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European anti-corruption regulation and its implementation in the Central Europe: on the case of Poland

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Європейське антикорупційне регулювання та його впровадження в Центральній Європі: приклад Польщі

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Annotation. *The article examines the implementation of the European Union anti-corruption regulations in its member states of Central Europe, in particular, in Poland. Nowadays, Poland is one of the most economically developed states of Central Europe. Its role as the growing leader on the scene of Europe attracts the attention of many political scientists. Even though Poland is on its way growth and prosperity, it is challenged with the remaining elements of all post-communist states. Corruption is one of the main challenging factors for such countries. The purpose of the article is to find out what are the anti-corruption European law implemented in Poland and its efficiency. It also refers to the real mechanisms for the corruption fight. In terms of action mechanism in the fight with corruption, it includes several institutions. In addition to the police and the Public Prosecutor's Office or other law enforcement agencies (for instance, secret services), the Polish legal system has a specific institution aimed for investigating corruption – The Central Anticorruption Bureau (CBA). The CBA has its specific tools to detect corruption among public officials and legal entities to gather evidence for criminal cases. The article tries to find out the influence of European pressure on the national fight against corruption. It shows the today's scope of corruption in the state and its challenging effect on the modern European legal framework. Moreover, it tries to find the answer if the change of government influence the increasing transpar-*

ency in Polish political life. Finally, the article concludes Poland's perspectives to become a real future leader of Central Europe in terms of its anti-corruption efforts and transparency.

Keywords: Anti-corruption law, Central Corruption Bureau, Anti-corruption report, Transparency International, Law and Justice, GCECO.

Formulas: 0, *fig.:* 0, *tabl.:* 0, *bibl.:* 12.

Анотація. У статті розглядається впровадження антикорупційних норм у центральноевропейських країнах, зокрема, у Польщі. Нині Польща є однією з найбільш економічно розвинених держав Центральної Європи. Роль Польщі, як зростаючого лідера на сцені Європи, привертає увагу багатьох політологів. Незважаючи на те, що Польща на своєму шляху зростає та процвітає, вона кидає виклик залишкам минулого усіх посткомуністичних держав. Корупція є одним із головних складних факторів для таких країн. Метою статті виступають питання з'ясування того, які антикорупційні європейські закони застосовуються у Польщі та визначити ефективність їх дії. Стаття також розглядає реальні механізми протидії та боротьби з корупцією. Щодо механізму дії у боротьбі з корупцією, то він містить декілька інститутів. Окрім поліції, прокуратури та інших правоохоронних органів (наприклад, секретних служб), у польській правовій системі є спеціальна установа, спрямована на розслідування корупції – Центральне антикорупційне бюро, яке має свої специфічні інструменти для виявлення корупції серед державних чиновників та юридичних осіб для збору доказів у кримінальних справах. Стаття покликана з'ясувати вплив тиску Європи на національну боротьбу з корупцією. Вона показує реальну ситуацію із поширенням корупції в державі та її шкідливий вплив на сучасну європейську правову базу. Більше того, у статті автор намагається знайти відповідь на питання: чи зміна уряду вплине на зростаючу прозорість у польському політичному житті. Нарешті, у статті робиться висновок про перспективи Польщі стати реальним майбутнім лідером Центральної Європи з точки зору антикорупційних зусиль та прозорості.

Ключові слова: Антикорупційний закон, Центральне бюро по боротьбі з корупцією, Антикорупційний звіт, Transparency International, Право і Справедливість, Група держав по боротьбі з корупцією.

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Formulation of the issue

In 2014 the European Commission published its first EU Anti-Corruption Report, which demonstrated that the nature and scope of corruption differ from one EU state to another and that the effectiveness of anti-corruption policies is not the same [4].

The report showed that the issue of transparency and corruption needs to have more attention in all of the member states, especially in the representatives of Central and Eastern Europe. There are more and more cases of corruption scandals across the EU (even including the EU funds). According to the latest researches, the cost of corrup-

tion across the EU put the loss to GDP as a result somewhere between 179 billion Euro and 950 billion Euros per year [11].

Poland is positioning itself as a regional political and economic leader: 'Poland is indeed Europe's future. It is younger, more dynamic than old Europe. It's been 14 years since Poland joined the EU, and it is showing the "old club" that it is ready to rock the boat' [9]. However, it took many years before the state could become not only a full member of the EU but also show its ambitions in the anti-corruption fights. According to the researches from the beginning of the 20th century, Poland was one of the most corrupted countries in

Europe [1]. Thus, corruption is a common challenge for all post-communist states. The fight against it is one of the most essential parts of the states in transition. Mostly, the changes in the levels of corruption depend on the ruling government and its dedication to the fight for a more democratic and transparent state. For the last years, Poland has managed to become a leader in different spheres in the region. Moreover, it shows the increasing rates of transparency in comparison to the years before its EU membership. Still, the question appears, if the state feels the pressure of corruption and what is its future in terms of the fight against it.

Analysis of recent research and publications

The article is mostly based on the statistical data prepared by the Transparency International and Freedom House, in particular, its independent reports. The evaluation rounds of the Group of States against Corruption (GRECO) are another source of data. The article also refers to the European law, in particular, the Treaty of the Functioning of the European Union and Polish national law, for instance, its Penal Code.

The wide part of EU anti-corruption legislation consists of different conventions: Council of Europe Criminal Law Convention on Corruption (COE Criminal Law Convention), which aims to coordinate the criminalization of corrupt practices, provide complementary criminal law measures and improve cooperation for the prosecution of offenses; Council of Europe Civil Law Convention on Corruption (COE Civil Law Convention), which aims to define common international rules of civil law and corruption; European Union Convention against Corruption Involving Officials (EU Convention against Corruption), which aims to fight corruption involving EU or Member States' officials; European Union Convention on the

Protection of the European Communities' Financial Interests (EU Convention on Financial Interests), which aims to create a common legal basis for the criminal protection of the EC's financial interests.

Unsolved earlier parts of the general problem

International non-governmental organization Transparency International defines corruption: 'Corruption involves behavior on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them' [6]. At the same time, the Treaty on the Functioning of the EU recognizes corruption as a "euro-crime", listing it among the particularly serious crimes with a cross-border dimension for which minimum rules on the definition of criminal offenses and sanctions may be established [12]. The biggest role of the fight with the corruption in the EU was given to the Commission. After the adoption of the Stockholm Programme, the Commission has been given a right to control the measures taken by the member states in the fight against corruption. At the same time, it was given a right to develop a comprehensive EU anti-corruption policy, in close cooperation with the Council of Europe Group of States against Corruption (GRECO).

The Commission's anti-corruption efforts include such pillars: mainstreaming anti-corruption provisions in EU legislation and policy; monitoring performances in the fight against corruption by its Member States; supporting the implementation of anti-corruption measures at the national level with the help of funding, technical assistance and experience-sharing. However, the Commission has no power to intervene in individual cases in the EU member states.

As a member of the EU, Poland has ac-

tively started the fight against corruption. Even though the beginning of its path was quite successful, the latest amendments of the government create some questions about existing transparency inside the state. According to the report prepared by the Council of Europe's Group of States against Corruption (GRECO), the amendments which were passed late last year (2018) by the

Polish government to the state's judiciary, including laws on the National Council of the Judiciary, to the Supreme Court and to the Law on Ordinary Courts, do not comply with the Council of Europe anti-corruption standards. The report is based on information gathered during the visits to Poland in 2018. A quite similar opinion had been expressed already by the Council of Europe's Venice Commission. The rising concerns about the level of transparency and corruption scopes raise the question of the efficiency of the Polish anti-corruption law and existing European standards.

Formulating the objectives of the article

The main purpose of the article is to analyze the efficiency of the anti-corruption policies in Poland as a member of the EU and a new regional leader. In 2018 the Transparency International published its Corruption Perceptions Index, which ranks Poland as 36 least corrupt nation out of 175 countries [3]. Such a result shows real progress in the state's fight against corruption during the last years. Corruption Rank in Poland averaged 44.57 from 1996 until 2018, reaching a high rank of 70 in the year 2005 and a record low of 24 in 1996. While most Poles (76 percent) consider corruption as a big challenge for Poland according to a CBOS poll from May 2017 [2], this is a drop from 89 percent in 2009 and the lowest percentage since 1991. When it comes to the current gov-

ernment, 59 percent of respondents think that the political climate in Poland enables the fight against corruption. Despite the positive changes in the corruption rates, there are still question about the future of Polish transparency.

Outline of the main research material

Poland is a part of several international conventions aimed at fighting corruption. They include: OECD Convention on

Combating Bribery of Foreign Public Officials in International Business Transactions, Convention against Transnational Organized Crime, Council of Europe Civil Law Convention on Corruption, Council of Europe Criminal Law Convention on Corruption, United Nations Convention against Corruption. However, Poland is not a party to the European Convention on Transfer of Proceedings in Criminal Matters. On the national level, bribery of public officials is regulated under the Polish Penal Code (PC), articles 228-230a [10].

In terms of action mechanism in the fight with corruption, it includes several institutions. In addition to the police and the Public Prosecutor's Office or other law enforcement agencies (for instance, secret services), the Polish legal system has a specific institution aimed for investigating corruption – The Central Anticorruption Bureau (CBA). The CBA has its specific tools to detect corruption among public officials and legal entities to gather evidence for criminal cases. However, it cannot prosecute defendants accused of corruption before courts. That should be done by the public prosecutors.

As for the overall mood in Polish society, corruption remains a concern for Poles, and the PiS (Law and Justice) government has quite a huge influence on such a situation, especially after cracking down on tax fraud and introducing changes in the tax administration [8]. At the same time,

this legitimate fight against corruption has often been claimed to be a party's priority. In 2017, PiS focused its efforts on resolving the "restitution scandal", which refers to the significant problems around returning property nationalized after World War II. Overall, Poles perceive politicians, as well as the medical and legal professions, as particularly prone to corruption. In 2017 PiS took advantage of this perception, starting its campaign against the judiciary on accusations of corruption and nepotism among its members. During the 2015 electoral campaign, the Law and Justice party promised a crackdown on corruption, including tax-fraud schemes and tax avoidance. In 2017, then as a finance minister and later as prime minister Morawiecki and Justice Minister/Prosecutor General Zbigniew Ziobro strengthened the framework for curbing and penalizing tax fraud. At the same time, they were rough proponents of establishing a new investigative commission to assess the period between 2007 and 2015. In March 2015 the National Tax Authority was established, culminating the personnel and organizational changes in tax administration and reshuffling of the tax collection system.

2017 became a new period for the tax reforms. During the year, PiS also obliged companies to issue monthly tax receipts to the tax authority, previously sent on demand. According to estimates by the Finance Ministry, in the first quarter of 2017, tax revenue increased by 28 percent in relation to the same period in 2016. In March 2017 the amendments to the criminal code were introduced. They additionally increased penalties for gross VAT fraud to up to 25 years in prison. In August, the Prosecutor General issued guidelines concerning VAT fraud cases and encouraged prosecutors to request more severe punishments in cases of tax fraud and tax avoidance. During the year, VAT revenue increased by 9.7 billion zlotys [7].

Another strong topic was the so-called restitution scandal. After World War II, the Polish People's Republic nationalized large parts of private land and property. The restitution process was characterized by the abuses after the transition to democracy in 1989. The restitution scandal was another pillar used by the PiS. However, it is quite clear that there have been many instances of wrongdoing and quite possibly corruption by city officials. PiS's actions also meant the large-scale acceptance of social injustice, previously largely ignored by political elites. In March 2017, the Ministry of Justice established a verification commission for restitution in Warsaw.

The huge nepotism scandal occurred in 2017. It concerned the Defense Minister Antoni Macierewicz for promoting Bartłomiej Misiewicz, political cabinet chief and spokesperson for the Ministry of National Defense between 2015 and 2017. After the accusations, the minister was forced to step down from political functions in April. Another scandal appeared with the ruling party Senator Stanisław Kogut who was accused of corruption charges. The senator's PiS membership was suspended [8].

Conclusions

Overall, despite the latest political scandals, Polish society promotes the changes. The latest independent reports show the progress Poland has already made in addressing corruption, including improving transparency among lobbyists and introducing a new anti-corruption program to run between 2018 and 2020. Poland is still on its way to transparency. Even though there are few political scandals over the last years, overall the corruption rates are falling down. The state is on its own transition way and there are high chances for it to become a real political and economic leader not only of Central Europe but the whole EU.

Reference

1. Batory, A. (2018), "Corruption in East Central Europe: has EU membership helped?", *Handbook on the geographies of Corruption*, pp. 169-182.
2. CBOS (2017), Public opinion research center, vol. 5, p. 3.
3. – The official web site of the Transparency International (2018), Corruption perception index. URL: <https://www.transparency.org/cpi2018> (Accessed 17 February 2019)
4. The official web site of the European Commission (2014), Anti-corruption report. URL: https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en (Accessed 17 February 2019)
5. Official website of GRECO (2018), Group of states against corruption// Addendum to the Fourth Round Evaluation Report on Poland (Rule 34). URL: <https://www.coe.int/en/web/greco/-/poland-council-of-europe-anti-corruption-group-criticises-weakening-independence-of-courts-and-judges> (Accessed 17 February 2019)
6. The official web site of the Transparency International (2018), How do you define corruption? URL: <https://www.transparency.org/what-is-corruption#define> (Accessed 17 February 2019)
7. Darasz, J. (2017), "Fighting VAT fraud brings a substantial increase in Poland's budget revenues", *Central European Financial Observer*. URL: <https://financialobserver.eu/poland/fighting-vat-fraud-brings-a-substantial-increase-in-polands-budget-revenues> (Accessed 27 February 2019)
8. The official web-site of the Freedom House (2018), Nations in Transit: Report on Poland. URL: <https://freedomhouse.org/report/nations-transit/2018/poland> (Accessed 27 February 2019)
9. Poland is Europe's dynamic future (2016), *Politico*. URL: <https://www.politico.eu/article/letter-to-editor-poland-warsaw-is-europes-dynamic-future> (Accessed 27 February 2019)
10. Polish Penal Code, 1997. Art.228-230a, pp. 81-82.
11. European Parliament research service (2018), "The costs of corruption across the EU". URL: <https://www.greens-efa.eu/en/article/press/new-report-the-cost-of-corruption-across-the-eu> (Accessed 27 February 2019)
12. Treaty on the Functioning of the European Union (2012), Euro-lex. URL: <https://eur-lex.europa.eu/legal-ontent/EN/TXT/?uri=celex%3A12012E%2FTXT> (Accessed 27 February 2019)

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