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**Figures**

Figure 1. Control of corruption indicator..... 6  
Figure 2. General perception of corruption – respondents believe, corruption is a ‘very big problem’ ..... 6

**Tables**

Table 1. General perception of corruption..... 4  
Table 2. Experience of bribery..... 4  
Table 3. Corruption within socio-professional groups ..... 5  
Table 4. Use of procurement procedures .....10  
Table 5. Fraud crimes related to EU funds spending .....12  
Table 6. Corruption crimes related to EU funds spending.....13  
Table 7. Perception of corruption in the public administration .....17  
Table 8. Tolerance of corrupt behaviors .....24  
Table 9. General trust and faith in main public institutions .....25  
Table 10. Sense of influence on situation in the country and local community .....25  
Table 11. Turnout in national elections .....25  
Table 12. Membership in civic organizations .....26  
Appendix 1. Particularism diagnosis.....38

## I. Introduction

Corruption was not a salient issue in Polish public opinion by 2013, although it was regularly raised in the media in relation to bribery, misuse of power, favoritism or other corrupt behavior. In 2013 a multimillion-euro fraud in the tenders for IT services for public administration (MAiC 2012) made headlines. Another earlier case that raised much concern was related to public procurement for highway construction projects (EurActiv 2012). In both cases, as a result of the bribery of high-ranking officials, not only was the realization of important public investments at stake, but also the possibility of losing large sums in European funds. Both cases were widely covered in the media, and one consequence was the suspension of EU subsidies - in the first case the European Commission froze more than 700 million EUR, in the second more than a billion EUR. It is also impossible not to mention one of the largest corruption scandals of recent years, which has affected the Polish Football Association. Between 2004 and 2011 several hundred football fans, officials and players were detained or arrested. Up to the time of completion of this text the courts had overseen nearly a hundred convictions. This summary conveys only a partial image, however.

Nevertheless, since the early 1990's most Poles have believed that they live in a deeply corrupt country. Citizens see corruption as a permanent feature of daily life, even when they do not encounter it directly. Few have been asked to paid a bribe, however (see Table 2), at least in comparison with the far larger numbers perceiving corruption (see Table 1).

**Table 1. General perception of corruption**

Do you believe corruption is a significant or very significant problem in	Dates											
	VII 91	II 92	VII 00	VIII	II 03	XII 03	V 04	XII 05	II 06	IV 09	IV 10	VI 13
	%											
Very significant	33	49	46	68	68	65	75	71	67	40	44	40
Significant	38	37	40	25	23	25	20	22	26	49	43	43

Source: Public Opinion Research Center (CBOS), [http://cbos.pl/SPISKOM.POL/2013/K\\_105\\_13.PDF](http://cbos.pl/SPISKOM.POL/2013/K_105_13.PDF) [last access: 10.10.2013]

**Table 2. Experience of bribery**

In the last 3-4 years, did you find yourself obliged to bribe someone?	Dates											
	X 93	IV 97	VII	XI 00	VI 02	VI 03	VI 04	V 05	VII	XII	IV 09	VI 13
	%											
Yes	16	20	19	14	16	17	15	15	9	9	9	9
No	77	74	73	85	82	80	83	83	90	89	89	89
Hard to say	7	6	8	1	3	4	2	2	1	2	2	2

Source: Public Opinion Research Center (CBOS), [http://cbos.pl/SPISKOM.POL/2013/K\\_109\\_13.PDF](http://cbos.pl/SPISKOM.POL/2013/K_109_13.PDF) [last access: 10.10.2013]

Invariably, for many years, Poles have also believed that the main sources of corruption are the same socio-professional groups – especially politicians and senior officials, health care employees and local government officials.

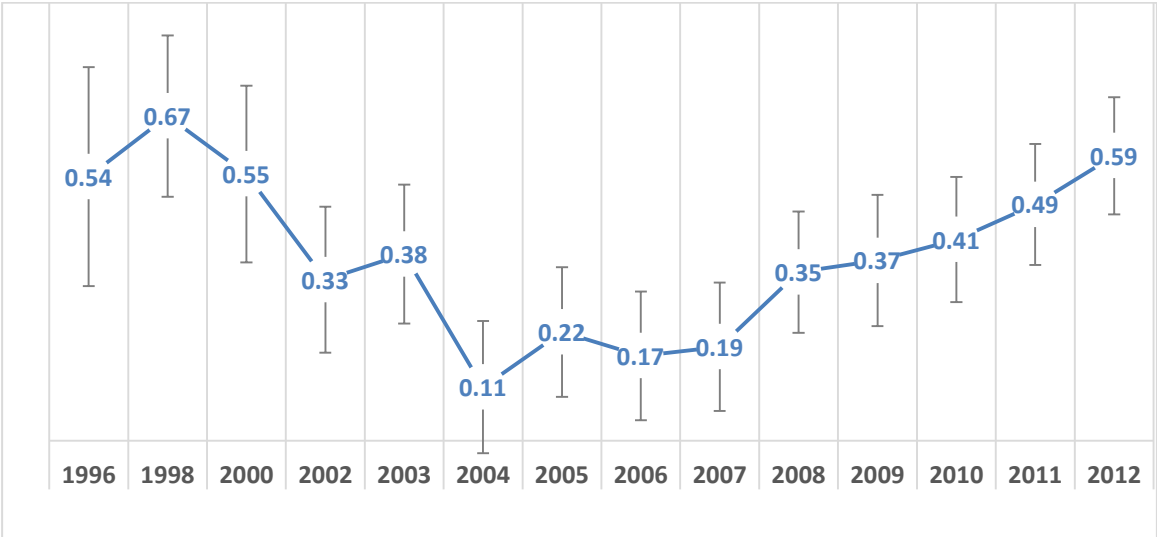
**Table 3. Corruption within socio-professional groups**

From time to time we hear about corruption in various areas of public life. In which of the listed areas do you believe corruption is most common?	Dates									
	X 01	VI 02	VI 03	VI 04	V 05	VII 06	XII 07	IV 09	IV 10	VI 13
	%									
Among politicians – party members, local councilors, MPs	54	52	60	64	61	35	44	55	60	62
In healthcare	47	42	43	37	50	53	58	54	58	53
In courts and prosecutor's	37	33	33	42	37	32	30	29	29	31
In local government offices	29	25	29	30	21	28	25	28	31	27
In the police	31	23	25	21	34	31	28	16	15	21
In central government institutions and ministries	38	29	37	39	34	22	32	27	26	18
In state-owned companies	13	12	11	11	11	9	15	14	13	13
In private firms	13	9	11	9	12	8	9	10	8	9
In education and science	7	8	4	5	4	8	3	3	3	3
In banks	6	3	5	4	4	3	2	4	3	2
In the military	-	-	-	-	-	-	-	-	1	1
Elsewhere	1	0	1	1	1	2	0	4	1	2
Hard to say	1	12	8	7	6	15	10	8	7	8

Source: Public Opinion Research Center (CBOS), [http://cbos.pl/SPISKOM.POL/2013/K\\_105\\_13.PDF](http://cbos.pl/SPISKOM.POL/2013/K_105_13.PDF) [last access: 10.10.2013]

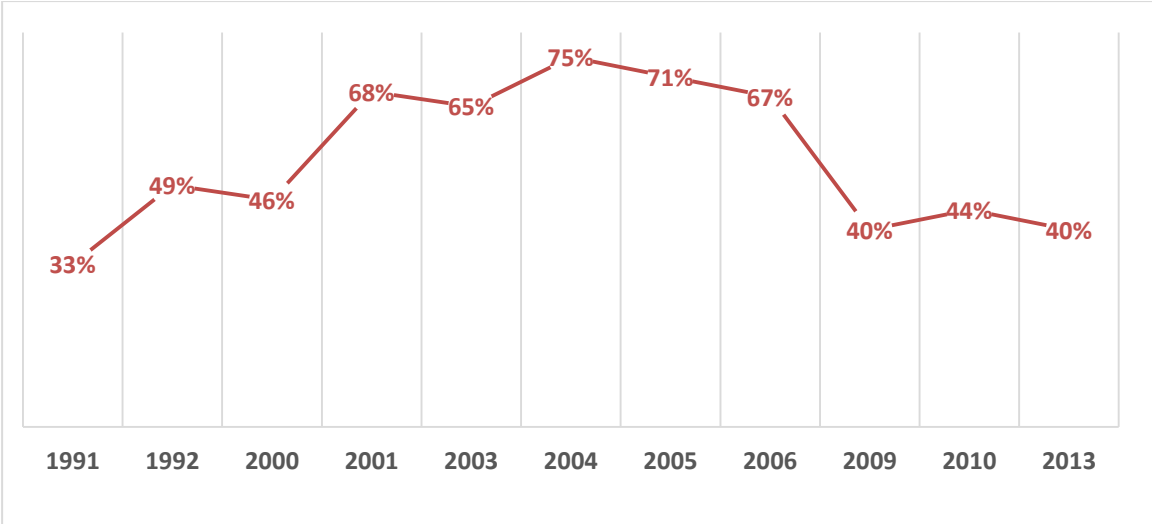
The results of public opinion surveys about corruption in Poland corroborate the WB control of corruption (CoC) indicator commonly used by the World Bank and other institutions to describe the quality of governance in individual countries. CoC has a value of -2.5 to 2.5 points – a higher value means the country has a greater ability to combat corruption. In the case of Poland, that indicator did not change particularly quickly. Since the first measurement in 1996 until 2012 it fluctuated close to zero, reaching its lowest value of 0.11 point in 2004 and its highest (so far) in 2012 – 0.59 points - not a large variation, suggesting that Poland is not doing so badly, but has not taken intensive efforts to improve. Metaphorically speaking, Poland “barely holds its head above the water” – it is a "borderline country", and registered no great progress during its democratization years as a whole. Both surveys find that between 2000 and 2007, so in pre-accession and first EU accession years the situation of Poland actually declined before returning to previous values. This was also a period of unprecedented public discussion about corruption.

**Figure 1. Control of corruption indicator**



Source: Public Opinion Research Center (CBOS), [http://cbos.pl/SPISKOM.POL/2013/K\\_105\\_13.PDF](http://cbos.pl/SPISKOM.POL/2013/K_105_13.PDF) [last access: 10.10.2013]

**Figure 2. General perception of corruption – respondents believe ‘corruption is a ‘very big problem’**



Source: The Worldwide Governance Indicators, <http://www.govindicators.org> [last access: 02.01.2014]

The early transition period in Poland was characterized by little discussion of corruption. In fact, one would have expected the opposite for that was the time of intensive privatization, processes which on the one hand certainly created many “opportunities” for particularistic actions (for “them”, for the party, for influential interest groups, etc). Sometimes privatization processes provoked justified controversies, such as that concerning the sale of the Polish Telecommunication Company, TPSA. On the other hand, privatization, associated with the inflow of foreign capital, was able to contribute to the reduction of various forms of corruption, such as the seizure of important sectors of the economy by fraudulent businessmen, or the post-communist nomenclatura, which otherwise could have resulted in the emergence of an ‘oligarchy’ class similar to those known from Russia or Ukraine (Aslund 2007). Other important reforms happened at the same time – for example, reform of public administration

and the establishment of a civil service in 1993, which might have contributed toward improvement of the quality of governance in Poland. Also decentralization and its key element – the local government reform which was initiated therein - helped empower citizens and local communities. The hope was that autonomous local governments would implement public policy and distribute public goods and services more in accordance with the logic of ethical universalism. It was hoped too that at the same time they would be more transparent and accountable than central structures which are more remote from citizens, although such hopes seemed to have been fulfilled only in part (Regulski 2000).

It may therefore be that the early transition reforms of intense privatization, reform of local government and a number of significant changes to public administration helped create a virtuous "equilibrium" (Mungiu-Pippidi 2011) with fewer "opportunities" and some barriers established against systematic corruption. One would therefore expect the reforms to bring positive results in following years, but according to the control of corruption indicator, as well as to public opinion polls, what followed was a decline in the quality of governance. It seems that the quality of transition (or post-transition) governments themselves rather than the legal framework created mattered more.

The understanding of what corruption is began to change as Poland began the process of accession to the European Union. In the years 2000-2004 and following, public discourse on corruption was very intense, with various strong non-governmental initiatives involving media campaigns and educational projects (Makowski 2006). An important change in social understanding of corruption might be noted easily by analyzing the media. In this period the media not only reported corruption more often, but also in a more descriptive way. In the press, or on web portals, journalists and experts explained what modern corruption is and described its various forms. Publications too were rich in definitions of corruption and referred to research results and expert opinion.

## **II. State of governance**

The definition of corruption used in this paper is very broad and refers to all kinds of particular (i.e. non-universal) allocation of public goods as the result of the abuse of influence (Mungiu-Pippidi and all 2011). The typology of governing regimes, adopted for the purposes of this analysis identifies four broad categories:

- (neo)patrimonialism, when systemic corruption and particular social allocation accompanies a power monopoly;
- competitive particularism, when systemic corruption can be found in a context of pluralism;
- borderline, when the norms of particularism and those of universalism compete for supremacy;

- open access order, when the norm of social allocation is free and fair competition and citizens are treated equally by the government.

There are many indications, presented in previous publications based on this classification, suggesting that Poland belongs to the third – “borderline” category (Mungiu-Pippidi 2011). Poland is not a country ruled by autocratic authority nor do the elite monopolize access to public goods and services. Poles are not characterized as being people with a collectivist mentality who make no distinction between private and public spheres. On the other hand, Poland in terms of quality of governance, is surely behind countries such as Denmark, Sweden or the Netherlands, where the power really is "in the hands of citizens," state institutions are well protected from the influence of particularistic interest groups, and the norm is that officials follow the legal rules and always act for the common good.

In the case of Poland, at least from the formal point of view, there is a clear distinction between the public and private spheres although, in practice, within this “archipelago” of autonomy there are a number of "captured islands" controlled by bigger or smaller interest groups usually associated with politicians - especially those in power (e.g. professional sport, public media or the coal industry). Thus it happens that while, for example, the allocation of public goods is generally done in a universalistic manner there are still exceptions. Access to certain goods or services might still be facilitated (and sometimes even allowed) by favoritism, bribery, or other types of non-formal and / or unlawful practices.

## **Public procurement**

In 2012, the value of the public procurement market in Poland was estimated at 132 billion PLN (33 billion EUR), which accounted to more than 8% of GDP. The same year over 188 thousand contracts were awarded. The sector has been growing for several years, partly associated with the inflow of EU funds (UZP 2013).

It is difficult to assess to what extent those resources are distributed according to the principle of universalism or that of particularism, for there are no analyses available that could help to determine the specifics. So far, the public procurement market has not been analyzed for the presence of corruption and Polish literature on the subject is somewhat scarce. However, the question of whether the distribution of resources through public procurement is done by universalism or particularism can be answered indirectly, by analyzing general reports of audits and inspections carried out by national regulators.

One of the sources is data collected by the Central Anti-Corruption Bureau (CBA), one of whose jobs it is to protect the economic interests of the state. The CBA examines whether tendering procedures and the spending of public funds are done properly, and in 2012 the Bureau audited 83 economic decisions taken by different kinds of public institutions, 34 of which were related to public procurement procedures. The rest covered matters like the



management of public property, provision of financial support for non-public entities, allowances, tax exemptions, or privatization of social housing by local governments.

In most cases, the audits uncovered irregularities, and the Bureau made 38 notifications to the prosecutor's office of their suspicion that crime had been committed and 54 requests for the dismissal of public officials. CBA checks revealed loss to the State Treasury in the amount of 113 million EUR (CBA 2013). The majority of infringements were related to irregularities in local government administration, but the scale of the damage was incomparably greater in cases where breaches were made in national-level institutions. To take just one case, concerning the contract for the construction and maintenance of a Central Register of Vehicles and Drivers coordinated by the Ministry of Internal Affairs and Administration and carried out in 2000-2010, the audit revealed abuse in the amount of PLN 34 million (8.15 million Euro). Among other things, malpractice was related to the unlawful annexing of contracts.

Another case reported by the Bureau in 2012 related to a particular state-owned company. It was not a case of irregularities in tendering procedures, but concerned the management of the company's assets. Members of the executive supervisory boards of the company were accustomed to receiving undue benefits and to being accompanied abroad on business trips by family members at company's expense. The sums involved were relatively large and exceeded 3.5 million PLN (900,000 EUR) in total. In addition, officials involved in the scandal were close associates of one of the parties of government, so the affair had a strongly political context, finally leading in 2012 to the resignation of the Minister of Agriculture, who had been responsible for supervising the company.

Another institution, where useful data can be found for assessing whether the governing regime in Poland is closer to particularism or ethical universalism, is the Public Procurement Office (UZZP) – the national public procurement market regulator. The UZZP prepares annually approximately 250 scheduled and ad-hoc audits of tenders involving EU funds. In 2012, irregularities were detected in 36% of cases, the most common types of violation being artificial division of orders, which allowed avoidance of more restrictive but also more competitive tender procedures, and using less transparent, discretionary and non-competitive modes. Instances were found of unjustified rejections of the best offers because of minor errors in documentation, and of setting conditions for participation in tenders that violated the principles of fair competition.

An interesting indicator here could well be the number of tenders where competitive and non-competitive procedures were used.

**Table 4. Use of procurement procedures**

Procedure	Years					
	%					
	2007	2008	2009	2010	2011	2012
Open tendering	63,79	70,39	68,28	77,94	82,07	83,89
Restricted tendering	1,30	0,97	0,79	0,69	0,64	0,60
Negotiated procedure with publication	0,14	0,11	0,11	0,13	0,14	0,28
Negotiated procedure without publication	0,54	0,53	0,39	0,29	0,17	1,16
Competitive dialog	0,04	0,03	0,02	0,03	0,04	0,03
Contract of single source procurement	28,27	22,19	25,98	17,20	13,90	11,69
Request-for-quotations	5,87	5,73	4,27	3,55	2,91	2,19
Electronic bidding	0,05	0,05	0,16	0,17	0,13	0,16

Source: Author's analysis based on data of the Public Procurement Office, [www.uzp.gov.pl](http://www.uzp.gov.pl)

Over the last six years the number of tenders where uncompetitive procedures were used has declined significantly. Theoretically, that could be an indication of a more rational, universalistic, approach to public procurement. The problem is that the competitive procedures are often used incorrectly, the most common mistake being to use price as the sole criterion for assessing the quality of an offer. As a result, the cheapest offer is most often the one chosen, which does not necessarily guarantee quality. Moreover, the price criterion is easy to manipulate, which can lead to corruption and other irregularities.

The way the public procurement market is regulated in Poland can be considered reasonably effective. Development in the sector might be slow and full of drawbacks (public procurement law is still one of the most frequently changing pieces of legislation in Poland), but it is evolving from the particularistic logic to more universalistic model. The problem is that the evolution is not steady.

Public procurement legislation was first adopted in Poland in the early 1980's during communist times in an attempt to reform the devastated centrally planned economy. In rudimentary form, some competitive modes of commissioning public tasks were introduced. This was also possible thanks to a gradual expansion of the sphere of private enterprise (Poznanski 1993). However, the first real breakthrough did not come until the early 1990's, with political and economic liberalization and - perhaps preeminently in that period - in relation to the emergence of a new category of large public institution – local government. Brought to life in 1991 and in the years thereafter, local government and county and regional departments quickly became the most important source of supply to the public procurement market.

The first comprehensive law regulating public procurement procedures was adopted in 1994. Roughly speaking, it complied with all international requirements posed in the framework of the GATT, or by organizations such as the World Bank, and first of all it established the national public procurement regulator – the Public Procurement Office (UZP). Unfortunately,

at that time, the provisions lacked a number of important measures required by the European Union, so it was adjusted to meet EU requirements - but only in the late 1990s when Poland's accession process began. The adjustment was forced on the country in the face of an EU threat to both exclude Polish companies from the EU market and to reduce pre-accession funds.

However, a completely new law on public procurement, complying with all EU requirements was not adopted until 2004, just before Poland joined the EU. Although there were many objections to the new legislation, it was an important and positive step toward strengthening the position of the Public Procurement Office and especially its chief officer. The scope of control and the competences of UZP were expanded, for example by the introduction of an "observer" – an arbiter from the national list of arbiters who was to be delegated by the head of UZP to the procurement commissions which would make decisions about the most valuable contracts.

Many experts criticized the new legislation for focusing too much on checks and controls rather than on the effectiveness of the system. Indeed, a side effect of the new law was a frequently excessive length of tender procedures, and often even total paralysis, what was most evident in the area of infrastructure investment (Lubiszewski 2013). On the one hand, the head of UZP not only became established as one of the highest officials, but was appointed directly by the Prime Minister for a term of five years. Appealing to the head of the UZP was extremely difficult, but that had the effect of making the position highly independent from lower political pressure. On the one hand the changes were implemented in response to pressure from the European Commission, while on the other hand they were consequences of the political situation at the time. The government that was making such reforms as it sought to regain the trust of voters was simultaneously groaning under the weight of numerous corruption scandals in its own ranks.

The time of strong UZP leadership and its broad control powers quickly faded. In 2007, a right-wing government dissolved the civil service, set up an unlimited term for the head of the UZP, and limited the scope of the agencies powers. After the 2007 elections, the new Prime Minister changed the head of UZP on undisclosed grounds. At the same time, however, the situation improved somewhat as one of the amendments to the public procurement law introduced a competition procedure for the position of UZP head. However, the OECD found that UZP had much less autonomy than it did in 2004 (OECD 2011). A recent study prepared for the European Commission (published in late 2013) identified many problems in the area of Polish public procurement. Among other things, the Polish system lacks risk assessment procedures to limit the possibility of corruption, has no rules for protection of whistleblowers, no specialized trainings for officials, nor important electronic instruments like a central database of public procurement proceedings, special e-modules to reduce the risk of fraud in electronic commercial proceedings such as auctions, and so on (see: PwC 2013).

Summing up, Poland created quite a good framework for public procurement which approaches the standards of ethical universalism, but the framework (the law and institutions) is unstable and full transparency still needs being enacted.

The best way to trace social allocation is through EU funds distribution as they remain the greatest source of potentially discretionary money, though they are subject to special oversight due to requirements of the European Commission. The data on fraud and other forms of misuse in this area is collected carefully by several public institutions in Poland, but unfortunately, as in the case of public procurement, they are not analyzed either in the context of corruption or following a general governance model.

One of very few studies on irregularities in the area of EU spending shows that that between 2006 and 2011 law enforcement agencies registered 3103 crimes of various kinds which qualified as fraud related to the use of EU funds (Nowak 2013).

**Table 5. Fraud crimes related to EU funds spending**

	2006			2007			2008			2009			2010			2011		
	CP	PR	SR %	CP	PR	SR %	CP	PR	SR %	CP	PR	SR %	CP	PR	SR %	CP	PR	SR %
Art. 54-92 FCC – tax fraud	0	0	0	0	0	0	1	1	100	3	1	33,3	2	1	50	0	0	0
Art. 270-273 PC – using forged documents	9	4	44,4	66	54	81,8	100	15	15	24	14	58,3	30	18	60	32	20	62,5
Art. 284 - 286-287 PC – simple fraud, IT fraud	167	112	67	176	127	72,1	133	67	50,3	202	127	67,9	119	74	62,2	124	64	51,6
Art. 297 PC – credit fraud	163	97	59,5	498	305	61,2	415	208	50,1	411	181	44	286	142	49,6	214	128	59,8

\*FCC – Fiscal Criminal Code, PC – Penal Code

\*\*CP – Concluded proceedings, PR – Positive results, SR - Success rate

Source: Nowak 2013, Table 7

In her paper Celina Nowak presents the pre-trial success rate in EU fraud cases in which proceedings are carried out by the Polish Police (2013). She defines the pre-trial success rate as a relation between the number of proceedings concluded with regard to EU fraud with a positive result and the overall number of concluded proceedings.<sup>1</sup> According to the data shown in Table 5, generally a relatively high number of the proceedings are likely to be unsuccessful at the pre-trial stage. In Nowak's opinion, it is not the impossibility to identify the perpetrator that mainly contributes to the relatively low pre-trial success rate, as only few proceedings are discontinued due to the unidentified perpetrator. It might be that law enforcement bodies (including prosecution) are insufficiently aware of the legal framework so fail to build a successful case.

<sup>11</sup> This is only a preliminary success rate and there can be different results after the trial.

Based on Nowak (2013) this report compiled a simple analysis of the number of common corruption offenses associated with spending of EU funds (see Table 13). The numbers remain low.

**Table 6. Corruption crimes related to EU funds spending**

	2006			2007			2008			2009			2010			2011		
	CP	PR	SR %	CP	PR	SR %	CP	PR	SR %	CP	PR	SR %	CP	PR	SR %	CP	PR	SR %
228 – 230a PC – bribery, trading in influence, paid protection	7	5	71%	7	5	71%	13	7	54%	11	3	27%	20	9	45%	5	2	40%
296a PC – bribery in private sector	0	0	0	0	0	0	0	0	0	1	0	0%	0	0	0	0	0	0

\*FCC – Fiscal Criminal Code, PC – Penal Code

\*\*CP – Concluded proceedings, PR – Positive results, SR - Success rate

Source: Authors calculation based on Nowak (2013)

Despite the lack of more specific evidence about irregularities related to the distribution of public resources, most experts, and representatives of law enforcement and supervisory institutions in Poland believe that public procurement and EU funds spending are areas of high corruption risk.

One of the Central Anti-Corruption Bureau reports of early 2013 states that:

In a short time one may expect that competition to win public contracts between large companies operating in the domestic market will be much more intense. It should be noted however that along with the economic downturn in various regions of the country, small and medium entrepreneurs will be the first to experience the effects of the crisis. Therefore, they might attempt to set up tenders, especially at a local level. Large investments (such as highway projects) due to the multi-million value and sustainable funding (from the state budget and EU sources) are extremely profitable. Therefore we might observe attempts to win such contracts by using illegal methods (CBA 2013, p. 6-7 [author's own translation]).

Unfortunately the Bureau does not support its diagnosis with any hard data. It is however in line with public opinion. For many years, most Poles have strongly believed that giving public contracts to officials' families, friends, or acquaintances is common practice, but there are no hard data in the official documents on irregularities in the public procurement and spending of EU funds to indicate that they might be a direct result of bribery, favoritism, the influence of specific interest groups (such as political or economic oligarchs) or other forms of corruption.

This still very preliminary analysis suggests that the scale of irregularity in public procurement and spending of EU funds is relatively small, suggesting that Poland is doing

rather well in this area and tends rather to follow the logic of universalism than of particularism. To confirm this observation more studies in greater depth would be required.

### ***Employment in the public sector***

A more telling indicator of the type of governance in Poland is data on staffing in the public sector. In particular, we shall focus on changes to legislation, public opinion and available information on hiring individuals for leading positions in state-controlled companies.

At the end of 2011, there were 418,136 public administration employees (including 236,061 persons working in local government)<sup>2</sup>. For more than twenty years after the fall of Communism, the legislative framework concerning public administration changed repeatedly, especially in relation to the decentralization processes. For example, local government units were introduced in 1991 and administrative reform in 1998, which created a four-level system of administration; and there was the necessity to adapt to the requirements of the European Union (Bentkowski, Bober 2007). It would be difficult here to discuss all the developments that shaped public administration in Poland, although during the search for indicators of whether the Polish governance model is particularistic or universalistic, it is worth mentioning various attempts to establish a professional civil service in Poland, even if they were unsuccessful.

In 1991, parliament passed the law establishing the National School of Public Administration (KSAP), with the priority of educating senior public administration staff as quality professionals. However, consecutive governments were not very willing to make use of their skills, so that in the following years the most important positions in public administration were usually filled by political nominees. The reluctance of politicians at that time to create a really professional, apolitical public administration is confirmed by the fact that the first Civil Service Act was adopted only in 1996, although even that law made no great changes. Positions in public administration continued to fall prey to politicians (Burnetko 2002).

The next Civil Service Act was passed in 1998 and was intended to strengthen the structure of public administration and force decision makers to use merit-based criteria for recruitment. The new legislation failed too, being routinely circumvented because of a loophole which allowed non-graduates of the KSAP who lacked the necessary competence to be appointed to key positions. Most often such political nominees became so-called "PO's" (from the Polish expression "Pełniący Obowiązki" – someone "performing duties"), because they were supposed to hold their positions only temporarily, although in practice they stayed for years and were replaced by other "PO's", appointed as new cabinets were formed (Burnetko 2002).

Deep and constant politicization of key positions in public administration is evidenced by the fact that within a few months after the elections in 2005 two-thirds of general directors and half the heads of ministerial departments were changed. Moreover, more than half of the

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<sup>2</sup> Official Data of Civil Service Department, <http://dsc.kprm.gov.pl/>

directors and deputy directors were “PO’s”, which meant that their appointments had been purely political (Heywood and Meyer-Sahling 2008).

In 2006 a new law on the civil service was passed. In fact it dissolved the existing civil service system and established in its place the so-called “national administrative personnel resource”. Within the new system almost all candidates for the highest positions in the administration were directly selected by political ministers, and many experts who have analyzed the reform of 2006 claim that they amounted to the culmination of the politicization of public administration in Poland. In 2008, yet another new law on the civil service was adopted whereby the corpus of civil servants was restored; however, it remained more directly subordinated to the Prime Minister than it had been under the 1998 law.

Even this short history of the turbulence around Polish public administration shows that its model of governance still conforms more to the philosophy of particularism than of ethical universalism.

Another indication that appointments in public administration, at least in some areas, are influenced by particularism is **the results of audits carried out by the Supreme Audit Office (the NIK)**. Of course, the NIK cannot completely control the almost 3 thousand local government units in Poland, with thousands of subordinate institutions (e.g. companies owned by municipalities), and other entities. However, the NIK does perform frequent selective checks which usually reveal many irregularities.

One of the more recent and most comprehensive audits was completed in late 2009 and 2010, in 45 local government departments at all three levels – municipal, county and voivodeship and revealed irregularities in recruitment procedures in 35 out of 45 audited local governments. In four cases, there were severe violations, like complete neglect of the obligation to conduct open competition for positions. However, there were other abuses such as delays in announcing vacancies or failure to make them public, both of which indicate that there was a strong tendency to manipulate procedures. In the summary of the report, the NIK auditors concluded that examples of the lack of clear and solid criteria, unequal treatment of candidates and disregard for legally binding rules, revealed in the course of inspection, created serious risks of corruption (NIK 2010 [author’s own translation]).

Unfortunately, the Supreme Audit Office does not prepare comprehensive reports with aggregated data from different audits, which would have helped to assess the real scale of irregularity in staffing in local public administration. Nevertheless, even those fragmentary data, and studies on the functioning of local government carried out by other institutions, enable us to formulate a strong hypothesis that there is a section of the public administration which, despite more than twenty years of transition, is still governed more according to the philosophy of particularism than of universalism (Kulesza 2012).

The final aspect worth mentioning in this section is **staffing in companies controlled by the state**. Unfortunately, there is even less ready-to-use data for that than there is for public administration. However, there are many premises suggesting that the area is especially vulnerable to particularistic influences, especially exerted by the political elite.

At the end of 2012 there were 249 companies controlled by the state. Having the ability to decide who is in the governing bodies, politicians willingly use that power to "pay their dues" to those who supported them during their election campaigns or any other political purposes. However, having almost no research data, we must limit ourselves to one illustration.

One of the biggest firms controlled by the state is Polish Public Broadcasting (TVP), which is also one of the largest media companies in the country. It is easy to guess that positions in TVP are a tempting target for politicians and between 2004 and 2013 there were five different government cabinets. During the same period there were fourteen changes in the position of president of TVP, a number which reveals how much the functioning of this company is driven by the short-term interests of the ruling political elites. In most public companies changes in management are perhaps less frequent than in the TVP, but there is always a change with each new term of parliament). (see also chapter on Trends)

#### **Public opinion on administrative corruption**

Public opinion in Poland is convinced that corruption is common in Poland and the public administration is perceived as one of most corrupt areas within it. Over the years, the negative opinion about that has not changed much, the vast majority of respondents believing that selection of senior officials in public administration, just as in state-owned companies, depends solely on family ties and friendships. That view is accompanied by a strong belief that bribery is always necessary in any sort of dealings with officials. In 2013, 55% of respondents expressed such an opinion. Poles also believe that the officials awarding public contracts - or making other decisions - tend to be pressured by business and other interest groups.



**Table 7. Perception of corruption in the public administration**

Do you think the hiring of friends and relatives for positions in public institutions, state companies, banks, etc., among high officials and politicians is currently:	Dates									
	IV 97	VII 99	VII 00	II 03	XII 03	V 04	IV 09	IV 10	VIII	VI 13
	%									
Very frequent / rather frequent	69	84	87	91	87	92	82	84	84	90
Rather rare / very rare	13	4	5	2	4	2	7	7	8	4
Hard to say	18	11	7	7	9	6	11	9	8	6
Do you think acquiring public contracts for family and friends, among high officials and politicians is currently:	Dates									
	IV 97	VII 99	VII 00	II 03	XII 03	V 04	IV 09	IV 10	VIII 12	VI 13
	%									
Very frequent / rather frequent	78	73	78	81	81	87	75	73	79	80
Rather rare / very rare	9	10	10	6	6	4	11	13	10	8
Hard to say	13	17	12	13	13	9	14	14	11	12
Do you think giving in to the pressure of private firms, professional or any other social groups related to public procurement, in exchange for their own benefit among high officials and politicians is currently:	Dates									
	XII 03	V 04	IV 09	IV 10	VIII 12	V 13				
	%									
Very frequent / rather frequent	78	81	74	72	73	77				
Rather rare / very rare	4	3	8	10	10	8				
Hard to say	18	16	18	18	17	15				

Source: *Public Opinion Research Center (CBOS)*,

[http://cbos.pl/SPISKOM.POL/2013/K\\_105\\_13.PDF](http://cbos.pl/SPISKOM.POL/2013/K_105_13.PDF) [last access: 10.10.2013]

This deep conviction that officials are corrupt becomes less justified when confronted with the results of research into direct experience of dealing with the authorities. Such a study was carried out in 2011 for the Department of the Civil Service. First of all, it showed that only 32% of respondents had had direct contact with any public authority during the year - usually the local administration and tax offices. It might be hypothesized therefore, that in general the belief that officials are corrupt is based not on direct experience, but rather on stereotypes, rumors, news reports, and so on. Moreover, most of the respondents who had had contact with officialdom declared that the people serving them were competent, willing to help and did their work promptly. Only 3% of respondents said they were asked directly or indirectly by an official for a bribe or other undue advantage. Those data suggest that the condition of the Polish public sector is not as bad as one might judge from public opinion polls.

### ***Evaluation of social allocation fairness and impartiality***

Access to basic public goods and services such as education, culture, health care or public transport is guaranteed under the provisions of the Constitution and a number of specific

laws. Public goods and services are financed from both central and local government budgets and it would be impossible here to discuss the Polish model of public allocation in detail. It is enough to say that, according to Eurostat, in 2010, Poland contributed 18.9% of GDP<sup>3</sup> to various social benefits, including the basic public goods and services - not the highest percentage among all European Union countries, but one of the highest in Central and Eastern Europe.

Experts estimate that spending on generally defined social policy is relatively high taking into account Poland's economic capacity. At the same time, in many areas there are still significant shortages restricting access to public resources. However, there are no clear indicators to assess how much they might be related to either a particularistic or a universalistic governance regime in Poland. Problems of availability of public goods and services are rather the result of other factors, such as the general level of development, overall wealth, and the budgets of central and local governments (KPRM 2009).

For example, one of the most significant barriers to access to educational services in Poland is a shortage of kindergartens. On average 60% of children in towns attend kindergartens, but in rural areas only 20% do (KPRM 2009) and of course in a context like that - especially in rural areas, one might expect to encounter instances of bribery. Parents might be willing to bribe kindergarten directors to obtain a place for their children, although there is no reason to believe that it is common practice nor that it would have any general effect on difficulty of access to education. The small percentage of children benefiting from preschool education is rather the result of the lack of schools, with local authorities in rural areas simply unable to afford to establish and maintain kindergartens from budgets which are relatively small compared with what urban areas can afford. The main source of income for local government is a proportion of the income tax paid by private individuals, and since rural dwellers earn less, so the loop closes. Corruption, if it does happen, shows a rather haphazard character.

Another example of limited access to public resources is publicly available e-services such as exchange of documents, or submission of tax declarations. Research shows that only 30% of Poles use the Internet to contact the public authorities, and the service itself is not readily available. Yet again, it is not that corruption greatly affects the implementation of IT projects in Poland - although cases of corruption do happen - but that the IT infrastructure in the country is generally poor. Proof of that is that in 2011 only 51% of the population had access to the internet (Czapiński, Panek 2011).

Healthcare is undoubtedly a fundamental and crucial public service. Under Polish law, access to almost all health services is free of charge –from the most basic care by family doctors to the most complicated hospital care and specialist treatment. According to the report Social Diagnosis 2011, 91% of Polish households declared that they made use of

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<sup>3</sup> [http://europa.eu/rapid/press-release\\_STAT-12-165\\_en.htm](http://europa.eu/rapid/press-release_STAT-12-165_en.htm) [access: 2.10.2013]

public health services (Czapiński, Panek 2011). At the same time nearly half (49%) use the parallel services provided by private companies, which might tend to suggest that the public system, despite its universality, is unable to satisfy all needs. The same report shows that 2% of Poles are willing to pay informal "extra" money for services in the public health care system. Respondents also declared that an annual average amount of "informal payments" (including bribes), is just over 500 PLN (125 EUR), which is a relatively small amount.

Taking those numbers into account, it would be difficult to defend the thesis that health care is an area of public life particularly vulnerable to corruption. However, for many years, in addition to politicians and public administrators public opinion has pointed to health care as one of the most corrupt areas. Just as with politicians and officials, a strong belief that the health care system is corrupt can be interpreted rather as an assessment – its organization, satisfaction with services, and so on. The same surveys suggest that the majority of those who benefited from the public health system never found themselves in a corrupt situation, so that the widespread conviction that corruption in this sector is commonplace seems rather an exaggeration, if not a misconception. Moreover, the overall availability of private health services is increasing, for example, in 2000 only 38% of households reported use of private health care. Increased availability itself helps to eliminate one of the most important factors in corruption.

Of course, there are some gaps that the private sector cannot fill. For example, there is the high cost of medical technology such as tomographs, which the OECD reports as being carried out in Poland at half the rate per thousand citizens of the average for its member countries (OECD 2010). Then again, the problem might involve a limited supply of specialists like transplant surgeons or cardiologists, and in areas like that Poles might indeed face corruption, if there is the necessity of bribing doctors and specialists or "paying extra" for access to the most advanced medical services. However, the true scale of such corruption is unknown.

A glimpse into the problem of corruption due to health policy failure is provided by the case opened in 2007 against one of the leading Polish cardiologists, who was working in a public hospital. Shortly after he was detained, the Ministry of Health estimated that the number of heart transplants fell by 40% or perhaps even 50%. (PolTransPlant 2008) That decline was attributed in part to the fact that a team led by that particular cardiologist performed the highest number of heart transplants in Poland. Furthermore, even after several years of litigation the government could not prove that the doctor had made his treatment conditional on bribes.

Probably the greatest risk of corruption in healthcare is related to public investment and regulation of the pharmaceutical market. There, decisions on multibillion-dollar contracts are

made and competition between suppliers of drugs and medical equipment is very intense. Unfortunately, there are no analyses of corruption in that area.

Another key public resource is education, and the results of polls on the perception of the sector show that it is perceived as relatively free of corruption. In the past, mostly petty corruption was seen in schools, such as paying bribes for grades or acquiring places in better establishments. However, again given the lack of any systematic research it is difficult to assess what was (or is) the scale of the phenomenon and how it limited access to education in general. Currently, although in this case too there is no hard data, public attention is focused rather on the lack of transparency in the relationship between schools, teachers and textbooks suppliers. There are many reasons to believe that schools are often bribed by publishers to buy their textbooks (Rzeczpospolita 2013) and as a result students and their parents fall victims. Some experts suggest that the market for textbooks is ultimately created by collusion and corrupt lobbying by a few dominant players, showed for instance in the reluctance to introduce e-textbooks, which would be cheaper and more accessible to students.

The Polish state tries to provide relatively wide access to various types of public resources and services, and problems and barriers seem rather to be the results either of a scarcity of resources or of organizational failures by the institutions responsible for providing a particular service. Corruption in public services seems to be rather a side effect of policy failures.

### **III. Underlying mechanisms**

Indicators discussed above suggest (in the opinion of the author) that Poland is a country in the borderline or in a mixed category between particularistic and universalistic regimes of governance. The scale of corruption, whether in the area of distribution of public funds or related to staffing in public administration, or in the area of delivery of public resources and services, seems not to be especially extensive. Perhaps Poland is approaching the desired universalistic regime, although the process is very slow, in fact close to stagnation. It is appropriate then, to ask what mechanisms are hindering it. To attempt to answer that, I shall refer to certain of the indicators discussed earlier and will introduce new ones corresponding to the features of the models of governance previously described.

#### **Power distribution**

One area where we can look for the reason why Poland stalled at the border between particularism and universalism is the question of distribution of power where things are not as clear cut. In theory, the political system in Poland guarantees equal access to power; free association is permitted and people are free to form political parties to get their views heard. Citizens are also free to influence policy makers in other ways, by lobbying, by organizing protests, and they may submit their own bills to parliament or to local councils; they may also appeal directly to local authorities by means of referendums. In fact there is no single, elite

monopolizing power or access to public resources and since 1989 various configurations of cabinet government have formed involving almost all the political parties that emerged after the fall of communism. There are, therefore, a few specific groups or political parties which are totally excluded from power.

Some researches point out that a more problematic matter is that the Polish party system has become too exclusive, too closed off. That almost hermetic sealing of the political scene has gained momentum since the introduction of state financing of political parties which began in 2001 with the argument that it would reduce political corruption. Indeed, the bill proposing the new law was even called an “anti-corruption law” (BAS 2000).

The reform of the system of financing of political parties was done just before the elections by a right-wing government which hoped to rebuild support following a series of scandals. There had been unlawful lobbying, trouble with privatization processes, corrupt tenders for military equipment and there was also the report of the World Bank published at the end of 1999. That report included the information that one could buy a bill in the Polish parliament for \$3 million – the claim was investigated with a view to prosecution, but unfortunately with no result<sup>4</sup>. There was also small but influential group of experts and NOGs gathered mainly around Anti-corruption Program of the Stefan Batory Foundation and a non-governmental think-tank called the Institute of Public Affairs (Walecki 1999; Zbieranek 2009) who advocated the implementation of the German model of party financing. The system proved to also have disadvantages, however. First, no efforts were undertaken to improve control over party expenditure, which many experts have pointed out is the biggest problem needing to be resolved in this area. Secondly, it closed access to politics to new parties. A side effect of the reform that has been made is that new parties have hardly any chance of breaking into the political scene, most of them being simply incapable of financing campaigns from their own resources or from wealthy individual supporters and being unable obtain public funding. As a result they cannot reach the threshold of 5% of votes cast, which guarantees a place in parliament, or even 3%, which would at least allow them to obtain money from the state budget. All the same, it is not completely impossible, for in 2011, when an energetic businessman with left wing views managed to create a new political party just a few months before the elections, and managed to reach parliament with the support of almost 10% of the vote.

Civic Platform (PO), the center-right party in power since 2007 repeatedly tried to change the system and in 2010 managed to reduce the subsidies for political parties by half. The main

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<sup>4</sup> One of the main impulses was related to the story of Mr. Kazimierz Grabek, called the “The King of Gelatin”. In the late 1990’s, thanks to his connections with leading politicians of the main parties and very effective, but unlawful lobbying (called “Grabbing” by journalists from the surname of the businessman and the Polish word “grabić” which means sack or plunder) the rules of sanitary requirements for imported gelatin became very strict. In a short time this made him the biggest producer of gelatin in the country. See also: Jarosław Kurski, 2009, Król żelatyny, [http://wyborcza.pl/1,76842,6578391,Krol\\_zelatyny.html](http://wyborcza.pl/1,76842,6578391,Krol_zelatyny.html) [last access: 02.01.2014]

political parties are highly centralized, centered on the leader and a rather closed group of supporters. The leaders of the three most important parties have played leading roles in politics for twenty or more years, changing only the brands of politics they lead. According to Weberian typology, Polish political parties are solely “power” not program parties, their focus being almost exclusively on the struggle for power. They have less interest in developing and implementing political programs that could stimulate the modernization processes in the country, as shown for example by the poor – in fact almost non-existent – technical expertise available to the main political parties in Poland (Chmaj, Waszak, Zbieranek 2011).

Signs of exclusivity in politics can be seen at the local level too. In local elections in 2010 electoral committees created by the political parties gained an average of between 37% (in the smallest units) and even 90% (in bigger cities and regional governments) of the votes, with the rest accounted for by local groupings and activists. However, the proportion of re-elected councilors, with certain exceptions, did not exceed 50%, which might suggest that at least at the local level changes in power structures are easier and new people have more chance of being elected. But the reality is more complicated. The influence of political parties on local affairs is much stronger than the electoral statistics suggest (Kwiatkowski, Modrzewski, Płatek 2011). It is common practice, although difficult to quantify and demonstrate scientifically, that candidates for national political parties register as representatives of local (civic) election committees, which is done to counter suspicion that openly stated political affiliation might reduce the chances of gaining an electoral mandate, or even for purely practical reasons. Civic committees are often preferred because it is easier to claim campaign expenses because the regulations are different for them (A. Gendźwił, T. Żółtak 2012). As a result, however, politicization of local authorities is in fact deeper and many bad practices from the national level filter down to local governments.

To sum up, one of the main reasons why Poland has ended up caught somewhere between particularism and universalism is lack of accountability of the Polish political parties. Administrations formed by Polish parties feel little motivation to introduce the deeper changes which would push Poland toward the universalistic model of governance. The main impulse, which for a time stimulated policy makers to introduce and implement broader reforms, was the prospect of joining the European Union and attendant pressure from the European Commission. However, when EU membership was accomplished, the main source of motivation disappeared (Makowski 2008). At the same time, because of the politicization of local authorities and rather intransigent local political elites, the grass-roots political resources that might have stimulated positive changes have remained too weak to do so. A second factor is the low accountability of persons performing public functions linked, on the one hand, with the poor quality of available legal instruments and, on the other hand, with the “empowerment gap” – a sort of lag between legislation and practice. In Poland there are many legal solutions that can be used to hold policy makers accountable for their actions,

ranging from "hard" tools like the provisions of the criminal code, to softer ones like the rules governing access to public information. Those solutions often have significant drawbacks that hinder or even prevent their effective use.

A good example of such a regulation is the law enacted in 2011 establishing Liability of Public Officials for Flagrant Violation of the Law (Journal of Laws, 2011, No. 34, item 173). Against its own title it is almost impossible to use provisions of that regulation to hold officials responsible and accountable for their wrongdoings, for to show liability of an official, any person (individual or legal) who suffering under a given decision must first obtain a court decision granting him or her compensation for the loss. Few Poles would decide to engage in an expensive and drawn-out law suit against any public institution, so that in practice the whole parcel of regulations remains dead. A similar problem occurs in the case of criminal liability of legal professionals. Polish law (Journal of Laws, 2002, No. 197, item 1661) in theory allows for the punishment of legal professionals but it is possible only when a court has already convicted someone – an employee or sub-contractor of some corporate entity (Nowak 2013). There are many more examples of similar legal shortcomings.

There are also gaps in the law that reduce the possibility of the practical enforcement of accountability, such as an almost complete lack of provisions to protect whistleblowers. Permanent employees wishing to inform about irregularities in their workplaces can use only very limited protection under the Labor code, while temporary or contract staff have no protection at all. (Wojciechowska-Nowak 2012)

Moreover, the application of existing solutions, even when they are good, is not very efficient in practice. As mentioned, Poland is rich in legal instruments enabling the prosecution of corruption offences, with law enforcement agencies registering 9703 basic corruption crimes (like bribery, abuse of public functions, favoritism) in 2011 (CBA 2012). In the same period, 1,789 crimes were confirmed in preparatory proceedings and courts secured 2,837 convictions. But they are only raw statistics and analysis of those figures and other official data would certainly have to be more detailed to make any far-reaching conclusions. However, even this juxtaposition of a few simple numbers suggests that the vast majority of offences of corruption do not result in convictions, suggesting that law enforcement authorities are unable to gather good enough evidence. Particular cases confirm that. In 2007, for example, the Central Anti-Corruption Bureau organized controlled bribery against a certain MP. The case had a clear political subtext (the arrest was made short time before the elections) but that is not the point as far as we are concerned here. For our purposes it is enough to mention that after six years of legal process the court of appeal found that, although the MP did actually accept the bribe, all evidence of it was gathered illegally, which in the opinion of the court was a serious violation of the basic constitutional right to a fair trial. Accordingly, the MP was acquitted. The case, which is only one among many others, is a

good illustration of the incompetence of law enforcement bodies in prosecuting corruption cases.

The third key factor leaving Poland stranded as a border country is a social environment which is generally not very favorable to any governing regime wishing to transition toward ethical universalism. Not least, that is because, as public opinion polls show, Polish society is still relatively tolerant of corruption. The Center for Social Opinion Research (CBOS) periodically examines this issue by using a special index which shows how far Poles are willing to condemn corrupt behavior. It is true that since 1999, the percentage of those who strongly condemn it has grown, but the number of those who would tolerate it in specific circumstances (e.g. if individual health or a life were at stake) has remained largely the same.

**Table 8. Tolerance of corrupt behaviors**

Dates	Full acceptance	Limited acceptance	Ambivalence	Limited condemnation	Full condemnation	Avg. on the scale 0–12
			Points on the scale			
	0–1	2–5	6	7–10	11–12	
VII '99	5	36	16	42	1	5,91
VI '04	2	25	18	52	3	6,71
IV '09	3	32	14	47	4	6,45
VI '13	2	31	13	49	5	6,60

Source: Public Opinion Research Center (CBOS), [http://cbos.pl/SPISKOM.POL/2013/K\\_111\\_13.PDF](http://cbos.pl/SPISKOM.POL/2013/K_111_13.PDF) [last access: 10.10.2013]

The thesis suggesting a tendency to justify corruption and other unlawful behavior in conflict with ethical and legal norms might be confirmed by other polls too, such as for example the results of a huge panel of research carried out every two years since 2000. That research has aimed to show the overall condition of Polish society, its attitudes, moral values, its health, wealth and quality of life and so on; and it tends to reveal that sensitivity to “the common good” in Polish society is low. It has been increasing over time, but very slowly. Researchers prepared a special index to create a picture of it, but more telling are answers to the specific questions of which the index is composed. Respondents in 2011, as in previous years, were asked whether they would be concerned if they were to witness behavior considered controversial from an ethical point of view: 32.9% of them declared they would, and only 16% said they definitely would. If respondents were aware that an individual was paying less tax than they should, disapproval was a little ‘better’ at 48,3% (although only 25,5% definitely), and for avoidance of paying rent 50.,4% would be concerned (only 24,5% definitely). These results clearly show that Poles are still quite tolerant of behavior which is clearly unethical and actually harmful from the perspective of the common good.

Another important indicator is a strong belief that the public administration is deeply corrupt and unworthy of trust, as are other public institutions and politicians.



**Table 9. General trust and faith in main public institutions**

Years	2002	2004	2006	2008	2010	2012
	%					
- "most people" (general trust)	19	17	19	26	26	23
The percentage of adult Poles declaring <b>mistrust</b> in:						
- local government	41	34	33	23	34	33
- the courts	49	60	51	29	45	44
- public administration	52	54	50	33	47	41
- the government	45	68	47	32	60	49
- Parliament	54	67	54	44	68	55

Source: Public Opinion Research Center (CBOS), [http://cbos.pl/SPISKOM.POL/2012/K\\_033\\_12.PDF](http://cbos.pl/SPISKOM.POL/2012/K_033_12.PDF) [last access: 10.10.2013]

Poles also believe they themselves lack the capability to do anything to change situation in their country or even in their local communities. Their sense of helplessness is accompanied by data showing low turnout in elections and referendums - the lowest in fact in Central and Eastern Europe. Poles then are discouraged by the state, but on the other hand they consciously refuse to do anything about it even if they actually do have the opportunity. Polish society is passive in the public sphere.

**Table 10. Sense of influence on situation in the country and local community**

Years	1992	1997	1999	2004	2007	2008	2009	2010	2012
	%								
The percentage of Poles claiming they have influence on the situation in the country	7	19	11	15	24	30	25	36	30
The percentage of Poles claiming they have influence on the situation in their local community	16	26	25	34	42	39	42	52	50

Source: Public Opinion Research Center (CBOS), [http://cbos.pl/SPISKOM.POL/2012/K\\_033\\_13.PDF](http://cbos.pl/SPISKOM.POL/2012/K_033_13.PDF) [last access: 10.10.2013]

**Table 11. Turnout in national elections**

Years	89	90	91	93	94	95	97	98	01	02	05	06	07	10	11
	%														
Turnout in parliamentary elections	63	x	43	52	x	x	48	x	46	x	40	x	54	x	49
Turnout in presidential elections	x	61	x	x	x	65	x	x	x	x	50	x	x	55	X
Turnout in local government elections	x	42	x	x	34	x	x	46	x	44	X	46	x	47	X

Source: Author's analysis based on data of the National Electoral Committee, [www.pkw.gov.pl](http://www.pkw.gov.pl)

Additional indicators confirming the hypothesis of societal apathy can be also found in data on willingness to make an effort for a common cause, membership of social organizations, and involvement in volunteering. All of those indicators are very low.

**Table 12. Membership in civic organizations**

Years	2003	2005	2007	2009	2011
The percentage of Poles claiming they belong to civic organizations, associations, parties, committees, councils, religious movements, unions or similar groupings or entities	12	12	15	13	15

Source: *Social Diagnosis*, <http://ce.vizja.pl/en/issues/volume/5/issue/3> [last access: 10.10.2013]

This suggests important conclusions. First, as discussed above, attitudes and beliefs prevailing in Polish society, in particular the relatively high level of tolerance of corruption and other behavior detrimental to the idea of the public good, the rule of law, and good governance, are obviously more characteristic of particularistic than of universalistic governance. Second, general civic reluctance and lack of confidence in public institutions proves that Poles feel dissatisfied with the workings of their state. Third, passivity and lack of interest in public affairs suggests the low likelihood that any institutional change would start from the grass-root level.

In conclusion, three interrelated factors seem to get together in preventing more progress in Poland. A semi-closed political system means that at both national and local level only people lacking true political commitment to good governance and unwilling to push reforms forward can get selected. The second factor is the weak accountability of persons performing public functions, and that is related on the one hand to the weakness of the legal and institutional framework, and on the other hand to general inability to use existing tools effectively. The third and perhaps the most important factor is the public mentality. Poles present a relatively high tolerance of corruption, seem not really to care about the common good and declare a lack of confidence in public institutions, disbelief in their own capability to influence on public, but also unwillingness to associate and work together with others for the common good and to effect change.

### ***Control of the state over economy***

In the first two or three years of the transformation most of the reforms had neither precise plans nor clear objectives. All options were open, and it was not entirely clear whether the best way would be a slightly deeper change to the existing system; to create something completely new (a Polish model of "socialism with a human face"); or a rapid transition to a liberal free-market democracy.

It is difficult, therefore, to expect that in such a situation which after all was characteristic not only of the first months of transition but remained the same for years, reformers were able to conduct truly comprehensive changes, taking into account all relevant aspects. Lack of any plan or clear vision concerning reform had negative side effects too, which decision-makers had been unable to predict and in fact had not even tried to.

## **Privatization**

Let's look at the processes of privatization in Poland. On the one hand, it is pointed out that the way it was carried out prevented "grand corruption" by preventing the establishment of a caste of oligarchs recruited either from the communist party elite, or the new, democratic one. As explained by the proponents of that theory, it was above all because foreign capital, not the post-communist nomenclatura, was a strong player in the process of transformation in ownership in post-communist Poland, (Jaworek 2008).

In a few years after 1989 the major banks were privatized although many observers thought it happened too slowly (Winiecki 1997). Many large companies such as the main Polish oil producers PKN Orlen and Lotos Group are still in the hands of the state, although some, like the banks, attracted foreign investors while the state telecommunication monopoly TPSA was bought by France Telecom. The specificity of Polish privatization was very quick sale of the smallest state companies – shops and services. By the end of 1991 several thousand such companies were in private hands, giving impetus to the development of small and medium entrepreneurship. In general, from the time perspective, it is estimated that privatization increased efficiency of enterprises, stimulated development of the financial sector, improved free market mechanisms, and the state budget received funds needed to finance other reforms (Aslund 2007).

The Polish model of privatization has as many supporters as critics. Interestingly, critics come from both from among conservatives who deny the whole transformation after 1989, and from within liberal circles. It is pointed out, for example, that virtually no method of privatization used in Poland met expectations. Many large privatizations were made in an atmosphere of scandal, accompanied by accusations of corruption and criminal investigations. Witold Kieżun, known in Poland as, a right-wing economist, questions the whole rationale of privatization of banks. He says, unfortunately without offering any hard evidence, that the transformation of the major state-owned banks in Poland was dictated by foreign investors and speculators like George Soros with the tacit consent of the democratic opposition and the communist nomenklatura (Kieżun 2013). Indeed, the privatization of Bank Śląski in 1994 could be seen as one of the main proofs of that. In short, the board of the Bank that prepared it for privatization underestimated the issue price of bonds, as compared to its first listing on the stock exchange. It also blocked more than 800 thousand small investors from selling their shares in the first phase, when the bank first appeared on the stock market and the prices of its shares were at their highest. Meanwhile, members of the board who could sell their shares became billionaires in just one day (Werner 2013).

Indeed, much of the privatization process of the last decade of the twentieth century and the first years of the twenty-first century was controversial, with many cases from that time still under criminal investigation. For example, in 2012 several managers of a Polish investor who participated in the privatization of TPSA, the Polish telecommunications giant, in early 2000

and a former Army General who held the role of advisor to the process faced criminal charges. Another General linked to the case committed suicide shortly after the first arrests, which many interpret as evidence that corruption had affected the privatization.

Another argument of the critics of privatization is the history of the Popular Privatization Program (PPP), launched in 1994. Its main pillar, the National Investment Funds (NFIs) was formed a year later. The main goal of the NFIs was to restructure and conduct the privatization of 512 previously state-owned enterprises. Each citizen could purchase one share certificate from the fund they had chosen, for a reasonable price and more than 95% of citizens took the opportunity to do so. In a very short time the state made more than half a billion dollars just from that one share issue, while the NFIs earned more by selling their shares on the stock exchange. Share certificates sold on the stock market reached prices several times higher, which caused huge controversy. The mainly foreign companies managing NFIs, received 15% of the shares of privatized enterprises as remuneration, so managers were naturally interested in quick profit and used to sell the shares of the companies on the stock market at underestimated prices. As a result most NFIs went bankrupt, and up to the end of 2003 only a few companies have been privatized, most of which went bankrupt just like the NFIs. However, most of their managers earned considerable sums without any liability for their mistakes (O'Neill 2012).

In the end, more liberal reformers criticized the privatization of the Polish economy as too slow although others, like Grzegorz Kołodko held completely opposite opinions, indicating that neither too rapid privatization nor foreign capital was the main factor protecting Poland from corruption on the grand scale and the emergence of an oligarchy (Kołodko 2009). Indeed, even in 2011, 25% of the largest companies in Poland were still controlled by the State, and employment in them exceeded 12% of the labor force. By comparison, in Estonia the rate was 3.9%, in France it was 3.0%, and in the UK it was 1.2% (Zalicki 2013).

Therefore, it is often quite justifiably pointed out that the relatively strong involvement of the Polish state in the country's economy is associated with the politicization of most of the state companies. The best example is the story of one of the largest such companies – KGHM Polish Copper. In 1997, the son of a former Interior Minister and later Prime Minister was employed as a representative of one of the firms connected with KGHM, on a very attractive salary. After the elections in 1998, when the government was taken over by right-wing parties, positions on the supervisory board and the job of CEO were taken by people associated with those ruling parties – voivodship governors, former senior military officers, heads of the secret services, and so on. Salaried drivers, secretaries or assistants – and people politically associated with ruling party, earned 20 or even 30 thousand PLN (5-9 thousand EUR) per month. After the elections in 2001, when power was regained by left-wing parties, as might be expected most of the management was replaced and again local party activists - councilors or mayors - who sympathized with left-wing parties. The situation

repeated itself after the elections in 2005. Currently, as established by one of the weeklies, more than 400 activists of ruling parties or their friends and family are employed on governing bodies of the KGHM and its affiliated companies (Harłukowicz 2013).

### ***Decentralization***

There is an ambiguous but similar story in the cases of decentralization and local government reform. The law establishing gminas (the lowest unit of local government in Poland) adopted in 1991 was one of the first comprehensive regulations. Decentralization was treated on the one hand as a way to reform the whole governance model in the country while on the other hand it was supposed to be an instrument of the development of civil society. Again, however, the notion of corruption was not very important in that context because local government reform was driven by a broader ideological purpose. In the words of one of its main authors, Jerzy Regulski, its purpose was to break five monopolies inherited from the communist period (Regulski 2010):

- monopoly of political power – the local elections of 1990 were the first fully democratic elections since 1989. Even before the 1991 parliamentary elections, local government reform founded new power structures – since the process of forming local elites was now possible;
- monopoly of public authority – local government received a great deal of autonomy to run its own public policies as the powers of central government were limited;
- monopoly of public property – local government obtained legal personality, it also took over most part of the public property that previously had been nationalized (Regulski calls it even a quasi-privatization);
- monopoly of public finances – before 1991, local government budgets were part of the state budget, but the reform of 1990 defined local government budgets, management of local finances was transferred to local authorities, local governments received a share of revenue from income tax and became able to use other sources of financing (e.g. loans from private banks);
- monopoly of governance – local government reform allowed the emergence of a separate level of the central administration.

The objectives of the reforms have in some sense been achieved. The position of local government was strengthened in the constitution of 1997 and through the next stage of decentralization from 1998-2001 when in order to create a more effective system of absorption of EU funds after the expected accession to the EU, 16 regions were set up and the county level administration was introduced. At the same time, it can be concluded that to some extent decentralization significantly reduced the "sphere of opportunity" to act according to particularistic logic, which also reduced corruption and readiness to misappropriate public resources although, as critics have suggested, the reform of local

government might have improved the quality of governance to some extent but also effectively decentralized corruption and other problems.

Nowadays, almost 25 years after the first reforms, researchers suggest that the existing Polish model of local government requires thorough revision. Over the years, a number of dysfunctional aspects have been revealed, such as overlapping of functions between different levels of government. Financial and political autonomy of local governments is often abused, as the number of tasks transferred from central government to local level rises but extra funding is not forthcoming. Prof. Jerzy Hausner, a former deputy prime minister and well-known expert on local government, says that for some time what Poland has is no longer decentralization, but only the decentralization of public deficit, in order to be able to carry out their functions in the absence of sufficient public funding more and more local governments look to the private sector for money (Bober, Hausner, Izdebski 2013).

At the same time the relations between local and central government are poor. During the economic crisis there have even been attempts to reduce the autonomy of local governments, such as in 2011 when the Ministry of Finance pushed through legislation to limit the ability of local government to borrow money from banks. Another problem is increasing politicization of local government. Candidates of national parties have come increasingly to dominate decision-making bodies at the local level, so that positions in local government are tending to become a form of pay-off within party structures. Finally, there are indications that local government is relatively the most corrupt area of the whole public sector. Most cases of corruption, nepotism, and cronyism relate to the local level and that is reflected in both the official data and opinion polls. It is then worth remarking again that despite undeniable progress Poland is a borderline country in terms of particularism and universalism.

### ***Anti-corruption policy and future trends***

A sudden intensification of anti-corruption efforts happened only when Poland began its preparations for joining the European Union (Makowski 2008; Kamiński, Kamiński 2004). Governments at that time were simply forced to adapt to the requirements of the European Commission, and thus to prepare and implement anti-corruption policies. The accession process coincided with an intensification of anti-corruption activity by other international organizations – the UN, OECD, the World Bank and the International Monetary Fund. Therefore, in 2000-2005 various anti-corruption efforts started mushrooming in Poland as corruption began to be systematically explored and analyzed. Within a few years Poland had ratified all major international anti-corruption conventions and adjusted its national legislation (Makowski 2008, Gadowska 2010) and in 2003, as one of a number of reform measures, carried out a major overhaul of its Penal Code. Institutional changes were implemented, with the setting up of special police units to fight corruption and economic crimes. In 2002, the

government adopted its first anti-corruption strategy, changes which were accompanied by interest in the media and activity by NGOs which created intense public discourse.

The problem of corruption became an important element in the political struggle because the political parties - especially the largest left-wing Democratic Left Alliance - in power between 2001 and 2005, despite launching many favorable changes from the point of view of the fight against corruption, themselves became the victims of corruption scandals. A series of right-wing parties then won the election of 2005, of which the most powerful, Law and Justice, gained the strongest support by convincing voters of the ubiquity of corruption in public life. Anti-corruption rhetoric was a touchstone of the next two-year government a period during which anti-corruption policy became rather extreme, until in 2006 the Central Anti-Corruption Bureau was established. The Bureau was a secret, special service, answerable solely on the Prime Minister and having the right to use any surveillance techniques available including things like wiretapping, provocation, and undercover agents in its job of preventing and detecting corruption. The Bureau was set up hurriedly and without proper diagnosis of the problem it was to solve and lacking the appropriate human resources (Makowski 2010). Its first head was an MP of the ruling party, an active politician who had been the main author of the law establishing the Bureau. It should come as no surprise then that during first two years of its existence the Bureau was politicized. The Act of Law on the Central Anti-Corruption Bureau was found unconstitutional in many important points. The Constitutional Tribunal questioned the definition of corruption, and wondered about allowing officers to interpret things in a discretionary manner and to initiate operations (including surveillance), on almost any pretext (Makowski 2010). Indeed, the Bureau mostly tried to prove corruption among representatives of opposition parties or to detect it in areas of particular social sensitivity, such as healthcare. However, most of the alleged corruption scandals "revealed" by the CBA at that time simply petered out. The CBA was basically never able to gather enough evidence even to proceed beyond the pre-trial stage. One such case, which has already been mentioned, was a controlled bribery of an opposition MP, just before the elections in 2007. After several years, the appeal court acquitted the defendants considering that all the evidence had been gathered illegally. Written reasons for that judgment stated: A Democratic state by its very nature precludes testing the integrity of citizens or making ad hoc checks on their honesty by using secret and insidious methods for the purpose. Such practices are characteristic of a totalitarian state<sup>5</sup>. That might indeed stand as a short summary of the anti-corruption policy that was implemented in 2005-2007. The government led by the Law and Justice party eventually collapsed in 2007 amid allegations of corruption against the Deputy Prime Minister and the Chairman of one of the coalition parties. Again, it was the Central Anti-corruption Bureau that organized the unsuccessful provocation against that individual,

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<sup>5</sup> Uzasadnienie do wyroku Beaty Sawickiej, <http://bi.gazeta.pl/im/6/14103/m14103366.SAWICKA-UZAS.pdf> [access: 7.10.2013]

having no real evidence of corruption, and having been unable to keep the whole operation secret.

The elections in 2007 were won by a centrist party, the Civic Platform (PO) and together with the agrarian Polish Peasants' Party (PSL) formed the government for the next two terms. Their coalition was able for the first since 1989 to win successive elections, when they won again in 2011. The PO and PSL intentionally pushed corruption into the background assuming (somewhat correctly) that after the period of radical anti-corruption policy the society was tired of it and focusing on it would not be the best strategy to build political capital and might be even harmful (Makowski 2012). Even so, from 2007-2011, the PO-PSL cabinet tried to demonstrate that corruption was still a political priority, partly by creating the position of a government plenipotentiary in the struggle against corruption, and they announced a special anti-corruption program for public procurement, known as the "Anti-Corruption Shield". In fact, however, the plenipotentiary had no powers which could have allowed her even to coordinate much less initiate any anti-corruption policy, and so no significant changes were made to legislation that might have helped reduce the risk of corruption (Fundacja im. Stefana Batorego 2011). Thanks to the curiosity of several watchdog organizations, which demanded access to the documentation of it, The "Anti-Corruption Shield" announced as the flagship anti-corruption project turned to be nothing more than a loose arrangement for cooperation between several ministries and law enforcement agencies, but without any particular plan or strategy.

To sum up, from 2007 onwards, after several years of intense and often inconsistent or even controversial anti-corruption policy the activity of policy-makers in the field seems stabilize and charts reflect a small improvement.

Poland remains a "borderline" country, indeed. It is located somewhere between a particularistic and a universalistic model, but with at least a certain tendency to improve.

As described, there are irregularities in the distribution of public funds, abuses of tender procedures, and misuse of EU funds, while access to goods and services offered by the state is sometimes limited. However, the available data suggest that the scale of those negative factors is not large enough to prove that Poland is completely stalled or even in regression. On the contrary, there are reasons to believe that Poland is moving slowly but consistently towards a universalistic regime of governance.

Law enforcement bodies sometimes show incompetence, although they can still point to almost three thousand convictions for corruption annually, which is quite a high number. Tax authorities are able to detect and recover more than a billion euros of unpaid taxes for which effort Poland was even praised by the OECD(OECD 2013). The political scene is perhaps rather closed and the activities of politicians and the government lack substance, but it is not simply the case that the government is dominated by one particular group while the



opposition has nothing to say. There is a good legislative framework for political and civic activities, guaranteeing freedom of expression and political activity. Politicians, even the most prominent ones, are sometimes involved in corruption scandals and sometimes resign from office as a result of them. However, there are only a few cases in which their guilt has been proven in court. Public officials are given poor assessments in opinion polls, and politicians still try to use their public positions for particularistic purposes. On the other hand the experience of the average citizen when dealing with public officials is generally positive. As already mentioned, a number of problems can be treated as indicators of particularism, but there is no evidence that the situation is worsening. In fact there are reasons to believe that Poland is evolving toward a more open, universalistic model of government.

However, perhaps the most important conclusion to be drawn from this preliminary analysis is that there are no factors that could push Poland more firmly towards the development of a more universalistic model of governance. Shortly after Poland joined the EU her policy-makers almost completely lost motivation to improve the quality of the country's governance, something particularly evident in the lack of any coherent anti-corruption policy. In the absence of outside pressure of such magnitude as that exerted during accession to the EU, and taking into account the weakness of civil society and the fact that local elites are heavily "infected" by national political parties, it is difficult to identify an impulse that could boost reforms. Poland, as stated above, is slowly moving towards a model of governance based on the principals of ethical universalism, but the risk is that in the absence of true political will to enforce the process, it might break down or even regress, for example, if deeper economic crisis or serious political turmoil should occur.

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## Appendix 1. Particularism diagnosis table

Power distribution	<p><b>Pluralism, with some reservations. Potentially all political parties that exist and have reasonable support are able to win elections and form a cabinet. Some problems are observable in the closure of the political scene.</b></p> <ul style="list-style-type: none"> <li>• Partially free parliamentary elections in 1989 and fully free since 1991.</li> <li>• Since 1991 all cabinets in power were coalitions.</li> <li>• Until 2001, the Polish political scene was highly fragmented. Nowadays there are five major political parties – Civic Platform, Law and Justice, Democratic Left Alliance, Polish Peasant Party and Palikot’s Movement.</li> <li>• Only occasional cases of politicians leaving opposition parties to join the ruling party (usually, before the elections).</li> <li>• A strong belief persisting for many years that corruption among politicians, public officials and within the government is common</li> </ul>
State autonomy from private interest	<p><b>Public institutions generally are not prone to pressures from private firms or interest groups, although of course there is such pressure. Politicians are trying to have an impact on staffing in the public service, especially for the most important positions. There are certain areas of the public sector "colonized" by politicians and / or by players from the private sector (for example, state-owned companies or the market for state-funded medicines).</b></p> <ul style="list-style-type: none"> <li>• There are isolated cases of businessmen who have come to politics and achieved some success by supporting parties in parliament or setting up their own parties. One example of that is described above. Another - the owner of one of the biggest cooperative banks in Poland is a senator from the right-wing Law and Justice party who uses his position to defend the interests of the cooperative banks (Mikołajewska 2012).</li> <li>• A special law on lobbying has been in force since 2006; however it is low quality legislation creating only a semblance of control. In fact, lobbying is done completely without regard to this law, which of course causes much lack of transparency and actually increases the risk of corruption (Makowski, Zbieranek 2007).</li> <li>• Politicians attempt to subordinate public administration to their short term purposes, reflected in the continuous changes to the regulations governing the civil service. Another indicator of this is the practice of filling higher positions in public administration with people lacking the necessary competence and / or with political nominees to the positions of persons “performing duties”.</li> </ul>
Public allocation (goods and services)	<p><b>In general, the state provides broad access to basic public goods and services, barriers are not generally associated with corruption.</b></p> <ul style="list-style-type: none"> <li>• Subsidies and European funds from the state budget to local governments are distributed by mathematical algorithms established by law (e.g. in relation to the population).</li> <li>• Irregularities in the implementation of public procurement do happen. It is difficult however to determine their real scale and how they affect the principle of equal public allocation.</li> <li>• The public finances are generally transparent. At local level public spending is systematically monitored by special structures (Regional Accounting Chambers). Public spending is audited by the Supreme Audit Office, assessed as the most effective anti-corruption institution in Poland (Kobylińska, Makowski, Solon-Lipiński 2012).</li> <li>• The problem may be an illegibility of government data for the average citizen. There is some progress however. Special web portal have been created to help citizens track public spending (e.g. <a href="http://www.naszakasa.org.pl">www.naszakasa.org.pl</a> or the Local Data Bank created by the Central Statistical Office).</li> <li>• Despite research data on the experience of corruption, most polls show that Poles are convinced corruption is common in the public sector.</li> </ul>
Separation of	<p><b>There is relatively clear distinction between the public and private</b></p>

private and public	<p><b>spheres defined in many pieces of legislation. Situations of crossing the line between public and private spheres happen, however it is difficult to measure its true scale.</b></p> <ul style="list-style-type: none"> <li>• There are a number of legal solutions defining the boundary between the public and private spheres, e.g. an Act of 1997 On the Restrictions of Economic Activity by Persons Performing Public Functions, the so-called "Anti-corruption Act", Act of Law of 2008 on The Civil Service; special provisions are included in the Code of Administrative Conduct, or in legislation regulating local government.</li> <li>• Cases of nepotism and other violations of the autonomy of the private and public spheres in local government are covered by the media relatively frequently; although there is no quantitative research on this topic, such situations do arise in local government.</li> <li>• Majority public opinion tends to the view that public officials routinely use their positions to further their private ends.</li> </ul>
Relations formal / informal institutions	<p><b>In Polish public life there are still traditions, shaped during the communist period, of ignoring the law and applying informal rules.</b></p> <ul style="list-style-type: none"> <li>• According to estimates of Austrian economist Friedrich Schneider, the shadow economy in the Polish economy might amount to 25% of GDP. According to Polish economists it might be around 15% of GDP (Schneider 2011).</li> <li>• Poles are characterized by little sensitivity to the public good, and a tendency to justify illegal or unethical behavior.</li> <li>• In 2012, tax offices carried out 10,158 audits that showed irregularities to a total amount of PLN 3,779 million. Most cases (73) were associated with VAT (mainly fake invoices), personal income tax (11) and corporation tax (7).</li> <li>• According to the latest available statistics, for 2011, the common courts of first and second instance dealt with 15.2 million cases (criminal, civil and minor offences), of which 13.4 million (about 88%) were completed (average duration of proceedings is 1.7 months). Courts of appeal upheld 60% of cases.</li> </ul>
Accountability and the rule of law	<p><b>In general, accountability is well guaranteed at the formal level. In practice, however, is frequently not enforced, often because of defects in existing regulations.</b></p> <ul style="list-style-type: none"> <li>• Politicians, political parties and government officials are generally perceived as the most corrupt and least-trusted groups.</li> <li>• There is no specific legislation protecting whistleblowers. The whole idea is not well understood by society (according to a survey of 2012 67% of Poles declared that whistleblowers at their workplace would be rather condemned than praised for their attitude (CBOS 2012).</li> </ul>
Personal autonomy and capacity for collective action	<p><b>There are almost no restrictions on freedom to associate, to protest, to communicate, etc. The problem is rather the apathy of citizens.</b></p> <ul style="list-style-type: none"> <li>• There are 83,000 associations and foundations registered in Poland. Probably a third of them either do not really exist or are inactive.</li> <li>• The majority of citizens do not take part in elections, belong to any civic organization and generally do not show much interest in public matters.</li> <li>• There are only a few nationwide organizations specialized in watchdog activities or working for good governance. Their functioning is endangered due to lack of funding.</li> <li>• Investigative journalism is rather underdeveloped, however in individual cases the media have shown that they are capable of tracking abuses and irregularities and have even brought accused officials to the point of resignation.</li> </ul>

(based on Mungiu-Pippidi et al. 2011)



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## Project profile

ANTICORRP is a large-scale research project funded by the European Commission's Seventh Framework Programme. The full name of the project is "Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption". The project started in March 2012 and will last for five years. The research is conducted by 21 research groups in sixteen countries.

The fundamental purpose of ANTICORRP is to investigate and explain the factors that promote or hinder the development of effective anti-corruption policies and impartial government institutions. A central issue is how policy responses can be tailored to deal effectively with various forms of corruption. Through this approach ANTICORRP seeks to advance the knowledge on how corruption can be curbed in Europe and elsewhere. Special emphasis is laid on the agency of different state and non-state actors to contribute to building good governance.

Project acronym: ANTICORRP

Project full title: Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption

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