are not interested in entering the procurement contract, though concerned about unlawful actions taking place in public procurement procedures, shall be imposed upon the Procurement Monitoring Bureau.

12. Amendments to regulatory enactments.

Summing up the conclusions and proposals mentioned above, the author offers to make the following amendments to regulatory enactments.

The Public Procurement Law:

- To restate Section 8, Paragraph 9 of the law to provide as follows: ‘If the commissioning party chooses to apply a closed competition or a negotiated procedure, it shall send argumentation for the choice of type of the procedure to the Procurement Monitoring Bureau before applying the respective procedure. The Procurement Monitoring

Bureau within 3 working days after receipt of the aforesaid substantiation examines it and sends a written report regarding approval or disapproval of applying a closed competition or a negotiated procedure.’

- To supplement Section 67 of the law with paragraph 7 to provide as follows: ‘Within 3 working days following conclusion of the procurement contract the Commissioning party sends a copy of the procurement contract for including into the United register of public procurement contracts, administration of which is performed by the Procurement Monitoring Bureau. The same procedure shall be applied to amendments made in the procurement contract. Data of the United Register of public procurement contracts shall be publicly available.’
- To supplement Section 22 of the law with paragraph 4 to provide as follows: ‘Only certified procurement specialists may be accepted as members of public procurement commission. Certification procedure of the procurement practitioners is prescribed by the Cabinet of Ministers.’
- To supplement Section 81 of the law with Clause 8² to provide as follows: ‘Obligatory pre-examination of procurement procedures shall be made if contract price of the procurement is equivalent to or exceeds the limits of contract prices stipulated by the Cabinet of Ministers.’
- To supplement Section 83, Paragraph 1 of the law with the following sentence to provide as follows: ‘Nongovernmental organisations have the authority to submit the aforesaid complaint’.

To supplement the law with Section 24¹ to provide as follows: ‘**Section 24¹ Limitations of responsibility of the procurement commission.** (1) Liability in the sphere of public procurement shall be

imposed upon procurement commission only in cases when indications of criminal offences have been detected in their actions. (2) The responsibility for lawfulness of the procurement procedure – its conformity with procedural and substantive legal provisions shall be imposed on the head of the centralized procurement institution. (3) Responsibility for the necessity to purchase the subject matter of the procurement as such, elaboration of non-discriminating technical specification and supervision of execution of the procurement contract shall be imposed on the administration of the commissioning party.

The Criminal law

To supplement the Criminal Law with Section 326.⁵ to provide as follows:

‘Section 326.⁵ Corruptive lobbying in the sphere of public procurements.

(1) Intentional communication with state or municipal institutions with the aim to exert influence over the decision-taking process in the public procurements for the purpose of satisfying personal interests, if such communication is associated with bribery or accepting of an unmerited privileges or unlawful benefits for himself or herself – punishment of deprivation of liberty for a period not exceeding 3 years or permanent deprivation of liberty or a community service or a fine shall be applied. (2) For the same actions, if committed by a group of people by a prior agreement– punishment of deprivation of liberty for a period not exceeding 5 years or permanent deprivation of liberty or a community service or a fine shall be applied.

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