



Anti-corruption Programme

Anti-Corruption Policy

**Summative evaluation of anti-corruption policy
applied by consecutive Polish governments
in 2001–2011**

Publication summary

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Publication summary

ANTI-CORRUPTION POLICY **Summative evaluation of anti-corruption policy** **applied by consecutive Polish governments** **in 2001–2011** **– published by Anti-Corruption Program** **of the Stefan Batory Foundation**

Only a couple of years after the breakthrough of 1989, corruption became a hot topic of the public discussion. The obvious reason was the significance of the problem and social response. The media also played an important role: not only did they unveil various scandals – both on national and local levels – but they continually reported of them on front pages or as leading news.

Soon afterwards, Poland started negotiations on its accession to the European Union and because the accession required complying with specific standards, the government had to intensify its efforts in dealing with the problem.

In addition to amending the legislation (including harsher penalties for corruption, regulating public procurement procedures), in 2002, the Council of Ministers accepted the *Program for Combating Corruption* with its so-called *Anti-Corruption Strategy*, which was supposed to be a flagship anti-corruption undertaking. It was a collection of target solutions and set of actions to be undertaken by government administration in combating corruption. The strategy had been planned for two years, but in January 2005, the next cabinet decided to continue the actions and developed a concept of stage II of the strategy implementation (for 2005–2009). The idea was not only that it had not been possible to implement all tasks – a more important factor was probably social anger resulting from the so-called Rywin affair, a corruption scandal related to the possibility of manipulating a legislative process in a vital social issue of the media market.

In April 2010, the Council of Ministers accepted the report on implementing stage II of the Anti-Corruption Strategy, which

recommends... implementing stage III (in 2011–2015). Again, it was not possible to complete all planned activities and additionally, new challenges and threats to new spheres of social and economic life appeared.

The Anti-Corruption Program of the Stefan Batory Foundation was monitoring the Anti-Corruption Strategy implementation from the very beginning. The attitude – in general terms - of the consecutive Polish governments to corruption was also monitored. As a result, it is now possible to evaluate the effectiveness of the anti-corruption policy of consecutive Polish governments in the last decade. The publication *Anti-Corruption Policy* is a summary of the monitoring.

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“Most tasks envisioned in the document *Program for Combating Corruption – Anti-Corruption Strategy* have been completed”, but about 30 percent “are delayed”, and “implementation of several tasks did not even start” – this opinion about implementing stage I of the government strategy expressed by the Anti-Corruption Program of the Stefan Batory Foundation has been quoted by **Krzysztof Burnetko** as a starting point for evaluating stage II and, especially, for assessing the accuracy of the government’s report on the issue.

It appears that many flaws and questionable moves, which had been indicated by the experts who described the anti-corruption activities of the government in 2002-2004, were later repeated by consecutive cabinets.

And thus, some actions, considered to be the result of undertaking the successive tasks of the *Strategy*, were in fact performed independently of the *Strategy* (as was the case of establishing the Central Anti-Corruption Bureau (‘CBA’). At the same time, other activities were reported as completed too soon.

In a long-term perspective, the key conclusion may be that some government departments have a “purely formal” approach to combating corruption (and what results from it, to carrying out the tasks assigned by the *Strategy*). Indeed, government workers often carry out the assigned tasks, but without either stronger commitment or understanding the sense of the tasks. And this obviously affects the quality of work.

Sometimes, the government itself does not show initiative – particularly the legislative initiative. The authors of the government *Report* suggest that it is the Parliament who is responsible for the delays and negligence in passing anti-corruption legislation, but it is possible to show that in some cases, the ministries or government legislative service are to be blamed for the delays.

Occasionally, there appear objective reasons for not completing the tasks (personnel changes in the departments which are key offices for a particular issue, shifting competences from one department to another).

Some of the *Strategy* tasks were formally completed, but they brought negligible results. A meaningful example – especially that it drew a negative social response – is the training on ethical issues, organized by the Ministry of Sport and Tourism, addressed to activists of the Polish Football Association. The government department evaluated it as “wonderfully conducted”, whereas the public opinion in Poland is frequently shocked by corruption scandals in Polish football and by the Association ignoring them.

The *Report* considers some de facto one-time tasks to be completed, whereas their nature requires a long-term activity. For example, the Ministry of Interior and Administration, in cooperation with the Internal Security Agency and the Polish Police Headquarters, was supposed to prepare an annual report on enforcing the bill on lobbying each year. However, the analysis was prepared only once – in 2006.

The moment when in 2006 the Law and Justice (Prawo i Sprawiedliwość) cabinet gave up the idea of the Civil Service and virtually dismantled its structures was particularly dangerous. The then parliamentary majority and the coalition government forced through a total change in the concept of filling posts in the state administration. The key requirement of the previous Civil Service model to use open competition proceedings for filling the senior posts was now rejected. In addition, the list of such senior posts turned out to be very long – 2,000 influential and lucrative posts in state offices, agencies and funds and a similar number of managerial functions in organizational units subordinated to the prime minister and ministers. Candidates for the posts were to be recruited from the so-called State Service Corps [Państwowy Zasób Kadrowy] (note changing the word “civil” to “state”) from which the ministers, directors

general or presidents of the state agencies could choose (they could also dismiss their employees at any time).

The possibilities of clientelism or political corruption resulting from the new regulations do not need to be explained. It is characteristic that the new legislation on State Service Corps – opposite to the “old” Act on Civil Service – did not even mention political neutrality of the candidates for the Corps.

The result was that the civil service of the Fourth Polish Republic (IV RP) was considerably narrowed – the regulations applied practically to the mid-level administration. And thus, the recommendations of the *Anti-Corruption Strategy* were not any longer relevant for the area so crucial and sensitive for the state.

Despite these objections, according to Krzysztof Burnetko, the implementation of stage II of the *Anti-Corruption Strategy* (for 2005–2009) comes out better than stage I. For the media, he uses a famous Antoni Słonimski’s saying: “it’s good, but not hopeless”.

What is perhaps more important is that at least some departments showed more commitment to combating corruption. Also promising are the boldness of some conclusions in the *Report*, signed by the government itself, and the declaration that the *Strategy* should be continued (however, one year has passed and the plan for stage III has not been announced yet).

Regardless of these observations, if the *Strategy* is to succeed, a number of demands should be taken into account:

First, a body supervising the implementation of the *Strategy* should be appointed – in addition to ongoing assessment of the engagement of each participating institution, it could identify current issues that need to be addressed urgently.

It is also necessary to allocate additional funds to the departments and institutions to supplement their own resources, so that they are capable of fulfilling the imposed tasks.

The government information policy is a serious obstacle. We can observe a systematic improvement in public availability of information concerning the *Strategy* (access through the government websites, using plain language and avoiding bureaucratic jargon, etc.). But although corruption is a hot issue, the successive governments failed to draw the media attention to the *Strategy*. And if the public opinion is interested, it

is a strong motivating factor for the officials. As it appears, binding the targets of the Strategy to either international programs (particularly EU) or to obtaining various certificates (e.g. the most popular ISO) also fulfills an important mobilizing function.

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Dr Jan Winczorek conducted a sociological and legal analysis of prosecuting corruption offences in the years 1998-2010. Using the official data, he compared, among others, kinds of detected and identified corruption offenses in respective years with the number of prosecution proceedings and terminated proceedings. The conclusions include the impact of the amendments to the criminal code on detectability of corruption offences and conviction rate.

The figures indicate that after the year 2000, there was a significant and consistent increase of the number of detected corruption cases and the number of suspected, accused and convicted of such offences. Since 2004, the rise can be described as sharp. The exception to the rising trend is a sudden decrease in the number of people suspected of corruption after 2007.

An important observation is that the changes are irregular and they are in no way interrelated. Up till 2007, the number of corruption offences detected by the law enforcement bodies increased faster than the number of the suspects and convicted. On the other hand, the decrease of the suspects after 2007 was accompanied by a stable number of detected and convicted offences, not by decrease.

It is also significant that although after the year 2000, the number of cases, suspects and conviction was growing, the number of activities conducted by the law enforcement bodies and the judiciary can not be rated as particularly high – it reached the level of the 70s (the Gierek epoch of the Polish People's Republic) only in 2007.

The number of both detected cases and people convicted of active bribery is growing fastest. At the same time, the ratio of convictions to cases prosecuted, particularly in accepting and giving bribes, does not differ from the figures recorded for cases of different types. As for the abuse of power, the percentage is very low.

Significant differences between the number of identified corruption offences, the suspects and the number of convictions result from the fact that some cases have been dismissed by the prosecutor.

During the analyzed period, some fundamental amendments were made to the criminal code regarding the prosecution of corruption offences. However, linking it to the increase in the number of corruption offences would not be justified. The legislative changes did not have a significant impact on the form of punishment and the severity of sentencing. The statistics show that Polish courts still often give suspended prison sentences for committing corruption offences.

The increase in the number of identified corruption cases can neither be explained by establishing the Central Anti-Corruption Bureau. What is more, when we compare the funds for running the Bureau with the Police budget, it is clear that the cost of running the Bureau is very high when compared with the effects.

Dr Winczorek justifies the dynamics of the official statistics by the new rules of functioning of the police as an institution. And thus, the decrease in the number of cases prosecuted by the police and the decrease in the number of criminal cases in relation to other offences allowed the police to use their capacities and funds for, among others, more effective investigation and prosecution of corruption offences. Probably, also the methods of recording the police operations do not directly translate the increase of identified offences and crimes into the increase of the number of suspected and convicted persons.

In turn, sudden decrease of the number of suspects in corruption cases after 2007 is undoubtedly related to “changing the political environment of the judicial system” – the government who then lost the power considered prosecuting corruption and combating the “system” as their flagship political slogan, which sometimes resulted in violating the law by the police, the Bureau and the prosecutor.

And finally, the social perception of corruption does not coincide with the real level of the pathology. What is more, although at the end of the 90s, the number of identified corruption cases dropped, a heated debate broke out about this threat, about the “system”, etc.

The following practical conclusion can thus be drawn for the penal policy: corruption can be combated more effectively (improving also the

social safety awareness) through prevention and information programs than through increasing criminal penalties.

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Asociological qualitative research on the effectiveness of implementing the *Ant-Corruption Strategy* was carried out by a team of sociologists under the guidance of **prof Anna Kubiak** and **Aneta Krzewińska, PhD** from the University of Lodz. There are now two extensive reports on successive stages of implementing the government program in the years 2001–2011.

In order to evaluate the period of 2001–2007, the team studied 24 institutions: the Ministry of Health, the Ministry of Sport and Tourism, Voivod's Offices, Customs Chambers and Tax Chambers in three selected voivodships, and those municipalities, customs offices, tax offices, government administration offices in voivodships which had been recommended to the team as the most active in combating corruption. The evaluators checked which activities and strategies were actually implemented (including training on anti-corruption, functioning of advisers on ethical issues, information campaigns, etc.). A case study method was applied and various techniques were used: from questionnaires, through free informant interviews to analyzing materials (e.g. websites of the analyzed offices).

It is significant that particular offices presented information of varying degrees of detail. But it is evident that political changes (e.g. rotations of voivods, which is not infrequent in Poland), result in varying approaches to anti-corruption measures. The evaluators are convinced that this is why the activities of the parent administrative bodies (like the Ministry of Administration) are so important and they should focus on promotion or even enforce anti-corruption activities in subordinate institutions. That is also why it is necessary to have ongoing national programs and to monitor the ant-corruption activities.

Yet another trend prevails in the local government units. The municipalities themselves undertook measures to address corruption and to minimize its scope. They also participated in joint social campaigns promoted by non-governmental organizations. The reason for such proactive attitude is probably that the local authorities (mayors, presidents

and councils) have been elected directly and they have to respect the opinion of their constituencies more than representatives of the central administration. They are rooted deeper in their communities, they function within more flexible structures and they have more freedom than the state services.

This proves that the so-called human factor plays a significant role - direct involvement of the superiors in anti-corruption activities, sensitivity to ethical issues, taking into consideration not only existing legislation or directives, but also the spirit of the law.

What hinders implementation of the *Anti-Corruption Strategies*, besides personnel turbulences, is low quality of legislation. Rules are either unstable or imprecise (e.g. those pertaining to the civil service) or they are too restrictive, which may paradoxically lead to discretionary decision-making (the Customs case).

Ambiguity of formal legitimacy and lack of clear rules is particularly evident in case of the ethics advisors. As a result, the funds allocated for functioning of this institution have been largely wasted.

Introduction of quality certification (ISO and CAF) has been an important factor in reducing corrupt behavior. The ISO certification process requires systematic and detailed description of procedures related to specific posts, thus reinforcing positive habits. Also participation in various competitions and adaptation of procedures to the EU standards and requirements have had a positive impact.

During the second assessment, which focused on the activities in 2007–2011, the sociologists surveyed all 17 ministries and 16 Voivod Offices as well as 32 central offices and institutions. This time, the basic tool was a questionnaire (65 institutions were invited to participate in the survey, 52 completed the questionnaires). The most important was to evaluate the commitment of the institutions to fight corruption. They were asked, e.g. what procedures and certificates to fight corruption had been introduced (and how useful they were), in what training courses the staff participated, whether Code of Ethics was adapted and an ethics advisor was appointed, what solutions related to public procurement were implemented, and finally, whether the office/institution can show examples of its own initiatives.

The authors present a detailed list of activities of each institution that completed the questionnaires. It appears that there is a great variety of

anti-corruption procedures and activities. The number of implemented solutions also varies. For example, only two ministries (the Ministry of Economy and the Ministry of Justice), two Voivod Offices (opolski and świętokrzyski) and one central institution (the General Inspectorate of Road Transport) are currently ISO and CAF certified and adopted the so-called “anti-corruption shield”. At the same time, 18 institutions did not implement any of those procedures.

The great majority of the surveyed institutions organized training on fighting corruption. But there are some – including the Border Guard and the Polish Information and Foreign Investment Agency – where not even one training session on corruption was conducted.

45 out of 52 surveyed institutions (including all Voivod Offices) implemented Code of Ethics. Ethics Advisors were appointed in in most ministries and Voivod Offices, but they were rare in central offices and institutions.

20 offices and institutions cannot show any own anti-corruption initiatives (including such “sensitive” to corruption institutions like the Ministry of Sport, the General Office of Building Control and the Military Housing Agency). It should be noted that the figures are based on the information provided by the respondents – the evaluators wanted to determine the scope of implementing the *Strategy* tasks and not the effectiveness of the program activities.

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In his essay on methods for fighting corruption, **Klaus Bachman** observes that although prevention is the most effective weapon, governments rarely use it because it is not spectacular enough. Tedious prevention actions do not ensure “spectacular media success which could then turn into electoral success”. Perhaps this is the reason the offices and institutions are so reluctant and slow in implementing anti-corruption procedures. And the staff think that anti-corruption activities weaken their status, they simply mean new responsibilities and strict discipline, sometimes even deprive them of potential.

Also the public opinion pays attention to spectacular trials and full-scale investigations (or meetings of committees of enquiry) rather than to laborious work inside offices. That is why “we will be often witnessing

huge anti-corruption campaigns and spectacular getting even with corrupted politicians and criminals – totally regardless of the real scope of corruption in Poland”.

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The evaluation shows that so far, the Polish State has not developed a long-term anti-corruption policy.

What is more, each consecutive government had a completely different vision and philosophy of combating corruption. Initially, legal obstacles and procedures were considered to be – partly under the influence of EU – the most effective anti-corruption tools (between 2001 and 2005, i.e. when SLD and PSL [the Democratic Left Alliance together with the Polish People’s Party] held the power). Then (in the years 2005–2007,) i.e. when the Law and Justice (PiS) was responsible for forming the government, repressive tactics took over, sometimes verging on violation of law. Anti-corruption phraseology – balancing on the edge of propaganda – was used extensively. Advocacy of aggressive anti-corruption measures became a flagship of the party’s program and the so-called system, controlled by a national network of politicians, businessmen and intelligent agencies, was supposed to be the most threatening manifestation of corruption. The government considered prevention activities to be not only disproportionate to the scale of corruption but also totally ineffective. Since 2007, PO-PSL coalition (the Civic Platform and the Polish People’s Party) has been focusing on strengthening of the state control, and simultaneously delaying legislative changes (although the Parliament lasted for a full four-year term, the expected laws on lobbying and anti-corruption were not passed).

If we add to all this relatively frequent changes of government, it is not surprising that the implementation of various anti-corruption measures (e.g. both stages of the *Strategy*) resulted in limited effects.

Stereotypes also played a significant role, particularly the belief that tightening up the penal policy is an effective method.

Development of really long-term anti-corruption programs (up to even 15 to 20 years) could be a solution. However, the programs should be restructured: they should include strategic goals and measurable performance indicators. A timetable for completing the tasks (a kind of

“road map for the strategy) should be set, so that it would be possible to monitor the program implementation.

The program should also include procedures for revising and updating tasks. Consecutive governments could use such long-term program to develop and implement short-term (4-year) operational projects (to be implemented during the four year parliamentary term). The projects would help achieving the strategic goals of the *Strategy*, but it would be also possible to adapt them to the political philosophies of the next governments.

Such model requires at least a minimum agreement (even unwritten) between the key forces in the political arena – they should agree on the significance of combating corruption, which should be treated as one of the elements of *raison d’Etat*.