

## **Fighting against corruption**

The Citizens Network Watchdog Poland is a civic organization whose statutory goals include protecting access to public information and preventing corruption. Our organization has been active for 20 years, and since 2006 it has continuously monitored compliance with the law on access to public information, while on the issue of corruption, cooperating with other social organizations in Poland and abroad.

We identify the following issues worth considering when working on anti-corruption policies.

Central to anti-corruption efforts is the right to information - which provides a viable means for both citizens and journalists to scrutinize public authorities. In Poland, there has been a consistent decline in the effectiveness of judicial protection of the right to information in recent years. Over the years, public institutions have found methods to protract responses to requests, with the result that a single case can result in several proceedings in a row, which take a total of several years. Even if the case ends favorably for the applicant, the information obtained years later loses its relevance.

There is no real sanction for intentionally using procedures to avoid openness. Theoretically, there is a criminal article, but practically it is not effective (1). Sometimes a fine is possible, which the taxpayer pays anyway (2). There is also a lack of analysis of how transparently the state operates and how the law is implemented since no obligation to collect and analyze data has been introduced in Polish law. Administrative courts, which are responsible for protecting the right to information, mainly deal with procedural issues due to the nature of their work. There is a great lack of an entity on the public side, which referred to the impact that the right to information has on the public sphere, the prevention of corruption, and freedom of speech. Indeed, the courts extremely rarely refer to Article 19 of the International Covenant on Political and Civil Rights, and Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. There is also a lack of systemic education in public institutions regarding the importance and responsibility for transparent actions and for making information available (3). As a result, it is more common to see training for administrations on how not to share information than how to do so (4).

One of the recurring international recommendations - UNESCO, UNCAC - is to establish independent national monitoring of the implementation of the right to information (5). Governments should allow an independent oversight body with the political and financial autonomy needed to fulfill its role of monitoring and supporting the right to information at all levels, and supporting all public bodies in enforcing laws and inspiring good practices.

We see from the example of Poland and UNCAC reporting, as well as the actions taken under the UPR, that these actions are ineffective - they do not promote greater transparency and do not counteract corruption. Despite the UPR government's assertion that all is well in the areas in question, numerous problems are not signaled or resolved.

### **UPR (UNIVERSAL PERIODIC REVIEW)**

The Watchdog Poland Civic Network participated in the UPR (6). In the UPR system, recommendations and their implementation at the national level are key. Analyzing the recommendations made during the third cycle, we see that many of them have not been implemented, despite declarations and assurances, from the government side. This can be seen especially in topics related to the rule of law, the separation of powers, and the independence of the judiciary. Such a soft evaluation system is effective for countries that take the recommendations seriously and see them as an opportunity to improve their rights protection system. For countries that do not respect the rule of law - and thus contribute to creating the conditions for corruption such a system will not work. Enforcement measures are needed.

### **UNCAC**

Analyzing Poland's self-assessment document from the second review of the cycle, the answers are given, that emerge from it, are at odds with observable practice, especially on the issues of transparency of governance, access to information, and civil society involvement. Polish society is not actively encouraged to participate in consultations. Despite its great potential, this mechanism does not work for a country like Poland for the time being.

Anti-corruption is fostered by the transparency of institutions and individuals, which can be ensured by mechanisms for the proactive publication of information. We recommend at the EU and individual member state level that authorities publish as much information as possible.

### **CONTRACT REGISTERS**

Public contract registries are found in many countries around the world. A clear trend is to maintain such registries in the form of central contract registries. Central contract registries have been in effect successfully for years in the Czech Republic (available at <https://smlouvy.gov.cz/>) or the Slovak Republic (available at <https://www.crz.gov.sk/>). We discuss the Czech registry in more detail. The contract registry (ISRS) was introduced in the Czech Republic by a law adopted on November 24, 2015, which became effective on July 1, 2016. The law consists of 10 articles and takes up 3.5 pages. The solution was modeled on the Slovak law, in effect since 2010. Unlike the Polish proposal, the law makes it mandatory to publish civil law contracts and contracts for grants or financial assistance in the register if one of the parties to the contract is the Czech Republic, a local government unit (including legal entities in which a local government unit participates), a state-subsidized organization, a state fund, a public research institution or a public university, etc., and the value of the contract exceeds the amount of CZK 50,000 (excluding VAT), or about EUR 2,000. The Ministry of the Interior is the body that maintains the register. Contracts are also published in the Czech register. The law says that publication consists of posting the content of the contract in the form of a computer-processable file, as well as metadata containing at least

the identification of the counterparties, the definition of the subject of the contract, the price/value of the contract and the date of the contract. If the price is a trade secret, it may not be published. Personal data should be anonymized before the contract is placed in the registry. For the first year of the law, the time to publish a concluded contract in the registry was 30 days from the date it was concluded. Since July 1, 2017, a contract is not effective until it is published in the registry, except for emergencies. In practice, the registry is maintained in the form of a website at <https://smlouvy.gov.cz>. Obligated entities post contracts via a form or mailbox, in the form of an XML file (metadata), and the content of contracts as attachments in the form of a doc, rtf, odt, or pdf file. The system allows automatic posting by external applications, for example, accounting programs.

The website is built in such a way that each contract is given an identifier, that is, it is always available in the form of a unique web address, for example,

<https://smlouvy.gov.cz/smlouva/17992219> Parties to a contract are marked with an IČO number (equivalent to REGON) in the form of a link, allowing easy access to browse all contracts to which a particular entity is a party, e.g. [https://smlouvy.gov.cz/vyhledavani?party\\_idnum=04308697](https://smlouvy.gov.cz/vyhledavani?party_idnum=04308697). In addition, the search engine allows you to search for contracts by detailed parameters including date, subject of the contract, value, words occurring in the contract's content, etc., and export the results to an xlsx (excel) file. At the end of 2020, the registry contained more than 3 million contracts with a total value of more than 15 trillion crowns. Access to contracts in the form of a centralized dataset allows various institutions or organizations to analyze this data from different angles. For example, the website <https://www.hlidacstatu.cz/k-index>, among other things, evaluates individual entities in terms of what percentage of the contracts they post have hidden prices. The comparator on this site also allows you to search for the entities with the most contracts, with the highest sum of value

### **INFORMATION ON EXPENSES RELATED TO BUSINESS TRIPS**

information on expenses related to delegations - a good example is the information published by individual EU Commissioners, this type of data should be published for all persons holding public office. A good example would be the solution currently in place at the level of the European Commission. On the websites dedicated to individual commissioners, we can check their expenses related to the events they attended and the places they visited. From the point of view of anti-corruption, this knowledge allows public representatives, for example, to check whether commissioners are using their travels for party campaigns in a given country, thus not contributing to the illegal use of funds during elections.

### **PUBLICATION OF CALENDARS OF ORGANS OF POWER AND OFFICIALS**

One of the measures that can counter corruption can be the publication of calendars of officials and people in exposed positions. Citizens cannot be condemned to official announcements and knowledge at the level of statements "Last month the President of the Court/Minister/Mayor held one meeting with government officials." As a society, we should

be able to receive source knowledge of what government bodies are doing within the scope of their powers is legitimate in a democratic state of law, where citizens have the right to information. In Poland, the current system does not protect citizens' right to information in this regard.

An example is the case of our association. Our association requested the calendars of Julia Przyłębskaya and Mariusz Muszyński, who were, at the time of the question, acting President and Vice President of the Constitutional Court, respectively. We asked about the period from January 1, 2017, to the date of the request - July 6, 2017. In the answer provided, we learned that these calendars do not constitute public information (i.e., information that can be made available to citizens under Polish law). Complaining about this response, the Watchdog Polska Civic Network pointed out to the Provincial Administrative Court that the response was a violation of Article 10 of the European Convention on Human Rights. We argued that knowledge of the actions of those deciding on the Constitutional Court's moves and potentially having frequent contacts with the ruling party are important from the point of view of social control, preservation of the tripartite division of power, but also possible political corruption. We also handed over a printout of one of the press reports confirming potential contacts of the authorities exceeding the standards that should apply in a democratic state of law. The court disagreed with our view, and we, therefore, snuck the case to the Supreme Administrative Court, which ruled: *The requested calendar (schedule) of meetings of persons holding certain functions at the Court does not relate to the public form of the Court's activities and, as such, does not contain public information. At most, it is an office tool, a working tool, or an auxiliary tool, supporting the organization of the body's work, serving only indirectly the body's performance of public tasks.* The case was referred by us to the ECHR and was communicated to Poland in September 2021.

## **UNIFICATION AND ESTABLISHMENT OF AN ELECTRONIC ASSET DECLARATION SYSTEM**

We recommend creating a unified and transparent system of asset declarations at the national level, as well as at the European level. At the moment in Poland, different institutions have different models for asset declarations. Some public officials fill them out manually, others electronically. There is a lack of a system in which the quality of the data, its consistency, and the possibility of comparison are guaranteed, especially when politicians move from the national to the European system.

## **DATA ON TENDERS**

Experience with the publication of such data from other countries indicates that access to high-quality, reusable information makes it possible to monitor the awarding of public contracts and agreements to signal corruption risks. In the examples of foreign solutions we have analyzed, among others, tools are being developed that automatically, through the use of algorithms and aggregation of data from other sources - for example, company registers

with the composition of the board of directors - signal contracts with a higher risk of corruption. While the risk itself does not yet indicate corruption, documents flagged in this way can be verified, for example, by experts, as well as by competitors themselves, who have the knowledge necessary for the assessment and are directly interested in equal access to labor, the ability to perform orders or services in corruption-free conditions. The Hungarian Red Flags project ([redflags.eu](http://redflags.eu)) can serve as an example.

Social organizations in Poland are also using existing registries to monitor possible irregularities. An example of this is the My State, which runs the portals:

- Tenders.guru monitoring public procurement enabling you to see who is winning public tenders and seeking contracts,
- Rejestr.io presents up-to-date data on companies, foundations, and associations, including personal links between members of the bodies, to increase certainty and openness in business,
- ktoile.pl illustrating state aid to entrepreneurs in Poland.

## **REGISTER OF ACTUAL BENEFICIARIES**

The decision of the Court of Justice of the European Union on registers of real beneficiaries has cast a shadow over the fight against corruption. Open registries contribute to fighting tax fraud and improving integrity in public procurement. They are o important in combating natural resource crimes and improving governance in the extractive industries. The European Commission should find new solutions to ensure that registries of real beneficiaries across the European Union are once again available to the public.

(1) Case description

<https://informacjapubliczna.org/news/co-grozi-dyrektorze-przedszkola-za-nieudostepnienie-informacji-publicznej-i-zniszczenie-skargi-na-bezczynnosc/>

(2) <https://informacjapubliczna.org/news/w-jakich-warunkach-mozna-domagac-sie-wymierzenia-organowi-grzywny-jak-ustalana-jest-jej-wysokosc-i-komu-jest-placona/>

(3) <https://www.rti-rating.org/country-detail/?country=Poland>

(4) [https://informacjapubliczna.org/wp-content/uploads/archive\\_files/files/2013\\_02\\_21\\_173521\\_\(1\)\\_1xo9.jpg](https://informacjapubliczna.org/wp-content/uploads/archive_files/files/2013_02_21_173521_(1)_1xo9.jpg)

(5) <https://unesdoc.unesco.org/ark:/48223/pf0000377808?posInSet=5&queryId=b3865756-5277-4fdb-ad12-2c63c6e80179>

(6) <https://siecobywatelska.pl/watchdog-polands-submission-in-the-4th-cycle-of-the-universals-periodic-review/?lang=en>