

THE SITUATION OF CIVIL SOCIETY ORGANISATIONS IN POLAND

Summary:

- Since the beginning of 2016 the civil society sector has faced numerous challenges detrimental to its work that has and limited its ability to perform its role of promoting democratic participation and facilitating government accountability towards the rule of law and fundamental rights standards. The challenges have come in the form of attacks on non-governmental organizations (both physical and through smear campaigns), changing the process of distributing public funds for NGOs and shrinking the space for dialogue between civil society and the authorities.
- The Parliament is working on legislative changes that, once adopted, may have a severe impact on the work of civil society sector.

SHRINKING THE SPACE FOR DIALOGUE BETWEEN CSOS AND THE ADMINISTRATION

The majority of legislation adopted since 2015, which have had a serious impact on fundamental rights protection, was not subject to public consultations. Each legislative act introducing consecutive reforms of the Constitutional Tribunal, the Act amending the Act on the Police and the Act on the Prosecutor's Office were submitted to the Parliament as private members' bills in order to bypass obligations to hold public consultations. In the case of the Anti-terrorist Act, even though the government promised to launch a public consultation process, the draft has not been opened for consultation and, which is even more worrying, remained confidential until shortly before it was sent to the Parliament.¹

The Civil Forum of Legislation (one of the programs of Stefan Batory Foundation) stressed that between May and September 2016 the authorities responsible for organising public consultations routinely set very short deadlines for consultations (14 days) and that only the original version of the draft law was subject to consultations. Furthermore, the remarks received during the consultations were not always published and the responsible authorities almost never responded to the contributions they received.²

CHANGES IN THE PROCES OF DISTRIBUTION PUBLIC FUNDS

Since 2015, there have been several changes affecting the process of distributing funds for NGOs working on fundamental rights.

¹ Helsinki Foundation for Human Rights, HFHR opinion on new antiterrorism law, available at: www.hfhr.pl/en/hfhr-opinion-on-new-antiterrorism-law/

² Obywatelskie Forum Legislacji, Obserwacja praktyki procesu legislacyjnego w okresie od 16 maja do 10 września 2016 r., available at: www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Komunikat%20z%20VIII%20obserwacji.pdf

The first disturbing trend concerns limitation of NGOs' access to public funds. This practice is reflected in deteriorating standards for organising public calls for proposals. According to the data gathered by the Polish Federation of Non-Governmental Organisations, since 2016, 17 calls for proposals organised by the authorities at the national level were annulled or organised with a very short deadline (e.g. the deadline for presenting offers was 7 days from the call's publication). The same research shows other problems, e.g. an announcement on public consultations on the programme of cooperation between the Ministry of Foreign Affairs and NGOs was published under a link to a "car sale".³ Furthermore, there are examples of decisions on distributing public funds in a way that favours specific organizations close to the governing majority party. For example, in July 2016 the Ministry of Foreign Affairs announced that a grant to establish Regional Centres for International Debate was awarded to an organization that was established in 2015, even though the rules of the call required that a bidder have documented experience in this field from the period 2013-2015. Funds from the same call were also granted to the catholic 'Academia', which had no previous experience dealing with issues related to international policy.⁴

The second trend concerns the distribution of funds to NGOs providing aid to victims of crimes. On the basis of Article 43 of the Criminal Executive Code and the Regulation of the Ministry of Justice, the Ministry of Justice distributes funds to NGOs for activities delivering support for victims of crime. Since 2014, the overall amount of money distributed within this Fund varied from 11 million PLN (ca. 2,500,250 EUR) in 2014 to 20 million PLN (ca. 5 million EUR) in 2016 to 16 million PLN (ca. 4,000,000 EUR) in 2017. Since 2012, when the Fund was created, three very experienced NGOs providing aid specifically for children and women victims of crime were among the organisations that received financial support from the Fund. However, since 2016 those three organisations (the Women's Rights Centre, Association for Women BABA and Nobody's Children Foundation) have not received any financial support. According to the Ministry of Justice, funds were granted only to organisations that provide victims with comprehensive aid. After the Ombudsman's intervention in this case, the Minister of Justice announced that the reason why the Women's Rights Centre did not receive funding is because it specialises only in one group of victims of crime (women). The minister considered this practice to be discriminatory towards men who can also suffer domestic violence. The Ministry of Justice also announced that the offers submitted by two other organisations (Nobody's Children Foundation and Association for Women BABA) were assessed to be of a lower quality than the offers presented by other associations such as Caritas and the Brother Krystian Association of Aid for Neighbours.⁵

Another example relates to the works of the Autonomia Foundation which run a project named "ZERO violence - engagement, education and advocacy against the gender-based violence". The project was funded by funds from the Civic Initiatives Fund. After an unexpected inspection from the Ministry of Family, Labour and Social Policy (which operates the Fund) the agreement between the organization and the Fund was cancelled with immediate effect. It was the first case of such an inspection in the entire history of the fund. It should be noted that a couple of days before the inspection two MPs submitted a question to the Ministry of Family, Labour and Social Policy concerning cooperation with Autonomia Foundation. In their letter the MPs described the work of the Autonomia Foundation as including "an enormous load of ideology" and the Foundation's statute was said to include "aims strictly referring to LGBT ideology" and a declaration on the "fight against

³ Polish Federation of Non-governmental Organisations (OFOP), Repozytorium, available at: <http://repozytorium.ofop.eu/>

⁴ Stankiewicz A., Strumień dotacji dla o. Rydzyka, Rzeczpospolita, available at: <http://www.rp.pl/Kosciol/307069869-Strumien-dotacji-dla-o-Rydzyka.html#ap-1>

⁵ Ombudsman's Office (Biuro Rzecznika Praw Obywatelskich), Dlaczego niektóre organizacje pozarządowe nie mogą liczyć na dotacje? – Minister Sprawiedliwości odpowiada RPO, available at: <https://www.rpo.gov.pl/pl/content/dlaczego-niektore-organizacje-pozarzadowe-nie-moga-liczyc-na-dotacje-minister-sprawiedliwosci>

sexual intolerance". The MPs asked the Ministry how this agenda could go hand in hand with the Ministry's activity towards "the strong position of the family and marriage".⁶

The third disturbing trend concerns the distribution of funds for legal aid and support for migrants and refugees. In 2016, the Ministry of the Interior annulled the call for proposals within the Asylum, Migration and Integration Fund. The Ministry explained its decision by stating that between the announcement of the call and presentation of its results significant changes had occurred in relation to migration and integration. Given these changes, the Ministry decided to announce two new calls for proposals. Altogether, the Ministry was supposed to distribute over 2,500,000 PLN (approx. 625,000 EUR).⁷ The deadline for those two calls was set for June 2016 and the costs were eligible as of August 2016. However, no decisions on the offers submitted has yet been taken (almost year and a half later). The significant delay in resolving these calls has detrimentally affected NGOs' capacity to provide legal aid and support to migrants and refugees.⁸

NATIONAL INSTITUTE OF FREEDOM – CENTRE FOR CIVIL SOCIETY DEVELOPMENT

In December 2016, the Prime Minister announced plans to create the National Center for the Development of Civil Society. In June 2017, the draft Act on the National Institute of Freedom – Centre for Civil Society Development was submitted to the Parliament.

According to the draft law, the Institute's Director and the majority of Director's Council are to be appointed by another new institution: the Committee for Public Benefit Activity, chaired by a member of the Council of Ministers. The draft law gives civil society representatives a marginal role, assigning them only 5 seats in the 11-member Council of the Institute. The Council's main responsibilities include issuing opinions on the Institute's action plans and finances.

The Institute will be responsible for distributing funds to civil society organisations at national level - the former Civic Initiatives Fund, which distributed approximately 14 million EUR per year for the projects selected through open competitions, would be abolished and its resources would be operated by the Institute. The draft law fails to provide detailed information on the rules relating to the competitions determining the distribution of funds. The draft also includes a provision that would the President of the Institute to delegate public tasks to be performed by particular NGOs. In effect the new rules would allow the Director complete discretion in distributing public funds.

Furthermore, according to the draft law, the National Freedom Institute will also be responsible for the allocation of funds obtained from the European Union and other international funds (e.g. EEA/Norway Grant funds). The legislative proposal contains no guarantees ensuring compliance with relevant EU rules concerning cohesion funds. For example, there is no mention in the draft law of the requirement for the Institute to respect relevant EU and domestic laws, promote equality between men and women and non-discrimination as well as the principle of sustainable development, as required by Articles 6, 7 and 8 of the Common Provisions Regulation.⁹

⁶ Repozytorium OFOP, MRPiPS: rozwiązanie umowy FIO z Fundacją Autonomia w trybie natychmiastowym, available at: <http://repozytorium.ofop.eu/mrpips-rozwiazanie-umowy-fio-z-fundacja-autonomia-w-trybie-natychmiastowym/>

⁷ Ministry of Interior, Department of Border Policy and International Fund (Ministerstwo Spraw Wewnętrznych, Departament Polityki Granicznej i Funduszy Międzynarodowych), Dwa nowe nabory w ramach Funduszu Azylu, Migracji i Integracji, available at: <http://fundusze.mswia.gov.pl/ue/aktualnosci/13784,Dwa-nowe-nabory-w-ramach-Funduszu-Azylu-Migracji-i-Integracji.html>

⁸ Mazur N., MSWiA ma miliony na integrację cudzoziemców, ale w 2016 r. nie wydało na to ani złotówki, Gazeta Wyborcza, available at: <http://wyborcza.pl/7,75398,21216958,mswia-ma-miliony-na-integracje-cudzoziemcow-ale-w-2016-r-nie.html>

⁹ Regulation 1303/2013 laying down common provisions on EU cohesion funds (OJ 347, 20.12.2013, p. 320).

Unlike the previous mechanisms for distributing public funds, which used to be decentralized, the government's current proposal would centralise all funds under one institution. The draft law has been strongly criticized by numerous NGOs. The Klon/Jawor Association stated that "the draft law is contradictory to the rules of partnership and sovereignty, competitiveness and transparency guaranteed not only by the Act on the activity for social benefit, but also preserved by years of cooperation".¹⁰

On 15th September Sejm adopted the law, and the law was directed to Senat. Most probably the Act will be approved by Senat during its next session between 26 and 27th September.

ATTACKS ON NGOS

At the beginning of 2016, the headquarters of NGOs working on LGBTQ rights (namely the Campaign Against Homophobia and the Lambda Foundation) were attacked by persons unknown. The criminal proceedings in these cases were discontinued due to the impossibility of identifying the perpetrators. At almost the same time, an activist of HejtStop (the Stop Hate Project) was subject to a high volume hate speech and threats after she reported to Facebook a racist statement from a sportsman. None of these incidents was condemned by the authorities. A letter signed by over 300 NGOs with an appeal to the Prime Minister to take action against a rising wave of hatred and attacks against NGOs remains unanswered.¹¹

At the end of October 2016, the public media carried out a smear campaign aimed at certain NGOs working on the rule of law and fundamental rights, and which had received public funding for their work. The campaign began with news reports that were originally directed at a former judge of the Constitutional Tribunal who had expressed criticism of government reforms. The public media used the fact that the judge was a board member of a particular NGO to attack the organisation. Public media made unsupported allegations that this organization fraudulently received public funding. Public media adopted a similar approach towards other NGOs. Although largely relying on publicly available documents, the broadcasts presented themselves as revelatory of hidden information and suggested that some organizations received public funds in a non-transparent way due to family and personal ties. The allegations were unsupported by any evidence suggesting a breach of the law or any other irregularities such as wasting or improper spending of public funds.¹²

EXPECTED LEGISLATIVE CHANGES

Currently, there are two pieces of legislation under preparation that, once adopted, may have a negative impact on the ability of CSOs to fulfill their watchdog functions.

The first piece of legislation is an amendment to the Act on the National Remembrance Institute. The new law introduces criminal liability for statements imputing responsibility for crimes of the Nazi regime to the Polish nation and establishes civil law remedies for infringements of the good name of the Republic of Poland and of the Polish nation. These provisions raise two concerns. First, they constitute a general limitation on the freedom of expression. Second, they are likely to impeding NGOs' ability to hold the government accountable. If adopted, the proposed version of the Act may

¹⁰ Citizens Observatory of Democracy, Projekt ustawy o Narodowym Centrum Rozwoju Społeczeństwa Obywatelskiego, available at: <http://obserwatoriumdemokracji.pl/ustawa/o-projekt-ustawy-o-narodowym-centrum-rozwoju-spoleczenstwa-obywatelskiego/>

¹¹ Obywatele dla Demokracji, List do premier Beaty Szydło z prośbą o podjęcie działań na rzecz przeciwwstawienia się fali nienawiści, available at: <http://www.ngofund.org.pl/apel-do-premier-beaty-szydlo-o-podjecie-dzialan-w-sprawie-atakow-na-organizacje-pozarządowe/>

¹² Bychawska-Siniarska D., Godzisz P., Warso Z., Information on the recent challenges faced by human rights defenders and civil society in Poland, Helsinki Foundation for Human Rights, available at: www.hfhr.pl/wp-content/uploads/2016/11/HRD-report-30112016-FIN.pdf

discourage members of the public from discussing certain aspects of Poland's history because of the risk of facing criminal sanctions.¹³ In the opinion of HFHR there is a high risk that in the future this provision may be used against watchdog organizations and human rights defenders, particularly those active at international fora, for voicing critical opinions about the government's actions or providing information about the irregularities in the functioning of state institutions.¹⁴

ABOUT HFHR

The Helsinki Foundation for Human Rights is one of the biggest and oldest non-governmental organisations dealing with the human rights protection in Poland. HFHR's mission is to promote human rights protection in democratic state ruled by law. HFHR undertakes educational, legal and monitoring activities both in Poland and the countries of the former Soviet block. HFHR has a consultative status at ECOSOC and is a member of numerous research networks and platform.

Follow us:

www.hfhr.pl/en

[Twitter/hfhrpl](https://twitter.com/hfhrpl)

[Facebook/hfhrpl](https://facebook.com/hfhrpl)

Helsinki Foundation for Human Rights

Zgoda 11

00-018 Warsaw, Poland

¹³ Helsinki Foundation for Human Rights, The HFHR on draft amendment to National Remembrance Institute Act, available at: <http://www.hfhr.pl/en/the-hfhr-on-draft-amendment-to-national-remembrance-institute-act/>

¹⁴ Bychawska-Siniarska D., Godzisz P., Warso Z., Information on the recent challenges faced by human rights defenders and civil society in Poland, Helsinki Foundation for Human Rights, available at: <http://www.hfhr.pl/wp-content/uploads/2016/11/HRD-report-30112016-FIN.pdf>