

Excerpts from *The German Criminal Code*:

(The excerpts start on the next page)

## GERMAN CRIMINAL CODE

Criminal Code in the version promulgated on 13 November 1998, Federal Law Gazette [Bundesgesetzblatt] I p. 3322.

Last amended by Article 3 of the Law of 2 October 2009, Federal Law Gazette I p. 3214.

### CHAPTER TWENTY-SIX

#### RESTRICTIVE PRACTICES OFFENCES

##### **Section 298 - Restricting competition through agreements in the context of public bids**

(1) Whosoever upon an invitation to tender in relation to goods or commercial services makes an offer based on an unlawful agreement whose purpose is to cause the organiser to accept a particular offer shall be liable to imprisonment not exceeding five years or a fine.

(2) The private award of a contract after previous participation in a competition shall be equivalent to an invitation to tender within the meaning of subsection (1) above.

(3) Whosoever voluntarily prevents the organiser from accepting the offer or from providing his service shall not be liable under subsection (1), also in conjunction with subsection (2) above. If the offer is not accepted or the service of the organiser not provided regardless of the contribution of the offender he shall be exempt from liability if he voluntarily and earnestly makes efforts to prevent the acceptance of the offer or the provision of the service.

##### **Section 299 - Taking and giving bribes in commercial practice**

(1) Whosoever as an employee or agent of a business, demands, allows himself to be promised or accepts a benefit for himself or another in a business transaction as consideration for according an unfair preference to another in the competitive purchase of goods or commercial services shall be liable to imprisonment not exceeding three years or a fine.

(2) Whosoever for competitive purposes offers, promises or grants an employee or agent of a business a benefit for himself or for a third person in a business transaction as consideration for such employee's or agent's according him or another an unfair preference in the purchase of goods or commercial services shall incur the same penalty.

(3) Subsections (1) and (2) above shall also apply to acts in competition abroad.

##### **Section 300 - Aggravated cases of taking and giving bribes in commercial practice**

In especially serious cases an offender under section 299 shall be liable to imprisonment from three months to five years. An especially serious case typically occurs if

1. the offence relates to a major benefit or
2. the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

##### **Section 301 - Request to prosecute**

(1) The offence of taking and giving bribes in commercial practice under section 299 may only be prosecuted upon request unless the prosecuting authority considers proprio motu that prosecution is required because of special public interest.

(2) The right to file the request under subsection (1) above belongs, in addition to the victim, to all or the business persons, associations and chambers indicated in section 8(3) Nos 1, 2, and 4 of the Restrictive Practices Act.

### **Section 302 - Confiscatory expropriation order and extended confiscation**

(1) In cases under section 299(1), section 73d shall apply if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(2) In cases under section 299(2), section 43a and section 73d shall apply, if the offender acts as a member of a gang whose purpose is the continued commission of such offences. Section 73d shall also apply if the offender acts on a commercial basis.

### Section 330d - Definitions

Within the meaning of this chapter

1. a body of water shall be surface water, ground water and the sea;
2. a nuclear facility shall be a facility for the production or treatment or processing or fission of nuclear fuels or for the enrichment of irradiated nuclear fuels;
3. dangerous goods shall be goods within the meaning of the Transportation of Dangerous Goods Act or an ordinance based thereon and within the meaning of the provisions relating to the international transportation of dangerous goods in the respective territories of their application;
4. a duty under administrative law shall be a duty which arises from
  - (a) a legal provision;
  - (b) a judicial decision;
  - (c) an enforceable administrative act;
  - (d) an enforceable condition to an administrative act; or
  - (e) a contract under public law to the extent that the duty could also have been imposed by an administrative actand which serves to protect against dangers or harmful effects on the environment, especially on persons, animals or plants, bodies of water, the air or the soil;
5. an act without a permit, planning approval or other permission shall be also an act on the basis of a permit, planning approval or other permission which was secured by threats, bribery or collusion or obtained by deception through incorrect or incomplete statements.

## CHAPTER THIRTY

### OFFENCES COMMITTED IN PUBLIC OFFICE

#### Section 331 - Taking bribes

(1) A public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine.

(2) A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine. The attempt shall be punishable.

(3) The offence shall not be punishable under subsection (1) above if the offender allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorises the acceptance or the offender promptly makes a report to it and it authorises the acceptance.

#### Section 332 - Taking bribes meant as an incentive to violating one's official duties

(1) A public official or person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from six months to five years. In less serious cases the penalty shall be imprisonment not exceeding three years or a fine. The attempt shall be punishable.

(2) A judge or an arbitrator, who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform a judicial act and thereby violated or will violate his judicial duties shall be liable to imprisonment from one to ten years. In less serious cases the penalty shall be imprisonment from six months to five years.

(3) If the offender demands, allows himself to be promised or accepts a benefit in return for a future act, subsections (1) and (2) above shall apply even if he has merely indicated to the other his willingness to

1. violate his duties by the act; or
2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

#### Section 333 - Giving bribes

(1) Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier in the Armed Forces for that person or a third person for the discharge of a duty shall be liable to imprisonment not exceeding three years or a fine.

(2) Whosoever offers promises or grants a benefit to a judge or an arbitrator for that person or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine.

(3) The offence shall not be punishable under subsection (1) above if the competent public authority, within the scope of its powers, either previously authorises the acceptance of the benefit by the recipient or authorises it upon prompt report by the recipient.

#### Section 334 - Giving bribes as an incentive to the recipient's violating his official duties

(1) Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier of the Armed Forces for that person or a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from three months to five years. In less serious cases the penalty shall be imprisonment not exceeding two years or a fine.

(2) Whosoever offers, promises or grants a benefit to a judge or an arbitrator in return for the fact that he

1. performed a judicial act and thereby violated his judicial duties; or
2. will in the future perform a judicial act and will thereby violate his judicial duties,

shall be liable in cases under No 1 above to imprisonment from three months to five years, in cases under No 2 above to imprisonment from six months to five years. The attempt shall be punishable.

(3) If the offender offers, promises or grants the benefit in return for a future act, then subsections (1) and (2) above shall apply even if he merely attempts to induce the other to

1. violate his duties by the act; or
2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

### **Section 335 - Aggravated cases**

(1) In especially serious cases

1. of an offence under
  - (a) Section 332(1) 1st sentence, also in conjunction with (3); and
  - (b) Section 334(1) 1st sentence and (2), each also in conjunction with (3),
 the penalty shall be imprisonment from one to ten years and
2. of an offence under section 332(2), also in conjunction with (3),  
the penalty shall be imprisonment of not less than two years.

(2) An especially serious case within the meaning of subsection (1) above typically occurs when

1. the offence relates to a major benefit;
2. the offender continuously accepts benefits demanded in return for the fact that he will perform an official act in the future; or
3. the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

### **Section 336 - Omission of an official act**

The omission to act shall be equivalent to the performance of an official act or a judicial act within the meaning of sections 331 to 335.

### **Section 337 - Arbitration fees**

The fees of an arbitrator shall only be a benefit within the meaning of sections 331 to 335 if the arbitrator demands them, allows them to be promised him or accepts them from one party unbeknown to the other or if one party offers, promises or grants them to him unbeknown to the other.

### **Section 338 - Confiscatory expropriation order and extended confiscation**

(1) In cases under section 332, also in conjunction with section 336 and section 337, section 73d shall apply if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(2) In cases under section 334, also in conjunction with section 336 and section 337, section 43a and section 73d shall apply if the offender acts as a member of a gang whose purpose is the continued commission of such offences. Section 73d shall also apply if the offender acts on a commercial basis.

### **Section 339 - Perverting the course of justice**

A judge, another public official or an arbitrator who in conducting or deciding a legal matter perverts the course of justice for the benefit or to the detriment of a party shall be liable to imprisonment from one to five years.