

Corruption Risks in the Visegrad Countries

Visegrad Integrity System Study



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Hungary 2012

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Transparency International Hungary (TI-H) is the Hungarian chapter of Transparency International. As an independent professional organisation TI-H contributes to mitigating corruption, promoting transparency and accountability in the public sphere of decision making processes as well as in the allocation of public funds, in addition to improving the accessibility of public interest information. To achieve its goals party and campaign financing, public procurement, the protection of whistleblowers, judicial corruption, advocacy issues and the transparency mechanism in the business sector are in the focus of the activities.

Transparency International Slovakia (TI-SK) is a non-profit non-governmental organisation founded in 1998. TI-SK is among the 90 national branches of the worldwide movement against corruption Transparency International. TI-SK believes that corruption can be combated, in particular by increasing transparency and reducing bureaucracy. The anti-corruption strategy of TI-SK is based on a close dialogue with partners from the private sector, civil society and the public sector. TI-SK strives for cooperation with all relevant stakeholders in order to fulfil its aim which is to push for introduction and implementation of anti-corruption measures and to increase transparency in the public sector.

Institute of Public Affairs (IPA) is a leading Polish think tank and an independent centre for policy research and analysis, established in 1995. Its mission is to contribute to informed public debate on key Polish, European and global policy issues. Main areas of study include European policy, social policy, civil society, migration and development policy as well as law and democratic institutions. The IPA has a team of in-house researchers/policy analysts and an extensive network of associate experts from academia and other paths of life. IPA publishes the results of its projects in research reports, policy papers and books, which are broadly disseminated among members of parliament, government officials and civil servants, academics, journalists and civil society activists.

Transparency International – Czech Republic (TI-CZ) is an independent non-governmental, non-profit organisation with the mission to determine the scope of corruption in the Czech Republic. Its activities are directed to making an active contribution to curbing corruption. Among the main areas of focus belong public procurement, civil service, political parties financing, judiciary, whistleblowers protection or issues concerning conflicts of interest or non-transparent public finance management. TI-CZ is one of more than 90 branches of Transparency International, the international organisation.

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ABBREVIATIONS

CIVICUS CSI – Civil Society Index
CPI – Corruption Perception Index
CSO – Civil Society Organisation
CZK – Czech Crown
EMB – Electoral Management Body
EU – European Union
EUR – Euro
Fidesz – Alliance of Young Democrats–Hungarian Civic Union
HUF – Hungarian Forint
IMF – International Monetary Fund
Jobbik – Movement for a Better Hungary
KDNP – Christian Democratic People’s Party
LMP – Politics can be Different
MP – Member of the Parliament
MSZP – Hungarian Socialist Party
MTI – Hungarian National News Agency
NEO – National Election Office
NEC – National Election Committee
NGO – Non-Governmental Organisation
NIK – Supreme Audit Institution in Poland
NIS – National Integrity System
NJO – National Judicial Office
NMHH – National Media and Infocommunications Authority
ODIHR – Office for Democratic Institution and Human Rights
OSCE – Organization for Security and Co-operation in Europe
PBO – Public Benefit Organisation
PLN – Polish Złoty
RPO – Ombudsman in Poland
SAO – Supreme Audit Office (State Audit Office in Hungary)
SDKÚ – Slovak Democratic and Christian Union
SMER – Direction – Social Democracy
TI – Transparency International
VAT – Value added tax
V4 – Visegrad Four Countries (Czech Republic, Hungary, Poland and Slovakia)

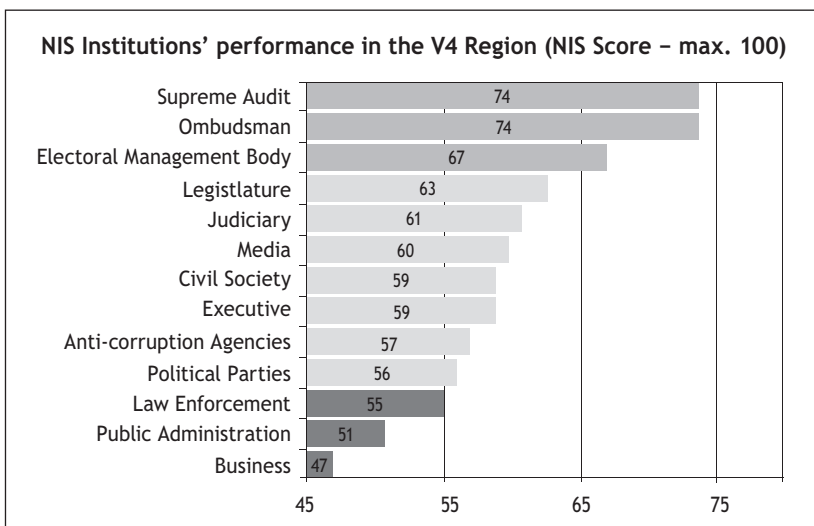
1. EXECUTIVE SUMMARY

This report focuses on the four Visegrad countries' – Czech Republic, Hungary, Poland and Slovakia – National Integrity Systems (NIS), by analysing key institutions important in preventing and fighting against corruption. The study highlights the major weaknesses and strengths, as well as the alarming and best practices in each country's anti-corruption system. Another goal of this analysis is to draw the four national integrity systems closer to each other and capture some important similarities as well as differences in the Visegrad Four (V4) region.

The National Integrity System assessment approach provides a framework for analysing the robustness and effectiveness of a country's institutions in preventing and fighting corruption. The NIS was developed by Transparency International (TI) as part of its holistic approach to countering corruption. The NIS identified 13 "pillars" or institutions that effectively contribute to a well-functioning integrity system of the country, to safeguard against corruption. When the NIS institutions are characterized by appropriate regulations and behavior that is accountable, corruption is less likely to thrive, with positive knock-on effects for the goals of good governance, the rule of law and the protection of fundamental human rights. Strengthening the NIS promotes better governance across all aspects of society and, ultimately, contributes to a more just society overall. While the NIS is a qualitative assessment, numerical scores (between 0 and 100) are assigned to help summarize the information and interpret key weaknesses and strengths of the integrity system in a clear way.

If we see the V4 region as a whole, business in the private sector, public administration, and law enforcement can be identified as the weakest institutions of the integrity system. The average scores of pillars such as legislature, judiciary, media civil society, executive, anti-corruption agencies, and political parties suggest a rather moderate performance. Institutions, fulfilling watchdog functions such as supreme audit office, ombudsman, and the electoral management body, help most to promote integrity in the V4 region.¹

1 See Annex for a more detailed scoring overview.



However when we dig deeper in the NIS assessments, consider important changes since the NIS reports were finalised in the late 2011, and the institutions' weight and significance in the whole NIS system, a country-by-country analysis provides us with a more nuanced picture.

Weakest Institutions

Business is the weakest institution in Poland and Hungary and prosecution proved to be especially weak in the Czech Republic and Slovakia. While in Hungary we can find several examples when corrupt interest groups are able to capture the state, in Poland the relationship is typically opposite. Here, rather the state captures the business. In the Czech Republic and Slovakia prosecution is vulnerable to direct political influence. In both countries the hierarchical organisational structure of prosecution also contributes to a non-transparent operation.

Alarming Practices

Several alarming practices in the V4 region showed common patterns that affect more than one institution in the NIS system. One of the most important findings is that an adequate legal framework cannot provide sufficient protection against doubtful individual or organisational behavior in these post-communist countries. Integrity and honest behavior do not automatically follow along the well-designed formal framework. Too much political influence over institutions and over-politicised public administration also seem to be a common and serious deficiency among V4 countries. Party financing is another critical issue in the region that has a significant negative impact on the integrity system.

Strongest Institutions

The Ombudsman and the Supreme Audit Office (SAO) are among the strongest institutions in all four countries. SAO is especially important in the fight against corruption because this institution accumulated substantial know-how together with practical and academic knowledge concerning corrupt practices. A high quality work force in Supreme Audit

Offices is a key strength of these watchdog institutions. Non-state institutions, especially media and civil society, are key anti-corruption actors because for corrupt interest groups it is much harder to influence and control them than state institutions.

Best Practices

Assessing the best practices the authors of this report conclude that an adequate formal framework is not always enough for an institution's success. Personal qualities such as leadership, honesty or courage may also be key factors. Cooperation between the media and the civil society, especially non-governmental organisations (NGO) and nonprofit foundations proved to be one of the best practices in the V4 region. Technology also plays a crucial role in the fight against corruption. New Internet related innovations, websites and data analysing techniques significantly improve the effectiveness of several different NIS institutions. Not surprisingly while too much political influence is a contributing factor to alarming practices, institutional independence is a crucial factor in best practice cases.

After a short introduction and outline of methodology the following chapters of this report provide a more detailed assessment of the weaknesses, strengths, and alarming and best practices in each country.

Headline Recommendations

- Reduce the political influence over independent institutions such as the public sector, prosecution, and judiciary
- Create a new, effective, transparent party and campaign financing regulation
- Strengthen the transparency in public procurement
- Provide more impartial internet based procedures and reduce the corruption risks derived from permit and licence requests
- Reduce the civil sector's dependence on public funding and EU resources
- Give more authority to the Supreme Audit Institutions to conduct deeper investigations in party financing and ability to sanction parties violating the law

2. INTRODUCTION

After the external constraint of the Soviet dominance and its uniform totalitarian institutions disappeared in the early 1990s the concept of a coherent Central Eastern Europe (CEE) became less adequate.² It turned out that the socio-cultural, historical and economic backgrounds of the societies in the region are rather different. But despite this obvious variability there seems to be a consensus that, for analytical reasons, clustering the four Visegrad Countries (V4), Czech Republic, Hungary, Poland, and Slovakia against two other post-communist sub-regions – the Baltic States and South-Eastern Europe – is completely legitimate.³ In 1991, before the disintegration of Czechoslovakia, the Visegrad Three (V3) countries established formal sub-regional groupings with a common agenda that mainly emphasized political cooperation for the strategic goals of European Union (EU) and NATO membership.⁴ In 1993, Czechoslovakia split into the Czech Republic and Slovakia and the V3 Group became V4.

Beyond this formal collaboration the countries in the region also followed similar institution development paths. For example, during the 1990s, compared with other Central and Eastern European nations, V4 countries substantially reformed their pension systems, unemployment insurance and health services.⁵ They also created new democratic institutions and legal frameworks at an early stage and – during the accession process – made efforts to harmonize them with the EU's equivalent institutions.

As the chart shows below, V4 countries are more consolidated democracies than the other Central and Eastern European societies and with their average Democracy Index Scores are closer to Western Europe.⁶ ⁷ Until the EU accession in 2004 the V4 countries also showed common economic paths and became deeply integrated into the European economic system.

2 Illner, M. (1996) Post-Communist Transformation Revisited. *Czech Sociological Review*, 4: 157–169.

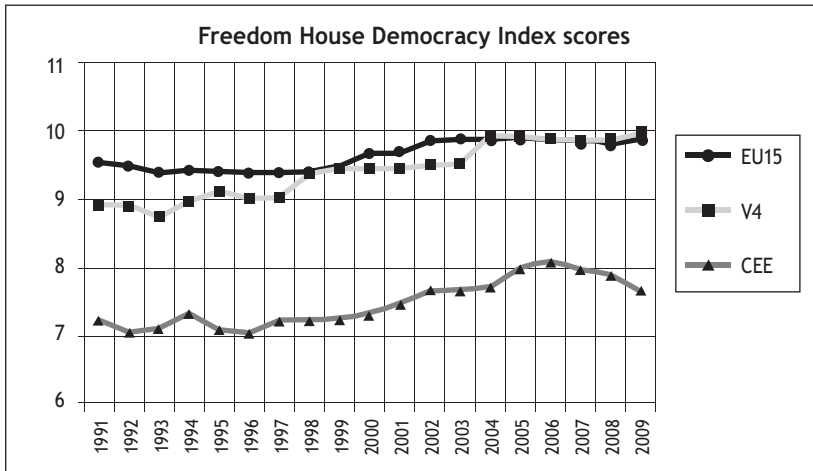
3 Cerami, A., & Vanhuyse, P. (2009) Introduction: Social Policy Pathways, Twenty Years after the Fall of the Bertin Wall. In A. Cerami & P. Vanhuyse (Eds.), *Post-Communist Welfare Pathways: Theorizing Social Policy Transformations in Central and Eastern Europe* (pp. 1–17): Palgrave Macmillan.

4 Dangerfield, M. (2008) The Visegrád Group in the Expanded European Union: From Pre-accession to Post-accession Cooperation. *East European Politics and Societies*, 22: 630–667.

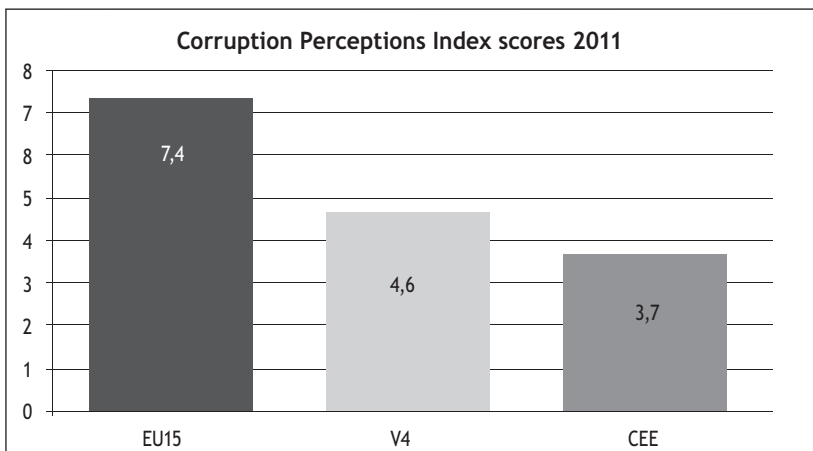
5 Inglot, T. (2005) From Theory to Practice: Lessons of Post-communist Social Policy Reforms in Central Europe. In M. Cain, N. Gelazis & T. Inglot (Eds.), *Fighting Poverty and Reforming Social Security: What Can Post-Soviet States Learn from the New Democracies of Central Europe?* (pp. 3–10): Washington DC: Woodrow Wilson International Center for Scholars.

6 EU15 category contains countries that were EU member states before the “big bang” enlargement in 2004: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and UK. The CEE countries are: Albania, Belarus, Bosnia Herzegovina, Bulgaria, Croatia, Estonia, Latvia, Lithuania, Moldova, Romania, Slovenia, and Ukraine.

7 Data source: Teorell, Jan, Marcus Samanni, Sören Holmberg and Bo Rothstein. 2012. *The Quality of Government Basic Dataset* made from the QoG Standard Dataset version 6Apr11. University of Gothenburg: The Quality of Government Institute, <http://www.qog.pol.gu.se>.



While V4 countries have some common achievements they show similar deficiencies as well. For example, the World Bank governance data indicates that V4 countries fall below the 75th percentile for control of corruption, and 3 of the 4 states experienced a backslide in the last 5 years. Moreover, the results of the Eurobarometer survey suggest that about 87% of citizens in the region agree that corruption is a major problem in their country. Although the average Corruption Perceptions Index (CPI) index of the V4 countries is somewhat higher than the Central Eastern European mean score, the region lagged far behind the EU 15 member states. During the accession process the EU had a lot of influence over the candidates who were eager to accomplish all requirements in order to get into the “club.” However this “stick and carrot” approach, that worked well before the EU had many members, proved to be less powerful after new countries joined the Union. Some scholars agree that we witness significant setbacks in many areas in the region because there are no effective tools to influence countries that are already members of the EU.^{8 9}



8 Dimitrova, A. (2007) Institutionalisation of Imported Rules in the European Union’s New Member States: Bringing Politics Back in the Research Agenda. European University Institute.
 9 Vachudova, M. A. (2009) Corruption and Compliance in the EU’s Post-Communist Members and Candidates. Journal of Common Market Studies, 47: 43–62.

Despite many similarities we can also find variability within the region. For example, while the V4 countries were more or less homogeneous in their economic development paths during the first fifteen years of the transition, after the EU accession each country started to follow different economic strategies. The global economic crisis also triggered different policy responses and political movements in the region.¹⁰ Integrity and anti-corruption policies are often short-lived since initiatives announced by one government are usually terminated by successor political formations. It is not because such programs are not effective but because political considerations almost always override rational ones in the V4 region. These zigzags do not allow longer-term programs that may contribute to deeper structural changes in the institutional systems.

The main goal of this report is to draw the four national integrity systems closer to each other. This study captures some important similarities as well as differences in the V4 region by analysing key institutions important in preventing and fighting corruption.

10 <http://www.visegradgroup.eu/other-articles/divergence-in-economic> [accessed 13 June 2012]

3. METHODOLOGY AND RESEARCH STRATEGY

I. THE METHODOLOGY OF THE NIS

The National Integrity System assessment approach provides a framework for analysing the robustness and effectiveness of a country’s institutions in preventing and fighting corruption. The NIS identified 13 “pillars” or institutions that effectively contribute to a well-functioning integrity system of the country and safeguard against corruption. These institutions can be classified into three main categories Government, Public Sector, and Non-governmental institutions.

Government	Public sector	Non-governmental
Legislature	Public Administration	Media
Executive	Law Enforcement Agencies	Civil Society
Judiciary	(Prosecution) ¹¹	Political Parties
	Supreme Audit Institution	Business
	Electoral Management Body	
	Ombudsman	
	Anti-corruption Agencies	

Each of these 13 institutions is assessed along three dimensions that are essential to its ability to prevent corruption. First, its overall capacity in terms of resources and legal status, which underlies any effective institutional performance. Second, its internal governance regulations and practices, focusing on whether the institution is transparent, accountable and acts with integrity, all crucial elements in preventing the institution from engaging in corruption. Thirdly, the extent to which the institution fulfills its assigned role in the anti-corruption system, such as providing effective oversight of the government (for the legislature) or prosecuting corruption cases (for the law enforcement agencies). Each dimension is measured by a common set of indicators. The assessment examines the legal framework as well as the actual institutional practice, thereby highlighting discrepancies between the formal provisions and reality on the ground.

The NIS assessment is a qualitative research tool based on a combination of different types of data, such as national legislation, secondary reports, academic research, and in-depth interviews with key actors. A final process of external validation and engagement with stakeholders ensures that the findings are as relevant and accurate as possible.

The NIS is a flexible tool and TI allows enough room for the methodology to be adapted to local conditions. For example, in Hungary and Poland prosecution authorities are treated as part of the “Law Enforcement Agencies” institution while in the Czech and Slovak NIS studies the “Prosecution Service” stands alone as a separate pillar.

For a more comprehensive description and assessment of the national integrity systems of the V4 countries, readers should consult the NIS reports published by TI’s national chapters in the Czech Republic, Hungary, Poland, and Slovakia.

11 In the Czech and Slovak NIS studies Prosecution is assessed as a pillar separated from the Law Enforcement Agencies.

II. THE METHODOLOGY OF THE VISEGRAD INTEGRITY SYSTEM

The main sources of this analysis were the National Integrity System reports of the V4 countries that provide an overall evaluation of each country's institutions in preventing and fighting corruption. These are turbulent times in the V4 region, and this analysis tried to capture the significant changes that have already happened since the NIS reports were finalised in late 2011. Therefore the researchers of this study, all experts of their own country, enjoyed relative freedom to choose and interpret the most important and relevant issues from the national integrity assessments. This report does not automatically follow the quantitative scoring system of NIS studies. For example, institutions selected as weakest or strongest ones were not necessarily pillars with the highest or lowest NIS scores because the researchers considered their relative weight in preventing and fighting corruption. The authors also analysed the most recent cases in the V4 region when they identified the weakest and strongest institutions.

On one hand, we synthesised the main findings of the 4 countries' NIS assessments, but on the other hand, we tried to emphasise common problems and achievements as well as alarming and best practices especially relevant in the V4 region. The report also provides an overview of the most current tendencies in V4 countries.

4. THE DARK SIDE OF THE INTEGRITY SYSTEM

In this chapter we examine the poorly performing institutions and the bad practices in the region. The first section assesses the weakest NIS institutions using a country-by-country analysis. Here, the researchers identified two – in Slovakia three – institutions in each country they found particularly weak. Selecting these weakest institutions the analysts also considered the pillars’ importance and weight in the overall integrity system. Among the weakest institutions we can see key cross-country issues in the V4 region. For example, business is a common weak area in Poland and Hungary while prosecution proved to be especially weak in the Czech Republic and Slovakia.

Business is a common weak area in Poland and Hungary while prosecution proved to be especially weak in the Czech Republic and Slovakia.

Although private-private corruption (corrupt practices within and between business enterprises) exists in the V4 countries, significant corruption risks rather arise when state meets business. Business related corruption risks are especially high in Hungary and Poland. In Hungary we can find several grand corruption cases where powerful interest groups and national “minigarchs” are able to manipulate state laws and policies for their own benefits. Rent-generating cartels are typical in mega-projects such as large-scale motorway and bridge projects. As Hungarian examples suggest, corrupt economic cliques extract huge amounts of public money from the system through intentionally designed and professionally managed corrupt networks. In Poland the state-business relationship in corruption often works in the opposite direction. Here we can find several “state captures the business” cases when public officials extort bribes from business people or even seize private assets using illegal means such as blackmail.

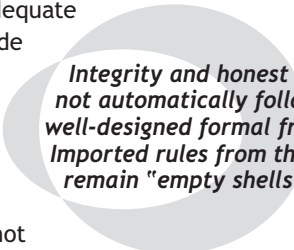
There are significant concerns about prosecution in the Czech Republic and Slovakia regarding the independence of the institution and internal integrity mechanisms. In both countries prosecution is vulnerable to direct political influence and its strictly hierarchical and non-transparent organisational structure raises questions about whether decisions about investigations are really non-partisan and objective.

Weakest Institutions in the V4 Region			
Czech R.	Public Administration	Prosecution	
Hungary	Political Parties	Business	
Poland	Civil society	Business	
Slovakia	Law Enforcement	Judiciary	Prosecution

The second section of this chapter analyses the alarming practices in the V4 region. Based on their national expertise the researchers identified practices that had significant negative impact on the integrity system. As we see in the assessment these practices typically proved to be beyond a single institution and influenced a broader range of the societal system. Bad practices typically cross more than one institution, suggesting that these weaknesses are more systemic.

Since the collapse of communism the V4 countries have developed a relatively strong legal and institutional framework. This progress was especially stimulated during the EU accession negotiations when the newcomers had to harmonise their regulations in order to meet with the EU's requirements. In several cases these institutions were simply formally copied versions, "empty shells" of their Western counterparts. However our findings suggest that the huge gap between law and practice is a common problem in the V4 region. This feature is especially striking in Slovakia where the lack of conformity between the formal rules and the actual practices are widespread in several institutions. The NIS scoring overview for the V4 region also suggests that five institutions have an implementation gap, difference between law and practice, 20 points or more (Annex). These pillars are law enforcement, business sector, executive and the judiciary. Sometimes formally adapted rules are not just disregarded but entirely reversed. Hungary provides some striking examples of the significant changes in pre-accession institutions by dominant political actors.

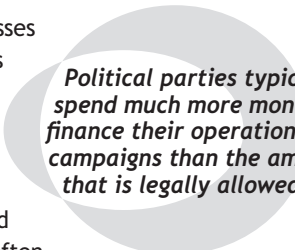
The main lesson of this analysis is that an adequate legal framework does not necessarily provide sufficient protection against doubtful individual or organisational behaviors. Integrity and honest action do not automatically follow along the well-designed formal framework. Imported rules often remain "empty shells". Professionally created institutions alone are not able to change illicit political culture. Real institutionalisation of the formal framework happens when the rules are followed by supporting culture, social norms and values.



Integrity and honest action do not automatically follow along the well-designed formal framework. Imported rules from the EU often remain "empty shells".

The general lack of transparency in the V4 region is a good example of how law and practice are far from each other. For example, in all countries adequate legal frameworks require high level public officials, political parties, public institutions, and state owned companies to submit declarations of assets, incomes, gifts, and conflicts of interest. In reality, the majority of the provided information is superficial or simply false. As examples in the following chapters suggest, such cases are rarely investigated or sanctioned in the region.

Party financing is also a key area where significant weaknesses can be found in the region. Dominant political parties typically spend much more money to finance their operation and campaigns than the amount that is legally allowed. Here, not only are the practices illicit but the legal framework related to party and campaign financing proved to be particularly weak, mainly because "grand coalitions" among otherwise opposition political parties often sabotage attempts to create a transparent party financing system with adequate monitoring, controlling and sanctioning mechanisms.



Political parties typically spend much more money to finance their operation and campaigns than the amount that is legally allowed.

Too much political influence over institutions is also a common problem in the V4 region. As the Czech and Hungarian cases suggest, public administrations in both countries are especially vulnerable to political parties and politicians. Politicians often control personal

decisions in the bureaucracies. Meritocratic recruitment, predictable, long-term career prospects, and impersonal professionalism – conditions associated with competent, purposive, and efficient state administrations and general economic growth¹² – do not prevail in the administrations. The tendency that new governments fire a significant portion of public servants and replace them with party loyalists significantly increases the chance of short-term opportunistic behavior among public employees. However political interest does not always use informal ways or weak regulations to influence independent institutions. Hungary provides an example of political influence when the government openly strengthened its control over formerly autonomous spheres of social life by simply using its two-thirds legislative power.

Too much political influence over institutions is a common problem in the V4 region

I. WEAK JUSTICE AND DODGY BUSINESS IN POST-COMMUNIST COUNTRIES

Czech Republic: Public Administration & Prosecution

The four weakest institutions identified by the Czech National Integrity Study are the Public Prosecution (40 points), the Public Sector (42 points), the Police (43 points) and Political Parties (47 points). Together, these pillars hold decision-making power over public expenditures, determine rules that regulate the functioning of state institutions and initiate proceedings against those who act in detriment to the public interest. This section looks at the institutions that received the lowest overall rating. The key weakness they both share is too much political influence over their staff, both in procedural terms and in terms of job-security. This results in a state of collective irresponsibility and, in the case of public administration, a low level of professional competence.

This section looks at the functioning of ministries and other state institutions with a national scope of authority, responsible for preparing draft legislation, implementation of adopted legislation, making decisions concerning public procurement, and managing state property and a large part of state subsidies.

The Czech Republic has sufficient resources for the public administration to carry out its duties, as well as enough qualified human resources. The public administration actually seems to employ more staff than necessary¹³ and offers salaries that, on average (CZK 35,341 in 2010, approximately EUR 1,400), exceed the average wages in both the business (CZK 23,873) and non-business sectors (CZK 24,289, approximately EUR 1,000).¹⁴

Despite sufficient resources, the public administration is not able to attract, educate and retain competent employees, especially in top-level positions. Rather than encouraging professional expertise and independence, the system is supportive of a high level of employee turnover and loyalty to politicians.


12 Evans, P., & Rauch, J. E. (1999) Bureaucracy and Growth: A Cross-National Analysis of the Effects of "Weberian" State Structures on Economic Growth. *American Sociological Review*, 64: 748–765.

13 Interview with a former employee of the abolished General Directorate of State Administration.

14 Public online database of the Czech Statistical Office, see also <http://www.denik.cz/ekonomika/prumerny-plat-ve-statni-sprave-loni-klesl-o--korun.html> [accessed 18 May 2012]

One reason is the absence of rules for employee selection and career advancement.¹⁵ The relation between most public employees and the state continues to be governed by the general Labour Code. The Labour Code provides relatively good protection against political interference to ordinary employees, who can be dismissed only on the grounds to lawful reasons. This protection, however, is compromised by two factors. Firstly, managerial staff have a significant leeway in rewarding employees through appraisal-related pay (which may reach up to 100% of the wage rate) and through one-off bonus payments. Secondly, the enforcement of public servants' liability for damages or unlawful conduct depends on political discretion. A survey from 2009 reveals that in the majority of cases, public administration employees are not being held accountable for decisions that were not made in compliance with the law.¹⁶

The vulnerability of ordinary employees to political pressures is aggravated by the fact that nearly all officials who supervise a team (from heads of sections and divisions to heads of individual departments) are appointed by politicians. These officials can also be arbitrarily removed by those who appointed them.



Ordinary public employees are vulnerable to political pressures in the Czech Republic

The result is that the public administration operates well in sections where there is sufficient political will and performs poorly whenever there is a lack of it. Furthermore, inadequately qualified public employees make the public administration a weaker partner in negotiations with the private sector. This leads to a tendency to resort to formalism or to refusing responsibility for the exercise of public authority and outsourcing important decisions outside the public administration instead.¹⁷

Deficient legislation in other areas allows effective exploitation of the public administration's vulnerability. Specifically, the existing legal framework allows the conclusion of public contracts with companies that have anonymous shareholders and does not offer strong enough safeguards against conflicts of interests. As a result, a small number of anonymously held companies with markedly high profits¹⁸ regularly acquire some 8 billion CZK each year, accounting for approximately 1.2% of all public procurement.¹⁹ The opportunities created by existing legal loopholes and strong political affinity of high-ranking public servants subsequently creates a strong bottom-up pressure on political parties, which become avenues for the covert advancement of vested interests.

The Czech National Integrity Study saw it as instrumental to split the institution of Justice into two, dealing separately with the courts of justice and public prosecution. One reason was the radically different performance of each institution (as a separate item, the public prosecution received the lowest rating of all); another was the fact that public prosecution is formally part of the executive.

15 A Civil Service Act was adopted in April 2002, but after 4 postponements, it has still not entered into full force.

16 Černý P. and Karolina Klanicová: Klientelistický nebo právní stát? Ekologický právní servis, Praha, 2010. p. 22–23.

17 The public company Lesy ČR, for example, hires an external law firm despite the fact that it has its own legal department; see <http://www.otevrete.cz/hodnoceni-uradu/soutez-otevreno-zavreno/archiv-souteze/2010/> [accessed 18 May 2012]. Another area where this appears to be a common practice are public procurements.

18 See <http://zpravy.ihned.cz/c1-52709790-anonymni-firmy-zavratne-vydelavaji-ze-statnich-zakazek-tezi-zisk-az-70-procent> [accessed 18 May 2012]

19 See http://magazin.ceskenoviny.cz/zpravy/zindex-anonymni-firmy-loni-ziskaly-z-verejnych-tendru-8-mld-kc/639131&id_seznam=25272 [accessed 18 May 2012]

The public prosecution service's key role is to represent public interest in criminal proceedings. Individual public prosecutors have the duty to prosecute all criminal offences which they become aware of, without differentiation. Unlike courts of justice and judges, it cannot rely on the Constitution nor adequate legislation to guarantee its full independence. Public prosecution's vulnerability to political interference appears to be an important reason why no serious corruption case resulted in a verdict during the past two decades.

The public prosecutors' remuneration system is based on fixed salaries. In terms of organisational structure, public prosecution is organised hierarchically in a manner similar to the state administration. The Prosecutor General is appointed by the government at the suggestion of the Minister of Justice. On his/her suggestion, the Prosecutor General may also be removed by the government without an explicit reason. The Minister, in collaboration with the Prosecutor General, has the subsequent authority to remove officials at the lower echelons of the public prosecution service, provided this is justified by a serious breach of duties. In practice, changes in politically appointed personnel at the ministry level are frequently followed by the removal of public prosecutors from office. Changes of this sort cast doubt over the independence of public prosecution even in situations when the dismissal seems to be completely justified, such as in the case of former Prosecutor General Vesecká.²⁰

Apart from such external interferences coming from the executive, a former Deputy Prosecutor General noted that the independence of individual prosecutors is compromised by the possibility given to senior public prosecutors to issue binding instructions to their subordinates with regard to individual cases. Unlike in the case of judges, senior officials also have the authority to withdraw cases from specific public prosecutors. An instrumental use of this prerogative has been well documented in the case of former deputy Prime Minister Čunek.²¹

The system discourages prosecutors from acting independently even when they are entitled to do so. Many prefer to have a written approval from their superiors for every step taken in a court proceeding, especially when it comes to high-profile and politically sensitive cases.²² The result is a system characterised by collective irresponsibility. A similar behaviour in the police is also encouraged by public prosecutors who tolerate – in contradiction to the law – that its “preliminary investigation” takes many months and that the case can later be shelved without written documentation of all the steps taken, which is required by law.²³

Partial paralysis of public prosecution means that cues or actual investigations carried out by the media, law enforcement agencies or the Supreme Audit Authority are either not followed or do not result in indictments and sentencing of the offenders.

20 See http://zpravy.idnes.cz/vlada-odvolala-nejvyssi-zalobkyni-veseckou-nahradi-ji-pavel-zeman-10e-/domaci.aspx?c=A101027_141026_domaci_js [accessed 18 May 2012]

21 See press release of 17 August 2011: <http://portal.justice.cz/nsz/hlavni.aspx?j=39&o=29&k=2716&d=318040> [accessed 18 May 2012]

22 Interview with Jaroslav Fenyk.

23 Interview with Jaroslav Fenyk. Also see opinion of Transparency International – Česká republika on the police investigation of criminal complaint of 18 October 2010: <http://old.transparency.cz/pdf/2010-10-18-stanovisko-policie-ukladaniAA.pdf> [accessed 18 May 2012]

Hungary: Political Parties & Business

It seems to be a consensus among academics, think tanks, advocacy groups, the press and ordinary citizens that political parties embody a major corruption risk in Hungary. In many cases of weak NIS pillars the relatively strong and adequate legal framework is not followed by appropriate actual institutional practice. In the case of political parties not only the practices are problematic but also the regulations related to party and campaign financing proved to be inadequate.

Although the 1997 electoral law limited the spending amount per candidate to HUF 1 million (approximately EUR 3,400) the law did not include strict sanctions against violators. However it is obvious that the parties need much more money to finance their operations and campaigns than the amount that is legally allowed. During election campaigns media and NGOs usually monitor the party spending and try to estimate the real expenses based on the market price of the advertisements. According to *kepmutas.hu*, a website estimating the 2010 campaign expenses based on real market prices, the two strongest political parties, MSZP (The Hungarian Socialist Party) and Fidesz (Alliance of Young Democrats-Hungarian Civic Union), spent on average three times more than their legal spending ceiling.

Political parties are not forced by law to audit their accounts and submit their financial reports in the format that meets EU's double bookkeeping standards. Party treasurers are not legally responsible for their party's reports. External control and monitoring mechanisms are also weak. Although parties must present their financial reports to the State Audit Office (SAO), the SAO has no effective tool to investigate the reports comprehensively and is lacking of sufficient power to sanction parties violating the law.

Between 1994 and 2010 the Hungarian political arena was dominated by two equally powerful opponent political parties, the centre-right Fidesz, and the socialist party (MSZP). By the late 1990s the fierce rivalry between these two parties led to strong political polarization in Hungary.²⁴ This polarization significantly eroded the quality of democracy in Hungary. The over-politicised atmosphere had crucial impact on the public administration, judiciary, police, media and people's every-day life, even at the workplace and family levels.²⁵ After each election a significant portion of professional administrative staff at public institutions are fired, even at lower managerial levels, and are replaced with party loyalists.²⁶

In the April 2010 parliamentary elections, the Fidesz, and its junior partner, the Christian Democratic People's Party (KDNP) won a two-thirds majority in the National Assembly that allowed the coalition to amend the constitution. This has radically changed the balance of power in Hungary, allowing a concentration of political power unprecedented during the last 20 years since the fall of communism. So far it seems that the coalition is using its majority to deteriorate the democratic institutions rather than increase the

24 http://www.sgi-network.org/pdf/SGI11_Hungary.pdf [accessed 21 April 2012].

25 Meyer-Sahling, J. (2006) The Institutionalization of Political Discretion in Post-communist Civil Service Systems: The Case of Hungary. *Public Administration*, 84: 693-716.

26 Jancsics, D. (2006) Amikor a Leviatán éjjeliőrnek képzelet magát: Az állami adminisztráció ma. In G. Nikolett and J. Liska (Eds.), *Magyar Árok és Napfény Ország – fiatal értelmiségiek a ma és a jövő Magyarorszájáról* (pp. 237-265): Budapest: Gondolat

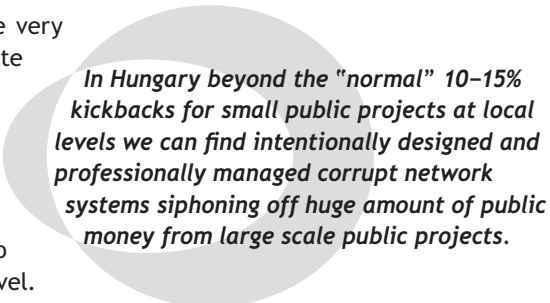
integrity and effectiveness of them. The new government was criticised for changing the Constitution without genuine public consultation to strengthen political control over the media, weaken the independence of the courts and decrease the labour protections of civil servants.^{27 28 29}

When it comes to business, Hungary has made important progress in the simplification and unification of regulations on company registration and authorisation. For example, founding a new company requires only four days and involves minimal costs; an impressive record even by international standards.³⁰ The tax system for companies, including the corporate income tax, was also simplified in 2010 making the operation easier and tax evasion more difficult.³¹ The standards and regulations of financial auditing are especially strict.

Despite these obvious achievements some other areas are weakly regulated and controlled by authorities. Filing for bankruptcy and liquidation, for instance, take many months or years with high costs for companies. As an alternative response to these difficulties a special business model emerged in Hungary called “company cemeteries” driving companies out of the market using illicit means to avoid the costly bankruptcy and liquidation procedures.³²

The Hungarian business sector has an amorphous structure with very few dynamic – mostly multinational – companies using state of the art technology and in contrast to this a less effective and productive domestic sector dominated by small and micro-sized enterprises and more than a million self-employed.³³ Many of them chose the easier way and try to get a competitive advantage by paying bribes and kickbacks rather than by improving management and organisation or by innovating.

Business related corruption risks are very high in exchanges when the private sector meets with the public sector. Public procurement and permits from authorities are the most affected areas, particularly at the local governmental level. In addition to this public spending is also problematic at the national level. Beyond the “normal” 10–15% kickbacks for



In Hungary beyond the “normal” 10–15% kickbacks for small public projects at local levels we can find intentionally designed and professionally managed corrupt network systems siphoning off huge amount of public money from large scale public projects.

27 Opinion on the new Constitution of Hungary adopted by the Venice Commission at its 87th Plenary Session (Venice, June 17-18th, 2011) 102, 103 [hereafter Venice Commission Opinion] <http://www.venice.coe.int/docs/2011/CDL-AD%282011%29016-e.pdf> [accessed 20 June 2012]

28 http://www.nytimes.com/2011/04/19/world/europe/19iht-hungary19.html?_r=1 [accessed 20 June 2012].

29 <http://www.amnesty.org/en/library/asset/EUR27/006/2011/en/b528abb2-32a6-4615-858a-5eeff13f369f/eur270062011en> [accessed 20 June 2012].

30 World Bank Doing Business 2011 p. 168.

31 Taxation trends in the European Union (2010 edition) by the European Commission, see more details:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_structures/2010/ntl_release.pdf [accessed 10 July 2011]

32 Alexa, N., Rita Bárdos R., Szántó Z., and Tóth Istvan J. (2008) Corruption risks in the business sector - National Integrity System Country Study. Part two by TI Hungary. See more details: <http://www.transparency.hu/files/p/en/490/2625261448.pdf> [accessed 10 July 2011]

33 http://www.sgi-network.org/pdf/SGI11_Hungary.pdf [accessed 25 April 2012].

small public projects³⁴ at local levels we can find intentionally designed and professionally managed corrupt network systems siphoning off huge amount of public money from large scale public projects.³⁵ Here the “profit rate” of corrupt actors is probably much higher than the aforementioned 10–15%. Some interest groups are even able to influence the legislation in order to obtain monopolistic or rent-seeking positions.³⁶

There are only a few state owned and controlled companies in Hungary. However collusions between the state and the private sector are not rare. For example, the same few “national champion” private firms appear in almost all large scale infrastructure projects. Although Fidesz came to power in 2010 promising to end the era of dodgy deals that was typical in the previous Socialist administration the former Hungarian “minigarchs” have only been replaced with new ones. For example, investigative journalists revealed that one particular company whose owner is a former party treasurer of the current ruling party, has won public tenders with the eye-popping value of around 200 billion HUF (approximately 1 billion USD) since 2010.^{37 38}

Integrity mechanisms within the business sector are also poor. Whistleblower protection is inadequate.³⁹ Potential whistleblowers have to face stigmatisation and the high probability that nobody wants to hire them again. Therefore the typical safety strategy among employees is “better to keep silent about the misbehaviour of colleagues or bosses.” Counter-integrity mechanisms at the corporate level such as an explicit code of ethics, anti-corruption training, and a compliance unit might be found only at multinational firms. Most medium size or smaller Hungarian companies do not pay attention to preventing corruption through integrity.

Slovakia: Police, Judiciary, & Prosecution

The section below provides an overview of the weakest institutions in Slovakia: the law enforcement (police), the prosecution and the judiciary. All three pillars belong to the lowest scored institutions in the Slovak national NIS report. Together they form a backbone for implementation of anti-corruption policies through institutions that represent law enforcement, prosecution and judicial review. Moreover, all institutions share common weaknesses, especially in the implementation of integrity mechanisms and accountability. Importantly, the latest political development in Slovakia impacts these pillars more profoundly than the others. A positive policy trend between 2010 and 2011, which was acknowledged in a NIS report on Slovakia and was reflected in scoring itself, may have been short-lived due to the early parliamentary election in March 2012. The wholesale alternation of the government left former proponents of reforms in prosecution, police and judiciary (Justice Minister Lucia Žitňanská and Interior Minister Daniel Lipšic) on opposition benches. Some of the policy initiatives that were announced

34 Ernst & Young Kft. and MKIK GVI (Integrity and corruption risks in the Hungarian corporate sector – 2010)

35 Jancsics, D. & Javor I (2012) Corrupt Governmental Networks. *International Public Management Journal* (15): 62–99

36 See Szántó, Z, Tóth István J., Varga Sz, & Cserpes T. (2010) Gazdasági érdekcsoportok, szabályozási kudarcok, járadékvadászat és korrupció. (Business interest groups, regulation failures, rent-seeking and corruption). CUB Corruption Research Center, Budapest and István János Tóth (ed.) (2010) : Szabályozási kudarcok, járadékvadászat és korrupciós kockázatok a magyar villamosenergia-szektorban. (Regulation failures, rent-seeking and corruption risks in the Hungarian electricity sector) CUB Corruption Research Center, Budapest.

37 <http://magyarnarancs.hu/belpol/kozgep-tul-a-200-milliardon-78425> [accessed 13 June 2012].

38 http://hvg.hu/hvgfriss/2012.27/201227_simicskaek_milliardjai_ceghajlatvaltozas [accessed 07 July 2012].

39 OECD Progress Report 2011. Enforcement of the OECD Anti-Bribery Convention, p.40

by the former government were halted completely, while those that were passed in 2010 and 2011 are left to be implemented by the new government⁴⁰, composed of only a single party, the Direction - Social Democracy (SMER). It was SMER, at the time the strongest opposition party, which strongly criticised the aforementioned reforms introduced by Mrs. Radičová's government. A lack of political and policy consensus in all three institutions may therefore result in a weak implementation of a recently introduced mechanism or, in a pessimistic scenario, in a complete reversal of policies that were introduced by the previous government.

Law enforcement in Slovakia has been undergoing permanent changes over recent years. The high level of personnel turnover, which is combined with lower standards for hiring, directly influences the overall performance of the Police Force in Slovakia. At the same time, the absence of relevant provisions in regard to the appointment and promotion of officials together with political interference have been the main threats in terms of independence. While the access to information on the Police Force activities improved over last decade, there are severe shortages in information about the policemen/women assets as these are disclosed only internally. A legal framework as such is designed in favour of accountability of the Police Force. However, the absence of an independent body dealing with complaints against the members of the Police Force does not allow for full control of the Force. The absence of post-employment restrictions and rules on gifts and hospitality is considered to be a serious loophole to the integrity of the legislative framework. At the same time, the absence of capacity building in the ethical rules and very weak integrity mechanisms in practice count for the most significant insufficiencies.

The prosecution remains the only institution in the Slovak constitutional system with an organisational scheme that has not changed since the communist era. The President on the proposal from parliament appoints the Prosecutor General. The institutional settings provide for a strictly hierarchical organisation, with unclear rules for the selection and promotion of individual prosecutors, whose independence is limited by an overpowering presence of the Office of General Prosecutor. Doubts about the non-partisan decisions in cases of top-rank politicians accused of criminal acts while in office, as well as the cases of political party financing that have not been prosecuted within the proper time or have not been prosecuted at all, are viewed as a sign of lack of prosecution independence.⁴¹

The public is lacking information on the work of the Prosecution, which also leads to a limited knowledge about its role and functions. Disclosure of assets by prosecutors is very formal and is not published.

40 In both judiciary and law enforcement complex mechanisms for performance evaluation were introduced in 2011, attempting to establish for the first time clear and measurable criteria that will allow for individual evaluation of judges and policemen.

41 In two most prominent cases, that targeted alleged illegal financing of two major parties, SDKÚ and SMER, the investigations were suspended due to "insufficient evidence". In 2004 a political watchdog Aliancia Fair Play filed a complaint with the police in a case of donors of ruling party SDKÚ. The Aliancia alleged, based on their investigation that several people listed as donors of the SDKÚ had never given money to the party. In a 2010 case that also involved SDKÚ the party was accused of money laundering, fictitious firms and tax-haven bank accounts by the then ruling party SMER. In the same year the daily SME published an audio recording, in which a voice resembling that of Mr. Fico, Chair of the SMER, talks about having secured funding for the party from undisclosed sponsors, bypassing its official accounts. Prosecutors discontinued both cases. For overview of both cases see: Slovak Spectator, Parties not charged, but doubts linger, 17 January 2011 available at: http://spectator.sme.sk/articles/view/41321/2/parties_not_charged_but_doubts_linger.html [accessed 19 May 2011]

The judiciary is the only constitutional power that did not undergo substantial personnel transformation after 1989. In a reaction to the turmoil period of 1990's, in which the executive and parliament repeatedly overstepped boundaries for the separation of powers and the government directly influenced judges' selection, the 2001 amendment strengthened the independence of the judiciary by allowing judges to serve for life and by establishing the Judicial Council, a self-governing body, to administer the majority of judicial affairs. The strengthening of the judiciary's independence in 2001 was not, however, intertwined with the introduction of transparency and accountability mechanisms, allowing for external control of the judiciary. The problems include various allegations of using disciplinary proceedings to target critical judges, allegations of nepotism in candidate selection for judges and the 2009 election of former Justice Minister Stefan Harabin (2006-09) directly to the position of Chief Justice of the Supreme Court in 2009. At the same time, the judiciary is considered to be the most distrusted institution in Slovakia (32% trust, 65% distrust)⁴², while also perceived as the most corrupt one.⁴³

All three institutions have considerable problems in the implementation of accountability and integrity mechanisms. Although legal frameworks exist in all of them the implementation is marred by various problems. In the judiciary for example, judges are subjected to disciplinary proceedings conducted by the Disciplinary Court that is elected by the Judicial Council. The practice provides repeated examples that disciplinary motions and subsequent proceedings were used

Accountability to the public in the Slovak law enforcement (police), the prosecution and the judiciary are limited by a longstanding bureaucratic culture

arbitrarily to intimidate judges that were publicly critical of the current state in the judiciary.⁴⁴ This not only undermines the consistency and fairness of decision-making by the disciplinary court and the Judicial Council, but potentially also the legitimacy of disciplinary proceedings and their perception by the general public. Accountability to the public in all three institutions is limited by a longstanding bureaucratic culture. In law enforcement, reporting on cases has been very selective with a tendency to inform on the serious cases and successes of the police. The situation is even more alarming with regard to the integrity mechanisms in practice. As the legislative framework on integrity is very vague in all three institutions, the strong implementation has to provide missing content. However, it does not. No independent bodies exist to review possible conflicts of interest and integrity issues of respective members, nor are there any initiatives from within that attempt to start a discussion about the need for integrity mechanisms.

Poland: Civil Society & Business

The weakest institutions of the Polish National Integrity System are civil society and business. It is important to note that although civil society is currently very weak it also has a huge potential in fighting corruption. We should underline however, that these

42 Standard Eurobarometer 74, 2010 National Report on Slovakia, available at: http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_sk_sk_nat.pdf [Accessed on 17 November 2011].

43 Global Corruption Barometer 2009, Full report, available at: <http://transparency.org/content/download/43788/701097> [accessed on 17 November 2011].

44 There are several cases documented, which followed this pattern. For individual cases see 2010 Human Rights Report: Slovakia, Bureau of Democracy, Human Rights, and Labor, U.S. State Department, available at: www.state.gov/documents/organization/160213.pdf, p. 5-8. [accessed on 17 November 2011]. Monitoring of some disciplinary cases is also available at: <http://www.sudcovia.sk/Konkr%C3%A9tne-pr%C3%ADpady/>, (in Slovak), by Society for Open Judiciary, [Accessed on 17 May 2012].

pillars have quite a wide meaning. They cover a relatively widespread and diverse part of society. This makes them different from other NIS pillars which were assessed and which were usually concrete public institutions (such as the Ombudsman, legislature or executive). Deficiencies in the areas of civil society and business in Poland have some common sources. These sources are the socio-political and socio-cultural foundations of Polish society.

In Poland, people are generally reluctant to associate, engage in philanthropic activities or undertake any action for the common cause. A characteristic feature of Polish politics is the lack of trust and alienation of the citizens, a significant part of whom refuse to accept the current shape of politics. The main indicator of this state of affairs is the traditionally low voter turnout, balancing between 40–55% in the case of parliamentary elections (from 1991 to 2011). The assessment of democracy in Poland is usually negative. Statements made by those surveyed in 2011 indicate that more than two fifths of the Poles (43%) positively assess the functioning of democracy in Poland, and half of them (50%) hold the opposite view. Political institutions in Poland are, to a great extent, alienated from the society. Political parties attract only a small fraction of the society and enjoy very little public trust.⁴⁵ There is also a low level individual civil activity in Poland.⁴⁶ Lack of faith in the integrity of public life is quite common.

Under these circumstances it is quite difficult for civil society and business to be important actors which would widely contribute to the national integrity system. Both NGOs and the private sector do not care much about the integrity of public life. There are very few civil society organisations which call themselves watchdogs. Most of them are Warsaw-based institutions which do not represent any wider society movement. The business sector is almost completely uninterested in supporting anti-corruption initiatives.

There is also a wider problem of cooperation between civil society organisations and business. Neither side trusts the other. Business is rather concentrated on “doing business”. Entrepreneurs, as well as ordinary people, do not want to support non-governmental institutions because of their bad image (for example, after some political corruption accusations, public opinion attaches a negative connotation to the word “foundation”⁴⁷), and their lack of financial transparency. Non-governmental organisations are regarded as a weak and dependent partner whose basic role is to provide legitimacy for image-building activities, whereas business partners are mostly looked upon as providers of funding⁴⁸. There have also been cases of companies ruined by the fiscal

45 European Social Survey 2010

46 European Social Survey 2010

47 Best known example is the case of the foundation led by the wife of Polish former president Aleksander Kwaśniewski. In 1996, just after Kwaśniewski had been elected, she sent a letter to voivods (centrally-appointed governor of a Polish province – voivodeship) asking them to select enterprises from their regions which could donate to her foundation. Later, in 2004, she refused to disclose sources of funding in front of a parliamentary committee of inquiry which was investigating corruption cases. This non-transparent behavior reinforced widespread opinion that foundations are agents of political corruption and they are not worth too much trust (<http://wiadomosci.ngo.pl/strona/80283.html>).

48 Giza Anna, Wygnański Jan., ‘Przyszłe wyzwania dla współpracy biznesu i organizacji pozarządowych’, [in:] *Odpowiedzialny Biznes w Polsce. Dobre praktyki*. Raport 2010, Responsible Business Forum: <http://odpowiedzialnybiznes.pl/pl/praktyka-csr/dobre-praktyki/raporty/raport-2010.html> [accessed 24.04.2011].

administration on finding their charity actions unconstitutional⁴⁹. All the abovementioned make it hard to initiate a fruitful cooperation of non-governmental organisations and enterprises, which could lead to the development of a culture of philanthropy as well as gaining more independence from the state which would make watchdog activities easier.

Polish entrepreneurs, as well as ordinary people, do not want to support non-governmental institutions because of their bad image and their lack of financial transparency.

Civil Society Organisations (CSO) find themselves much more comfortable when cooperating with local governments. As a result, they become more and more dependent on public funding. It makes them unreliable when it comes to watchdog activities. Furthermore, they do not care much about this kind of activity as they prefer to concentrate on carrying out the subsidiarity function which means their activities mainly cover topics connected with social policy.

The transparency of Polish civil society sector is also very weak. The scope of publicly available information about their activities and finances is very limited. Many organisations seem not to be aware of the importance of compliance with basic standards in this regard. The transparency of an organisation to a large extent depends on its good will.

Additionally, most non-governmental organisations do not have the resources to conduct professional activity. The average annual budget of an organisation is no more than 25 thousand EUR. That is why the civil society sector in Poland has very limited possibilities to attract professional staff. This is evident in the case of organisations dealing with the issues of corruption and anti-corruption policy, whose activities often require knowledge and expertise (e.g. in the field of law).⁵⁰

The legislative framework regulating business in Poland is not adequate. According to the World Bank *Doing Business 2011* report, which investigates whether the regulatory environment of the economy enhances or constrains business activity in 183 countries of the world, Poland was ranked 70th in terms of the overall "ease of doing business". It was ranked 113th for starting a business, and this process takes six procedures.

Enterprises are not free from external pressures. The World Bank *Incidence of Graft Index*, which shows the percentage of businesses expected to give gifts or pay informal payments during the application process for a specific administrative decision, indicates that entrepreneurs in Poland do encounter corruption in their dealings with various authorities. However, this does not happen frequently as only an average of 7.6% firms have encountered a situation in which a bribe was expected. This picture, however, will change if different

49 The most famous case was the case of Waldemar Gronowski, a baker from Legnica. He had been giving bread which he did not manage to sell to the poor. In 2004 he was awarded the title of Benefactor of The Year. After this he became a subject of fiscal controls which stated that his company hadn't been paying the VAT for products given to the charity. The company went bankrupt. This case became commonly known and symbolic when it comes to business charity activities as well as the administration's attitude to it (<http://legnica.naszemiasto.pl/artykuł/1057909,koniec-procesu-piekarza-z-legnicy,id,t.html#1569afceb10b02b1,1,3,5>).

50 Aleksandra Kobylińska, Grzegorz Makowski, Marek Solon-Lipiński (ed.), *Mechanizmy zapobiegania korupcji w Polsce* (Polish National Integrity System), Institute of Public Affairs, Warszawa 2012.

areas for bribe expectations are taken into account. For example, the corruption risks are much higher in the cases of securing public contracts and obtaining import licences.⁵¹

The other important issue about business in Poland is the “against-the-state” culture shared by a wide range of entrepreneurs. In Poland, the state and its agencies tend to be viewed by businesspeople in oppressive terms, as institutions which constrain business freedoms, whereas loyalty towards the state is not regarded as an ethical duty. Such an attitude has its underpinnings in the past and in the current, inefficient bureaucratic system. Since there is no confidence in the relations between the state and entrepreneurs, evading legal norms is not defined as unethical.⁵²

Another important issue connected with Polish business in the context of the standards enshrined in the legal regulations and codes of ethics is the model of the entrepreneur as it has developed historically. According to the researchers from the Business Ethics Centre, the major research centre dealing with this topic in Poland, the ethics of business is a mentality issue, owing to the prevalent view that businesspeople should strive for success irrespective of the ethical issues, while the ability to evade the regulations is viewed as a positive feature and proof of being smart and resourceful.⁵³

II. “EMPTY SHELL” INSTITUTIONS AND POLITICAL OVERWEIGHT UNDERMINE THE SYSTEM

Czech Republic: Conflict of Interests and Insufficient Transparency

A number of bad practices range across most institutions analysed by the Czech National Integrity study. The obstacles citizens encounter in acquiring information concerning the links between politicians or public officials and private companies as well as documents related to important decisions in the field of public investment seriously limit the exercise of public oversight. The break-through ruling of the Highest Administrative Court which recently declared salaries of public officials to be public information demonstrated the overall reluctance of the public sector to work in a transparent manner. Positive developments such as the above-mentioned ruling remain isolated, leaving a wide array of serious loopholes unaddressed.

A major weakness of the Czech National Integrity System is a patchy regulation of conflict of interests. The missing pieces have serious repercussions with respect to the financing of political parties, the effectiveness of public spending and the overall ability of the state administration to pursue the public interest. Lobbying remains completely unregulated and ethical codices are given little importance by the actors.

Existing legislation, including a stand-alone law on the conflict of interests, stipulates the incompatibility of certain offices and requires a relatively large pool of public officials

51 *Enterprise Surveys. Poland country profile 2009*, The World Bank, p. 13: <http://www.enterprisesurveys.org/documents/EnterpriseSurveys/Reports/Poland-2009.pdf>; Aleksandra Kobylińska, Grzegorz Makowski, Marek Solon-Lipiński (ed.), *Mechanizmy zapobiegania korupcji w Polsce* (Polish National Integrity System), Institute of Public Affairs, Warszawa 2012.

52 Aleksandra Kobylińska, Grzegorz Makowski, Marek Solon-Lipiński (ed.), *Mechanizmy zapobiegania korupcji w Polsce* (Polish National Integrity System), Institute of Public Affairs, Warszawa 2012.

53 Gasparski W., Lewicka -Strzalecka A., Rok B., Bał D., 'Portret polskiej etyki biznesu: fakty, oceny, propozycje', [in:] *Ku obywatelskiej rzeczpospolitej gospodarce*, eds. W.Gasparski, B. Rok, Wydawnictwo Poltex, Warsaw 2010, pp. 15–16.

to submit an annual declaration of assets. Members of the parliament and senators cannot simultaneously hold office in other constitutional bodies (e.g. courts of justice)⁵⁴ or be employed within the state administration. They may, however, serve as members of government, hold elected offices in regional or local administration bodies and sit in executive or control panels of government-owned companies. Public servants are barred from membership in executive or control panels of private companies and may engage in business activities only with express permission from their employer. Restrictions concerning members of government combine those applied to MPs and to public servants. Furthermore, members of parliament, senators, officials of elected executive bodies at all levels of administration as well as public officials in charge of funds above a certain volume (250,000 CZK), are required to submit an annual declaration of assets, any function held outside office, gifts, incomes and liabilities.

The restrictions and requirements listed above represent a mere framework of a comprehensive system for regulating conflict of interest, however. While it is not permissible to hold certain types of office simultaneously, their list is incomplete and there are no limitations on holding any of them consecutively. The result is a “revolving doors” phenomenon, where individuals seamlessly “transfer”, for example, from a private company to an influential position within the public administration and vice versa.⁵⁵ Furthermore, the executive boards of publicly owned companies often serve as a repository for ex-politicians, providing them with financial rewards reaching millions of CZK per annum⁵⁶ and indirect influence over the choice of suppliers.

The executive boards of publicly owned companies often serve as a repository for ex-politicians, providing them with financial rewards reaching millions of CZK per annum and indirect influence over the choice of suppliers.

The obligation to present annual declarations of assets fails to improve the situation for two reasons. Firstly, the declarations only monitor changes in assets, but do not record an overall sum of assets. Politicians whose assets appear to increase disproportionately can thus claim the income comes from sales of assets acquired prior to their term in office, a claim that is impossible to verify. Secondly, sanctions for not submitting the declaration or providing false information are very mild. An amendment to the law from 2008 made the sanctioning mechanism non-public and decreased the penalties.⁵⁷ Assets transferred to family members prior to entering office are also beyond the scope of the law.

54 For example, they may not hold a position in the Czech National Bank, the Supreme Audit Office, or the Council for Radio and TV Broadcasting. Also, they may not hold the office of the President or Ombudsman.

55 For example, Jiří Kittner (ODS) who served for many years as a mayor of Liberec, previously worked as an economic director of construction company Syner, and the ex-chairman of regional council of Liberec region Pavel Pavlík (ODS) joined a consulting company working for a subsidiary of Syner after leaving his office. Both companies had won a number of regional and municipal public contracts while these politicians held their offices. See <http://aktualne.centrum.cz/domaci/kauzu/clanek.phtml?id=630548> [accessed 18 May 2012].

56 The head of Prague Social Democrats (ČSSD) Petr Hulínský, for instance, has earned CZK 19 million from his membership in statutory bodies of municipal companies over a period of 3 years, in clear circumvention of the Act on Conflict of Interest. See http://www.lidovsky.cz/vynosna-opozice-sef-prazske-cssd-hulinsky-si-vydelal-19-milionu-pse-/ln_domov.asp?c=A101012_080644_ln_domov_pks [accessed 18 May 2012]. See also the explanatory report to the Parliamentary Print No. 994; <http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=994&CT1=0> [accessed 18 May 2012].

57 Compare StřetZ, s. 23 and the amendment No. 216/2008 Sb. It is curious that the amendment was introduced at the time when the Supreme Administrative Court was about to decide in the first case of such a nature, namely in the case of Senator and Deputy Prime Minister Čunek. See ruling NSS 7 As 19/2008 of 19 December 2008.

Three factors further aggravate the consequences of these deficiencies. Despite a recent amendment to the law on public procurement, the existing legal framework allows the conclusions of public contracts with companies that have anonymous shareholders. A recent analysis conducted by ZIndex, an independent NGO, showed that such companies service a significant portion of public procurements.⁵⁸ It is likely that some of these companies are covertly owned by politicians or public officials.

In sum, there are numerous ways in which politicians and public officials can conceal a conflict of interests. Given the weak regulation and even weaker exercise of control over political party financing, it is not surprising to see a similar pattern emerge in a number of corruption cases, where a political party provides access to public resources to an individual, who then uses the office to help fill party coffers, thus returning the favor.⁵⁹

While the past decade has seen some improvements with regard to the transparency of public institutions (notably within the police), there are important areas where inadequate legislation combined with lenient exercise of control allows the privatisation of public office and leads to significant financial losses. Especially problematic are the areas of political party financing, the operation of public administration bodies and, outside of public institutions, private company ownership structures.

Citizens may request information concerning the operation of public institutions on the basis of the Free Access to Information Act. In scope, it extends to nearly all public institutions: state administration bodies, the local self-administration, institutions handling state funds, the police, courts, as well as publicly-owned companies. Some institutions (the Ombudsman, the SAO) must abide by more extensive rules for publishing information. The Free Access to Information Act requires institutions to publish a volume of basic information on the internet. More importantly, it obliges them to provide nearly any piece of information on request and to make the already requested information available to the public. These provisions are respected only in part. Higher-level courts, for example, venture beyond their most basic legal obligations in publishing important data, but simultaneously ignore the obligation to publish information concerning their current and past budgets.⁶⁰

On an individual level, the transparency of personal motivations within political parties and public institutions is regulated by the Conflict of Interests Act, which requires a broad range of public officials to submit an annual declaration of assets, activities, gifts, incomes and liabilities. Stipulations of the law are largely respected, but relatively easy to side-step. Furthermore, the informative value of the declarations is limited, as they only cover the term of office period.

In practice, those who wish to obtain information concerning the public sector will discover that some data is relatively easy to obtain, while retrieving other information is

58 Skuhrovec, J.: Seznam společností s listinnými akciemi na majitele, které vyhrály veřejné zakázky mezi lety 2007 - 2010. ZIndex, 2011. Available on http://www.zindex.cz/data/listinne_akcie_na_majitele-2007-2010.xls [accessed 18 May 2012]

59 See http://zpravy.idnes.cz/sef-prazske-cssd-hulinsky-si-v-meststych-firmach-vydelal-19-milionu-1du-/domaci.aspx?c=A101012_114524_domaci_bar [accessed 18 May 2012]

60 In March 2011, when the websites were searched by the NIS researcher Petr Jansa, other courts' budgets were not available or they were not updated (there were budgets for 2005, 2007, etc.).

made difficult by administrative restrictions or overt obstructionist practices. The dividing line seems to correspond to a boundary beyond which the citizen turns from a passive consumer of public services into an agent of oversight.

Furthermore, as numerous corruption cases suggest, areas in which information is hard to obtain conspicuously correlate with those places within the system where corruption potential is the highest. In particular, these are information concerning financial management of institutions, remuneration of their staff, information on exercise of control and use of sanctions, or data/ on which important decisions (such as the awarding of public contracts) are based.⁶¹

The NGO Děti Země, for example, has been trying unsuccessfully for 3 years to obtain information on contracts concluded with law firms that provide legal services to the Ministry of Transport and to the Road and Motorway Directorate, including disputes over the access to information.⁶² The 15-days period for provision of information can thus stretch to several years.

Where remuneration of public employees is concerned, a recent verdict of the Supreme Administrative Court confirmed that their salaries constitute public information and fall outside the scope of the Protection of Personal Data Act. Numerous public institutions nevertheless refuse to respect the court's decision.⁶³ Furthermore, the Office for Personal Data Protection issued a statement where it recommends authorities to ignore the verdict,⁶⁴ and officials of the Ministry of the Interior even attempted to use a legislative rider to amend the Act on Free Access to Information to exempt the salaries of high-level public officials.

The private sector is important actor in the state institution system since it provides services and products for the state through public procurements. Despite some improvements introduced by its recent novelties, the Public Procurements Act still permits companies with anonymous owners and/or weak transparency standards to win public contracts. The marked success of such companies in becoming service providers⁶⁵ suggests the existence of secret links to public officials and politicians. Given the leniency of parliamentary members, committees as well as the responsible Tax Offices to exercise control over party financing⁶⁶ (whose regulation is rudimentary in any case), it is also likely that some of these profits serve to finance political parties.

Given the abovementioned deficiencies, it can be very difficult to obtain information on why a certain company has won a public contract, who are the company's real owners and whether the profits did not serve to illicitly sponsor of a political party or a specific candidate. It can be equally difficult to uncover clientelism within the public administration that aide such practices.

61 For example, the municipality of Prague classified several key documents regarding its controversial Open Card project, including tender documentation and an analysis concerning its compliance with law, thus preventing public oversight. See <http://www.otevrete.cz/hodnoceni-uradu/soutez-otevreno-zavreno/archiv-souteze/2010/nominace-zavreno-ucast-obcanu-na-rozhodovani-2010-282.html#3> [accessed 18 May 2012].

62 See <http://www.detizeme.cz/zprava.shtml?x=2288519> [accessed 18 May 2012]

63 See <http://aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=707086> [accessed 18 May 2012]

64 See opinion of ÚOÚÚ of 3 June 2011, <http://www.uouu.cz/uouu.aspx?menu=14&loc=328> [accessed 18 May 2012]

65 Skuhrovec, J.: Seznam společností s listinnými akciemi na majitele, které vyhrály veřejné zakázky mezi lety 2007 – 2010. *zindex*, 2011. Available on http://www.zindex.cz/data/listinne_akcie_na_majitele-2007-2010.xls [accessed 18 May 2012]

66 During the last 5 years, revenue authorities have not carried out a single inspection of bookkeeping of any parliamentary party.

Hungary: Excessive Political Overweight

The striking cases of the Hungarian media and judiciary suggest that neither democratic institutions nor the EU membership can be perfect guarantees against significant backward steps on progress made in the free press and the independent judiciary in a post-socialist society. Both cases provide important lessons about how political influence can erode the independence of relatively well functioning institutions in a democratic country. In these examples the Hungarian government used its two-thirds legislative power to strengthen its political control over formerly more independent spheres of the social life.

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Media is the fourth weakest institution in Hungary and also lags behind the other V4 countries' media institutions. Although during the 2000s community media service in Hungary was considered to be a good example of plural and vibrant media content, the current Freedom of Press 2012 report downgraded the status of press from "free" to "partly free". Freedom House commented on this change as a disturbing development in a well-established democracy.⁶⁷ The report claims that the main reasons of this decline were the new media legislation passed by the ruling coalition, the newly established and controversial National Agency for Data Protection, a politically motivated licensing procedure resulting in the loss of frequencies of the Klubradio, the popular radio station known for its anti-government political comments, increased reports of censorship and self-censorship especially in the public service channels and worsening economic conditions for independent media entrepreneurship.⁶⁸

The Fidesz-KDNP government's efforts to strengthen control over the media has generated strong domestic and international criticisms. The government, using its two-thirds majority, passed legislation in January 2011 that placed broadcast, print and online media under the strict supervision of a single authority, the National Media and Infocommunications Authority (NMHH) whose members were nominated entirely by the government.

The new law on media service and mass media (Act CLXXXV of 2010) required print and online media to register with the government and also forced journalists to expose the identity of their informant due to national security or public safety issues, though without clearly defining the scope of "national security or public safety issues." The new legislation also provides an opportunity to impose shockingly high fines on journalists and publishers for infringement. Such fines may even be high enough to make smaller or middle level providers go bankrupt.

On December 19, 2011, Hungary's Constitutional Court annulled some sections of the new media legislation, for example, the Court weakened the sanctioning power of the NMHH and deleted a provision limiting the confidentiality of journalists' sources to stories.

67 <http://www.freedomhouse.org/report/freedom-press/freedom-press-2012> [accessed 2 May 2012]

68 <http://www.freedomhouse.org/sites/default/files/Hungary%20draft.pdf> [accessed 20 June 2012].

Despite the positive decisions of the Constitutional Court the political influence over the Hungarian media remains obvious and worrisome. Since 2011 the government-funded Hungarian National News Agency (MTI) has acted as the official source for all public media news content. All news programs broadcast by public service television and radio stations use news and photos produced and edited by MTI. However the objectivity of MTI reporting is more than dubious. All recent analyses confirmed that the government coalition is over-represented in public service media.^{69 70 71 72}

The case of [átlatzszo.hu](http://atlatzszo.hu) (“transparent”) a website launched by investigative journalists in July 2011 is another example of how authorities influenced by political interests are attempting to curb the free press. The aim of the website was to promote transparency in the government. After a few weeks of the launch, the editor in chief of the website was interrogated by the organised crime division of the police after publishing documents about suspicious cases. Since the editor refused to reveal his source, the police threatened to charge him with perjury. The police also entered his home and seized a hard drive as evidence.⁷³

In Hungary, media has played a very important role in the fight against corruption. In recent years investigative journalists revealed several high-profile corrupt cases such as the case of György Hunvald, former MSZP MP and Socialist mayor of District VII, and the case of Miklós Hagyó, former Socialist deputy mayor of Budapest. The so-called Balatonring project in Sárvoly is also a good example of how the press could halt corrupt projects in Hungary while insider administrative controls failed to do so. Thus the current efforts of the government to weaken media independence are especially alarming.

During the political transition judicial independence and the judicial organisation for depoliticisation had symbolic importance as one of the most important values of the rule of law in Hungary. The judicial reform in 1997 provided strong organisational autonomy to the judicial system, further enhancing the separation of powers yet leaving the judicial administration relatively ineffective and non-transparent.⁷⁴ It was no doubt that Hungary’s legal system needed an overhaul. However, critics say, the new Fundamental Law introduced by the Fidesz–KDNP government in 2011 that has changed the constitutional regulations on the judiciary represents significant backward steps regarding judicial independence and depoliticisation.

The current changes in the judicial system were strongly criticised by the Venice Commission and the Council of Europe. According to the commission there is no other EU country that would have a judicial system as centralised as Hungary’s.^{75 76} The law on the judiciary created the National Judicial Office (NJO) and Tünde Handó, the former Vice President of the National Association of Labour Judges, a friend of the Prime Minister

69 http://index.hu/kultur/media/2010/12/10/ketharmados_fidesz-uralom_az_mtv-ben [accessed 20 June 2012].

70 <http://www.republikon.hu/news.php?id=141> [accessed 20 June 2012].

71 http://www.policysolutions.hu/hireink-olvas/_egyedulalkodo_a_fidesz_a_hiradokban [accessed 20 June 2012].

72 <http://nezopontintezet.hu/mufajok/mediamonitor/> [accessed 20 June 2012].

73 <http://www.freedomhouse.org/sites/default/files/Hungary%20draft.pdf> [accessed 20 June 2012].

74 *Fleck, Zoltán, Judicial independence in Hungary* In A. Seibert-Fohr (ed.), *Judicial Independence in Transition* (pp. 793–834): Berlin, Springer, 2011

75 http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=663 [accessed 20 June 2012].

76 <http://www.economist.com/node/21551100> [accessed 20 June 2012].

Viktor Orbán and his family and the wife of a prominent Fidesz MEP, has been appointed to be the head of the new authority for nine years. The law places unusually great power in the hands of the NJO top leader.⁷⁷

The government abruptly lowered the retirement age for judges from 70 to 62, forcing more than two hundred judges into early retirement. The head of the NJO has the sole power to move any sitting judge to a different court and pick judges personally to fill any judicial vacancy in both civilian and military courts as well as replacements for those just forced into retirement. The head of the NJO also has discretion to speed up cases with social importance or take cases out of the Budapest courts and move them anywhere else in the country they please. However the term social importance is not clearly defined by law. One of the nine cases that have just been moved out of Budapest to smaller towns based on this new regulation was the highest profile corruption case in the last few years involving the opposition socialist party. The main person accused in the case was former Budapest Deputy Mayor Miklós Hagyó, charged with embezzling hundreds of millions HUF. Transparency International Hungary commented on the practice of moving individual cases by the head of NJO as a negative precedent that may erode the independence of a court, increase corruption risks and significantly reduce the objectivity of the judicial system.⁷⁸

The Council of Europe is pressing Hungary to make changes to protect the independence of the judiciary and the news media. Although the Hungarian government proposed some changes at the time this chapter was being written the adaptation of such changes is pending and it is not clear how much the Hungarian government will modify these new controversial legislation.⁷⁹

Poland: Administration vs. Business & Access to Public Information

There are several cases in Poland when private businesses were intentionally ruined by administrative decisions. The most well-known example is the story of Roman Kluska. He was a founder and owner of the computer company Optimus. In 2000 he resigned and sold his shares in the company. He stated that the reasons for his decision included an atmosphere of intimidation, corruption and the impossibility of performing fair business in Poland. In 2002 he was accused of 30 million PLN VAT embezzlement by Optimus and spectacularly arrested. His property was seized as a financial provision. The day after Kluska was arrested, the local Military Command attempted the impounding of off-road vehicles belonging to him. In November 2003 the Supreme Administrative Court annulled all the decisions of the tax authorities. In later interviews Kluska argued that people who claimed to be representatives of a group with strong influence in the public administration were offering him to withdraw his share of the profits in exchange for impunity, both before and after he was arrested. Another infamous case of ambiguous provisions which led to the bankruptcy of a company is the case of another computer company – JTT. It was also accused of VAT fraud. After a few years these accusations were also annulled but it was too late to rescue the company.

77 <http://www.economist.com/blogs/easternapproaches/2012/01/latest-budapest> [accessed 20 June 2012].

78 http://www.transparency.hu/igazsagszolgalatas_kezi_vezerlesen [accessed 20 June 2012].

79 <http://www.parlament.hu/irom39/06393/06393.pdf> [accessed 20 June 2012].

These cases show that existing ambiguous law may be used directly to extort bribes from business or force it to behave in a certain way, for example donate to certain organisations or parties, or which do not support initiatives not wanted by groups with the ability to put such pressure on a business.

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Another problematic issue in the Polish integrity system is the role of public procurement. One of the main problems in reducing the risk of corruption by safeguarding integrity in public procurement is the lack of a mechanism for punishing dishonest operators. A breach of law during the performance of a contract with a public institution is very rarely an obstacle preventing such an operator from winning another contract. The Supreme Audit Office, in one of its reports on corruption, gives an example of the implementation of the National Programme for Fighting Cancer. The audit carried out in the years 2006–2008 showed that the work on developing the programme had been done by the same people who later decided about the purchase of equipment used for the implementation of the programme. Such practices result from consolidating private contacts with a view to creating a network of people who cooperate with one another in different arrangements, at different times, on different projects. The people who form such networks are valued as experienced experts and their services are sought for subsequent projects.⁸⁰

The important mechanism for ensuring civic oversight over government is the well-functioning law on access to public information. Without it, non-governmental organisations cannot effectively play their watchdog role. In Poland access to public information does exist although there are well-known cases where public authorities have refused to provide data or delay the procedures related to data sharing. An example is a refusal to provide information on a declaration by the government of Donald Tusk's project to create "an anticorruption shield". The request for information was submitted by an important Polish watchdog organisation – Association of Leaders of Local Civic Groups, along with other organisations as part of an Anti-Corruption Coalition of Non-Governmental Organisations.

Difficulties experienced by well known organisations facing the central bureaucratic apparatus, inclines one to think that access to public information for the average citizen often unaware of their rights, can be almost impossible.

Lack of access to public information was also an important issue in the latest "Salt scandal". Serious doubts about food safety in Poland have arisen as private TV investigators revealed that industrial salt (a by-product of calcium chloride production and containing dangerous carcinogens) was sold as an edible salt by big wholesalers. Industrial salt was added to various groceries (i.e. bakery products) and was predominantly used in the food industry. According to initial fact-findings at least three companies have been selling industrial salt for ten years, in quantities of 1000 tons per month. Normally

80 Aleksandra Kobylińska, Grzegorz Makowski, Marek Solon-Lipiński (ed.), *Mechanizmy zapobiegania korupcji w Polsce* (Polish National Integrity System), Institute of Public Affairs, Warszawa 2012.

such salt is used for de-icing of roads only and its consumption may pose a serious health hazard. Around 227,000 tons of products that contained industrial salt were withdrawn from the market. Despite an investigation in progress and several arrests being made, the government and the Prosecutors' Office have refused to reveal the names of companies using industrial salt. As a result, customers cannot make knowledge-based decisions regarding the purchase of industrial-salt-free products.⁸¹

A similar weakness in the execution of the right to access public information is demonstrated in yet another alarming situation. As revealed by one of the Polish weekly magazines⁸², the Prime Minister's Chancellery refused to disclose records of conversations between Prime Minister Donald Tusk and Vladimir Putin between 2009 and 2011. As grounds for this refusal, an Act on Protection of Undisclosed Information was cited, although a part of the records was not classified. Such information (i.e. stenographic records) could be useful in evaluating both Polish- and Russian- side involvement in elucidating the presidential airplane crash near Smolensk, Russia in 2010 that is hotly debated.

There are plenty of other examples of problems concerning access to public information. Additionally, last year the Polish parliament changed the Act on access to public information. The amendment, introduced by one of the senators of the ruling party, provides that the right to public information may now be restricted on account of the "protection of important economic interests of the state" in two situations: one, when this would hurt Poland's position during the negotiating of international or EU agreements and two, to protect the state's financial interests during the proceedings before courts or tribunals. This amendment provoked a great deal of controversy regarding its compliance with the Constitution. Finally, in April 2012, the Constitutional Court recognised this amendment as unconstitutional.

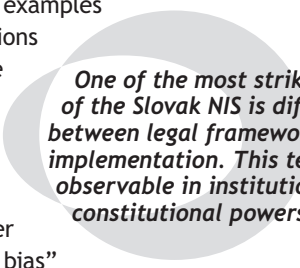
Slovakia: Gaps between Law and Practice

One of the most striking characteristics of the Slovak NIS is difference in scores between legal frameworks and their implementation. This tendency is especially observable in institutions that deal with constitutional powers: i.e. the parliament, the judiciary, and to a certain extent the government and political parties. It is a troubled implementation that has to be considered the worst practice in the Slovak integrity system.

The following sections provide individual examples of this practice and its various manifestations

in the national system. These manifestations range from a tendency toward legal formalism, in which rules are implemented narrowly without much consideration paid to the original intent of the legislation and to broader dimensions (societal or ethical), a "peer bias"

in which actors control themselves, which diminishes any intentions for objective control provided by legal regulations, to a limited administrative capacity of institutions created to control and sanction wrongful behavior.



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81 <http://ireport.cnn.com/docs/DOC-756056>; <http://wiadomosci.onet.pl/raporty/afera-solna/raport-specjalny.html>

82 Uważam Rze, 07.05.2012

The example of legal formalism is to be found in the administration of asset declarations of high level public officials. In the case of regular judges, asset declarations were not available publicly until 2011, till then they were subjected to no scrutiny by court's administrations. The judges fulfilled their legal obligations by submitting declarations, court administrators - by a formal acknowledgement of declaration submissions. Although the 2010 amendment to the law on judges, which pushed for publication of judges' asset declarations on courts' websites from 2011 opens a possibility for public scrutiny, it remains to be seen how the system works in practice. The situation in the judiciary is comparable to ineffective scrutiny in the case of members of parliament and members of the government.

A "peer bias" is demonstrated in the workings of the parliamentary committee that deals with conflict of interest. Members of the parliament are obliged to report conflict of interest and other information, including asset declarations, within 30 days of the assumption of the office and subsequently every year for the previous calendar year to the Parliamentary Committee on Incompatibility of Functions (hereinafter committee). The committee is composed of coalition and opposition MPs based on the proportional system. If there is evidence against the MP, the committee is obliged to start proceedings, gather further evidence and make a decision within sixty-days. However, the implementation of the constitutional law is repeatedly questioned by the media and NGOs. The long running practice of the committee is that it does not demand specific information on MPs assets. So, it is sufficient for an MP to state that they own real estate, but they are not obliged to state its value.⁸³ This leads to absurd situations, e.g. in 2009 Transparency International Slovakia filed a complaint with the committee, asking it to investigate the case of the MP Ján Šlota who, according to the media reports, used a privately owned plane to fly to Croatia and in a separate case piloted another private fighter jet. In both cases the committee were unable to vote on a resolution and accepted the MP's "written explanation"⁸⁴, despite all known facts pointing to the violation of constitutional law that explicitly forbids MPs to accept donations and free services.

The gap between law and practice is at its "best" in the area of political parties' financing. All three manifestations are to be found here: formalism, peer bias and the lacking of administrative capacity. The 2010 OSCE/ODIHR assessment report stated that the present financial oversight of political parties in Slovakia "includes elements that could potentially form the foundation of an effective regulatory regime". However, the report added, "the effectiveness of these elements is undermined by insufficiently detailed legal provisions and, most notably, by a lack of enforcement." (OSCE/ODIHR,

83 For example, in 2009 the leader of junior coalition partner, SNS, Ján Šlota was repeatedly photographed by the media flying a small private aeroplane and driving a luxurious Mercedes-Benz SLR McLaren 722 Edition costing more than half a million EUR (USD approx. 678,900). In his asset declaration he has declared annual income of Sk 726,000 (about EUR 24,000 / USD 32,587) from his activities as a public official and another Sk 128,250 (EUR 4,200/ USD 5,702) as other income. His assets included an unspecified flat, a garden with a garden hut, two cars, a motorbike, a Diamond DA 42 aeroplane and savings. See: www.nrsr.sk/Default.aspx?sid=vnf/oznamenie&UserId=Slota.Jan [accessed on 17/11/2011]. The aeroplane and one of the cars are new on the list, as compared to last year. According to Jana Benková, the SNS spokesperson, the car is a Lada Niva, which Šlota bought for about EUR 8,000 (USD 10,862). She did not specify the purchase price of the plane, which she said Šlota had bought crash-damaged, according to a report in the *Hospodárske Noviny* daily. Available at: http://hnonline.sk/43-67823910-1-37630430-k02000_d-94, [accessed on 17/11/2011].

84 The Slovak Spectator, http://spectator.sme.sk/articles/view/36206/2/slota_flies_into_problems.html, 17 August 2009, [accessed on 17/11/ 2011].

p.10)⁸⁵ Both supervising institutions (the parliamentary committee and the Finance Ministry), exercise their powers in a formalistic manner. The parliamentary commission does not have full access to the parties' accounting and relies only on a simplified version that is submitted by the political party and approved by the auditor. The committee has no supporting staff to investigate whether a financial report is correct.

The same formal approach characterizes the Finance Ministry and its supervision of campaign reports. There is no specialised staff that deals with reports and the Ministry only controls whether information that has to be included in the report is included. The media and NGOs repeatedly point out these longstanding implementation problems. Over the last decade, for example, the political watchdog Alliance Fair-Play filed several motions with police, the parliamentary committee and Finance Ministry that concerned alleged violations of legal requirements in parties' financial reports. None of these motions were properly investigated, nor brought before the courts. In most prominent cases, that targeted alleged illegal financing of two major parties, the Slovak Democratic and Christian Union (SDKÚ) and SMER, the investigations were suspended due to "insufficient evidence". In 2004 the Alliance filed a complaint with the police in a case of donors of the ruling party SDKÚ. The Alliance alleged, based on their investigation, that several people listed as donors of the SDKÚ had never given money to the party. In a 2010 case that also involved SDKÚ, the party was accused of money laundering, establishing fictitious firms and tax-haven bank accounts by the then ruling party SMER. In the same year, the daily SME newspaper published an audio recording, in which a voice resembling that of Mr. Róbert Fico, Chair of the SMER, talks about having secured funding for the party from undisclosed sponsors, bypassing its official accounts. Prosecutors discontinued both cases.⁸⁶

85 The same conclusions are supported by 2010 GRECO compliance report on Slovakia that focused on transparency of party funding. The report concluded that current level of compliance is "globally unsatisfactory" and that no discernible progress has been made in any of the previous recommendations. Third Evaluation Round. Compliance Report on the Slovak Republic, Adopted by GRECO at its 46th Plenary Meeting, March 2010. pp. 12-13

86 For overview of both cases see: Slovak Spectator, Parties not charged, but doubts linger, 17 January 2011 available at: http://spectator.sme.sk/articles/view/41321/2/parties_not_charged_but_doubts_linger.html [accessed 19 May 2011]

5. THE KEY STRENGTHS OF THE INTEGRITY SYSTEM

This chapter examines the key strengths of the V4 integrity system by assessing the strongest institutions and best practices in the V4 region. The strongest pillars, analysed in the first section of this chapter, were chosen by researchers in each country and it seems to be a consensus that the Ombudsman and the Supreme Audit Office are among the strongest institutions in all four countries. The second part of this chapter focuses on best practices that make a major contribution to a well-functioning institutional system in a country. Such practices may relate to one or more institutions.

As we saw in the “Dark Side” chapter well designed formal frameworks do not necessarily protect against drawbacks, misconduct or illicit practices in the V4 region. Examples from the key strengths chapter also suggest that an adequate formal framework is not always enough. Individual factors are key variables in the complex formula of a well-functioning integrity system. The main lesson here is that success or failure of an institution may depend on personal qualities such as leadership, honesty or courage.

Adequate formal framework is not always enough. Individual factors are key variables in the complex formula of a well-functioning integrity system.

Strongest Institutions in the V4 Region				
Czech R.	Judiciary	Supreme Audit Office		
Hungary	Ombudsman	State Audit Office		
Poland	Ombudsman	Supreme Audit Office		
Slovakia	Ombudsman	Supreme Audit Office	Media	Civil Society

In all V4 countries the ombudsman is classified as one of the strongest institutions, although it is also regarded as an institution with typically less direct impact on corruption risks than other pillars. However as the Slovak case suggests, without changing the legal framework and the organisational structure of the ombudsman, a new person who recently took the oath of office improved the likelihood of a more direct anti-corruption agenda. Hungary provides another example of the importance of the individual factor. Here the new Fundamental Law has significantly changed the ombudsman’s organisational structure that has become more centralised and less independent. Yet despite these clear downsides, the new leader of the institution recently stood up to the government and initiated Constitutional Court reviews on important cases such as the new controversial Media Law. In Poland the office holder’s personal characteristics also significantly determine the image of the ombudsman. NIS scores also suggest that in the V4 region ombudsman is the only institutions where the practice is significantly stronger than the underlying legislative framework (Annex).

There are also examples from the Czech Republic illustrating that an otherwise sufficient formal framework cannot always provide enough protection to individuals with respect to career and remuneration. In these cases publicly raising a voice against corrupt practices requires a lot of courage.

The Supreme Audit Offices are also among the strongest institutions in the V4 region. The examples of the Supreme Audit Offices from the Czech Republic and Hungary suggest that the quality of the work force really matters. In the Czech Republic a rigorous process of staff recruitment and in Hungary a high-standard of in-house training significantly contribute towards the top ranking of the institution in the integrity system. SAO is also a very important institution in the fight against corruption because of its top-notch know-how, and practical and academic knowledge about corrupt practices, but only if the top officials' integrity remains intact. The explicit political background of the SAO's top leader in Hungary raised questions about the institution's independence and credibility. However strengthening the control and sanctioning power of SAO would further improve the effectiveness of this institution and all V4 countries.

The Supreme Audit Offices is among the strongest institutions in the V4 region.

Institutions outside the state's authority, especially media and civil society, proved to be important in the fight against corruption in the region. It seems that for interest groups which are capable of influencing and manipulating state institutions there are much more difficulties in controlling external actors such as the media and civil society. In all countries investigative journalists, websites and blogs exposed illicit practices that could not be hidden anymore by corrupt cliques after such publicity. We can also find good examples of the fruitful cooperation between media and NGOs and other civil society organisations in the battle against corruption in all V4 countries. In Poland, the "watchdog movement" led by NGOs and nonprofit foundations play an especially important role in anti-corruption activities.

For interest groups which are capable of influencing and manipulating state institutions there are much more difficulties in controlling external actors such as the media and civil society.

However transparency in general matters. The success story of the freedom of information law in Slovakia suggests all channels that make governmental data available for the public may have a critical role in reducing the risks of corruption. Technology also has a vital importance here. New innovations such as e-procurements, websites and applications supporting an easy search in public procurement data and other large datasets, data mining techniques, online platforms to discuss and comment on drafts of legislation and policy decisions work very well in Slovakia and in other V4 countries too.

As the "Dark Side" chapter suggested, one possible reason for an institution's negative performance was too much political influence. Assessing the same phenomenon from the positive side we can see that institutional independence has made a crucial contribution in best practice cases, such as in the examples of the Constitutional Court in the Czech Republic or the electoral system in Hungary. The expertise and know-how of Supreme Audit Offices in all V4 countries also have key roles in the top ranking of the institution in the integrity system.

I. PERSONAL QUALITY MATTERS

Czech Republic: Supreme Audit Office & Judiciary

This section focuses on two of the four strongest institutions identified in the Czech National Integrity Study. The reason for focusing on the Supreme Audit Office (76 points) and Courts of Justice (65), instead of the Ombudsman (90 points) and Electoral Management Body (65), was the greater potential of the chosen institutions in countering corruption.

The Supreme Audit Office (SAO) received the second highest rating of all NIS pillars. Its independence is anchored in the Constitution and its operational costs are covered from a separate chapter of the state budget. It has sufficient powers, financial means and human resources to exercise its duties. It is not, however, entitled to audit local self-governance bodies,⁸⁷ political parties, intelligence services nor state-controlled companies.

The SAO pays great attention to employee selection and to their education. This applies especially to the employees of the Audit Section who have to undertake a rigorous in-house training.⁸⁸ Independence of the SAO's 17-member management board rests on long office terms,⁸⁹ clearly defined procedures for removal from office and incompatibility of office regulations. At the same time, 5 out of the last 7 appointments (since December 2005) were ex-parliamentary members,⁹⁰ a practice the law permits, but which raises doubts with regard to a possible conflict of interests. Furthermore, given the absence of a career advancement system and other safeguards, the regular employees of SAO remain potentially vulnerable to pressures from their superiors.

The Czech Supreme Audit Office pays great attention to employee selection and to their education. This applies especially to the employees of the Audit Section who have to undertake a rigorous in-house training.

The SAO has been criticised for focusing solely on the legality and regularity of financial management during its audits, paying little attention to the efficiency and effectiveness of public expenditures.⁹¹ This criticism appears somewhat misplaced however. For one thing there is still enormous space for improvement in the realm of financial management and accounting practices of state institutions.⁹² Secondly, few public investments are based on clearly formulated policies and rarely contain specific indicators, making the evaluation of their effectiveness difficult.

The SAO follows a coherent approach in its exercise of control both by focusing on the most significant budgetary chapters⁹³ and by following up on the implementation of

87 A constitutional amendment procedure has been launched with the intention of extending SAO's competences to include self-governing institutions in May 2011, see Sněmovní tisk 351 and Sněmovní tisk č. 352.

88 Interview with Miroslav Leixner, see also SAO Annual Report 2009, p. 29.; <http://www.nku.cz/vyr-zpravy/vyrocnizprava-nku-2009.pdf>.

89 9 years for the president and vice-president, up until 65 years of age for regular members.

90 The law on the Supreme Audit Office prohibits SAO Board members to holding any office in political parties but does not prohibit the party membership.

91 Interview with Miroslav Leixner.

92 SAO Annual Report 2009, p. 18; <http://www.nku.cz/vyr-zpravy/vyrocnizprava-nku-2009.pdf>.

93 Interview with Jiří Kalivoda and Jan Vedral.

corrective measures. For example, a control of the financial management of EU-funded subsidies was followed by a check on the volume of financial penalties actually paid (revealing exemptions worth 31 billion CZK from the 34.5 billion list of penalties). Overall, the SAO manages to audit approximately 10% of the annual state budget.

While it provides the public sector with many valuable recommendations, the SAO has no enforcement mechanisms at its disposal, nor the authority to impose sanctions. To a great extent, it has to rely on the executive, the parliament and law enforcement agencies to both prosecute offenders and push for changes in existing practices. While the SAO can file a complaint with the police at any point during an on-going audit, it makes infrequent use of this option, preferring to wait for the law enforcement agencies to request further information on already completed audits.⁹⁴

Overall, the SAO fulfils its control function and provides the parliament, the public administration and the general public with relevant information on the management of state property. However, problematic issues – and in some cases clear violations of the law – reported by the SAO appear to be largely ignored by its counterparts in other institutions. The Chamber of Deputies dedicates very limited time to the SAO's reports,⁹⁵ the parliamentary Committee on Budgetary Control managed to discuss only 5 out of the 26 reports completed in 2010⁹⁶ and the law enforcement agencies are either slow in launching investigations or end up shelving sensitive cases.⁹⁷ Nonetheless, its independence and professionalism make the SAO one of the most functional elements of the National Integrity System.⁹⁸

Key guarantees of the judiciary's independence are anchored in the country's Constitution.⁹⁹ The judiciary's budget, however, is a part of the Ministry of Justice's budget, giving the Ministry of Finance decisive authority over its total expenditures.¹⁰⁰ Salaries of judges are regulated by a special law and coefficients based on the average salary in the non-business sector are used for their calculation. Frequent changes to the corresponding law have been neutralised by the Constitutional Court, which has repeatedly provided protection to judges against salary reductions.

Basic protection against malicious decision-making of the courts is provided by the procedural regulation of civil, criminal and administrative proceedings, which allow the participants to raise an objection regarding the bias of a judge. A potential limiting factor here is the unavailability of information relating to individual judges that would

94 During the last two years, the SAO filed only one criminal complaint, which was based on the findings of its audit No. 07/27.

95 Interview with Miroslav Leixner.

96 Interview with Jiří Kalivoda and Jan Vedral.

97 Ibid.

98 The Czech National Integrity Study deals separately with courts of justice and the public prosecution. This approach is justified by the fact that the public prosecution is formally part of the executive. The study's findings serve to illustrate the very different performance of each institution within the National Integrity System.

99 To amend the Constitution, a 3/5 majority of all Deputies and the consent of the Senate is required. However, such amendment as well as any law that would significantly limit the independence of the courts may be invalidated as unconstitutional by the Constitutional Court.

100 Interview with František Korběl. See also Korběl, F.: *Současný stav správy justice a pokusy o jeho reformu*. In: *Česká justice*. Transparency International – Česká republika, Praha, 2010, p. 11–78; <http://www.transparency.cz/publikace-analyzy/ceska-justice-otazka-spravy-nezavislosti/>.

help participants identify bias.¹⁰¹ Disciplinary proceedings with judges do not occur very often and the sanctions are rather mild.¹⁰² While this indicates a degree of unhealthy professional solidarity within the judiciary, insiders have noted a gradual shift after the introduction of key reforms in 2008.¹⁰³

The highest courts have played an important role in defending public interest and enjoy a high degree of public confidence. Two shortcomings hamper the reputation of lower courts, however. One is the low predictability of their decision-making: only slightly less than half of the lower courts' 76,097 rulings in 2009 have been confirmed by regional courts in subsequent appellate reviews.¹⁰⁴ One of the causes behind these statistics is the enormous volume of new legislation approved every year and its low quality. The confusion this creates is difficult to handle even for experienced lawyers.¹⁰⁵ Along with insufficient capacities, this has the concomitant effect of maintaining a high average length of proceedings.

With regard to corruption, the public prosecution fails to bring serious or politically sensitive cases before a court, limiting its attention mainly to petty administrative corruption. Sentences imposed in the 69 cases that resulted in a conviction in 2009 were relatively mild.¹⁰⁶ A recent case deserves mention, however, in which a parliamentary member was sentenced for offering bribes in the form of "loans" to other party members in order to secure their loyalty during parliamentary decisions.

Hungary: Ombudsman & State Audit Office

Although fighting against corruption is not the main priority of the ombudsman in Hungary, the institution has a great importance for protection of citizens' rights, transparency and the control of regulatory bodies. The ombudsman system was completely reshuffled recently which triggered strong criticisms. The changes raised questions about the independence of the institution.

The Hungarian ombudsman system was created during the democratisation process in the early 1990s. The main goal of this system was to establish institutions that support the mechanisms for the protection of citizens' rights. Originally the organisational structure of the ombudsman institution was based on one general civil rights ombudsman (Parliamentary Commissioner for Civil Rights, sometimes referred to as the Human Rights Ombudsman/Commissioner) and four independent and equally ranked specialised ombudsmen (including data protection and freedom of information, rights of national and ethnic minorities, and environmental rights).¹⁰⁷

101 The only exception are the Constitutional Court judges whose personal profiles are publicly discussed prior to their appointment in the Senate and whose curricula vitae are available on the Constitutional Court website; <http://www.concourt.cz/clanek/687>.

102 Research of disciplinary decisions available on the website of the Supreme Administrative Court conducted in April 2011.

103 Interview with František Korběl.

104 See the 2010 statistical overview of judicial agenda for further details: <http://portal.justice.cz/Justice2/MS/ms.aspx?j=33&o=23&k=3397&d=47145>.

105 See the commentary of Robert Malecký, writing for the Czech Bar Association: <http://www.cak.cz/scripts/detail.php?id=1123>.

106 *Zpráva o činnosti státního zastupitelství za rok 2009*; <http://portal.justice.cz/nsz/soubor.aspx?id=84948>.

107 <http://www.theioi.org/news/hungary-new-ombudsman-act>

The Hungarian Data Protection Ombudsman was a real constitutional innovation at that time in Europe. The institutional protection of information rights, combined with data protection and freedom of information, proved to be a success story and inspired other countries to establish their own data protection offices.

The Hungarian Data Protection Ombudsman was a real constitutional innovation in Europe. However the new data protection authority is separated from the ombudsman system and assigned under the authority of the executive branch.

The former organisational structure of the autonomous, multiple ombudsman system has been reshuffled by the new Hungarian Fundamental Law that came into effect on January 1st, 2012. The New Ombudsman Act created a more centralised and hierarchical structure in which the two new specialised ombudsmen became the deputy of the one general ombudsman. The new chief Ombudsman, the Commissioner for Fundamental Rights, is nominated by the President of the Republic and elected by Parliament. His or her main responsibility is the protection of fundamental rights.

One of the two new deputy ombudsmen is the Parliamentary Commissioner for Future Generations who is an environmental ombudsman. This commissioner investigates complaints relating to a broad range of environmental issues such as the degradation of urban green areas, noise pollution by aviation, licensing of individual industrial installations, etc.¹⁰⁸ The second deputy ombudsman is the Parliamentary Commissioner for National and Ethnic Minority Rights. This person is mainly responsible for the protection of national and ethnic minority rights.¹⁰⁹ Moreover, the new law abolished the sixteen-year old institution of the Parliamentary Commissioner for Data Protection and created a new data protection authority separate from the ombudsman system. This new administrative body is assigned under the authority of the executive branch despite the fact that its independence is declared by law.

At the time of the publication of the Hungarian NIS it was not clear how these changes would affect the operation of the ombudsman system. The new structure had many critics. Among others, the European Commission raised serious concerns about the independence of the new data protection authority.¹¹⁰

Despite the criticisms major drawbacks of the new system have not yet been seen. Although it is too early for a comprehensive assessment of the institution's performance, the new ombudsman organisation seems to be relatively well-functioning even with its more centralised structure. For example, the Commissioner for Fundamental Rights Máté Szabó recently became very active in the highly criticised Media Act. Szabó requested from the Constitutional Court to review some problematic provisions of the Media Law.¹¹¹ The ombudsman also drew the attention of the Constitutional Court on several other cases such as the lax custody of juvenile offenders, the harsh local regulation of homeless people in Budapest's Józsefváros district and the obligatory

108 <http://www.jno.hu/en/?amp;menu=intro> [accessed 13 June 2012].

109 <http://www.kisebbszegiombudsman.hu/index.php?lang=en> [accessed 13 June 2012].

110 <http://www.economist.com/node/21548285> [accessed 13 June 2012].

111 [http://www.theioi.org/news/hungary-ombudsman-becomes-active-on-media-act v](http://www.theioi.org/news/hungary-ombudsman-becomes-active-on-media-act-v) [accessed 13 June 2012].

contract between the state and college students that prohibits students, whose studies are publicly funded, to work abroad for several years after graduation.¹¹²

Established in 1989, the State Audit Office (SAO) is the financial and economic audit organisation of the Parliament. It audits and evaluates the operation of public finances. The institution has a mandate to audit the state budget, foundations, political parties, state owned companies, the Hungarian National Bank, local governments and other institutions financed from the state budget. The fact that some current top senior officers of the SAO have an explicit political party background raised concerns recently. However despite these potential risks to independence the SAO is still one of the strongest institutions in Hungary.

The SAO, as the main financial watchdog, plays a key role in the fight against corruption in Hungary. Over the years the organisation has developed substantial expertise in the field of public financial management. The SAO has specific knowledge on corruption as well. Senior staff members of the institution regularly publish papers and academic articles on corruption. In 2011 the SAO launched an integrity project to explore, map and classify corruption risks within public administration, established a better audit practice and enhanced compliance with legal/ethical norms and transparency along with professional innovation.¹¹³

The legal framework provides organisational independence for the SAO and its operation is generally transparent. The institution also has autonomy over budgetary and personnel matters. The SAO has a detailed and frequently updated website (www.asz.hu), where several reports are available. The organisation publishes results of audit reports on individual local governments and political parties.¹¹⁴ The reports usually contain recommendations and findings of SAO are often published by the Hungarian press.

As for the professional background of the staff, most auditors are economists but there are some engineers and lawyers as well. The SAO makes special efforts to increase the employees' competence through high-standard in-house training and special education.

The SAO's effectiveness could be further enhanced by strengthening the control and sanctioning power of the organisation that would particularly be important in the case of party financing. For example, the SAO is only entitled to examine the documents provided by the political parties and it has no tools for additional investigations. The SAO also has very limited power to take sanctions against parties violating the law.

112 http://index.hu/belfold/2012/03/29/az_ab_elott_a_hallgatoi_szerzodes/ [accessed 13 June 2012].

113 <http://integritas.asz.hu/> [accessed 13 June 2012].

114 <http://www.asz.hu/jelentesek/osszes> [accessed 13 June 2012].

Poland: Supreme Audit Institution & Ombudsman

According to the Polish National Integrity System report the strongest institutions are the Supreme Audit Institution and the Ombudsman. The strength of these institutions is also common in other countries across Europe. Nevertheless, it is essential to underline that the role of the Ombudsman in protecting the integrity of the whole system is not crucial. The Supreme Audit Institution's role is definitely more important.

The Supreme Audit Institution (NIK) audits public institutions and the way in which public funds are used. The years of systematic building of its structure and methodology have brought positive results. NIK enjoys the reputation of a professional and diligent institution. It has appropriate human and financial resources at its disposal, although the fact that its budget is shrinking every year, makes retaining high quality experts an ever greater challenge. The law guarantees broad independence to the NIK and its auditors, although it would perhaps be worthwhile to strengthen the mechanisms ensuring the political neutrality of its staff. The NIK is an exceptionally transparent institution thanks to its comprehensive communication policy. The existing procedures make it possible to assess NIK's activities effectively. The provisions of the Act contain appropriate mechanisms ensuring integrity, including a comprehensive system of staff appraisals. In practice, however, certain problems appear that require further regulation. The quality of financial audits carried out by the NIK's inspectors must be highly assessed. The results of NIK's work however are not sufficiently used by other institutions – yet this is something the Office cannot influence. There is no doubt that NIK makes a significant contribution to improving the standards of state finances management and mitigating the corruption threats.

It remains disputable whether the provisions of the recently amended Act on the Supreme Audit Office, introducing a possibility to subject the Office to internal audit by an external financial auditor, pose a threat to its independence. The audit may be ordered by the Speaker of the Parliament.

Recently there have been other attempts of politicians to influence the Supreme Audit Institution. When NIK was auditing the case of the Smolensk airplane crash, Tomasz Arabski, the chief of the Prime Minister Chancellery, demanded transcripts of interrogations of his subordinates before his own testimony in front of NIK controllers. After the final report on the Smolensk crash some politicians of the ruling party tried to undermine its reputation accusing the Supreme Audit Institution of partisanship.¹¹⁵

The mission of the Ombudsman office (Rzecznik Praw Obywatelskich, RPO) is to protect human and civil rights which are guaranteed by the Constitution of the Republic of Poland and other laws. The main goal of the RPO is to control the legality of actions of state institutions. The Ombudsman also monitors compliance with the rules of social justice.¹¹⁶ The RPO initiates its action in the case of finding systematic breaking of citizen's freedom and rights, or it intervenes at the request of a citizen who finds himself deprived of his rights.

115 Marek Solon-Lipiński, Tykająca bomba korupcji, Rzeczpospolita, 20.03.2012, <http://www.rp.pl/arttykul/9157,841210-Tykajaca-bomba-korupcji.html>

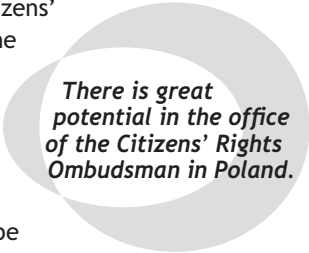
116 The Ombudsman Law (Ustawa o Rzeczniku Praw Obywatelskich z dnia 15 lipca 1987 r., art. 1 ust. 3, <http://www.brpo.gov.pl/index.php?md=8497&s=1>)

The RPO is anchored in the Constitution of the Republic of Poland¹¹⁷ which strengthens its position in the Polish law structure. Besides the constitution, the role of the RPO is defined by the Ombudsman Act. The Ombudsman in Poland is a quite an independent institution. There is a strong influence of the personal characteristics of the person who holds this post as it has a wide autonomy when deciding on the importance of cases and the ways to conduct them. In practice, the main role of the Ombudsman is to inform and control as well as to demand re-examination of some cases by suitable institutions.

Similarly to the case of the NIK, the relatively high score awarded to the institution of the Ombudsman is due to the unquestionable reputation that the institution enjoys. But also considering the criteria used in the monitoring exercise, the office of the Ombudsman obtained very good results – thanks mainly to maintaining a high level of internal transparency of operation, the strong position of the Ombudsman vis a vis other authorities, independence from the current political situation and the professionalism in action. However, the good score achieved by the RPO requires some comment, as it results primarily from the objective conditions that determine the formal strength of this institution.

If we consider the role that the Ombudsman plays in counteracting corruption, promoting transparency, strengthening the high standards of public life or the idea of good governance, it will turn out that his role is not as great as it may seem. This, in turn, comes from the fact that the activities of the Ombudsman focus, first of all, on the objectives connected with improvement in the main areas of citizens' rights, for instance, protection of the basic freedoms. The issues related to the broadly understood integrity of public life, counteracting corruption or the right to good governance are not fully contained within these priorities. Therefore the Ombudsman devotes less attention to matters such as restrictions on access to public information, control of conflict of interests or violation of ethical codes binding the public administration. Perhaps such issues could be raised more often by the RPO, however, the office lacks the institutional capacity (first of all financial and human resources) to do that, which, in fact, has been one of the factors lowering the assessment of the Ombudsman's activity with respect to improving the integrity of public life.

In brief, there is great potential in the office of the Citizens' Rights Ombudsman, which could be tapped to improve the functioning of other elements constituting the network of institutions with the greatest influence over the integrity of public life in Poland – public administration, political parties, law enforcement agencies, non-governmental organisations, etc. Yet, because of the scarcity of resources, the Ombudsman is not able to engage in this type of activity.



There is great potential in the office of the Citizens' Rights Ombudsman in Poland.

117 The Constitution of the Republic of Poland (Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., art. 208–212, <http://www.sejm.gov.pl/prawo/konst/polski/kon1.htm>); por. Jacek Świeca, Ustawa o Rzeczniku Praw Obywatelskich: komentarz (Warszawa: Wydawnictwo C. H. Beck, 2010).

Slovakia: Supreme Audit Office, Ombudsman, Media, & Civil Society

There are no clear strong achievers in the Slovak integrity system. A cluster that consists of eight pillars that can be deemed relatively successful scored from 63 to 75, while only two of them scored over 70 (parliament, 71; supreme auditing office, 75). The cluster includes institutions that represent state (parliament, government), public (ombudsman, supreme auditing office, EMB) and private (political parties, media, civil society) institutions. Each pillar has a major weakness, be it lacking capacity (media, civil society), a formalistic implementation of legal rules (parliament, supreme auditing office), or a weak anti-corruption and transparency commitment (ombudsman).

The institutions also vary significantly in the relative weight they play in the Slovak integrity system, especially if we consider their contribution to the anti-corruption and transparency policies and their implementation. This can be illustrated on the strongest institution overall, the Supreme Audit Office. The SAO has sufficient resources to properly fulfil its respective tasks with regard to the integrity system and has been operating in a professional way, maintaining its independence. Transparency and accountability tools are commonly used in the practice and the institution also performs well in integrity mechanisms. However, the SAO does not use its potential and performs often very formalistic outputs of control with a very limited focus on the effectiveness of audited tasks and performance. The same applies to the office of the Ombudsman. Based on the scores in the NIS capacity and governance indicators, the Ombudsman should have an essential role in combating corruption and promoting integrity in society. The office has sufficient resources with no external interference in its work and functioning transparency, accountability and integrity mechanisms. Thus, with some limitations in legal competencies, the Ombudsman is designed to be a strong institution within the framework of the NIS. However, the weight of the institution in the political system is minor and performance is rather weak. Former Ombudsman, Mr. Pavel Kandráč, has remained silent on certain trends and discussions in society and his visibility has been fairly limited. However, this weakness could end with a new Ombudswoman, a former judge, who took the oath of office in March 2012. Mrs. Jana Dubovcová won an integrity award for exposing corruption in the local judiciary system and devising a system to root it out in 2002 and was one of the most vocal critics of the current state of the Slovak judiciary.¹¹⁸

The new Ombudswoman in Slovakia won an integrity award for exposing corruption in the local judiciary system and devising a system to root it out in 2002 and was one of the most vocal critics of the current state of the Slovak judiciary.

On the other hand, the Media and Civil Society play an important role as watchdogs in society, although they face considerable obstacles and have some major weaknesses in their scores. Both sectors are lacking efficient integrity mechanisms with rules on conflict of interest and codes of conduct being quite scarce and not mandatory. The accountability of Civil Society is weak due to limited information on its activities provided to the public. A lack of resources, both financial and human, heavily affects the quality of their work.

118 More in The Money Trap, Stopping the Spread of Corruption, available at: http://www.soros.org/resources/articles_publications/publications/osn_20031025/OSN--Summer-Fall%202003.pdf

In media, the impact of such shortages is mainly related to decreasing level of investigative journalism, thus has a direct impact on the activities in exposing corruption cases. The Civil Society is facing large staff fluctuations due to the lack of resources. Despite these drawbacks, both Media and Civil Society played and continue to play a leading role in uncovering corruption cases and helped in shaping the public perception of corruption as well. In 2010, an influential blog, Slovak Press Watch (SPW) on Slovak media, published by the now director of TI Slovakia Gabriel Šipoš, attempted to evaluate the “usefulness” of Slovak media in control of the government. The blog presented dozens of cases that were publicised by the media between 2006 and 2010 that included cases of mismanagement, fraud, corruption and bad governance. As the blog concluded, while there were significant differences between individual media, overall it was the media, not the opposition political parties, that contributed most to the control of the government.¹¹⁹

The media are assisted in these efforts by the civil society organisations, which provide tools and information for investigative journalism through their own analytical work and development of new applications that are based on free access to information. For example, the Open Database of Public Procurement¹²⁰, run by Transparency International Slovakia, allows users to search in the database of Public Procurements by the name of institution involved in the public procurement, as well as by the amounts of procured services and goods provided by different institutions and companies. The political watchdog Aliancia Fair Play created an online application ZNasichDani.sk which uses publicly available data to uncover influential persons (e.g. owners, managers) standing behind companies successful in securing contracts with the state, thus helping uncover conflicts of interest.¹²¹ The latest effort by the Aliancia, started in May 2012, provides users with streamlined information on all projects that were supported by the EU structural funds in 2007–2013.¹²² Along with uncovering of corruption cases and shaping of the public perception, it is the civil society that often attempts to initiate debate on anti-corruption policies and provides pilot testing of their viability. Aliancia Fair Play for example has demonstrated the importance of public access to the contracts signed between state institutions and third parties and managed to influence the government of Mrs. Iveta Radičová (2010–2012) that included anti-corruption measures that deal with the access of the public to the contracts of all public institutions and self-governing institutions in the government’s manifesto. The activities of TI Slovakia in the project ‘Transparent City’ implemented by the city of Martin have shown the importance of the e-auctions/e-procurement for public procurement. E-auctions have been adopted by the government of Mrs. Iveta Radičová and were introduced at the national level. Other municipalities have also adopted this tool to make the procurement process more transparent and to get the best price and save taxpayers money.¹²³

119 See, Najúžitočnejšie médiá volebného obdobia (The most useful media of electoral term), Available at: <http://spw.blog.sme.sk/c/226485/Najuzitocnejšie-media-volebneho-obdobia-SME-Pravda-TREND.html>

120 <http://tender.sme.sk/>

121 The application won <http://opendatachallenge.org/> in a best app category in 2011.

122 <http://datanest.fair-play.sk/datasets/50>

123 Research on public procurement in Slovakia between 2009 and 2011, conducted by Transparency International Slovakia, confirmed that “the main reason for the higher competition, besides the economic crisis, [was] the massive introduction of electronic auctions, and making the procedure of narrower competition stricter. While in 2011 the e-auction was used in every fourth tender, in 2009 it was used only in every 140th procurement.” The news report (in English) is available at: <http://www.transparency.sk/the-state-was-buying-more-effectively-in-2011/>

II. Transparency and Publicity Are Key Tools in Fighting Corruption

Czech Republic: Transparent and Accountable Operation

The Ombudsman and the Supreme Audit are examples of whole institutions that function in a transparent, accountable manner and demonstrate a determination to act in the public interest. As the NIS notes, existing rules, despite their many inadequacies, allow for accountable behaviour of both institutions and individuals. Only in a limited number of cases (e.g. judges, SAO board of members), however, do they provide sufficient protection to individuals who strive for positive change. Good practices therefore often depend on individual integrity and courage, be it among investigative journalists, civil society activists, or among politicians¹²⁴, public prosecutors¹²⁵ and other public officials. Three general areas deserve a mention in the context of good practices: the SAO, the highest courts and the media, together with a number of civil society initiatives.

The operation of the Supreme Audit Office is described in greater detail elsewhere in this study. Three issues stand out in terms of good practices. One is the rigorous process of staff recruitment and the high number of university-educated staff employed. Secondly, the SAO adheres to high standards of transparency with regard to its internal functioning, including financial management. This has been recently compromised, however, by the alleged misuse of the SAO's funds by its president Dohnal as well as his refusal to allow an audit by the Chamber of Deputies' Committee on Budgetary Control.¹²⁶ Information leaked to the media nevertheless suggests that the wider management of the SAO disagrees with their president over the issue¹²⁷. The third area of good practice is the quality of the SAO's audits. Generally, these place greater emphasis on legality and adherence to rules of financial management, rather than on the efficiency, economy and effectiveness of public expenditures.¹²⁸ While this is regrettable, external obstacles stand in the way of performing the more arduous efficiency audits. For example, in its audit of the VZP health insurance company, the SAO could not examine the efficiency and economical utilization of VZP funds because the relevant law does not contain any objective criteria that would permit such assessment. Clearly defined objectives, material and financial requirements and/or a timescale are frequently missing in tender documentation, making it difficult for the SAO to perform more than a financial legality check. While poor tender documentation may serve to conceal misuse of public resources, in the case of smaller municipalities the reason may simply be the lack of competent staff.¹²⁹ It is commendable that the SAO does look for ways to provide such evaluation despite the obstacles. In its audit of finances spent on maintenance of main roads and motorways, for example, the SAO used comparative analysis to quantify financial disadvantages of the new system of main road maintenance. In another audit, looking into a railway corridors modernisation project, it drew attention to repeated increases in investment needs from the original CZK 97.1 billion to CZK 135.5 billion.

124 The current Minister of Justice, Jiří Pospíšil, has made several politically sensitive personal changes within the Public Prosecution service in an attempt to remove officials suspected from intentionally stalling investigations.

125 As the case of David Rath's arrest in May 2012 demonstrated, the low rating given to Public Prosecution in the Czech NIS does not preclude individual prosecutors from successfully investigating corruption cases that implicate influential politicians. See <http://zpravy.ihned.cz/politika/c1-55823010-jdu-neproslapanou-cestou-rika-statni-zastupkyne-ktera-obvinila-ratha-z-korupce>.

126 See <http://www.nku.cz/cz/media/tiskove-prohlaseeni-tykajici-se-zahajeni-tzv--kontroly-na-nku-id5028/>.

127 See <http://aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=694845>.

128 Interview with Miroslav Leixner.

129 See http://www.rozhlas.cz/zpravy/spolecnost/_zprava/1037634.

Both the Constitutional Court and the Supreme Administrative Court have proved capable of making bold decisions and serve as a check against the excesses of the state's legislative and executive powers. With regard to abuse of power and misuse of public resources, the role of the Supreme Administrative Court is especially important. Since its establishment in 2003, it has issued a number of key decisions concerning free access to information,¹³⁰ planning and building permit procedures,¹³¹ collection of taxes and other areas.¹³² Unfortunately, while its individual rulings are usually respected, the administrative practice often does not change or an amendment to the law is passed that makes formerly unlawful actions legal.¹³³

The satisfactory performance of the highest courts is, to an extent, a function of their institutional independence: the Constitutional Court drafts its own budget and has repeatedly provided protection to judges against reductions in salary. A high degree of independence is granted on an individual level too: Constitutional Court judges are appointed for a 10-year term by the President with the consent of the Senate. Yet even the judges of lower courts are well protected against outside interference both in terms of tenure and procedure. They are appointed for life and may only be removed as a result of disciplinary proceedings or other reasons stipulated by law. Rulings that have protected journalists from defamation law suits initiated by politicians, for example, or the recent conviction of a parliamentary member in an open trial for bribing his fellow partisans testify to the independence of the Czech justice.¹³⁴

Although it is difficult to judge the media's contribution to the advancement of anti-corruption measures, the fact is that reporting on corruption has become remarkably frequent and relatively thorough in the past few years. Media monitoring data reveals, for example, that between January and June 2011, the word "corruption" appeared in the monitored media more frequently than "unemployment" or "justice", and with nearly the same frequency as "education" or "family".¹³⁵

Furthermore, the media are capable of following a corruption case on a long-term basis (as proved, for instance, in the case of the so called "judicial mafia").¹³⁶ The weekly *Respekt*, the dailies *Hospodářské noviny* and *Lidové noviny* as well as a number of internet news providers such as *Aktualne.cz* dedicate significant space to corruption

130 For example, the court has inferred the obligation of public administration to allow access to contracts (decision 1 As 17/2008 of 7 May 2008) or to protocols on evaluation of bids in public contracting (decision 1 As 28/2010 of 17 June 2010).

131 For example, decisions repeatedly overturning a part of guiding principles for town planning and development of Prague City in relation to plans for building a new airport, the most recent being the decision 1 Ao 7/2010 of 27 January 2011.

132 Interviews with Josef Baxa and František Korbel.

133 Interview with Josef Baxa.

134 See http://zpravy.idnes.cz/rozsudek-nad-bartou-a-skarkou-d2r-/domaci.aspx?c=A120412_235733_domaci_kop

135 Research made by Petr Jansa and Tereza Kvášová for the National Integrity Study on the 30 June 2011 in the database of NewtonMedia, which monitors 19 types of sources (besides regional and professional publications the service monitors 39 national dailies, 9 nationwide TV programmes, 8 nationwide radio stations and 269 internet servers).

136 The case filed against former Prosecutor General Marie Benešová for calling top-level officials of public prosecution service a 'judicial mafia that strives to gain control of the judiciary so that it would serve the governing elites's interests'. Vesecká and her colleagues sued Benešová over her statement. Judge Cepl, in a daring ruling, stated that the label "judicial mafia" was exaggerated and inaccurate, yet he rejected the complaint, reasoning that the statement is based on reality, concerning non-standard conduct of the complainants and suspicious meetings held by them. The "non-standard" conduct consisted namely in the fact that the investigating of alleged criminal behaviour of the then deputy prime minister Čunek was removed from the state prosecutor in Pířerov shortly before Čunek's formal accusation. See the ruling of Prague Regional Court 36 C 8/2008 of 5 June 2008 (<http://aktualne.centrum.cz/domaci/kauzu/fotogalerie/2008/06/05/prohlednete-si-rozsudek-soudce-vojtecha-cepla-o-justicni-mafii/>). The court of appeal revoked the ruling in February 2011 (see <http://zpravy.e15.cz/domaci/udalosti/benesova-se-musi-omluvit-za-vyrok-o-justicni-mafii/>), but the matter is yet to be handled by the Supreme Court.

cases and provide commentaries explaining the legal deficiencies that permit corrupt practices. Independent public media complement the efforts of private news providers. A Czech Television reporter has been awarded in the Open Society Fund's Journalist Award this year for a series of reports on the misuse of funds in a Prague's municipal transport company, for example.¹³⁷ Overall, the media plays a significant part in uncovering the abuse of power and mismanagement of public funds, despite the limited resources available for investigative journalism.

In the Czech Republic the media plays a significant part in uncovering the abuse of power and mismanagement of public funds despite the limited resources available for investigative journalism.

The past three years have also seen the emergence of new civil society initiatives which aim to fight corruption. Unfortunately, the level of cooperation in the sector is low and the impact of individual initiatives on public policy formulation as well as their capacity to mobilize sympathisers are limited. Nevertheless, some of these initiatives effectively complement the work of the media by providing analytical tools (ZIndex), informing on local governance issues (e.g. PragueWatch) or by carrying out independent investigative work on larger corruption cases (Nadační fond proti korupci).

Hungary: Well-functioning Electoral System

It may sound commonplace but one of the most important achievements in post-Communist Hungary is that despite some obvious deficits and some exaggerated press commentaries the fundamental conditions of Hungarian democracy are stable. General elections at both the national and local governmental levels have been free, fair and transparent since the collapse of the Communist one-party system in 1989–1990. The well-functioning Electoral Management Body (EMB) has made a crucial contribution in this strong democratic system. The OSCE/ODIHR published a commentary on the 2010 parliamentary elections of Hungary and claimed that “the competition took place on a generally level playing field, under a sophisticated electoral system. It was administered by professional and efficient election management bodies, including fully-fledged political party representatives.”¹³⁸

Although several scholars agree that since the mid-1990s the Hungarian political field has gradually shifted toward an American style two-party system, dominated by the centre-right Fidesz and the socialist MSZP, the latest elections in 2010 proved that the electoral system is able to reflect significant changes in the Hungarian society and channel newly emerged interests groups into the political arena. The fact that the electoral system provides effective mobility

The fact that the electoral system in Hungary provides effective mobility routes for new political formations may have a corruption reducing effect.

137 See <http://www.novinarskacena.cz/aktuality/novinarska-cena-2011-ma-sve-viteze-a-vitezky/#vysledky%20>.

138 OSCE/ODIHR August 2010, p. 1.

routes for new political formations may have a corruption reducing effect. Earlier studies suggest that in transitional societies where the rigid political system cannot offer legitimate and acceptable means to integrate rising interest groups such groups will probably use corruption to get immediate access to the political decision making.^{139 140}

As a result of the 2010 general elections two new parties, the far-right populist Jobbik and the LMP (Politics can be Different) won several seats in the Parliament. Jobbik and LMP seem to be committed to fight against corruption. Both parties use strong anti-corruption rhetoric against their more powerful counterparts, Fidesz and MSZP. The MPs of Jobbik and LMP have an important role in keeping the ruling Fidesz–KDNP government under constant pressure by questioning the state’s suspicious deals and illicit public tenders with Hungarian minigarchs.

Compared to the incumbent parties, both grass-root oriented newcomers used innovative media and campaign techniques as well as new ways of campaign financing through small donations from supporters via the internet.¹⁴¹ The fact that extremist ideologies are increasingly popular in Hungary is bad news. A significant proportion of the Hungarian population supports Jobbik and its unapologetic anti-Roma, anti-Semitic and homophobic ideologies. The party took 17% of the vote in 2010 and as long as a party plays by the basic democratic rules it cannot be rejected to represent its voters in the Parliament. This is a great test of the strength, flexibility and tolerance of the Hungarian democratic system.

The Electoral Management Body – responsible for general, European Parliamentary and local elections – represents a “best practice” in Hungary. The operation of the EMB is highly transparent and accountable. The organisation is divided into two different bodies, the National Election Office of Hungary (NEO) and the National Election Committee (NEC).

The NEO has mainly administration functions such as preparing, organising and implementing the elections. It also circulates non-partisan information among citizens, candidates and nominating organisations. Moreover this unit of the EMB is responsible for providing necessary technical conditions.¹⁴²

The NEC is an independent deliberative body responsible for ensuring the fairness, impartiality and legality of the election process. It issues statements to ensure a uniform interpretation of the regulations and legal practice with respect to the elections. The NEC has authority to make decisions on reported appeals about the activities of the election office. The NEC is also responsible for ascertaining and publishing the results of the elections that are evaluated nationally.¹⁴³

The EMB’s staff is experienced and well educated. The organisation even takes into account an appropriate gender policy.¹⁴⁴ The organisation has enough resources to contract as many persons as necessary.

139 Leff, N. H. (1964) Economic Development through Bureaucratic Corruption. *American Behavioral Scientist* 8: 8–14.

140 Huntington, S. P. (1968) *Political Order in Changing Societies*. New Haven: Yale University Press.

141 http://kitekinto.hu/bem-rakpart/2010/04/25/jobbik_es_lmp_avatarok_a_kampanyban/ [accessed 13 June 2012].

142 <http://www.valasztas.hu/en/ovi/index.html> [accessed 13 June 2012].

143 <http://www.valasztas.hu/en/ovb/index.html> [accessed 13 June 2012].

144 NIS Hungary 2011

The electoral office's operation is highly transparent. With one website dedicated to both bodies, the NEC and NEO provide very detailed information on all previous elections and referendums as well as materials about both the NEC and of the NEO, available in English.¹⁴⁵ It also informs the visitors about relevant laws, regulations and ministerial decrees. The EMB publishes every decision of the NEC, and these are accessible to every citizen on the website.

Although there is no formal code of conduct for electoral officials and other staff members, unwritten rules regulate the behaviour of such employees sufficiently. The EMB seems to be an exceptional institution in Hungarian society that is able to function very effectively without written formal integrity mechanisms. In spite of other institutions related to the state and/or politics, the EMB is highly respected and supported by Hungarian citizens. The overall integrity of the NEC and NEO is considered strong.

Poland: NGOs' Role in Anti-corruption

Although this report pointed out in a previous chapter that the civil society sector is among the weakest pillars of the Polish integrity system, still the activity of some CSOs working in the field of anti-corruption is worth underlining as best practice. This can also be a reminder that if the condition of Polish NGOs were to be better (eg. in terms of their resources), the whole integrity system would be significantly stronger.

Although effective anti-corruption actions may require appointing professional staff on permanent contracts, only few NGOs can handle this. Most of them are Warsaw-based foundations or associations which conduct their job on a central level. The main fields of their work are research and advocacy, direct watchdog actions, education and training, or finally developing internet solutions for higher transparency.

One of the most important NGOs of the Polish watchdog movement is the Stefan Batory Foundation, which is a Polish Soros foundation. The work of its Anti-Corruption Programme was initiated in 2000 by a public awareness campaign run under the slogan "Corruption. You don't have to give, you don't have to participate!" the aim of which was to draw the attention of public opinion to the plague of corruption. Since then the Programme's activities concentrate on monitoring the authorities at both national and local level, diagnosing the mechanism of corruption in concrete areas and professions and building a social movement for transparency in public life.

One of the most important initiatives of the Anti-Corruption Programme of the Stefan Batory Foundation is the monitoring of the fulfilment of the pledges to fight corruption made by political parties during the parliamentary election campaigns. Before every election all political parties are asked to fill out the questionnaire on their proposals for anti-corruption policy. Representatives of political parties running for the parliament present their anti-corruption priorities and sign anti-corruption declarations on behalf of their parties. After elections these pledges are monitored. Reports from monitoring are published annually at press conferences.

¹⁴⁵ <http://www.valasztas.hu/> [accessed 13 June 2012].

Another subject of interest of the Anti-Corruption Programme is the transparency of the legislative procedure. The Programme monitors the legislative paths of chosen laws, inter alia by taking part in the work of parliamentary commissions. After each scrutiny the Programme publishes a report on it and recommends changes which should be implemented in provisions that regulate the legislative procedure. The Anti-Corruption Programme is also working on the topic of Polish Anti-Corruption Strategy. Two pieces of sociological research were conducted on implementing the strategy both at the central and local level. Researchers analysed all information regarding anti-corruption procedures in chosen public offices and agencies and conducted interviews with its representatives. In effect it was possible to evaluate how strategy worked in reality and prepare a policy paper on proposed rules of creation and implementation of a new strategy.

The Foundation's Anti-Corruption Programme worked also in the field of whistleblower protection. It was the first institution in Poland which discussed this subject and managed to put it into public discourse. What is interesting is that the Anti-Corruption Programme made an attempt to form a new word in the Polish dictionary, translating "whistleblower" into Polish "sygnalista". It was important to do so as in Polish culture it would be easy to defame the idea of whistleblowing by labelling it as "snitching" or "denouncing". Among other activities the Anti-Corruption Programme offered legal advice to people who wanted to signal irregularities in their place of employment, suggesting ways to avoid the charge of acting against the interest of one's employer or charges of breaching the limits of constructive critique. They also offer support to persons who have lost their jobs or have otherwise suffered retaliation due to acting as whistleblowers.

Another important organisation which made some advocacy effort for greater transparency in public life is the Institute of Public Affairs which, along with the Batory Foundation, worked on changes in the Electoral Code which made party and campaign finances more transparent. While the Batory Foundation conducted monitoring of election campaigns, the Institute of Public Affairs monitored the income and spending of political parties on their routine (non-electoral) activities. Results of this monitoring were translated into proposals for law amendments which were successfully enacted.

The Local Civic Group Leaders Association is the NGO the aims of which are to protect the law on access to public information and to educate people who want to start watchdog activity. Every year several dozen local leaders are trained during both stationary and interactive courses of watchdog work. Together they create a net of associations the goal of which is to work on increasing transparency especially at the local government level. The monitoring of access to public information in gminas (communities) in Silesia Province (or Silesian Voivodeship) may be an example of their projects. They prepared the methodology of evaluating the level of transparency of local government, then a local organisation performed research which revealed the whole spectrum of problems associated with accessing public information.

There is also a separate group of NGOs which try to exercise oversight of politicians using interactive methods. Sejmometr.pl is an initiative which enables observing the whole legislative process in the Polish Parliament. The website allows an enquirer to find all laws on which MPs are currently working, to follow all votes cast by MPs and parliamentary factions, to read all speeches of MPs, to check MPs property declarations, etc.. The main

value of the site is that it gathers all important information about MPs and factions in one place and it is both very easy to navigate and visually attractive. Another “interactive” initiative is the Mamprawowiedziec.pl (which means “I have a right to know”) website. Before each election authors of this initiative send questionnaires to all candidates. Questions concern most of the important country issues. Results of this research are published on the website so after elections everyone may check if a specific MP is voting in line with his or her declarations.

Summing up, it is important to remember, that in spite of a general weakness of Polish NGOs and little representation of watchdogs among them, there are some interesting and effective projects that result in a higher transparency of public life. The conclusion is that there is a huge potential for watchdog organisations but without the perspectives of increasing independence and professionalism of Polish NGOs they will never be able to broaden their activities and provide better conditions for protecting the transparency and integrity of Polish public life.

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Slovakia: Freedom of Information Law

After more than a decade since the Freedom of Information Act. law was approved in the Slovak parliament, it is safe to argue that the law remains the most influential legal norm on citizen-government relations. In a political system dominated by the government despite being a parliamentary democracy, in which the government’s control by parliament is mostly formal, the Freedom of Information Act remains an effective tool that provides a possibility for the control of the national government, regions or municipalities. Although the accessibility and effectiveness of the law is confronted with repeated efforts to limit the law’s scope and diminish its appeal, so far these efforts have been unsuccessful due to strong advocacy from the media and NGOs, both of which played a crucial role during law preparation. The successful implementation of the law is also supported by consistent decision-making by the courts. Moreover, in recent years the publicly available information is subjected to a more sophisticated analysis by using data mining techniques. In 2011, the political watchdog Aliancia Fair Play created an online application ZNasichDani.sk that uses publicly available data to uncover those persons of influence (e.g. owners, managers) involved in companies successful in obtaining contracts with the state, thus helping to discover any conflicts of interest.¹⁴⁶ Another application, also created in 2011, otvorenezmluvy.sk (open contracts), provides a streamlined data on all contracts that are published by the public sector. The following section provides other examples of

The Freedom of Information Act. remains an effective tool that provides a possibility for the control of the Slovak national government, regions or municipalities.

¹⁴⁶ The application won <http://opendatachallenge.org/> in a best app category in 2011.

activities by parliament and the government that are based on the Freedom of Information Act.

The Freedom of Information Act obliges parliament to publish dates and agendas of parliament's session, written transcripts of public sessions, voting records, draft and approved bills and data on MPs absence during the sessions and committee hearings. In 2002, the then Speaker Pavol Hrušovský launched the "Open Parliament" initiative that aimed to extend requirements laid down in the law by providing online TV coverage of sessions (both live and in the archive) and audio-recordings of parliamentary sessions. The parliamentary website¹⁴⁷ allows the public to follow an actual parliamentary session (audio and video feed) or to use the archive, which includes transcripts of parliamentary sessions since 1994.¹⁴⁸ The site's functionality includes a "follow a bill" section, which allows anyone to gather information concerning the bills that are introduced on the floor, the MPs' voting on the bill and the amendments introduced in parliament. Other data, such as agendas, complete voting records, MPs contact information is available as well. Also, as a part of the Open Initiative, anyone can visit parliament as a member of an organised group or individually every working day from 8 a.m. until 4 p.m., even during the plenary session. The full scope of data on the organisation and functioning of parliament is therefore available to the public since 2002, regardless of changes at the position of Speaker. Under the previous Speaker Richard Sulik (2010-11) parliament decided to publish (online) all contracts, invoices and orders made by parliament to increase transparency.¹⁴⁹

In 2001, in direct connection to the new freedom of information legislation, the cabinet amended its legislative rules to incorporate a new mechanism of public consultation. New rules obliged the ministries to publish online every draft of legislation and policy decision that were to be discussed during the cabinet's session. The public may, for a defined period (usually 15 days) review and comment on proposed materials. If at least 500 individuals and organisations sign an initiative that proposes changes or otherwise comments on a publicised document, the ministry has to negotiate with their representatives. This system serves as a preliminary test for the cabinet's legislation and may give it an early warning that proposed solutions are going to be subjected to criticism. It also allows media and non-governmental organisations to start a public debate much earlier than to wait until the draft ends on the parliament's agenda. Finally, it allows the public to offer solutions that improve the proposed draft. All documents that are on the agenda during regular weekly sessions of the government are accessible through www.rokovania.sk, a government administrated portal. The government budget is also public and anyone can monitor the current situation in expenditures at the Ministry of Finance website www.rozpozet.sk (Slovak translation of budget.sk). The website was launched in April 2011 and allows the public oversight of the fiscal-budgetary situation.

147 www.nrsr.sk

148 As a part of official collaboration between the Slovak and Czech Parliaments, the Digital Library was created. The library, accessible at www.nrsr.sk/dk, includes electronic versions of existing documents of legislatures since 1848. The data include written session transcripts, agendas, draft bills and resolutions.

149 Available at: www.nrsr.sk/web/default.aspx?sid=nrsr/kancelaria/platne_zmluvy, [accessed on 17 November 2011].

6. FURTHER REGIONAL PERSPECTIVES

The next three chapters provide further comparative aspects among the V4 countries focusing on topics such as the post-accession effects, the implementation of the law and the role of the media and the civil society. They add some important pieces to the puzzle of the integrity system in the V4 region as a whole.

I. POST-ACCESSION EFFECTS IN THE V4 REGION

Probably the most powerful common experience of the V4 countries in the last decade was the accession and the membership in the EU. Studies proved that the already member V4 countries often abolished or revised legal frameworks adopted during the accession. The post-accession chapter of this report analyses the impacts of the EU accession and post-accession on the implementation of the law in the region.

One of the most common problems recognised across the Visegrad region is the problematic implementation of the law, manifested in NIS reports by differences between scores for legal frameworks and those for practices. The prevalence of legal formalism, in which rules are implemented narrowly without much consideration paid to the original intent of the legislation or to broader dimensions (societal, ethical) considerably lowers overall scores in national integrity systems across the region. In other words, NIS reports suggest that what is written in the books does not necessarily become effective in practice. What affects the implementation? Existing implementation research shows that the most important factors tend to be the degree of institutional and policy fit, the political preferences of actors and the administrative capacities of governments.¹⁵⁰ While some of these factors are unique to respective countries and may provide plausible explanations for their implementation problems, it is also possible to find shared experiences that shaped institutions and actors in the region and affect the implementation across the region. Without doubt, the most intense experience that the V4 countries shared in the last decade is the accession and the membership in the EU.

During the EU accession candidate countries had to transpose hundreds of legal norms to achieve the compatibility of their legal systems with the *acquis communautaire*. In the 1997 report on the readiness of candidate countries for membership, the European Commission for the first time introduced monitoring reports on candidate countries to measure their progress towards accession on a regular basis. By using EU conditionality as “a bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions”¹⁵¹, the Commission directly influenced the institutional time and pressured candidate countries to increase the efficiency and effectiveness of their legislative systems. The “stick and carrot” approach was successful. The accession countries managed, in a relatively short period, to change their legal and institutional frameworks. However, at the same time,

150 For extensive database of existing qualitative research on compliance see: <http://www.eif.oeaw.ac.at/compliance/> . For database on quantitative research on implementation see: <http://www.eif.oeaw.ac.at/implementation/>

151 Schimmelfennig, F., & Sedelmeier, U. (2004) Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe. *Journal of European Public Policy*, 11: 670

candidate countries were criticised by the Commission for a practical phase of implementation: the application and enforcement of adopted legislation. The literal transposition of EU legislation in candidate countries during the accession resulted in the ignoring of domestic specifics and interest groups.¹⁵² The importance of conditionality applied by the EU against candidate countries significantly weakened at the moment of their accession to the EU in 2004. It was expected that the socialisation effect of the accession would be weakened by the departure of the part of the national administration responsible for accession negotiations, as a result of the need to put in place representations to the EU and its institutions¹⁵³. Antoaneta L. Dimitrova¹⁵⁴ suggested that once former CEE countries entered the EU in 2004, they could respond to the accession process, which provided them with only small room for negotiations about accession conditions, by re-evaluating some pre-accession obligations or by blocking the phase of reception. In any case, the expected result was to be one of complicated performance by the NMS in the EU, in particular in the area of transposition of EU legislation into national systems. As it turned out, it was only partially true. Several authors pointed out that transposition performance of the new member states is better than that of the old member states.¹⁵⁵ Although there are some differences among individual member states, the high success rate of the NMS is often explained by the preservation of the pre-accession legislative mechanisms designed to transpose the legal norms of the *acquis communautaire* effectively. Despite the success of the new member states in formal transposition of EU law, the trend of literal transposition continued. The research into the implementation of selected EU directives in the area of social policy conducted by Gerda Falkner and Oliver Treib¹⁵⁶ as a follow-up to their research of the original EU-15¹⁵⁷ found that new member states do not fit into any of the worlds of compliance suggested for the EU-15. They proposed a fourth category: the world of dead letters. Countries belonging to this group include all V4 countries as well as Italy and Ireland. These countries are characterised by excellent results at the transposition stage and quite systematic problems at the application and enforcement stage. Unlike other worlds of compliance, the implementation in the world of dead letters is influenced by a larger number of factors: from weak civil society and the status of trade unions, through to an inability and unwillingness of legal entities to apply law and problematic law enforcement on the part of monitoring bodies and the courts, the same factors that were identified as problematic in the NIS reports on V4.

In addition, the no longer existing EU stick allowed V4 countries to refine, revise or completely abolish institutional frameworks that were created as a result of the accession. One of these requirements that was demanded as a part of accession was to establish and sustain an administrative capacity built on the principles of professionalisation and political neutrality. Jan-Hinrik Meyer-Sahling showed that only Estonia, Lithuania and

152 Schimmelfennig, F., & Sedelmeier, U. (2007) Candidate Countries and Conditionality. In: Graziano, P. & Vink, M., eds., 2007. Europeanization: New Research Agendas. Basingstoke: Palgrave Macmillan.

153 *ibid*

154 Dimitrova, A. (2007) Institutionalization of Imported Rules in the European Union's New Member States: Bringing Politics Back in the Research Agenda. European University Institute, EUI Working Papers 2007/37.

155 Quantitative data are compiled from European Commission Internal Market Scoreboards, available at http://ec.europa.eu/internal_market/score/index_en.htm

156 Falkner, G., & Treib, O. (2008) Three Worlds of Compliance or Four? The EU-15 Compared to New Member States. *Journal of Common Market Studies*, 46: 293–313.

157 Falkner, G., Treib, O., Hartlapp, M. & Leiber, S. (2005) *Complying with Europe: EU Harmonisation and Soft Law in the Member States*. Cambridge: Cambridge University Press.

Latvia continued with pre-accession administrative reforms after EU accession, while Slovakia, Poland and the Czech Republic abolished or revised substantively frameworks adopted during the accession.¹⁵⁸ Slovakia, for instance, abolished the Civil Service Office, which led to the strengthening of political influence on the civil service, a practice that was prevalent during the 1990s. These so called “soft rules”¹⁵⁹ that were part of pre-accession conditionality, but not part of the *acquis communautaire*, were designed to close the gap between law in the books and law in practice. The scope of changes in civil service systems in V4 after the 2004 point out the limits of pre-accession conditionality, but also suggests that the socialisation effects of conditionality were not able to change the values of domestic actors. They obeyed and implemented everything, but their values did not change dramatically. The conditionality in candidate countries thus strengthened the importance of political accountability to external organisations (EU, World Bank, IMF), but at the same time weakened the horizontal accountability to local electorates¹⁶⁰. As Klaus Goetz pointed out “in settings where institutions are far from fixed and their socialising effects generally limited, actors matter”.¹⁶¹

There are no easy solutions for improving the implementation of law in the Czech Republic, Hungary, Poland and Slovakia. National Integrity Reports of the V4 countries provide enough evidence on how the implementation (both in phase of enforcement and application) is obstructed by shortcomings in court systems, administrative capacity of monitoring institutions and civil society, that is both underfunded and lacks personnel. As Gerda Falkner (2010, p. 18) lamented, when discussing the shortcomings of EU law implementation in member states “it is almost tragic to see how those very laws that are so cumbersome to achieve in intricate EU-level negotiations are later so often not respected in the member states”.¹⁶²

II. INDEPENDENCE OF THE MEDIA ACROSS VISEGRAD COUNTRIES

This chapter looks at the parameters of media independence and at their role in providing oversight over the operation of the four Visegrad states.

Overall the media can operate freely and citizens in all four countries have access to a broad range of information sources. Legal provisions do not digress from international standards, with the notable exception of Hungary, which has been a target of severe criticism with respect to its new media law.¹⁶³ The broad and poorly defined prerogatives it gives to a politically controlled media supervisory body are a serious threat to media independence. Media outlets in all four countries are dependent on advertisers; resources

158 Meyer-Sahling, J.-H. (2009) Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years after EU Accession. SIGMA Paper No. 44, OECD, available at [http://www.oilis.oecd.org/olis/2009doc.nsf/LinkTo/NT00002C4A/\\$FILE/JT03264288.PDF](http://www.oilis.oecd.org/olis/2009doc.nsf/LinkTo/NT00002C4A/$FILE/JT03264288.PDF)

159 In areas such as administrative capacity, anti-corruption or transparency.

160 Malová, D. & Dolný, B. (2008) The Eastern Enlargement of the EU: Challenges to Democracy? Human Affairs, 18: 67–80.

161 Goetz, K. H. (2005) The New Member States and the EU: Responding to Europe. In: Bulmer, S., Lequesne, Ch., eds., 2005. The Member States of the European Union. Oxford: Oxford University Press. pp. 254–285.

162 Falkner, G. (2010) Compliance with EU Social Policies in Old and New Member States: Different Worlds, Different Remedies. Working Paper No. 06/2010, Institute for European Integration Research, URL [accessed on May 13 2012] <http://www.eif.oeaw.ac.at/downloads/workingpapers/wp2010-06.pdf>

163 Critical voices have been raised by organisations such as the Reporters Without Borders, Committee to Protect Journalists, Human Rights Watch, OSCE Representative on Freedom of the Media or the Vice-president of the European Commission.

for serious investigative work are limited. The media nevertheless likes to report on irregularities within public administration and journalists working for the printed media have played a significant role in uncovering serious corruption cases in all four countries. The transparency of media ownership varies across the region,¹⁶⁴ in some cases aggravating concerns about the outlet's impartiality.

There are notable similarities among the media markets in all four countries of the region, although the difference in size should not be underestimated – the population of Slovakia (circa 5.5 million) is nearly seven times smaller than that of Poland.¹⁶⁵ In each case, a choice of private broadcasters is complemented by a public press agency and one or more public television and radio channels. While there are no publicly-owned printed media, the private ones cover a broad range of political standpoints and lead the way in terms of opinion-making and investigative work. The Hungarian market shows signs of a shifting balance: the NIS study notes that “a concentration of ownership of broadcast and print media is clearly visible just before and after the change of the government”, with a clear skew towards right-wing oriented media owners. In Poland, numerous journalists cited politicisation of their profession – partly the result of political polarisation of media outlets – as a serious problem. On the contrary, the Slovakian NIS notes a disappearing tendency to mix news reporting and political commentary,¹⁶⁶ even if media occasionally do express a political preference.

A common trend seems to be the gradual tabloidisation of media, partly a result of the need to attract advertisers. Strong focus on media outlets' ratings (readership, listenership) results in the predominance of mainstream content and sensational reporting, rather than an in-depth and consistent coverage of stories.¹⁶⁷ Insiders from Slovakia further attributed the low standard of reporting to inadequate professional training of journalists.¹⁶⁸ Journalists in Poland have noted the effect of the economic downturn, with dropping salaries and layoffs, on the quality of investigative work.¹⁶⁹

In all four countries, basic guarantees of media freedom are anchored in the constitution. While the Czech constitutional law does not go beyond guaranteeing freedom of speech, the Slovakian constitution envisages a special law to regulate linear media, and the Polish constitutions contain a whole section outlining the competences of a National Council of Radio Broadcasting, including safeguards against its politicisation. The recently amended Hungarian constitution envisions a parliamentary supermajority law on freedom of the media that will “provide rules on the supervision of the electronic mass media and the news media market”. Intended as a safeguard against instrumental meddling in media legislation, the provision makes changing media regulations quite difficult.

Subsequent laws regulate the operation of media in more detail. Except for Hungary, a separate law exists for linear media (radio and television) and for printed media. Internet-

164 The Czech legal system permits joint stock companies to have anonymous owners, for example.

165 The Czech Republic and Hungary both have approximately 10 million inhabitants.

166 Interview with I. Štulrajter, E. Babitzova, B. Ondrášik a M. Lešek.

167 Jirák, J.: Czech Newspapers Reviewed. New Presence: The Prague Journal of Central European Affairs, 2005, n. 1, p. 44–45.

168 Interview with P. Múdry, M. Lešek a B. Ondrášik.

169 A., Osiecki J.: Sami o sobie. Kondycja i zagrożenia odpowiedzialnego dziennikarstwa in: Kto pilnuje strażników. Odpowiedzialne dziennikarstwo w demokratycznej Polsce, ed. J. Kucharczyk, Instytut Spraw Publicznych, Warsaw, 2011, pp. 78–79. Available on <http://www.isp.org.pl/publikacje,82,448.html> [accessed 15.04.2011].

based media fall under the regulation of media regulation bodies in Slovakia, the Czech Republic and Hungary. Overall, it can be said that the relevant laws are specific enough to allow for predictable court rulings. The exception is Hungary, where vague formulations such as “exceptionally justified cases” combine with other provisions in opening the space for political intervention, as will be explained later.

Beyond general provisions protecting the freedom of speech, freedom of the media rests on a number of specific issues. Along with economic factors and the overall functionality of the judiciary, these are the access to broadcasting licences, protection of information sources, access to information and regulations with regard to content, including publishing of classified information and defamation laws. The modalities of media supervision are also essential, setting the boundaries for political or administrative interference in media work as well as corresponding sanctions.

In all four countries, radio and television broadcasting licences are subject to application with a supervisory body. In the case of printed media, no licence is required, although in Hungary and Slovakia publishers have to register their products. The criteria taken into consideration typically include the applicant’s technical preparedness, financial resources, transparency of ownership and the impact of the broadcaster’s program portfolio in terms of “plurality of information and media content”, to quote the Slovakian media law.¹⁷⁰ While there is no appeal against the regulatory body’s decision, applicants may question the regularity of the procedure in a court proceeding. In practice, the licensing process has not been a source of major controversies, with the notable exception of Hungary.¹⁷¹ In a recent tender the main opposition radio station, Klubradio, has lost its license to a music channel and faced other obstructions that have brought it near bankruptcy. The case indicates that it is not so much the provisions related to the licensing process that threaten media freedom in Hungary, but the discretionary powers of the supervisory body.¹⁷² The Polish NIS notes that legislation is also lacking when it comes to regulating ownership concentration.

The role of the media as an instrument of public oversight is maintained through the right of journalists to protect the anonymity of their sources of information as well as by their “licence to report”, i.e. their freedom to impart information of public interest. In Slovakia and the Czech Republic, the right not to disclose sources of information is limited only by an obligation to prevent criminal conduct, which the journalist is obliged to prevent or report.

In Poland, special limitations apply to cases involving national security, murder and terrorist acts.¹⁷³ The new Hungarian media law went further, limiting the protection of sources to information that has been obtained lawfully. However in a subsequent ruling,

170 Available on http://www.rada-rtv.sk/_cms/data/modules/download/1311150454_zakon_c._308_2000_Z.z._o_vysielani_a_retransmisii.pdf

171 Another case that has raised controversy was a decision of the Polish regulatory body (KRRiT) to deny a broadcasting licence to the conservative Catholic Trwam TV in March 2012. The reason cited was a lack of transparency in its funding, but opponents have argued that broadcasting concessions have been awarded to far less financially sound applicants in the past. See <http://www.warsawvoice.pl/WVpage/pages/article.php/20624/news>

172 See <http://esbalogh.typepad.com/hungarianspectrum/2011/12/media-freedom-in-hungary-the-case-of-klubr%C3%A1di%C3%B3.html>

173 See <http://www.pressreference.com/No-Sa/Poland.html>

the Hungarian Constitutional Court declared the protection offered by the current media law as entirely insufficient.¹⁷⁴

The use of “leaked data”, especially of police wire-tappings, has been a source of controversy in other countries as well. Leakages of wire-tappings made by both the police and the secret services have, on the one hand, revealed a number of corruption scandals.¹⁷⁵ On the other hand, their leaking casts serious doubts over the performance of the respective law enforcement agencies. In the context of press freedom, it is important that apart from Hungary, publishing such information is not restricted.¹⁷⁶

Another important factor in the ability of media to exercise public oversight is regulations concerning public access to information. Both the laws and practice in Slovakia appear to work well. In the Czech Republic, the level of institutional resistance to transparency measures is relatively high, but relevant laws are in place and the highest administrative court upheld the right to information. The Polish Press law further strengthens the act on access to public information.¹⁷⁷ In Hungary, access to information has suffered a setback with a new law that replaces the independent Commissioner for Data Protection and Freedom of Information with an administrative agency, formally part of the executive and dependent on the prime minister.¹⁷⁸

As far as reporting on corruption is concerned, media in all four countries have played an active role. This appears to be especially the case of the Czech Republic, where reporting on corruption has become remarkably frequent in the past few years. As opposed to Slovakia, for example, the media has also proved capable of following corruption cases on a long-term basis (see the Key Strengths chapter for details). Investigations that follow an initial impulse provided by an informer are predominantly the domain of the printed media journalist.

To protect the reputation and private life of individuals, each of the four countries applies libel and defamation legislation. This is a contentious area, as publishing unpleasant information may serve as a pretext for legal action against the news provider. Czech journalists enjoy a high level of protection in this respect: actions for the protection of personal rights rarely succeed in politically sensitive cases.¹⁷⁹ Although the legislation does not differ dramatically in Slovakia, court rulings follow an opposite trend: in numerous cases, media outlets had to pay large compensation to politicians for using words such as “arrogant”.¹⁸⁰ In Poland, it is the toughness of libel legislation itself

174 See <http://atlatzso.hu/2011/12/20/constitutional-court-decided-in-favour-of-journalistic-source-protection/>

175 A recent case in the Czech Republic involves secret deals between the ex-mayor of Prague, Pavel Bém and private company executives (see <http://zpravy.ihned.cz/c1-55173350-dalsi-odposlechy-bem-s-janouskem-ladili-noty-chteli-ovlivnovat-developerskou-firmu>). In Slovakia, the leakage of a secret service file named “Gorila”, mapping contacts between representatives of nearly all political parties and the financial group Penta, has caused a grave political crisis. The authenticity of the information has not been fully confirmed, however (See <http://tema.aktuality.sk/kauza-gorila/>).

176 A 2009 law has made the publishing of police wire-tappings illegal in the Czech Republic, but a 2011 novelization has mandated their publishing in cases where public interest outweighs the need to protect personal privacy. See <http://www.novinky.cz/domaci/240564-nahubkovy-zakon-je-mekci-odposlechy-lze-ve-verejnem-zajmu-zverejnit.html>

177 The Act of September 6th 2001 on access to public information is joined by the Press Law Act in requiring public bodies to supply information to journalists, the means by which that information is supplied, and the scope thereof, being laid down.

178 See <http://www.freedominfo.org/2011/09/new-law-on-freedom-of-information-in-hungary/>

179 See, for example, the case of former deputy Kořistka, who does not have to apologise to the lobbyists whose corrupt practices he exposed. See http://www.ceskenoviny.cz/zpravy/nejvyssi-soud-zamitl-dovolani-dalika-a-vecerka-v-koristkove-kauze/588251&id_seznam=5918

180 See <http://www.sme.sk/c/5040557/harabin-opat-vyhral-sud-proti-novinam.html>

that has attracted criticism: the Polish criminal code provides for sentences of up to two years in prison for defamation of public officials and those assisting them in the performance of public duties.¹⁸¹ In Hungary, similar provisions are in place. While the new media law does not alter existing regulations with regard to defamation and libel, the vagueness of its provisions and the broad scope of extra-legal authority vested in the media supervisory body have made media owners extremely cautious, especially in fraud-related stories.¹⁸²

The Hungarian Media Law prescribes special responsibilities to “media service providers with significant market power”. With regard to content, these include obligatory broadcasting of news. The law further prohibits dedicating more than 20% of the news programmes’ duration to “reports of a criminal nature which do not qualify as information serving the democratic public opinion” (on average, per year). But content regulation is a source of concern on a broader level in Hungary. Provisions in the new media law that seek to protect the audience from insult, threats to public morality and hatred against majority or minority are broad and the grounds for investigation by the media supervisory body unclear. Taken to the extreme, current legislation enables the Media Authority to impose fines on any for-profit media of up to EUR 727,000 for publishing a statement about any person or organisation.¹⁸³ On a related note, the Slovakian NIS observes that the vague requirement of presenting news in an objective and balanced manner leads broadcasters to apply preventative self-censorship.¹⁸⁴

The common competences of supervisory bodies are to issue broadcasting licences, supervise the operation of public media and monitor compliance of private media outlets with conditions stipulated in their licences as well as with media laws. The two critical factors that determine their role are a mechanism through which their members are appointed and the competences they are given. In Poland and the Czech Republic, political nominations to supervisory bodies have been criticised,^{185 186} but in the latter case, the supervisory body has an independent budget and each type of public media has a board of directors that is appointed separately. In Slovakia, the more convenient means of interfering with media work seem to be defamation law suits. Nevertheless, the vaguely worded requirement to present news in “an objective and balanced manner” enabled the Slovakian media supervisory body to sanction a radio for using the derogative for “big shot” when referring to politicians, for example.¹⁸⁷ The Czech supervisory body imposed six fines under a similar provision in 2010.¹⁸⁸

In terms of media freedom, risks inherent in the media supervision system recently put in place in Hungary grossly overshadow the deficiencies in the other three countries. An

181 See http://www.ifex.org/poland/2007/11/08/two_newspaper_editors_to_be_held/

182 Interview with Júlia Keserű, K-Monitor Public Watchdog Association.

183 See <http://humanrightshouse.org/Articles/17199.html>

184 Interview with P. Múdry, director of the International Press Institute, with E. Babitzova, general director of Asociácie nezávislých rozhlasových a televíznych staníc and with I. Štulajter, reporter of the SME daily.

185 See NIS Poland, Pillar Media, section Independence (practice).

186 Interview with Jan Jiráček; International Press Institute: Press Freedom Audit Report. Czech Republic. See also IPI Mission 13–14 May, 2009, str. 8; <http://www.freemedia.at/press-room/public-statements/features/singleview/4573/>.

187 Interview with E. Babitzová.

188 RRTV Annual Report 2010. Zpráva o činnosti Rady pro rozhlasové a televizní vysílání a o stavu v oblasti rozhlasového a televizního vysílání a v oblasti poskytování audiomedialních služeb na vyžádání za rok 2010; <http://www.rrtv.cz/cz/static/o-rade/vyrocní-zpravy/index.htm>.

appointment system that favours the ruling party will conserve the composition of both the media supervisory body (NMHH) and the Public Service Fund (which is in charge of all public media assets and income) beyond the current government's term of office. Simultaneously, it gives the NMHH extremely broad investigative power, enabling a media commissioner to investigate even if the media provider has not violated the law. Sanctions that the NMHH can impose are very high and apply to all who could potentially hinder the investigation process.¹⁸⁹ As has been mentioned earlier, the scope of content control is extremely broad and vaguely defined.

III. CIVIL SOCIETY IN THE V4 REGION

One can distinguish a few areas in which problems of Visegrad countries are quite common. A very wide and fundamental issue is the financial condition of NGOs, including sources of funding available for them (especially in the case of watchdog organisations). Other problems are the lack of transparency and – in most cases – lack of self-regulating mechanisms.

Although Visegrad countries vary in terms of CSO's funding systems there is a common problem of insufficient resources. The fact which is especially important for watchdog and advocacy organisations is that lots of opportunities for international funding were stopped after EU accession. Nowadays it is common in all V4 countries that NGOs are highly dependable from state institutions and sources as well as from EU funding. Not all of them are transparent.

For example, in Hungary, the main state sources of income for NGOs are the National Civil Fund – which is quite transparent – and on another hand – ministry funds. The latter are non-transparent, highly dependable upon ministers. These funds might be donated by a decree of a minister, without open calls for proposals. The result of this situation is that there is a wide area for embezzlement and clientele building. Some cases of such misuse of funds will be described below.

In Poland in contrast the local government is the main donor for CSOs. This makes it impossible to develop a strong movement of the local watchdogs. There is also a large share of the money allocated by the central administration in the form of grants and subsidies. This amount also includes the EU funds, which are, however, used only by the largest and strongest organisations (about 10 percent of the whole population of the CSOs) due to the complication of the procedures that they require. As a consequence, there is very little variety of funding sources among the Polish CSOs. More than half of them have no more than three donors.

The Czech NIS states that there is a corruptive problem of some EU funding. According to the experience of some organisations it is clear that a sure route to their acquisition is still effective use of the services of purposefully created "consulting firms". However it is not stated directly in other V4 reports, the problem seems to be known in all of the Visegrad countries.

189 See <http://www.indexonensorship.org/2011/01/hungary-media-law/>

Another issue is the question of private funding. In three out of four V4 countries (Poland, Hungary and Slovakia) there function various types of the so-called 1% mechanism. It enables people to donate 1% of their income tax to the CSO. This mechanism is not very attractive for watchdog organisations as taxpayers prefer to choose a charity organisation. Moreover it may have this kind of effect that an individual who spent his "1%" on charity will be less keen on donating in some other ways during the tax year.

An important question is what are the incentives both for business and for natural persons to donate to NGOs. In the case of Poland, although there is a lot of provisions which should make charity easier, the NGOs cannot count on the private donations, neither from individuals (only about 20 percent of Poles declare that they have sent a donation, but usually these are not large amounts) nor corporations (in this case there are no good estimates; yet, the studies of the non-governmental sector indicate that only about 20 percent of CSOs receive such support and it does not constitute a substantial part of their budgets). Some reasons for the bad image of CSOs and a fear of donating to them are described in Poland's weakest institutions chapter. Also, the membership base of the organisations is not a good source of funding, given that most members of the associations fail to pay their membership fee (it is a principal source of income for only 12 percent of the organisations).

When talking about sources of finance of NGOs it is worth underlining that there is a similar phenomenon of abusing the form of CSO for political purposes described in NIS reports from Hungary, Slovakia and the Czech Republic (the Polish NIS does not recognise this issue, but in Polish weakest institutions chapter one can find other problems in close relations between CSO-politicians). This phenomenon is described by the Hungarian NIS as the government establishing and primarily cooperating with its "own", friendly quasi-CSOs: formations registered in the form of associations or foundations, but obviously established by and serving political and/or business forces. Quasi-CSOs have been the key players in major financial scandals, the most notable of these being the so-called Zuschlag case. The case revealed that János Zuschlag, an ex-Socialist MP and his collaborators operated a network of organisations aimed at raising funds from different state sources for various goals (e.g. youth camps), and which instead were used by the Hungarian Socialist Party. In a similar case, the chairman (László Földesi-Szabó, a retired police officer) and collaborators of the Egymásért Foundation, established by high-ranking secret service officials were found to have committed embezzlement and smuggling. There was a similar case in Slovakia, where one of the non-profit social enterprises called Socialne podniky, financed by the European Social Fund, was non-existent as they were a cover up for the misuse of financial resources of the EU taxpayers. Again, the beneficiaries of embezzlement were people close to one of the political parties (SMER). In the Czech Republic practices like that are also occurring and they are called "porcovani medveda".

All these funding issues produce a situation in which NGOs may face the challenge to recruit and maintain permanent staff for key positions. In some cases it will not be an overstatement if one were to say that CSOs are the subject of a brain drain.

The next common problem for CSOs from V4 countries is the lack of culture of accountability and integrity. For example, in Hungary, among CSOs, only public benefit

organisations (PBO) (comprising 48% of all) are legally required to produce annual reports, which include their financial accounts. However, they are not obliged to make them easily available to the public (e.g. on webpages), or to submit them to any state body (e.g. the attorney's office); only PBOs with an exceptional status (6%) must publish their reports in a national newspaper. However, conformity with these regulations is not monitored in practice. Therefore, the planned new non-profit law will require these organisations to submit their reports to the courts. Also, the legally required form of the report is practically incomprehensible to a layperson, because it is largely quantitative and emphasises issues of accounting, and it does not include a section in which a report on the organisation's actual activities can be described. Thus, the publication of an easy-to-understand report, or reporting, by non-PBOs depends entirely on the organisation's own willingness and morale, and this is typical only for a minority of the more professional CSOs. The same applies to making information about the composition of the board and the list of paid staff publicly available – this is even less common than reporting on the general goals and activities.

The situation is quite similar in Poland. The law obliges the foundations, which constitute a large part of the Polish third sector, to submit periodical reports on their activities and financing. According to the provisions of the Act on Foundations, a foundation has to provide a relevant minister with such a report and make it available to the public. Also the entities that hold the status of Public Benefit Organisations are obliged to prepare a report on their activities. Nevertheless, it is estimated that less than half of the foundations and public benefit organisations do not comply with these simple reporting requirements. The data published by the Ministry of Education indicate that in 2008 only 404 out of 1524 foundations supervised by the ME fulfilled the obligation to submit a report. Another example of the lack of transparency of Polish CSOs is their ignorance of the provisions of the Law on Access to Public Information. It obliges all the entities performing public tasks, including the CSOs, to publish information under certain rules, e.g. to publish some data in the Public Information Bulletin. In practice, these provisions have never come to reality.

Self-regulation of the third sector in Visegrad countries multiplies a model that we know from the comparative chapter on media. Again, Hungary looks positive in this aspect while all other countries are striking an unsatisfactory note.

In Hungary, on the sector-wide level, there are no self-regulatory mechanisms or codes of conduct, but similar instruments do exist in some sub-segments or geographic locations. The best known among these, considered as an exemplary model, is the cooperation and delegation system of the environmental NGO movement, which has been operational for at least one and a half decades. It is based on the institution of the "National Gathering" (NG) an annual meeting of the environmental movement, organised by a different CSO each spring and approximately 120 to 150 organisations participate. What differentiates it from other such "jamborees" is that the NG has written and mutually approved rules of procedure, which sets out the goals, the modes of operation, participation and decision-making. From the self-regulatory point of view, the most important elements are:

- only statements approved by a majority at the NG may be considered as the position of the environmental NGO movement as such (no organisation can claim to speak on behalf of all);
- only delegates elected by the NG are entitled to participate in various multi-party dialogue or consultative bodies as representatives of environmental NGOs;

During these elections and decisions, each registered CSO (which has the protection of environment among its main goals) attending the NG has one vote (thus, there is no bias towards the larger ones). This system was developed in the mid-1990s in a rather lengthy and “organic” process, mainly in response to governmental attempts to find or appoint “the” representative of the environmental movement. It may be added that environmental CSOs are not organised under one umbrella organisation with a central leadership, but through this system they have been able to retain their diversity and strengthen their advocacy capacities.

By contrast, other countries experience very low accountability of their CSO sector. In Slovakia, there are no self-regulatory mechanisms in place among CSOs. Some CSOs have their own code of conduct policies, either written or oral (usually designed on the demand of the donors), but there are no sector wide common rules on the matter. In various umbrella organisations the codes have often been voluntary and have almost never been enforced. Most of the disputes in the CSOs have been solved individually and based on the individual sense of good, transparent and proper behaviour.

The Czech NIS also points out that self-regulation is not working. Umbrella organisations cannot promote greater integrity of its members as they do not have a sufficient motivational tool. An important incentive in this direction could be easier access to donations. The tool which is trying to use this idea is a portal called “Donate Correctly”. It was established by the Forum of Donors. Part of the registration process is to provide information about the “financial health, operations, management, controlling, and resource management and communication organisation”.

In Poland the problem is similar. While there had been efforts to regulate CSOs, according to the Polish NIS the self-regulation of the Polish third sector practically does not exist. The first efforts to create a set of rules governing the operation of CSOs date back to the 90s. During the First National Forum for Non-Governmental Initiatives in 1997 the Charter of Principles of CSOs was developed. Among other rules, is stressed the need for a statutory distinction between organisations’ management and supervisory functions. It also recommended that the members of collegial supervisory bodies should not receive any remuneration for their work. The Charter did not, however, play any significant role in practice. According to the data cited by the CIVICUS CSI report 72% of the organisations in 2002 were not even aware of the existence of such a set of rules.

7. RECOMMENDATIONS

The recommendations of this report are addressed to different stakeholders of the NIS system. Some recommendations are general and applicable in all V4 countries while others are more specific and addressed to one specific country.

Public Administration

- Reduce the political influence over the public sector. **All V4 countries**
- Increase the professional quality of the work force in the public sector. **Czech Republic**
- Strengthen the stability and predictability of civil service career path for both ordinary employees and senior officials. Protect professional public administration staff from politically motivated lay-offs. **Czech Republic and Hungary**

Law Enforcement: Public Prosecution

- Reduce the political influence over the prosecution. **All V4 countries**
- Decrease the dependence of individual prosecutors on senior public prosecutors. **Czech Republic, Slovakia**
- Reform the too strictly hierarchical and non-transparent organisational structure. **Czech Republic, Slovakia**

Law Enforcement: Police

- Improve the employment conditions of the police force: decrease the high level of personnel turnover, increase the standards for hiring, and establish post-employment restrictions. **Slovakia**

Political Parties

- A new, effective, transparent party and campaign financing regulation is required. **All V4 countries**
- Break the consensus among political parties to maintain the non-transparent party financing system. **Hungary**
- Give more authority to the SAO to conduct deeper investigations in party financing and sanction parties violating the law. **Hungary**

Business

- Strengthen the transparency in public procurement. **All V4 countries**
- Provide more impartial internet based procedures and reduce the corruption risks derived from permit and licence requests. **All V4 countries**
- Strengthen the integrity mechanisms in the business sector. Promote and subsidize programs about ethical business conduct for small and medium-size companies. **Hungary**
- More effective regulation on bankruptcy and liquidation. **Hungary**
- Protect entrepreneurs from extortion of public officials with more effective and non-partisan law enforcement. **Poland**

Judiciary

- Strengthen the judiciary's independence. **Hungary**
- Introduce a more transparent candidate selection. **Slovakia, Hungary**

Civil Society

- Reduce the civil sector's dependence on public funding and EU resources. **All V4 countries**
- Encourage individual civil activity and cooperation between civil society organisations and business. **Poland**

Supreme Audit Institution

- Give more authority to the SAO to conduct deeper investigations in party financing and ability to sanction parties violating the law. **All V4 countries**

8. ANNEX

NIS Assessment Scores: Visegrad Overall

Pillar Scoring Board	1-L	2-E	3-J	4-PA	5-LE	6-EMB	7-O	8-SAI	9-ACA	10-PP	11-M	12-CS	13-B	Average
Resources (law)	94	N/A	75	N/A	N/A	N/A	N/A	N/A	75	81	81	75	75	79
Resources (practice)	81	75	63	75	44	81	75	81	67	63	81	38	69	69
Independence (law)	94	88	75	56	56	56	88	81	50	88	75	100	69	75
Independence (practice)	69	56	56	31	44	83	81	75	58	75	44	75	56	62
Transparency (law)	63	81	69	81	69	75	94	88	50	50	50	N/A	69	70
Transparency (practice)	69	56	56	44	56	75	81	81	58	56	38	50	44	59
Accountability (law)	63	69	75	75	81	69	88	75	58	50	63	N/A	69	69
Accountability (practice)	50	44	44	33	44	56	75	75	75	31	56	44	38	51
Integrity mechanism (law)	50	56	69	56	69	50	81	63	67	63	63	N/A	56	62
Integrity mechanism (practice)	44	31	44	33	38	69	69	69	58	38	50	38	25	46
Pillar specific 1	56	38	69	38	56	31	56	75	50	44	44	63	31	
Pillar specific 2	38	56	44	50	-	94	63	56	42	44	63	56	19	
Pillar specific 3	-	-	-	42	-	-	-	69	50	-	63	-	-	
Capacity	84	73	67	54	48	73	81	79	63	77	70	72	67	70
Governance	56	56	59	56	59	66	81	75	61	48	53	46	50	59
Role	47	47	56	40	56	63	59	67	47	44	56	59	25	51
Overall Pillar Score	63	59	61	50	55	67	74	74	57	56	60	59	47	60
Law	73	73	73	67	69	63	88	77	60	66	66	-	68	70
Practice	63	53	53	43	45	73	76	76	63	53	54	49	46	57
Difference	-10	-21	-20	-24	-24	10	-11	0	3	-14	-13	-	-21	-12



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