

## REGISTER OF BENEFITS – CURRENT STATE AND AUTHORS’ PROPOSAL FOR CHANGES

Dr. habil. Sebastian Skuza

Poznań University of Technology, Poland  
e-mail: [sebastian.skuza@put.poznan.pl](mailto:sebastian.skuza@put.poznan.pl); <https://orcid.org/0000-0002-9357-6791>

Dr. Robert Lizak

Polish Academy of Sciences, Poland  
e-mail: [robertpol25@wp.pl](mailto:robertpol25@wp.pl); <https://orcid.org/0000-0001-7980-2409>

**Abstract.** In this article, the Authors assess the institution of the register of benefits kept by the State Electoral Commission (PKW) and the Speakers of the Sejm and the Senate. This assessment can be tremendously helpful in answering the question whether the institution of the register of benefits requires a change in its operating model. The answer to the question posed in this way is significant insofar as, on the one hand, a review of the law regulating the institution of the register of benefits and the practice of its application shows that the implementation of statutory obligations still largely depends on the goodwill of those subject to the statutory obligation, if only due to the lack of a sanctioning norm. On the other hand, the legislation governing the register of benefits has raised long-standing concerns, which are also shared by the authors of this publication. These concerns centre on the problems related to overcoming the challenges in developing this institution, especially in a time when the environment is changing dynamically, but above all to the challenges associated with its day-to-day application.

**Keywords:** register of benefits; anti-corruption; compliance; ethics; public management.

### INTRODUCTION

A common feature of record-keeping, irrespective of its thematic scope, is the collection and storage of information in a specific mode, manner and form that allow for the analysis of the actual state of affairs [Skorupka, Auderska, and Łempicka 1969, 691]. In general, the purpose of the register of benefits is to collect and monitor data on the benefits received by the enumerated persons performing public functions. In Poland, the register of benefits was first introduced in Article 12 of the Act of 21 August 1997 on restrictions on conduct of business activities by persons performing public

functions.<sup>1</sup> At the same time, pursuant to Article 23(2) of that law a new drafting unit was added in another law, i.e., Article 35a to the Act of 9 May 1996 on the exercise of the mandate of deputy and senator,<sup>2</sup> in a wording almost identical to that of Article 12 of the Anti-Corruption Act.<sup>3</sup>

The institution of a register of benefits has been in place for over 25 years. The authors contend that it is reasonable to assess this institution and determine whether it requires a fundamental shift in the operating model, and if so, why and to what extent. In order to answer the question thus posed, the authors reviewed the norms of national law that regulate the issue of anti-corruption, including the institution of the register of benefits, but also a number of other hard law and soft law norms that are directly or indirectly related to these issues. In turn, the answer to the question posed this way is important for a number of reasons. Firstly, a review of Article 12 of the Anti-Corruption Act and Article 35a of the MandPosłU and the practice of their application shows that the ongoing implementation of the statutory obligations, as well as the heightened need to fulfil them after subsequent parliamentary or local elections, e.g., submitting to the register of benefits information on benefits received by spouses or meeting the 30-day deadline for reporting all changes to the data covered by the register from the date of their occurrence, still largely depends on the goodwill of those subject to the statutory obligation. This is the case, for example, due to the lack of a sanctioning standard for non-compliance with the duties cited above [Galińska-Raczy 2003, 96].<sup>4</sup> Secondly, the concerns identified in this publication in relation to the regulations governing the institution of the register of benefits give rise to questions not only regarding overcoming the challenges of developing this institution, especially in an era of a rapidly changing environment as well as technical and technological progress, but also the challenges of their day-to-day application [Szewc 2016, 46-54]. Thirdly, in 2023 the Anti-Corruption Act received its first substantive amendment since the introduction of the register of benefits into the national legal order (Article 12(9)), which, albeit legitimate, was frag-

---

<sup>1</sup> Journal of Laws of 2023, item 1090 [hereinafter: Anti-Corruption Act].

<sup>2</sup> Journal of Laws of 2022, item 1339 [hereinafter: MandPosłU].

<sup>3</sup> A comparison of both acts shows that the only difference actually lies in the appointment of a different register keeper, i.e. in the Anti-Corruption Act, the register keeper is the National Electoral Commission, and in the case of the Act on the exercise of the mandate of a Member of Parliament and Senator, the keeper is the Speaker of the Sejm or Senate, respectively.

<sup>4</sup> The literature emphasizes that the provision of Article 12(6) of the Anti-Corruption Act and Article 35a of the Act on the exercise of the mandate of a Member of Parliament and Senator, which reads “all changes to the data included in the register should be reported no later than 30 days from the date of their occurrence” – indicates the legislator’s will to continuously update the data contained in the register of benefits.

mentary.<sup>5</sup> It is difficult to surmise why the legislature refrained from making more extensive changes to the institution of the register of benefits. Consequently, this publication is of a postulative character, which boils down to highlighting the need to make the institution of the register of benefits more efficient.

## 1. THE ESSENTIAL IDEA BEHIND CREATING A REGISTER OF BENEFITS

While the wording of the anti-corruption law suggests that its purpose is to restrict the conduct of business activities by officials occupying leading positions as defined by the provisions on the remuneration of persons in managerial positions, it can be assumed that the overriding *ratio legis* of its enactment is to prevent corruption. In the opinion of the Constitutional Court, the law is intended to curb corruption and abuse of public positions for personal and private gain,<sup>6</sup> as well as to prevent public figures from engaging in situations that may not only call into question their personal impartiality or integrity, but also undermine the authority of the constitutional bodies of the state and weaken the confidence of voters and public opinion in their proper functioning.<sup>7</sup>

The situation is similar in the case of Article 12(1) of the Anti-Corruption Act, which formed the basis for establishing the register of benefits. It is clear from the literal wording of this provision that the purpose of setting up a register of benefits is to disclose the benefits received by the enumerated entities or their spouses. According to A. Wierzbica, the register of benefits is an indication of openness and transparency of the financial benefits received by persons performing public functions,<sup>8</sup> while according to A. Rzetecka-Gil, the purpose of the register is to monitor the benefits received by persons performing public functions and their material status [Rzetecka-Gil 2021]. P.J. Suwaj notes in turn that the monitoring of the material situation of politicians and officials is the norm in European countries [Suwaj 2009], whereas M. Kozłowska noted that the register of benefits can become an effective and efficient tool to counteract corruption [Kozłowska 2021, 31-43].

---

<sup>5</sup> The provision of Article 12(9) amended by Article 3 of the Act of 26 January 2023 amending the Act – Electoral Code and certain other acts, Journal of Laws item 497.

<sup>6</sup> Judgment of the Constitutional Tribunal of 13 July 2004, ref. no. K 20/2003, Lex no. 367590 (OTK-A 2004, No. 7, item 63).

<sup>7</sup> Resolution of the Constitutional Tribunal of 13 April 1994, ref. no. W 2/94, OTK 1994, No. 1, item 21.

<sup>8</sup> See commentary on Article 12, thesis 1 [Wierzbica 2017].

The ideas behind the cited views are indisputable. However, the Authors believe that there is reason to clarify some points. First of all, it should be noted that the offence of active and passive corruption are so-called consensual offences, i.e., victimless crimes, the essence of which consists in concealing the fact and circumstances surrounding the commission of the criminal act by both parties. Moreover, in this type of crime, the form of the unlawful gain and ways of legalising it are also subject to a complex concealment mechanism. The data in the register of benefits is complementary to the data obtained via another anti-corruption tool, namely the financial disclosure statement. The above toolkit makes it possible to monitor changes in the material status of public office holders.

A register of benefits can facilitate the identification of potential conflict of interest, i.e., a negative impact on the impartial and selfless performance of official duties. In addition, the universal availability of data in the register of benefits enhances the transparency of activities of public authorities, allowing the public to exercise social control over the power entrusted to public officials, which includes assessing whether their decisions could have been motivated by benefits for their own, private gain, and whether the actions taken constitute the crime of corruption. This is significant because heightened public perception and raised awareness of corruption reduce tolerance for pathological conduct and forces a response from public authorities, which, in turn, may boost public confidence in these authorities and their credibility. A register of benefits can also be a valuable tool for law enforcement and the judiciary. On the one hand, it discourages corrupt behaviour and makes it possible to identify and exclude circumstances conducive to it (i.e., preventing its occurrence) and, on the other hand, it facilitates the fight against corrupt behaviour by establishing its occurrence and surrounding circumstances, subsequently leading to detection of the perpetrators and holding them accountable.

## 2. ASSESSMENT OF THE LEGAL STATUS OF THE REGISTER OF BENEFITS AND THE PRACTICE OF ITS APPLICATION

At the outset, it is reasonable to clarify the relationship between the provisions of Article 12 of the Anti-Corruption Act along with Article 35a

of the MandPosłU<sup>9</sup> and the provision of Article 228 of the Act of 6 June 1997 – the Criminal Code.<sup>10</sup>

The two editing units mentioned above, i.e., Article 12 of the Anti-Corruption Act and Article 35a of the MandPosłU, on the basis of which the register of benefits was created, constitute a *lex specialis* in relation to Article 228 of the CC. This is because in Article 228 of the CC in conjunction with Article 115(4) of the CC, it is forbidden for a public office holder to accept any benefit in connection with the performance of this function,<sup>11</sup> which also applies to their spouses, while the wording of Article 12 of the Anti-Corruption Act and Article 35a of the MandPosłU allows to infer that the register of benefits “shall disclose the benefits received” by persons holding public office and their spouses.<sup>12</sup> This means that the subject-matter scope of the Anti-Corruption Act and the MandPosłU excludes the punishability of persons performing public functions for accepting benefits in connection with performing a public function. A review of national law reveals that two other norms of generally applicable law present a similar circumstance,

---

<sup>9</sup> Pursuant to Article 12(2) in connection with Article 12(7) of the Anti-Corruption Act, the register of benefits discloses benefits obtained by: members of the Council of Ministers, secretaries and undersecretaries of state in ministries and the Chancellery of the Prime Minister, heads of central offices, voivodes, deputy voivodes, members of voivodeship boards, voivodeship secretaries, voivodeship treasurers, members of poviats boards, district secretaries, district treasurers, commune heads (mayors, city presidents), deputy commune mayors, commune secretaries, commune treasurers, members of the management board of the metropolitan association, secretary of the metropolitan association, treasurer of the metropolitan association – as well as their spouses. Application to the wording of Article 35a of the Act on the exercise of the mandate of a deputy and senator, the register of benefits discloses the benefits accepted by deputies and senators and their spouses.

<sup>10</sup> Pursuant to Article 228(1) of the Criminal Code, whoever, in connection with the performance of a public function, accepts a material or personal benefit or a promise thereof, shall be subject to the penalty of imprisonment from 6 months to 8 years. Journal of Laws of 2022, item 1138 [hereinafter: CC].

<sup>11</sup> Pursuant to Article 15(19) of the CC, a person performing a public function is a public official, a member of a local government body, a person employed in an organizational unit that has public funds at its disposal, unless the person performs only service activities, as well as another person whose rights and obligations in the field of public activity are defined or recognized. by statute or an international agreement binding on the Republic of Poland.

<sup>12</sup> Pursuant to Article 12(7) of the Anti-Corruption Act, the obligation to report information on the acceptance of benefits to the Register covers members of the Council of Ministers, secretaries and undersecretaries of state in ministries and the Chancellery of the Prime Minister, heads of central offices, voivodes, deputy voivodes, members of voivodeship boards, voivodeship secretaries, voivodeship treasurers, members of poviats boards, district secretaries, district treasurers, commune heads (mayors, city presidents), deputy commune mayors, commune secretaries, commune treasurers, board members of the metropolitan association, secretary of the metropolitan association and treasurer of the metropolitan association. In turn, pursuant to Article 35a(2) MandPosłU, the register discloses benefits obtained by deputies, senators or their spouses.

namely Article 58(3) of the Act of 6 September 2001 – the Pharmaceutical Law<sup>13</sup> and para. 5 of the Regulation of the Minister of Foreign Affairs of 22 July 2002 on the publication of scientific and journalistic works and the dissemination of news in the mass media, as well as the acceptance of gifts and other benefits of a similar nature by members of the foreign service.<sup>14</sup>

Under Article 58(3) of the Pharmaceutical Law, benefits may be received by persons authorised to issue prescriptions and by persons trading in medicinal products advertising a medicinal product, regardless of the extent of the ownership structure of the entity employing those persons,<sup>15</sup> where the giving or receiving, including by persons performing public functions, concerns items with a material value not exceeding the amount of PLN 100, related to the medical or pharmaceutical practice, bearing a sign advertising a given company or medicinal product.<sup>16</sup> Meanwhile, on the basis of Section 5 of the Regulation of the Ministry of Foreign Affairs on the acceptance of gifts, a member of the foreign service may, in connection with the performance of official duties, accept a gift or a benefit of a similar nature with a value not higher than the equivalent of EUR 100 if: 1) for reasons of custom or diplomatic etiquette, declining a gift or other service of a similar nature would not be advisable, 2) the giving of such a gift or benefit is of a common and commemorative nature, in particular in connection with a public or religious holiday.<sup>17</sup>

---

<sup>13</sup> Journal of Laws of 2022, item 2301.

<sup>14</sup> Journal of Laws of 2002, No. 136, item 1150 [hereinafter: Regulation of the Ministry of Foreign Affairs on the acceptance of gifts].

<sup>15</sup> Pursuant to Article 2(14) of the Act of 12 May 2011 on the reimbursement of medicines, foodstuffs for particular nutritional uses and medical devices, Journal of Laws of 2022, item 463, the person authorized to issue prescriptions for reimbursed medicines is a person with the right to practice a medical profession who, pursuant to the provisions relating to the practice of a given medical profession, is authorized to issue prescriptions in accordance with the Act and the Act of 6 September 2001, the Pharmaceutical law and orders for the supply of medical devices referred to in Article 38.

<sup>16</sup> The provision of Article 58(3) amended by Article 1(63) of the Act of 30 March 2007 amending the Pharmaceutical Law Act and amending certain other acts, Journal of Laws No. 75, item 492, amending the Pharmaceutical Law Act as of 1 May 2007. According to the original wording, Article 58(3) of the Pharmaceutical Law Act stated that the provision of Section 1 and 2 does not apply to giving or receiving items of negligible material value bearing a sign advertising a given company.

<sup>17</sup> Pursuant to para. 1(2) of the Regulation of the Ministry of Foreign Affairs on the acceptance of gifts, gifts and other benefits of a similar nature may only be accepted by members of the foreign service, which are: 1) members of the civil service corps employed in the ministry supporting the minister responsible for foreign affairs, 2) persons employed in the foreign service who are not members of the civil service corps, 3) plenipotentiary representatives of the Republic of Poland in another country or at an international organization, 4) persons performing tasks in the field of economic diplomacy.

The four legal regulations cited so far, defined in Article 12 of the Anti-Corruption Act, Article 35a of the MandPosłU, Article 58(3) of the Pharmaceutical Law and para. 5 of the Regulation of the Ministry of Foreign Affairs on the acceptance of gifts, all constitute a *lex specialis* with respect to Article 228 of the CC. Therefore, benefits may be accepted on their basis and, consequently, they may also determine the need to record them in the register of benefits.<sup>18</sup> However, the situation in the rest of the public sector is not as clear-cut as in the cases cited above. On the one hand, there is an opinion that the provisions of Article 228 of the CC rules out the possibility of accepting benefits in the case of all other public authorities, since the acceptance of small tokens of gratitude constitutes a criminal act and,<sup>19</sup> on the other hand, that the acceptance of small benefits by persons performing public functions under certain conditions may not be an unlawful act under Article 228 of the CC as it does not infringe the protected legal interest by way of an offence under this Article; although it meets the features of unlawfulness and punishability, it lacks culpability or that the unlawfulness of the act is nullified by the non-statutory justification by custom [Iwański 2016, 574-88; Idem 2009, 193-224; Kubiak 2015, 82-110].<sup>20</sup> The Authors believe that conducting a holistic argument as to which interpretation is correct goes beyond the scope of this paper. The view that accepting small tokens of gratitude constitutes a criminal offence in relation to international custom, diplomatic protocol or cooperation with other offices serving public authorities appears to be untenable, as a result of which the intervention of the legislator is necessary, as will be discussed later in this article.

Nevertheless, it should be noted that the custom of accepting and giving benefits, souvenirs and gifts at official state and diplomatic meetings is an integral part of official etiquette and diplomatic protocol, and is an inseparable part of the official duties performed by persons holding public office [Nichols 2018, 167-78; Kissinger 2014, 52]. Therefore, it should come as no surprise that internal acts, which establish a foundation for accepting benefits and documenting them in internal registers of benefits are included in the list of binding ministerial legislation.<sup>21</sup> For example, in accordance

---

<sup>18</sup> In the private sector, the situation seems to be simple. Although there is no legal basis in the strict sense for creating a register of benefits, there is a statutory provision, i.e. Article 38 of the Act of 23 April 1964, the Civil Code (Journal of Laws of 2023, item 1610), according to which a legal person operates through its bodies in the manner provided for in the Act and in the statute based on it, i.e. an entity private sector may independently decide to create a register of benefits under the internal legal regime.

<sup>19</sup> Anti-corruption guidelines for public officials, Central Anti-Corruption Bureau, Warszawa 2015, p. 14-15.

<sup>20</sup> Judgment of the Supreme Court of 29 March 1938, ref. no. I K 2159/37, OSN(K) 1939, No. 2, item 31.

<sup>21</sup> See Order No. 8 of the Minister of Sport and Tourism of 2 August 2023 on anti-corruption

with Article 19(1) of Ordinance No. 17 of 27 June 2023 of the Minister of Digital Affairs on the anti-corruption policy and prevention of conflict of interest in the Ministry of Digital Affairs,<sup>22</sup> a person employed in this Ministry due to the performance of their official duties may not accept any benefit, unless this is justified by special circumstances related to international custom, diplomatic protocol or cooperation with other offices serving public authorities.

Another important issue that needs to be discussed is the definition of the concept of benefit. Namely, pursuant to Article 12(3) and (4) of the Anti-Corruption Act and Article 35a(3) and (4) of the MandPosłU, there are six categories of events that may be regarded as a benefit for public office holders or their spouses, and these benefits are subject to the obligation of being disclosed in the register. The following information must be submitted: 1) all salaried positions and occupations performed both in public administration and in private institutions as well as self-employed professional work, 2) the existence of material support for public activities carried out by the notifier, 3) a donation received from domestic or foreign entities, if its value exceeds 50% of the lowest employee remuneration for work in force in December of the preceding year, as determined by the Minister of Labour and Social Policy on the basis of the Labour Code,<sup>23</sup> 4) domestic or foreign trips not related to the performed public function, if their cost has not been covered by the notifier or their spouse or their employing institutions or political parties, associations or foundations of which they are members, 5) other benefits obtained, with values greater than those indicated in item 3, not related to positions held or activities performed or professional work referred to in item 1, 6) involvement in foundation entities,

---

policy in the Ministry of Sport and Tourism, Journal of Laws MSiT of 2023, item 11; Order No. 1 of the Minister of Development and Technology of 30 December 2022 on anti-corruption policy and counteracting financial fraud in the Ministry of Development and Technology, Journal of Laws Ministry of Energy and Technology of 2013, item 1.

<sup>22</sup> Official Journal of the Ministry of Digital Affairs of 2023, item 18 [hereinafter: anti-corruption policy in the Ministry of Digital Affairs].

<sup>23</sup> To determine the amount of a donation received from domestic or foreign entities, if its value exceeds 50% of the lowest remuneration for employees' work, Article 25 of the Act of 10 October 2002 on the minimum remuneration for work (Journal of Laws of 2020, item 2207), according to which whenever the law mentions the lowest remuneration for the work of employees by reference to separate provisions or to the Labor Code or by designating the Minister of Labor and Social Policy, the Minister of Labor and Social Policy or the minister responsible for labor as obliged to determine such remuneration on the basis of separate provisions or the Labor Code, this means the amount of PLN 760. Therefore, in accordance with Article 12(3)(3) and (5) of the Anti-Corruption Act and Article 35a(3)(3) and (5) of the Mandate of Parliament, the limit value of the benefit constituting 50% of the amount of PLN 760 is PLN 380.



commercial law companies or cooperatives, even if no monetary benefits are collected on this account.

As can be noted, we are not dealing here with a classic definition of the term “benefit”, but rather a contextual definition of events that may be identified as benefits, including remuneration for work, a donation of more than PLN 380, any benefit above PLN 380 not related to the position held or activities performed or professional work, costs of domestic and foreign trips, financial and non-financial benefit from performing certain functions, and finally, any form of material support for the public activity of a person holding a public function, which may take the form of benefit in kind. Within the catalogue of the aforementioned identified benefits, we can discern property and personal benefits. What is interesting, from the wording of Article 12(3) and (4) of the Anti-Corruption Act and Article 35a(3) and (4) of the MandPosłU, only the act of accepting a benefit can be distinguished, so these provisions do not regulate the giving of benefits by persons performing public functions.

With regard to the practice of using the register of benefits established under Article 12 of the Anti-Corruption Act and Article 35a of the MandPosłU, it should be noted that after each successive parliamentary and local government elections in Poland, a number of publications appear in the press on verified cases of non-compliance with statutory obligations by new members of the government, parliamentarians, and local government officials [Nieśpiał 2008; Skory 2014; Ferfecki 2014; Krześnicki 2015; Horbaczewski 2023]. A likely reason for this is the lack of sanctions for non-compliance with statutory obligations. Importantly, in the case of another statutory obligation to counteract corruption, i.e., submitting a financial disclosure statement, a criminal sanction is provided for and this type of problem virtually does not exist. The second explanation could be the problematic hierarchical arrangement of the entities in charge of carrying out statutory duties, i.e., under Article 12 of the Anti-Corruption Act and Article 35a of the MandPosłU there are currently three entities responsible for keeping the register of benefits, namely the State Electoral Commission and the Speaker of the Sejm and Senate. The third reason are incomplete and vague provisions of law, which, due to the declaratory nature of the register of benefits, may lead to anxiety related to voluntary disclosure of data that could be detrimental to the image of the person holding a public function. Finally, the last reason may be a pragmatic reluctance to yet another bureaucratic requirement, if only with regard to the periodic filing of the financial disclosure statement.

### 3. REGISTER OF BENEFITS – PROBLEM AREAS AND THE AUTHORS' PROPOSALS FOR CHANGES

Following a review of Article 12 of the Anti-Corruption Act and Article 35a of the *MandPosłU*, this Section identifies problem areas mentioned below that require the intervention of the legislator or should be subject to a substantive assessment: 1) regulating a legal standard in the national legal order that would distinguish between a gift and an unlawful financial or personal gain, 2) introducing a definition of the concept of “material support” and regulating the minimum value of material support for public activities, 3) revoking the possibility for public office holders to accept donations towards “material support”, 4) regulating the manner of handling the accepted benefits by public office holders, 5) regulating the procedure for donations, other obtained benefits and material support below the threshold of PLN 380, 6) regulating the manner of proceeding in relation to donations, other benefits, and material support obtained, in order to determine their monetary value, or if such value cannot be determined, 7) indicating the entity whose tasks would include checking the accuracy and veracity of information submitted to the register of benefits, including analysing the data contained therein, 8) regulating the precise deadline for submitting information to the register of benefits and making changes thereto, 9) regulating the obligation to submit information in electronic form, 10) prohibiting persons performing public functions – during their holding of office or their employment and for a period of 3 years thereafter – from accepting any financial benefit, whether free of charge or for a fee in an amount lower than its actual value, from an entity or its subsidiary, if, by taking part in a decision on individual matters concerning from said entity or its subsidiary, they had a direct impact on the contents of the decision in question, 11) imposing sanctions for misrepresentation or concealment of the truth in statements submitted to the register of benefits.

The authors' proposals for changes to the abovementioned problem areas are set out below. First, it is appropriate to refer to the GRECO report, which points out that accepting a gift and accepting a bribe are two different things, and that the advantages of developing gift rules consist in resolving situations that do not involve criminal intent and/or situations that have not yet turned into bribery.<sup>24</sup> It added that Poland clearly needs to establish a solid set of rules on gifts. In the Authors' opinion, a discussion should be held on expanding the Act of 9 June 2006 on the Central

---

<sup>24</sup> Evaluation Report accepted by GRECO on the 81st Plenary Meeting (Strasbourg, 3-7 December 2018), Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies, Poland, Fifth Evaluation Round, 7 December 2018, p. 24.

Anti-Corruption Bureau (CBA),<sup>25</sup> with a legal norm, which constituted a *lex specialis* in relation to Article 228 of the CC and which would give other persons holding public functions in public authorities and state or local government organisational units the right to accept gifts or souvenirs, provided that similar prerequisites are met as in the case of the Regulation of the Ministry of Foreign Affairs on the acceptance of gifts and the anti-corruption policy of the Ministry of Digital Affairs. To be more precise, the Authors believe that the acceptance of a gift or souvenir could take place in the case of a benefit of a material value not exceeding the amount of PLN 100, especially in the form of stationery and educational materials received together with training materials, or other items commonly provided in the form of advertising and promotion, as well as in connection with the performance of official duties that involve representing the employer, while the acceptance of the benefit is related to the interest of the public service and official tradition. In addition, the provision could enumerate the gifts or souvenirs that are allowed, prohibited and conditionally allowed.

Subsequently, another proposed change is to define “material support” as aiding in the acquisition of physically existing assets ownership of which is passed to the holder of a public function, that are placed in their possession or are controlled directly or indirectly, as well as benefits derived from these assets. The definition would also include the transfer, modification or use of these benefits, as well as the carrying out of any operation involving these assets in any way that may make it possible to derive benefit from them.

In addition, the authors propose to introduce a minimum threshold corresponding to the value of the donation referred to in Article 12(3)(3) of the Anti-Corruption Act and Article 35a(3)(3) of the MandPosłU. This is supported by the fact that the concept of material support may in a sense be synonymous with the concept of donation, which means that in practice material support may take the form of a monetary donation and *vice versa*. Therefore, the repeal of the possibility of accepting donations by persons performing public functions and leaving only material support should be considered. This is justified insofar as the definition of donation must be interpreted on the basis of Article 888 of the Act of 23 April 1964, the Civil Code,<sup>26</sup> and there would be nothing unusual about this if it were not for the wording of Article 898(1), according to which, a donor may cancel a donation, even one that has already been made, if the recipient has been grossly ungrateful to the donor. A review of the doctrine and judicial practice shows that the donor’s right to revoke the donation due to the gross

---

<sup>25</sup> Journal of Laws of 2024, item 184 [hereinafter: Act on the CBA].

<sup>26</sup> Journal of Laws of 2023, item 1610.

ingratitude of the recipient constitutes a sanction for violating the ethical duty of gratitude (or at the very least, the prohibition of ingratitude), which is a private penalty that falls within the purview of the donor who was the target of the reprehensible behaviour of the recipient [Sylwestrzak 2023]. The introduction of a definition of “material support”, “souvenir” or “gift” would, on the one hand, rule out the potential dependence in the case of accepting a donation, as it would be impossible to identify the aforementioned concepts with a donation within the meaning of Article 888 of the Civil Code and, on the other hand, would fulfil the aforementioned GRECO’s recommendation to Poland to establish a solid set of rules on gifts or souvenirs and material support to public office holders and thus set such gifts or souvenirs and material support apart from bribery and donation under Article 888 of the Civil Code.

In terms of regulating the manner of dealing with the accepted benefits by persons performing public functions, it is reasonable to answer the question: who is the owner of the accepted benefit, and, subsequently, who can dispose of it? The answer to the above question does not pose any difficulties, because the subject of considerations in this publication is a benefit that has been accepted in connection with the performance of a public function. Thus, any benefit that is accepted in connection with the performance of official duties does not belong to the recipient, but to the body in whose name and on whose behalf the recipient is acting. Several arguments support this interpretation, which are presented below using the example of a member of the foreign service. Firstly, a member of the foreign service may accept a benefit in connection with the performance of their official duties, which involve representing the Republic of Poland on the international arena, and the acceptance of the benefit is related to the interests of the foreign service and traditions in diplomacy.

Secondly, a member of the foreign service may accept a benefit only as part of their employment relationship, as the individual member’s scope of duties are determined by the employer, who also consents to the acceptance and giving of benefits. In this case, the consent is referred to in para. 5(1) of the Regulation of the Ministry of Foreign Affairs on the acceptance of gifts.<sup>27</sup> What is interesting, in the previous version of the regulation in question, the provision of Article 5(4) and (5), according to which, an ac-

---

<sup>27</sup> Provision of para. 5(1) of the Regulation of the Ministry of Foreign Affairs on the acceptance of gifts states that a member of the foreign service in connection with the performance of official duties may accept a gift or other benefit of a similar nature with an equivalent value not exceeding EUR 100, if: 1) due to customs or diplomatic courtesy, it is not advisable to refuse to accept a gift or other benefit of a similar nature; 2) the provision of such a gift or benefit is of a general and occasional nature, in particular in connection with a public or religious holiday.

cepted gift with a value exceeding the amount of EUR 100 was the property of the office serving the minister in charge of foreign affairs, and with regard to the management of assets, it was assumed that the provisions of the Regulation of the Council of Ministers of 21 October 2019 on the detailed management of movable tangible assets of the State Treasury<sup>28</sup> can be applied to accepted benefits with a value exceeding the amount of EUR 100.<sup>29</sup> In the opinion of the Authors, the repeal of Article 5(4) and (5) of the aforementioned regulation did not affect the legal position in principle, or if it did, it was in such a way that previously, once benefits with a value of less than EUR 100 were accepted, they became the property of members of the foreign service, who were not subject to material liability under the general rules. Under the current state of the law, all accepted benefits are the property of the office of the minister competent for foreign affairs.

Another noteworthy solution is one adopted in the anti-corruption policy of the Ministry of Digital Affairs. Pursuant to Article 19(4) of the aforementioned policy, an employee of the Ministry is permitted to retain benefits in the form of stationery and educational materials received together with training materials, typically provided as a means of advertising and promotion, which constitute personal items received in connection with a participation in official business meetings with representatives of other entities, where returning them is not possible, would be tactless or would entail significant costs. Thus, through the adoption of the solution, the Minister of Digital Affairs not only agreed to the acceptance of benefits by his subordinate employees, but also clarified which benefits arising from office become their property.

Given the above, the question arises about handling benefits accepted with the consent of the employer, but without that employer’s consent for the subordinate employee to take over and control that benefit? The employer has the following options: (1) consent to the acceptance of the benefit or consent to the acceptance of the benefit under certain conditions (e.g., specifying its value or form) and then entrust it to the employee with or without an obligation to settle it or account for the benefit (e.g., in the form of a prize in kind); (2) not consent to the acceptance of the benefit by the employee; (3) consent to the acceptance of the benefit or consent to the acceptance of the benefit under certain conditions (e.g. specifying its value or form) but not entrust it to the employee.

It stands to reason to consider regulating the manner of proceeding in relation to donations, other benefits received and material support, below

---

<sup>28</sup> Journal of Laws of 2023, item 2303.

<sup>29</sup> Regulation of the Council of Ministers of 21 October 2019 on the detailed method of managing tangible movable assets of the State Treasury, Journal of Laws item 2004.

the threshold of PLN 380.<sup>30</sup> Two approaches should be taken into consideration: first, the enumerative singling out of benefits with a value of less than PLN 380, permitted to be retained by a person holding a public function; second, the introduction of a definition of a “related benefit”, which is understood as a benefit equivalent value of which exceeds the amount of, e.g., PLN 10,000, where the circumstances indicate that individual cases of donations, other benefits, and material support obtained are related to each other and have been divided into parts of a smaller value with the intention of avoiding the obligation to report information to the register of benefits.

The authors also propose the introduction of a regulation that would determine the method of determining their monetary value in relation to donations, other benefits received and material support, as well as how to proceed in the event of an inability to determine such value. In the first case, the proposal is to proceed in accordance with item 2.10 of the National Accounting Standard No. 4 “Impairment of Assets”,<sup>31</sup> according to which, if it is not possible to determine the net selling price available on an active market, the commercial value of an object of impairment assessment is determined by its estimated fair market value, within the meaning of Article 28(6) of the Act of 29 September 1994 on Accounting,<sup>32</sup> reduced by the cash expenses expected to be incurred and directly attributable to the disposal of the object of impairment assessment, representing the total expected costs of sale (disposal/liquidation) of this object, excluding financial costs and income tax charges. If the aforementioned principle cannot be applied, i.e., the value of the benefit cannot be determined, it stands to reason to regard it as a personal benefit.

Another amendment proposal put forward by the authors is to add to Article 2(1) of the Act on the CBA, a new editorial unit stating that the control of the accuracy and veracity of the information reported to the register of benefits referred to in Article 12 of the Anti-Corruption Act and Article 35a of the MandPosłU, as well as the introduction of implementing provisions in the Act on the CBA that would enable the implementation of the new task. It is reasonable to designate the CBA as the entity responsible for keeping the register of benefits in Poland, assuming this responsibility from the National Electoral Commission and the Speakers of the Sejm and Senate. At the same time, it is justified to grant the CBA access to the database resources held by public authorities and state or

---

<sup>30</sup> Evaluation Report..., p. 24.

<sup>31</sup> Announcement No. 2 of the Minister of Finance of 29 March 2012 regarding the announcement of the resolution of the Accounting Standards Committee on the adoption of the amended National Accounting Standard No. 4 “Impairment of assets”, Journal of Laws Device Min. Fin. of 2012, item 15.

<sup>32</sup> Journal Laws of 2023, item 120.

local government organisational units that are directly or indirectly linked to the verification of the accuracy and veracity of the information submitted to the register of benefits. The manner of performing tasks within the framework of the central register of benefits should be part of the CBA activity report for the previous calendar year, submitted annually by 31 March to the Prime Minister and the Parliamentary Special Services Committee.<sup>33</sup>

There are reasonable grounds for introducing into the Anti-Corruption Act and the *MandPosłU* a precise deadline for submitting information to the register of benefits and making changes thereto provided such changes would not create any uncertainty as to whether the deadline for the initial notification should be determined either upon the appointment to the post or function or from the date of the occurrence of the event resulting in the attainment of the benefit. It is also imperative to call for a provision prohibiting persons holding public office while in office or during their employment and for three years thereafter, from accepting any material benefit, whether free of charge or for a fee in an amount lower than its actual value, from an entity or its subsidiary, if, by taking part in a decision on individual matters concerning such an entity or subsidiary, they have directly influenced content of that decision. The proposed solution could be modelled after Article 24m of the Act of 8 March 1990 on municipal self-government.<sup>34</sup> The final proposal is to introduce a criminal sanction as follows: stating untruth or concealing the truth in the information submitted to the register of benefits shall result in liability under Article 233(1) of the CC.

## CONCLUSIONS

A benefits register can be one of the essential elements of the system for preventing and, in some cases, combating corruption. However, the presented inaccuracies and problem areas related to this institution make it clear that it requires a thorough overhaul of its operating model. Moreover, in the opinion of the Authors, the aforementioned makes it difficult to attribute to the institution of the register of benefits the features specific to a legal system, i.e., a configuration of components possessing a clear structure and forming a logically ordered whole that is characterised by hierarchical order, internal consistency, and completeness [Podgódek, Szmulik, and Zenderowski 2022, 400-404]. The situation is similar if we regard the institution of the register of benefits as part of the subsystem of the national anti-corruption system.

---

<sup>33</sup> See Article 12 of the Act on the Central Anticorruption Bureau.

<sup>34</sup> Journal of Laws of 2023, item 40.

The Authors therefore call for a legislative initiative that would ensure that the identified inaccuracies and problem areas are repealed, and that the institution of the register of benefits is attributed the features specific to a legal system and, finally, it would form a foundation for the creation of an IT system in Poland enabling electronic processing of information submitted to the register of benefits, in particular for the purposes of calling for the correction of information submitted to the register, automatic generation of alerts and notifications, smooth implementation of control activities, easy generation of reports, etc. Furthermore, a preliminary comparison of the declaration form for the register of benefits and the financial disclosure form shows that some of the information required in both templates is duplicated or complementary, which speaks in favour of their integration.

It therefore seems, *prima facie*, that there are no barriers to the establishment of a central register of benefits and financial disclosure statements, which would, on the one hand, facilitate public access to the information submitted to the register of benefits and financial disclosure statements and, on the other, eventually help in the fight against corruption. This would be all the more justified as the GRECO report has called the Polish state to consolidate the legal framework in the area of financial disclosure statements (which are currently regulated by roughly a dozen of separate laws), gift policy, and conflict of interest.<sup>35</sup> It should also be mentioned that two IT systems relevant to the anti-corruption system have recently been developed in Poland, namely the Financial Information System<sup>36</sup> and the Central Register of Real Beneficiaries<sup>37</sup>. Integrating data from IT systems that are part of the public authorities' resources would not only significantly strengthen the public authorities' capacity to combat corruption but would also enhance the state security system as a whole.

It would be also impossible to overlook the importance of data integration due to one of the key reasons behind the introduction of the obligation to provide information to the register of benefits and submit financial disclosure statements by persons performing public functions was the inability of public authorities to access database resources in which changes in the material status of persons exercising public functions could be monitored in an efficient and effective manner. This is why the collection of this type of information has so far taken place as a result of the statutory obligation imposed on persons exercising public functions.

---

<sup>35</sup> Evaluation Report..., p. 14.

<sup>36</sup> See Act of 1 December 2022 on the Financial Information System, Journal of Laws of 2023, item 180.

<sup>37</sup> See Article 55-71a of the Act of 1 March 2018 on counteracting money laundering and terrorism financing, Journal of Laws of 2023, item 1124.



It seems that in an era of rapid progress of digitalising administration, the aim of which is not only to optimise costs and improve the quality and security of public services but also to make citizens' lives easier and to exercise social control over the power entrusted to persons performing public functions, part of the information provided to the register of benefits and submitted in financial disclosure statements is now electronically accessible to public authorities. They are, admittedly, scattered and stored in different data formats, however, the approach above makes it possible to postulate a change in the current operating model of the register of benefits and financial disclosure statements. The authors believe that it is undeniable that the CBA is an authority whose statutory task is to combat corruption in the public and economic life.

It would be justified to ultimately have the issue of gift policy regulated in each public authority and state or local government organisational unit, which would transfer information on lawfully obtained benefits to a central register of benefits and financial disclosure statements. Given the obligation to act on the basis and within the limits of the law and to avoid invoking custom, especially in public authorities and entities with a public-private ownership structure, it is reasonable to submit for consideration the introduction of a statutory legal basis that would give the possibility of accepting and giving benefits with the consent of a superior and in connection with the exercise of a representative function.

The above situation pertains not only to the public sector, but also to the public-private and private sectors as it would be ideal if all organisational units kept registers of benefits that took common elements into account. This would enable public disclosure of benefit transfers from givers to recipients as well as the verification of information about the circumstances surrounding these transfers. It would also serve as a tool for monitoring the controversial institution of lobbying [Kuczma 2012, 61-75].

#### REFERENCES

- Ferfecki, Wiktor. 2014. "Zapomniany rejestr korzyści." *Rzeczpospolita* [accessed: 11.02.2024].
- Galińska-Raczy, Irena. 2003. "Sprawa aktualizacji danych zawartych w Rejestrze Korzyści." In *Ekspertyzy i Opinie Prawne Biuletynu Biura Studiów i Ekspertyz Kancelarii Sejmu*, vol. 1.
- Horbaczewski, Robert. 2023. "Dane w Rejestrze Korzyści zostaną 6 lat po zakończeniu funkcji." <https://www.prawo.pl/samorzad/dane-w-rejstrze-korzysci-przez-6-lat-nowelizacja-przepisow,520481.html> [accessed: 02.11.2024].
- Iwański, Mikołaj. 2009. "Zwyczaj jako «okoliczność wyłączająca bezprawność» wręczenia lub przyjmowania prezentów przez pracowników służby zdrowia i nauczycieli." *Czasopismo Prawa Karnego i Nauk Penalnych* 1:194-224.

- Iwański, Mikołaj. 2016. *Odpowiedzialność karna za przestępstwa korupcyjne*. Kraków: Krakowski Instytut Prawa Karnego Fundacja.
- Kissinger, Henry. 2014. *O Chinach*. Wydawnictwo Czarne.
- Kozłowska, Małgorzata. 2021. "Rejestr korzyści jako narzędzie przeciwdziałania korupcji w administracji publicznej." In *Ewolucja elektronicznej administracji publicznej*, edited by Renata Kusiak-Winter, and Jerzy Korczak, 31-42. Wrocław: E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Faculty of Law, Administration, and Economy of the University of Wrocław. DOI: 10.34616/23.21.007.
- Krześnicki, Ireneusz. 2015. "Rejestr korzyści, czyli brak konkretnych definicji i sankcji." <https://www.prawo.pl/samorzad/rejestr-korzysci,98404.html> [accessed: 11.02.2024].
- Kubiak, Rafał. 2015. "Czy istnieje «kontratyp zwyczajowy»?" *Prokuratura i Prawo* 7-8:82-110.
- Kuczma, Paweł. 2012. "Funkcje lobbying." *Państwo i Prawo* 8:61-75.
- Nichols, Robert. 2018. "Corruption." In *The Oxford Handbook of Demosthenes*, edited by Martin Gunther, 167-78. Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780198713852.001.0001>.
- Nieśpiał, Tomasz. 2008. "Co dziesiąty poseł nie wypełnił rejestru korzyści." *Rzeczpospolita* [accessed: 11.02.2024].
- Podgłódek, Andrzej, Bogusław Szmulik, and Radosław Zenderowski. 2022. *Wprowadzenie do nauki o państwie, polityce i prawie*. Warszawa: Wolters Kluwer.
- Rzetecka-Gil, Agnieszka. 2021. "Article 1." In *Ustawa o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne. Komentarz*. Lex el.
- Skorupka, Stanisław, Halina Auderska, and Zofia Łempicka. 1969. *Mały słownik języka polskiego*. Warszawa: PWN.
- Skory, Tomasz. 2014. "Rejestr Korzyści i ... zdziwień." RMF24 [accessed: 11.02.2014].
- Suwaj, Patrycja J. 2009. "4.2.2. Instrumenty majątkowe." In *Konflikt interesów w administracji publicznej*. Lex el.
- Sylwestrzak, Anna. 2023. *Kodeks cywilny. Komentarz aktualizowany*, edited by Małgorzata Balwicka-Szczyrba. Lex el.
- Šzewc, Tomasz. 2016. "Skuteczność samorządowych mechanizmów antykorupcyjnych." *Samorząd Terytorialny* 4:45-54.
- Tarapata, Szymon. 2023. "O legalności przyjmowania prezentów przez osoby pełniące funkcje publiczne – uwagi polemiczne." *Prokuratura i Prawo* 2:5-28.
- Wierzbica, Anna. 2017. *Ustawa o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne. Komentarz*. Legalis el.