

COMBATING CORRUPTION CRIME IN POLAND: SELECTED LEGAL ASPECTS, WITH PARTICULAR REFERENCE TO THE ROLE OF THE CENTRAL ANTICORRUPTION BUREAU

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ABSTRACT

This article highlights issues related to corruption in Poland. The definition of corruption is examined in national and international terms, for example, as developed by the OECD (Organization for Economic Co-operation and Development) or the World Bank. This study contributes to the discussion of the scale of corruption as well as on the effectiveness of anticorruption agencies. Particular attention has been paid to one of the leading special services entites, the Central Anticorruption Bureau, which was established on 9 June 2006 to address the deepening corruption in both the economic and political life in Poland. The study also examines the role of the prosecutor's office and the efforts to transform its organisational structure to effectively and efficiently combat crime, particularly those related to corruption. In addition, relevant statistics on the effectiveness of anticorruption measures are presented. The fundamental research problem is to understand the current scale of corruption in Poland. The main hypothesis focuses on determining whether the level of corruption has decreased or remained constant since the beginning of the socio-economic transition. This study used the detailed research method—primarily statistics (desk research). Data were collected through face-to-face interviews conducted by the Centre for Public Opinion Research (CBOS). The article ends with conclusions and postulates de lege futura.

KEYWORDS

*corruption
combating crime
Central Anticorruption Bureau
prosecution
bribes*

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1. Introduction

Corruption is a social phenomenon that is extremely difficult to define because of its polymorphous nature. Owing to its exceptionally complex and pervasive nature the international community, including the European Union Member States, undertake extensive counteractive measures targeting corruption activities. Corruption has been the subject of many studies by researchers of the doctrine and is the subject of numerous court rulings.²

The multifaceted nature of corruption makes establishing a uniform definition difficult. According to the Polish PWN dictionary edited by Doroszewski, corruption is considered to be 'accepting bribes by officials or functionaries.'³ Corruption also encompasses social demoralisation and bribery.⁴ This definition, due to the multifaceted nature of the corruption phenomenon, is too narrow and does not correspond to the variety of forms of corruption, as it focuses only on the subjective elements relating to public officials and officers. The preamble of the Civil Law Convention on Corruption, drawn up on 4 November 1999 in Strasbourg, states that corruption poses a great threat to the rule of law, democracy, human rights, fairness, and social justice, as well as a hindrance to economic development and endangerment to the proper and fair functioning of a market economy. Article 2 of the Convention states that corruption means

[...] requesting, offering, giving or accepting directly or indirectly bribes or any other undue advantage or the promise thereof, which distorts the proper performance of any duty or conduct required of the person receiving the bribe, undue advantage or the promise thereof.⁵

Under the provisions of the Convention, state entities are further obliged to respect, *inter alia*, international cooperation in combating and preventing corruption,⁶ legal protection of whistleblowers,⁷ responsibility of the parties (the State) for unlawful acts,⁸ and the obligation to make reparations.⁹

Arising from the Paris Convention of 14 December 1960 the Organisation for Economic Cooperation and Development (OECD) was launched on 30 September 1961. Upon the commencement of the OECD one of its fundamental objectives was to achieve the highest possible sustained economic growth, employment and living standards in its member countries while maintaining financial stability. In addition, its mandate was to contribute to 'healthy economic expansion' in its member countries as well as third world

2 | See e.g.: Dylus, Rudowski and Zaborski, 2006; Bielecki, 2002; Balcerzak, 2010; Brewster, 2014; Grosse, 2000; Kell, 2006; Nowak, 2008; Pływaczewski, 1993; Palka and Reut, 1999; Dobrowolski, 2005; Górnio, 1995; Dzienis and Filipkowski, 2001; Nowak, 2008; Szelest-Woźny, 2012; Krueger, 1974; Carr and Lewis, 2010; Gathii, 2009; Henning, 2001; Smidt, 2007.

3 | Słownik języka polskiego: korupcja [Online]. Available at: <https://sjp.pwn.pl/doroszewski/korupcja;5442652.html> (Accessed: 10 July 2022).

4 | Skorupka, Auderska and Łempicka, 1969, p. 305.

5 | Civil Law Convention on Corruption of 4 November 1999, Dz. U. No. 244, item 2443.

6 | Art. 13 of the Convention.

7 | Art. 9 of the Convention.

8 | Arts. 4 and 5 of the Convention.

9 | Art. 4 of the Convention.

countries, which meant working together for balanced economic development, and to promote the development of world trade on a multilateral non-discriminatory basis in accordance with international obligations.¹⁰ One of the tenets of the OECD is the continuous development of anticorruption practices among its member states. Within the scope of its activities, the OECD develops permanent recommendations to combat corruption. Examples include the OECD Convention on 17 December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2021 Recommendations on Combating Bribery.¹¹

Other important international acts include the United Nations Convention against Corruption adopted by the UN General Assembly on 31 October 2003 by resolution 58/4,¹² and the Criminal Law Convention on Corruption of the Council of Europe in 1999.¹³

Resolution 58/4 of the United Nations Convention dated 31 October 2003 consists of eight chapters, which include, among other regulations, preventive measures, criminalisation and law enforcement, international cooperation, asset recovery technical assistance, and information exchange. It is also worth mentioning that the World Bank Group attempted a systemic approach to corruption and has developed several definitions that relate to both corruption offences and fraud.

According to the World Bank, it is considered a corrupt practice to offer, give, or induce to offer, or give, directly or indirectly, any good in order to unduly influence the actions of another party. Fraud, is any act or omission to act, including knowingly or recklessly deceiving or intending to deceive in order to accept a financial or other advantage or to avoid an obligation.¹⁴ In Poland, a sharp increase in corrupt activities occurred during the period of social and economic transition of the 1990s. This was primarily due to the weakness of the state apparatus and its failure to adapt and develop legal mechanisms for the changing socio-economic and political situation. The main reasons for the increase in crime, including corruption, were historical factors related to the long-standing development of crime; social factors, having to do with the decline of values and authorities; economic factors relating to changes in the ownership structure after the collapse of communism;¹⁵ legal factors, for example, inadequate regulations, instability of the rule of law, and ineffective use of legal instruments; organisational factors such as the restructuring of state bodies, and the lack of qualified staff to deal with crime; international factors such as the gradual opening of borders, and the collapse of the USSR.¹⁶

An important aspect of the crime of corruption is its perception among citizens, the purported perception of corruption.

10 | Serwis Rzeczypospolitej Polskiej [Online]. Available at: <https://www.gov.pl/web.oecd> (Accessed: 10 July 2022).

11 | OECD [Online]. Available at: <https://www.oecd.org/corruption/oecdantibriberyconvention.htm> (Accessed: 10 July 2022).

12 | General Assembly resolution 58/4 of 31 October 2003 United Nations Convention against Corruption.

13 | The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community entered into force on 1 December 2009.

14 | Międzynarodowy Bank Odbudowy i Rozwoju/Grupa Banku Światowego, 2015; Płoskonka, 2003, p. 111.

15 | See Sokołowicz, Gurtowski and Pietrowicz, 2009, pp. 813–822.

16 | See e.g.: Laskowska, 2011, pp. 152–170; Hołyst, 2004, pp. 1009 et seq.; Zybortowicz, 2005, pp. 299 et seq.

The Global Organization of Transparency International (Transparency International) addresses this phenomenon.¹⁷ To date, no ideal mechanism has been developed to assess the degree of corruption in individual countries unequivocally. Every year, Transparency International publishes results related to the perception of corruption. The index ranks countries chronologically according to the degree of corruption among public officials and politicians according to surveys conducted by independent institutions, including the Gallup Institute, the World Bank, and Pricewaterhouse.¹⁸

Table 1. Corruption Perception ranking of Poland according to Transparency International

Year	Place in the ranking	Points	Number of countries participating in the survey
2021	42	56	180
2020	45	56	180
2019	45	58	180
2018	36	60	180
2017	36	60	180
2016	29	62	176
2015	30	63	168
2014	35	61	175
2013	38	60	177
2012	41	58	176
In 2012, TI changed the methodology of the survey. Unlike in previous years, a scale from 0 to 100 (instead of 0-10) was used, where 0 represents the most corrupt country and 100 the least corrupt. This change is intended to allow accurate observation of trends and comparison of results against previous years.			
2011	41	5,5	183
2010	41	5,3	178
2009	49	5	180
2008	58	4,6	180
2007	61	4,2	180
2006	61	3,7	163
2005	70	3,4	159

17 | Transparency International [Online]. Available at: <https://www.transparency.org/> (Accessed: 11 July 2022).

18 | New Zealand ranked first as the country least prone to corruption with a score of 9.55 (variance of 0.07), while Venezuela ranked last with a score of 2.66 (variance of 3.18). Corruption perception index [Online]. Available at: <https://transparency.org/en/cpi/2021> (Accessed: 23 January 2018); Ociecek, 2021, pp. 428–430.

Year	Place in the ranking	Points	Number of countries participating in the survey
2004	67	3,5	146
2003	64	3,6	133
2002	45	4,0	102
2001	44	4,1	91
2000	43	4,1	90
1999	44	4,2	99
1998	39	4,6	85
1997	29	5,08	52
1996	24	5,57	54

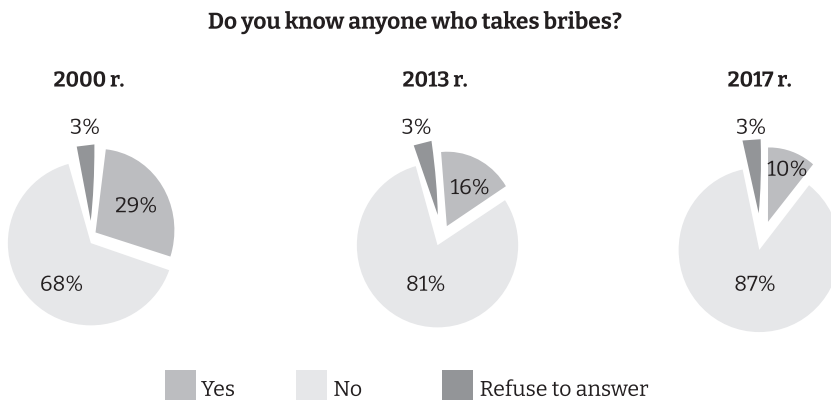
Source: The author’s own compilation based on Transparency International data.

According to the Corruption Perceptions Index, Poland was ranked its highest in 2016, while in 2004 and 2005 it was ranked 67th and 70th, respectively, among the countries participating in the Citizens’ Corruption Perceptions Survey. For example, in 2022 Hungary ranked 42nd.

Systematically, additional surveys were conducted in Poland by the Center for Public Opinion Research (CPOR). The graph below illustrates Poles’ responses to the question, ‘Do you know anyone who takes bribes?’ The survey covered the years 2000, 2013, and 2017.

From the responses obtained from a sample of 1,034 people, it was found that the level of corruption in Poland decreased over 17 years (2000–2017).

Chart 1. Survey on Bribery I.

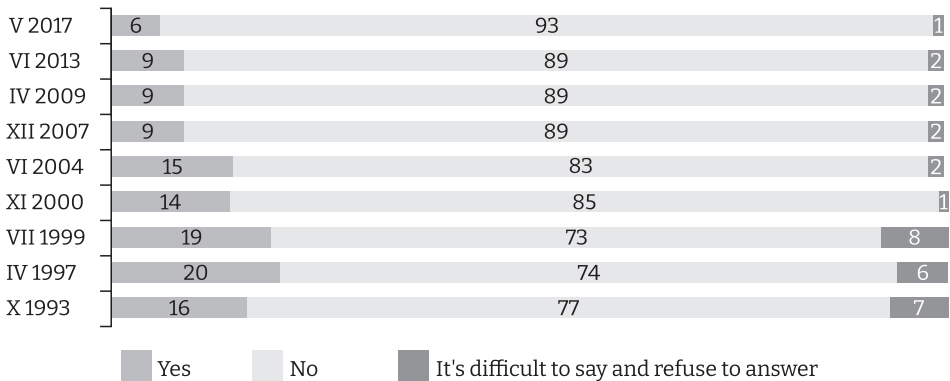


Source: CPOR, SURVEY CONDUCTED 5-14 MAY 2017, N=1034.

In addition, the CPOR's research shows that personal knowledge of bribery is more often declared by people with higher education, with relatively high *per capita* incomes, living in large cities (100–499,000 inhabitants), in the 25–34 age bracket, assessing their financial situation as poor, and declaring left-wing political views. Occupational groups were more likely to be managers, senior professionals, administrative and office workers, and those employed in the service sector. An example of another survey was to determine whether a person has been forced to give a bribe in the last three to four years. The survey covered the period 1993–2017. The responses to this question is shown in Figure 2.

Chart 2. Survey on Bribery II.

Have you been forced to bribe in the last three to four years?



Source: CPOR, SURVEY CONDUCTED 5–14 MAY 2017, N=1034.

The data show that the largest number of respondents answered that they were forced to give a bribe in 1997 and 1999.

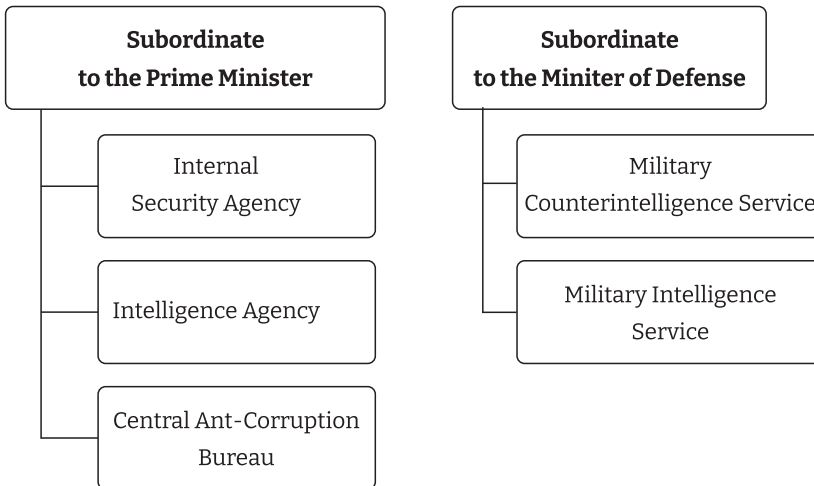
2. The role and tasks of the Central Anticorruption Bureau in combating corruption in Poland

In view of the current problem of corruption-related crime, the state authorities decided to set up a specialised institution to combat corruption. The main premise of the draft law was to combat corruption in state institutions and local government as well as in public and economic life. As a result of consultations and in view of the significant number of corruption-related proceedings, on 12 May 2006 the Sejm passed an act for the establishment of the Central Anticorruption Bureau (CBA). When voting on the CBA Act, 354 MPs were in favour, 43 were against, and 20 abstained. Finally, on 13 June 2006

the President of the Republic of Poland signed the act establishing the CBA as a special service.

It should be mentioned that the CBA is one of the five special services operating in Poland. The following chart illustrates the types of Polish special services and their hierarchy.

Chart 3. Types of Polish special services in Poland



Source: The author's own study.

In the CBA Act the concept of corruption is defined in Article 1(3). According to this provision, corruption is

Promising, proposing, giving, demanding, accepting by any person, directly or indirectly, any undue pecuniary, personal, or other advantage for himself or herself or any other person, or accepting an offer or promise of such advantage in return for an act or failure to act in the performance of a public function or in the course of business.

In view of the need to clarify the legal definition of corruption, which would correspond to illegal activities undertaken in various spheres of social, political, and economic life, on 1 June 2010 the Polish Government adopted an amendment to the CBA Act which clarified corrupt activities. Pursuant to Article 1(3a) of the CBA Act, corruption is defined as an act: 1. involving the promise, offer, or giving by any person, directly or indirectly, of any undue advantage to a person exercising a public function for himself or herself or for any other person in return for an act or failure to act in the exercise of his or her function; 2. involving the request or acceptance by a person exercising a public function, directly or indirectly, of any undue advantage, for himself or for any other person, or the acceptance of an offer or promise of such an advantage in return for an act or failure to act in the exercise of his function; 3. committed in the course of a business activity involving the

fulfilment of obligations towards a public authority (institution), consisting of promising, proposing, or giving, directly or indirectly, to a person in charge of an entity not included in the public finance sector or working in any capacity for such an entity, any undue advantage, for himself or herself, or for the benefit of any other person, in return for an act or omission to act that violates his or her obligations and constitutes a socially harmful reciprocation; 4. committed in the course of business activities involving the fulfilment of obligations towards a public authority (institution), consisting of requesting or accepting, directly or indirectly, by a person in charge of an entity not included in the public finance sector, or working in any capacity for such an entity, any undue advantage, or accepting an offer or promise of such an advantage to himself or herself or to any other person, in return for an act or omission to act which violates his or her obligations and constitutes a socially harmful reciprocation.

The definition of corruption that was finally adopted systemically addressed the problem related to the essence of corruption in its various forms.

According to Article 2 of the CBA Act, the primary objective of the newly established, CBA, is to combat corruption in both public and economic life, as well as in state and local government institutions, and to eliminate activities detrimental to the economic interests of the State. For example, it addresses the identification, prevention, and detection of crimes against: 1. activities of state institutions and local self-governments, as defined in Articles 228–231 of the Act of 6 June 1997—Penal Code, as well as referred to in Article 14 of the Act of 21 August 1997 on the Restrictions on Conduct of Business Activities by Persons Performing Public Functions; 2. the administration of justice, as defined in Articles 232, 233, 234, 235, 236(1), and 239(1); elections and referenda, as defined in Article 250a; and public order, as defined in Article 258; 3. credibility of documents, as defined in Articles 270–273 and 277a § 1, property, as defined in Article 286, economic turnover, as defined in Articles 296–297, Article 299 and Article 305, turnover of money and securities, as defined in Article 310 of the Act of 6 June 1997—Criminal Code, as well as those referred to in Articles 586–592 of the Act of 15 September 2000—Commercial Companies Code and those referred to in Articles 179–183 of the Act of 29 July 2005 on trading in financial instruments in connection with corruption or activities detrimental to the economic interests of the state; 4. financing of political parties, as defined in Articles 49d and 49f of the Political Parties Act of 27 June 1997, if related to corruption; 5. tax obligations, and accounting for grants and subsidies, as defined in Chapter 6 of the Act of 10 September 1999—Fiscal Penal Code, in connection with corruption or activities detrimental to the economic interests of the state; 6. the principles of sports competitions as defined in Articles 46–48 of the Sports Act of 25 June 2010; 7. trading in medicines, foodstuffs for special nutritional purposes, and medical devices, as defined in Article 54 of the Act of 12 May 2011 on reimbursement of medicines, foodstuffs for special nutritional purposes, and medical devices.

Apart from conducting operational and exploratory activities resulting in the initiation and conduct of criminal proceedings in combating corruption, the CBA also conducts other activities aimed at counteracting corruption. Additional tasks performed by CBA officers include: 1. Disclosure and non-compliance with the provisions on the restriction of business activities by persons holding public office; 2. Documenting the grounds for and initiating the implementation of provisions on the return of benefits wrongfully obtained at the expense of the State Treasury or other statutory entities; 3. Uncovering cases of non-compliance with the legally prescribed procedures for decision-making and

implementation: privatisation and commercialisation, financial support, public contract awards, disposal of the property of entities or entrepreneurs; 4. The granting of concessions, authorisations, subject and object exemptions, concessions, preferences, quotas, plafonds, sureties and credit guarantees; 5. Control of the accuracy and veracity of asset declarations or declarations on conduct of business activities by persons performing public functions, referred to in Article 115 § 19 of the Act of 6 June 1997—Penal Code, submitted pursuant to separate regulations; 6. Conducting analytical activities for trends within the CBA’s jurisdiction and presenting information in this respect to the Prime Minister, the President of the Republic of Poland, the Sejm and the Senate; 7. Taking other actions specified by separate laws and international agreements.

Within the framework of its competencies, the CBA also conducts joint activities with other service entities, including, *inter alia*, the Public Prosecutor’s Office, the Police and others in support of the Government Programme for Counteracting Corruption. The objective of this programme is to reduce the level of corruption in Poland by strengthening preventive and educational measures among society and public administration, as well as to increase the effectiveness of combating corruption.

According to analysts at the CBA, the area’s most vulnerable to corrupt activities include infrastructure, digitisation of public administration, use of European Union funds, the Defense health care, energy and environmental protection sectors, and clerical corruption.

In turn, representatives of the doctrine include areas such as the management of public assets, privatisation, special-purpose fund activities, public procurement, tax administration and customs services.

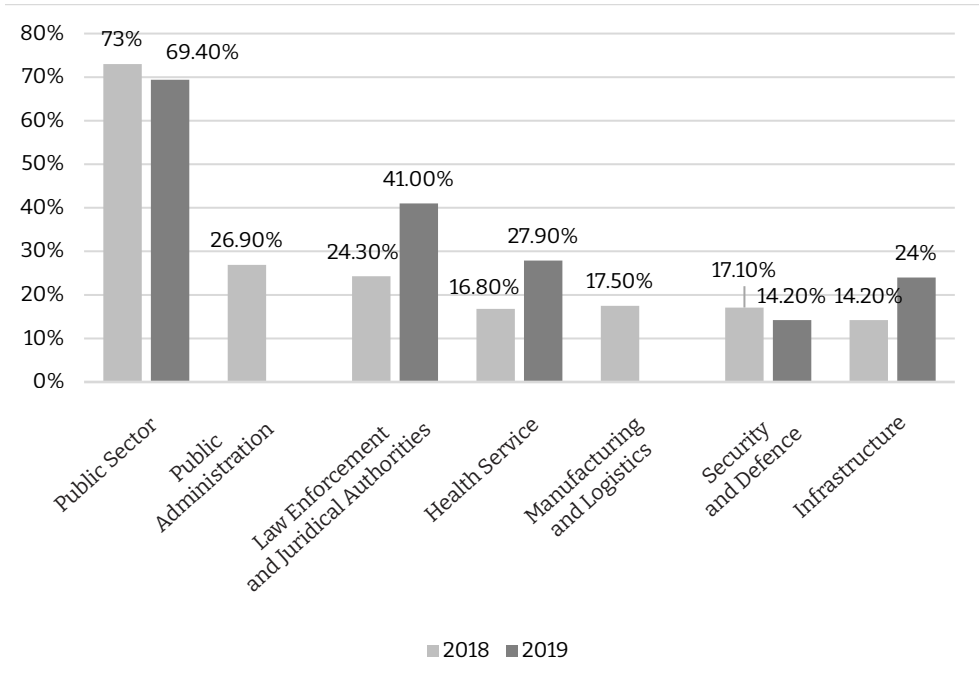
The following chart illustrates the number of pre-trial investigations initiated and conducted by the CBA by various categories.

Chart 4. Number of pre-trial proceedings opened in 2015 due to CBA operations

Source: CBA statistics

The chart below illustrates the areas investigated for corruption-related crime during 2018-2019. The data below were obtained from the Government's Anticorruption Plan, with the CBA as the lead agency.

Chart 5. Areas of Corruption Crime in Poland in 2018–2019.



Source: The author’s own compilation based on data obtained from the CBA.

According to data from the CBA, the public sector has the highest risk exposure for corruption. The public sector had the highest number of preparatory proceedings conducted by the CBA. In 2018, this amounted to 895 proceedings, accounting for 72.8% of the total preparatory proceedings conducted. In contrast, 194 proceedings were conducted in the private sector (15.8%) and 140 in the public-private sector (11.4%). In 2019, there was a slight decrease in the percentage of public sector proceedings. Even though it amounted to 69.4%, there were 948 proceedings conducted. Meanwhile there was a significant increase in the number of cases involving law enforcement and the judiciary. The increase was approximately 16.7%.

Apart from the CBA as the most specialised services involved in the fight against corruption in Poland, other institutions are obliged by law to fight this serious issue. These institutions include the Police, the Internal Security Agency, the Polish Border Guard, the Supreme Audit Office, the Polish Ministry of Health, the Polish Ministry of Defense, and the Polish Ministry of Interior and Administration.

The table below illustrates the number of ongoing pre-trial investigations corruption by services dealing with this type of activity.

Table 2. Number of pre-trial investigations into corruption offences conducted by each service in 2018-2019.

Year	Police	Central Anticorruption Bureau	Border Guard	Military Police	Internal Security Agency	National Tax Administration
2018	691(56,2%)	223 (18,1%)	176(14,3%)	95(7,8%)	25(2%)	19(1,6%)
2019	820(60%)	244(17,9%)	170(12,4%)	65(4,8%)	29(2,1%)	38(2,8%)

Source: The author's own elaboration based on data from CBA.

Based on the above data, the Police deal with greatest number of corruption crimes. However, given the size of this agency (over 100,000 officers), it is the CBA (with just over 1,000 officers) that plays a significant role, in combating corruption; those of the most serious nature.

3. Summary

Corruption is one of the most dangerous types of crime. This always occurs when the state agencies fail to adapt the law to the current socio-economic situation. An example of the rapid development of corruption was the period of socio-economic transition mentioned earlier in this thesis. Corruption tends to occur in developing countries that have some degree of political and economic instability. It is economic corruption that causes, among other things, a reduction in the effectiveness of state investment as well as the perception of a country internationally. This negatively impacts economic stability and international investments.

An analysis of the data obtained from both law enforcement agencies and non-governmental institutions (Transparency International, CBOS) allowed us to confirm the main hypothesis that the overall scale of corruption in Poland has decreased over the last 30 years. Currently, one can observe the transfer of corruption to the local government, government administration, and economic sector (Chart 4). Managerial corruption, for example, increased in 2010 and 2011. It is important to note the improvements in the effective prosecution of corruption cases internationally. An example is the recent arrest of senior officials in the European Parliament.¹⁹

Only transparent legal mechanisms and their effective use can reduce corruption in Poland. The following recommendations can certainly mitigate corruption. Thus, the following actions are required: collaboration at an international level in the fight against corruption, in particular between law enforcement and judicial authorities; coordination of anticorruption activities at both central and local level; new methods of operational work that can effectively reduce crimes of corruption; effective use of current legislation

19 | Gregory, 2022.

including, *inter alia*, the use of non-punishment clauses²⁰ or confiscation, as well as crown witness in the criminal and procedural sense; educational programmes to promote an honest lifestyle; improving the system of supervision and control of compliance with anticorruption legislation; new legislation against corrupt practices, including, *inter alia*, 'whistleblower law'; unifying the issues relating to asset declarations by relevant persons; the introduction of an integrity test; strengthening the system of transparency in the activities of state institutions, local government and the economy.

Finally, the results of a survey conducted in Poland in the 2000s on ways to fight corruption illustrated that respondents agreed that the most effective way to fight corruption was through strict laws without loopholes and inaccuracies, increasing internal control in individual institutions, and strengthening services to combat this type of crime.²¹

20 | Art. 229(6) of the Penal Code; Art. 296a§5 of the Penal Code; Art. 230a§3 of the Penal Code; Art. 250a§4 of the Penal Code.

21 | Szulik, 2011, p. 634.

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