

Overall Score:

80 - Moderate

Legal Framework Score:

86 - Strong

Actual Implementation Score:

71 - Moderate

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁹⁰Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

Basically, the right to establish any kind of NGO (including those focused on anti-corruption/good governance) is guaranteed by the Polish Constitution (articles mentioned above). This question is regulated more precisely in the law on foundations, in the law on associations and in the law of public benefit and voluntary work.

According to these laws, we may have three basic types of NGOs working in anti-corruption/good governance area — associations, foundations and public benefit NGOs (which are mainly associations and foundations that have special public benefit status, but also private, not-for-profit companies that also may obtain public benefit status).

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

Articles 58 and 59 guarantee the freedom of establishing civil society organizations (especially associations, foundations, trade unions, etc.).

Article 13 excludes from the legislative system organizations whose programs are based upon totalitarian methods and modes.

The Law on Foundations, Journal of Laws, 1984, No. 21, Item 97.

Article 1 states that these type of NGOs may be established for all kinds of purposes that are “socially or economically beneficial.”

The Law on Associations, Journal of Laws, 1989, No. 79, Item 855.

Article 1 states that these type of NGOs may be established for all kinds of purposes that do not violate the Constitution or other laws.

The Law on Public Benefit and Voluntary Work, Journal of Laws, 2003, No. 96 Item 873.

Article 4, Section 1, Items 20 and 22, state that one type of public benefit activity is to work to support public order and security as well as promote and protect human and civil rights, freedoms and the development of democracy.

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes

No

Comments:

There are no legal restrictions that could limit anti-corruption NGOs in gathering foreign or domestic sources.

References:

Wiedza i doświadczenie. Finanse w organizacji pozarządowej (Warszawa: Akademia Rozwoju Filantropii, 2006).

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes

No

Comments:

Generally, there are many regulations that theoretically make NGOs more transparent. There are no specific regulations

concerning anti-corruption/good governance organizations. However, it is necessary to say that only in the case of NGOs that have public benefit status is full transparency guaranteed because they have to make all reports, including financial reports.

Finances of NGOs without PBO status are accessible through supervisory bodies (at the central or local level) or directly if they use public sources (then they are obliged to publish all information on the Bulletin of Public Information). In practice, this transparency looks very different.

References:

The Law on Foundations, Journal of Laws, 1984, No. 21, Item 97.

Article 12 states that foundations are obliged to submit to the supervisory body (one of the ministries) an annual report, which should be also published.

The Law on Associations, Journal of Laws, 1989, No. 79, Item 855.

Chapter 3 describes supervisory mechanisms for associations.

The Law on Public Benefit and Voluntary Work, Journal of Laws, 2003, No. 96, Item 873.

Article 23 obliges all kinds of public benefit NGOs to make their financial and factual reports public.

The Law on Access to Public Information, Journal of Laws, 2003, No. 112, Item 1198.

Article 4 states that all entities that use public financing sources are obliged to provide all information about their activity, including financial information

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

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

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

83

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

References:

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

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

Comments:

The score is low mainly due to the fact that there are only a few really active governance NGOs in Poland. They are independent and free in their actions, but weak especially because of funding problems.

References:

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, , one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

As there was no such situation, I am convinced that the interview with Mrs. Kopińska, who knows this area very well, is enough to make a proper score.

References:

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes

No

Comments:

As there was no such situation, I am convinced that the interview with Mrs. Kopińska who knows this area very well, is enough to make proper score.

References:

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes

No

Comments:

As there was no such situation, I am convinced that the interview with Mrs. Kopińska who knows this area very well, is enough to make proper score.

References:

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes

No

Comments:

As there was no such situation, I am convinced that the interview with Mrs. Kopińska who knows this area very well, is enough to make proper score.

References:

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Yes: A YES score is earned if there were no documented cases of NGO 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

04a. In law, citizens have a right to organize into trade unions.

Yes

No

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483. Articles 12 and 59 guarantee the freedom of establishing trade unions and other types of civil society organizations.

The Law on Trade Unions, Journal of Laws, 2001, No. 79, Item 854.
<http://isap.sejm.gov.pl/DetailsServlet?id=WDU19910550234>

The law regulates all basic aspects of the establishing and the functions of 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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

“Polish citizens can petition the government, assemble freely, and engage in collective bargaining. Workers have the right to strike after mediation efforts have failed, except those working in essential services such as law enforcement.”

This observation of the authors of the Freedom House report is true, but there are some sectors of the economy in which workers have problems in organizing into trade unions, especially in large stores like super and hypermarkets and shopping malls. Some information about this problem might be found in the sources mentioned.

This is the reason why the score cannot be 100 points.

References:

Freedom House, The Global State Of Workers' Rights: Free Labor In a Hostile World (Washington: Freedom House, August 2010), 35, accessed November 25, 2010: http://freedomhouse.org/uploads/specialreports/workers_rights/2010/WorkerRightsOverviewEssay-FINAL.pdf

Adam Leszczyński, “Strajkujemy, bo jest nam lepiej. Interview with Prof. Julisz Gardawski” Gazeta Wyborcza, March 3, 2008, accessed November 25, 2010: http://wyborcza.pl/2029020,76498,4978466.html?sms_code=

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.

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes

No

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483. Article 14 and 25 guarantee freedom of press, all other means of communication and freedom of expression.

The Law on Press Media, Journal of Laws, 1984, No. 5 Item 24.

<http://isap.sejm.gov.pl/DetailsServlet?id=WDU19840050024>

The Law on the Radio and Television Broadcasting of 1992, Journal of Law, No. 253, Item 2531.

These basic laws regulate the functioning of the main press and electronic media and the operation of the freedom of the media.

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.

05b. In law, freedom of speech is guaranteed.

Yes

No

Comments:

Freedom of speech is basically guaranteed by the Constitution. Any that is contrary to this provision is void. The only exception is made for those who propagate totalitarian, Nazi, fascist and communist ideologies or any kind of hate speech.

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78 Item 483.

Articles 25 and 54 are two provisions assuring basic freedom of expression and dissemination information.

Article 53 is a specific article guaranteeing freedom of religious expression. It also includes provisions limiting this type of freedom if it is necessary for the security, public order, health, morals or the freedoms and rights of others.

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?

94

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

In principle, the central government does not create any barriers for print media. However, at the local level it is very difficult to start and run local newspapers. They are very often blocked by local municipalities, for example, by cutting off advertisements .

References:

Freedom House, Freedom of the Press 2010 (Washington: Freedom House, 2010), accessed November 25, 2010:
<http://www.freedomhouse.org/uploads/pfs/371.pdf>

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

It is rather difficult to call the procedure that is necessary to follow if one is interested in forming print media a 'license'. Running print media is just one of many forms of economic activity. The procedure is not very different to this when one wants to run any other kind of business activity. Anyone who wants to do it has to register this activity in a court. That is all. Of course, there are some doubts if the bidding law is clear enough, but there are no serious problems.

References:

The Law on the Press Media, Journal of Laws, 1984, No. 5, Item 24.

Chapter 4 describe the organization of publishing print media. The appeal procedure is basically the same as in any other court's decision.

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In this case, I think one source is enough, especially given the fact that it is not necessary to have any license to run any kind of print media. It is enough to register and that is very easy.

References:

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In this case, I think one source is enough, especially given the fact that it is not necessary to have any license to run any kind of print media. It is enough to register and that is very easy.

References:

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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?

63

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

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

Comments:

The score is low mainly because of complications in the licensing procedures. It is also a difficult broadcast bandwidth, not because of unfairness, but, again, because of procedural problems.

References:

Andrzej Krajewski, *Telewizja w Europie: regulacje, polityka i niezależność*, Budapest: Open Society Institute, 2006 (updated in 2008).

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes

No

Comments:

A decision to grant a license is made by the National Broadcasting Council in the form of a resolution which is then sent to the president of the Office of Electronic Communication who approves its technical aspects by way of a decision. The final stage of the licensing procedure consists of a decision issued by the National Broadcasting Council's chairman. If the decision is negative, one can appeal to the court.

References:

The Law on the National Broadcasting Council, Journal of Laws, 2004, No. 253, Item 2531.

<http://www.krrit.gov.pl/bjp/LinkClick.aspx?fileticket=mOmMxR5gKlw%3d&tabid=374&language=en-US> (unofficial)

Chapter 2 regulates the functioning of the National Broadcasting Council, the institution responsible for issuing licenses for radio and TV broadcasting .

– Chapters 5 and 6 describe the procedure of obtaining licenses for radio and TV air and cable broadcasting for national and foreign companies.

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.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100

75

50

25

0

Comments:

In theory, anyone may obtain a broadcast (radio and TV) media license. The score is low because, in practice, it is a very difficult process and costly in terms of time. It may take more than two months.

References:

Andrzej Krajewski, *Telewizja w Europie: regulacje, polityka i niezależność*, Budapest: Open Society Institute, 2006 (updated in 2008).

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

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

References:

Andrzej Krajewski, *Telewizja w Europie: regulacje, polityka i niezależność*, Budapest: Open Society Institute, 2006 (updated in 2008).

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:

Rafał Lew-Starowicz, "Prawo w sieci. Zalety rozwiązań samoregulacyjnych internetowe," paper presented at the Conference "Prawo w Sieci," Warsaw, Louisiana, May 11, 2009.

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

Piotr Waglowksi, Prawo w sieci, Dziennikarstwo tradycyjne a dziennikarstwo internetowe, paper presented at the conference, Warsaw, May 11, 2009.

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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?

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

Comments:

One thing that should be mentioned here is Paragraph 212 of the Penal code, which establishes criminal liability for defamation of officials. This provision is very often over-interpreted by the officials and courts. It is also often used for blackmailing journalists with lawsuits when they attempt to publish news that might be harmful to officials and politicians.

The Helsinki Foundation for Human Rights assesses that this provision is contrary to the constitutional guarantees of freedom of the media and speech.

See: Dawid Sześciło, Paragraph 212 (Warsaw: HFPC, 2009).

References:

Theoretically, there are no specific restrictions in the law that would limit journalists in publishing news, even if they might damage the reputations of public figures.

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100

75

50

25

0

Comments:

It is rather rare, but it happens that politicians try to postpone publications to manipulate or use the media to present corruption cases as they want. One well-known example of this practice is the situation that happened in 2007. Public television was used by the ruling party to pressure a leftist ex-politician suspected of corruption. She committed suicide during detention.

References:

Dominika Bychawska-Siniarska, introduction to the collection of papers presented during the conference of Współczesna Cenzura, Warsaw, May 6, 2010.

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Pre-publication censorship is prohibited by the Constitution of Poland.

References:

AD4

Mirosław Wróblewski, Zabezpieczenie powództwa przez zakaz publikacji — instrument cenzury prewencyjnej?, paper presented at the conference Współczesna Cenzura,” Warsaw, May 6, 2010.

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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?

85

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

Yes | No

Comments:

Every company has to be registered in the National Court Register, including print media and companies that own them. The register is open to the public where everyone can find data about corporate structure.

References:

The Law on the National Registry Court, Journal of Laws, 1997, No. 121, Item 769.
This law, in general, obliges all public and private companies to be registered.

The Law on the Press Media, Journal of Laws, 1984, No. 5, Item 24.
Article 27 obliges all print media to publish basic information on every copy, including data about ownership.

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

Comments:

There are no specific regulations concerning disclosure of an ownership of broadcast media.

References:

The Law on the National Registry Court, Journal of Laws, 1997, No. 121, Item 769.
This law in general obliges all public and private companies to be registered.

As in the case of print media, the register is public and everyone can access all data stored there, including information about broadcast media.

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 types 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:

Unfortunately, it happens that journalists sometimes do not sufficiently document cases of corruption which they describe. One may have the impression that they often use official sources (e.g. from investigations) without reflection. After all, it often happens that the conviction is not proved before the court, but public figures already have a ruined image. Examples of such cases are Dr. Marek Garlicki or the former defense minister Romuald Szeremietiew.

References:

Aleksandra Niżyńska, Odpowiedzialne dziennikarstwo, Raport z badań, Warsaw: Instytut Spraw Publicznych, September 24, 2010.

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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:

The problem is the high political polarization and politicization of the public media. The results are that there are almost no balanced sources of information; the media are either extremely pro or against given political options.

References:

AD4

Fundacja im. Stefana Batorego, Raport z monitoringu głównych serwisów informacyjnych TVP w czasie kampanii prezydenckiej 2010 roku, Warsaw, Fundacja im. Stefana Batorego, September 2010.

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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.

100 | 75 | 50 | 25 | 0

References:

Fundacja im. Stefana Batorego, Raport z monitoringu głównych serwisów informacyjnych TVP w czasie kampanii prezydenckiej 2010 roku, Warsaw, Fundacja im. Stefana Batorego, September 2010.

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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

Comments:

As there was no such situation, I am convinced that the interview with Dr. Bodnar, who knows this area very well, is enough for proper scoring.

References:

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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

Comments:

As there was no such a situation I am convinced that the interview with dr. Bodnar, who knows this area very well, is enough to make proper scoring.

References:

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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

Comments:

As there was no such situation, I am convinced that the interview with Dr. Bodnar, who knows this area very well, is enough for proper scoring.

References:

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

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

Yes | No

Comments:

Additionally, it should be mentioned that Article 51 of the Constitution forbids public authorities to collect any information about citizens that is not necessary to preserve the democratic state. The same article guarantees citizens access to all data concerning themselves.

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

Article 61 guarantees the right to obtain information about activities of the organs of public authority as well as persons discharging public functions. This, of course, means that there is free access to any documents.

Section 3 of the article above states that limitations upon the rights to access public information may be imposed by statute, solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the state.

The right to access to public information is also regulated by the special Law on Access to Public Information, Journal of Laws 2001 No. 112 item 1198

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

Providing or refusing public information is simply done in the way of administrative decisions. The Law on Access to Public Information gives the precise appeal procedure in case of refusal. At the same time, in such situations, the provisions of the Code of Administrative Conduct are also applied.

There is a two-step administrative proceeding in Poland. In case of negative administrative decisions (including access to information), first one must appeal to the office which made the decision. If the appeal is not accepted, the next stage might be going before the administrative court. Furthermore, at the stage of judicial proceedings there are also other options. The matter may be considered by the Supreme Administrative Court and by the Supreme Court as a last resort, which may revoke a sentence of the Supreme Administrative Court.

References:

The Law on Access to Public Information, Journal of Laws, 2001, No. 112, Item 1198.

Articles 16 and 17 describe the basic appeal procedure in case a public authority refuses access to information.

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

References:

The Law on Access to Public Information, Journal of Laws, 2001, No. 112, Item 1198.

On the basis of Articles 8 and 9, the Bulletin of Public Information has been created. The bulletin is simply an electronic system in which any entity obliged to provide public information about its activity must create its own web page and, through this channel, publish all basic information and documents. All information that cannot be accessed through the bulletin is provided by the institution upon request.

The Bulletin is described in the Ordinance of Minister of Internal Affairs and Administration on the Public Information Bulletin, Journal of Laws 2007 No. 10 item 68

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 to information requests effective?

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

100 | 75 | 50 | 25 | 0

References:

Centrum Monitoringu Wolności Prasy SDP, Badanie Przejrzystość Administracji Rządowej 2009. Raport z badań, Warsaw: SDP, 2009, accessed November 20, 2010:
http://informacjapubliczna.org.pl/wwwdane/files/raporty/raport_badanie_przejrzysto%C5%9Bci_administracji_rz%C4%85dowej_2009.

Interview with Katarzyna Batko-Tołuć, one of the creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In principle, access to public information is free. The problem is that it happens that authorities refuse or avoid giving decisions, etc. This, in turn requires further steps, and sometimes even court proceedings, which cost time and money.

References:

Centrum Monitoringu Wolności Prasy SDP, Badanie Przejrzystość Administracji Rządowej 2009. Raport z badań, Warsaw: SDP, 2009, accessed November 20, 2010:
http://informacjapubliczna.org.pl/wwwdane/files/raporty/raport_badanie_przejrzysto%C5%9Bci_administracji_rz%C4%85dowej_2009.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

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

References:

Centrum Monitoringu Wolności Prasy SDP, Badanie Przejrzystość Administracji Rządowej 2009. Raport z badań, Warsaw: SDP, 2009, accessed November 20, 2010:
http://informacjapubliczna.org.pl/wwwdane/files/raporty/raport_badanie_przejrzysto%C5%9Bci_administracji_rz%C4%85dowej_2009.

Katarzyna Batko-Toluć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

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

Comments:

Simple requests are usually resolved quickly (fourteen working days by law), but when an office has something to hide, procedures may take months or even years.

References:

Centrum Monitoringu Wolności Prasy SDP, Badanie Przejrzystość Administracji Rządowej 2009. Raport z badań, Warsaw: SDP, 2009, accessed November 20, 2010:
http://informacjapubliczna.org.pl/wwwdane/files/raporty/raport_badanie_przejrzysto%C5%9Bci_administracji_rz%C4%85dowej_2009.

Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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.

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

100 | 75 | 50 | 25 | 0

References:

Centrum Monitoringu Wolności Prasy SDP, Badanie Przejrzystość Administracji Rządowej 2009. Raport z badań, Warsaw: SDP, 2009, accessed November 20, 2010:
http://informacjapubliczna.org.pl/wwwdane/files/raporty/raport_badanie_przejrzysto%C5%9Bci_administracji_rz%C4%85dowej_2009.

Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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.

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

Comments:

The low score is usually the matter of vagueness of the reasons. The method is simple — any legal justification without deeper explanation.

References:

Centrum Monitoringu Wolności Prasy SDP, Badanie Przejrzystość Administracji Rządowej 2009. Raport z badań, Warsaw: SDP, 2009, accessed November 20, 2010:
http://informacjapubliczna.org.pl/wwwdane/files/raporty/raport_badanie_przejrzysto%C5%9Bci_administracji_rz%C4%85dowej_2009.1

Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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 2. Elections

2.1. ⁹⁰Voting and Party Formation

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

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

-Article 32 states that everyone should be treated equally by the law and public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

– Article 33 has special provisions regarding equality of men and women regarding political rights, among others.

– Article 62 guarantees the right to vote for all Polish citizens who have attained 18 years of age. Exceptions are made to persons who, by a final judgment of a court, have been subjected to legal incapacitation or deprived of public or electoral rights –they shall have no right to participate in a referendum nor a right to vote.

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

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

Chapters IV, V and VII establish the basic legal framework for the main democratic institutions to which representatives are elected — Parliament, president, and local government. There are also provisions included concerning the intervals between elections — accordingly four and five year terms.

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?

92

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

100 | 75 | 50 | 25 | 0

Comments:

In practice, disabled and elderly people have difficulty realizing their voting rights because it is not allowed for them to vote by post or by a representative.

References:

Maciej Bernatt , Robert Rybski, "Nieuzasadnione ograniczenie praw wyborczych," Rzeczpospolita, September 9, 2009, accessed November 19, 2010: <http://www.rp.pl/artykul/358309.html>

Jarosław Zbieranek, "Zmiany w systemie prawa wyborczego i finansowaniu partii" in Demokracja w Polsce 2007-2009, ed. Lena Kolarska-Bobińska, Jacek Kucharczyk, Warsaw: Institute of Public Affairs, 2010.

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:

Ferdynand Rymarz (ed.), Semokratyczne standardy prawa wyborczego Rzeczypospolitej Polskiej, Teoria i praktyka, Warsaw: Państwowa Komisja Wyborcza, 2005.

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

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

Comments:

In this case, it is enough to look through the website of the National Electoral Commission where one can find all documents and data concerning elections conducted in the last twenty years. In this period there were no irregularities in election calendars caused by abuse or political pressure (of course, excepting situations in which the government was losing political support in Parliament).

References:

Website of the National Electoral Commission:

<http://www.pkw.gov.pl>

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?

90

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

Yes

No

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

Article 11 guarantees freedom for the creation and function of political parties.

Article 13 creates some exceptions. Political parties whose programs are based upon totalitarian methods and the modes of activity of Nazism, fascism and communism, as well as those whose programs or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the state policy, or provide for the secrecy of their own structure or membership, are prohibited.

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 Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

The right to run for any political office is guaranteed simply by the previously mentioned Article 32 of the Constitution concerning equality of access to public life, in any of its forms.

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:

Ferdynand Rymarz (ed.), *Semokratyczne standardy prawa wyborczego Rzeczypospolitej Polskiej, Teoria i praktyka* (Warsaw: Państwowa Komisja Wyborcza, 2005).

Interview with Dr. Jarosław Zbieranek, an expert on issues of electoral law and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs.

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

References:

Radosław Markowski, "System partyjny" in *Demokracja w Polsce 2005-2007*, eds. Lena Kolarska-Bobińska, Jacek Kucharczyk, Jarosław Zbieranek (Warsaw: Institute of Public Affairs, 2007).

Dariusz Dudek, *O potrzebie zmian w konstytucji RP z 1997 r.*, (Lublin: Polska Akademia Nauk, Oddział w Lublinie, 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:

Grzegorz Pastuszko, "Stanowisko ustrojowe marszałka Sejmu a prawa opozycji parlamentarnej," *Przegląd Sejmowy*, 2/91 (2009), 9-30.

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

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.

2.2. Election Integrity

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

100

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

Yes

No

Comments:

see link to web page of the National Electoral Commission:
<http://www.pkw.gov.pl/>

References:

The Law on Elections to the Polish Sejm and the Polish Senate, Journal of Laws, 2001, No. 46, Item 499.

Chapter 7, Articles 36-43a, establish the National Electoral Commission — the main institution responsible for the organization and monitoring of all elections and referendums.

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.

18. Is the election monitoring agency effective?

100

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

Yes

No

References:

The Law on Elections to the Polish Sejm and the Polish Senate, Journal of Laws, 2001, No. 46, Item 499.

Independence from the National Electoral Commission is guaranteed by Article 36. This provision states that members of the commission are only judges chosen by the heads of the Constitutional Tribunal, the Supreme Court, the Supreme Administrative Court and appointed by the president of the Republic of Poland.

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:

Chmaj Marek, Skrzydło Wiesław, System wyborczy w Rzeczypospolitej Polskiej (Warsaw: Wolters Kluwer Polska, 2005).

Stefan Jaworski, "Państwowa Komisja Wyborcza organem kontroli i ochrony prawa," ed. Ferdynand Rymarz, Iudices electionis custodes (Sędziowie kustoszami wyborów) — Księga Pamiątkowa Państwowej Komisji Wyborczej (Warsaw: Państwowa Komisja Wyborcza 2007), 77-98.

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:

Chmaj Marek, Skrzydło Wiesław, System wyborczy w Rzeczypospolitej Polskiej (Warsaw: Wolters Kluwer Polska, 2005).

Ferdynand Rymarz (ed.), Demokratyczne standardy prawa wyborczego Rzeczypospolitej polskiej, Teoria i praktyka (Warsaw: Państwowa Komisja Wyborcza, 2005).

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

Comments:

Everyone can easily verify functioning of the National Electoral Commission through their website:
<http://www.pkw.gov.pl>

References:

Chmaj Marek, Skrzydło Wiesław, System wyborczy w Rzeczypospolitej Polskiej (Warsaw: Wolters Kluwer Polska, 2006).

Ferdynand Rymarz (ed.), Demokratyczne standardy prawa wyborczego Rzeczypospolitej polskiej, Teoria i praktyka (Warsaw: Państwowa Komisja Wyborcza, 2005).

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 most recent situation happened in 2007. The Alliance of Democratic Left (SLD) was endangered by losing party subsidies for three years, because their financial statement was submitted after the deadline.

References:

Mirosława Ekiert, Krzysztof Lorentz, "Rola Państwowej Komisji Wyborczej w systemie kontroli finansowania partii politycznych i kampanii wyborczych."

Ferdynand Rymarz, *Iudices electionis custodes (Sędziowie kustoszami wyborów)* — Księga Pamiątkowa Państwowej Komisji Wyborczej (Warsaw: Państwowa Komisja Wyborcza 2007), 307-314.

Jarosław Zbieranek (ed.), *Subwencje z budżetu państwa dla partii politycznych. Jawność i kontrola*, (Warsaw: Instytut Spraw Publicznych, 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?

88

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

100 | 75 | 50 | 25 | 0

Comments:

Scoring should be slightly lower due to the fact that fully independent observers from outside the electoral committees formally don't exist (e.g., watch-dog organizations cannot be formal observers of elections).

References:

Wiesław Skrzydło, Marek Chmaj, *System wyborczy w Rzeczypospolitej Polskiej* (Warsaw: Wolters Kluwer Polska, 2008).

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

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:

The Law on Elections of the President of the Republic of Poland, Journal of Laws, 2010, No. 72, Item 467.

The Law on Elections to the Polish Sejm and the Polish Senate, Journal of Laws, 2001, No. 46, Item 499.

The Law on Elections to the Councils of Gminas, Counties and Voivodships, Journal of Laws, 2010, No. 176, Item 1190.

The Law on Direct Elections of Borough Leaders, Mayors and Presidents, Journal of Laws, 2010, No. 176, Item 1191.

All listed laws include similar procedures concerning submission of protests against the validity of elections. All complaints are examined by courts (district courts in case of local elections or the Supreme Court in case of presidential or parliamentary elections).

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:

AD1

Polska Agencja Prasowa, „Sąd Najwyższy zalewany przez protesty wyborcze”, Gazeta Prawna, Accessed November 23, 2010 <http://www.gazetaprawna.pl/drukowanie/435533>

AD2

Wiesław Skrzydło, Marek Chmaj, System wyborczy w Rzeczypospolitej Polskiej (Warsaw: Wolters Kluwer Polska, 2008).

Interview with Dr Jarosław Zbieranek, an expert on issues of electoral law and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs.

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

Comments:

The army and security forces usually remain neutral. However, there are recent cases of more or less direct attempts to influence voters' opinion. For example, during the last electoral campaign in 2007 to the Parliament, the head of the Central Anti-Corruption Bureau was suggesting publicly which party, in his opinion, was honest and transparent and which was corrupt .

References:

Wiesław Skrzydło, Marek Chmaj, System wyborczy w Rzeczypospolitej Polskiej (Warsaw: Wolters Kluwer Polska, 2008).

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

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:

Currently, Parliament is working on the the electoral code. It will contain provisions regulating the role of foreign observers.

References:

There are no such regulations.

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:

As it was mentioned earlier, observers outside electoral committees are not formally recognized. Only representatives of the electoral committees are allowed to be observers. So basically, from the formal point of view, only parties running electoral campaigns observe themselves.

References:

Polska Agencja Prasowa, "Obserwatorzy z zagranicy odwiedzają komisje w Podlaskiem," Polska Agencja Prasowa, June 20, 2010, accessed November 25, 2010:

<http://www.newsweek.pl/artykuly/sekcje/polska/obserwatorzy-z-zagranicy-odwiedzaja-komisje-w-podlaskiem.60696.1>

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

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.

2.3. ⁹⁶Political Financing Transparency

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

100

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

Yes

No

References:

The Law on Political Parties, Journal of Laws, 1997, No. 98, Item 604.

<http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970980604>

Chapter Four regulates financing of political parties. Article 25 of this chapter sets the limit of contributions that individuals can make to a political party. The total sum from an individual (excluding membership fees) can't be higher than one average salary. Contributions to the Electoral Fund of a given party cannot exceed the limit of fifteen times of the minimum wage.

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.

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

Yes

No

Comments:

It should be understood that corporate donations are prohibited.

References:

The Law on Political Parties, Journal of Laws, 1997, No. 98, Item 604.

Articles 25-26a describe precisely the mechanism of financing political parties. According to these provisions, corporate contributions are prohibited.

Political parties may receive funds only from Polish citizens residing in the country.

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.

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

Yes

No

References:

The Law on Elections to the Polish Sejm and the Polish Senate, Journal of Laws, 2001, No. 46, Item 499.

Articles 114 and 115 set up limits for party expenditures during electoral campaigns. Limits vary depending on the size of electoral committees. The general rule is also that during campaigns, committees cannot devote more than 80 percent of their electoral budgets for advertising.

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. 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 requirements for the disclosure of donations to political parties.

Yes

No

References:

The Law on Political Parties, Journal of Laws, 1997, No. 98, Item 604.

Articles 38-41 describe basic procedures of financial reporting of political parties. Parties are obliged to disclose all their income, including contributions from individual persons. The guidelines and required forms are regulated by the ordinance of the Minister of Finance on the report about the sources of funding, Journal of Laws, 2003, No. 33, Item 269.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

References:

The Law on Political Parties, Journal of Laws, 1997, No. 98, Item 604.

According to Article 34, parties are required to submit to the National Electoral Commission their annual finance reports with opinions and a separate report of independent auditors. It is a standard procedure. If there are irregularities uncovered those who are responsible, they may be fined or even sentenced to prison and the party may lose state subsidies for three years.

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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 when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

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

Yes | No

Comments:

Link to web page of the National Electoral Commission:
<http://www.pkw.gov.pl/>

References:

The Law on Elections to the Polish Sejm and the Polish Senate, Journal of Laws, 2001, No. 4,6 Item 499.

The National Electoral Commission established by Chapter 7 is responsible for monitoring the financing of political parties.

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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

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

100

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

Yes | No

Comments:

Individuals can run only in certain types of elections – presidential elections, elections to the Senate and local elections (with some exceptions in the case of elections at the voivodship level). At the same time, even in these cases, a single person can't be an addressee of donations. To be able to collect funds for political activities, one must always establish the electoral committee – this committee is a body collecting funds for political activity or the campaign of a given candidate. Committees are subject to the same rules as political parties.

References:

The Law on Elections of the President of the Republic of Poland, Journal of Laws, 2010, No. 72, Item 467.

The Law on Elections to the Polish Sejm and the Polish Senate, Journal of Laws, 2001, No. 46, Item 499.

The Law on Elections to the Councils of Gminas, Counties and Voivodships, Journal of Laws, 2010, No. 176, Item 1190.

The Law on Direct Elections of Borough Leaders, Mayors and Presidents, Journal of Laws, 2010, No. 176, Item 1191.

All listed laws include provisions regulating limits on individual donations that might be contributed to the electoral committees supporting political candidates.

All provisions are similar. An example may be Article 113 of the The Law on Elections to the Polish Sejm and the Polish Senate:

“The total sum of contributions from an individual to a single electoral coalition committee or the voters' electoral committee may not exceed 15 times the minimum wage, established on the basis of separate provisions in force on the day preceding the announcement date order ordering the elections.”

The provisions limiting individual donations in other laws have the same construction.

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.

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

Yes | No

Comments:

Individuals can run only in certain types of elections – presidential elections, elections to the Senate and local elections (with some exceptions in the case of elections at the voivodship level). At the same time, even in these cases, a single person can't be an addressee of donations. To be able to collect funds for political activities, one must always establish the electoral committee – this committee is a body collecting funds for political activity or the campaign of a given candidate. Committees are subject to the same rules as political parties.

References:

The Law on Elections of the President of the Republic of Poland, Journal of Laws, 2010, No. 72, Item 467.

The Law on Elections to the Polish Sejm and the Polish Senate, Journal of Laws, 2001, No. 46, Item 499.

The Law on Elections to the Councils of Gminas, Counties and Voivodships, Journal of Laws, 2010, No. 176, Item 1190.

The Law on Direct Elections of Borough Leaders, Mayors and Presidents, Journal of Laws, 2010, No. 176, Item 1191.

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.

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

Yes

No

Comments:

Individuals can run only in certain types of elections – presidential elections, elections to the Senate and local elections (with some exceptions in the case of elections at the voivodship level). At the same time, even in these cases, a single person can't be an addressee of donations. To be able to collect funds for political activities, one must always establish the electoral committee – this committee is a body collecting funds for political activity or the campaign of a given candidate. Committees are subject to the same rules as political parties.

References:

The Law on Elections of the President of the Republic of Poland, Journal of Laws, 2010, No. 72, Item 467.

The Law on Elections to the Polish Sejm and the Polish Senate, Journal of Laws, 2001, No. 46, Item 499.

The Law on Elections to the Councils of Gminas, Counties and Voivodships, Journal of Laws, 2010, No. 176, Item 1190.

The Law on Direct Elections of Borough Leaders, Mayors and Presidents, Journal of Laws, 2010, No. 176, Item 1191.

All listed laws include provisions regulating limits on individual donations that might be contributed to the electoral committees supporting political candidates.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes

No

Comments:

Individuals can run only in certain types of elections – presidential elections, elections to the Senate and local elections (with some exceptions in the case of elections at the voivodship level). At the same time, even in these cases, a single person can't be an addressee of donations. To be able to collect funds for political activities, one must always establish the electoral committee – this committee is a body collecting funds for political activity or the campaign of a given candidate. Committees are subject to the same rules as political parties.

References:

The Law on Elections of the President of the Republic of Poland, Journal of Laws, 2010, No. 72, Item 467.

The Law on Elections to the Polish Sejm and the Polish Senate, Journal of Laws, 2001, No. 46, Item 499.

The Law on Elections to the Councils of Gminas, Counties and Voivodships, Journal of Laws, 2010, No. 176, Item 1190.

The Law on Direct Elections of Borough Leaders, Mayors and Presidents, Journal of Laws, 2010, No. 176, Item 1191.

According to these laws, electoral committees might be requested by the National Electoral Commission to examine the financial reports of the independent auditor. The same is the case of political parties. If there are irregularities uncovered, those who are responsible may be fined or even sentenced to prison and the party may lose state subsidies for three years.

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 when financial irregularities are uncovered. 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 when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

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

Yes

No

Comments:

Link to web page of the National Electoral Commission:
<http://www.pkw.gov.pl/>

References:

The Law on Elections to the Polish Sejm and the Polish Senate, Journal of Laws, 2001, No. 46, Item 499.

The National Electoral Commission established by Chapter 7 is responsible for monitoring the financing of electoral committees supporting individual political candidates.

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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

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:

Basically the problem is that it is difficult to evaluate the effectiveness of these provisions because reporting is of very low quality and there are many attempts of hiding individual donations, e.g., in services and goods being provided to political parties.

References:

Marcin Walecki, "Money and Politics in Poland: a New Democracy in a Comparative Perspective," (Warsaw: Instytut Spraw Publicznych, 2005).

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

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:

In theory, legal persons can't make donations to political parties. In practice, however, it happens that companies care about them. That's the opinion of Dr. Zbieranek.

References:

Marcin Walecki, Money and Politics in Poland: a New Democracy in a Comparative Perspective, (Warsaw: Instytut Spraw Publicznych, 2005).

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:

An example might be the institution of the "expert fund." Parties are required to use a certain amount of the subsidies they are receiving from the state for preparing analyses, draft laws or their political agendas, etc. But in fact, that money is wasted or spent on political marketing.

References:

Marcin Walecki, Money and Politics in Poland: a New Democracy in a Comparative Perspective, (Warsaw: Instytut Spraw Publicznych, 2005).

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

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:

The National Electoral Committee could more effective if it had more investigative powers and did not have to rely only on cooperation with other bodies.

References:

Marcin Walecki, Money and Politics in Poland: a New Democracy in a Comparative Perspective, (Warsaw: Instytut Spraw Publicznych, 2005).

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, 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:

Again, the National Electoral Committee could more effective if it had more powers for imposing penalties.

References:

Marcin Walecki, Money and Politics in Poland: a New Democracy in a Comparative Perspective, (Warsaw: Instytut Spraw Publicznych, 2005).

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

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

100 | 75 | 50 | 25 | 0

Comments:

The problem is that audits have only basic financial figures and are not double checked by the National Electoral Committee. So formally, the parties are audited, but the audits have limited scope.

References:

Marcin Walecki, *Money and Politics in Poland: a New Democracy in a Comparative Perspective*, (Warsaw: Instytut Spraw Publicznych, 2005).

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing 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?

75

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

Comments:

The main reason for the low score is that limits are too high for ordinary citizens wanting to enter political life. It is very difficult to run in parliamentary or presidential elections based only on individual donations.

References:

Jarosław Zbieranek, "System finansowania partii politycznych," *Analizy i Opinie*, 91 (2009).

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 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:

Candidates cannot receive contributions from corporations. However, it happens from time to time, that some firms try to finance politicians via individual donations.

References:

Jarosław Zbieranek, "System finansowania partii politycznych," *Analizy i Opinie*, 91 (2009).

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 2008).

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

References:

Jarosław Zbieranek, "System finansowania partii politycznych," *Analizy i Opinie*, 91 (2009).

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 2008).

Mirosława Ekiert, Krzysztof Lorentz, "Rola Państwowej Komisji Wyborczej w systemie kontroli finansowania partii politycznych i kampanii wyborczych".

Ferdynand Rymarz, *Iudices electionis custodes (Sędziowie kustoszami wyborów) — Księga Pamiątkowa Państwowej Komisji Wyborczej* (Warsaw: Państwowa Komisja Wyborcza 2007), 307-314.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

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

References:

Jarosław Zbieranek, "System finansowania partii politycznych," *Analizy i Opinie*, 91 (2009).

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 2008).

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

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

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to give telling examples that could be briefly described. Generally, all experts agree that the quality of audits is not sufficient.

References:

Jarosław Zbieranek, "System finansowania partii politycznych," *Analizy i Opinie*, 91 (2009).

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 2008).

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

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?

75

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 prepare and publish their financial reports annually. However, on request, they are obliged to provide all information concerning the functions of any control institution (according to the provisions of the Law on Access to Public Information). Of course, there are some problems with the clarity and completeness of this information.

References:

Jarosław Zbieranek, "System finansowania partii politycznych," *Analizy i Opinie*, 91 (2009).

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 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

Comments:

Parties are obliged to provide all information to the citizens according to the provisions of the Law on Access to Public Information. Of course, there are some problems with the clarity and completeness of this information.

References:

Jarosław Zbieranek, "System finansowania partii politycznych," *Analizy i Opinie*, 91 (2009).

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 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

Comments:

Parties are obliged to provide all information to the citizens according to the provisions of the Law on Access to Public Information. Of course, there are some problems with the clarity and completeness of this information.

References:

Jarosław Zbieranek, "System finansowania partii politycznych," *Analizy i Opinie*, 91 (2009).

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Parties are obliged to provide all information to the citizens according to the provisions of the Law on Access to Public Information. Of course, there are some problems with the clarity and completeness of this information.

References:

Jarosław Zbieranek, "System finansowania partii politycznych," *Analizy i Opinie*, 91 (2009).

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 2008).

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

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

56

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:

It should be mentioned, once again, that individuals can run only in certain types of elections — presidential elections, elections to the Senate and local elections (with some exceptions in the case of elections at the voivodship level). However, a single person can't be an addressee of donations. To be able to collect funds for political activities, one must always establish an electoral committee, which acts to collect funds for the political activity or campaign of a given candidate.

Committees are subject to the same rules as political parties. Problems with disclosing and accessing information about the functioning of electoral committees have the same results as in cases of political parties.

References:

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 2008).

Interview with Dr. Jarosław Zbieranek, an expert on issues of electoral law and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs.

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:

It should be mentioned, once again, that individuals can run only in certain types of elections — presidential elections, elections to the Senate and local elections (with some exceptions in the case of elections at the voivodship level). However, a single person can't be an addressee of donations. To be able to collect funds for political activities, one must always establish an electoral committee, which acts to collect funds for the political activity or campaign of a given candidate.

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References:

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 2008).

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

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.

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

Comments:

Committees are subject to the same rules as political parties. Problems with disclosing and accessing information about the functioning of electoral committees have the same results as in cases of political parties.

References:

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 2008).

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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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

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

Comments:

It should be mentioned, once again, that individuals can run only in certain types of elections — presidential elections, elections to the Senate and local elections (with some exceptions in the case of elections at the voivodship level). However, a single person can't be an addressee of donations. To be able to collect funds for political activities, one must always establish an electoral committee, which acts to collect funds for the political activity or campaign of a given candidate.

Committees are subject to the same rules as political parties. Problems with disclosing and accessing information about the functioning of electoral committees have the same results as in cases of political parties.

References:

Marek Chmaj, *Finansowanie polityki w Polsce na tle Europejskim* (Warsaw: Wydawnictwo Adam Marszałek, 2008).

Dr. Jarosław Zbieranek, lawyer, political scientist, expert on issues of electoral law, and head of the Program of Law and Democratic Institutions at the Institute of Public Affairs, date: December 29, 2010, interview in a restaurant.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

3.1. ⁷³Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

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

Yes

No

Comments:

There are many possibilities for bringing the government before the court if it is violating civil rights. By using laws mentioned above, one can start simply with civil or administrative proceedings and end with submitting a complaint to the ombudsman who can start proceeding before the Constitutional Court. Finally, one can complain to the European Tribunal of Human Rights in Strasbourg (if all other means within the country don't work).

References:

- The European Convention on Human Rights from 1953.
- Code of Administrative Procedure, Journal of Laws, 1960, No. 30, Item 1968.
- Code of Civil Procedure, Journal of Laws 1964, No. 43, Item 297.
- Civil Code, Journal of Laws, 1964, No. 16, Item 93.
- The Law on the Ombudsman Office, Journal of Laws, 1987, No. 21, Item 123.

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.

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

100

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

References:

Interview with Dr. Jolanta Arcimowicz, an expert on issues of civil service and Assistant Professor at the Faculty of Applied Social Science of the Warsaw University.

Interview with Dr. Robert Sobiech, an expert on issues of civil service and Assistant Professor at the Faculty of Applied Social Science of the Warsaw University.

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:

Code of Administrative Procedure, Journal of Laws, 1960, No. 30, Item 1968.

The Law on the Constitutional Tribunal, Journal of Laws, 1997, No. 102, Item 643.

The Law on the Supreme Court, Journal of Laws, 2002, No. 204, Item 2052.

These laws include provisions regulating different ways in which the judiciary can control actions undertaken by the government or other executive bodies.

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:

One of the recent examples of the activity of the Constitutional Tribunal is described in the article mentioned above. Information is about the sentence of the Constitutional Tribunal, which challenged amendments to the Road Traffic Act. The act introduced — instead of the mandates — the penalties imposed for administrative procedures and penalty points. The judges acknowledged that such solutions would be easier for the police and the government, but would be unfair for the citizens because some of them could easily avoid the penalty.

References:

Informacyjna Agencja Radiowa, Wyrok: TK zakwestionował nowelizację ustawy o ruchu drogowym, accessed November 21, 2010: http://www.wiadomosci24.pl/artykul/wyrok_tk_zakwestionowal_nowelizacje_ustawy_o_ruchu_drogowym_112535.html

Tomasz Stawecki, Wiesław Staśkiewicz, Jan Winczorek, Między policentrycznością a fragmentaryzacją Wpływ Trybunału Konstytucyjnego na polski porządek prawny (Warsaw: Ernst&Young, 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

Comments:

In this situation, I can't see any sense of giving any specific sources that would confirm this score. Anyone who has basic knowledge about the political system in Poland can confirm this.

References:

I am not sure if I understand this question properly. In Poland, the chief executive (namely the Prime Minister or the president in a very limited manner) has no possibility to create any new regulations, policies or government practices by only executive orders. Any new law drafted by the Council of Ministers and approved by the Prime Minister (or proposed by the president) has to go through Parliament. Of course, the government may create secondary laws, but only if a given act or law requires such a measure. So basically, only the last sentence of the 100 Criteria applies to our situation, meaning that executive orders are limited in number and narrow in scope.

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, Journal of Laws, 1997, No. 78, Item 483.

The Law on Performing the Mandate of the Member of Sejm and Senate, Journal of Laws, 1996, No. 73, Item 350.

The Law on the Tribunal of State, Journal of Laws, 1982, No. 11, Item 84.

Article 105 of the Constitution describes general principles and procedures for bringing deputies and those members of the government who are MPs to criminal accountability. More detailed rules are described in Articles 6-12 of the Law on Performing the Mandate of the Members of the Sejm and the Senate.

A general rule is that the Sejm or Senate must agree to bring MPs to criminal accountability. This applies also to members of the government if they are MPs. Other members of government do not have immunity and may be prosecuted for crimes within regular proceedings.

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:

There are no specific provisions that would exclude ministerial officials from criminal proceedings.

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?

75

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

Yes | No

References:

The Law on Limiting Business Activity of Persons Performing Public Functions, Journal of Laws, 1997, No. 106, Item 679.

Articles 8-11 describe requirements and procedures concerning disclosure of assets of all the highest state officials (president, members of government, heads of central institutions, etc.). Disclosure forms must be submitted annually and are published on websites of the relevant institutions.

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 Law on Limiting Business Activity of Persons Performing Public Functions, Journal of Laws, 1997, No. 106, Item 679.

Basically, Article 10 states that ministerial-level officials are required to submit their financial statements. This statement should include, in particular, information about their resources in cash, property, shares, etc.. This statement should also include information regarding conducting economic activities or holding positions in companies or cooperatives.

The same provisions that apply to high government officials are also applicable to ministerial-level officials.

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 Law on Limiting Business Activity of Persons Performing Public Functions, Journal of Laws, 1997, No. 106, Item 679.

Article 12 sets up the institution for a special register of gifts. All high officials of the executive branch (including heads of local governments) are obliged to declare and register all benefits they receive during the performance of their functions.

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:

There is no such legal requirement.

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 Law on Limiting Business Activity of Persons Performing Public Functions, Journal of Laws, 1997, No. 106, Item 679.

Article 7, Section 1, states that according to this provision, ministers and most important government officials may not take positions or functions, be employed or perform any other activities for entrepreneurs if they have participated in decision-making processes concerning these entrepreneurs.

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

References:

Patrycja Joanna Suwaj, *Konflikt interesów w administracji publicznej*, (Warsaw: Wolters Kluwer 2009).

Magdalena Tabernacka, Renata Raszewska-Skałeczka, *Płaszczyzny konfliktów w administracji publicznej* (Warsaw: Wolters Kluwer 2010).

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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

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

100 | 75 | 50 | 25 | 0

Comments:

Generally, there are not too many reports of violations of these provisions. In practice, however, it is difficult to verify to what extent they are really effective.

References:

Patrycja Joanna Suwaj, *Konflikt interesów w administracji publicznej*, (Warsaw: Wolters Kluwer 2009).

Magdalena Tabernacka, Renata Raszewska-Skałeczka, *Płaszczyzny konfliktów w administracji publicznej* (Warsaw: Wolters Kluwer 2010).

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

Comments:

It is common knowledge that the control over declarations of assets of high officials is very weak. However, there is lack of current analyses and reports on that topic. Also, not too many experts and researchers analyze this issue.

References:

Pitera chce ujawnić majątki wszystkich polityków, *Portal Money.pl*, August 8, 2008, accessed November 30, 2010: <http://prawo.money.pl/aktualnosci/wiadomosci/artykul/pitera;chce;ujawnic;majatki;wszystkich;politykow,118,0,361590.html>

Patrycja Joanna Suwaj, *Konflikt interesów w administracji publicznej*, (Warsaw: Wolters Kluwer 2009).

Magdalena Tabernacka, Renata Raszewska-Skałeczka, *Płaszczyzny konfliktów w administracji publicznej* (Warsaw: Wolters Kluwer 2010).

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

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?

0

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

Yes | **No**

Comments:

Still, there is one exception. Disclosure records might be published, if members of the government give their permission to do so. The current government set up this as a good practice for all officials to publish their forms. However, the law hasn't been changed yet to make full disclosure obligatory.

References:

The Law on Limiting Business Activity of Persons Performing Public Functions, *Journal of Laws*, 1997, No. 106, Item 679.

Article 10, Section 3, states that disclosure forms of members of the government are confidential.

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:

Because the law says that assets disclosure records of the government officials are confidential, the question is quite irrelevant. However, as it was mentioned, the law gives officials the possibility to disclose their assets, if they want to do so. Then if there is some good will within the government, assets might be public (as it is right now) and fully accessible.

One can also try to obtain this information by referring to the provisions of the law on the access to public information. However, this is a rather ineffective way, because disclosure records are defined by law as a confidential, not public information.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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:

As the law says that assets disclosure records of the government officials are confidential, the question is quite irrelevant. See the explanation in the answer to Question 30b.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

Because the law says that assets disclosure records of the government officials are confidential, the question is quite irrelevant. See explanation in the answer to Question 29f.

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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

As the law says that assets disclosure records of the government officials are confidential, the question is quite irrelevant. See explanation in the answer to Question 30b.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

50

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

Comments:

During almost all the elections we had after 1989, there was also the problem of using governmental resources for electoral campaign purposes by ruling parties. These were not very serious situations (e.g., using cars, helicopters, etc. for traveling for meetings with voters), but they took place.

References:

Polska Agencja Prasowa, SLD: PO płaci za kampanię z publicznej kasy, Rzeczpospolita, November 19, 2010, accessed December 1, 2010: <http://www.rp.pl/artykul/566436.html>

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

67

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

Yes | No

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

Articles 79 and 188-197 set up a basic legislative framework for the Constitutional Tribunal and procedures that could be used to review laws created by the legislative bodies. The procedures are quite complicated, but at the same time, relatively open. Almost anyone can submit a complaint to the Tribunal s/he is convinced that a given law is unconstitutional.

The Law on the Constitutional Tribunal simply regulates the functioning of this institution and all procedures concerning reviewing laws.

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

Comments:

Maybe one of the most telling examples (especially in the context of this research) of the role of the judiciary in the legislative process was questioning the constitutionality of the Law on the Central Anti-Corruption Bureau by the Constitutional Tribunal in 2009. One of the main objections was that this law gave excessive powers to officers of the bureau, endangering the principles of the state.

References:

Tomasz Stawecki, Wiesław Staśkiewicz, Jan Winczorek, Między policentrycznością a fragmentaryzacją Wpływ Trybunału Konstytucyjnego na polski porządek prawny (Warsaw: Ernst&Young, 2008).

Biuro Trybunału Konstytucyjnego, Proces prawotwórczy w świetle orzecznictwa Trybunału Konstytucyjnego (Warsaw: Trybunał Konstytucyjny, 2008), accessed November 25, 2010:

http://www.trybunal.gov.pl/epublikacje/download/proces_prawotworczy.pdf

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**

References:

The Law on Performing the Mandate of the Member of Sejm and Senate, Journal of Laws, 1996, No. 73, Item 350.

Chapter 2 regulates the immunity of MPs. According to its provisions, MPs may be brought to criminal proceedings only with the consent of the Sejm or the Senate.

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?

46

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

Yes | No

References:

The Law on Performing the Mandate of the Member of Sejm and Senate, Journal of Laws, 1996, No. 73, Item 30.

Article 35, Section 1, obliges all MPs to disclose all information about their property, assets, incomes (also from the stock exchange), loans, etc.

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**

References:

There are no such restrictions in the law.

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 Law on Performing the Mandate of the Member of Sejm and Senate, Journal of Laws, 1996, No. 73, Item 350.

Article 35a sets up the institution of the special register of gifts and other types of benefits. All MPs are obliged to declare and register all benefits they receive during the performance of their mandate.

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:

There is no such a legal requirement.

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 are no regulations concerning this issue to enforce. Therefore, I think that in this case one source is enough to confirm such a simple fact.

References:

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

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

100 | 75 | 50 | 25 | 0

Comments:

Basically, it happens from time to time that some legislators are caught hiding something from the gift registers.

References:

Piotr Nisztor, Darmowe wyjazdy posła PO, July 24, 2009, accessed December 1, 2010:
<http://www.rp.pl/artykul/339465.html>

Tomasz Nieśpiał, Posłowie uzupełniają rejestr korzyści, Rzeczpospolita, October 17, 2008, accessed December 1, 2010:
<http://www.rp.pl/artykul/206024.html?print=tak>

AD7

Interview with Grażyna Kopińska, head of the Anticorruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview

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 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.

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

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

Comments:

I simply think that the description on the scale explains the situation in Poland very well. This is exactly the problem we have.

References:

Oświadczenia majątkowe posłów dostępne są na stronie internetowej Sejmu, Rzeczpospolita, May 25, 2008, accessed November 30, 2010:

<http://www.rp.pl/arttykul/141065.html>

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

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: 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.

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 Law on Performing the Mandate of the Member of Sejm and Senate, Journal of Laws, 1996, No. 73, Item 350.

Article 35, Section 5, provides that all disclosure records of MPs (excluding information about residence addresses) are public.

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, non-governmental 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:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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.

100 | 75 | 50 | 25 | 0

Comments:

Records are free and available on the parliamentary website.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

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

<http://www.senat.gov.pl>

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

100

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

Yes

No

Comments:

Actually, the parliamentary system of information is one of the best in Poland.

References:

The Rules of the Sejm of the Republic of Poland, Polish Monitor, 2009, No. 5, Item 47.

Article 201a sets up an electronic system of information about the functioning of the Sejm — the lower chamber of Polish Parliament.

The Rules of the Senate of the Republic of Poland, Polish Monitor, 2010, No. 39, Item 57.

Articles 37-38 regulate procedures about publishing information on the functioning of the Polish Senate — the higher chamber of Polish Parliament.

Both regulations state that systems of accessing documents and information about legislative processes should be available via the Internet.

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:

This information is free and accessible via the Internet.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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:

Access to all data is free of charge.

References:

Grażyna Kosińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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 NGOs. 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 NGOs trying to access this information.

78

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

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

Yes

No

Comments:

Basically, judges are nominated by the president of the Republic of Poland on the recommendations given by the National Council of Judiciary.

References:

The Law on the System of Common Courts, Journal of Law, 1985, No. 31, Item 137.

Chapter One describes the procedures of nominating judges.

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

Comments:

It happens that judges are nominated not because of their experience, but, for example, because of their close relations with heads of the courts. Situations like this are reported in the media from time to time.

References:

Agnieszka Sowa, Toga po ojcu, Polityka, September 3, 2010, accessed December 1, 2010: <http://www.polityka.pl/kraj/1508230,1,prawnicy-lekarze-naukowcy-nepotyzm-po-polsku.read>

Paweł Dobrowolski, Polska mafia sądowa, Polityka, April 5, 2009, accessed December 1, 2010: <http://www.wprost.pl/ar/157300/Polska-mafia-sadowa/>

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

Comments:

Still, as the National Council of Judiciary is rather a closed institution, many argue that the procedure of nominating judges (especially for the most important posts) should be more open to the public.

References:

The Law on the System of Common Courts, Journal of Law, 1985, No. 31, Item 137.

Chapter One describes the procedures for nominating judges. Before they are nominated by the president, they have to be recommended by the National Council of Judiciary, which is an independent associations of judges.

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

88

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes

No

Comments:

There are dozens of articles describing different requirements for different types of judiciary decisions. It would be difficult to characterize them here.

References:

The Law on the Code of the Criminal Proceedings, Journal of Law, 1997, No. 89, Item 555.

The Law on the Code of the Civil Proceedings, Journal of Law, 1964,, No. 43, Item 269.

The laws include many provisions obliging courts to give reasons and justifications for different types of decisions.

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:

Tomasz Konczewski, "Sporządzanie projektów uzasadnień orzeczeń przez asystenta sędziego," in Sprawny sąd. Zbiór dobrych praktyk. Cz. 2, Łukasz Bojarski, ed., (Warsaw: C.H. Beck, 2008).

Interview with Mr. Łukasz Bojarski, lawyer, member of the National Council of the Judiciary of Poland, date: February 8, 2011, telephone interview.

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:

There is no single disciplinary agency for the national judicial system. When judges break the law or act to the detriment of their authority, they are subject to the Disciplinary Proceedings Representatives in appeal courts (the first instance of disciplinary action) or to the Supreme Court (second instance of disciplinary action). Disciplinary Proceedings Representatives are nominated by the National Council of Judiciary.

References:

The Law on the System of Common Courts, Journal of Law, 1985, No. 31, Item 137.

Chapter 3 describes the rules of disciplinary responsibility and sets up institutions responsible for the supervision of judges, basically the appeal courts and the Supreme Court.

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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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

Comments:

Disciplinary Proceedings Representatives are nominated by the National Council of Judiciary.

References:

The Law on the System of Common Courts, Journal of Law, 1985, No. 31, Item 137.

Chapter 3 describes the rules of disciplinary responsibility and sets up institutions responsible for the supervision of judges, basically appeal courts and the Supreme Court.

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 executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The system generally works, but from time to time there are situations when judicial disciplinary agencies do not react. Maybe not the most telling, but the most common situation, is when judges overuse alcohol while driving cars. They are treated relatively gently by the disciplinary courts.

References:

Ryszarda Stasiak, Wzmocnienie polskiego wymiaru sprawiedliwości — zarządzanie personelem sądowym in Sprawny sąd. Zbiór dobrych praktyk. Cz. 2, Łukasz Bojarski, ed., (Warsaw: C.H. Beck, 2008).

Interview with Mr. Łukasz Bojarski, lawyer, member of the National Council of the Judiciary of Poland, date: February 8, 2011, telephone interview.

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:

Basically, the main problem is lack of will to impose penalties. It is not easy to provide an exact example. The score is based on the opinion of experts and the literature. the judiciary in Poland is generally nontransparent, including the functioning of the disciplinary courts. General opinion is that they are rather forgiving.

References:

Dawid Sześciło, *Ocena okresowa pracy sędziów. Analiza na tle propozycji Ministerstwa Sprawiedliwości* (Warsaw: FOR 2011).

Ewa Łętowska, "Dekalog dobrego sędziego," in *Sprawny sąd. Zbiór dobrych praktyk. Cz. 2*, Łukasz Bojarski, ed., (Warsaw: C.H. Beck 2008).

Ryszarda Stasiak, *Wzmocnienie polskiego wymiaru sprawiedliwości — zarządzanie personelem sądowym* in *Sprawny sąd, Zbiór dobrych praktyk. Cz. 2*, Łukasz Bojarski, ed., (Warsaw: C.H. Beck 2008).

Interview with Mr. Łukasz Bojarski, lawyer, member of the National Council of the Judiciary of Poland.

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.

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

References:

The Law on the System of Common Courts, Journal of Law, 1985, No. 31, Item 137.

Article 87 obliges members of the national judiciary to declare their assets to the head of the appeal courts.

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:

There are no regulations concerning gifts and hospitality offered to members of the judiciary.

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:

There is no such a legal requirement.

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:

The Law on the System of Common Courts, Journal of Laws, 2001, No. 98, Item 1070.

Articles 86 and 105 prohibit retired judges from taking on any functions in the private sector.

A judge may not take additional employment, with the exception of employment as a professor or researcher in the total time not exceeding that of full-time employees in these positions, but only if the exercise of that employment does not interfere with the duties of a judge.

A judge must not undertake activities that would obstruct the performance of his or her duties or undermine the confidence in his or her impartiality or prejudice.

A judge may not:

- 1) Be a member of the management board or the audit committee of commercial companies.
- 2) Be a member of the board, the supervisory board or audit committee co-operatives,
- 3) Be a member of the Board of the Foundation that engages in business activities.
- 4) Own holdings in a company of commercial law for more than 10 percent of the shares or the shares of more than 10 percent of the share capital.
- 5) Conduct economic activities on their own account or jointly with others, and manage these activities or be a representative or agent of such activities.

Article 105 states that Article 86 also applies to retired judges.

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:

Izabela Kacprzak, Piotr Nisztor, Sędzia dorabia, gdzie się da, Rzeczpospolita, September 3, 2010, accessed December 25, 2010: <http://www.rp.pl/artykul/530571.html>

Anna Wierzbica, Przepisy antykorupcyjne w administracji publicznej, (Warsaw: LexisNexis 2010).

Mr. Łukasz Bojarski, lawyer, member of the National Council of the Judiciary of Poland, date: February 8, 2011, telephone interview.

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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Generally, there is not too much information about abusing gifts and hospitality rules by judges. Therefore, there is no argument to give zero or low scores. However, this lack of information is also the result of a less than transparent functioning of the judiciary system. That is why it is better to be careful while scoring this indicator.

References:

Anna Wierzbica, Przepisy antykorupcyjne w administracji publicznej, (Warsaw: LexisNexis 2010).

Interview with Katarzyna Batko-Tołuć, , one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The score is low because, in fact, assets of judges are audited solely by their superiors and disciplinary courts. There is no independent audit from outside of the judiciary.

References:

Anna Wierzbica, *Przepisy antykorupcyjne w administracji publicznej*, (Warsaw: LexisNexis 2010).

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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: 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.

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

Comments:

Similar to the provisions regarding disclosure records of members of the government, judges may give permission to publish their asset disclosures. However, it is a rare practice.

References:

The Law on the System of Common Courts, *Journal of Law*, 1985, No. 31, Item 137.

According to Article 87, declarations of assets submitted by members of the judiciary are confidential.

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

Comments:

the situation is the same as in the case of members of the government. The law states that assets disclosure records of the judiciary are confidential, so the question is quite irrelevant. The law gives officials the possibility to disclose their assets, if they want to do so. However this usually doesn't does not happen.

One can also try to obtain this information by referring to the provisions of the law on the access to public information. However, this is rather ineffective because disclosure records are defined by law as a confidential, not public information.

References:

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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:

The situation is the same as in the case of members of the government. The law states that asset disclosure records of the judiciary are confidential, so the question is quite irrelevant. The law gives officials the possibility to disclose their assets, if they want to do so. However, this rarely happens.

One can also try to obtain the information referring to the provisions of the law on the access to public information. However, this is rather ineffective way because disclosure records are defined by law as confidential, not public information.

References:

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The situation is the same as in the case of members of the government. The law states that asset disclosure records of the judiciary are confidential, so the question is quite irrelevant. The law gives officials the possibility to disclose their assets, if they want to do so. However, this rarely happens.

One can also try to obtain the information referring to the provisions of the law on the access to public information. However, this is rather ineffective way because disclosure records are defined by law as confidential, not public information.

References:

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

83

40a. In law, the legislature can amend the budget.

Yes | No

Comments:

Actually, it is a serious problem that MPs have so much freedom to interfere with drafts of the budget laws.

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

Articles 219-224 regulate general rules of work on a draft of the budget law.

The state budget has the form of an act. It has a special charter. There are special rules governing procedures for its adoption by the parliament. MPs are not very limited in changing the shape of the budgetary bill.

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

Comments:

Only expenditures changing budgetary law have to be approved by the legislature (it is done simply by amending the budget). They don't need any special procedure.

References:

Piotr Russel, „Wydatki budżetowe w Polsce,” Studia Biura Analiz Sejmowych Kancelarii Sejmu, 3/23 (2010).

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:

Piotr Russel, "Wydatki budżetowe w Polsce," Studia Biura Analiz Sejmowych Kancelarii Sejmu, 3/23 (2010).

Mark Halberg, Jurgen von Hagen, Organizacja procesu budżetowego w Polsce (Warsaw: Ernst&Young, 2006).

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?

83

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

References:

Piotr Russel, "Wydatki budżetowe w Polsce," Studia Biura Analiz Sejmowych Kancelarii Sejmu, 3/23 (2010).

Mark Halberg, Jurgen von Hagen, Organizacja procesu budżetowego w Polsce (Warsaw: Ernst&Young, 2006).

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:

It is very difficult to give an example of such a practice. Participation on budgets is rather limited, but is possible under general rules (that is why the score is low). One of the most recent examples of such an intervention might be the Advocacy 2007 campaign of NGOs to keep a special fund in the budget for financing initiatives and projects of local organizations (e.g., Civil Society Fund).

References:

APiotr Russel, "Wydatki budżetowe w Polsce," Studia Biura Analiz Sejmowych Kancelarii Sejmu, 3/23 (2010).

Mark Halberg, Jurgen von Hagen, Organizacja procesu budżetowego w Polsce (Warsaw: Ernst&Young, 2006).

International Budget Partnership, "Open Budget Index 2010, Poland." accessed December 10, 2010:
<http://www.internationalbudget.org/files/OBI2010-Poland.pdf>

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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:

The budget law, after its adoption, is treated in the same way as any other law. It is published in the Journal of Laws and accessible to anyone.

References:

Piotr Russel, "Wydatki budżetowe w Polsce," Studia Biura Analiz Sejmowych Kancelarii Sejmu, 3/23 (2010).

Mark Halberg, Jurgen von Hagen, Organizacja procesu budżetowego w Polsce (Warsaw: Ernst&Young, 2006).

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

References:

The Rules of the Sejm, Polish Monitor, 1998, No. 44, Item 618:

<http://www.sejm.gov.pl/prawo/regulamin/kon7.htm>

Article 18 sets up the Committee of Public Finances within the lower chamber of Parliament. This committee is responsible for the supervision of the fiscal system, credit and taxation, wages and income, budget and financial plans of the state-appropriated funds, agencies and state-owned foundations, non-life insurance, and customs and statistics.

Article 15 sets up the Committee of the State Budget. The scope of the committee is the financial system (including monetary policy, revenue and expenditure budget, earmarked funds, and treasury control), accounting, foreign exchange laws, the function of financial markets (including banking, insurance, investment funds, and securities).

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

75

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Such documents are sent on a regular basis or at the request of the MPs. However, their quality is not satisfactory. They are laconic and use raw data without analysis, comments and explanations. That often makes them difficult to understand.

References:

Piotr Russel, "Wydatki budżetowe w Polsce," Studia Biura Analiz Sejmowych Kancelarii Sejmu, 3/23 (2010).

Mark Halberg, Jurgen von Hagen, Organizacja procesu budżetowego w Polsce (Warsaw: Ernst&Young, 2006).

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.

100 | 75 | 50 | 25 | 0

References:

Piotr Russel, "Wydatki budżetowe w Polsce," Studia Biura Analiz Sejmowych Kancelarii Sejmu, 3/23 (2010).

Mark Halberg, Jurgen von Hagen, Organizacja procesu budżetowego w Polsce (Warsaw: Ernst&Young, 2006).

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.

100 | 75 | 50 | 25 | 0

Comments:

Basically, what the committee can do is to work on documents, with help from experts, and eventually report irregularities to the prosecutor.

References:

Piotr Russel, "Wydatki budżetowe w Polsce," Studia Biura Analiz Sejmowych Kancelarii Sejmu, 3/23 (2010).

Mark Halberg, Jurgen von Hagen, Organizacja procesu budżetowego w Polsce (Warsaw: Ernst&Young, 2006).

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.

4.1. ⁵⁹ Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

50

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes

No

References:

The Law on the Civil Service, Journal of Law, 2008, No. 227, Item 1505:
[\[http://www.dsc.kprm.gov.pl/userfiles/Ustawa_SC.pdf\]](http://www.dsc.kprm.gov.pl/userfiles/Ustawa_SC.pdf)

This act establishes the legal framework of civil service in Poland. It includes many provisions that aim to assure professionalism, fairness, impartiality and political neutrality.

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 Law on the Civil Service, Journal of Law, 2008, No. 227, Item 1505.

Articles 28-40 describe general procedures of applying for the positions in the civil service. Basically, all civil service positions are settled through competitions. Moreover, Article 79 prevents nepotism. Additionally, it should also be mentioned that it is a

standard that internal regulations of certain bodies include provisions preventing different types of misuse of the office.

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**

References:

Unfortunately, we don't have any whistle blower legislation.

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, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | **No**

Comments:

However, according to Article 41, Part 1, the court may temporarily prohibit offenders of corruption from carrying out their profession, if they have abused the function of their office and it has been proved that letting them continue carrying out their profession would threaten public interests that are protected by law. This provision may apply to all professions, including civil servants.

References:

There are no specific provisions on this issue.

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?

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In an article mentioned above, the author describes how, less than year after elections in 2007, the ruling parties shared positions in several important institutions in the agricultural sector. Of course, this happened without looking at competence or formal requirements that should be fulfilled by those who take these positions. It is still common practice, unfortunately.

References:

Krystyna Naszkowska, "PSL – Posady Swoim Ludziom," Gazeta Wyborcza, May 5, 2008, accessed November 21, 2010: http://wyborcza.pl/1,76842,5228201,PSL_Posady_Swoim_Ludziom.html

Paul Heywood, Jan-Hinrik Meyer-Sahling, *Występowanie stref korupcji w zarządzaniu polską administracją rządową* (Warsaw: Ernst & Young, 2008).

Tomasz Skierniewski, *Diagnoza modelu zarządzania jakością w administracji rządowej* Warszawa, listopad 2008 r. Raport z I etapu badania (Warsaw: KPRM, 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:

Frequently, the practice to hire officials who are politically friendly is to appoint "temporary" heads of departments or other important units in the administration, called them "acting" director or chief. They, of course, may stay for long time in their positions.

References:

Paul Heywood, Jan-Hinrik Meyer-Sahling, *Występowanie stref korupcji w zarządzaniu polską administracją rządową* (Warsaw: Ernst & Young, 2008).

Interview with Dr. Jolanta Arcimowicz, sociologist, researcher, and expert on Polish civil service, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 24, 2011, telephone interview.

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

Comments:

Again, very often the practice of “acting” officials is used to appoint friends (appointing family members is rare).

References:

Paul Heywood, Jan-Hinrik Meyer-Sahling, *Występowanie stref korupcji w zarządzaniu polską administracją rządową* (Warsaw: Ernst & Young, 2008).

Interview with Dr. Jolanta Arcimowicz, sociologist, researcher, and expert on Polish civil service, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 24, 2011, telephone interview.

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:

From the formal point of view, job descriptions are rather clear. It happens, however, that officials perform duties other than those in their job descriptions. It happens usually because of financial problems in public administration.

References:

Tomasz Skierniewski, *Diagnoza modelu zarządzania jakością w administracji rządowej* Warszawa, listopad 2008 r. Raport z I etapu badania (Warsaw: KPRM, 2008).

Interview with Dr. Jolanta Arcimowicz, sociologist, researcher, and expert on Polish civil service, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 24, 2011, telephone interview.

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:

Interview with Dr. Jolanta Arcimowicz, sociologist, researcher, and expert on Polish civil service, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 24, 2011, telephone interview.

Interview with Dr. Robert Sobiech, sociologist, researcher and adviser to the head of the Department of Civil Service in the Chancellery of the Prime Minister of Poland, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 2, 2011, telephone interview.

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:

Interview with Dr. Jolanta Arcimowicz, sociologist, researcher, and expert on Polish civil service, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 24, 2011, telephone interview.

Interview with Dr. Robert Sobiech, sociologist, researcher and adviser to the head of the Department of Civil Service in the Chancellery of the Prime Minister of Poland, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 2, 2011, telephone interview.

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

References:

Interview with Dr. Jolanta Arcimowicz, sociologist, researcher, and expert on Polish civil service, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 24, 2011, telephone interview.

Interview with Dr. Robert Sobiech, sociologist, researcher and adviser to the head of the Department of Civil Service in the Chancellery of the Prime Minister of Poland, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 2, 2011, telephone interview.

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:

Interview with Dr. Jolanta Arcimowicz, sociologist, researcher, and expert on Polish civil service, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 24, 2011, telephone interview.

Interview with Dr. Robert Sobiech, sociologist, researcher and adviser to the head of the Department of Civil Service in the Chancellery of the Prime Minister of Poland, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 2, 2011, telephone interview.

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:

Interview with Dr. Jolanta Arcimowicz, sociologist, researcher, and expert on Polish civil service, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 24, 2011, telephone interview.

Interview with Dr. Robert Sobiech, sociologist, researcher and adviser to the head of the Department of Civil Service in the Chancellery of the Prime Minister of Poland, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 2, 2011, telephone interview.

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?

72

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

These are the same provisions that are applicable to members of government.

References:

The Law on Limiting Business Activity of Persons Performing Public Functions, Journal of Laws, 1997, No. 106, Item 679m

Articles 8-11 describe requirements and procedures concerning disclosure of assets of all senior civil servants. Disclosure forms must be submitted annually and are published on websites of relevant institutions.

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 Law on the Civil Service, Journal of Law, 2008, No. 227, Item 1505.

Specific provisions concerning this issue are usually part of the internal regulations of certain public institutions. However, there is also a general delegation in the law on the civil service concerning conflicts-of-interest. Article 78, No. 1, states that a member of the civil service performing his or her duties must not be guided by the interests of individuals or groups.

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 Law on Limiting Business Activity of Persons Performing Public Functions, Journal of Laws, 1997, No. 106, Item 679.

Article 7, Section 1, states that ministers and most important government officials may not take a position or function, be employed or perform any other activities for entrepreneurs if they participated in decision-making processes concerning these entrepreneurs. This restriction is also applicable to all members of the civil service in Poland.

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:

The Law on Limiting Business Activity of Persons Performing Public Functions, Journal of Laws, 1997, No. 106, Item 679.

Article 12 sets up the institution of a special register of gifts. The same provisions apply to high officials of the executive branch and to members of the civil service.

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:

There is no such a legal requirement.

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:

Regulations are in place, but there are situations from time to time when officials fail in conflicts-of-interest.

References:

Patrycja Joanna Suwaj, *Konflikt interesów w administracji publicznej* (Warsaw: Wolters Kluwer 2009).

Magdalena Tabernacka, Renata Raszewska-Skałeczka, *Płaszczyzny konfliktów w administracji publicznej* (Warsaw: Wolters Kluwer 2010).

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.

Comments:

One of the recent examples of violation of rules governing hospitality might be the case of officials of the Agency for Restructuring and Modernization of Agriculture and the Ministry of Agriculture and Rural Development who accepted bribes for positive decisions concerning EU grants for farmers.

References:

Patrycja Joanna Suwaj, *Konflikt interesów w administracji publicznej* (Warsaw: Wolters Kluwer 2009).

Magdalena Tabernacka, Renata Raszewska-Skałeczka, *Płaszczyzny konfliktów w administracji publicznej* (Warsaw: Wolters Kluwer 2010).

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.

Comments:

This is common problem with those in positions of “acting” directors and chiefs.

References:

AD2

Krzysztof Burnetko, “O demokracji w administracji publicznej,” in *Demokracja w Polsce 2007-2009*, ed. Lena Kolarska-Bobińska, Jacek Kucharczyk (Warsaw: Institute of Public Affairs, 2010).

Dr. Jolanta Arcimowicz, sociologist, researcher, and expert on Polish civil service, Assistant Professor in the Faculty of Applied Social Studies of Warsaw University, date: January 24, 2011, telephone interview.

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:

The problem is that there is only an internal audit of assets. The role of the external auditors work with the Central Anti-Corruption Bureau, but their capabilities are limited, taking account of the number of civil servants.

References:

Krzysztof Burnetko, "O demokracji w administracji publicznej," in Demokracja w Polsce 2007-2009, ed. Lena Kolarska-Bobińska, Jacek Kucharczyk (Warsaw: Institute of Public Affairs, 2010).

Katarzyna Batko-Toluć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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?

6

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | **No**

Comments:

Still, there is one exception. Disclosure records might be published if civil servants give permission to do so.

References:

The Law on Limiting Business Activity of Persons Performing Public Functions, Journal of Laws, 1997, No. 106, Item 679.

Article 10, Section 3, states that disclosure forms of civil servant are confidential (this is the same provision which applies to the members of government).

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

Comments:

The situation is the same as in the case of members of the government. The law states that assets disclosure records of the civil servants are confidential, so the question is quite irrelevant. The law gives officials the possibility to disclose their assets, if they want to do so. However in civil service such a situation is rather rare.

One can also try to obtain this information referring to the provisions of the law on the access to public information. However, this is a rather ineffective way because disclosure records are defined by law as a confidential, not public information.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Krzysztof Burnetko, "O demokracji w administracji publicznej," in *Demokracja w Polsce 2007-2009*, ed. Lena Kolarska-Bobińska, Jacek Kucharczyk (Warsaw: Institute of Public Affairs, 2010).

Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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

Comments:

The situation is the same as in the case of members of the government. The law states that asset disclosure records of the civil servants are confidential, so the question is quite irrelevant. The law gives officials the possibility to disclose their assets, if they want to do so. However in civil service such a situation is rather rare.

One can also try to obtain this information referring to the provisions of the law on the access to public information. However, this is a rather ineffective way, because disclosure records are defined by law as a confidential, not public information.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The situation is the same as in the case of members of the government. The law states that asset disclosure records of the civil servants are confidential, so the question is quite irrelevant. The law gives officials the possibility to disclose their assets, if they want to do so. However in civil service such a situation is rather rare.

One can also try to obtain this information referring to the provisions of the law on the access to public information. However, this is a rather ineffective way, because disclosure records are defined by law as a confidential, not public information.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

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:

As I have already mentioned, there are no specific provisions protecting whistle blowers.

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:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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**

References:

As I have already mentioned, there are no specific provisions protecting whistle blowers. The same is true for the private sector.

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**

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49a. 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:

There are no such mechanisms.

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100

75

50

25

0

Comments:

There are no such mechanisms for civil servants.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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

Comments:

There is no such mechanism for civil servants.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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:

There is no such mechanism for civil servants.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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

Comments:

There is no such mechanism for civil servants.

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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.

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

85

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes

No

References:

Public Procurement Law, Journal of Laws, 2004, No. 19, Item 177.

Article 17 of this law sets up basic exclusion rules for persons engaged in contracting procedures. Point one and two state that these persons cannot compete for the contract, have any family relations with competing parties, have any professional relationship with competing parties during the three years prior to the date of the start of the contracting procedures or remain in such legal or actual relationships with the economic operators that could raise justified doubts as to their impartiality. These persons are obliged to provide written statements concerning these issues. Of course, providing false information is punishable by the provisions of the penal code and may lead to cancellation of the public procurement procedure.

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

References:

There are no provisions concerning this issue.

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

Comments:

One of the recent examples of violating conflicts-of-interest regulations concerning public procurement might be the case of the MP from the ruling party. His firm won the contract for training unemployed people from privatized state companies. At the same time, he worked on a bill regarding this privatization.

References:

IAR, Polmosy nie na sprzedaż. Był konflikt interesów, Portal Money pl, April 4, 2009, accessed November 30, 2010: <http://news.money.pl/artykul/polmosy;nie;na;sprzedaz;byl;konflikt;interesow,115,0,440435.html>

Patrycja Joanna Suwaj, Konflikt interesów w administracji publicznej, (Warsaw: Wolters Kluwer 2009).

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

References:

There is no special agency or institution that controls the assets of officials involved in public procurement. Of course, they are subject to the general mechanisms of audit, control (e.g., from the Supreme Chamber or the Control of Public Procurement Office), investigative procedures, police, prosecutors or other law enforcement agencies.

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:

Public Procurement Law, Journal of Laws, 2004, No. 19, Item 177.

Article 4 states a general rule that public procurement regulations do not apply to contracts with values less than 14,000 euro. There are also some other exceptions based on qualitative criteria, but this is most important demarcation. All procurements over the amount mentioned shall be treated as major.

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:

Public Procurement Law, Journal of Laws, 2004, No. 19, Item 177.

In Article 4, contrary to what has been written in the previous answers, all contracts under 14,000 euro might be sole sourced. The same article also includes a huge list of specific types of tasks that might be contracted without the necessity of applying public procurement law, e.g., contracts where the main purpose is exploitation of public telecommunications networks or special procedures of an international organizations different from the ones provided for in the act.

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:

Public Procurement Law, Journal of Laws, 2004, No. 19, Item 177.

The law describes instigating procedures in many articles. I would be difficult to describe all of them here. Basically, an unsuccessful bidder has two options before going to the court. First, one may submit a protest to the awarding party. If this won't help unsuccessful contractors, they may submit another protest to the National Appeal Chamber, which is a body supervising procurement procedures. The last option is, of course, a law suit.

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:

Public Procurement Law, Journal of Laws, 2004, No. 19, Item 177.

Proceeding before the court is possible only after exhausting basic appeal means, specifically in regard to the decision of the National Appeal Chamber. According to Article 196a, parties and participants of the appeal procedure may complain to the court against the National Appeal Chamber's ruling.

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 Law on the Liability of Collective Entities for Acts Prohibited Under the Penalty, Journal of Laws, 2002, No. 19,7 Item 1661.

According to Article 9, Section 1, No. 4, the court may ban a company to apply for public procurements for up to five years.

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

Comments:

On the website of the Public Procurement Office (www.uzp.gov.pl) is information about firms that should be excluded from procurements. The list is updated regularly.

References:

Mateusz Winiarz, Prawo zamówień publicznych. Orzecznictwo w zakresie dyscypliny finansów publicznych (Warsaw: Wolters Kluwer Polska 2009).

Łukasz Korporowicz, Hubert Nowak, Zamówienia publiczne: wybrane informacje o wynikach kontroli Prezesa UZP (Warsaw: Branta 2009).

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:

All public procurement rules are open to the public and may be accessed on the basis of the Law on Access to Public Information.

The Law on Access to Public Information, Journal of Laws, 2001, No. 112, Item 1198:
<http://isap.sejm.gov.pl/DetailsServlet?id=WDU20011121198>

– Article 6 states that in particular publicly available among others should be information on the activities and competencies and the rules of functioning of public entities including all those who are obliged to follow public procurement rules.

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 Law on the Liability of Collective Entities for Acts Prohibited Under the Penalty, Journal of Laws, 2002, No. 197, Item 1661.

According to the Part 1, Chapter 3, all announcements concerning public procurements and theirs results are published in the special bulletin of public procurement.

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:

All data is free of charge and available on the website of the Public Procurement Office: <http://www.uzp.gov.pl>

References:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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

Comments:

Full information about the public procurement processes are available on the website of the Public Procurement Office: <http://www.uzp.gov.pl>.

One will find information, not only about current procurements, but also detailed reports on general situations in Poland (e.g., statistics on public procurement), analyses, results of audits, judicature, etc. I have made reference to the article from 2006 because the situation is quite the same in terms of transparency of public procurement.

References:

Janusz Dolecki, "Zamówienia publiczne — efektywny instrument prawny czy biurokratyczna procedura?" in XV-lecie zamówień publicznych w Polsce, ed. Heryk Nowicki, Jacek Sadowy (Warsaw: Urząd Zamówień Publicznych, 2009).

Piotr Wiśniewski, "Korupcja w obszarze zamówień publicznych w Polsce — zagrożenia i rekomendacje na przyszłość," Analizy i Opinie, 67 (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. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Full information about public procurement processes are available on the website of the Public Procurement Office: <http://www.uzp.gov.pl>.

One will find information not only about current procurements, but also detailed reports on the general situation in Poland (e.g., statistics on public procurement), analyses, results of audits, judicature, etc. Major procurements are usually advertised in two well-known dailies — Gazeta Wyborcza and Rzeczpospolita.

I have made reference to the article from 2006 because the situation is quite the same in terms of transparency of public procurement.

References:

Janusz Dolecki, "Zamówienia publiczne — efektywny instrument prawny czy biurokratyczna procedura?" in XV-lecie zamówień publicznych w Polsce, ed. Heryk Nowicki, Jacek Sadowy (Warsaw: Urząd Zamówień Publicznych, 2009).

Piotr Wiśniewski, "Korupcja w obszarze zamówień publicznych w Polsce — zagrożenia i rekomendacje na przyszłość," Analizy i Opinie, 67 (2006).

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

Comments:

Full information about public procurement processes are available on the website of the Public Procurement Office: <http://www.uzp.gov.pl>.

One will find information not only about current procurements, but also detailed reports on the general situation in Poland (e.g., statistics on public procurement), analyses, results of audits, judicature, etc.

I have made reference to the article from 2006 because the situation is quite the same in terms of transparency of public procurement.

References:

Janusz Dolecki, "Zamówienia publiczne — efektywny instrument prawny czy biurokratyczna procedura?" in XV-lecie zamówień publicznych w Polsce, ed. Heryk Nowicki, Jacek Sadowy (Warsaw: Urząd Zamówień Publicznych, 2009).

Heryk Nowicki, Jacek Sadowy (Warsaw: Urząd Zamówień Publicznych, 2009).

Piotr Wiśniewski, „Korupcja w obszarze zamówień publicznych w Polsce — zagrożenia i rekomendacje na przyszłość”, Analizy i Opinie, 67 (2006).

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

92

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

References:

The Law on Commercialization and Privatization of the State Enterprises, Journal of Laws, 1996, No. 118, Item 561.

This law describes general privatization rules and procedures. There are no restrictions that would discriminate against any private companies from participating in the privatization processes.

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

Comments:

In the law on Limiting Business Activity, we can mention Articles 10 and 11, which regulate questions on asset disclosures in which officials (also those engaged in the privatization processes) should also declare information that could help prevent conflicts-of-interest.

In the Law on Civil Service, there are general provisions in Chapter 6 of the act that describe all basic rights, obligations and standards for civil servants. One of the fundamental duties of any civil servant is to secure the interest of the state. This means that in situations of any conflict-of-interest, he or she is not only liable for criminal misconduct, but also risks losing the civil service position.

References:

There are no specific regulations concerning conflicts-of-interest with regard to privatization. However, there are general provisions, which has been already mentioned, in the Law on Civil Service or in the Law on Limiting Business Activity of Persons Performing Public Functions. They apply also to these matters.

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

Comments:

Basically, there are situations from time to time where government officials are under pressure from politicians or investors interested in the privatization processes and conflicts-of-interest arise. One of the recent examples might be the privatization process of the state company Polish Energy Group (PGE).

References:

Maciej Chrzan, Misiak dorobdziej, Gazeta Wyborcza, March 14, 2009, accessed November 30, 2010: http://wyborcza.pl/1,76842,6381781,Misiak_dobrodziej.html

Janusz Kaliński, Transformacja gospodarki polskiej w latach, 1989-2004 (Warsaw: SGH 2009).

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:

All regulations concerning privatization are open to the public and may be accessed on the basis of the Law on Access to Public Information.

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:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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

Comments:

Such data is also accessible on the basis of the Law on Access to Public Information.

References:

The government is obliged to publish results of privatization mainly on the basis of two acts:

The Law on Public Finances, Journal of Laws, 2005, No. 249, Item 2104 — according to Article 158, Section 2, Part 3, the Ministry of the State Treasury has to report the results of privatization to the Council of Ministers, the Sejm, and the Supreme Chamber of Control.

The Law on the Execution of the Rights of the State Treasury, Journal of Laws, 1996, No. 106, Item 493 — according to Article 2, the Minister of the State Treasury has to prepare and submit to the Council of Ministers a report on the implementation of the privatization guidelines.

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:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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:

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

Interview with Katarzyna Batko-Tołuć, one of creators of the Association of Leaders of Local Civic Groups, a leading watch-dog organization in Poland, date: January 30, 2011, telephone interview.

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁸⁴National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

www.rpo.gov.pl — the Ombudsman Office

www.nik.gov.pl — the Supreme Chamber of Control

References:

Two most important institutions should be mentioned here:

The Supreme Chamber of Control, an independent institution specialized in supervising the government and all kinds of institutions using public funds. (Chapter IX of the Polish Constitution and the Law on the Supreme Chamber of Control, Journal of Laws, 1995, No. 1,3 Item 59.)

The Human Rights Ombudsman is the constitutional authority for legal control and protection. In his activities, this defender is integral and independent from other state authorities (Articles 208-212 of the Polish Constitution and the Ombudsman Act, Journal of Laws, 1987, No. 21, Item 123).

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.

56. Is the national ombudsman effective?

73

56a. In law, the ombudsman is protected from political interference.

Yes

No

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

Ombudsman Act, Journal of Law,s 1987, No. 21, Item 123.

Articles 208-212 of the Constitution are the basis of the independence of the Ombudsman Office. The ombudsman is appointed by the Sejm, with the consent of the Senate, for a period of five years. He or she must be apolitical and independent of other state organs and shall be accountable only to the Sejm, in accordance with principles specified by statute.

The Ombudsman Act regulates details of the functioning of the Ombudsman Office and its relations to other organs.

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.

Comments:

In general, the ombudsman is independent. However, at the moment of selection, political influences are strong and visible. This has some later impact on the everyday functioning of this office.

References:

Polska Agencja Prasowa, "Janusz Kochanowski nowym Rzecznikiem Praw Obywatelskich," Portal WPPL, accessed November 20, 2010: http://wiadomosci.wp.pl/kat,1342,title,Janusz-Kochanowski-nowym-Rzecznikiem-Praw-Obywatelskich,wid,8167234,wiadomosc.html?ticaid=1b8f0&_tictsrn=3

Norbert Banaszak, "Skuteczność działania Rzecznika Praw Obywatelskich — podstawowe problemy," PWSZ IPiA Studia Lubelskie, 5 (2009).

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.

References:

Norbert Banaszak, "Skuteczność działania Rzecznika Praw Obywatelskich — podstawowe problemy," PWSZ IPiA Studia Lubelskie, 5 (2009).

Izabela Malinowska, Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce, (Warsaw: Elipsa, 2007).

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

Comments:

The ombudsman office employs many professionals. At the same, it needs more experts. Here, however, there are budgetary constraints.

References:

Norbert Banaszak, "Skuteczność działania Rzecznika Praw Obywatelskich — podstawowe problemy," PWSZ IPIA Studia Lubelskie, 5 (2009).

Izabela Malinowska, Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce, (Warsaw: Elipsa, 2007).

Biuro Rzecznika Praw Obywatelskich, Synteza Informacji o działalności Rzecznika Praw Obywatelskich w 2009 roku (Warsaw: Rzecznik Praw Obywatelskich 2010), accessed November 20, 2010:

<http://www.rpo.gov.pl/pliki/12831749940.pdf>

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

Comments:

No doubt, the candidates usually have the necessary qualifications. They are lawyers, professors, etc. However, as the strongest voices are the MPs, it is common that ombudsmen are those who are closest in their views to the ruling party.

References:

Norbert Banaszak, "Skuteczność działania Rzecznika Praw Obywatelskich — podstawowe problemy," PWSZ IPIA Studia Lubelskie, 5 (2009).

Izabela Malinowska, Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce, (Warsaw: Elipsa, 2007).

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

Comments:

The budget of the ombudsman office might be greater, as it is highlighted in annual reports.

References:

Norbert Banaszak, "Skuteczność działania Rzecznika Praw Obywatelskich — podstawowe problemy," PWSZ IPIA Studia Lubelskie, 5 (2009).

Izabela Malinowska, Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce, (Warsaw: Elipsa, 2007).

Biuro Rzecznika Praw Obywatelskich, Synteza Informacji o działalności Rzecznika Praw Obywatelskich w 2009 roku (Warsaw: Rzecznik Praw Obywatelskich 2010), accessed November 20, 2010:

<http://www.rpo.gov.pl/pliki/12831749940.pdf>

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

Comments:

Annual reports and other information about the functioning of the Ombudsman Office are easily available through the website at: <http://www.rpo.gov.pl>

References:

Izabela Malinowska, *Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce*, (Warsaw: Elipsa, 2007).

Biuro Rzecznika Praw Obywatelskich, *Synteza Informacji o działalności Rzecznika Praw Obywatelskich w 2009 roku* (Warsaw: Rzecznik Praw Obywatelskich 2010), accessed November 20, 2010:

<http://www.rpo.gov.pl/pliki/12831749940.pdf>

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

Comments:

The problem is exactly as it is described on the scale. Example: recently the ombudsman addressed the issue of discrimination against older workers before retirement. But this is all she could do. The Ombudsman Office can only pressure the Ministry of Labor or the National Labor Inspection to take some action. Eventually, the office may propose some changes in the law. But then almost everything depends on what will be (or will not be) done by other bodies.

References:

Norbert Banaszak, "Skuteczność działania Rzecznika Praw Obywatelskich — podstawowe problemy," *PWSZ IPIA Studia Lubelskie*, 5 (2009).

Izabela Malinowska, *Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce*, (Warsaw: Elipsa, 2007).

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:

As the Polish ombudsman doesn't have authority to impose any penalties, it is very difficult to score this indicator. In situations in which the ombudsman finds some violations of citizen's rights, s/he may react by signaling such facts to different state institutions, such as the government, Constitutional Tribunal, courts, police, or the prosecutor's office.

Some of those institutions have powers to impose penalties or start other procedures that may result in some form of a punishment to offenders. But cooperation of the Ombudsman Office with other institutions depends on specific situations. But in any case, opinions about the functioning and effectiveness of the Ombudsman Office are generally positive.

References:

Norbert Banaszak, "Skuteczność działania Rzecznika Praw Obywatelskich — podstawowe problemy," PWSZ IPIA Studia Lubelskie, 5 (2009).

Izabela Malinowska, Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce, (Warsaw: Elipsa, 2007).

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

Comments:

There are situations when the Ombudsman Office reports some problems and no action is undertaken by responsible bodies. One recent example might be the report of the Ombudsman Office on the necessity of amending the law on access to public information. Since the problem was signaled for the first time in 2009, nothing has been done by the government by the end of 2010.

References:

Norbert Banaszak, "Skuteczność działania Rzecznika Praw Obywatelskich — podstawowe problemy," PWSZ IPIA Studia

Lubelskie, 5 (2009).

Izabela Malinowska, Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce, (Warsaw: Elipsa, 2007).

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

Comments:

Generally there are no complaints on the functioning of the Ombudsman Office. However, surely it could work faster if it received bigger budget.

References:

Norbert Banaszak, "Skuteczność działania Rzecznika Praw Obywatelskich — podstawowe problemy," PWSZ IPIA Studia Lubelskie, 5 (2009).

Izabela Malinowska, Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce, (Warsaw: Elipsa, 2007).

Biuro Rzecznika Praw Obywatelskich, Synteza Informacji o działalności Rzecznika Praw Obywatelskich w 2009 roku (Warsaw: Rzecznik Praw Obywatelskich 2010), accessed November 20, 2010:

<http://www.rpo.gov.pl/pliki/12831749940.pdf>

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?

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

References:

Ombudsman Act, Journal of Laws, 1987, No. 21, Item 123.

Article 19 obliges the ombudsman to inform the Sejm and the Senate on his activities and on the observance of the liberties and rights of citizens. The defender's information shall be made public.

Apart from the all information about activity, the Ombudsman Office may also be accessed on the basis of the Law on Access to Public Information.

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

Comments:

I think in this case one source confirming the scoring is enough. The Ombudsman's Office regularly publishes all reports and information that is required by law. All documents are available online. If some information is not published, one can always ask for it based on the provisions of the Law on Access to Public Information.

References:

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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

Comments:

I think in this case one source confirming the scoring is enough. The Ombudsman's Office regularly publishes all reports and information that is required by law. All documents are available online. If some information is not published, one can always ask for it based on the provisions of the Law on Access to Public Information.

References:

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

Website of the Supreme Chamber of Control:
<http://www.nik.gov.pl/>

Recently the official name of the chamber has been changed to the Supreme Audit Office

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

The Law on the Supreme Chamber of Control, Journal of Laws, 1995, No. 13, Item 59.

The Supreme Chamber of Control is a constitutional organ of the state, established by provisions of the Constitution, Chapter IX.

The Law on the Supreme Chamber of Control regulates details of its functioning and relations to other state organs.

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.

59. Is the supreme audit institution effective?

84

59a. In law, the supreme audit institution is protected from political interference.

Yes

No

References:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

The Law on the Supreme Chamber of Control, Journal of Laws, 1995, No. 13, Item 59.

Articles 204-206 of the Constitution are the basis of the independence of the Supreme Chamber of Control. Its president is appointed by the Sejm, with the consent of the Senate, for a period of six years. The president of the Chamber must be apolitical and independent of other state organs and shall be accountable only to the Sejm, in accordance with principles specified by statute.

The Law on the Supreme Chamber of Control regulates details of its functioning and relations of the Chamber to other organs.

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

Comments:

From a legal and formal point of view, the head of the National Chamber of Control (NIK) is protected from removal without essential justification. However, recently there were attempts to limit the autonomy of the NIK in what was also recognized as an attempt to weaken the position of the head of the chamber.

References:

Grażyna Zawadka, Prezes NIK prosi senatorów o ratunek, Rzeczpospolita, accessed November 30, 2010:
<http://www.rp.pl/artykul/16,379612.html>

Irena Lipowicz, "Pozycja ustrojowa Najwyższej Izby Kontroli," Kontrola Państwowa, 1/330 (2010).

Andrzej Sylwestrzak, Najwyższa Izba Kontroli. Studium prawnoustrojowe, (Warsaw: Wydawnictwo Sejmowe, 2006)

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:

Marek Henzler, NIK po nic, Tygodnik Polityka, accessed November 30, 2010:
<http://www.polityka.pl/kraj/273918,1,nik-po-nic.read>

Andrzej Sylwestrzak, Najwyższa Izba Kontroli. Studium prawnoustrojowe (Warsaw: Wydawnictwo Sejmowe, 2006).

Najwyższa Izba Kontroli, Sprawozdanie z działalności Najwyższej Izby Kontroli w 2009 roku (Warsaw: Najwyższa Izba Kontroli, 2010), accessed November 30, 2010:
<http://www.nik.gov.pl/plik/id,1688.pdf>

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

Comments:

It is the same situation as in the case of the head of the Ombudsman Office. Candidates are usually competent and professional, but, again, their political sympathies play an important role when it comes to voting in the Sejm.

References:

Gazeta Wyborcza, Sejm wybrał Jacka Jezierskiego na nowego szefa NIK, Gazeta Wyborcza, accessed November 30, 2010: <http://wyborcza.pl/1,76842,4226335.html>

Andrzej Sylwestrzak, Najwyższa Izba Kontroli. Studium prawnoustrojowe, (Warsaw: Wydawnictwo Sejmowe, 2006).

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:

Marek Henzler, NIK po nic, Tygodnik Polityka, accessed November 30, 2010: <http://www.polityka.pl/kraj/273918,1,nik-po-nic.read>

Irena Lipowicz, "Pozycja ustrojowa Najwyższej Izby Kontroli," Kontrola Państwowa, 1/330 (2010).

Andrzej Sylwestrzak, Najwyższa Izba Kontroli. Studium prawnoustrojowe (Warsaw: Wydawnictwo Sejmowe, 2006).

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:

Irena Lipowicz, "Pozycja ustrojowa Najwyższej Izby Kontroli," Kontrola Państwowa, 1/330 (2010).

Andrzej Sylwestrzak, Najwyższa Izba Kontroli. Studium prawnoustrojowe (Warsaw: Wydawnictwo Sejmowe, 2006).

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

Comments:

Unfortunately, the situation in which the government and other responsible bodies do not follow recommendations of the Supreme Chamber of Control is very common. One of the recent and most telling examples might be ignoring the conclusions for the control of the anti-flood system. Recommendations hadn't been implemented for years. This negligence resulted in serious damage after the flood in 2010.

References:

Marek Henzler, NIK po nic, Tygodnik Polityka, accessed November 30, 2010: <http://www.polityka.pl/kraj/273918,1,nik-po-nic.read>

Andrzej Sylwestrzak, Najwyższa Izba Kontroli. Studium prawnoustrojowe (Warsaw: Wydawnictwo Sejmowe, 2006).

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

References:

Irena Lipowicz, "Pozycja ustrojowa Najwyższej Izby Kontroli," *Kontrola Państwowa*, 1/330 (2010).

Andrzej Sylwestrzak, *Najwyższa Izba Kontroli. Studium prawnoustrojowe* (Warsaw: Wydawnictwo Sejmowe, 2006).

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 Law on the Supreme Chamber of Control, Journal of Laws, 1995, No. 13, Item 59.

According to Articles 7 and 10, the president of the chamber is obliged to submit to the Sejm annual activity reports. Also, the results of all control activities of the chamber are public and accessible by Internet.

Apart from that, all information about the activity of the chamber may also be accessed on the basis of the Law on Access to Public Information.

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:

Andrzej Sylwestrzak, Najwyższa Izba Kontroli, Studium prawnoustrojowe, (Warsaw: Wydawnictwo Sejmowe, 2006).

Najwyższa Izba Kontroli, Sprawozdanie z działalności Najwyższej Izby Kontroli w 2009 roku (Warsaw: Najwyższa Izba Kontroli, 2010), accessed November 30, 2010:
<http://www.nik.gov.pl/plik/id,1688.pdf>

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:

Andrzej Sylwestrzak, Najwyższa Izba Kontroli, Studium prawnoustrojowe, (Warsaw: Wydawnictwo Sejmowe, 2006).

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 NGOs. 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 NGOs trying to access this information.

95 5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes

No

Comments:

Link to the Ministry of Finance: <http://www.mf.gov.pl/>

References:

The Law on the Council of Ministers, Journal of Laws, 2003, No. 24, Item 199.

According to Chapter 6, the authority responsible for tax collection is the Ministry of Finance, who controls all tax administration in Poland.

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.

62. Is the tax collection agency effective?

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Piotr Skwirowski, Ściąganie podatków w Polsce jest drogie, Gazeta Wyborcza, September 11, 2009, accessed November 24, 2010:

http://wyborcza.biz/biznes/1,101774,7027898,Sciaganie_podatkow_w_Polsce_jest_drogie.html

Krzysztof Woźniak, Skarbowka potrzebuje jednego systemu IT, Gazeta Prawna, August 23, 2010, accessed November 24, 2010: http://podatki.gazetaprawna.pl/wywiady/444580,skarbowka_potrzebuje_jednego_systemu_it.html

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

Comments:

Underfunding of the tax office employees is permanent. However, in 2010 the government also announced reductions of employment in tax administration, which might have a negative impact on its effectiveness.

References:

Ewa Matuszewska, Redukcje w skarbowce powinna poprzedzić gruntowna analiza, Gazeta Prawna, October 10, 2010, accessed November 24,

2010: http://podatki.gazetaprawna.pl/wywiady/456126,redukcje_w_skarbowce_powinna_poprzedzic_gruntowna_analiza.html

Najwyższa Izba Kontroli, Informacja o wynikach kontroli poboru podatku dochodowego od osób fizycznych (Warsaw: Najwyższa Izba Kontroli, 2010), accessed November 30, 2010:

<http://www.nik.gov.pl/plik/id,1594,vp,1781.pdf>

Najwyższa Izba Kontroli, Informacja o wynikach kontroli poboru podatku dochodowego od osób prawnych, (Warsaw: Najwyższa Izba Kontroli, 2010), accessed November 30, 2010:

<http://www.nik.gov.pl/plik/id,82,vp,82.pdf>

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

100

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Ewa Matuszewska, PIT w Polsce niższy od średniej UE, Gazeta Prawna, June 4, 2010, accessed November 24, 2010: http://podatki.gazetaprawna.pl/artykuly/426155.pit_w_polsce_nizszy_od_sredniej_ue.html

PricewaterhouseCoopers, Opodatkowanie osób fizycznych w Unii Europejskiej. Ile wynagrodzenia trafia do naszych kieszeni? (Warsaw: PwC, 2009), accessed November 24, 2010: http://www.pwc.com/en_PL/pl/biuro-prasowe/PIT_pl.pdf

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. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

Link to the Customs Service at: <http://www.mf.gov.pl/> (the same as to the Ministry of Finance)

References:

The Law on the Customs Service, Journal of Laws, 2008,, No. 227, Item 1505.

The law establishes the Customs Service which is controlled by the Ministry of Finance.

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.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Generally, the customs agency has a professional staff . However, there are claims to increase employment.

References:

Ewa Matyszewska, Celnicy dostaną strategię, Gazeta Prawna, February 15, 2010, accessed December 1, 2010: http://podatki.gazetaprawna.pl/wywiady/398309,jacek_kapica_celnicy_dostana_strategie.html

Ministerstwo Finansów, Struktura organizacyjna służby celnej 2010 projektowane zmiany (Warsaw: Ministerstwo Finansów 2010).

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

Comments:

The customs and excise agency receives regular funding, but as it is highlighted in annual reports, the budget could be higher.

References:

Polska Agencja Prasowa, Nie będzie cięcia zatrudnienia w służbie celnej i skarbowce w 2010 r. Gazeta Prawna, February 15, 2010, accessed December 1, 2010:

http://praca.gazetaprawna.pl/artykuly/377093,nie_bedzie_ciecia_zatrudnienia_w_sluzbie_celnej_i_skarbowce_w_2010_r.html

Najwyższa Izba Kontroli, Informacja o wynikach kontroli stanu organizacji i wyposażenia jednostek administracji celnej (Warsaw: Najwyższa Izba Kontroli 2009), accessed December 1, 2010:

<http://www.nik.gov.pl/plik/id,1782,vp,2034.pdf>

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Polska Agencja Prasowa, MF: "Zero tolerancji" dla korupcji w Służbie Celnej, Gazeta Prawna, February 24, 2010, accessed December 1, 2010: http://podatki.gazetaprawna.pl/artykuly/401293,mf_zero_tolerancji_dla_korupcji_w_sluzbie_celnej.html,1

Najwyższa Izba Kontroli, Informacja o wynikach kontroli stanu organizacji i wyposażenia jednostek administracji celnej (Warsaw: Najwyższa Izba Kontroli 2009), accessed December 1, 2010:

<http://www.nik.gov.pl/plik/id,1782,vp,2034.pdf>

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

No

Comments:

Link to the Ministry of the Treasury: <http://www.msp.gov.pl/>

References:

The Law on the Council of Ministers, Journal of Laws, 2003, No. 24, Item 199.

According to Chapter 6, this authority oversees the Ministry of the Treasury. Also, the Supreme Chamber of Control has special responsibilities concerning supervision over state-owned companies.

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.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

35

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | **No**

Comments:

However, we should always remember that the Supreme Chamber of Control, which is an independent institution, also has abilities to oversee state-owned companies.

References:

The answer should be no, as the main institution responsible for controlling state-owned companies is simply one of the ministries.

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:

This is a problem of both agencies overseeing state-owned companies and themselves. The Ministry of the State Treasury doesn't have enough qualified personnel to effectively control all state companies (that are many). On the other hand, in those companies there is lack of professional staff due to the fact that they are in a very politicized environment and don't offer wages high enough to attract good managers from the private sector.

References:

Beata Chomątowska, Elżbieta Glapiak, Więcej ładu w spółkach Skarbu Państwa, Rzeczpospolita, April 9, 2009, accessed December 1, 2010:
<http://www.rp.pl/artykul/458886.html?print=tak>

Najwyższa Izba Kontroli, Informacja o wynikach kontroli sprawowania nadzoru właścicielskiego w spółkach z większościovym udziałem Skarbu Państwa (Warsaw: Najwyższa Izba Kontroli 2009), accessed December 1, 2010:
<http://www.nik.gov.pl/plik/id,1682,vp,1900.pdf>

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:

Beata Chomątowska, Elżbieta Gliapiak, Więcej ładu w spółkach Skarbu Państwa, Rzeczpospolita, April 9, 2009, accessed December 1, 2010: <http://www.rp.pl/artykul/458886.html?print=tak>

Piotr Kozarzewski, "Nadzór korporacyjny w przedsiębiorstwach państwowych i jednoosobowych spółkach skarbu państwa," paper presented at the 89th seminar of the CASE Foundation, "Przedsiębiorstwa sektora prywatnego i publicznego w Polsce (1999–2005), Warsaw, Poland, March 1, 2007.

AD3

Najwyższa Izba Kontroli, Informacja o wynikach kontroli sprawowania nadzoru właścicielskiego w spółkach z większościovym udziałem Skarbu Państwa (Warszawa: Najwyższa Izba Kontroli 2009), Accessed December 1, 2010 <http://www.nik.gov.pl/plik/id,1682,vp,1900.pdf>

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:

Again, this is a problem of cooperation between the Ministry of the State Treasury and law enforcement agencies. If something is going wrong in a given state company, the ministry itself can't investigate anything. It has to rely on the police, prosecution, or courts and they are not always as effective as we would wish. A different question is if the ministry reacts to concerns in state-owned firms and acts accordingly. In case of Poland, the best example of lack of proper reaction might be the critical situation in public television.

References:

Piotr Kozarzewski, "Nadzór korporacyjny w przedsiębiorstwach państwowych i jednoosobowych spółkach skarbu państwa," paper presented at the 89th seminar of the CASE Foundation, "Przedsiębiorstwa sektora prywatnego i publicznego w Polsce," (1999–2005), Warsaw, Poland, March 1, 2007.

Andrzej Zybertowicz, Bartosz Pilitowski, Polityczna pogoń za rentą: Peryferyjna czy strukturalna patologia polskiej transformacji, Zakład Interesów Grupowych, Instytut Socjologii, Uniwersytet Mikołaja Kopernika, accessed December 1, 2010: <http://www.is.uw.edu.pl/wp-content/uploads/zybertowicz-i-pilitowski-pogon-za-renta.pdf>

Najwyższa Izba Kontroli, Informacja o wynikach kontroli sprawowania nadzoru właścicielskiego w spółkach z większościovym udziałem Skarbu Państwa (Warszawa: Najwyższa Izba Kontroli 2009), accessed December 1, 2010: <http://www.nik.gov.pl/plik/id,1682,vp,1900.pdf>

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:

See comment to the previous indicator.

References:

Piotr Kozarzewski, "Nadzór korporacyjny w przedsiębiorstwach państwowych i jednoosobowych spółkach skarbu państwa," paper presented at the 89th seminar of the CASE Foundation, "Przedsiębiorstwa sektora prywatnego i publicznego w Polsce," (1999–2005), Warsaw, Poland, March 1, 2007.

Andrzej Zybertowicz, Bartosz Pilitowski, Polityczna pogoń za rentą: Peryferyjna czy strukturalna patologia polskiej transformacji, Zakład Interesów Grupowych, Instytut Socjologii, Uniwersytet Mikołaja Kopernika, accessed December 1, 2010: <http://www.is.uw.edu.pl/wp-content/uploads/zybertowicz-i-pilitowski-pogon-za-renta.pdf>

Najwyższa Izba Kontroli, Informacja o wynikach kontroli sprawowania nadzoru właścicielskiego w spółkach z większościovym udziałem Skarbu Państwa (Warszawa: Najwyższa Izba Kontroli 2009), accessed December 1, 2010: <http://www.nik.gov.pl/plik/id,1682,vp,1900.pdf>

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?

70

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

So, the general answer is “yes.” However, it is not so simple because these entities also function under the general provisions of the Commercial Code, some of them also under other specific regulations (like Polis Press Agency or Polish television). And those provisions include many exceptions that might be used to limit access to financial records of the state-owned companies.

References:

The Law on the Access to Public Information, Journal of Laws, 2001, No. 112, Item 1198.

The basic law under which the ordinary citizen may access any public information, including that about the functioning of the state-owned companies (also basic information about their financial condition), is the Law on access to Public Information. Article 4, Section 1 Part 5, states that all entities using public property, funds or those in which the state treasury or local government units have a dominant position are obliged to provide information about their activity upon request of the citizens.

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:

State-owned companies are obliged to publish information about their functions and situation. However, this information is often of low quality and insufficient. Polish Public Television, which is also a state company, is one of the most telling examples.

References:

Tomasz Siemieniec, Koniec nieładu w spółkach skarbu, Puls Biznesu, June 1, 2010, accessed December 1, 2010: http://www.pb.pl/2/a/2010/06/01/Koniec_nieladu_w_spolkach_skarbu?readcomment=1

Najwyższa Izba Kontroli, Informacja o wynikach kontroli sprawowania nadzoru właścicielskiego w spółkach z większościovym udziałem Skarbu Państwa (Warszawa: Najwyższa Izba Kontroli 2009), accessed December 1, 2010: <http://www.nik.gov.pl/plik/id,1682,vp,1900.pdf>

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:

State-owned companies are audited. The problem is that audits very often serve no one and they don't improve the situation of the companies. An example might be the Polish State Railways, which was audited many times and is in difficult financial condition. See also comment to the previous indicator.

References:

Tomasz Siemieniec, Koniec nieładu w spółkach skarbu, Puls Biznesu, June 1, 2010, accessed December 1, 2010: http://www.pb.pl/2/a/2010/06/01/Koniec_nieladu_w_spolkach_skarbu?readcomment=1

Najwyższa Izba Kontroli, Informacja o wynikach kontroli sprawowania nadzoru właścicielskiego w spółkach z większościovym udziałem Skarbu Państwa (Warszawa: Najwyższa Izba Kontroli 2009), accessed December 1, 2010: <http://www.nik.gov.pl/plik/id,1682,vp,1900.pdf>

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:

The procedure to obtain information about state-owned companies is the same as for all public information. But in this case it is more difficult because state firms do everything to avoid giving information. This is general problem and it is difficult to give a concrete, telling example.

References:

Grzegorz Nawacki, Skarb urodził nowy ład korporacyjny, Puls Biznesu, October 5, 2010, accessed December 1, 2010: http://www.pb.pl/a/2010/10/05/Skarb_urodzil_nowy_lad_korporacyjny.

Najwyższa Izba Kontroli, Informacja o wynikach kontroli sprawowania nadzoru właścicielskiego w spółkach z większościovym udziałem Skarbu Państwa (Warszawa: Najwyższa Izba Kontroli 2009), accessed December 1, 2010: <http://www.nik.gov.pl/plik/id,1682,vp,1900.pdf>

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

References:

Grzegorz Nawacki, Skarb urodził nowy ład korporacyjny, Puls Biznesu, October 5, 2010, accessed December 1, 2010: http://www.pb.pl/a/2010/10/05/Skarb_urodzil_nowy_lad_korporacyjny.

Najwyższa Izba Kontroli, Informacja o wynikach kontroli sprawowania nadzoru właścicielskiego w spółkach z większościovym udziałem Skarbu Państwa (Warszawa: Najwyższa Izba Kontroli 2009), accessed December 1, 2010: <http://www.nik.gov.pl/plik/id,1682,vp,1900.pdf>

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 NGOs. 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 NGOs trying to access this information.

68 5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

63

70a. In law, anyone may apply for a business license.

Yes

No

References:

There are many acts of law and state bodies that provide various licenses and permissions under different provisions and procedures. However, generally there are no restrictions on who can apply for a license or permission.

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:

Code of Administrative Procedure, Journal of Laws, 1960, No. 30, Item 1968.

Basically, the permission or license is a form of administrative decision. If the request is denied, one can use general appeal procedures described in the Code of Administrative Procedures. The proceeding has two possible steps: first one has to appeal to the organ issuing the license of permission. If the appeal is rejected, then one may complain to the administrative court.

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:

Obtaining licenses and permissions is generally time consuming. But maybe the most telling example might be environmental permissions. Firms (even small businesses) are very often obliged to obtain such permissions and renew them periodically. The whole procedure is very discretionary and may take months.

References:

Marcin Graczyk, Jedno okienko wciąż tylko na papierze, Rząd wini urzędników, Gazeta Prawna, March 23, 2010, accessed December 1, 2010: http://biznes.gazetaprawna.pl/artykuly/408129,jedno_okienko_wciaz tylko_na_papierze_rzad_wini_urzednikow.html,1

The World Bank, Doing Business, 2011. "Making a Difference for Entrepreneurs" (Washington: The World Bank, 2010), accessed December 23, 2010: <http://www.doingbusiness.org/~media/FDPKM/Doing%20Business/Documents/Annual-Reports/English/DB11-FullReport.pdf>

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:

Generally procedures for obtaining licenses and permissions in Poland are very complicated and time consuming. For this reason, we are are very low in every international business ranking and the situation has not improved for many years.

References:

Barbara Jureczek, Aneta Wrona, Rozpoczęcie działalności gospodarczej: comiesięczne obowiązki, Portal eGospodarka, March 9, 2010, accessed December 1, 2010: <http://www.prawo.egospodarka.pl/50629,Rozpoczecie-dzialalnosci-gospodarczej-comiesieczne-obowiazki,1,82,1.html>

The World Bank, Doing Business, 2011, "Making a Difference for Entrepreneurs" (Washington: The World Bank, 2010), accessed December 23, 2010: <http://www.doingbusiness.org/~media/FDPKM/Doing%20Business/Documents/Annual-Reports/English/DB11-FullReport.pdf>

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

Comments:

Link to the Chief Sanitary Inspector website: <http://www.pis.gov.pl>

References:

In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

The main institution responsible for enforcing health standards in business is the Chief Sanitary Inspector, functioning under the ordinance of the Minister of Health on the Statute of the Chief Sanitary Inspector. All requirements in this regard are publicly available on the web pages of this institution.

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 Law on the State Inspection for Environmental Protection, Journal of Laws, 1991, No. 77, Item 335.

The main institution responsible for enforcing health standards in business is the Inspection for Environmental Protection, functioning under the Law on the State Inspection for Environmental Protection. All requirements in this regard are publicly available on the web pages of this institution.

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

Comments:

Link to the National Labor Inspector: <http://www.pip.gov.pl>

At the same time, it should be mentioned that, depending on how we define public safety and what kind of businesses we think about, there are other specific institutions regulating requirements regarding public safety. For example, the National Atomic Energy Agency is responsible for public safety with regard to levels of radiation and for companies working with radioactive materials. Another example is the General Director for National Roads and Motorways, who is responsible for road safety. Therefore, it is really difficult to point out one main institution responsible for enforcing public safety standards.

References:

Act 13, April 2007, on the National Labor Inspector, Journal of Laws, 2007, No. 89 ,Item 589.

The main institution responsible for enforcing health standards in business is the National Labor Inspector. It is focused mostly on enforcing standards for work and employment, but also on issues of public safety. All requirements concerning public safety are available on the web pages of this institution.

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?

58

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

Comments:

It happens that inspectors are bribed. An example of such a situation might be the story from Lubelskie (one of the eastern regions of Poland) where one of the inspectors (an official) accepted baskets of delicatessen food and small amounts of money for not reporting irregularities in weeding house. This is typical of the problem of petty administrative corruption.

References:

Jerzy Dudek, Antykorupcyjne szkolenia inspektorów, Rzeczpospolita, December 1, 2010, accessed December 1, 2010: <http://www.rp.pl/artykul/572317.html>

Tomasz Wójciszyn, Dariusz Jędryszka, Korupcja w sanepidzie: Za kosz z łakociami przymknęły oko, Dziennik Wschodni, September 26, 2009, accessed December 1, 2010:

<http://www.dziennikwschodni.pl/apps/pbcs.dll/article?AID=/20090826/lublin/803398431>

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.

Comments:

Again, the main problem is petty administrative corruption of environmental inspectors and officials when issuing permissions, certificates, etc. From time to time a bigger scandal erupts. Two years ago, the head of one of the regional environmental inspection entities was arrested on charges of corruption.

References:

B. Główny, Inspektor Ochrony Środowiska zatrzymany przez ABW, Gazeta Wyborcza, November 22, 2010, accessed December 1, 2010L http://wiadomosci.gazeta.pl/Wiadomosci/1,80708,5977589,B_Glowny_Inspektor_Ochrony_Srodowiska_zatrzymany.html

Bartosz Rakoczy, Prawo ochrony przyrody, (Warsaw: C. H. Beck 2009).

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

Comments:

Checks are made regularly, but at the same time, there are cases of corruption in bribing controllers.

References:

Państwowa Agencja Prasowa, Inspektor PIP oskarżony o korupcję, Gazeta Wyborcza, 9, 2010, accessed December 1, 2010: http://gazetapraca.pl/gazetapraca/1,90443,6772586,Inspektor_PIP_oskarzony_o_korupcje.html

Tomasz Niedziński, Nadzór i kontrola Państwowej Inspekcji Pracy warunków pracy u pracodawcy, (Warsaw: C.H. Beck 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 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁸²Anti-Corruption Law

73. Is there legislation criminalizing corruption?

73a. In law, attempted corruption is illegal.

Yes | No

References:

Penal Code, Journal of Laws, 1997, No. 88, Item 553:
<http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970880553>

Articles 228-231 criminalize basic types of corruption: passive and active bribery, cronyism, patronage, and misuse of public functions, In Article 250(a), attempts at election bribery is also criminalized and in Articles 296(a) to 296(b), attempts at bribery in professional sports and the private sector is addressed.

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:

Penal Code, Journal of Laws, 1997, No. 88, Item 553.

Article 286 criminalizes extortion.

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:

Penal Code, Journal of Laws, 1997, No. 88, Item 553.

Article 228 criminalizes active corruption.

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:

Penal Code, Journal of Laws, 1997, No. 88, Item 553.

Article 228 criminalizes passive corruption.

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:

Penal Code, Journal of Laws, 1997, No. 88, Item 553.

Article 228 (5) and 229 (6) criminalizes passive and active bribery of foreign officials.

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

Comments:

At the same time, it should be mentioned that specific forms of the misuse of public resources are penalized in many other acts of law, e.g., in the Law on Public Finances or in the Fiscal Penal Code.

In December 2010, Parliament adopted the Law on the Special Rules of Responsibility of Public Officials for Gross Violations, which will include special provisions criminalizing embezzlement. The law is not yet signed by the president.

References:

Penal Code, Journal of Laws, 1997, No. 88, Item 553.

Basic forms of embezzlement (including public resources) is covered by Article 284.

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:

Penal Code, Journal of Laws, 1997, No. 88, Item 553.

Articles 265-268 criminalize different forms of misusing confidential information.

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:

Penal Code, Journal of Laws, 1997, No. 88, Item 553.

Article 299 criminalizes money laundering.

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:

Penal Code, Journal of Laws, 1997, No. 88, Item 553.

Article 16 describes general conditions in which preparations to commit a crime is punishable. Article 258 criminalizes different forms of organized crime.

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

See the web page of the Central Anti-Corruption Bureau: <http://www.cba.gov.pl>

References:

The Law on the Central Anti-Corruption Bureau, Journal of Laws, 2006, No. 104, Item 708.

This act established a central Polish anti-corruption body and regulates its functioning.

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.

75. Is the anti-corruption agency effective?

69

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | **No**

References:

The Law on the Central Anti-Corruption Bureau, Journal of Laws, 2006, No. 104, Item 708.

According to Article 6, the head of the Central Anti-Corruption Bureau is nominated by and fully dependent on the prime minister. This means that, in practice, there are many possibilities to influence the functioning of the bureau.

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

References:

Grzegorz Makowski, Socjologiczna analiza funkcjonowania centralnych organów antykorupcyjnych, Międzynarodowa perspektywa i polskie doświadczenia (Warsaw: Institute of Public Affairs, 2010).

Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

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

Comments:

Although there are provisions protecting the head of Polish ACA, there is also a loophole in the law on the Central Anti-Corruption Bureau. Article 7, Section 1, Part 3, states that the head of the bureau must demonstrate an “impeccable moral, civic and patriotic attitude.” This provision may be freely interpreted.

References:

Grzegorz Makowski, Socjologiczna analiza funkcjonowania centralnych organów antykorupcyjnych, Międzynarodowa perspektywa i polskie doświadczenia (Warsaw: Institute of Public Affairs, 2010).

Interview with Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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

Comments:

The most telling example is the case of the first head of the CBA, Mariusz Kamiński. In 2006, he suddenly resigned from his

functions in the party and became head of this special service, which is expected to be apolitical. This was, of course, the political decision of the ruling party and the then government. He was dismissed in 2009 because of the scandal.

References:

Bogdan Wróblewski, "Chaos w CBA, Agenci do kontroli agentów," Gazeta Wyborcza, January 1, 2010. accessed November 5, 2010:

http://wyborcza.pl/1,75478,7482348,Chaos_w_CBA_Agenci_do_kontroli_agentow.html

Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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:

Grzegorz Rzeczkowski, "CBA, Rok po Kamińskim," Polityka, October 14, 2010, accessed November 20, 2010:

<http://www.polityka.pl/kraj/analizy/1509486,1,cba-rok-po-kaminskim.read>

Centralne Biuro Antykorupcyjne, Informacja o wynikach działalności Centralnego Biura Antykorupcyjnego w 2009 roku (Warsaw: CBA, May 2010), accessed November 20, 2010:

<http://www.senat.gov.pl/k7/dok/dr/800/841-CBA.pdf>

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

Comments:

I think that in case of this question it is enough to give the score based on the one source — the official report on activity of the Central Anti-Corruption Bureau, where one can find basic data on the finances of the bureau. Common opinion on its budget is that it is even higher than it should be.

References:

Marek Henzler, "Etaty i budżety służb specjalnych," Polityka, December 29, 2009, accessed March 10, 2011:
<http://www.polityka.pl/kraj/analizy/1500287,1,etaty-i-budzety-sluzb-specjalnych.read>

Centralne Biuro Antykorupcyjne, Informacja o wynikach działalności Centralnego Biura Antykorupcyjnego w 2009 roku (Warsaw: CBA, May 2010), accessed November 20, 2010:
<http://www.senat.gov.pl/k7/dok/dr/800/841-CBA.pdf>

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 CBA is obliged by law to submit an activity report to Parliament. Those documents include basic data on the functioning of the bureau. They are publicly discussed and accessible. However, I have decided to lower the scoring because, especially in previous years, the informative value of these documents is low.

References:

Grzegorz Makowski, Socjologiczna analiza funkcjonowania centralnych organów antykorupcyjnych, Międzynarodowa perspektywa i polskie doświadczenia (Warsaw: Institute of Public Affairs, 2010).

Centralne Biuro Antykorupcyjne, Informacja o wynikach działalności Centralnego Biura Antykorupcyjnego w 2009 roku (Warsaw: CBA, May 2010), accessed November 20, 2010:
<http://www.senat.gov.pl/k7/dok/dr/800/841-CBA.pdf>

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:

Grzegorz Makowski, Socjologiczna analiza funkcjonowania centralnych organów antykorupcyjnych, Międzynarodowa perspektywa i polskie doświadczenia (Warsaw: Institute of Public Affairs, 2010).

Marcin Bożek, Miejsce i rola Centralnego Biura Antykorupcyjnego w systemie organów państwowych na tle obowiązującego ustawodawstwa (Warsaw: CBA, May 2008), accessed November 20, 2010:

<http://antykorupcja.edu.pl/index.php?mnu=12&app=docs&action=get&iid=1221>

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

Comments:

The Polish Anti-Corruption Bureau has the status of a special secret service. This institution is controlled directly by the prime minister and has very wide latitude, including the right to conduct operational intelligence activities for which it only needs permission of the court.

References:

Grzegorz Makowski, Socjologiczna analiza funkcjonowania centralnych organów antykorupcyjnych, Międzynarodowa perspektywa i polskie doświadczenia (Warsaw: Institute of Public Affairs, 2010).

Claus-Peter Wulff and Marcus Ehbrecht, "Enhancing Anti-Corruption Activities in Poland." Twinning Project, Transition Facility, 2005 (Warsaw: CBA, May 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?

63

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

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

Comments:

Generally, it is very difficult to answer to this question. The CBA presents itself as an effective institution, reacting quickly to complaints and reports from the citizens, as is written in their annual reports submitted to Parliament and from what we can figure out from parliamentary discussions. A different picture is drawn from analyses by researchers and journalists. However, we cannot be sure which opinion is more accurate because the bureau is secret service. Detailed information about its activities and effectiveness remain confidential.

References:

Centralne Biuro Antykorupcyjne, Informacja o wynikach działalności Centralnego Biura Antykorupcyjnego w 2009 roku (Warsaw: CBA, May 2010), Accessed November 20, 2010: <http://www.senat.gov.pl/k7/dok/dr/800/841-CBA.pdf>

Adam Bodnar, Dawid Sześciło, "Przeciwdziałanie korupcji: instytucje i ich działanie," in *Demokracja w Polsce 2007-2009*, eds. Lena Kolarska-Bobińska and Jacek Kucharczyk (Warsaw: Institute of Public Affairs, 2010).

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

Comments:

I decided to lower the score as there are no specific provisions protecting whistle blowers or citizens reporting corruption, only general rules from the Penal Code.

References:

Sławomir Śnieżko, Director in the Cabinet of the Head of the Central Anti-Corruption Bureau, date: February 11, 2011, telephone interview.

Interview with Grażyna Kopińska, head of the Anti-Corruption Program of Stefan Batory Foundation, date: December 30, 2010, telephone interview.

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.

77

6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

Yes | No

References:

Code of Criminal Proceeding, Journal of Laws, 1997, No. 89, Item 556:
<http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970890555>

Appeal procedures concerning criminal cases is regulated in Chapter 49 of the code.

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:

Again, it is difficult to give some telling and representative example. The general problem is that courts are overloaded. This, of course, leads to longer proceedings. People may fight for justice for years. Maybe an example relating to corruption scandals might be the story of Mr. Szeremietiew, deputy minister of defense in the Jerzy Buzek cabinet (1997-2001). He was accused of corruption in connection with tendering procedures in 2001. It took him almost ten years to get cleared of charges.

References:

Radisław Anapolski, "Jak przyspieszyć procesy karne — propozycje legislacyjne sędziów okręgu opolskiego," Rzeczpospolita, June 11, 2010, accessed December 10, 2010:
<http://www.rp.pl/arttykul/492663.html>

Jarosław Beldowski, Magdalena Ciżkowicz, Dawid Sześciło, Efektywność polskiego sądownictwa w świetle badań międzynarodowych i krajowych, (Warsaw: Fundacja im. Stefana Batorego, 2010).

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

Comments:

This is exactly as it is described on the scale. However, it is difficult to give some representative example because costs vary. The general opinion is that court proceedings, including appeals, are expensive and ordinary citizens can hardly afford them.

References:

Zbigniew Bartuś, "Mamy najdroższy wymiar sprawiedliwości w Europie Mamy najdroższy wymiar sprawiedliwości w Europie," Dziennik Polski, October 22, 2010, accessed December 10, 2010:

<http://www.dziennikpolski24.pl/pl/aktualnosci/kraj/1077033-mamy-najdrozszy-wymiar-sprawiedliwosci-w-europie.html>

AD2

Jarosław Beldowski, Magdalena Ciżkowicz Dawid Sześciło, Efektywność polskiego sądownictwa w świetle badań międzynarodowych i krajowych, (Warsaw: Fundacja im. Stefana Batorego 2010)

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney 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. Attorney 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. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

100

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Jarosław Beldowski, Magdalena Ciżkowicz, Dawid Sześciło, Efektywność polskiego sądownictwa w świetle badań międzynarodowych i krajowych (Warsaw: Fundacja im. Stefana Batorego 2010).

Andrzej Siemaszko, Sprawność postępowań karnych w świetle danych statystycznych (Warsaw: Instytut Wymiaru Sprawiedliwości 2010).

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. In practice, are judicial decisions enforced by the state?

75

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Generally, the decisions of the courts are enforced. There are, however, some problems. One of them is the shortage of prison space. This obviously means that convictions and penalties are not followed in accordance with the judgments.

References:

Marek Domagalski, "Sędziowie proponują szybsze procesy karne," Rzeczpospolita, July 27, 2010, accessed December 10, 2010:

http://www.rp.pl/artykul/514102_Sedziowie_propozycja_szybsze_procesy_karne.html

Jarosław Bełdowski, Magdalena Ciżkowicz, Dawid Sześciło, Efektywność polskiego sądownictwa w świetle badań międzynarodowych i krajowych, (Warsaw: Fundacja im. Stefana Batorego 2010).

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?

94

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

Basically, the independence of the judiciary is guaranteed by the provisions describing procedures of the nominating judges. What hasn't been mentioned, and might be important, is the institution of material immunity of judges, regulated by the Articles 80 and 81 of the law mentioned above. Financial issues are regulated separately in this law in Part V.

References:

The Law on the System of Common Courts, Journal of Laws, 1985, No. 31, Item 137.

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 includes 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.

100 | 75 | 50 | 25 | 0

Comments:

Judges are generally protected, but from time to time, the government announces drafts of new laws, including provisions that might limit the autonomy of the judiciary. This is what happened in 2009 and 2010 when the Ministry of Justice proposed changes that would make it easier to move judges from court to court. This could, of course, expose them to more intense political pressure.

References:

Dawid Sześciło, Reformatory i hamulcowi. Przegląd działań Ministrów Sprawiedliwości po 1989 r., (Warsaw: Forum Obywatelskiego Rozwoju 2010).

Konwersatorium Doświadczenie i Przyszłość, Uwagi o stanie demokracji w Polsce. Raport, (Warsaw: KDP 2007).

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

Comments:

Basically, all types of cases are registered in the courts one by one. The assignment of cases to individual judges is done by the chairmen of specific departments of the courts (e.g., civil or criminal). So the system is fairly decentralized and courts have broad autonomy regarding the distribution of cases.

References:

The procedure for distribution of cases to national-level judges is described in Part III of the Ordinance of the Minister of Justice, Rules of Functioning of the Common Courts, Journal of Laws, No. 38, Item. 249.

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, Journal of Laws, 1997, No. 78, Item 483.

Article 180 guarantees independence of judges.

The Law on the System of Common Courts, Journal of Laws, 1985, No. 31, Item 137.

Articles 80 and 81 describe basic regulations on the liability of the judges in cases of abuse of power or criminal offense.

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

Comments:

As there was no such a situation, I am convinced that the interview with Dr. Bodnar, who knows this area very well, is enough to make a proper score.

References:

Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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

Comments:

As there was no such a situation I am convinced that the interview with Dr. Bodnar, who knows this area very well, is enough to make a proper score.

References:

Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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?

75

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

Mr. Łukasz Bojarski, lawyer, member of the National Council of the Judiciary of Poland, date: February 8, 2011, telephone interview.

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:

Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

Mr. Łukasz Bojarski, lawyer, member of the National Council of the Judiciary of Poland, date: February 8, 2011, telephone interview.

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:

The Constitution of the Republic of Poland, Journal of Laws, 1997, No. 78, Item 483.

Article 42 states that: anyone against whom criminal proceedings have been brought shall have the right to defense at all stages of such proceedings. Sh/e may, in particular, choose counsel or avail himself — in accordance with principles specified by statute — of counsel appointed by the court.

The Code of Criminal Procedure, Journal of Laws, 1997, No. 89, Item 555.

Article 78 states that a defendant who hasn't chosen a counsel may request counsel assigned by the court. However, one can use this right only in situations in which he or she is not able to bear the costs of defense without harm to him or his family.

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

Comments:

Legal help is always provided. However, attorneys are not very motivated to take ex officio cases because of low rates offered by the state. As a result, the counsel is not always the best quality.

References:

Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

Mr. Łukasz Bojarski, lawyer, member of the National Council of the Judiciary of Poland, date: February 8, 2011, telephone interview.

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

References:

Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

Mr. Łukasz Bojarski, lawyer, member of the National Council of the Judiciary of Poland, date: February 8, 2011, telephone interview.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney 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. Attorney 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. Attorney 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:

For small businesses, as for individuals going to the courts, it is difficult and expensive. Courts are overloaded and procedures last for years (especially in commercial courts), which is very inconvenient for entrepreneurs for whom time is money. Basically, the main problem is time.

References:

Marek Domagalski, "Adwokat za darmo," Rzeczpospolita, October 19, 2010, accessed December 13, 2010: <http://www.rp.pl/artykul/379541.html>

Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

Mr. Łukasz Bojarski, lawyer, member of the National Council of the Judiciary of Poland, date: February 8, 2011, telephone interview.

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. Attorney 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. Attorney 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

Comments:

Unfortunately, there are problems with the availability of courts for the residents of rural areas and for poor people.

References:

Ireneusz Walencik, "Ostrożny start pomocy prawnej dla ubogich," Rzeczpospolita, February 6, 2010, accessed December 13, 2010: <http://www.rp.pl/artykul/429872.html>

Polska Agencja Prasowa, "Prawnicy apelują o ustawę ws. bezpłatnej pomocy prawnej dla najuboższych," Gazeta Prawna, March 27, 2010, accessed December 13, 2010: http://prawo.gazetaprawna.pl/artykuly/409461.prawnicy_apeluja_o_ustawie_ws_bezplatnej_pomocy_prawnej_dla_najubozszych.html

Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

50

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Heads of law enforcement agencies usually are professionals. However, there are cases in which they are appointed on a political basis (the appointment of the first head of the Central Anti-corruption Bureau is a recent example) or potential candidates might be professionals, but, at the same time, are close to current government members.

References:

Karolina Łagowska, "Matejuk nowym szefem policji," *Gazeta Wyborcza*, March 5, 2008, accessed December 13, 2010: <http://wroclaw.gazeta.pl/wroclaw/1,35768,4988258.html>

Szymaniak Adam, Ciepiela Wiesław (ed.), *Policja w Polsce, Stan obecny i perspektywy*, (Poznań: Wydawnictwo: Wydawnictwo Naukowe INPiD 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, 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

Comments:

The Central Anti-Corruption Bureau is the smallest specialized service (around 1,000 employees). At the same time, expectations towards this institution are high. One example is that one of its basic tasks is to audit asset declarations of thousands of public functionaries. This task simply cannot be done effectively with an operational budget of around 25 million euros.

References:

"Policjanci piszą do premiera," Rzeczpospolita, September 8, 2010, accessed December 13, 2010: <http://www.rp.pl/artykul/532765.html>

Polska Agencja Prasowa, Budżet policji ma w 2010 r. wzrosnąć o 544 mln zł, Gazeta Wyborcza, November 4, 2009, accessed December 13, 2010: http://wiadomosci.gazeta.pl/Wiadomosci/1,80708,7221520,Budzet_policji_ma_w_2010_r_wzrosnac_o_544 mln_zl.html

Szymaniak Adam, Ciepła Wiesław (ed.), Policja w Polsce, Stan obecny i perspektywy, (Poznań: Wydawnictwo: Wydawnictwo Naukowe INPiD 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:

Law enforcement agencies are generally independent, but in key moments (e.g., during changes on top positions), political influences are often visible.

References:

Agnieszka Burzyńska, Andrzej Stankiewicz, Rapacki: Cały czas myślę o dymisji, Portal RMF24, March 7, 2009, accessed December 13, 2010: http://www.rmf24.pl/opinie/wywiady/news-rapacki-caly-czas-mysle-o-dymisji_nld,216173

Karolina Łagowska, "Matejuk nowym szefem policji," Gazeta Wyborcza, March 5, 2008, accessed December 13, 2010: <http://wroclaw.gazeta.pl/wroclaw/1,35768,4988258.html>

Szymaniak Adam, Ciepła Wiesław (ed.), Policja w Polsce, Stan obecny i perspektywy, (Poznań: Wydawnictwo: Wydawnictwo Naukowe INPiD 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?

83

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes

No

Comments:

There are at least several possibilities of complaining about police activity. One way is to simply go to the common or administrative court. In case of corruption, the best way would be to make a report (it may be anonymous) to the Central Anti-Corruption Bureau or to the Supreme Chamber of Control (which also can start procedures, even on the basis of an individual's notification).

In cases when human rights are violated, complaints might be submitted to the Ombudsman Office. However, very often the simplest and most efficient way is to complain to the Bureau of Internal Affairs of the police, which is responsible for investigating offenses committed by policemen.

References:

(None listed.)

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.

100

75

50

25

0

Comments:

It depends on what law enforcement agency we are thinking about. Complaints about the police are usually considered in a reasonably period of time, but often the results of such a consideration are not satisfactory. The situation is very different in the case of prosecutors. There are examples of complaints waiting several years for reply, according to the opinion of experts.

References:

Dr. Adam Bodnar, lawyer, assistant professor of Law and Administration at the Warsaw University, member of the board of the Helsinki Foundation for Human Rights, date: January 3, 2011, telephone interview.

Łukasz Bojarski, lawyer, member of the National Council of the Judiciary of Poland, date: February 8, 2011, telephone interview.

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

References:

There are several law enforcement bodies (police, customs, fiscal police, municipal police, etc.), but the basic standard for all these entities is to have internal units that investigate and eliminate corruption and other types of abuse. It would be difficult to list here all the regulations concerning these institutions — all of them are internal regulations issued on the basis of statutes of law enforcement bodies.

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.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to reliably score this indicator. Some agencies act more independently, some less. For example, the Central Anti-Corruption Bureau is very independent in its actions, but the police more often act on the orders of attorneys. There is also a lack of sources which one could use as a basis for scoring.

References:

Polska Agencja Prasowa, CBS zatrzymało urzędników Ministerstwa Finansów, Portal Money, March 26, 2010, accessed December 13,

2010: <http://prawo.money.pl/aktualnosci/wiadomosci/artykul/cbs;zatrzymalo;urzednikow;ministerstwa;finansow;141;0;603277.html>

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:

There are no restrictions on the liability of law enforcement officials in Poland.

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

Comments:

There are no clear examples of exempting influential people from prosecution. However, it seems that in some cases, investigations are impeded without apparent reason. An example might be the case of group of corrupt policemen from Busko-Zdrój who were released from custody after a controversial decision of the court.

References:

Skandaliczna decyzja sądu! Zatrzymani policjanci z buskiej drogówki podejrzani o kilkaset przestępstw wypuszczeni na wolność!, Polska Agencja Prasowa, October 1, 2010.

Polska Agencja Prasowa, B. wiceszef łódzkiej policji zatrzymany przez CBA, Gazeta Prawna, August 21, 2010, accessed December 13,

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.
