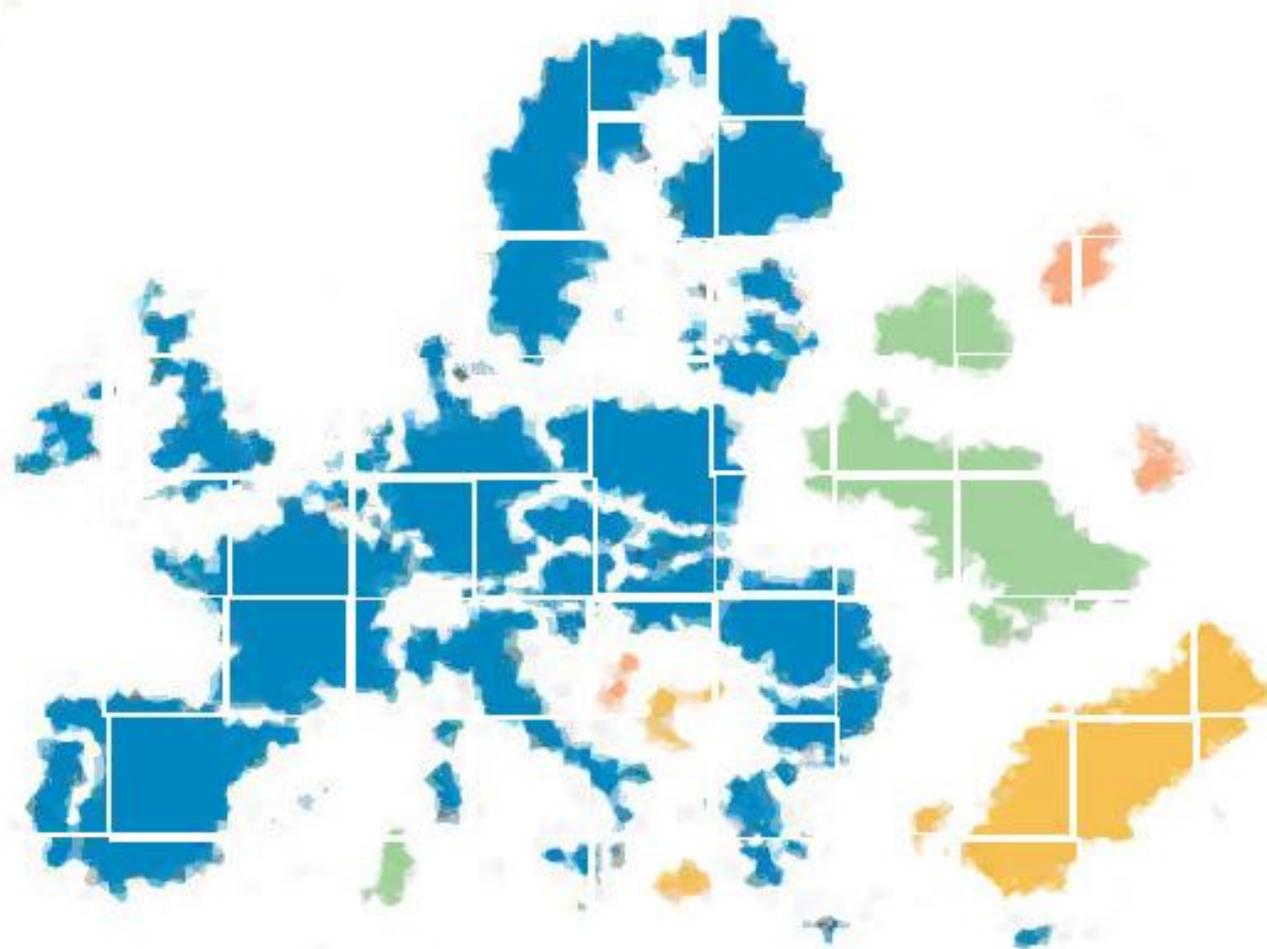


# *Frontiers of Democracy*

## **Polish Experience in Fighting Corruption (1997-2015)**

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**Katarzyna Batko-Tołuć**



## Center for European Neighborhood Studies

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The Center for European Neighborhood Studies (CENS) is an independent research center of the Central European University (CEU) located in Budapest, Hungary. Its main goal is to contribute to an informed international dialogue about the future of the European Union in the world, while capitalizing on its Central European perspective and regional embeddedness.

The strategic focus of the center is academic and policy-oriented research on the place and role of the European Union in its rapidly changing and increasingly volatile neighborhood. Through its research, CENS seeks to contribute to the understanding of the environment where the EU, its member states and partners need to (co)operate, and it aims at supporting the constructive development of these relations by providing opportunities for discussion and exchange. The center's geographic focus areas are Central and Eastern Europe, the Western Balkans and Turkey, Eastern Europe, the South Caucasus and Russia.

## Frontiers of Democracy

### *Embedding Democratic Values in Moldova and Ukraine*

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Moldova and Ukraine, countries of the European Union's Eastern Partnership program, are undergoing complex processes of democratic transformation, but with weak embeddedness of democratic values and principles drawbacks can occur. It is embeddedness that helps to overcome the challenges of transformation and pushes countries beyond mere frontiers of democracy towards becoming strongly committed democratic communities. The goal of the [“Frontiers of Democracy: Embedding Democratic Values in Moldova and Ukraine”](#) project of the CEU Center for European Neighborhood Studies is to facilitate embedding democratic values in the societal ethos in Moldova and Ukraine by providing a forum for discussion of the difficulties of such a complex process and by drawing on the transition experience of the Visegrad countries (the Czech Republic, Hungary, Poland and Slovakia).



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The opinions expressed here are those of the author.

## About the author

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### **Katarzyna Batko-Tołuć**

Katarzyna Batko-Tołuć is programming director of the Citizens Network Watchdog Poland. In her words: “I am proud to be among the developers of a grass-root social movement aiming at transparency of governments and accountability of decision-makers that brought major change in Poland. In my work, I focus on preparing on-line and off-line tools to get people engaged and to educate themselves in civic oversight and influence on governance. Currently my organization works with more than 300 activists, bloggers, journalists, organizations and groups all over Poland. We also advocate for better legal solutions concerning openness of governance, monitor legislative process, litigate, take part in the public debate and provide above 2000 legal consultations annually for those who want to shape Polish democracy. For this vision and bottom-up strategy, I was named a social innovator by the Ashoka – Innovators for the Public and awarded a Knight's Cross of Order of the Rebirth of Poland.”

## Polish Experience in Fighting Corruption (1997-2015)

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The present paper overviews and comments the main anti-corruption legal regulations in Poland, their effectiveness and possible impact on public opinion and voting decisions. As an in-depth cross-country legal analysis was prepared by the European Commission for the Council and the European Parliament in 2014 and is available on-line,<sup>1</sup> this work is more focused on the author's interpretation of the societal perception of anti-corruption and political developments.

At the end of the study, on the basis of the Polish experience, the author prepared some recommendations for other countries. However, comparisons should be limited regardless of some commonalities in the history of Central and Eastern Europe and the "Newly Independent States". This is due to the different experiences under the totalitarian system, the different levels of each country's former economic dependence on the Soviet Union, as well as the pre-totalitarian experience with democracy or the differences in the societal system of values. It is also not possible to consider, within a short text, all aspects of systemic economic changes, types of privatisations etc. Different systems can generate different and very specific types of corruption. This topic was examined and described in depth in the World Bank's publication on transformation countries and their economies.<sup>2</sup> On the other hand, there is a clearly defined set of solutions,<sup>3</sup> which is recommended to be implemented in a country in order to build a strong anti-corruption system. These measures will be described in the text and will form a reference point for comments and considerations.

### Development of reflection on corruption in Poland

The first law on limitations concerning the economic activity of people who held public positions was introduced in 1997, and was named as "the anti-corruption law". It is probably not an accidental that it coincided with a general trend in post-communist countries, where after first years of economy

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<sup>1</sup> "Annex 21 on Poland to the Report from the Commission to the Council and the European Parliament," prepared in 2014, accessed June 17, 2016, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_poland\\_chapter\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_poland_chapter_en.pdf)

<sup>2</sup> John H. Anderson and Cheryl W. Gray, *Anticorruption in Transition 3, Who Is Succeeding .... and Why?* (Washington DC: The World Bank, 2006)

<sup>3</sup> Tomasz Grzegorz Grosse, *Działania antykorupcyjne w państwach członkowskich OECD* (Florence: Stefan Batory Foundation, 2000)

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reforms, “the sense of injustice and disillusionment with the transition process began to emerge among a large segment of population.”<sup>4</sup>

The same year, the new Polish Constitution<sup>5</sup> was enacted, and some of its provisions are related by analysts to the fundamentals of the anti-corruption laws.<sup>6</sup> The Constitution underlined that public organs have to “act on the basis of and within the law.” This rule is laid down in Article 7 (on lawfulness) and means that public institutions have to be impartial. The second important rule is set in Article 32 point 1, and says that all people are “equal before the law,” therefore all people should be treated equally by decision makers whose decisions cannot be motivated by personal or financial advantages. It is completed by Article 25 point 2 saying that all public institutions should be impartial with regards to religion, personal and philosophical convictions.

Discussion on fighting corruption accelerated around 2000 in Poland for several reasons. Firstly, thanks to the efforts of NGOs, namely the initiative “Anti-Corruption Program”<sup>7</sup> jointly implemented by the Stefan Batory Foundation and the Helsinki Foundation for Human Rights. The program’s strategic approach to the issue of corruption joined with the World Bank’s engagement provided high visibility to the topic and educated the public on different types of corruption, not only bribes but also such phenomena as e.g. undue advantages connected with holding public position, nepotism, cronyism, revolving doors, conflict of interest or state capture. The program provided expertise on the most important international discussions, documents and measures. It also built a civic coalition that put pressure on politicians to adhere to their electoral promises concerning dealing with corruption.<sup>8</sup>

Secondly, Poland was pressured by the upcoming membership in the European Union to progress with anti-corruption policies. This is how the first “Program for Fighting Corruption – Anticorruption Strategy for the years 2002-2004” was prepared.<sup>9</sup>

Thirdly, regardless of the strategic thinking of the elites, the public’s attention was focused on discussions around one of the biggest scandals

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<sup>4</sup> Anderson and Gray, *Anticorruption*, 1.

<sup>5</sup> “The Constitution of the Republic of Poland of 2nd April, 1997”, accessed June 17, 2016, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

<sup>6</sup> Grzegorz Wiaderek and Natalia Mieleczyk, „Problematyka konfliktu interesów z perspektywy polskiego ustawodawstwa,” in *Konflikt interesów w polskiej administracji rządowej – prawo, praktyka, postawy urzędników*, ed. Grzegorz Makowski, et al. (Warsaw: Stefan Batory Foundation, 2014), 30–31, accessed June 17, 2016, [http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Konflikt\\_in\\_teresow\\_w\\_administracji\\_rzadowej\\_raport.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Konflikt_in_teresow_w_administracji_rzadowej_raport.pdf)

<sup>7</sup> In 2013, its name changed to Public Integrity Program. More information on: [http://www.batory.org.pl/en/operational\\_programs/anti\\_corruption](http://www.batory.org.pl/en/operational_programs/anti_corruption), accessed June 17, 2016.

<sup>8</sup> Anti-corruption Coalition of NGOs, accessed on June 17, 2016, <http://www.akop.pl/>.

<sup>9</sup> Anti-Corruption Strategy. I Phase of Implementation, accessed on June 17, 2016, <http://www.antykorupcja.gov.pl/ak/strategia-antykorupcyj/2514.Strategia-Antykorupcyjna-I-etap-wdrazania.html>.

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connected with law making, namely the so-called Rywingate.<sup>10</sup> It concerned an attempt of state capture and changed the political scene by almost completely burying the Democratic Left Alliance (SLD), the post-communist party in Poland, and paving the way to the victory of the party focused on anti-corruption slogans: Law and Justice (PiS). However, the times under the ruling of the latter needs to be considered as a first lesson for other countries. In 2006, the PiS-government established the Central Anti-corruption Bureau and created the atmosphere of intolerance for corruption. While its policy proved to be effective in the short term, it halted sincere public debate for several years, mostly due to the politicisation of the topic. These times were characterized by arresting suspects in the limelight, provoking public persecutions, or manipulating people to commit crimes. Since then, corruption became a powerful instrument in political fighting between various political sides who accused each other of abusing public money, of conflict of interest etc. No serious public debate on how to draw conclusions from the discovered misconducts was possible anymore. For mainstream opinion leaders it was somehow abject to engage with these matters, which had a negative influence on the public's perception of the elites.

During the first term of the new ruling coalition, the Civic Platform (PO) and Polish People Party (PSL), between 2007 and 2011, one of the most important achievements was changing the Electoral Code, which regulated financing and procedures connected with the election period. Behind this success were mostly NGOs and the opposition from the Democratic Left Alliance,<sup>11</sup> the same party that was earlier the main hero of political scandals. It was one of the few cases when civil society involvement had a real impact.<sup>12</sup> On the other hand, there were several ineffective attempts to introduce improvements to existing laws, as well, e.g. to expand the anti-corruption law on the limitations in running economic activity to new groups<sup>13</sup> or to standardize the situation of all groups obliged to submit asset declarations.<sup>14</sup>

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<sup>10</sup> The scandal started at the end of 2002. The leading daily "Gazeta Wyborcza", owned by the media corporation Agora, published an article in which one of the most powerful film producers, Lew Rywin, was accused of attempted trading in influence. The chief editor of the newspaper, Adam Michnik, recorded a proposal made by Rywin to Agora on introducing provisions beneficial for Agora to the law regulating media concessions. Rywin claimed that this proposal is supported by Prime Minister Leszek Miller (from the post-communist party, Democratic Left Alliance (SLD)). After the publication of the article, public institutions started to work. The Prosecutor, who had been earlier informed, accelerated the investigation. There was also a Parliamentary Commission to clarify the case. Although it was finally verified that only second-line politicians from the Alliance were involved in this case, other scandals connected with the party, e.g. the case of the Polish public fuel industry with Russian spies and business (OrlenGate) or the case of informing criminals on the upcoming arrests (StarachowiceLeak) built a picture of in-depth corruption within the post-communist party and contributed to its slow disappearance from the Polish political scene. More information on biggest scandals in Poland can be found here: <http://polskieafery.pl/>.

<sup>11</sup> Polityka antykorupcyjna. Ocena skuteczności polityki antykorupcyjnej polskich rządów prowadzonej w latach 2001-2011 (Warsaw: Stefan Batory Foundation, 2011), 6, accessed June 17, 2016, [http://www.batory.org.pl/upload/thumbs/Glowne\\_pliki/publikacje/Raport\\_polityka\\_antykorupcyjna\\_2011.pdf](http://www.batory.org.pl/upload/thumbs/Glowne_pliki/publikacje/Raport_polityka_antykorupcyjna_2011.pdf)

<sup>12</sup> Adam Sawicki, <https://www.youtube.com/watch?v=RPFweYp883I>, 8:22-10:22, accessed June 17, 2016

<sup>13</sup> Projekt założeń projektu ustawy o niektórych sposobach unikania konfliktu interesów, accessed on June 17, 2016, <http://legislacja.rcl.gov.pl/projekt/6372>.

<sup>14</sup> Projekt ustawy o oświadczeniach o stanie majątkowym osób pełniących funkcje publiczne, accessed on June 17, 2016, <http://legislacja.rcl.gov.pl/projekt/230491>.

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At the same time, the coalition managed to introduce provisions limiting access to information<sup>15</sup> (later cancelled by the Constitutional Tribunal), and to delete the whistle-blower protection act from the Government Program to Combat Corruption for the years 2014-2019.<sup>16</sup> Also the main anti-corruption tool for internal corruption prevention, the Anti-corruption Shield, proved to be just a PR slogan.<sup>17</sup> In 2011, the Anti-corruption Coalition of NGOs, which had been working for ten years and collected electoral promises of the parties on anti-corruption ideas every election, discovered that no party treated the topic as a priority.<sup>18</sup>

### **The robustness of Polish anticorruption system**

There are several solutions introduced in Polish law to prevent corruption, but a number of them need some corrections to be more effective. This seems to be the most difficult task in the last years as the drive of politicians to resolve the problem of corruption significantly dropped.

Looking at legal solutions that were implemented in Poland, there is no reason for anxiety. The problem comes with the actual implementation.

Several aspects of corruption are criminalized. Poland ratified the Council of Europe's Criminal Law Convention on Corruption, where the types of crimes that should be criminalized are named. It includes active and passive bribery of domestic and international public officials and members of public assemblies, international organizations, courts and parliaments. Active bribery concerns offering any undue advantage, while the passive one means taking it. The convention also obliges its signatories to introduce measures concerning active and passive bribery in the private sector, trading in influence (which refers to implicating a decision-maker in bribery), and money laundering of proceeds from corruption offences, account offences and

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<sup>15</sup> In 2011, when the government was amending the law on access to public information to implement the PSI Directive (Directive 2003/98/EC), it used the opportunity of the last months before the elections and pretexts of special proceedings connected with the implementation of the European law, as well as the rush connected with delays in implementation, to introduce limitations on the access to public information not related to the EU law. As citizens and NGOs protested, the lower chamber of parliament did not accept the government proposal. However, it was accepted in the upper chamber. As this situation was unconstitutional, the President sent the law to the Constitutional Tribunal, which cancelled the new provisions. Blocking the new provisions was possible mostly thanks to the significant pressure from the side of the civil society. <http://informacjapubliczna.org/aktualnosci/poprawka-rockiego-niezgodna-z-konstytucja/> [accessed on June 17,2016]

<sup>16</sup> Projekt założeń projektu ustawy o niektórych sposobach unikania konfliktu interesów, accessed June 17,2016, <https://bip.mswia.gov.pl/download/4/20330/Program-wersjaIV.pdf>

<sup>17</sup> Anticorruption Shield was a programme mentioned in the report for 500 days of the Donald Tusk's government. When NGOs gathered in the Anticorruption Coalition for NGOs wanted to find out more information on the Shield, they were informed that this information is classified. However NGOs were persistent and wanted to know at least the legal basis for the programme. After years in courts, they discovered that in fact there was not much planning, rather a loose discussion of the Prime Minister and chiefs of the main anticorruption forces. More information on <http://informacjapubliczna.org/aktualnosci/trzeci-rok-staran-o-uzyskanie-informacji-o-tarczy-antykorupcyjnej/>, access on June 17,2016.

<sup>18</sup> Anti-corruption Coalition of NGOs, accessed on June 17,2016, <http://www.akop.pl/aktualnosci.html?page=11>.

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participatory acts. It also assumes special authorities to deal with the issue - one central organ, extraditions and international cooperation.<sup>19</sup>

The central organ, the Central Anti-Corruption Bureau, was established in 2006 and is the main institution to combat corruption. At the beginning of its existence, it was criticized as fully dependent on the prime minister and lacking capacities connected with the prevention of corruption. In 2010, an additional provision was added to the law that the activity of the Bureau is controlled by the Parliament. Still, it is supervised by the prime minister and continues to be mostly responsible for investigations while lacking preventive measures.<sup>20</sup>

Concerning the criminalization of corruption, the criminal code in Article 229, paragraph 6 allows for a person giving bribe avoiding consequence if it was given successfully, was reported to the investigation organs before it was a known fact and if the bribe-giver cooperates during the investigation.<sup>21</sup> This solution is sometimes described as “breaking solidarity between the giver and the receiver” and was introduced into the Polish law in 2003.

Several measures connected with political and administrative prevention are also in place. The asset declarations are practically applied to all politicians on the central, regional and local level. Almost all of them have to disclose their declarations. There are, however, some exceptions, e.g. ministers, whose declarations are not compulsorily disclosed.<sup>22</sup> Such inequalities are connected with the fact that regulations are included in different acts.<sup>23</sup> In the case of the highest positions in the government, the law has not been amended since 1997. As a result, the councillor on the local level, who alone does not have any real power to decide on public money, has to be more transparent and accountable than e.g. the minister responsible for a list of medicines that are refunded from the public budget.<sup>24</sup> There are therefore problems with asset

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<sup>19</sup> „Prawnokarna konwencja o korupcji, sporządzona w Strasburgu dnia 27 stycznia 1999 r.,” accessed on June 17, 2016, <http://www.dziennikustaw.gov.pl/DU/2005/s/29/249>.

<sup>20</sup> „Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 4 września 2014 r. w sprawie ogłoszenia jednolitego tekstu ustawy o Centralnym Biurze Antykorupcyjnym,” accessed on June 17, 2016, <http://www.dziennikustaw.gov.pl/DU/2014/1411/1>.

<sup>21</sup> „Ustawa z dnia 13 czerwca 2003 r. o zmianie ustawy — Kodeks karny oraz niektórych innych ustaw,” accessed on June 17, 2016, <http://www.dziennikustaw.gov.pl/DU/2003/s/111/1061>.

<sup>22</sup> „Ustawa z dnia 21 sierpnia 1997 r. o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne,” accessed on June 17, 2016, <http://www.dziennikustaw.gov.pl/DU/1997/s/106/679>.

<sup>23</sup> „Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym”, accessed on June, 17, 2016, <http://www.dziennikustaw.gov.pl/DU/2015/1515/1> Art. 24 h-m; „Ustawa z dnia 5 czerwca 1998 r. o samorządzie powiatowym,” accessed on June, 17, 2016, <http://www.dziennikustaw.gov.pl/DU/2016/814/1> Art. 24 c-f; „Ustawa z dnia 5 czerwca 1998 r. o samorządzie województwa,” accessed on June, 17, 2016, <http://www.dziennikustaw.gov.pl/du/2016/486/1>, Art. 27 c-g; „Ustawa z dnia 9 maja 1996 r. o wykonywaniu mandatu posła i senatora,” accessed on June, 17, 2016, <http://www.dziennikustaw.gov.pl/du/2015/1605/1>, Art. 35.1; „Ustawa z dnia 21 sierpnia 1997 r. o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne,” accessed on June, 17, 2016, <http://dziennikustaw.gov.pl/DU/2006/s/216/1584>, Art. 12.

<sup>24</sup> In 2016, the new Vice-Minister of Health, Krzysztof Łanda, decided to withdraw his assets declaration when journalists discovered that he formerly was a president and a founder of the Watch Health Care Foundation (<http://www.korektorzdrowia.pl/>), which was significantly funded by pharmaceuticals. As a minister, he was responsible for the so-called “list of refunded medicines.” Source: Radosław Gruca, „Wiceminister traci stół? Jest notatka służbowa”,

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declaration system that need to be resolved: namely, the different obligations for different groups, the lack of sufficient control and the lack of diligence in filling in the declarations. A promising fact is that there are a couple of NGOs interested in changing the situation such as Association 61,<sup>25</sup> the Media 3.0 Foundation<sup>26</sup> and the Stefan Batory Foundation.<sup>27</sup>

Another solution that was introduced in Poland is the MPs' obligation to submit information to the Register of Benefits<sup>28</sup> about their and their spouse's travels, related or not related to their public mission, which are covered by them or by the institutions with which they are officially affiliated. Similarly, information about other benefits they receive with no relevance to their official public mission, information on being members of management or other organs of foundations, companies or cooperatives, even if the job is not paid, has to be submitted to the Register. They also have to report on the gifts above a certain value (around 200 EUR). The prime minister, members of the Cabinet, mayors, heads of counties and regions have to submit such information to the State Election Committee. Politicians holding such positions are, in fact, responsible for most of the public spending, while MPs create the legal framework for the whole country. The selection of groups covered by these provisions is therefore accurate. However, the Register of Benefits run by the Central Election Committee<sup>29</sup> does not work in practice due to the lack of sanctions for not reporting.

Political parties' financing is subject to disclosure according to Article 11 point 2 of the Polish Constitution.<sup>30</sup> The Law on political parties<sup>31</sup> regulated that parties' budgets can be built on a subvention that is dependent on exceeding a given threshold in the elections, a grant for campaigning that is subject to a refund for won mandates, membership fees and donations from private persons. All parties have to submit their financial reports to the Central Election Committee. Public financing, which is significant, allows parties to be free from lobbying and from any dependence on business expectations.<sup>32</sup> However, public scrutiny that should have been available if the law was working in practice too, required litigation by the Citizens Network Watchdog Poland. The case concerned access to parties' invoices and

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Fakt, June 17, 2016, accessed on July 14, 2016, <http://www.fakt.pl/wydarzenia/polityka/wiceminister-zdrowia-krzysztof-landa-moze-stracic-stanowisko/niew7hj>.

<sup>25</sup> Association 61, <https://mamprawowiedziec.pl/>.

<sup>26</sup> Media 3.0 Foundation, <http://media30.pl/>.

<sup>27</sup> Stańczyk Foundation, <http://www.stanczyk.org.pl/>.

<sup>28</sup> „Ustawa z dnia 9 maja 1996 r. o wykonywaniu mandatu posła i senatora,” accessed on June, 17, 2016, <http://www.dziennikustaw.gov.pl/du/2015/1605/1>, Art. 35a

<sup>29</sup> “The Register of Benefits is available on line,” accessed on June, 17, 2016, <http://archiwum.pkw.gov.pl/rejestr-korzysci-lista/>

<sup>30</sup> “The Constitution of the Republic of Poland of 2nd April, 1997,” accessed June, 2016, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

<sup>31</sup> „Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 29 czerwca 2011 r. w sprawie ogłoszenia jednolitego tekstu ustawy o partiach politycznych,” accessed on June 17, 2016, <http://dziennikustaw.gov.pl/DU/2011/s/155/924>.

<sup>32</sup> Adam Sawicki, „TAK dla (współ)finansowania partii politycznych ze środków publicznych”, Sieć Obywatelska Watchdog Polska, September, 4, 2016, accessed on June 17, 2016, <http://siecobywatelska.pl/tak-dla-wspolfinansowania-partii-politycznych-ze-srodkow-publicznych/>.

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took two years.<sup>33</sup> NGOs were also successful in their advocacy efforts to safeguard the electoral situation from dependence on business influence. In 2011, on the basis of studies of several election processes prepared by civil society, the new Electoral Code was introduced. On the other hand, there are still abuses of soft standards such as using public positions to run a campaign, starting election campaign too early, not reporting spending etc. This is subject to citizens' observation and interest of several NGOs, e.g. Stefan Batory Foundation, Institute for Public Affairs,<sup>34</sup> or Stańczyk Foundation.

Other important solutions, such as immunity and lobbying, still need larger improvements. The immunity of the deputy does not exclude corruption, thus it is possible to waive the immunity by voting but it does not happen frequently in practice. It is not difficult to ignore lobbying regulations if someone is interested in influencing a decision-maker: e.g. during parliamentary meetings, there are many guests who in practice have free access to parliamentarians. They do not need to register as lobbyist. The law on lobbying requires improvements.<sup>35</sup>

Conflict of interest regulations are focused on activities of civil servants other than their official positions. Their involvement in other activities requires permission by the head of their office. Also, the law forbids several groups of politicians and civil servants to run economic activities. In some of their case, a one-year break is required before they can be employed in a business that had any connection with their earlier decisions.<sup>36</sup> It is, however, not customary to submit declarations of honesty, impartiality and independence. Such a practice is recommended in a study by the Batory Foundation,<sup>37</sup> and is implemented in projects supported by EU funds where such declarations are compulsory.

The public procurement law needs verification. It was robustly made in 2004, and has undergone several amendments since then, also ones that made it more flexible. For years, no good monitoring was implemented by NGOs, but currently there are two projects running. One led by the ePaństwo Foundation<sup>38</sup> focused on following the most endangered tenders,<sup>39</sup> and the second led by the Stefan Batory Foundation focused on identifying the weak points of the system. The latter pointed to several questionable phenomena, like the fact that in 45 percent of open tenders, there is only one bidder. The

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<sup>33</sup> Magda Barczyk, „Ponadpartyjna zgoda”, Sieć Obywatelska Watchdog Polska, September 22, 2014, accessed on June 17, 2016, <http://siecobywatelska.pl/ponadpartyjna-zgoda/>.

<sup>34</sup> Institute for Public Affairs, <http://www.isp.org.pl/>

<sup>35</sup> Grzegorz Makowski, *Czy możliwy jest przejrzysty lobbying? Raport o potrzebie lepszych regulacji i dobrych praktyk działalności lobbingsowej* (Stefan Batory Foundation: Warsaw, 2015), accessed on June 17, 2016, [http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Lobbing\\_Raport.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Lobbing_Raport.pdf).

<sup>36</sup> „Ustawa z dnia 21 sierpnia 1997 r. o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne,” accessed on June 17, 2016, <http://dziennikustaw.gov.pl/DU/2006/s/216/1584>.

<sup>37</sup> Mieleşzyk and Wiaderek, *Conflict of Interest*.

<sup>38</sup> ePaństwo Foundation, <http://epf.org.pl/pl/>

<sup>39</sup> Red Flags, <http://www.redflags.eu/>

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most sensitive moment concerning tenders is the preparation of the terms of reference, and in this regard, more vulnerability can be observed in the case of public companies and organizations dependent on public institutions.<sup>40</sup>

As it is described, most of the fundamental solutions to counter corruption have been already introduced in Poland. The concerns of NGOs are threefold: first of all, the system is disordered and there is a lack of strategic thinking;<sup>41</sup> secondly, several solutions need improvement but there is a lack of political will for making changes; thirdly, one of the most important solutions, which is whistle-blower protection, has not been introduced over the years and was even deleted from the Government Strategy to Combat Corruption 2014-2019.<sup>42</sup>

**Public opinion on corruption: If the situation is so good, why doesn't public opinion react positively?**

In the beginning of 2014, 87 percent of the population claimed that corruption is a big problem in Poland. 85 percent of respondents believed that high-profile politicians and officials take care of their, their relatives' and their friends' careers in the ministries, state agencies, state companies and public banks. 77 percent were convinced that they also facilitate that their relatives and friends get government contracts. 80 percent thought that political activity serves building a vocational career and is not connected with a public mission. Finally, 64 percent thought that the standards of public services have been lowered by the practice of building positions within a party or by promising good careers to supporters.<sup>43</sup> This level of disillusionment of the public opinion was not very much different than the attitudes in 2010, and was only slightly lower than in the harshest moment in 2004, just after Rywingate.

The cited survey was conducted in the beginning of 2014. In the summer of the same year, a series of illegal recordings were released from talks of high-profile officials of the governing party, the Civic Platform. In response to the clearly political intentions of those who prepared the recordings, Prime Minister Donald Tusk decided not to replace the involved politicians. In summer 2015, the Central Anti-Corruption Bureau accused the President of the Supreme Audit Office of manipulating the contest for the position of the

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<sup>40</sup> Barometer of Corruption Risk, accessed on June 17 2016, [http://www.batory.org.pl/programy\\_operacyjne/przeciw\\_korupcji/barometr\\_ryzyka\\_korupcji\\_w\\_zamowieniach\\_publicznych/wydarzenia\\_15/barometr\\_ryzyka\\_naduzyc\\_w\\_zamowieniach\\_publicznych\\_pierwsze\\_rezultaty](http://www.batory.org.pl/programy_operacyjne/przeciw_korupcji/barometr_ryzyka_korupcji_w_zamowieniach_publicznych/wydarzenia_15/barometr_ryzyka_naduzyc_w_zamowieniach_publicznych_pierwsze_rezultaty).

<sup>41</sup> *Polityka antykorupcyjna*.

<sup>42</sup> Rządowy program przeciwdziałania korupcji na lata 2014-2019, accessed on June 17 2016, <https://bip.mswia.gov.pl/download/4/19005/Programantykorupcyjny-wersja2.pdf>.

<sup>43</sup> „Opinie na temat korupcji i standardów życia politycznego w Polsce. Komunikat z badań CBOS”, Centrum Badania Opinii Społecznej: Warsaw, February 2014, accessed on June 17 2016, [http://cbos.pl/SPISKOM.POL/2014/K\\_014\\_14.PDF](http://cbos.pl/SPISKOM.POL/2014/K_014_14.PDF).

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director of one of the local offices of this institution.<sup>44</sup> The situation was made worse by the fact that the Supreme Audit Office had been respected as one of the few independent and just institutions. In a research conducted by the Institute of Public Affairs in 2012 in the framework of the international study of National Integrity Systems by Transparency International, the Supreme Audit Office was listed as the best-respected and most trustworthy institution.<sup>45</sup> There was, however, no procedure to waive the immunity of the head of this institution who also refused to resign on his own.

What is the impact of such a situation? For the ruling party, losing the elections. But ignoring the political responsibility was only one contributing factor to such consequences, and was not perceived by the present opposition as a key one. The new government and the new President started with the same double standards. The PiS-government is also reluctant to reveal information,<sup>46</sup> it employs ministers who hide their income,<sup>47</sup> contracts services for excessive amounts while omitting procedures,<sup>48</sup> or uses public finances to pay its supporters.<sup>49</sup> Every political side has more inclination to focus on administrative solutions, is eager to criticize political rivals and is visibly lenient toward members of its own fraction. People living on the local level observe a system of dependencies in which their neighbours, politicians of the parties ruling on the central level, do not adhere to standards and avoid responsibility.<sup>50</sup>

It all results in several negative trends and real problems for Poland. There is a high level of distrust in politicians and courts,<sup>51</sup> high level of radicalisation, and increasing approval toward anti-systemic politicians. This factor is one of the important reasons why Polish democracy is in crisis after 25 years of success.

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<sup>44</sup> Maciej Duda and Robert Zieliński, Ustawianie konkursów w NIK? Prokuratura chce uchylecia immunitetów Kwiatkowskiemu i Buremu, TVN24, August 27, 2015, accessed on June 17, 2016, <http://www.tvn24.pl/wiadomosci-z-kraju.3/kwiatkowski-i-bury-podejrzani-o-ustawianie-konkursow-w-nik.572036.html>.

<sup>45</sup> Mechanizmy przeciwdziałania korupcji w Polsce. Raport z monitoringu, ed. Aleksandra Kobylińska et al. (Institute for Public Affairs: Warsaw, 2012), accessed on June 17, 2016, [http://media.transparency.org/nis/cogs/assets/pl/pdf/ISP\\_korupcja\\_raport.pdf](http://media.transparency.org/nis/cogs/assets/pl/pdf/ISP_korupcja_raport.pdf).

<sup>46</sup> Mateusz Bogucki, „Imiona i nazwiska kontrahentów Kancelarii Prezydenta RP jawne!”, Sieć Obywatelska Watchdog Polska, June 21, 2016, accessed on July 14, 2016, <http://siecobywatelska.pl/imiona-i-nazwiska-kontrahentow-kancelarii-prezydenta-rp-jawne/>.

<sup>47</sup> Jakub Stachowiak, „Tajemnicza promocja MON”, Oko.press, July 1, 2016, accessed on July 15, 2016, <https://oko.press/promocja-w-mon/>

<sup>48</sup> Oświadczenie majątkowe Jana Szyszki pod lupą CBA. Ministerstwo Środowiska odpowiada na zarzuty, Onet.pl, July 13, 2016, accessed on July 14, 2016, <http://wiadomosci.onet.pl/szczecin/cba-sprawdzi-oswiadczenie-majatkowe-ministra-jana-szyszko/74r4et>.

<sup>49</sup> Kolejne ministerialne granty dla ojca Rydzyka - opozycja oburzona, Superstacja.TV, July 13.2016, accessed on June 14, 2016, <http://www.superstacja.tv/wiadomosc/2016-07-12/kolejne-ministerialne-granty-dla-ojca-rydzyka-opozycja-oburzona/>.

<sup>50</sup> Katarzyna Dzieniszewska-Naroska and Grzegorz Makowski, *Samorządowe Unie Personalne* (Stefan Batory Foundation: Warsaw, 2014), accessed on June 14, 2016, [http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/samorzadowe\\_unie\\_personalne.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/samorzadowe_unie_personalne.pdf)

<sup>51</sup> „Społeczne oceny uczciwości i rzetelności zawodowej. Komunikat z badań”, Centrum Badania Opinii Społecznej: Warsaw, March, 2016, accessed on June 17 2016, [http://www.cbos.pl/SPISKOM.POL/2016/K\\_034\\_16.PDF](http://www.cbos.pl/SPISKOM.POL/2016/K_034_16.PDF)

## Lessons learned

There are several lessons from the Polish experience that can be considered by other countries when they fight corruption.

First of all, as international research also argues, there must be an atmosphere of no acceptance for corruption backed by committed leaders.<sup>52</sup> However, corruption should not be a tool of political fights, i. e. highly visible corruption accusations cannot be used against political rivals without strong proof.

Secondly, the opportunity of international pressure connected with negotiations, pacts, and agreements with the European Union or other institutions should be used in order to reform the country's anti-corruption policy. Civil society organizations are important allies in such a fight, they have knowledge based on their own research, should take care of building relations with media and politicians and stay independent to make them accountable afterward. In Poland, the most active government, which introduced the most solutions, was the one that got implicated in the corruption scandals in 2005. However, it is also the one that opened the European Union for Poland, introduced the new public procurement law, breached the solidarity of the giver and receiver of bribe, planned the first anti-corruption strategies and prepared the law on lobbying.<sup>53</sup>

Thirdly, concerning the quality of the regulations, a lot depends on prior analyses and strategy. Regulations for different groups of public officials and politicians do not need to be gathered in one act, but they should be just, logical and complete.

Fourthly, lawmakers should always reflect on allowing civil oversight on new regulations, which means that declarations on how public officials and politicians fulfil obligations should be compulsory and they should be proactively released in an electronically processable and well-structured format.

Fifthly, NGOs have a key role in change. In Poland, the Batory Foundation's role cannot be underestimated. The key for this success was expertise, long-term funding, networking of people interested in good regulations, using external experts from different areas, of different professions and with different backgrounds. This is a task for donors to provide wise funding and become the partners of those organizations that search for the best solutions, while allowing them to learn and to build expertise.

Finally, the political culture should never be abandoned and should be treated with as much attention as legal solutions. This is why civil society groups are needed. They must stay on guard, they must educate people, and they must educate themselves. Donors should invest in their capacity-building and financial independence.

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<sup>52</sup> Anderson and Gray, *Anticorruption*, xii.

<sup>53</sup> *Polityka antykorupcyjna*, 5-6.

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