

Overall Score:

88 - Strong

Legal Framework Score:

92 - Very Strong

Actual Implementation Score:

82 - Strong

Category I. Civil Society, Public Information and Media

I-1. ⁸⁷Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

The Constitution states that all the citizens are free to organize.

Articles 1 and 2 of the Act on Public Good Organizations and Volunteering from April 24, 2003. The law states how an organization may become a public good organization and how this type of organization is monitored.

Article 3(2) provides a definition of civil society organization.

References:

Article 57, The Constitution of the Republic of Poland (The Constitution), (April 2, 1997).

Articles 1, 2, & 3(2), The Act of 24 April 2003 on Public Good Organizations and Volunteering (Dz.U. No 96 item. 873).

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:

D.U. No 96, item. 873, Public Good Organizations and Volunteering, Journal of Laws of the Republic of Poland (April 24, 2003).

<http://www.isip.sejm.gov.pl>

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

Public Good organizations only are required to disclose their sources of funding.

References:

D.U. No 96 item. 873, Public Good Organizations and Volunteering, Journal of Laws of the Republic of Poland, (April 24, 2003).

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

Comments:

In general, the government does not create barriers to the organization of new anti-corruption /good governance Civil Service Organizations (CSOs). However, the government decides which organizations will be funded from the European Union (EU) funds. This provides some control on the financing of CSOs.

References:

Grazyna Kopinska, Program Director of Anti-Corruption Program, Batory Foundation, Warsaw, Sept. 12, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Dec. 9, 2008).

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

Comments:

The Civilian Service Organizations (CSOs) engage in the political and policymaking process but only as monitoring organizations. They provide expertise and reports but it is difficult to estimate whether they have any political power (at least there is not any casual relationship).

References:

Grazyna Kopinska, Program Director of Anti-Corruption Program, Batory Foundation, (Warsaw, Dec. 9, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Dec. 9, 2008).

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Grazyna Kopinska, Program Director of Anti-Corruption Program, Batory Foundation, (Warsaw, Dec. 9, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Dec. 9, 2008).

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Grazyna Kopinska, Program Director of Anti-Corruption Program, Batory Foundation, (Warsaw, Dec. 9, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Dec. 9, 2008).

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

Grazyna Kopinska, Program Director of Anti-Corruption Program, Batory Foundation, (Warsaw, Dec. 9, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Dec. 9, 2008).

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Grazyna Kopinska, Program Director of Anti-Corruption Program, Batory Foundation, (Warsaw, Dec. 9, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Dec. 9, 2008).

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

The Constitution states that all Polish citizens are free to organize into trade unions.

Article 2 of the Act on Trade Unions states that all employees have a right to join trade unions.

References:

Article 59, The Constitution of the Republic of Poland, April 2, 1997).

Article 2, Dz.U. 1991, No 55, item 234, The Act of 23 May 1991 on Trade Unions.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

A. Jankowski said there are problems with organizing trade unions, especially in small companies at local level. Small private companies are rather reluctant to allow employees to organize into trade unions.

References:

Telephone interview,, Andrzej Jankowski, Head of Law Department of Forum Zwiazkow Zawodowych (Forum of Trade Unions), (Bydgoszcz, Sept. 16 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 16, 2009).

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Articles: 49 & 54, The Constitution of the Republic of Poland of 2 April 1997,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

Dz.U. 1993 Nr 7 poz. 34, The Act of 29 December 1992 on Public Broadcasting and Television,
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19840050024&type=3&name=D19840024Lj.pdf>.

Dz.U. of 1984 No 5 item 24, with further changes, article 1, The Act of 26 January 1984 on Press
Regulations, <http://isip.sejm.gov.pl/servlet/Searchtodo=file&id=WDU19840050024&type=3&name=D19840024Lj.pdf>.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Article: 54 , The Constitution of the Republic of Poland of 2 April 1997,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

75

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism, University of Warsaw (Warsaw, Sept. 19, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008.)

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

There is no such a mechanism, but the court may deny a registration of a newspaper if formal requirements are not fulfilled (Articles 21 & 22). If a newspaper does not edit any issue for a year, the Court may find registration procedure (license) invalid (article 23).

References:

Articles: 20, 21,22, 23, & 45., Dz.U. of 1984 No 5 item 24, with further changes, The Act of 26 January 1984 on Press Regulations,

<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19840050024&type=3&name=D19840024Lj.pdf>.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism, University of Warsaw (Warsaw, Sept. 19, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008.)

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism, University of Warsaw (Warsaw, Sept. 19, 2008).

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

100

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

National Council of Broadcasting is in charge of licenses.

References:

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism, University of Warsaw (Warsaw, Sept. 19, 2008).

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

Appeals can be made to the Province Court (Sad Wojewodzki) in Warsaw.

References:

The Act of 29 December 1992 on Public Broadcasting and Television (Dz.U. 1993 Nr 7 poz. 34), article:56, para 1, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19840050024&type=3&name=D19840024Lj.pdf>.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Marek Tkaczyk, Head of Polish Media Association, (Warsaw, Sept, 18, 2008).

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 9, 2008).

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 19, 2008).

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 19, 2008).

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

83

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 19, 2008).

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

This problems mainly concern the local print media. Some local newspapers are partially financed by local governments. Moreover, a number of local newspapers are financed partially by local governments through advertising.

References:

Micha B Zaremba, PhD, Institute of Journalism, Department of Political Science and Journalism, University of Warsaw, (Warsaw, Sept. 22, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 19, 2008).

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

70

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

Applicants are required to provide data on ownership when submitting a registration proposal.

References:

The Act of 26 January 1984 on Press Regulations (Dz.U. of 1984 No 5 item 24, with further changes): articles: art. 20, para 3; art. 27,
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19840050024&type=3&name=D19840024Lj.pdf>.

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

The Act of 29 December 1992 on Public Broadcasting and Television (Dz.U. 1993 Nr 7 poz. 34) Article 44.
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19840050024&type=3&name=D19840024Lj.pdf>.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

Comments:

According to L. Szurminski, journalists are divided into groups (camps) and a main divide is politics. Objectivity as an ideal is a myth. Journalists often represent the political views of the owners of newspapers.

References:

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 19, 2008).

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

Comments:

It is stated (OSCE Report,2008:16) that the manner in which the public broadcaster (TVP1) covered the allegations made public against a PO deputy in the final week of the campaign, implicitly questioning the credibility of an entire contending party, was inconsistent with these principles and represented an inappropriate interpretation of its public service responsibilities.”

It is stated in the OSCE Report (2008:12) that “President Lech Kaczynski appeared to make partisan political interventions during the campaign. Most notably, in an interview aired by the First Station of public radio on 18 October, he stated there were reasons to remove the parliamentary immunity of some of the leaders of PO, but declined to reveal any names or further information.”

References:

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 19, 2008).

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

Republic of Poland, Pre-term Parliamentary Elections 21 October 2007. OSCE/ODIHR Election Assessment Mission Final Report, (Warsaw, March 28, 2008).

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

References:

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 19, 2008).

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 19, 2008).

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

References:

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 19, 2008).

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism University of Warsaw (Warsaw, Sept. 19, 2008).

Marek Tkaczyk, Head of Polish Media Association (Warsaw, Sept. 18, 2008).

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

90
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

Article 61 of the Constitution states that a citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions.

Chapter 2 of the Law on Access to Public Information lists in detail all governmental sources of information.

References:

The Constitution of the Republic of Poland from 2 April 1997, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

Act of 6 September 2001 on Public Information Access (Dz.U. No 112, item 1198)

<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU20011121198&type=3&name=D20011198Lj.pdf>.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

Article 16 states that a citizen has the right to appeal within 14 days of the issuing of the decision.

References:

Law on Access to Public Information from 6 September 2001, DZ.U. No112 item 1198,

<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU20011121198&type=3&name=D20011198Lj.pdf>.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Article 7 states that all state institutions are obliged to submit information to the Journal of Public Information (Biuletyn Informacji Publicznej).

Article 4 lists in detail the institutions that should display information (for example the government).

Article 10 states if any information was not provided by the Journal of Public Information, it should be made available upon request.

References:

Act of 6 September 2001 on Public Information Access (Dz.U. No 112, item 1198),

<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU20011121198&type=3&name=D20011198Lj.pdf>.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

60

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Bil: I have been intensively researching Polish state institutions for over 5 years. One of the problems of these institutions is that some data is not available because it is not gathered and saved.

Another problem relates to time within which the data should be provided when requested. Last year, research was undertaken in three ministries. It took them three to eight months to provide the requested information.

Another issue relates to the attitudes of civil servants who treat the providing of any information to a citizen as additional work. Thus, civil servants have little understanding of the right to public information.

David SzciBo: Access to public information is often delayed. This was noted when trying to access information while researching the report titled Secret CIA prisons in Poland."

References:

Monika Bil, Researcher, University of Sussex, UK

Telephone interview, David SzciBo, collaborator, Program Spraw Precedensowych, Helsinki Foundation for Human Rights (Warsaw, Sept, 2008).

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Fees are decided by officials or/and civil servants at their own discretion. There is no fee system. This gives officials of state institutions a tool to limit access to public information.

References:

Telephone interview, David Sz [ciBo, collaborator, Program Spraw Precedensowych, Helsinki Foundation for Human Rights (Warsaw, Sept, 2008).

Monika Bil, Researcher, University of Sussex, UK

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens do not have access to all information that is publicly available by law. The Act on Public Information does not state a precise time period for making the information available to citizens. This allows state institutions to decide how much time they need to provide the information.

References:

Telephone interview, David Szescilo, Collaborator, Program Spraw Precedensowych, Helsinki Foundation for Human Rights (Warsaw, Sept. 17, 2008).

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Telephone interview, David Szcibo, collaborator, Program Spraw Precedensowych, Helsinki Foundation for Human Rights (Warsaw, Sept, 17, 2008).

Lukasz Szurminski, Ph.D., Institute of Political Science and Journalism, University of Warsaw (Warsaw, Sept. 19, 2008).

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

An institution should provide an explanation for denying access to any public information.

References:

Telephone interview, David Sz [ciBo, collaborator, Program Spraw Precedensowych, Helsinki Foundation for Human Rights (Warsaw, Sept, 17, 2008).

Monika Bil, Researcher, University of Sussex, UK, author of the report.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁹³Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

Article 62 states that universal and adult suffrage is guaranteed to Polish citizens who are 18 years of age on election day.

References:

The Constitution of the Republic of Poland from 2 April 1997,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

Article 98 states that members of both chambers of the Parliament shall be chosen for a 4-year term of office.

Article 98, para 2, states that the Sejm may shorten its term of office by a resolution passed by a majority of at least two-thirds of the votes of the statutory number of Deputies. Any shortening of the term of office of the Sejm shall simultaneously mean a shortening of the term of office of the Senate.

References:

The Constitution of the Republic of Poland from 2 April 1997,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

From the Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Report: Polish citizens achieve suffrage at 18 years of age, unless they are legally incapacitated or deprived of their public or electoral rights by a final court decision. The Criminal Code describes deprivation of the right to vote and to be elected as a sanction given along with imprisonment for an offense committed with motives deserving particular condemnation.

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

Report on Pre-term Parliamentary Elections (Oct. 21, 2007).

OSCE/ODIHR Election Assessment Mission Final Report,
http://www.osce.org/documents/odihr/2008/03/30354_en.pdf, (Warsaw, March 28, 2008)

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission; (Warsaw, Aug. 8, 2008).

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission; (Warsaw, Aug. 8, 2008).

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

95

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Articles 11 and 13, The Constitution of the Republic of Poland from 2 April 1997,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

The Act of 16 July 1998 on Elections to Councils of Parishes, Councils of Districts and local Parliaments (Dz.U. rom 2003, No 159, item 1547, from 2004 No 25, item 219, No 102, item. 1055 i No 167, item. 1760, from 2005 No 175, item 1457 and from 2006 No 17, item 128, No 34, item 242, No 146, item 1055 and No 159, item 1127),
http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21820&news_id=37628&layout=1&page=text.

Electoral Law to the Sejm and Senat from 12 April 2001 (Dz.U. 2007 No 190 poz 1360), Article 8,
http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=5545&layout=1&page=text.

Act on Disclosure of Information on Documents of the Organs of State Security for the Years of 1944 to 1990 and the Contents of Those Documents [often referred to as the Lustration Act] from 18 October 2006 (Dz.U. 2006 No 218 item 1592) Article 21a para 2.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission; (Warsaw, Aug. 8, 2008).

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Malkiewicz states that the cost of running a campaign deters many candidates from entering a race as individual candidates instead of party members.

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission; (Warsaw, Aug. 8, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective

campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Agnieszka Opalińska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 5, 2008).

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

80

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

National Electoral Commission (Panstwowa Komisja Wyborcza)

Electoral Law to the Sejm and Senate from 12 April 2001 (2007 No 190 item 1360) Article 36 para 2.

http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=5545&layout=1&page=text.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The National Election Commission (NEC/PKW) is not a judiciary institution. Thus, it does not impose penalties on offenders.

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

100

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Electoral Law to the Sejm and Senate from 12 April 2001 (Dz. U. 2007 No 190 item 1360), Articles 78-84.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

Czaplicki states that there is neither no such a law in Polish law system nor a law that forbids this.

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) report states that although such a regulation does not exist in Polish law, international observers were invited to Poland to observe pre-term parliamentary elections in October 2007.

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

Republic of Poland Pre-term Parliamentary Elections (Oct. 21, 2007).

OSCE/ODIHR Election Assessment Mission Final Report, (Warsaw, March 28, 2008).

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Office for Democratic Institutions and Human Rights (OSCE/ODIHR) report states that although there is no law that would allow the presence of election observers, OSCE/ODIHR observers monitored the last elections.

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Republic of Poland Pre-term Parliamentary Elections (Oct. 21, 2007).

OSCE/ODIHR Election Assessment Mission Final Report (Warsaw, March 28, 2008).

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

National Electoral Commission (Panstwowa Komisja Wyborcza).

Electoral Law to the Sejm and Senate from 12 April 2001 (2007 No 190 item 1360) Article 36 para 1.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

93 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

86

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

The Act of 27 June 1997 on Political Parties (Dz.U. 2001 No 79, item 857; Dz.U. 2001 No 154, item 1802; Dz.U. 2002 No 127, item 1089; Dz.U. 2003 No 57, item 507; Dz.U. 2004 No 25, item 219; Dz.U. 2004 No 273, item 2703; Dz.U. 2005 No 167, item 1398), Article 25, para 1 and 2.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | NO

References:

The Act of 27 June 1997 on Political Parties (Dz.U. 2001 No 79, item 857; Dz.U. 2001 No 154, item 1802; Dz.U. 2002 No 127, item 1089; Dz.U. 2003 No 57, item 507; Dz.U. 2004 No 25, item 219; Dz.U. 2004 No 273, item 2703; Dz.U. 2005 No 167, item 1398), Article 25 para 4, article 36a para 2.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

Political parties cannot accept any corporate donations.

References:

The Act of 27 June 1997 on Political Parties (Dz.U. 2001 No 79, item 857; Dz.U. 2001 No 154, item 1802; Dz.U. 2002 No 127, item 1089; Dz.U. 2003 No 57, item 507; Dz.U. 2004 No 25, item 219; Dz.U. 2004 No 273, item 2703; Dz.U. 2005 No 167, item 1398) Article 25 para 1.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | **NO**

References:

The Act of 12 April 2001 on Elections to the Sejm and Senate (Dz. U. 2007 No 190 item 1360), article 114.

The Act of 16 July 1998 on Elections to Councils of Parishes, Councils of Districts and Local Parliaments (Dz.U. 2003 No 159 item 1547), article 83e.

The Act of 20 June 2002 on Elections of Direct Election of Parish Leader, Borough President and President of City (Dz.U. No 113 item 984), article 24 para 5.

The Act of 23 January 2004 on Elections to the European Parliament (Dz.U. No 25 item 219), article 89.

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

References:

The Act of 27 June 1997 on Political Parties (Dz.U. 2001 No 79, item 857; Dz.U. 2001 No 154, item 1802; Dz.U. 2002 No 127, item 1089; Dz.U. 2003 No 57, item 507; Dz.U. 2004 No 25, item 219; Dz.U. 2004 No 273, item 2703; Dz.U. 2005 No 167, item 1398), Article 38.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

References:

The Act of 27 June 1997 on Political Parties (Dz.U. 2001 No 79, item 857; Dz.U. 2001 No 154, item 1802; Dz.U. 2002 No 127, item 1089; Dz.U. 2003 No 57, item 507; Dz.U. 2004 No 25, item 219; Dz.U. 2004 No 273, item 2703; Dz.U. 2005 No 167, item 1398), Chapter 4, Articles 34a and 38a, in particular.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

References:

The National Electoral Commission (NEC/PKW).

The Act of 27 June 1997 on Political Parties (Dz.U. 2001 No 79, item 857; Dz.U. 2001 No 154, item 1802; Dz.U. 2002 No 127, item 1089; Dz.U. 2003 No 57, item 507; Dz.U. 2004 No 25, item 219; Dz.U. 2004 No 273, item 2703; Dz.U. 2005 No 167, item 1398), Article 34a para 5 and 38a para 1, <http://www.sejm.gov.pl/prawo/partiepol/partiepol.htm>.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

References:

The Act of 27 June 1997 on Political Parties (Dz.U. 2001 No 79, item 857; Dz.U. 2001 No 154, item 1802; Dz.U. 2002 No 127, item 1089; Dz.U. 2003 No 57, item 507; Dz.U. 2004 No 25, item 219; Dz.U. 2004 No 273, item 2703; Dz.U. 2005 No 167, item 1398), Article 25 and 36a para 3,

<http://www.sejm.gov.pl/prawo/partiepol/partiepol.htm>.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | NO

References:

The Act of 27 June 1997 on Political Parties (Dz.U. 2001 No 79, item 857; Dz.U. 2001 No 154, item 1802; Dz.U. 2002 No 127, item 1089; Dz.U. 2003 No 57, item 507; Dz.U. 2004 No 25, item 219; Dz.U. 2004 No 273, item 2703; Dz.U. 2005 No 167, item 1398), Article 25 para 4, Article 36a para 2,

<http://www.sejm.gov.pl/prawo/partiepol/partiepol.htm>.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

References:

The Act of 27 June 1997 on Political Parties (Dz.U. 2001 No 79, item 857; Dz.U. 2001 No 154, item 1802; Dz.U. 2002 No 127, item 1089; Dz.U. 2003 No 57, item 507; Dz.U. 2004 No 25, item 219; Dz.U. 2004 No 273, item 2703; Dz.U. 2005 No 167, item 1398), Article 25 para 1 and 2,

<http://www.sejm.gov.pl/prawo/partiepol/partiepol.htm>.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

The Act of 12 April 2001 on Elections to the Sejm and Senate (Dz. U. 2007 No 190 item 1360), Article 111 para 1, http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=5545&layout=1&page=text.

The Act of 27 June 1997 on Political Parties (Dz.U. 2001 No 79, item 857; Dz.U. 2001 No 154, item 1802; Dz.U. 2002 No 127, item 1089; Dz.U. 2003 No 57, item 507; Dz.U. 2004 No 25, item 219; Dz.U. 2004 No 273, item 2703; Dz.U. 2005 No 167, item 1398), Article 38, para 1, <http://www.sejm.gov.pl/prawo/partiepol/partiepol.htm>.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | NO

References:

The Act of 12 April 2001 on Elections to the Sejm and Senate (Dz. U. 2007 No 190 item 1360), Article 95, http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=5545&layout=1&page=text.

The Act of 16 July 1998 on Elections to Councils of Parishes, Councils of Districts and Local Parliaments (Dz.U. 2003 No 159 item 1547), Article 64b, http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=7145&layout=1&page=text.

The Act of 20 June 2002 on Elections of Direct Election of Parish Leader, Borough President and President of City (Dz.U. No 113 item 984), Article 7, http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=122&layout=1&page=text.

The Act of 23 January 2004 on Elections to the European Parliament (Dz.U. No 25 item 219), Article 48, http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=2355&layout=1&page=text.

The Act of 27 September 1990 on Elections of the President of the Republic of Poland (Dz. U. 2000 No 47, item 544, with changes: Dz. U. 2002 No 113, item 984 and No 153, item 1271; 2003 No 57, item 507 and No 130, item 1188; of 2004 No 25, item 219, of 2006, No 218 item 1592; of 2007 No 112, item 766), Article 40a, http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=87&layout=1&page=text.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

References:

The National Electoral Commission(NEC), electoral committees of political parties and coalition political parties.

The Act of 12 April 2001 on Elections to the Sejm and Senate (Dz. U. 2007 No 190 item 1360), Chapter 13, Article 122, para 5, http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=5545&layout=1&page=text.

The Act of 16 July 1998 on Elections to Councils of Parishes, Councils of Districts and Local Parliaments (Dz.U. 2003 No 159 item 1547), Article 84b, http://www.pkw.gov.pl/pkw2/index.jsp?place=Menu01&news_cat_id=21778&layout=1.

The Act of 27 September 1990 on Elections of the President of the Republic of Poland (Dz. U. 2000 No 47, item 544, with changes: Dz. U. 2002 No 113, item 984 and No 153, item 1271; 2003 No 57, item 507 and No 130, item 1188; of 2004 No 25, item 219; of 2006 No 218 item 1592; of 2007 No 112, item 766), Article 87h, http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=87&layout=1&page=text.

The Act of 23 January 2004 on Elections to the European Parliament (Dz.U. No 25 item 219), Article 94, item 3. http://www.pkw.gov.pl/pkw2/index.jsp?place=Lead07&news_cat_id=21778&news_id=2355&layout=1&page=text.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

83

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Czaplicki states that limits on individual donations to political parties seem to be an effective tool to regulate the financing of political parties, but the possibility that the law is evaded cannot be excluded.

References:

Kazimierz W.Czaplicki, Secretary,Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008.)

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | **50** | 25 | 0

Comments:

Czaplicki states that corporate donations are forbidden in Polish law. Only individual citizens can donate money to a political party.

If a party has accepted any donation from a company, the party's report on finances is rejected and the donation is confiscated by the Ministry of State Treasury.

References:

Kazimierz W.Czaplicki, Secretary,Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008.)

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

Malkiewicz states that if all donations are withheld from reports on political parties' finances, it can be expected that the limits are not extremely effective.

References:

Kazimierz W.Czaplicki, Secretary,Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008.)

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Czaplicki states that if the National Electoral Commission (NEC) discovers violations of the Act of 27 June 1997 on Political Parties (Chapter 6a), they must inform law enforcement bodies about their suspicions. In addition to this, it is stated in the Criminal Code (Article 304, para 2) that if any state institutions have learned about any violations of the law, they are obliged to inform a prosecutor or the police.

References:

Kazimierz W.Czaplicki, Secretary,Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The National Electoral Commission (NEC/PKW) does not have any powers to impose any penalties on offenders. The NEC/PKW, in a given case, informs law enforcement bodies when they suspect a violation of the law.

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

85

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

Czaplicki states that corporate donations are accepted only in case of presidential elections. A complete ban on corporate donations is being considered. Corporate donations to the electoral committees of candidates constitute only a small amount of donations and are not very common.

M.K.B.: It might be the case that donations are so low because there is a gray (or informal) zone of party financing.

References:

Kazimierz W.Czaplicki, Secretary,Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

Monika K. Bil, researcher, Politics and Sussex European Institute, University of Sussex, UK

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Czaplicki states that the National Electoral Commission (NEC/PKW) informs law enforcement bodies (such as prosecutors or police) when they suspect violations of the law.

References:

Kazimierz W.Czaplicki, Secretary,Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The National Elector Commission (NEC/PKW) does not have powers to impose penalties on offenders. Offenders can be penalized only by a judicial decision.

References:

Kazimierz W.Czaplicki, Secretary,Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

The finances of candidates' electoral committees are audited.

References:

Kazimierz W.Czaplicki, Secretary,Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

92

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Political parties provide financial reports to the National Electoral Commission (NEC/PKW) by March 31 of each year.

References:

Kazimierz W.Czaplicki, Secretary,Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary,Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

75

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No, the rules of financing campaigns do not allow candidates to run their own campaigns. They have to establish an electoral

committee to process their finances. Thus, electoral committees submit reports to the National Electoral Commission (NEC/PKW), which publishes them. The reports are published as soon as they are submitted to the NEC.

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access financial records of a candidate's electoral committee.

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

Comments:

Citizens can access the financial records of an individual candidate's electoral committee.

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission, (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁸¹Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

88

27a. In practice, the chief executive gives reasons for his/her policy decisions.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Articles: 198-201,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The State Tribunal is considered rather an ineffective institution for reviewing the actions of executive.

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this

power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Articles: 198-201,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

The Act of 21 August 1997 on Restrictions for State Officials on Business Activities
(Dz. U z 2006 r., Nr 216, poz. 1584), Article 2,
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19971060679&type=3&name=D19970679Lj.pdf>.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

84

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

The Act of 21 August 1997 on Restrictions for State Officials on Business Activities
(Dz. U z 2006 r., Nr 216, poz. 1584), Article 8,
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19971060679&type=3&name=D19970679Lj.pdf>.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

The Act of 21 August 1997 on Restrictions for State Officials on Business Activities
(Dz. U z 2006 r., Nr 216, poz. 1584), Articles, 1, 10,

<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19971060679&type=3&name=D19970679Lj.pdf>.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

The Act of 21 August 1997 on Restrictions for State Officials on Business Activities
(Dz. U z 2006 r., Nr 216, poz. 1584): Article12,

<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19971060679&type=3&name=D19970679Lj.pdf>.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

The Act of 21 August 1997 on Restrictions for State Officials on Business Activities
(Dz. U z 2006 r., Nr 216, poz. 1584), Article 10,

<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19971060679&type=3&name=D19970679Lj.pdf>.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

The Act of 21 August 1997 on Restrictions for State Officials on Business Activities
(Dz. U z 2006 r., Nr 216, poz. 1584), Article 7,

<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19971060679&type=3&name=D19970679Lj.pdf>.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no regulations restricting post-government participation in the private sector by heads of state.

References:

Pawel Wronski, Kodeks Etyczny wedBug Lecha KaczyDskiego, Gazeta
Wyborcza, <http://serwis.gazeta.pl/kraj/1,69906,2954311.html>(Oct 6, 2006).

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

The data is available on the sites of the the National Election Commission (NEC).

References:

Kazimierz W.Czaplicki, Secretary, Head of National Electoral Office, National Electoral Commission (Warsaw, Aug. 28, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra(Zielona Góra, Poland, Sept. 12, 2008).

The NEC, <http://www.pkw.gov.pl/rk/index.jsp>.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra(Zielona Góra, Poland, Sept. 12, 2008).

O[wiadczenia maj tkowe w internecie, Wprost, <http://www.wprost.pl/ar/136196/Oswiadczenia-majatkowe-w-internecie/> (Aug. 13, 2008).

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

33

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

A proposal of the act states that citizens will be allowed to access the asset disclosure of the top executive officials.

References:

The Act of 21 August 1997 on Restrictions for State Officials on Business Activities

(Dz. U z 2006 r., Nr 216, poz. 1584), Article 10, para 3,

<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19971060679&type=3&name=D19970679Lj.pdf>.

WPROST 24 news story: <http://www.wprost.pl/ar/136196/Oswiadczenia-majatkowe-w-internecie/>

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The asset disclosure records were put on display when Donald Tusk was appointed Prime Minister.

Asset Disclosure Records of ministers are easily accessible within 2 days at <http://www.kprm.gov.pl/s.php?id=1415>.

The President's asset disclosure records cannot be reached via the Internet.

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

Prime Minister Asset Disclosure Records, <http://www.kprm.gov.pl/s.php?bio=575&path=10325>.

Ministers' Asset Disclosure Records, <http://www.kprm.gov.pl/s.php?bio=575&path=10325>.

WPROST 24 news story: <http://www.wprost.pl/ar/136196/Oswiadczenia-majatkowe-w-internecie/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Asset Disclosure Records of the prime minister and other ministers are available online whereas the asset disclosure records of the President are not.

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

<http://www.kprm.gov.pl/s.php?bio=575&path=10325>.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Article 45; Article 77, para 2; Article 78,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

100

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

100

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The Constitutional Tribunal reviews some of the laws that are passed by the legislature.

References:

The Constitution of the Republic of Poland of 2 April 1997, Article 188, para 3,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

Michał Krolkowski, Director of the Office for the Sejm Analyses, Sejm (Aug. 17, 2008, Warsaw).

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

All members are subject to criminal proceedings. However, immunity can be granted.

References:

The Constitution of the Republic of Poland of 2 April 1997, Article 105, para 1,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

64

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

The Act of 9 May 1996 on Exercising Mandate of Member of the Parliament (Dz. U of 2003 No 221, item 2199, and further changes), Article 35,

<http://www.sejm.gov.pl/prawo/mandat/mandat.htm>.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

There is no such restriction.

References:

Michal Krolkowski, Director of the Office for the Sejm Analyses, Sejm (Aug. 17, 2008, Warsaw).

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

The Act of 9 May 1996 on Exercising Mandate of Member of the Parliament (Dz. U of 2003 No 221, item 2199, and further changes), Article 35,

<http://www.sejm.gov.pl/prawo/mandat/mandat.htm>.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

The Act of 9 May 1996 on Exercising Mandate of Member of the Parliament (Dz. U of 2003 No 221, item 2199, and further changes), Article 35, para 6,
<http://www.sejm.gov.pl/prawo/mandat/mandat.htm>.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no such a regulation.

References:

Michal Krolikowski, Director of the Office for the Sejm Analyses, Sejm (Aug. 17, 2008, Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Petz states that ministers rarely provide information on gifts and hospitality that are offered to them. It is unclear whether this means that they do not receive any gifts or do not submit information on them.

References:

Janusz Petz, Zagladamy do kieszeni parlamentarzystow, [www.ezachodnia.eu](http://www.echodnia.eu), <http://www.echodnia.eu/apps/pbcs.dll/article?AID=/20080606/POWIAT02/198166300> (June 6, 2008).

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Michal Krolkowski, Director of the Office for the Sejm Analyses, Sejm (Aug. 17, 2008, Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

100

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

The Act of 9 May 1996 on Exercising Mandate of Member of the Parliament (Dz. U of 2003 No 221, item 2199, and further changes), Article 35, para 5.

<http://www.sejm.gov.pl/prawo/mandat/mandat.htm>.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Michał Krolkowski, Director of the Office for the Sejm Analyses, Sejm (Aug. 17, 2008, Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

Comments:

Available online.

References:

www.sejm.gov.pl.

Michał Krolkowski, Director of the Office for the Sejm Analyses, Sejm (Aug. 17, 2008, Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

100

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Articles: 4, 61,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

Sejm Regulations of 30 July 1992 (M.P. of 2002 No 23 item 398) Article: 202a
<http://www.sejm.gov.pl/prawo/regulamin/kon7.htm>.

Act of 6 September 2001 on Public Information Access (Dz.U. No 112, item 1198), Article 6.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special

secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access records of legislative processes and documents within a reasonable time period online.

References:

Michał Krolkowski, Director of the Office for the Sejm Analyses, Sejm (Aug. 17, 2008, Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

www.sejm.gov.pl.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are available online.

References:

Michał Krolkowski, Director of the Office for the Sejm Analyses, Sejm (Aug. 17, 2008, Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

www.sejm.gov.pl.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

91 III-3. Judicial Accountability

36. Are judges appointed fairly?

100

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

Criminal Proceedings Code of 27 July 2001 (Dz.U. of 2001 No 98, item 1070,) Article: 61,
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970890555&type=3&name=D19970555Lj.pdf>.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges (Crakow, Aug. 29, 2008).

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Articles 197, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

The Act of 21 July 2001 on Organization of Courts of General Jurisdiction (Dz. U. of 12.09.2001), Article 61, <http://isjp.sejm.gov.pl/servlet/Search?todo=file&id=WDU19840050024&type=3&name=D19840024Lj.pdf>.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

100

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Criminal Proceedings Code of 27 July 2001 (Dz.U. of 2001 No 98, item 1070), Articles 92,94,98, 99,
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970890555&type=3&name=D19970555Lj.pdf>.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges (Crakow, Aug. 29, 2008).

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

Disciplinary Court.

References:

Criminal Proceedings Code of 27 July 2001 (Dz.U. of 2001 No 98, item 1070), Articles 107, 112.
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970890555&type=3&name=D19970555Lj.pdf>.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

The Act of 21 July 2001 on Organization of Courts of General Jurisdiction (Dz. U. of 12.09.2001) Article 112, <http://isjp.sejm.gov.pl/servlet/Search?todo=file&id=WDU19840050024&type=3&name=D19840024Lj.pdf>.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges (Crakow, Aug. 29, 2008).

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

A Disciplinary Spokesman (Agent) initiates disciplinary proceedings.

References:

Waldemar Zurek, Spokesman, Association of Polish Judges (Crakow, Aug. 29, 2008).

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

43

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Criminal Proceedings Code of 27 July 2001 (Dz.U. of 2001 No 98, item 1070), Article 87,
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970890555&type=3&name=D19970555Lj.pdf>.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

The Act of 21 July 2001 on Organization of Courts of General Jurisdiction (Dz. U. of 12.09.2001), Article 87, <http://isjp.sejm.gov.pl/servlet/Search?todo=file&id=WDU19840050024&type=3&name=D19840024Lj.pdf>.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges (Crakow, Aug. 29, 2008).

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges (Crakow, Aug. 29, 2008).

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges (Crakow, Aug. 29, 2008).

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Criminal Proceedings Code of 27 July 2001 (Dz.U. of 2001 No 98, item 1070), Article 87, para 6,
<http://isjp.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970890555&type=3&name=D19970555Lj.pdf>.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges (Crakow, Aug. 29, 2008).

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Judicial asset disclosure is not allowed in Poland.

References:

Department of Law, Ministry of Justice (Warsaw, Aug 17, 2008).

Waldemar Zurek, Spokesman, Association of Polish Judges (Crakow, Aug. 29, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

100

40a. In law, the legislature can amend the budget.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Articles: 219-223,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12,2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

58

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

To professionals, the process is conducted in a transparent manner. However, an average citizen may face problems due to the complicated procedure.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12,2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are able to provide input to budget debate but only through the ministers.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12,2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Itemized budget allocations are available online.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12,2008).

<http://www.senat.gov.pl/k7/dok/sejm/004/16.pdf>.

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

100

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12,2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

Comments:

When necessary, the committee initiates hearings.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12,2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

The Act of 30 July 1992 on the Rules of the Sejm (M.P. 2002 No 23 item 398), Article 10,
<http://www.sejm.gov.pl/prawo/regulamin/kon7.htm>.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁸⁶ Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Article 153, para 1,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

The Act of 24 August 2006 on Civil Service (Dz. U. 170, item 1218, with further changes), Article 1,
http://www.ksap.home.pl/sc/templates/main/ustawa_o_sc.pdf.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

The Act of 24 August 2006 on Civil Service (Dz. U. 170, item 1218, with further changes), Article 50, para 1, http://www.ksap.home.pl/sc/templates/main/ustawa_o_sc.pdf.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

In Poland, there is not a specific mechanism for civil service. The only option is to appeal to the courts.

References:

The Act of 24 August 2006 on Civil Service (Dz. U. 170, item 1218, with further changes), Article 7, para 2, http://www.ksap.home.pl/sc/templates/main/ustawa_o_sc.pdf.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

The Act of 24 August 2006 on Civil Service (Dz. U. 170, item 1218, with further changes), Article 4 para 3, art.41 para 2, art 81, para 1, http://www.ksap.home.pl/sc/templates/main/ustawa_o_sc.pdf.

Labour Code of 26 June 1974,(Dz.U. 1974 No 24 item 14, and further changes), Article 51, para 1 and 2, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19740240141&type=3&name=D19740141Lj.pdf>.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

92

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control (Warsaw, Aug. 29, 2008).

Dagmir Dlugosz, Director of the Department of Civil Service and State Personnel Resource, Chancellery of the Prime Minister (Warsaw, Sept. 1, 2008).

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.



100 | 75 | 50 | 25 | 0

Comments:

It is difficult to determine what has been the situation in 2007-2008 because no studies have been published.

The report of the Supreme Chamber of Control stresses that requirements for the posts had been hardly adhered to (2005:31).

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control (Warsaw, Aug. 29, 2008).

Dagmir Dlugosz, Director of the Department of Civil Service and State Personnel Resource, Chancellery of the Prime Minister (Warsaw, Sept. 1, 2008).

Report of Control Results on Organization and Activities of Civil Service, Supreme Chamber of Control, Warsaw, April 2005).

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control (Warsaw, Aug. 29, 2008).

Dagmir Dlugosz, Director of the Department of Civil Service and State Personnel Resource, Chancellery of the Prime Minister (Warsaw, Sept. 1, 2008).

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to determine what is has been the situation in 2007-2008 because no studies have been published.

The report of the Supreme Chamber of Control stresses that requirements for the posts had been hardly adhered to (2005:31).

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control (Warsaw, Aug. 29, 2008).

Dagmir Dlugosz, Director of the Department of Civil Service and State Personnel Resource, Chancellery of the Prime Minister (Warsaw, Sept. 1, 2008).

Report of Control Results on Organization and Activities of Civil Service, Supreme Chamber of Control (Warsaw, April 2005).

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control (Warsaw, Aug. 29, 2008).

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

Dagmir Dlugosz, Director of the Department of Civil Service and State Personnel Resource, Chancellery of the Prime Minister (Warsaw, Sept. 1, 2008).

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw).

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

While there is no redress mechanism specifically for the civil service, the broader court system is an effective mechanism for addressing civil servant complaints.

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control (Warsaw, Aug. 29, 2008).

Dagmir Dlugosz, Director of the Department of Civil Service and State Personnel Resource, Chancellery of the Prime Minister (Warsaw, Sept. 1, 2008).

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control (Warsaw, Aug. 29, 2008).

Dagmir Dlugosz, Director of the Department of Civil Service and State Personnel Resource, Chancellery of the Prime Minister (Warsaw, Sept. 1, 2008).

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control (Warsaw, Aug. 28, 2008).

Dagmir Dlugosz, Director of the Department of Civil Service and State Personnel Resource, Chancellery of the Prime Minister (Warsaw, Sept. 1, 2008).

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

83

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

The Act of 21 August 1997 on Restrictions for State Officials to Business Activities (Dz. U z 2006 r., Nr 216, poz. 1584), Article 10, para 2, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19971060679&type=3&name=D19970679Lj.pdf>.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

The Act of 24 August 2006 on Civil Service (Dz. U. 170, item 1218, with further changes) Article 50, para

1, http://www.ksap.home.pl/sc/templates/main/ustawa_o_sc.pdf.

Civil Service Ethics Code, Prime Minister Directive of 11 October 2002 on Civil Service Ethics Code, para 4, <http://www.mazowieckie.pl/news.php?id=2032>.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

The Act of 21 August 1997 on Restrictions for State Officials to Business Activities (Dz. U z 2006 r., Nr 216, poz. 1584), Article 7, para 1; Art. 1, At. 2 para 1-3 and 6-6b, <http://isjp.sejm.gov.pl/servlet/Search?todo=file&id=WDU19971060679&type=3&name=D19970679Lj.pdf>.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Civil Service Ethics Code, Prime Minister Directive of 11 October 2002 on Civil Service Ethics Code, para 4, <http://www.mazowieckie.pl/news.php?id=2032>.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:

The Act of 21 August 1997 on Restrictions for State Officials to Business Activities (Dz. U z 2006 r., Nr 216, poz. 1584), Article 10, para 2, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19971060679&type=3&name=D19970679Lj.pdf>.

The Act of 9 June 2006 on Central Anti-Corruption Bureau (Dz.U. of 2006 No 104, item 708; No 158, item 1122; No 218, item 1592; of 2007, No 25, item 162).

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | **50** | 25 | 0

Comments:

It is difficult to answer this question because no data is available.

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept 12, 2008).

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Dagmir Dlugosz, Director of the Department of Civil Service and State Personnel Resource, Chancellery of the Prime Minister (Warsaw, Sept. 1, 2008).

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw).

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept 12, 2008).

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

They are not audited.

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept 12, 2008).

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

There is not such an act or regulation. However, it is a common practice to place asset disclosures on the Internet sites.

There is such an act as far as local governments members are concerned.

References:

There is not such an act or regulation. However, it is a common practice to place asset disclosures on the Internet sites.

There is such an act as far as local governments members are concerned.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, August 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept 12, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, August 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept 12, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

69

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Administrative Proceedings Code of 14 June 1960 (Dz. U. of 2000r. No 98, item 1071 with further changes), Chapter 5, article 24, [http://isip.sejm.gov.pl/PRAWO.nsf/4326b1a242fc14fd412563d20069fee3/5f3700d8132d14d9c125665700478cb5/\\$FILE/D19600168](http://isip.sejm.gov.pl/PRAWO.nsf/4326b1a242fc14fd412563d20069fee3/5f3700d8132d14d9c125665700478cb5/$FILE/D19600168)

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, Warsaw.

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

There is not any regulation.

References:

There is not any regulation.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | **75** | 50 | 25 | 0

Comments:

Private sector employees are protected by law, but there are not many cases where they would report corruption. It might be the case that protection is not sufficient.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, Warsaw.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

88

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Rafal Dabek, Advisor of Secretary of the State Julia Pitera, Chancellery of the Prime Minister (Warsaw, Sept. 8, 2008, Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Rafal Dabek, Advisor of Secretary of the State Julia Pitera, Chancellery of the Prime Minister (Warsaw, Sept. 8, 2008, Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Dabek states that it was difficult to determine because the time of the Central Anti-Corruption Bureau (CBA: Centralne Biuro Antykorupcyjne) work has been too short.

References:

Rafal Dabek, Advisor of Secretary of the State Julia Pitera, Chancellery of the Prime Minister (Warsaw, Sept. 8, 2008, Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Rafal Dabek, Advisor of Secretary of the State Julia Pitera, Chancellery of the Prime Minister (Warsaw, Sept. 8, 2008, Warsaw).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to

enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

Information on Corruption, online application (Informacja na temat korupcji).

The Act of 6 June 2006 on Central Anti-Corruption Bureau (Dz.U. of 2006 No 104, item 708, No 158; item 1122, No 218; item 1592; of 2007 No 25, item 162) Article 2,
http://bjp.cba.gov.pl/ftp/prawo/ustawa_o_cba.pdf.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

85
IV-3. Procurement

51. Is the public procurement process effective?

90

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

The Act of 31 January 2004 on Public Procurement (Dz.U. 2004 No 19 item 177, with further changes), Articles 161,162 & 200, <http://isip.sejm.gov.pl/prawo/index.html>.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

There is no such a requirement.

References:

There is no such a requirement.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Oct. 9, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The Head of Public Procurement.

References:

The Act of 31 January 2004 on Public Procurement (Dz.U. 2004 No 19, item 177, with further changes). Chapter 3, <http://isip.sejm.gov.pl/prawo/index.html>

Also the Supreme Chamber of Control http://www.nik.gov.pl/index.php?form_user_lang=enus.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

The Act of 31 January 2004 on Public Procurement (Dz.U. 2004 No 19, item 177, with further changes), Chapter 3, <http://isip.sejm.gov.pl/prawo/index.html>.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

The Act of 31 January 2004 on Public Procurement (Dz.U. 2004 No 19, item 177, with further changes), Part 3, Chapter 1, <http://isip.sejm.gov.pl/prawo/index.html>.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

The Act of 31 January 2004 on Public Procurement, part IV, Chapters 2 & 3 (Dz.U. 2004 No 19, item 177, with further changes). <http://isip.sejm.gov.pl/prawo/index.html>.

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

The Act of 31 January 2004 on Public Procurement. Part IV, chapter 4. (Dz.U. 2004 No 19, item 177, with further changes), <http://isip.sejm.gov.pl/prawo/index.html>.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

The Act of 31 January 2004 on Public Procurement, article 22; article 24, para 1.(Dz.U. 2004 No 19, item 177, with further changes), <http://isip.sejm.gov.pl/prawo/index.html>.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Oct. 9, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

100

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

The Act of 31 January 2004 on Public Procurement (Dz.U. 2004 No 19, item 177, with further changes), <http://isip.sejm.gov.pl/prawo/index.html>.

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

The Act of 6 September 2001 on Public Information Access: Chapter 1, Article 1, para 1; Article 2, para 1 (Dz.U. No 112, item 1198), <http://isip.sejm.gov.pl/prawo/index.html>.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

They are available online.

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Oct. 9, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

<http://www.bjp.gov.pl/categories/view/30>.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Oct. 9, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Oct. 9, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Oct. 2, 2008).

Biuletyn Informacji Publicznej, <http://www.bip.gov.pl/categories/view/30>.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

100

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

The Act of 30 August 1996 on Privatization and Commercialization (Dz.U. 1996 No 118, item 561, with further changes), Chapter 2, <http://isip.sejm.gov.pl/prawo/index.html>.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Administrative Proceedings Code of 14 June 1960 (Dz. U. of 2000r. No 98, item 1071 with further changes), Chapter 5, article 24, [http://isip.sejm.gov.pl/PRAWO.nsf/4326b1a242fc14fd412563d20069fee3/5f3700d8132d14d9c125665700478cb5/\\$FILE/D19600168](http://isip.sejm.gov.pl/PRAWO.nsf/4326b1a242fc14fd412563d20069fee3/5f3700d8132d14d9c125665700478cb5/$FILE/D19600168)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Oct. 2, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

100

54a. In law, citizens can access privatization regulations.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Article 54, para 1,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Oct. 2, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

The Act of 30 June 2005 on Public Finances (Dz.U. 2005 No 249, item 2104, with further changes), Article 1 para 1.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Oct. 2, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

References:

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Oct. 2, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁹⁰National Ombudsman

56. Is the national ombudsman effective?

91

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

The Constitution of the Republic of Poland from 2 April 1997, articles 209-211,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Wroblewski states that the regulations protect the ombudsman from political inference.

Malkiewicz states that the appointment of the current ombudsman has been an issue of political debate as opposition claims that a candidate for the office of ombudsman should not be a candidate for the post of MP as a representative of a given party. It should be stressed that more attention should be paid to the process of selection for the post.

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman does not impose any penalties on offenders. The Ombudsman has powers to forward a proposal (a recommendation of a judgment) to impose a penalty, or to revoke a judicial decision, to the relevant institutions.

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

The Act of 15 July 1987 on Ombudsman (Dz. U. of 2001 No 14, item 147; of 2007 Dz. U. No 3, item 15), Article 19, para 2, <http://www.rpo.gov.pl/index.php?md=1564&s=1>

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Information of Ombudsman of 2007, <http://www.rpo.gov.pl>.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Mirosław Wróblewski, Director of Constitutional and International Law Group, Office for Ombudsman, (Warsaw, Sept. 17, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

The ombudsman is Rzecznik Praw Obywatelskich.

References:

The Constitution of the Republic of Poland from 2 April 1997, articles, 80 & 208-212, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

The Act of 15 July 1987 on Ombudsman (Dz. U. of 2001 No 14, item 147; of 2007 Dz. U. No 3, item 15), <http://www.rpo.gov.pl/index.php?md=1566&s=1>

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

100

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Articles 202, para 2-3; 205, para 1-3; 206. <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

The Act of 23 December 1994 on Supreme Chamber of Control (Dz.U. of 2007 r. No 231, item 1701), Articles:1 para 2- 3; 6; 16, para 1; 7-19; 23; 26; 74; 75; 86-88.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, Aug. 20, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, Aug. 20, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, Aug. 20, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, Aug. 20, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, Aug. 20, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, Aug. 20, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Lubian states that the Supreme Chamber of Control (SCC) notifies law enforcement bodies when it suspects that the law has been violated.

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, Aug. 20, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

The Act of 23 December 1994 on Supreme Chamber of Control (Dz.U. of 2007 r. No 231, item 1701) Article 10, http://bjp.nik.gov.pl/bjp/podst_prawne/ustawa_o_nik.

Act of 6 September 2001 on Public Information Access (Dz.U. No 112, item 1198), Articles 4 and 6.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, Aug. 20, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Dariusz Lubian, Deputy Director, Department of Public Administration, Supreme Chamber of Control, (Warsaw, Aug. 20, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

Yes, it is the Supreme Chamber of Control.

References:

The Constitution of the Republic of Poland of 2 April 1997, Articles 202-203, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

The Act of 23 December 1994 on Supreme Chamber of Control (Dz.U. of 2007 r. No 231, item 1701), Articles:1-2, 4, http://bip.nik.gov.pl/pl/bip/podst_prawne/ustawa_o_nik.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

100 V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

Magdalena Kobos, Spokesman, Ministry of Finance, (Warsaw, Oct. 2, 2008).

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Witold Lisicki, Spokesman, Ministry of Finance (Warsaw, Oct. 2, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Witold Lisicki, Spokesman, Ministry of Finance (Warsaw, Oct. 2, 2008).

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

Tax Collection Chambers (Izby Skarbowe).

Only the Minister of Finance is in charge of both Tax Collection Chambers and Tax Collection Agencies.

References:

The Act of 21 June 1996 on Tax Collection Agencies and Tax Collection Chambers (Dz. U. No 106, item 489, with further changes), Article. 5, para 8, <http://www.mf.gov.pl/dokument.php?const=4&dzial=622&id=53466>.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

100

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

Magdalena Kobos, Spokesman, Ministry of Finance, (Warsaw, Oct. 2, 2008).

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

Customs Chamber (Izba celna)

References:

The Act of 24 July 1999 on Customs and Excise Service (Dz. U. No156, item 41, with further changes), Article1 para 7(2), http://www.mf.gov.pl/files/sluzba_celna/akty_prawne/ust_o_sc.pdf?PortalMF=8969ad388722f3b00ed7ebc87ccb9586.

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

100

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

References:

Witold Lisicki, Spokesman, Ministry of Finance (Warsaw, Oct. 2, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

40

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

Minister of the Treasury is a subordinate part of government.

References:

Minister of the Treasury is a subordinate part of government.

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Minister of the Treasure is a political post. Therefore, selection is not necessarily based on the candidate's professional skills.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Krzysztof Brunetko, Journalist, Expert of the Public Policy Institute, (Warsaw, Nov. 12, 2007).

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of the Treasury does not have a power to initiate investigations. It may recommend an audit of a particular state-owned enterprise. If a report undertaken by an independent auditing company points to any irregularities, the Minister is obliged to inform a prosecutor.

References:

Piotr Koszewski, Ministry of the Treasury, Audit in TVP points to Manipulation of Finances," http://www.msp.gov.pl/index_msp.php?dzial=29&id=5085. (Warsaw, Sept. 24, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Ministry of the Treasury does not have powers to impose penalties on offenders. However, it is obliged to inform a prosecutor of any irregularities found by an independent auditing agency.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Pawel Kozyra (ed.), Information on the Results of Lawsuits against a Few State-Owned Enterprises” (Komunikaty: Kto nie wykonuje zobowiazad w zwi zku z prywatyzacj), http://www.msp.gov.pl/index_msp.php?dzial=29&id=2084&search=141141, (Warsaw, Oct. 30, 2008).

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

50

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Article 61, para 1, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

The reports are not updated; they assess the condition of only a few state-owned enterprises.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Reports on Situation in Selected State-Owned Enterprises” (Sprawozdania o sytuacji w wybranych spółkach Skarbu Państwa), http://www.msp.gov.pl/index_msp.php?dzial=68&id=833.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | **25** | 0

Comments:

Auditors are selected by those state-owned enterprises that are to be audited.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Information on New Rules of Auditors' Selection” (Nowe zasady wyboru biegłych rewidentów dla spółek Skarbu Państwa), Ministry of the Treasury, http://www.msp.gov.pl/index_msp.php?dzial=29&id=2196 (July 18, 2007).

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Citizens can access financial records of a few state-owned enterprises that have been published by the Ministry of the Treasury. The reports are dated.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Reports on Situation in Selected State-owned Enterprises” (Sprawozdania o sytuacji w wybranych spółkach SP), Ministry of the Treasury, http://www.msp.gov.pl/index_msp.php?dzial=43.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access only those selected reports that are published by Ministry of the Treasury. The selected reports are free to all citizens.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Reports on Situation in Selected State-owned Enterprises ” (Sprawozdania o sytuacji w wybranych spółkach SP), Ministry of the Treasury, http://www.msp.gov.pl/index_msp.php?dzial=43 (2006).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

Minister of the Treasury.

References:

The Act of 30 August 1996 on Commercialization and Privatization, (Dz.U. 1996 No 118 item 561), Article 3, para 1; art. 4.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

63
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

YES | NO

References:

The Bill of 19 November 1999 on Business Activities (Dz.U. 101, Item 1178) Article 2, para 2,
<http://www.abc.com.pl/serwis/du/1999/1178.htm>.

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Administrative Proceedings Code of 14 June 1960 (Dz. U. of 2000r. No 98, item 1071 with further changes) Article 2, [http://isip.sejm.gov.pl/PRAWO.nsf/4326b1a242fc14fd412563d20069fee3/5f3700d8132d14d9c125665700478cb5/\\$FILE/D19600168L](http://isip.sejm.gov.pl/PRAWO.nsf/4326b1a242fc14fd412563d20069fee3/5f3700d8132d14d9c125665700478cb5/$FILE/D19600168L)

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

It takes from one week to one month to obtain a business license.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

None of the licenses are issued for free.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

The Act of 31 January 1980 on Environmental Protection and Development (Dz. U. 94.49.196, with further changes).

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

The Act of 31 January 1980 on Environmental Protection and Development (Dz. U. 94.49.196, with further changes).

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

The Act of 31 January 1980 on Environmental Protection and Development (Dz. U. 94.49.196, with further changes).

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

100

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁹¹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

Criminal Code of 6 June 1997 (Dz.U.97.88.553), Articles 228, 229, 230, 230a, 13, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970880553&type=3&name=D19970553Lj.pdf>.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

Criminal Code of 6 June 1997 (Dz.U.97.88.553 with further changes), article 228. para 4, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970880553&type=3&name=D19970553Lj.pdf>.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Criminal Code of 6 June 1997 (Dz.U.97.88.553 with further changes), Article 229, para 1, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970880553&type=3&name=D19970553Lj.pdf>.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Criminal Code of 6 June 1997 (Dz.U.97.88.553 with further changes), Article 228, para 1, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970880553&type=3&name=D19970553Lj.pdf>.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

Criminal Code of 6 June 1997 (Dz.U.97.88.553 with further changes), article 229, para 5,
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970880553&type=3&name=D19970553Lj.pdf>.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Criminal Code of 6 June 1997 (Dz.U.97.88.553 with further changes), Article 231,
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970880553&type=3&name=D19970553Lj.pdf>

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Criminal Code of 6 June 1997 (Dz.U.97.88.553 with further changes), Article 265,
<http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970880553&type=3&name=D19970553Lj.pdf>.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

Criminal Code of 6 June 1997 (Dz.U.97.88.553 with further changes), Article 299, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970880553&type=3&name=D19970553Lj.pdf>.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Criminal Code of 6 June 1997 (Dz.U.97.88.553 with further changes), Article 258, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970880553&type=3&name=D19970553Lj.pdf>.

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

81

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

The Act of 6 June 2006 on Central Anti-Corruption Bureau (Dz.U. of 2006 No 104, item 708; No 158, item 1122; No 218, item 1592; of 2007 No 25, item 162) articles: 5,6,7,8,9,10, http://bip.cba.gov.pl/ftp/prawo/ustawa_o_cba.pdf.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The former governing party used the Central Anti-corruption Bureau (CBA: Centralne Biuro Antykorupcyjne) in the pre-term parliamentary elections. Head of the CBA was directly involved in the electoral campaign. In short, the CBA was used by the PiS to discredit the main opposition party PO (Office for Democratic Institutions and Human Rights [OSCE/ODIHR] report 2008:12).

Dabek stated that it was too early to answer this question.

References:

Republic of Poland, Pre-term Parliamentary Elections, 21 October 2007, OSCE/ODIHR Election Assessment Mission Final Report (Warsaw, March 28, 2008).

Rafal Dabek, Advisor to State Secretary Julia Pitera, Chancellery of Prime Minister (Warsaw, Sept. 8, 2008).

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Rafal Dabek, Advisor to State Secretary Julia Pitera, Chancellery of Prime Minister (Warsaw, Sept. 8, 2008).

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

Rafal Dabek, Advisor to State Secretary Julia Pitera, Chancellery of Prime Minister (Warsaw, Sept. 8, 2008).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Rafal Dabek, Advisor to State Secretary Julia Pitera, Chancellery of Prime Minister (Warsaw, Sept. 8, 2008).

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Rafal Dabek, Advisor to State Secretary Julia Pitera, Chancellery of Prime Minister (Warsaw, Sept. 8, 2008).

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Central Anti-Corruption Agency was set up in 2006. No reports have been published yet.

References:

Rafal Dabek, Advisor to State Secretary Julia Pitera, Chancellery of Prime Minister (Warsaw, Sept. 8, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Rafal Dabek, Advisor to State Secretary Julia Pitera, Chancellery of Prime Minister (Warsaw, Sept. 8, 2008).

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Rafal Dabek, Advisor to State Secretary Julia Pitera, Chancellery of Prime Minister (Warsaw, Sept. 8, 2008).

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

75

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

It is difficult to answer this question due to the short period that the CBA has existed.

References:

Rafal Dabek, Advisor to State Secretary Julia Pitera, Chancellery of Prime Minister (Warsaw, Sept. 8, 2008).

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

Rafal Dabek, Advisor to State Secretary Julia Pitera, Chancellery of Prime Minister (Warsaw, Sept. 8, 2008).

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The institution has been named the Central Anti-Corruption Bureau.

References:

The Act of 6 June 2006 on Central Anti-Corruption Bureau (Dz.U. of 2006 No 104, item 708; No 158, item 1122; No 218, item 1592; of 2007 No 25, item 162), http://bip.cba.gov.pl/ftp/prawo/ustawa_o_cba.pdf.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

85
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

92

77a. In law, there is a general right of appeal.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Article, 176,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The number of cases in a given court has an impact on the time that it takes for appeals to be resolved.

The report states that the small number of appeals in courts are due to the high costs and the length of the time they take.
(Report 2006: 45)

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

Poland: Prawne Bariery dochodzenia praw z umów. World Bank and National Polish Bank Report, (Washington, Warsaw, 2006), <http://www.nbp.pl/publikacje/raportymif/bsnbp.pdf>.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

100

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

100

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Articles: 173, 178,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

The Act of 21 July 2001 on Organization of Courts of General Jurisdiction (Dz. U. of 12.09.2001) Article 29, <http://isjp.sejm.gov.pl/servlet/Search?todo=file&id=WDU19840050024&type=3&name=D19840024Lj.pdf>.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, article 180,
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear,

however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

86

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Criminal Code of 6 June 1997 (Dz.U.97.88.553 with further changes), Article 78, <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19970880553&type=3&name=D19970553Lj.pdf>.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Approximately thirty percent of society earn the Polish median yearly income. Thus, attorney fees may represent a major cost to these citizens who earn less.

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 12, 2008).

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Report states that the small number of appeals by small businesses to the courts is due to the high costs and length of the proceedings (Report 2006: 45).

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008)

Poland: Prawne Bariery dochodzenia praw z umów, World Bank and National Polish Bank Report, <http://www.nbp.pl/publikacje/raportymif/bsnbp.pdf>. (Washington, Warsaw, 2006)

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Waldemar Zurek, Spokesman, Association of Polish Judges, (Crakow, Aug. 29, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

75

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Opinion, Public Bulletin on Promotion to Higher Posts in Polish Police,"
<http://bjp.kgp.policja.gov.pl/porta1/kgp/1094/4846/2008.html>.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

Agnieszka Opalinska, Ph.D., Politics Institute, University of Zielona Góra (Zielona Góra, Poland, Sept. 29, 2008).

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Minister of Justice is the Prosecutor General.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 12, 2008).

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

100

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Article 63, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

Administrative Proceedings Code of 14 June 1960 (Dz. U. of 2000r. No 98, item 1071 with further changes) Articles 241 & 253, para 1, [http://isip.sejm.gov.pl/PRAWO.nsf/4326b1a242fc14fd412563d20069fee3/5f3700d8132d14d9c125665700478cb5/\\$FILE/D19600168L](http://isip.sejm.gov.pl/PRAWO.nsf/4326b1a242fc14fd412563d20069fee3/5f3700d8132d14d9c125665700478cb5/$FILE/D19600168L)

Directive of Prime Minister of 8 January 2002 on Organization of Submission and Investigation of Complaints and Suggestions (Dz. U. No 5, item 46).

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

References:

Office for Internal Affairs, Polish National Police Headquarters, (Warsaw, Apr. 10, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

Office for Internal Affairs of the Main Police Headquarters.

References:

Directive of 14 April 2008 No 372 issued by Head of the Police.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

References:

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

Office for Internal Affairs, Polish National Police Headquarters (Warsaw, Apr. 10, 2008).

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

The Constitution of the Republic of Poland of 2 April 1997, Article, 32, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

Office for Internal Affairs, Polish National Police Headquarters (Warsaw, Apr. 10, 2008).

Andrzej Malkiewicz, Professor, Politics Institute, University of Zielona Góra, (Zielona Góra, Poland, Sept. 29, 2008).

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.