Corruption, anti-corruption and human rights: the case of Poland's integrity system

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Abstract Serious tensions can arise in a country's integrity system when anti-corruption policy also poses a threat to fundamental values and standards under which a democratic state operates, in particular human and civil rights. This article examines these tensions using the case of Poland, where the risk arises, in particular, in situations of 'moral panic', where intense public and political discourse around a specific issue with a strong sense of threat to society also generates expectations that policy and decision makers will quickly solve the problem. With the Polish National Integrity System (NIS) assessment as a background, we examine the need and the scope for developing research and evaluation instruments which help reduce the risk that anti-corruption initiatives will undermine the basis of a democratic state, with recommendations in this regard.

Introduction

Corruption, no matter how it is defined see [1], raises concerns about human and civil rights. Even when not a crime, acts of corruption still violate the rule of law in a broader sense. Yet the impact of corruption on civil and human rights only started to be analyzed in depth relatively recently – for example, in the 2009 report of the International Council on Human Rights Policy emphasising the negative consequences of corruption on many different public goods and services (such as access to administrative decisions, judiciary, politics, health care, education), crucial for the realization of human and civil rights [2]: 31–58.

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However, there is another aspect of the relationship between corruption, and human and civil rights, which has been analyzed even less frequently. Can anti-corruption policies, if designed and implemented improperly, be just as harmful to human and civil rights as corruption itself? In this article we use the case of Poland to show that this risk is real, and how important it has become for research and evaluation on anti-corruption policies to include a specific focus on how the risk is being managed or mitigated. We first introduce the general problem of the potential for serious tension between anti-corruption policies and human and civil rights, and in response, the potential solutions offered by holistic approaches to policy evaluation, such as the National Integrity System (NIS) approach. Poland was one of 24 countries subject to NIS assessment as part of a Europe-wide initiative [3]. However, as we then discuss, the actual history of the principal reforms in Poland since 2006 shows how readily these risks can be realized, particularly in circumstances where an atmosphere of ‘moral panic’ is allowed to emerge around corruption issues – or indeed, encouraged or exploited. After analyzing this history in some detail, we return, in conclusion, to recommendations for how a policy evaluation framework like the NIS might best evolve to achieve its original, holistic goals and better deal with these fundamental tensions.

Anti-corruption policies as threats to human and civil rights

Internationally, the pressure to fight corruption has been increasing on an unprecedented scale since the 1990s see [4–7]. In this time, numerous multinational anti-corruption programs have been initiated by global organizations such as the World Bank, the International Monetary Fund, the European Union and the United Nations. A large body of international law, setting global standards for anti-corruption policies, has developed. The UN Convention Against Corruption (UNCAC) alone obliges its signatory countries to implement dozens of legal and institutional anti-corruption measures, which governments typically adopt. However, this may also only be out of governments’ eagerness to please foreign investors, and political leaders may also use international standards in an instrumental manner, not (or not only) to fight corruption, but as another technique to gain support from voters or to combat political opposition [8, 9]. Therefore, anti-corruption policies are sometimes created without any deeper reflection, with the risk they will be ineffective or even counterproductive.

Human and civil rights may also come into jeopardy in this process. As Grunberg [10] described, dilemmas arise because the process of detecting and counteracting corruption crimes often includes infringements of fundamental norms such as (1) the right to a fair trial; (2) the presumption of innocence; (3) the guarantee against self-incrimination; (4) the right to property; and (5) the right to privacy. The problem arises even within the UN Convention Against Corruption, with Article 65(2) stating that a state-signatory may ‘... adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption’ [10]: 54, arguably providing a direct incentive to violate the standards mentioned in the preamble of the Convention including principles of fairness, responsibility and equality under the law.

Some states, encouraged by the adoption of the UNCAC, introduce rigorous regulations preventing the illicit enrichment of public officials. Because it is usually difficult to secure evidence for this class of crime, the UNCAC suggests shifting the

burden of proof onto suspects. Hence, prosecution or tax authorities are not obliged to prove that wealth comes from illegal sources – rather, the suspect must prove that he or she acquired the property legally, obviously jeopardizing a traditional presumption of innocence. Guarantees against self-incrimination may also be breached if one decides not to testify, as silence becomes a *de facto* admission of guilt. For these reasons, many countries, e.g. Great Britain and Poland choose not to follow these UNCAC requirements – although in Poland, in 2016, the return of a government responsible for the decisions and actions we analyze below indicates a change in this attitude, and renewed preparedness to scarify human rights in exchange for more radical, and in its opinion more effective, anti-corruption measures.

Serious tensions between human rights and anti-corruption policies also develop in relation to the right to property [11]. Effective anti-corruption policy requires that dishonest public officials, politicians or businesspeople making fortunes on corruption should forfeit this stolen property or assets, for the benefit of the public. Article 31 of UNCAC obliges signatory states to take all measures permitted within their legal system to seize and confiscate assets derived from corruption offenses. However, assets recovery procedures often raise controversies, for similar reasons. As Ivory shows with respect to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECPHRFF), European courts (including the European Court of Human Rights) tend to find violations of the right to property or the presumption of innocence only in very specific situations in asset recovery disputes: only when there is a serious breach of court procedures, a threat to the right to life and dignity, or an accused person may be subjected to torture. Therefore, European courts enforce most judgments of other states concerning confiscation, with only minimum standards of the right to a fair trial fulfilled. Grunberg [10] also points out that an often-used solution is to confiscate property without any court order (*in rem*), solely on the basis of administrative procedure, with even lower requirements regarding evidence.

Even greater tensions can arise where countries choose to establish anti-corruption agencies (ACAs) equipped with extensive powers to interfere with private lives of citizens – another fashionable trend under UNCAC, with Article 36 often interpreted as a requirement to create one super-enforcement body specialized in corruption crimes. This is the key focus of the rest of our analysis, in the Polish case. In the first five years after UNCAC entered into force in 2003, 24 institutions of this type were established all over the world [9, 12]. Many states give these agencies highly invasive powers, such as wiretapping, monitoring of correspondence, and provocations), immediately raising tensions with human and civil rights such as the right to privacy, and increasing the risks that ACA officers may abuse these powers, especially if under political pressure. Regular oversight of the courts over the use of these special powers often turns out to be imperfect. Case studies demonstrating the risk of inadequate citizen protection against such institutions include Singapore, Hong Kong, Indonesia, South Korea, Ghana, Nigeria, Latvia, Lithuania, Romania and Bulgaria [12–16]. Such tensions were also identified as a possible reason why dedicated ACAs ranked as, on average, the least strong of the institutional integrity pillars across the 12 European countries where they were present, in the 24-country National Integrity System project [3]: 16, 19.

The National Integrity System (NIS) approach to anti-corruption policy is especially relevant to the risk of human and civil rights abuse, because it seeks to adopt a broader perspective towards how integrity institutions and policies are working, across the

entire political system. As noted in the Introduction to this special issue [17], the National Integrity System (NIS) concept arose due to perceived need for a more holistic approach to evaluation and reform, in place of a tendency towards one-off responses like single new anti-corruption laws or agencies. If all relevant integrity and anti-corruption institutions operate in a transparent manner, cooperatively, one may say that an effective anti-corruption policy is in place. On the one hand, the NIS approach may seem to promote a repressive approach to anti-corruption policy, because the fundamental pillars of the system could amount to an extensive apparatus of repression, through the broad criminalization of corrupt behaviors and reliance on a variety of law enforcement bodies, including ACAs. However, on the other hand, the philosophy of the NIS approach also requires that the anti-corruption system or policy take into account a set of different factors: political, economic and cultural, as well as values and standards, such as human and civil rights [18] – along with the presumption that no single solution (e.g. an ACA or specific law) will effectively reduce the risk of corruption.

If this holistic vision of anti-corruption policy is accepted, the question becomes how such a theoretical approach, and the assessment and evaluation approaches that flow from it, can foster the development of solutions which do not violate fundamental values such as human rights. In Poland, the NIS approach applied between 2010 and 2012 proved effective for assessing anti-corruption policies and formulating recommendations on how to improve them, and was helpful for understanding the complex relations between anti-corruption policy and human and civil rights see [19]. However the Polish case demonstrates that the risk of focusing on such “silver bullet” solutions as an all-powerful ACA remains, and may even be on the rise, notwithstanding its consistency with a broader perspective. The NIS report also failed to cool down the atmosphere of “moral panic” in which Polish anti-corruption policy was created in the preceding years, and came too late to help avoid serious violations of human and civil rights. We therefore turn to this case in detail before returning to the question of how evaluation approaches like the NIS might move beyond reporting on infringements of these fundamental values, and more effectively support the original goal of holistic policy improvement.

“Moral panic” as a driver for corrupt anti-corruption policies

There are many circumstances in which anti-corruption policies can be designed in such a way that they will pose a threat to human and civil rights. In states with an authoritarian history, this is less surprising. Singapore, for example, for many years was considered to have a model anti-corruption policy, relying in particular on its ACA, the Corrupt Practices Investigation Bureau (CPIB), often presented as one of the best models of central anti-corruption agencies. However, it is also easily forgotten that CPIB was at times infamous for controversial methods which violated human and civil rights, e.g. through use of torture [14: 23, 90; 20: 9; 21].

What are the circumstances in which democratic countries, which theoretically should respect human and civil rights, may also come to have anti-corruption policies which violate these norms? In Poland, the reform history shows one of the most important to be a situation of moral panic. Since the 1970s, this has come to be

understood as a situation where a society becomes strongly convinced that it has to deal with events, processes, individuals, or groups that threaten fundamental values, interests, objectives and social institutions, and in which sources of anxiety become the 'subject of styling and stereotyping' by the media, politicians, moral entrepreneurs (such as church institutions or authorities), experts and NGOs [22]. Moral panic has a tendency to sudden outbursts and interruptions. According to Goode and Ben-Yehuda [23], moral panic can be understood as a sociological problem with five key features:

1. **Concern** – an increased level of interest in certain social groups, categories of behavior or the consequences of certain behaviors that are seen as a significant threat to the society
2. **Hostility** – attitude of the society to specific groups or behaviors considered as a threat is characterized by a high level of hostility
3. **Consensus** – that the threat (the source) of a moral panic is real and what the exact reasons for this situation are
4. **Disproportion** – risk indicators, numbers, statistics, examples illustrating the threat are exaggerated or are inadequate (as often happens in cases of corruption, where there are no actual indicators that would determine the scale of the problem)
5. **Volatility** – a sense of danger suddenly explodes with high intensity, but then has a tendency towards institutionalization, routinization and slow decay, with periods of relapse and subsequent sudden explosions.

While moral panic may be a social construct, its consequences are real and can be of two types: (1) adoption of new (mostly very repressive) laws and / or creation of programs, policies and institutions or agencies whose task is to deal with the problem quickly; and (2) possible revision of moral attitudes in society, including views on what should be considered good or evil (which may take the form of acceptance of the threat as a part of normality).

Democratic states by their nature may be prone to moral panic [24], because they are more open, pluralistic and influenced by independent mass media than other types of political regimes. Moreover, in the Internet age, where access to public debate is practically unrestricted, one event (or sometimes even one person) may cause an explosion of moral panic. For example, the war on terrorism announced by the US after the 9/11 attacks led to severe anti-terrorist measures around the world, including military operations, extra-judicial killings, surveillance and privacy infringements, long-term detention and imprisonment of suspects without any independent court oversight, and other threats to human and civil rights. The war on terrorism is a good illustration of how, in the situation of moral panic decision-makers can sacrifice these values in the name of maximizing the efficiency of urgently-required actions, notwithstanding their inconsistency with the promotion of democracy and the rule of law.

Moral panic generally also leads to disproportionate reactions of society and public institutions to the real or putative conditions perceived as a threat. Of course, what is proportional and what is not can be contested. However, it is generally agreed that a reaction which goes beyond certain commonly accepted, often legally enforced and institutionalized set of norms (e.g. human rights) is inherently disproportionate. The scale of disproportion and moral panic may be further discussed using, for example, the indicators suggested by Goode and Ben-Yehuda [23].

In our assessment, Poland provides a good example of how corruption can become the subject of moral panic, resulting in disproportionate policies. In Poland, until the collapse of communism in 1989, corruption was simply a way of life [25, 26]. In the new democratic reality, for many years it was not perceived as a major social problem either, although it was still common. Corruption only became an important concern to the society, government, the media and experts in the late 1990s, when Polish authorities were forced to adapt to the requirements of the European Union and other international organizations (such as the NATO or OECD) [27]. Between 1998, when Poland started its negotiations on accession to the EU, and 2004 when the country joined, the process of rising moral panic on corruption is clearly observable. The government initiated a public debate on corruption and anti-corruption policy, but soon lost control over it. Public opinion seemed to be struck by a sudden “revelation” that the country was at high risk of corruption. What had been common for decades, rapidly became something unwanted and shameful. A clear indication of this swing in public opinion is illustrated in Fig. 1, which shows a more than 20 % increase in those believing that corruption in Poland is a severe problem, between 2000 and 2001, and remaining very high until 2006. As shown in Fig. 2, the momentum of moral panic concerning corruption was also reflected in changes in the media discourse, with the incidence of corruption-themed content in the two most widely read newspapers in Poland (*Gazeta Wyborcza* and *Rzeczpospolita*) increasing by more than 140% in the period 1998–2004.

The moral panic created a powerful pressure on policy-makers in Poland, who responded from the late 1990s and over next few years with an unprecedented 49 legal acts aimed at reducing the risk of corruption. Moreover, 16 police departments were established to combat corruption, alongside special anti-corruption units in the prosecutors’ bureaus and other services, such as the Railway Protection Service [12]. Paradoxically, the government that initiated these changes did not escape accusations of corruption, and its achievements were discredited by scandals involving high officials, adding more fuel to the moral panic. The government fell in 2004 (a day after the Polish accession to the EU), when the moral panic was at its height, only to be succeeded by populist parties in 2005, proclaiming radical slogans of “war against corruption”. Consistently with the Goode and Ben-Yehuda analysis of moral panic, the process ended with implementation of severe anti-corruption measures – the most

Fig. 1 General perception of corruption – respondents believing corruption is a very big problem (%). Source: Public Opinion Research Center [28]

Fig. 2 Number of articles whose main theme was corruption published in two main Polish newspapers between 1998 and 2004. Source: Makowski [29]

important being establishment in 2006 of the Central Anti-corruption Bureau (Polish acronym: CBA), a special super-service with extremely broad competences.

Presented as a “silver bullet” solution to the problem of corruption, the CBA’s establishment helped to calm the society (as also suggested by Fig. 1). However, as we will see, the radicalization of anti-corruption policy caused by moral panic resulted in the new CBA – the symbol of the response – became the source of a new threat to human and civil rights.

(II) legal basis of the polish central anti-corruption bureau

To understand the significance of the Central Anti-Corruption Bureau (CBA) as an example of human rights abuse in the name of anti-corruption, in its first two years, it is useful to examine the content of its enabling legislation, followed secondly by its actions as an institution. Indeed, it is relevant to ask how many times human and civil rights might be infringed by one legislative act. The Bureau was founded under the law of 9 June 2006 [30]. In the regulatory impact assessment report on the bill, its sponsors’ arguments in favor of a new institution cited the results of public opinion polls, the belief that corruption was one of the central problems in Poland, and Poland’s international commitments, including under the UN Convention against Corruption [31].

The bill posited that the CBA should combat corruption chiefly by means of criminal sanctions, granted it the status of a special service, and equipped it with a range of competences running the gamut from intelligence gathering through supervision to active [32] investigation. Notably, the Bureau was also assigned the task of combating corruption in its preliminary phases (*‘przedpole przestępstwa korupcyjnego’*), by pushing to ‘eliminate from the public life the entire range of individual corruptive conduct which stops short of falling under the criminal regulations but is nonetheless a violation of anti-corruption laws’ [31]. The Bureau was given the power to perform special-purpose audits and to engage in so-called controlled purchases, conditional on the consent of either a Regional Court or the General Prosecutor (who at that time, by law, was also the Minister of Justice).

From the beginning, the architects of this institution were aware that its operation could pose a threat to human and civil rights. Various experts pointed out that some of these regulations might violate the Polish Constitution and international regulations, in particular the ECPHRFF. The bill's sponsors responded that Article 31(3) of the Constitution permitted the Polish legislature to limit constitutional rights and freedoms when necessary to protect the state's safety and security, the public order, the natural environment, public health and morality, or the rights and freedoms of other individuals. Corruption was presented as an overwhelming problem and fundamental threat to the public order, and thus ideal justification for such limits. The Bureau was given power to: audit asset declarations of persons performing public functions (e.g. state officials, MPs and local government officials – in total around 600,000 individuals); carry out inspections in peoples' homes, without any oversight of the court or the prosecutor; and collect and archive personal information not even related to any investigation, including sensitive data such as information about health, sexual orientation, ethnicity or addictions. Citizens were deprived of any access to this database, and had no possibility to correct the information contained in it. These powers were obviously detrimental to the right to privacy, a basic human right [32]: 3–5.

A further serious objection to the bill concerned the lack of any precise definition of the term 'corruption' itself – a conscious decision, designed to broaden the CBA's competences [12]. The bill also included another vague objective, that the CBA would combat crimes against 'the economic interests of the state' – again, not specified or defined. Criticism from constitutionalists and other experts brought little effect, with the final definition still unclear: 'accepting, by any person, directly or indirectly, any undue benefit, personal or other, for her or himself or any other person, or accepting an offer or a promise of such a benefit, to act or refrain from acting in the exercise of public functions or in the course of business' [30]. This definition with reference to the sphere of economic activity, in practice could mean undermining another constitutional principle, namely the freedom to engage in economic activity. In addition, the CBA was to operate directly and exclusively under the supervision of the Prime Minister, which in Polish political reality meant a high risk of politicization.

Admittedly, the authors of the law on the CBA made an effort to show that the new special service would not be a threat for citizens: Article 13(4) of the law required officers to perform operational-investigative actions, or conduct control activities, respecting human dignity and human rights. Placed in legislation establishing a special, secret service equipped with extremely broad prerogatives to intervene in the lives of citizens, this requirement tended to emphasise more than resolve the danger.

During parliamentary debate on the bill, many reservations, presented mainly by the opposition parties, pertained to the potential for violations of human rights and civil liberties. One opposition MP identified the bill as violating the Constitution of the Republic of Poland in at least three ways: 'personal inviolability stipulated by Article 41 of the Constitution, freedom and privacy of communication stipulated by Article 49 of the Constitution, and the inviolability of the home stipulated by Article 50 of the Constitution' [33]: 163. Other critical comments addressed the range of powers of CBA officers to engage in surveillance of individuals, including 'the right to register sound and image in any public space without a need for factual grounds to do so'; for example, 'to monitor what people say and do in a café, with no court supervision at

all, because the decision to engage in audio and video surveillance is made by the CBA on its own' [33]: 167.

The extent of legislative over-reach was confirmed when, after the bill was adopted and the law entered into force, it was referred to Poland's Constitutional Court by a group of opposition MPs. The motion focused on compliance of the law with the Polish Constitution and Convention for the Protection of Human Rights and Fundamental Freedoms – in particular, Article 7 of the Constitution (prohibiting punishments with no legal basis), Article 31(3) (determining when constitutional rights and liberties may be limited), Articles 20 and 22 (pertaining to economic freedom), Article 42 (introducing the principle of *nullum crimen sine lege*), Article 51 (informational autonomy of individuals) and Article 32 (equal treatment by public authorities). The signatories to the motion also posited that the law violated the principle of inherent and inalienable dignity of a person (Article 30), the principle of inviolability of the home (Article 50), the right to respect for private and family life (as expressed by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 47 of the Constitution), and a number of provisions of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [34]. A large section of the motion pertained to the definition of corruption provided in Article 1 of the law as violating Article 2 of the Constitution, which stipulates that Poland is a democracy governed by the rule of law.

In 2009, the Constitutional Court ultimately agreed with the motions on the above issues [35]. Judges held that the provision extending the notion of corruption to private sector entities may violate the exercise of freedom of economic activity stipulated by Article 222 of the Constitution; that the law violated informational autonomy of individuals; and that the regulation of the President of the Council of Ministers of 27 September 2006 on the scope, terms and manner of providing information to the Central Anti-Corruption Bureau by public bodies, services and institutions was in violation of the Council of Europe Convention. Notably, one of the judges went further in a minority opinion, finding that a majority of the challenged provisions of the law also violated Article 2 of the Constitution, stipulating that Poland is a democracy governed by the rule of law.

While the law was then amended under the judgment of the Constitutional Court, the extent of these invalidities confirms the seriousness of the risk of human and civil rights erosion in the name of anti-corruption. Moreover, these were not only theoretical breaches, because in the two years prior to the judgment, the CBA made use of these unconstitutional provisions, gaining fame as 'the political police' of Poland [36].

CBA actions in breach of human and civil rights

As already noted, Article 13(4) of the law establishing the CBA required officers to respect human dignity and human rights. However, consistently with the extent of over-reach in the law itself, a number of actions undertaken by the Bureau in its first years of existence saw this provision clearly disregarded. Here we will briefly mention just two cases (of many) illustrating how the instrument of anti-corruption policy, in the form of institutions such as the CBA, can have real, direct, detrimental impacts on human and civil rights.

Fighting corruption with no respect for human dignity

In February 2007, the Bureau arrested on corruption charges a renowned cardiac surgeon in the Hospital Clinic of the Ministry of Internal Affairs and Administration. The CBA also actively publicized the case in the media, intending to build its image as an efficient institution at the beginning of its functioning. Doctors are generally perceived in Poland (along with politicians) as one of the most corrupt socio-professional groups [37]. Detaining a well-known doctor in a governmental hospital thus seemed to be an ideal case. The surgeon (who did not show any resistance) was handcuffed in the hospital in plain view of patients and colleagues, and videotaped recording immediately released to the media. Immediately afterwards, the Bureau organized a press conference at which the then-head of the CBA called this person ‘cynical, ruthless and corrupt’, and the Minister of Justice and Prosecutor General stated that ‘no one, anymore, will be deprived of life by this man’, naming the doctor [38]. Later on, it was also revealed that the case was code named “Mengele”, which was obviously offensive. The CBA annual report described the case as a major success, noting that ‘53 charges, including 46 cases of corruption, were raised against [the doctor, again named]’, along with related charges of extortion [39], p. 5. The scale of corruption and fraud of which the doctor was suspected, according to the Bureau, justified the drastic measures.

The Helsinki Foundation for Human Rights (the leading human rights watchdog in Poland) had a different opinion [40]. The Foundation accused the CBA of violating three articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms – Article 3 prohibiting degrading and inhuman treatment; Article 5 in relation to the unlawful detention and the procedures for the adjudication of the application of this measure; and Article 6 in relation to the presumption of innocence. The doctor, with help of the Foundation, won several cases before Polish courts and the European Court of Justice – among others one concerning degrading treatment during his detention. He also won a civil case against the Minister of Justice, who after his arrest had suggested that the doctor’s actions contributed to death of patients. Moreover, the European Court of Justice ruled that the detention and arrest of the surgeon was illegal, because it was authorized only by an “assistant judge” (*asesor*) in a position of a clerical nature, lacking essential qualities of judicial independence. “Assistant judges” at that time were nominated directly by the Minister of Justice / Prosecutor General for a limited time, and were to a large extent personally and politically dependent on the minister.

After almost seven years of proceedings, in 2013, the doctor was sentenced to one year in prison, suspended for two years, and fined for accepting “gifts” that were recognized by the court as bribes. Most of the nearly one hundred original charges were dropped. The measures against the doctor not only violated his rights, but were disproportionate to the deeds he had committed.

Violation of the right to fair trial and standards of a democratic state

Shortly before the parliamentary elections in 2007, the then-head of the CBA (importantly, a former politician of the party in power at that time) decided to disclose information about the ongoing investigation against one of the MPs of the largest

opposition party. Allegedly, in exchange for financial benefits, together with a local politician, the MP had facilitated the sale of building plots in one of the most attractive coastal regions of Poland. Again a press conference was called, at which the head of the CBA presented the whole situation in a peculiar and directly politicized way, stating: 'I hope that this press conference, presenting also the scenes of our public life, will force everybody, e v e r y b o d y, to re-think again whom to give a vote' (author's transcription) [41]. By making such a statement, this high public official and head of a special service was clearly manifesting his political views. This politicization reinforces the extent of the risk of uncontrolled anti-corruption policies, not only to individual human and civil rights, but to political integrity and a functioning democracy more broadly [40]. It suggested, if not demonstrated, that the CBA was simply acting at the behest of decision makers.

The MP and the local politician charged with accepting bribes were detained as a result of provocation organized by undercover agents. The court at first instance found them guilty. However, the court of appeal overturned this ruling, even though the MP actually had accepted the bribe, due to its finding that the entirety of evidence collected by CBA and the prosecution was illegal [42]. While the MP did break the law, the ultimate failure of the prosecution resulted solely from actions undertaken by the Bureau. Its officers, posing as businessmen interested in buying the plot, simply made the defendant commit an offence. The action, from the very beginning, was conducted using the most invasive techniques (undercover agents, wiretapping, correspondence control, provocation), without completing the statutory prerequisites to greenlight such measures. While all operational actions were carried out with the consent of a court, the CBA officers and prosecutors were found to have misinformed the court, and to have failed to have even obtained internal, formal permission from the head of the Bureau to perform such activities. Many other irregularities were also found. Consequently, more than six years later the court of appeal decided that the MP could not be punished because she was incited to commit the offence by the agents of the Central Anti-corruption Bureau. The appeal judge announcing the acquittal noted:

Only in an exceptional and subsidiary manner, and only for the purposes of fighting crime, under strictly prescribed conditions, does a democratic state allow the use of operational data collected by such services as CBA as evidence of guilt in a criminal case. The necessary condition of acceptability, in support of a conviction relying on the operational information, thus obtained [...] as a result of wiretapping, observation and provocation, is scrupulous compliance with the law by the law enforcement authorities and officers in charge of operational-investigative activities, and then rigorous control of the legality of such actions by the prosecution and the court [42].

Emphasising the wider implications of over-reach by an anti-corruption agency, the judge also stated:

It results directly from the Constitution, the principle of the rule of law, that the operational surveillance of citizens [...] is inadmissible as unlawful and illegal for as long as there is no previously obtained information, giving rise to conjecture, or at least guess that some concrete person has committed, or is willing to commit

a crime. [A] Democratic state, by its own very nature, rejects testing the integrity of its citizens, or making any random checks on their integrity, using for this purpose secret, insidious methods. Such conduct and practice is a feature of the totalitarian state.

Discussion and conclusions: Lessons from Poland for anti-corruption policy evaluation

The history of Poland's Central Anti-Corruption Bureau illustrates perfectly the main problem of this analysis, i.e. the potential for tension between anti-corruption policies and human and civil rights and its consequences. It also addresses a broader issue. Goode and Ben-Yehuda [23] mention that as an outcome of moral panic, radical and restrictive policies tend to become institutionalized. In Poland, threats to human and civil rights resulting from flawed anti-corruption policy became tolerated by decision-makers as an unavoidable side effect of the efforts to curb corruption. Therefore, it should not be surprising that the Central Anti-Corruption Bureau was created, despite clear signals that it might be a serious threat to human and civil rights. Sponsors of the law on the CBA were strongly attracted to Asian examples of anti-corruption agencies, particularly the Singaporean model, without analyzing the controversies and negative experiences surrounding either these original institutions or their adaptations to other countries such as South Korea, Nigeria or Thailand [14–16].

Even after the CBA started functioning and its practices proved that the threat was real, the authorities ignored the problem. The biggest parliamentary opposition party at the time when the Bureau was established came to power after elections in 2007, yet still nothing was done to reform the CBA to reduce the risk to human and civil rights. Amendments in the law on the CBA were forced only by the ruling of the Constitutional Court in 2009 and came into force a year later. It thus took nearly five years to correct even the most obvious flaws that posed a risk to human and civil rights. The CBA was not created as a flawed institution by accident or because there was no time for proper legislative work. It was created by policy-makers on the wave of the moral panic, in full awareness of the issues it would cause.

In this context, was there anything that could be done to reduce the likelihood of what happened with the Central Anti-Corruption Bureau? Further, how can anti-corruption policy evaluation techniques such as the National Integrity System (NIS) approach better account for the risk, and ensure it is properly considered in the context of anti-corruption reforms, especially given the holistic goals of this approach?

In the first place, at least two solutions could have been applied that may have mitigated this risk, even in circumstances of moral panic. One is a proper Regulatory Impact Assessment (RIA), which should precede any decision concerning anti-corruption policy. The RIA prepared for the bill in this case was devoid of substantive content, containing no word as to whether the establishment of the CBA could raise any problems with regard to human and civil rights. Even a basic RIA could therefore have helped to avoid what happened, if the preparation of impact assessments required legislators to take into account the perspective of human and civil rights.

Even better would be universal standards for including human and civil rights into regulatory impact assessment procedures, in the form of a Human Rights Impact Assessment (HRIA), of the kind currently promoted mainly by the UN and the World Bank during preparation of laws, programs, strategies, international agreements or concrete projects. A Human Rights Impact Assessment (HRIA) on anti-corruption policies should at least establish whether there is a risk of violating: (1) the right to a fair trial; (2) the presumption of innocence; (3) the guarantee against self-incrimination; (4) the right to property; (5) the right to privacy. Furthermore, an HRIA approach would see decisions or whole policies developed in an open and participative way, giving experts, academics and interested citizens an opportunity to participate in the process of creating anti-corruption policies that more effectively balance these risks.

An equivalent approach is needed in any process aimed at assessing the need for new or different anti-corruption institutions in the first place, and in the continuous and systematic monitoring that should accompany anti-corruption policies during implementation. As noted earlier, the NIS approach is potentially an ideal instrument for these tasks, being also a well-established and recognized assessment tool of anti-corruption policies. However, despite its comprehensive intent, the NIS assessment methodology at the time of the relevant European project [3] did not touch on the problem of relations between human and civil rights and anti-corruption policies. Consequently, it offered little to identification and resolution of these major problems in Poland's integrity system, even when otherwise contributing positively to debate on many issues. The lack of this type of analysis was a serious drawback.

A major lesson for anti-corruption policy evaluation techniques, including but not limited to the NIS approach, is thus the need to make a human and civil rights perspective a standard element of monitoring and evaluation, and not just an optional feature. In the NIS context, this can be better achieved in two ways. Firstly, the level of respect for human and civil rights can be analyzed as part of the foundations of anti-corruption policies – on a par with reflection on the political system, economy, social relations and culture. Second, compatibility with human and civil rights should be addressed in the assessment of individual areas of anti-corruption policy (i.e. its pillars), with particular focus on those related to law enforcement and the powers of state institutions such as anti-corruption agencies, like the CBA in this case. It should be obligatory to take into account questions on human and civil rights protection within the analysis of these bodies, through the addition of suitable indicator questions. Also, nothing stands in the way of taking human and civil rights into account in the role of other institutions, including civil society organisations, the ombudsman, or the judiciary (e.g. “Are there any regulations or other documents (such as guidelines for judges) obliging courts to take into account the perspective of human and civil rights with regard to corruption cases?” or “Do courts, when dealing with corruption cases, analyze the problem of human and civil rights infringement, either with regard to victims or perpetrators?”).

In these ways, assessment approaches such as the NIS can better realise their potential, by directly establishing how human and civil rights perspectives and anti-corruption objectives can be mutually reinforcing rather than seeing risks emerge that one way undermine the other. Of course, neither Human Rights Regulatory Impact Assessment, nor an improved National Integrity Systems tool will stop politicians (especially in situations of moral panic) who are determined to instrumentalise anti-

corruption measures for short-term goals, in ways that harm human rights. However, for those who oppose such actions they will be always a source of arguments and an advocacy tool to bring anti-corruption policies closer to human right standards; and for researchers, a source of knowledge to document and analyse policy processes.

The Polish case affirms the importance of adjusting available instruments to expose the dangers and minimize the risk of violations of human and civil rights within anti-corruption policies. The principles of efficient anti-corruption policies are already established by UNCAC and other documents but the additional step is needed of ensuring that anti-corruption also meets the highest standards of democracy and the rule of law. Just as it is difficult to justify a policy against terrorism which itself uses terrorist methods, efforts to curb corruption will be compromised and counterproductive wherever they use anti-democratic, anti-human-rights measures.

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