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Item Type	Book
Authors	Transparency International
Publisher	Transparency International
Rights	With permission of the license/copyright holder
Download date	2026-11-20 01:05:26
Link to Item	http://hdl.handle.net/20.500.12424/187549

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NATIONAL INTEGRITY SYSTEM ASSESSMENT
POLAND

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EXECUTIVE SUMMARY

CAN WE REALLY TALK ABOUT A "NATIONAL INTEGRITY SYSTEM IN POLAND"?

This assessment of the National Integrity System (NIS) evaluates Poland's key institutions in terms of their capacity to prevent corruption and maintain the integrity of the system, examining both the legal framework and what happens in practice. The report examines the extent to which Polish institutions function as intended and whether Poland has an effective strategy for fighting corruption. These institutions are assessed in the economic, political and socio-cultural context of the country. This study of institutions and their contexts thus provides an overall picture of the Polish national integrity system and its capacity to prevent corruption.

The picture emerging from the reports assessing the institutions which, with time, could form a coherent system of integrity of public life in Poland, can be described as only fairly satisfactory. The general profile of corruption in Poland allows us to claim that it is not a phenomenon of dramatic proportions or one that threatens the foundations of the state and the social order in Poland. Nonetheless there are numerous problematic areas which must be addressed if we are to talk meaningfully about having a functioning national integrity system in the country.

IN SPITE OF SOME SUCCESS, WE MUST GO BACK TO THE BASICS

The corruption profile of this report shows, first of all, that currently corruption is no longer a phenomenon of a systemic nature, as it used to be in mid 1990s. Such a conclusion can be drawn both from this assessment (more about it later) and from other data quoted in this study. For instance, the two key indicators, "rule of law" and "control of corruption", from the list of the *World Governance Indicators* prepared by the World Bank for the purpose of international analyses and comparisons, show that throughout the years preceding the publication of this study, Poland has been gaining an ever better reputation in the view of analysts, investors, entrepreneurs and experts evaluating our country from the point of view of the quality of governance or ease of carrying out business activity. A similar conclusion may be drawn from the results of the *Global Integrity Index* 2010 monitoring in which Poland scored 80 out of 100 points. **This result means that the capability of our country to control corruption in the areas of such key importance as business activity, political processes (including e.g. the functioning of political parties or**

electoral law), operation of the basic executive, judicial or legislative authority bodies or the control of corruption by non-governmental organisations, law enforcement agencies or central anti-corruption bodies has been assessed as moderately good. Therefore, the situation is not bad as we have a number of effective anti-corruption instruments at our disposal which we use with better or worse results. However, there is still a lot to be done, as shown by the analysis.

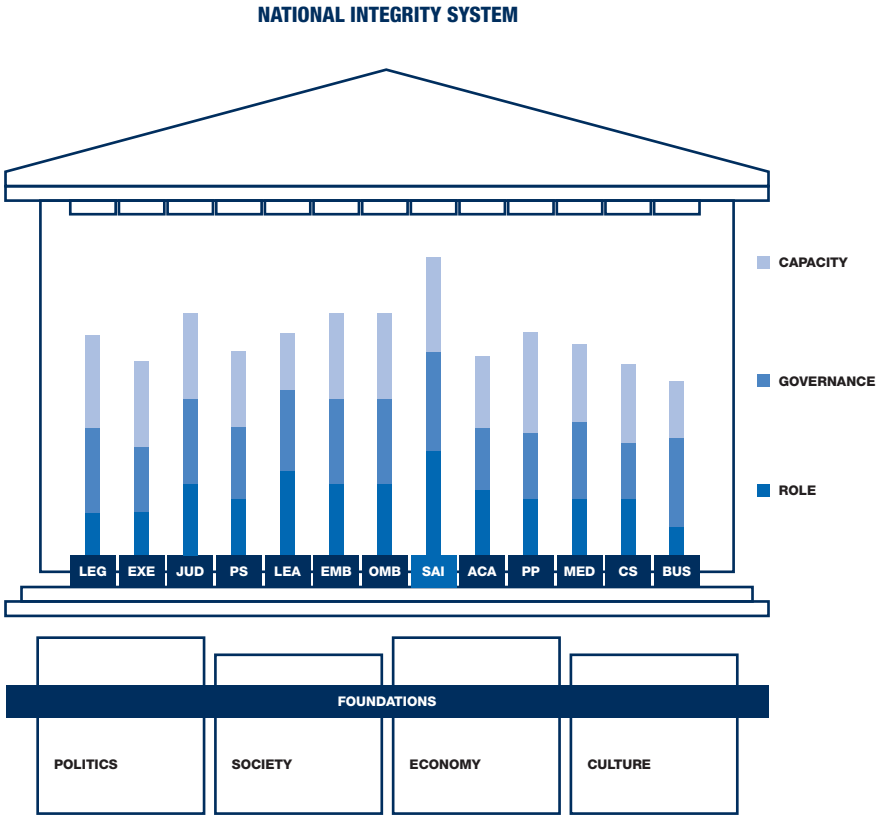
Furthermore, the overall assessment of anti-corruption activities carried out by Polish authorities cannot be described as bad, either. Poland lacks something that might be called "anti-corruption policy", yet, it is not the case that nothing has been or is happening in this respect. A number of positive changes have been introduced following the Poland's accession to the European Union. During the pre-accession period, the first in-depth analyses of the problem of corruption were carried out[1]. Year 2002 saw the first government anti-corruption strategy being adopted, moreover, between 2002-2005 numerous, important legal changes were passed (e.g. a special amendment of the Criminal Code extending penalisation of corruption). In the subsequent years some more or less successful initiatives were undertaken to raise the standards of public life in Poland (for instance, in 2006 the Central Anti-corruption Bureau was established, its operations being the focus of one of the detailed reports).

Thus, even though the actions of the public authorities in Poland to counteract corruption are rather chaotic, sometimes contradictory or even controversial, they are, nevertheless, being continued and clearly are bringing noticeable results as noted by the present monitoring or other international analyses done e.g. by the GRECO group or the World Bank.

It has to be underlined, however, that corruption in Poland still entails considerable risks. Corruption continues to be present in various spheres of public life and the level of anti-corruption protection is unsatisfactory as concluded by the report prepared by the Institute of Public Affairs.

1| Bank Światowy, Korupcja w Polsce. Raport, Warszawa 1999

FOUNDATIONS – STABILISING BUT NOT YET STABLE



LEG. Legislature
EXE. Executive
JUD. Judiciary
PS. Public Sector
LEA. Law Enforcement Agencies
EMB. Electoral Management Body
OMB. Ombudsman
SAI. Supreme Audit Institution
ACA. Anti Corruption Agencies
PP. Political Parties
MED. Media
CS. Civil Society
BUS. Business

As indicated by the report, Poland experiences difficulties with creating a legal and institutional environment for fighting corruption which stem mainly (which is paradoxical, in a way) from the weak foundations for this type of activity.

Our analysis confirms that, invariably, for more than ten years the will to fight corruption among the decision-makers has not proved to be very strong. One reason for that are numerous unsuccessful attempts to launch a comprehensive anti-corruption policy. The already

mentioned government anti-corruption strategy of 2002, implemented for the subsequent seven years, was, in fact, a rather chaotic collection of certain solutions more or less connected with the issue of improving the quality of public life or fighting corruption crime.

Whereas in the years 2009-2011, the government pursued practically no horizontal anti-corruption policy. Even though, a plenipotentiary (at a minister's rank) for preparing a programme for fighting abuse of authority in public institutions was appointed at the Prime Minister's Chancellery, the position had soon to be cancelled due to insufficient political support and lack of resources crucial to undertake strategic actions to reduce corruption.

All in all, the history of the ineffective efforts aiming at formulating an anti-corruption policy proves best that the political environment is not a factor conducive to building a strong system of integrity, transparency and quality of public life in Poland.

Moreover, the Polish society itself seems to lack the potential to create favourable conditions for increasing and strengthening the transparency of public life and creating effective anti-corruption mechanisms. Even though, considering the period of several years preceding the preparation of this study, it may be noticed that Poles are more and more willing to condemn corruptive behaviour[2]. Yet, the society (including non-governmental organisations) is reluctant to join initiatives aiming to improve the quality of governance, increase the transparency of public life or reduce corruption. **Corruption is increasingly being condemned, however, at the same time acquiescence to nepotism and cronyism is still common. Even more alarmingly, it is often excused by the country's elite.** A good illustration of such an abuse is year 2008 that witnessed quick careers in the structures of the Agricultural Social Insurance Fund (KRUS) of relatives and friends of politicians from the Polish People's Party (PSL) of Waldemar Pawlak, at the time the deputy Prime Minister and the head of PSL. Pawlak excused those practices saying that parents should be proud to see their children "[…] reveal similar interests and wish to follow in their parents' footsteps"[3].

Cultural conditions are not favourable, either, for stimulating the public action aiming at improving the quality of public life and reducing corruption. An implication for that is particularly low level of trust in public institutions, resulting partially from historical factors (mainly the period of the Partitions of Poland and the years of the communist regime were not conducive to citizens' positive attitudes towards the state). In this respect, Poland seems to have come to a stalemate. Low level of trust in public bodies discourages them from making efforts to improve relations with the public or, even worse, encourages exerting excessive control (manifested by multiplied procedures and regulations, not necessarily effective, for instance, in the area of public procurement) which, in turn, prevents a growth of confidence in the public sector. As a result, public institutions cannot evolve towards greater openness, friendliness of operations and efficiency.

The relatively strongest foundations for undertaking action aimed at fighting corruption, increasing the transparency of public life and implementing the principles of good governance, may be found in the realm of economy. In this area, Poland, perhaps, has not achieved any spectacular success, it has managed, however, to reach stabilisation. The economic situation of the society is continuously improving. The quality of life is getting better, private companies are

2| Barometr korupcji 2009, Fundacja im. Stefana Batorego / CBOS, Warszawa 2009

3| Nie ma nic złego w zatrudnianiu rodziny, Dziennik, wyd. 08.04.2008

increasing efficiency. The public finance sector is undergoing reforms, albeit slowly. In the broadly understood economic sector corruption has obviously not disappeared but the companies' mode of operation and the policy of the state seem to be more and more rational.

To sum up, at the most fundamental level (to use the metaphor applied by Transparency International), Poland has quite a good potential for building a system of transparency and anti-corruption solutions. Although the tolerance for corruption is still too strong, Poles have already realized that in order to have a strong economy, it is necessary to rationalize and improve the integrity of public life. Poland is capable of building a better, more rational state and society, more resistant to corruption and irregularities. The point is that (as the detailed reports show) this potential is not used in all the areas of public life.

STRONGEST AND WEAKEST INSTITUTIONS OF THE NIS

While summing up this rather elaborate study, it is worth focusing on the areas which have received diametrically opposite scores. Let us start with those assessed positively.

In the whole evaluation, the highest score (88 out of 100) has been awarded to the Supreme Audit Office (NIK). Such a good evaluation of NIK, results mainly from the fact that, in spite of a number of turbulences of various types, the Office is still perceived as very independent and professional in its operations. NIK scores highest due to its internal structure, meticulous execution of its functions, as well as high standards of work of NIK's inspectors.

Although there appear to be some discrepancies between the letter of law or the ethical codes for NIK employees and its practice (for instance lack of clear principles for using the municipal assets by NIK branch offices, which did lead to some irregularities), in general, NIK is one of the few impeccable institutions in Poland. Furthermore, it is difficult to overestimate the vital role NIK plays in counteracting corruption, caring for transparency and integrity in public life. The assessment of the general potential of NIK as an important element of the network of institutions improving the quality of public life in Poland, however, is lowered mainly by insufficient financial resources, proposals for changes in the provisions that regulate the operation of the Office which may reduce its independence; as well as the still limited ability to enforce its own recommendations resulting from the audits (in this respect, NIK may practically only appeal, remind and, of course, draft motions to the prosecutor's office to prosecute the guilty of irregularities).

One of the second strongest pillar of the integrity of public life in Poland, according to the results of the evaluation, is the Ombudsman (RPO). Similarly as in the case of NIK, the relatively high score awarded to this institution results from, among other things, the impeccable reputation the institution enjoys. Moreover, considering the criteria used in the monitoring exercise, the office of the Ombudsman obtained very good results – mainly due to maintaining high level of transparency of internal operations, a strong position of the Ombudsman *vis*-à-*vis* other authorities, independence from the current political situation and the professionalism in action. Nevertheless, the good score achieved by RPO requires some comment, as it results primarily from the objective conditions that determine the formal strength of this institution.

If we consider the role the Ombudsman plays in counteracting corruption, promoting transparency, strengthening the high standards of public life or good governance, it will turn

out that his role is not so prominent. It results from the fact that the activities of the Ombudsman focus, first of all, on the objectives connected with the improvement in the main areas of citizens' rights, for instance, protection of the basic freedoms. The issues related to the broadly understood integrity of public life, counteracting corruption or the right to good governance are not fully included in an Ombudsman's duties. Therefore, an Ombudsman devotes less attention to restrictions in access to public information, control of a conflict of interests or violation of the public administration's ethical codes. Perhaps such issues could be raised more often by RPO, however, the office lacks the institutional capacity (first of all financial and human resources) to do so, which, in fact, was one of the factors lowering the assessment of the Ombudsman's activity with respect to improving the integrity of public life.

In brief, there is great potential in the office of the Citizens' Rights Ombudsman, which could be employed to improve the functioning of other elements constituting the network of institutions with the greatest influence on the integrity of public life in Poland – public administration, political parties, law enforcement agencies, non-governmental organisations etc. Yet, due to the scarcity of resources, the Ombudsman is not able to engage in this type of activities.

When discussing the areas in which certain institutions perform best their functions related to improving public life integrity, it is worth drawing attention to the score achieved by political parties – perhaps not the best, but still relatively good. This result may come as a surprise, as politicians, especially those who hold seats in the parliament, do not enjoy high level of public trust. In public opinion polls, they are the ones (taking turns with healthcare services) perceived as the most corrupted social group. In spite of that, according to the criteria adopted for the purpose of this monitoring exercise, political parties received as much as 65 points.

One should not, however be misled by this relatively high score. Parties owe it mainly to the highly assessed institutional capacity based on the relatively good law that regulates their activity and to the strong guarantees of the independence of their operations. However, in the area of integrity, transparency of action and accountability the score was significantly lower (especially in the area of practice).

Consequently, Polish political parties cannot be a role model of a properly functioning institution. Moreover, their role as centres initiating or inspiring actions to improve the quality of public life cannot be highly assessed. Similarly to the Ombudsman, it must be stated that political parties have great potential and the necessary instruments improve the integrity of public life in Poland. This potential, however, is not used properly.

On the other, negative end of the scale among the weakest elements on which, eventually, a system of integrity of public life in Poland should rest, one finds private sector and civil society. The executive (understood mainly as a government) and public sector (analysed mainly as the central administration) have not scored very well, either. All the above mentioned institutions received between 51 and 60 points. Let us analyse these results together, as they seem to have some common denominator.

On the one hand, the civil society and the private sector, the main two areas in which a need to fight for better quality of public life, willingness to check upon the authorities, to take initiative to improve the functioning of the state etc. should come naturally receive a low score. The main reason for that are their rare and ineffective activities aiming at improving the integrity of public life.

As far as the civil society is concerned, one of the reasons is that **citizens themselves, even if are aware of the social problems (including corruption) or express their dissatisfaction in opinion polls with the manner in which the administration or other institutions operate, rarely try to change the situation, which is marked, for instance, by the low voter turnout. As a society we are not willing to support (for instance through charity) initiatives of non-governmental organisations involved in fighting corruption or promoting good governance standards.** Third-sector organisations, on the other hand, tend to focus their activity on other areas i.e. public benefit activities (which, in fact, makes them dependent on the public sector and lowers their potential as advocacy centres able to pressurize the government and politicians to safeguard the public interest better) as their main areas of activity are the provision of various public services and charity.

The entities involved in watchdog activities or other issues related to the improvement of the quality of public life are on the fringe of the third sector's activity in Poland. The poor score here results, first of all, from the fact that citizens, including those active in the third sector, generally are not interested in actions directed towards improving the quality of public life (not mentioning other problems such as financial weakness of non-governmental organisations in Poland).

For similar reasons, the private sector received a negative assessment in the evaluation. Despite unfavourable conditions for business activity that often lead to abuse, the main factor influencing the negative assessment is nearly absolute lack of initiatives within the private sector to reduce corruption. A kind of negative feedback can be observed between civil society and the private sector since private companies are not willing to support NGO initiatives trying to reduce corruption or improving the quality of public life.

At the same time, however, two other pillars expected to support the integrity of public life in Poland – the executive and the public administration – are also weak. Their problem lies not only in maintaining high standards of transparency and accountability, especially in practice, but also in the lack of determination in improving the functioning of the public sector and combating corruption. An example for that is procrastination of the law-making process reform, aiming to open up the decision-making processes to citizens. Another example is the lack of any anti-corruption strategy or at least a short-term anti-corruption programme that would be covered by the monitoring exercise[4].

MAIN CHALLENGES AND RECOMMENDATIONS

All this having said, Poland is dealing with a situation where the main centres of possible initiatives, action or change which could contribute to improving the quality of public life in Poland score poorly in this assessment. Moreover, the negative assessment results either from the low capacity (e.g. civil society or public administration), or from the lack of genuine interest in the issues of transparency, good governance or counteracting corruption (this is the case for the private sector and, which is even worse, for the government itself).

4| Grzegorz Makowski, Koniec walki z korupcją, Newsweek, wyd. 05.12.2011, Polityka antykorupcyjna. Ocena skuteczności polityki antykorupcyjnej polskich rządów…

Hence, in the near future Poland should not expect any far-reaching action that would significantly improve the level of integrity of public life. For there are no social or institutional actors that would be able to initiate such changes and to coordinate their implementation. Alternatively, at best, one may expect a point-specific reforms concerning particular problems (e.g. improving the quality of the law on access to public information), but not a comprehensive anticorruption strategy or a policy towards building a 'national integrity system'.

This problem coincides with yet another phenomenon, clearly visible in the results of this evaluation. A review of the scores achieved by all the pillars of integrity allows a conclusion that there is a significant disproportion between the relatively good scores for the formal conditions that, to some extent, guarantee maintaining higher standards of public life, and the practice. **To put it more figuratively – as far as constructing an honest, solid and corruption-free state is concerned, what we have is triumph of form over substance.**

For instance, from the formal and legal point of view, the parliament presents itself as an institution with a high degree of accountability. Citizens enjoy guaranteed access to information about the work of the Sejm and Senate's committees, the deputies may be held accountable, there are internal structures with some jurisdiction over the parliamentarians who violate codes of conduct (e.g. the Deputies' Ethics Committee). The problem is that, to a great extent, these institutions are lifeless. Deputies are deprived of their immunity very rarely. Over the last twenty years, only once has a member of parliament appeared before the State Tribunal (although many more reasons could be found). Holding deputies accountable for their electoral promises practically does not take place at all. The parliament is only one of a number of possible examples. In other areas under analysis, the discrepancy between the formal status and the reality are not smaller. A minor exception to the rule appears to be, unexpectedly, the Central Anti-corruption Bureau, which, being a highly specialised law enforcement agency and a secret special service at the same time, conducts a lot of public education activities. Moreover, it does so without any special resources or even explicit legal basis.

A number of conclusions can be drawn from the above description of the state of affairs. First, the relatively good result that Poland has achieved in this monitoring exercise is due to a relatively good level of formal guarantees of public life integrity. Poland has some good legal solutions and institutions at its service that can be used to improve the transparency or to implement the good governance principles. The problem is that, in many cases, these instruments are lifeless or used only partially. To put it briefly, we do have a framework for the system of integrity of public life in Poland, but we do not have the system itself because the framework is not sufficiently filled with practice.

Second, considering the fact that the main actors of any possible change or innovation (the civil society, business, administration and the government) do not show any great commitment and determination to care for high standards of transparency, implementing the idea of good governance or counteracting corruption, one must conclude that for a long time to come Poland will not have a coherent system of integrity of public life. Because who if not the society, business people and the authorities should maintain the standards in public life? And yet, they do not reveal great commitment to these issues.

Thus we have a situation where the metaphorical "temple of public integrity" in Poland has, perhaps, quite a solid framing but is built on unsettled ground and the builders who were supposed to complete the structure, would rather go for a drink than do their job. What recommendations could then be given?

The detailed recommendations for creating the system of public integrity in Poland are presented in the individual chapters of this study. In the context of this summary, we will just outline some general conclusions, referring mainly to implementation and strengthening of the existing institutional solutions:

- The evaluation reveals weakness of the key pillars of the integrity of public life in Poland – the civil society, private sector, public administration and the executive (government). These areas lack the potential and determination that would guarantee stability of construction, development and consolidation of the mechanisms conducive to good governance and fighting corruption in future. Therefore, efforts should primarily be made to support, among others, the activities of non-governmental organisations that specialise in monitoring the authorities (the so called watchdog organisations) and in active promotion of good governance standards (e.g. think-tanks). The government should develop and plan activities focusing on improving the quality of public life and counteracting corruption. At the same time, within the private and the non-governmental sectors, some grass-roots internal initiatives should appear. Today, unfortunately, these problems marginalized both by business and non-governmental organisations.
- The above point corresponds to the assessment of the two key foundations of all the activities aiming to improve the integrity of public life – namely, the society and culture. Poland struggles with a low societal interest in counteracting corruption or care for maintaining good governance standards, accompanied with still high level of tolerance towards a conduct that is illegal or morally doubtful, which may lead to more serious transgressions (e.g. towards incidents of conflict of interest or nepotism). Thus, building a system of integrity of public life in these areas requires launching and consistent implementation of educational and information activities – as a sort of preventive measures. And even though the main responsibility lies with the state, implementation of such an educational programme requires support from other actors – especially NGO, media and private sector.
- In most of the monitored areas there is an evident discrepancy between the sphere of legal regulations on maintaining high standards of public life and the everyday practice. To put it briefly, the existing law is often not observed or violated. Changing this requires existing legal provisions be made more specific, more often, however, it is the matter of education, promotion and enforcement of sanctions (as stipulated by relevant laws). The responsibility for action in this area shall, again, lie not with the government but, first of all, with particular institutions.
- Above everything else, however, the implementation of activities that may solve the problems outlined above, as well as those described in detail in the individual sub-chapters of the report, requires political will. Building a national system of public integrity, counteracting corruption are ambitious challenges that require launching some multi-annual horizontal action. Only the centres of authority (particularly the parliament and the government) are able to deal with such challenges and coordinate relevant actions. This, in turn, requires a formulation and consistent implementation of a coherent state policy for meeting good governance standards or counteracting corruption. At the time of writing this report, the appropriate programmes and strategies that could form the foundations for such a policy existed only on paper[5].

5| See: Strategia rozwoju kapitału społecznego. Projekt z dn. 10.09.2011, MKiDN, Warszawa 2011, Strategia „Sprawne Państwo 2011-2020". Projekt z dn. 6.04.2011, MSWiA, Warszawa 2011, czy Rządowy Program Przeciwdziałania Korupcji na lata 2011 – 2016,