

THE SITUATION OF THE CIVIL SOCIETY ORGANISATIONS

Summary:

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

SHRINKING SPACE FOR DIALOGUE BETWEEN CSOS AND THE ADMINISTRATION

The majority of the pieces of legislation adopted since 2015 and which have serious impacts on human rights protection, was not subject to public consultations. Each act introducing consecutive reforms of the Constitutional Tribunal, the Act amending the Act on the Police and the Act on Prosecutor's Office were submitted to the Parliament as private bills of MPs in order to bypass obligations to organize 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 directing to the Parliament.¹

The Civil Forum of Legislation (one of the programs of Stefan Batory Foundation) stressed that between May and September 2016 very often the authorities responsible for organizing public consultations set very short deadlines for consultations (14 days) and only the first 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 received remarks.²

CHANGES IN THE PROCES OF DISTRIBUTION PUBLIC FUNDS

Since 2015, there were several changes or developments that affected the process of distributing funds for non-governmental organisations working on fundamental rights.

The first disturbing trend concerns limitation of non-governmental organisations' access to public funds. This practice is reflected in deteriorating standards for organising public calls for proposals.

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

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 malfunctions, e.g. an announcement on public consultations of the programme of cooperation between the Ministry of Foreign Affairs and NGOs was published under a link "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. For example, in July 2016 the Ministry of Foreign Affairs announced that the 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 a documented experience from the period 2013-2015. The funds from the same call were also granted to the catholic Academia which had not previously dealt with the issues related to international policy.⁴

The second trend concerns distribution of funds to non-governmental organisations 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 to non-governmental organisation the funds for their activity embracing different forms of support for victims of crimes. 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 well-experienced non-governmental organisations providing specific aid for children and women victims of crime were among the organisations which received funding from the Fund. However, since 2016 those three organisations (namely the Women's Rights Centre, Association for Women BABA and Nobody's Children Foundation) have not received any access to this fund, even though their proposals were assessed very highly. According to the Ministry of Justice, the funds were granted to the organisations which 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) and, therefore, such a practice should be found discriminatory towards men who can also suffer from domestic violence. The Ministry of Justice also announced that the offers of two other organisations (Nobody's Children Foundation and Association for Women BABA) were assessed lower than the offers presented by e.g. Caritas and Brother Krystian Association of Aid for Neighbours.⁵ Another example relates to the works of the Autonomia Foundation which run a project „ZERO violence - engagement, education and advocacy against the gender-based violence”. The project was funded from the funds of the Civic Initiatives Fund. After a rapid and unexpected monitoring from the Ministry of Family, Labour and Social Policy (which operates the Fund) the agreement between the organization and the Fund was solved immediately. It was the first case of such a rapid monitoring in the entire history of the Fund. It should be stated that a couple of days before the monitoring two MPs directed a question to the Ministry of Family, Labour and Social Policy about the cooperation with Autonomia Foundation. In their letter the works of the Autonomia Foundation were described 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 „fight against sexual intolerance”. The MPs asked the Ministry how this agenda can go hand in hand with the Ministry's activity towards „the strong position of the family and marriage”.⁶

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

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

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/>

The third disturbing trend concerns the distribution of funds for legal aid and support for migrants and refugees. In 2016, the Ministry of Interior announced that the call for proposals within the Asylum, Migration and Integration Fund was annulled. 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 that, 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 in those two calls was set for June 2016 and the costs were eligible as of August 2016. However, none of these calls have been resolved yet (almost year and a half later). The significant delay in resolving these calls affected the 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 the plans to create the National Center for the Development of Civil Society. In September 2017, the Act on the National Institute of Freedom – Centre for Civil Society Development was adopted by the Parliament.

In the light of the law, 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 Polish Cabinet, Council of Ministers. The participation of the representatives of the civil society will be illusory - in the light of the law, the civil society representatives will have only 5 seats in 11-member Council of the Institute. The Council is designed to play a marginal role, with its main responsibilities including issuing opinions on action plans and finances of the Institute.

The Institute will be a body responsible for distributing funds to CSOs at the national level (the former Civic Initiatives Fund, which distributed approx. 14 million EUR per year for the projects selected in the open competitions, would be abolished and its resources would be operated by the Centre). The law fails to provide detailed information on the competitions which would be organized to distribute funds. The law also includes a provision in light of which it would be possible for the President of the Centre to delegate public tasks to be performed by particular NGOs. As a result, it will lead to a complete discretion in distributing public funds.

Furthermore, according to the 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 funds). The legislative proposal contains no guarantees that the relevant EU rules imposed on the Member States will be followed during the Institute's decision-making process. Examples of such rules are respecting EU and domestic laws, promoting the equality between men and women and non-discrimination as well as the principle of sustainable development.

Unlike to the previous mechanisms which used to be decentralized, right now the government is aiming at centralizing all the funds under one institution. The draft Act has been strongly criticized by numerous non-governmental organizations. The Klon/Jawor Association stated that "the draft law is contradictory to the rules of partnership and sovereignty, competitiveness and transparency

⁷ Ministry of Interior, Department of Boarder 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>

guaranteed not only by the Act on the activity for social benefit, but also preserved by years of cooperation”.⁹

ATTACKS ON NGOS

At the beginning of 2016, the headquarters of organizations acting for LGBTQ rights (namely Campaign Against Homophobia and Lambda Foundation) were attacked by persons unknown. The criminal proceedings in these cases were discontinued due to the impossibility of identifying their perpetrators. Furthermore, almost at the same time, an activist of HejtStop (Stop Hate Project) faced an enormous wave of hate speech and threats after she reported racist statement published by one sportsman to the administrators of Facebook. None of these incidents were 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 remained unanswered.¹⁰

At the end of October 2016, the public media carried out a smear campaign aimed at certain civil society organizations which work on the rule of law and human rights, and which had received public funding for their work. The campaign began with news reports that originally was directed at the previous judge of the Constitutional Tribunal who currently strongly criticizes the reforms of the Tribunal, including undermining its independence by the governing majority. The public media used the fact that the judge is a board member of a particular CSO to attack the organization. public media made allegations that this organization received public funding in a fraudulent way. A similar approach was taken towards other CSOs. Relying on publicly available documents, the broadcasts suggested that some organizations received funds in a non-transparent way and through family and personal ties. While making allegations, the broadcasts were not backed by any evidence of a breach of law or any other irregularities such as wasting public funding.¹¹

LEGISLATIVE CHANGES

Currently, there is another piece of legislation under preparation which, once adopted, may have a negative impact on the ability of CSOs to fulfill their watchdog functions.

On Friday, 26th January 2018, the Parliament adopted the 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 that of the Polish Nation. These provisions entail two kinds of dangers – the first one relates to the general limitation of the freedom of expression while the second relates to the possibility of impeding CSOs’ ability to hold the government accountable. If adopted, the proposed version of the Act may discourage members of the public from discussing certain aspects of Poland’s history because of the risk of facing criminal sanctions.¹² In the opinion of HFHR there is a risk that in the future this provision may be used against watchdog organizations and human rights defenders, particularly those active at international fora, for

⁹ 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/>

¹⁰ 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-pozarzadowe/>

¹¹ Bychawska-Siniarska D., Godzisz P., Warszo 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

¹² 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/>

voicing critical opinions about the government's actions or providing information about the irregularities in the functioning of state institutions.¹³

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.

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¹³ 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>