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Corruption: the Polish perspective of combating it in light of the World Bank's experiences

Abstract

Objectives: The aim of this article is to identify the main weaknesses in Poland in combating corruption in the context of the World Bank's experiences.

Research Design & Methods: Various notions of corruption will be presented. This article will also indicate the most important conclusions from a number of previous scientific studies in the field of corruption conducted under the aegis of the World Bank.

Findings: Reducing motivation to accept or provide undue benefits is directly related to an increased effectiveness in detecting corruption. The World Bank also points out that one of the most effective tools in fighting corruption is counteracting the legalisation of benefits obtained through corrupt activities.

Contribution: In the Polish perspective, a positive correlation between a weaker, less operational state apparatus and the frequency of corruption will be shown.

Article classification: research article.

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Introduction

The Polish experience in combating corruption after 1989 is a relatively short one and concerns the specificity and imperfections of systemic change. The various reasons for and faces of corruption make it difficult to talk about only one level of defining and fighting corruption. When treating the phenomena of corruption particularly as a category of crime, it is possible to underestimate the social, political, and economic aspects that determine the occurrence of corruption. It seems to me that the main difficulty

in researching the phenomenon of corruption stems from its essence, consisting, as it does, of a pact concluded by the perpetrators. This pact, often concluded in an implicit way, requires the secrecy of the corrupt actions taken. The secrecy of corrupt practices causes particular difficulties in disclosing and examining them. Having the above in mind, at the outset it is worth citing at least the two of the most revealing collections of data. In the latest Corruption Perception Index (CPI), published by Transparency International on 21 February 2018, Poland ranked 36th out of 180 countries, with a score of 60 points.¹ The leaders were New Zealand,

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¹ https://www.transparency.org/news/feature/corruption_perceptions_index_2017, accessed on 8.4.2018. The Corruption Perception Index, created in 1993 by

Denmark, Finland, Norway, Switzerland, Singapore, Sweden, Canada, Luxembourg and the Netherlands. The most corrupt countries, in turn, were considered to be Somalia, South Sudan, Syria, Afghanistan, Sudan, Yemen, Equatorial Guinea, Guinea-Bissau, North Korea and Libya. And the latest Corruption Map,² published in December 2017 by the Central Anti-Corruption Bureau, shows that in 2016 Polish law enforcement agencies registered 25,968 offenses of corruption. That is the highest figure in the history of the publication of the Corruption Map, i.e. since 2007. On the one hand, this data may indicate an improvement in detection capabilities, but, on the other hand, the specificity of corruption makes us ask a question about the hidden numbers of this crime³ and the credibility of such statistics. The significance of the negative political, economic, and social consequences and costs borne because of corruption will undoubtedly motivate due attention to be paid to the need to combat it in the context of Poland. In addition to tools in the field of penal policy, including, in particular, the establishing of a specialised investigative institution (in the form of the Central Anti-Corruption Bureau), it should be effective to apply the systemic mechanisms recommended by the World Bank. This international institution, whose original official name was the International Bank for Reconstruction and Development,⁴ was established as an organisation

the non-governmental international organisation that is Transparency International, is based on research conducted since 1995 among selected representatives of countries, who assess the perception of corruption in a given country.

² <https://cba.gov.pl/ftp/pdf/Mapa%2020upup%202016.pdf>, accessed on 8.4.2018. The Corruption Map is based on the registration data of crimes in the National Criminal Information Center, created pursuant to the Act dated 6.7.2001 on the collection, processing and transfer of criminal information (Journal of Laws of 2018, item 424).

³ The dark number of crimes is understood as the difference between the number of actually committed crimes and the number of crimes for which initial information reached law enforcement agencies (Hanausek 1998, p. 265).

⁴ From the IBRD, i.e. International Bank for Reconstruction and Development.

to provide financial assistance to countries that suffered during the Second World War and to developing countries. It was also set up to co-ordinate investment activities on a global scale, in order to guarantee the best possible economic results and contribute to a balanced growth of economic exchange (Munyama, 2009, p. 144). The creation of the World Bank was the result of the United Nations Monetary and Financial Conference, which took place in July 1945 in the United States, in Bretton Woods, New Hampshire (Latoszek, 2001, p. 190). The World Bank is the largest entity in the World Bank Group, which includes the International Development Association⁵ and the International Finance Corporation⁶; associated organisations include the Multilateral Investment Guarantee Agency⁷ and the International Forum on Settlement of Investment Disputes.⁸ The term “World Bank” most often refers only to the International Bank for Reconstruction and Development, although it is also officially applied to the International Development Association mentioned above, which is its main supporting body. During the decades of its operation, the World Bank, wishing to effectively implement its statutory goals, saw that that would not be possible without the implementation of an appropriate anti-corruption strategy. This issue was officially taken into account in the 1990s.

The World Bank’s definition of corruption

The World Bank, as part of various research and assistance programs, defines corruption as abuse of office for private gain.⁹ At the same time, it focuses

⁵ From the IDA, i.e. the International Development Association.

⁶ From the IFC, i.e. International Finance Corporation

⁷ From the MIGA, i.e. the Multi-lateral Investment Guarantee Agency.

⁸ From the International Center for Settlement of Investment Disputes.

⁹ The World Bank, *Helping Countries Combat Corruption. The Role of the World Bank*. Washington 1997, typescript in the possession of the author, p. 8.

on the economic analysis of factors conducive to that (Sutch, 1999, p. 10). That consequently widens the description of the phenomenon. The economic definition of corruption according to the World Bank is based on the statement that corruption is a function of:

- 1) a procedure's high profitability,
- 2) a high degree of discretion in the decision, and
- 3) low transparency.

In this sense, corruption also refers to the state apparatus in the spheres:

- 1) of efficiency,
- 2) integrity of officials and
- 3) the monitoring and accountability of officials.

With reference to the definition of corruption, however, it should be pointed out that different and diverse approaches exist in public and academic discourse. Using the term "corruption", one should first start with a linguistic interpretation. According to the dictionary of foreign expressions and foreign-language phrases by Władysław Kopański, it means degradation, demoralisation, bribery, and corruptibility. The etymology of this word derives from the Latin word *corruption*, which refers to degradation and bribery. The verb *corruptere* refers to shredding, destroying, and spoiling, including moral spoiling.¹⁰ The foregoing explanation of the term corruption, although probably corresponding to the intuitive meaning thereof, is problematic. It contains both the elements of the perpetrators' actions themselves and the effects of those actions. Such a broad definition may imply misleading conclusions. Not every action leading to demoralisation or degradation, in the sense of destroying social

values, is the result of the occurrence of corruption. Not every advantage doled out to a second party can be considered an instance of corruption. An essential requirement of democracy is to give due importance to occurrences of corruption and their absolute disclosure and stigmatisation. As the World Bank's experience shows in particular, eliminating the basis of corruption is a condition sine qua non for fighting it effectively. And occurrence of certain kinds of corruption can be indirect evidence of its existence.

Instances of corruption are not only issues in the field of ethics, sociology or economics: above all, they are a category of crime,¹¹ crimes which are extremely difficult to detect and prove. The perpetrators of corruption are its only beneficiaries, who take all kinds of, often very sophisticated, measures to mask their activities from their surroundings. The particular mystery surrounding incidents of corruption is undoubtedly the distinguishing feature of this type of crime. It should be added that today acts of corruption often accompany other types of crime, such as fraud, mismanagement, abuse of power, failure to comply with obligations, disclosure of professional secrecy, untruthful certification of documents, fixing public tender or money laundering. They are also often international in nature when the perpetrators are active in more than one country. Finally, acts of corruption are also instruments used in political activities and espionage carried out in the territory of a foreign state. As Dorota Fleszer notes: "There are no rules for analysing the scope, causes and nature of corruption, common for all states and institutions dealing with this issue. Understanding this word depends both on the research perspective and on the institutions or countries that use them.

¹⁰ <http://www.slownik-online.pl/kopalinski/0EB3CFBD1C4B3255C12565E90058616C.php>, accessed on 31.12.2017. In the Anglo-Saxon culture, analogous definitions can be found in The Oxford English Dictionary, which speaks of violating reliability in the performance of public duties through bribery or favour. As Jorge Martinez-Vasquez, Javier Arze del Granado and Jameson Boex note, other definitions develop this lexicon to indicate the role of persons performing public functions (J. Martinez-Vasquez *et al.*, 2007, p. 5).

¹¹ Crime in contemporary Polish criminal law, in accordance with the provisions of Art. 1 of the Criminal Code (Journal of Laws 1997.88.553, as amended) is defined as an act of a person which is unlawful (i.e. violating the sanctioned norm), punishable (i.e. covered by a penal act at the time of committing it), shameful (i.e. socially detrimental to a degree higher than negligible) and culpable (i.e. one for which the perpetrator can be blamed).

Otherwise, it is understood from the point of view of psychology, sociology, ethics, history or law.” (Fleszer, 2014, p. 286).

Selected definitions of corruption in scientific literature

In modern Polish academic literature one can find a wide range of definitions of corruption. For example, Kazimierz Tarchalski indicates that it is “an implicit deviation from the established order or from established norms of behaviour.” (Tarchalski, 2000, p. 9). He adds that corrupt behaviours have some necessary characteristics. It is pointless to define corruption where there is no distinction between public and private good. At the same time, there is no corruption when there is no secrecy or secrecy of exchanging benefits. Tarchalski emphasizes at the same time that there is no requirement that corruption should be interactive. It can come to fruition without an agreement with others. Andrzej Kojder, in turn, defines corruption as a “misappropriation of public resources (goods, benefits, services) or having them at one’s disposal to unlawfully obtain personal gain. Bribery, corruptibility, paid protection, nepotism, dishonest mediation, and the use of one’s position for personal (family or collegial) purposes are the most common activities of corruption today.” (Kojder, 2002, p. 234). At the same time, partly contradicting Kazimierz Tarchalski, he notes that “the most typical features of corruption are:

- 1) universality – since the time a sphere of public affairs became distinguishable, corruption has occurred in all political and economic systems;
- 2) entropy – corruption spreads – like a cancerous tissue – to areas that were not previously infected with it;
- 3) market – the price of corrupt transactions is a result of supply and demand for appropriated public resources;
- 4) interactivity – the partners of corrupt transactions are always ‘donors’ of public resources and their ‘recipients’. Usually, they are guided by

the motivation to achieve maximum personal benefits and a common desire to minimize the risk that the concluded corrupt transaction will be uncovered.” A slightly different view is proposed by the authors of a handbook edited by Janina Filek, in whose opinion “corruption is: first of all bribery, which results in government orders, contracts, receiving concessions, amending court decisions or repealing customs duties, tax and other duties; secondly, theft, i.e. conscious, unlawful disposition of budgetary and property funds which are a public good; thirdly, favouritism, protection, nepotism, cronyism; fourthly, buying influence (e.g. financing elections or political parties in exchange for obtaining influence)” (Filek, 2004, p. 42). Zbysław Dobrowolski states that corruption is an “illegal activity consisting of taking advantage of a privileged position for obtaining economic or political benefits, manifesting itself in placing private interest over public” (Dobrowolski, 2001, pp. 13–14). Zbigniew Rau defines corruption as instances where “a worker of a state or social institution receives or requests material or personal benefits in exchange for performing an official function or breaking the law” (Rau, 2002, p. 66). Antoni Z. Kamiński defines corruption “understood as bribery and embezzlement, in terms of the symptom of the problem of weakness in political culture, which causes inefficiency in political institutions” (Kamiński, 1997, p. 3).

A multitude of perspectives on this issue can also be found in the writings of contemporary authors from outside Poland. According to Samuel P. Huntington’s definition, corruption is the behaviour of government officials departing from acceptable standards in order to obtain private benefits (Huntington, 1968, pp. 59–61). It is also a phenomenon that occurs in varying intensity, at different times, in different cultures. At the same time, it is an element inseparably associated with modernisation, with the historical development of societies. In his considerations, Samuel P. Huntington stressed that the term corruption applies

only to regimes where there is a distinction between public and private interest. For example, it is difficult to talk about corruption in regimes where the monarch has power over the whole state. Going further, it should be noted that debate about corruption is pointless in non-democratic states. These regimes are characterised by the power elite appropriating the state and are, by their very nature, fundamentally corrupt. Returning to his insights, Huntington pointed out that corruption can also be described as a product of the distinction between the public and private good that comes with modernisation. Ian Senior, in turn, defines corruption by pointing to the necessary conditions that at the same time must be implemented in order to speak about its existence. According to this scholar, a briber must, in a non-transparent manner, provide the one being bribed or some third party a benefit to obtain a benefit for himself/herself or a third party who falls under the authority of the corrupted entity (Senior, 2006, p. 26). The service may be a good or a service. At the same time, it must present a positive value for the recipient. By the same token, psychological or physical coercion cannot be equated with obtaining benefits and the occurrence of corruption. Petrus C. van Duyne made an original attempt to define corruption based on a behavioral criterion (Nowak, 2008, p. 5). He perceives corruption as dishonesty or weakness that is a part of the decision-making process. In this approach, the perpetrator agrees to deviating or demands deviating from the criteria that should guide the decision-making process in return for a benefit or the promise thereof. The work of Carl J. Friedrich may be used as a summary of the above considerations. He stated that any attempt to analyse the concept of corruption must take into account that in each language the term has a history of wildly diverse meanings and connections. (Friedrich, 2002, p. 15). Nevertheless, it is possible to distinguish from a number of definitions of corruption, of its specific core. It is any behaviour that deviates from the norms currently dominating or recognised as dominant in a specific context. Moreover, according to Carl J. Friedrich, this behaviour is associated

with a situation in which private profit is achieved at the expense of a significant public good.

In the literature on the subject, and thus in the public debate, the tendency to broadly define corruption certainly predominates, mainly based on ethical imperatives, without strict reference to legal norms. The reason for this state of affairs probably arises from the fact that the phenomenon of corruption is inseparably connected with the existence of any state organization, (A. Z. Kamiński & B. Kamiński, 2004, p. 15), i.e. since the emergence of the first political structures and the use of public posts for private purposes (Czepil, 2015, p. 15). Thus, moral and not legal norms were the primary tools for combating it. The term corruption itself was not traditionally a legal language in the sphere of criminal legislation. (Nowak, 2008, p. 1).

The need to fight corruption

It should be emphasised that in addition to the above-mentioned definitions of corruption there are parallel and narrower or wider interpretations of this phenomenon. First of all, there is an intuitive understanding of the term. Simply put, corruption is most often perceived as drawing personal benefits from a public function, (Tarchalski, 2000, p. 9) and thus as a form of abuse of power. There is no doubt that just as there is no single, fully clear, and comprehensive definition of corruption (Filek, 2004, p. 9), it is difficult to point to a specific, concrete remedy to stop it.

The need to fight corruption stems from its destructive impact on the social, political, and economic life of the state and its citizens. From Kazimierz Tarchalski, it can be noted that the main consequences of corruption in the moral and cultural dimensions are primarily the decline in ethical standards of society and the disappearance of mutual trust between people participating in the social and economic market and the reduction of social capital, and ultimately the emergence of a “neo-tribal culture”, understood as division of societies according to group loyalty and acting

only in self-interest (Tarchalski, 2000, p. 54). In political terms, corruption is a denial of the idea of democratic equality of citizens in the face of the law (Dobrowolski, 2001). As to its economic repercussions, it can be stated most generally that it especially causes the depletion of state revenues, which in turn may lead to an increase in fiscal burdens. Going forward, some specialists such as Helen Sutch talk about four types of economic costs stemming from corruption (Sutch, 1999). The first are fiscal costs on a macro scale, which results from the loss of revenues from taxes and proceeds from privatisation, which in turn leads to excessively high expenditure, by increasing the prices of goods purchased by state administrators. The second are those related to the reduction of investment and economic growth. These indicators are lower in countries where the level of corruption is higher. The third type that can be distinguished are the social costs that most affect the poorest citizens. They are the result of the need to provide benefits to settle anything. The fourth and final type according to Sutch is the cost included in terms of cynicism and trust in public institutions or the state itself. Lack of societal subordination and identification with the idea of the state weakens the effectiveness of the fiscal apparatus. Summing up, it should be noted that the ultimate result of corruption is the undermining of trust in public institutions, which may even lead to undermining the legitimacy of the state (Dobrowolski, 2004, p. 8).

Good governance

Returning to the World Bank's experiences in the field of combating corruption, it should be pointed out that the starting point is the term "good governance". Its application took place for the first time by the World Bank when implementing support programs in the early 1990s (Rutkowski, 2009, p. 9 *et seq.*). With the collapse of the communist world in Europe and the transition of the Cold War order into historical memory, the institution has noticed that the effectiveness of its assistance is in close

correlation with the state of societies and countries concerned. Therefore, the term initially referred to the level of efficiency of the state administration in the scope of using financial aid from World Bank resources; the key issue was the ability of individual states to absorb aid money. With time, "good governance" came to include further political and economic factors. When speaking of "good governance", the following indicators should be taken into account: the voice and accountability of the governing power; political stability and non-violence; effective government; regulatory quality; the rule of law; and limiting corruption. The voice and accountability of the governing power is determined by the World Bank by how it implements democratic freedoms, including, in particular, the scope of civil liberties and democratic elections. Political stability and non-violence, on the other hand, refer to the continuity of democratic processes and to the state's degree of security, both internal and external, for its citizens. The effectiveness of governance concerns the correlation between a weaker, less efficient state apparatus and the more frequent phenomenon of corruption (Runde *et al.*, 2014). Regulatory quality is perceived by the World Bank through the prism of legal regulations created and implemented through appropriate channels, especially in relation to the private sector (Rutkowski, 2009, p.17). Going further, "good governance" is also the rule of law, understood as respect for civil rights, in particular, respect for property and economic freedoms. Finally, the corruption reduction index mainly affects the risk-perception of corruption. The experience of the World Bank clearly shows that where there is "good governance", corruption is limited. Furthermore, it can be stated that corruption is where the norms of a well-governed, well-functioning state are being violated (Fjeldstad & Isaksen, 2008). Here it is worth emphasising that the fight against corruption while maintaining the requirements of "good governance" is fraught with the basic difficulty resulting from the objective need to trust people who perform public functions (Soreide, 2014). In fact, it depends on the ethical

quality of public employees whether corruption will occur. Corruption often takes the form of extortion, understood as a solidification of conviction among citizens that without a gratifying a certain person performing a public function, it will not be possible to settle one's case. This ultimately results in reducing the role of an official to a profitable, cynical player who will abstain from carrying out his/her tasks until he/she receives a satisfactory gratification from the petitioner. The experience of the World Bank indicates that the factors that contribute to the fulfilment of this type of dependence are primarily the lack of moral backbone in public employees. This is particularly the case in countries with a fragile statehood and is also dependent on historical and cultural factors.¹² Another reason is also a low probability of detecting corrupt practices, as well as low risk of punishment and conviction (Martinez-Vasquez *et al.*, 2007, p. 80 and further). Thus, in the absence of moral dilemmas, if weighing profits and potential losses encourages an act of corruption, it is highly probable that the appearance thereof is only a matter of "price". In this context, the next factor conducive to bribery will be inadequate remuneration for the tasks faced by decision-makers. The frustration caused by financial undervaluing on the part of the employer in the long-term view gives rise to a lack of identification with the performed function and results in unscrupulous opportunities to "add" to one's salary. The World Bank's analyses see yet another important component motivating corrupt behaviour. It is the scope of official recognition, which is in particular clearly visible in the complexity of tax systems, which give rise to opportunities to look for ways to avoid fiscal obligations. In conclusion, the postulate of "good governance" can be said to emphasise the need for democracy, the effectiveness of governments, and economic development to complement each

¹² Bartosz Czepil in "Cultural and institutional barriers of corruption in the Scandinavian countries" indicates even the local democracy of the Viking Age as the germ of the egalitarian culture resulting in the implantation of a permanent pro-state attitude in Scandinavian societies.

other. The interplay of these components reduces the opportunity for corruption, which in itself is a symptom of state weakness and "bad governance".

World Bank guidelines on combating corruption

When conducting its activity, the World Bank places expectations on beneficiaries that the loans granted are effectively used for the economy. The solutions proposed by the World Bank can be spelled out in the following guidelines for governments. In countries where the level of corruption is high, the first steps should be to introduce the rule of law, strengthen horizontal control institutions (such as courts or parliaments), and strive to reduce state intervention (Fjedstadt & Isaksen, 2008, p. 16). In such countries, other measures will not work, due to the weakness of the state apparatus and the tendency towards politicisation. In turn, steps taken by countries with an average level of corruption should be adequate for effective government. The Bank proposes decentralising the administration, simplifying administrative procedures, and limiting regulation, which is understood as imposing on citizens requirements to obtain permits or any kind of consent from state authorities. Moreover, it is advisable to increase the responsibility and accountability of officials as part of their public functions. In countries with a relatively low level of corruption, the World Bank recommends the creation of specialised anti-corruption institutions. In well-functioning countries there is no danger that they will become a weapon of any current political struggle. In addition, educational activities that increase social awareness of problems arising from corruption are important. It also requires placing emphasis on raising the qualifications of public officials in this field (The World Bank, 1997, p. 39). The experience of the World Bank indicates that well-functioning control institutions and anti-corruption institutions are an important element strengthening the state apparatus, especially the corps of civil servants. In addition, they enhance financial discipline and

responsible economy, both at the central and local level. Thus strengthening the rule of law is also achieved. All the while, the overall transparency of how the state apparatus functions, which in turn favours the creation of a civil society that holds power accountable, increases.

The World Bank also points to the need for macroeconomic and sectoral reforms that will result in increased marketisation while reducing fiscalism. It should be mentioned here that the actions are aimed at reducing barriers, especially customs, in international trade and thus stimulating free-market competition. Going forward, the World Bank recommends limiting price controls and limiting subsidies for economic entities by the state. This should be introduced with the simultaneous privatisation of hitherto state-owned sectors. It should be noted that these guidelines correspond to the general political assumptions held by the World Bank's policy and have therefore undergone various criticisms. The overwhelming desire to limit barriers to the free market, in the context of perceiving corruption as a phenomenon related to the "struggle for access to resources" (Soreide, 2014), seems understandable. Critical voices, however, point out that such a policy is nothing more than an interference in the economic policies of states, imposed as the only legitimate, liberal lens (Polzer, 2001). However, such argumentation does not seem to apply to the World Bank guidelines themselves regarding the problem of corruption, but rather is a criticism that the Bank provides assistance according to the criteria imposed by it (Dobrowolski, 2001). In its aid projects, the World Bank requires borrowers to abide by public procurement rules, competitiveness, and transparency. In this respect, the goal is to increase the competence of beneficiaries. Some assistance programs are also oriented directly towards anti-corruption projects. Such as implemented taking into consideration the Bank's experience with operations in countries with a weak, inefficient administrative apparatus. This indicates that in such countries the political will to fight corruption is often focused only on selective action.

What's more, it is also unstable. As time goes by, political enthusiasm drops. In addition, the economic resources of countries with a weak administrative apparatus are usually insufficient. The implementation of anti-corruption measures in them therefore requires a long period of time (Fjeldstad & Isaksen, 2008).

Fiscal policy is another key aspect in limiting opportunities for corrupt behaviour. The factors that create the possibility of their occurrence, according to the World Bank, is the lack of comprehensive supervision over tax administration. This is especially facilitated by the complexity of tax systems. As a result, this leads to an increased spectrum of discretion in the activities of tax officials (Martinez-Vasquez *et al.*, 2007). The effects of this state of affairs are all the more severe the more politicised public officials responsible for the range and collection of taxes are. The World Bank's recommendations speak first of all about the need to increase the level of ethical fiscal administration. This should be done in particular through educational activities such as trainings and conferences aimed at developing a uniform model of behaviour towards taxpayers. In post-communist countries such as Poland, it also seems particularly important to promote ethical behaviour among citizens themselves. It should be noted that the oppressiveness of totalitarian regimes naturally established social resistance to the administrative apparatus. Thus, the behaviour of "cheating" officials of the hated state was widely regarded as something done by "decent men" for decades. Submission to authority could be construed as collaborating with the authorities. At the same time, it should be pointed out that the heritage of the communist system based on the apparatus of the police state was the creation of specific social capital (Zybertowicz, 2002, p. 174); a large part of the ruling class functioning after the fall of communism (understood as an undemocratic economic, social, and political system) was entangled in informal arrangements having their roots in a bygone era, and resulting from the activities of special services and their agents.

The secretiveness of these connections made it more difficult to detect corrupt behaviour in such an environment. The World Bank clearly indicates that reducing the motivation to accept or provide undue benefits is directly related to increasing effective detection (Martinez-Vasquez *et al.*, 2007). It is the fear of revealing corrupt behaviour and punishing it that is the most effective disincentive against taking such actions. Impunity, on the other hand, is the driving force thereof. One of the most effective tools for combating corruption is to counteract the legalisation of benefits obtained through corrupt activities. In particular, the World Bank mentions the obligatory submission of declarations of assets by persons holding public functions. For example, an experience, presented as a model for fighting corruption, and in the unfavourable historical and social conditions of Hong Kong, indicates that this requirement should be developed for family members of a given official. It significantly impedes camouflaging the reception of undue funds that are transferred to family members. The public disclosure of property declarations allows us to examine changes in the property status of persons discharging public functions and, therefore, to check whether those are not the result of bribery. The roles of not only state institutions appointed to prosecute crimes but also the media or non-governmental organisations are important. Indeed, independent public opinion may raise doubts as to the veracity of the official's statements or even force the indication of the origin of the revenues obtained. An important caveat is that the media itself should be financially independent and thus not subject to political influence (Senior, 2006). The experience of the World Bank clearly shows that a great problem in the fight against corruption is the tendency of the justice system to apply a protective umbrella over persons performing public functions and accused of corruption (Martinez-Vasquez *et al.*, 2007). As a result, the income statement for an official who faces a corrupt offer is such that, with the low likelihood of incurring severe criminal liability, and if ethical dilemmas are rejected, it pays to accept such an offer. The results of analyses

carried out under the auspices of the World Bank clearly show that the changes described above in how the administration of the state functions should go hand in hand with severe punishment for corrupt acts. There is, after all, no discrepancy between preventive solutions and those related to the execution of criminal liability.

The experience of the World Bank clearly shows that the fight against corruption is essential for the proper social and economic development of countries. Without it, one should expect that corruption will gradually decompose state structures and replace them with various informal structures of mutual connections and dependencies between persons performing public functions and groups of influence. At the same time, the macroeconomic stability of the economy will be systematically affected by the loss of income from tax receivables (The World Bank, 1997, p. 18). What's more, without fighting against corruption, it is impossible to control state expenditures, because they will be wasted and will not be directed towards set goals. This also applies to foreign investments. In microeconomic terms, corruption raises the costs of running a business and therefore inhibits competitiveness and the scope of investment by firms. Ultimately, the World Bank's analyses show unequivocally that the poorest social strata are the most affected by the effects of corruption. They are excluded from access to public services because the costs associated with the need to pay even small bribes are unsustainable in the long term.

Combating corruption: the Polish perspective after 1989

With reference to the above, it seems appropriate to look from the perspective of more than 25 years of Polish transformation whether the instruments for combating corruption recommended by the World Bank seem feasible in our country. While there has been a significant change in the functioning of the economy, it is still doubtful whether the criteria of "good governance" and

the postulated solutions to limit corruption are met. It should be noted that the World Bank's guidelines concerning corruption underline justice and the rule of law as the core remedy for the phenomenon of corruption. As Emilia Justyna Powell observes: "Many academic studies [...] underestimate the role of courts, prosecutors and law enforcement agencies in preventing and combating corruption. Factors such as economic development, corruption culture, political system and fundamental freedoms certainly have a significant impact on the level of bribery, however, minimising or disregarding the role of prosecution and law in general is a misunderstanding" (Powell, 2007, p. 30). In this context, one cannot fail to identify the weakness of Polish criminal policy. The numbers are telling: as of the time of writing 91 amendments have been made to the Penal Code of 1997.¹³ Along with the astonishing number of 133 amendments that have been made so far to the Code of Criminal Procedure,¹⁴ including one temporarily changing the model of the Polish criminal process in general, those testify to a persistent instability and, consequently, handicaps with regard to prosecuting crime. If crimes of corruption are brought to light, the excessive length of criminal proceedings would be a big problem. For example, according to the statistics of "Length of court proceedings (its efficiency) from the date of first registration to the date of validation of the case in the first instance (including the length of mediation) in district courts in selected categories of cases in the first half of 2017",¹⁵ out of 2,812 criminal cases, as many as 728 lasted for more than six months. This is just over a quarter of all cases. Of those, 149 criminal cases lasted

between 12 months and 2 years, 40 between two and three years, 36 between three and five years, and 38 between five and eight years. There were also 36 cases that lasted longer than eight years. Most notable, however, is the gentleness with which Polish courts treat those accused of corruption. In the case of conviction, the most common sentence is imprisonment with a conditional suspension of execution thereof. For example, between 2012 and 2014 such a penalty was given in 88% to 90% of judgments.¹⁶ This trend has been constant over the years. As one can see, the real shortcoming in the case of convicting people for corruption is only illusory. Thus, in rejecting moral imperatives, taking into account only one's profits and losses, committing such offenses is, in principle, profitable in Poland. In the scope of the existing Polish legal regulations, it should also be stated that there is a lot of resistance from some professional circles performing public functions against a broad disclosure of submitting declarations of assets. What is more, the heterogeneity of regulations in this area and their complexity effectively hinder the actual criminal liability of persons making false property declarations. In addition, the design of the provision of Art. 233 para. 1 k.k. (penal code) providing for the penalisation of such an act requires proving intentionality (Marek, 2007, p. 441), which is problematic, given the above-mentioned complexity of regulations and heterogeneity of case law. In practice, this allows the perpetrator to evade any criminal liability by adopting as a defence the assertion of inadvertently submitting a false property declaration. A particular weakness in Poland is the lack of meritocracy, understood as a model of governing a state in which clear rules of functioning prevail, and, above all, to a minimal extent, there are politically motivated nominations, not in terms of professionalism (Sutch, 1999). A dramatic discontinuity in civil service legislation could especially serve as an illustration of such a state, which should be just

¹³ <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970880553>, accessed on 28.4.2018.

¹⁴ <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970880553>, accessed on 28.4.2018.

¹⁵ Ministry of Justice, Basic information on the activities of common courts – the first half of 2017 against the background of previous statistical periods, Warsaw 2017, typescript of studies in the possession of the author, p. 23.

¹⁶ https://cba.gov.pl/ftp/pdf/Mapa_Korupcji_2014.pdf, accessed on 28.4.2018.

a guarantee of the professionalism and impartiality of the highest state officials. Only the first act on this matter, after 1989, was the Act dated 5 July 1996.¹⁷ It reactivated the civil service, created an apolitical idea of the Civil Service Council, three recruitment and HR committees, and the organ of the Civil Service Head, together with the Office of the Civil Service. However, above all it set out the institutional framework for creating an apolitical state apparatus. But just two years later a completely new law on the civil service, dated 18 December 1998, came into effect.¹⁸ That law diametrically changed the previously accepted solutions in the subjective scope of the concept. It also allowed for an exceptional competitive admission for non-civil servants. The next law, dated 24 August 2006,¹⁹ together with a law on the state's staffing pool, made an unprecedented trimming of the civil service corps. It also liquidated the Office of the Head of the Civil Service and the body of the Head of the Civil Service. By 21 November 2008, the Sejm [the Polish parliament] had passed yet another law on the civil service,²⁰ which was to a great degree a repetition of solutions from 1998. However, the restoration of the Office of the Head of the Civil Service was abandoned, replaced by the Chancellery of the Prime Minister. In turn, the latest amendment to the Civil Service Act, which entered into force on 23 January 2016,²¹ made fundamental changes in the principles of employment in higher positions of the civil service. It also liquidated the Civil Service Council, creating in its place the Public Service Council. It is not difficult to notice that the above-mentioned changes corresponded with changes in Poland's political scene and were even a result thereof. This is proof of the instrumental treatment of the Civil Service by governmental authorities. An even more significant example of how the attempt to create an apolitical and professional state apparatus

is lacking, in another key sector of the country, are the constant changes in managerial positions in the special services. The most important²² Polish civilian special service, nowadays called the Internal Security Agency, and previously the State Protection Office, had as many as 18 heads between 1990 and 2015.²³ This momentous fact does not seem to require a wider commentary. The aforementioned lack of meritocracy results, to a large extent, from the totalitarian legacy of communism, in which the state apparatus was identical with the party. Moreover, it is compounded by the lack of systematically coming to terms with the past era and making it impossible for the representatives of the old nomenclature to function in public space. At the very beginning of the creation of the Third Republic the democratic system was perverted by sanctioning the gigantic advantage of post-communist parties in the organisational and financial sectors. This problem was presented in detail and analyzed by Antoni Dudek in the book *Reglamentowana rewolucja* [Regulated revolution]. (Dudek, 2004). In particular, leaving property to these groups at the beginning put them in a privileged position in relation to the newly formed post-Solidarity groups. This clearly undermined the basic requirement of democracy, which is equal opportunity to take part in the political scene (Krasowski, 2012, p. 347). If we add the omnipotence of the former communist secret services, the most striking example of which was the Foreign Debt Service Fund (Cenckiewicz, 2011, p. 351 *et seq.*), or the activities of the Military Information Services as described in the Verification Commission report,²⁴ for Władimir Bukowski an especially

²² Because of counterintelligence competences.

²³ <https://www.abw.gov.pl/pl/o-abw/kierownictwo/278,BYLI-SZEFOWIE-UOP-I-ABW.html>, accessed on 28.4.2018.

²⁴ Report on the activities of soldiers and employees of the WSI and military organisational units carrying out tasks in the field of intelligence and military counter-intelligence before the entry into force of the Act dated 9 July 2003 on the Military Information Services in the scope specified in Art. 67 para. 1 items 1–10 of the Act dated 9 June 2006 "Provisions introducing the Act on the Military

¹⁷ Dz. U. 1996.89.402.

¹⁸ Dz. U. 1999.49.483.

¹⁹ Dz. U. 2006.170.1218.

²⁰ Dz. U. 2008.227.1505.

²¹ Dz. U. 2016 item 34.

accurately definition of the political system in Poland after 1989 was “kleptocracy” (Bukowski, 1999, p. 688). It is a system in which the political and economic elites to a large extent turn out to be an old nomenclature, having overwhelming control over the instruments of socio-economic life. At the same time, as Wojciech Roszkowski remarks, “Recovered freedom caused [...] numerous problems. Most of society, accustomed to various limitations, was not ready to accept those that resulted from the principles of social co-existence, treating those as a result of persecution by individuals or groups of opposite beliefs. In the ideological confusion, the hierarchy of values was mixed, often denying it at all” (Roszkowski, 2017, p. 508). James Dawson and Sean Henley, in their article “Poland Was Never as Democratic as It Looked”, published in the pages of *Foreign Policy*,²⁵ point to the facade of Polish democracy stemming from the lack of democratic ideas really taking root in Polish society. With reference to the recommendations of the World Bank, in this context one should count on a generational change that will make possible the implementation of the rules of “good governance” and the fight against corruption, distant from the baggage of the PRL era. One of the key conclusions resulting from the experience of the World Bank is the need for patience and persistence in the systemic implementation of changes.

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- ²⁵ <http://foreignpolicy.com/2017/01/03/poland-was-never-as-democratic-as-it-looked-law-and-justice-hungary-orban/>, accessed on 28.4.2018.
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