

HR HELSINKI FOUNDATION for HUMAN RIGHTS

February 2018

THE SITUATION OF THE CIVIL SOCIETY ORGANISATIONS IN POLAND

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 shrinking space for dialogue between civil society and the authorities, changing the process of distributing public funds for NGO and limiting certain freedoms (like e.g. freedom of assemblies) as well as attacks on non-governmental organizations (both physical and by smearing campaigns).
- In 2017, the Parliament adopted the Act on the National Institute of Freedom which changes at the national level the process of distributing public funds for NGOs. The law fails to provide any guarantees for open and transparent process of distributing the funds.
- In February 2018, the President signed the highly controversial amendments to the Act on the National Institute of Remembrance. 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. The latter provisions may hamper the NGOs advocacy activity at the international level.

SHRINKING SPACE FOR DIALOGUE BETWEEN CSOS AND THE ADMINISTRATION

Since late 2015 in Poland the space for public dialogue and social consultations had been shrinking. Most the pieces of legislation, key from the perspective of the system of the state and human rights protection, was not subject to public consultations. Each act introducing consecutive reforms of the Constitutional Tribunal¹, the Act amending the Act on the Police² and the Act on Prosecutor's Office³ 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

¹ Since late 2015, the Parliament has adopted six different acts regulating the works of the Constitutional Tribunal. Each of the draft laws were presented as a private bill and were not subject of social consultations. Two of these acts (from November and December 2015) were adopted at an accelerated pace: Act on the Constitutional Tribunal of November 2015:

<http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=12> and Act on the Constitutional Tribunal of December 2015:

<http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=122> The other four were adopted within two months, yet all the experts opinions were disregarded. Act on the Constitutional Tribunal of July 2016: <http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=558> and three Acts regulated the works of the Constitutional Tribunal adopted in December 2016:

<http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=1750>, <http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=1059> and <http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=880>

² Sejm, Poselski projekt ustawy o zmianie ustawy o Policji oraz niektórych innych ustaw, available at:

<http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=154>

³ Sejm, Poselski projekt ustawy - Prawo o prokuraturze, available at: <http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=162>

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.⁴

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.⁵ Furthermore, according to the Act on the public benefit and the volunteer, each of the ministry is obliged to adopt an annual program of cooperation with civil society organizations. In 2017, only 7 out of 19 ministries adopted such a program.⁶

CHANGES IN THE PROCES OF DISTRIBUTION PUBLIC FUNDS

Since 2015, there were several policy changes that affected the process of distributing public 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**. According to the data gathered by the Polish Federation of Non-Governmental Organisations, in the period between late 2015 and early 2017, 19 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".⁷ 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.⁸

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 funds 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 Empowering Children Foundation) have not received any access to this fund, even though their proposals were assessed very highly. According to the Ministry

⁴ Helsinki Foundation for Human Rights, HFHR opinion on new antiterrorism law, available at: www.hfhr.pl/en/hfhr-opinion-on-new-antiterrorism-law/

⁵ 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

⁶ Polish Federation of Non-governmental Organisations (OFOP), Repozytorium, available at: https://repozytorium.ofop.eu/wp-content/uploads/2017/04/Raport_Repozytorium_2_2017.pdf

⁷ Polish Federation of Non-governmental Organisations (OFOP), Repozytorium, available at: <http://repozytorium.ofop.eu/>

⁸ Stankiewicz A., Strumień dotacji dla o. Rydzyska, Rzeczpospolita, available at: <http://www.rp.pl/Kosciol/307069869-Strumien-dotacji-dla-o-Rydzyska.html#ap-1>

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 (Empowering 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.⁹ Also in 2018, the Empowering Children Foundation did not receive funding from the Minister of Justice's Fund.¹⁰

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”.¹¹

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).¹² 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.¹³

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.

⁹ 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>

¹⁰ Empowering Children Foundation (Fundacja Dajemy Dzieciom Siłę), Nie ma sprawiedliwości dla dzieci, available at: <https://fdps.pl/sprawiedliwosci-dla-dzieci/>

¹¹ 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/>

¹² 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>

¹³ 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>

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, in future 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 new law 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 guaranteed not only by the Act on the activity for social benefit, but also preserved by years of cooperation".¹⁴

THREATS TO THE NGOS' WORKS

In February 2018, the President of Poland announced that he will sign a highly controversial law amending the **Act on the Institute of the National Remembrance**. 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.¹⁵ 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 voicing critical opinions about the government's actions or providing information about the irregularities in the functioning of state institutions.¹⁶

¹⁴ 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/>

¹⁵ 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/>

¹⁶ 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: <http://www.hfhr.pl/wp-content/uploads/2016/11/HRD-report-30112016-FIN.pdf>

The President also decided to direct to the Constitutional Tribunal a motion upon verification the constitutionality of the criminal provisions of the law. The Constitutional Tribunal has not ruled in this case yet. The law will come into force on 1 March 2018.

FREEDOM OF ASSEMBLIES

In December 2016, the Parliament adopted amendments to the Act on assemblies. The amendment introduced the concept of “cyclical assemblies”, defined as assemblies organised on an annual basis within last three years or at least four times a year. A province governor, who is an official of the government administration, will decide whether a given assembly is deemed cyclical. The amendment raised considerable opposition. Almost 200 non-governmental organisations pledged the President to refuse to sign the amendment into law. NGOs warned that the introduction of cyclical amendment contravenes the civic nature of the constitutional freedom of assembly and may be used as a tool for abusing powers by public authorities.¹⁷ In March 2017, the Constitutional Tribunal ruled that this law is constitutional.

Numerous groups, including activists of the Citizens of Republic of Poland Foundation, continue to protest against this law and favoring by the authorities certain types of the assemblies which are granted a privileged status according to this new law (e.g. so-called *miesięcznice* – assemblies organized every month by the governing majority to commemorate victims of the Presidential aircraft in Smoleńsk in 2010 or the Independence March organized by the far-right groups on the Polish Independence Day). The protesters face charges of disturbing the course of a legal assemblies. It is estimated that in the end of January 2018 there were 472 pending cases against the protesters. So far, 226 protesters were sentenced in absentia and the courts ordered to each of the protesters approx. 500 PLN fines (ca. 150 EUR).¹⁸ The second group of activists who are most prone to be prosecuted in the light of this new law are ecologists who protested against harvesting Białowieża forest. In one of the cases, the group of ecologist faced charges of blocking the equipment used to harvest the forest. However, in January 2018 the court found them not guilty and stated that the ecologist acts were necessary to protect „a greater good and the defense of the common good from reckless harvesting was worth such sacrifice”.¹⁹

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.²⁰

¹⁷ Helsinki Foundation for Human Rights, Apel 194 organizacji do Prezydenta RP, available at: <http://www.hfhr.pl/apel-194-organizacji-do-prezydenta-rp/>

¹⁸ Magdalena Kursa, PIS walczy z obrońcami demokracji. Już 226 zaocznych wyroków, Gazeta Wyborcza, available at: <http://wyborcza.pl/7,75398,23025719,pis-walczy-z-obroncami-demokracji-juz-226-zaocznych-wyrokow.html>

¹⁹ Anna Siek, "Stan wyższej konieczności". Ekolodzy z Puszczy Białowieskiej uniewinnieni, TOKFM, available at: <http://www.tokfm.pl/Tokfm/7,102433,22880430,stan-wyzszej-koniecznosci-ekolodzy-z-puszczy-bialowieskiej.html>

²⁰ Obywatele dla Demokracji, List do premier Beaty Szydło z prośbą o podjęcie działań na rzecz przeciwstawienia się fali nienawiści, available at: <http://www.ngofund.org.pl/apel-do-premier-beaty-szydlo-o-podjecie-dzialan-w-sprawie-atakow-na-organizacje-pozarzadowe/>

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.²¹ For example, Akcja Demokracja, one of the leaders of the civil society's massive protests against the reforms of the judiciary in 2017, was targeted by public media in July and August 2017. The campaign run by the public media and far right press aimed at allegedly "uncovering" the sources of financing of the organisations (all information was publicly available at the organisation's website) and suggesting that Akcja Demokracja implemented the priorities of the German government in Poland as two of its major donors have offices registered in Germany.²²

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.

This brief was prepared by Małgorzata Szuleka, HRHF's advocacy officer and Barbara Grabowska-Moroz, Ph.D. Should you need any further information concerning this brief, please contact authors directly at: m.szuleka@hfhr.org.pl or b.grabowska@hfhr.org.pl

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

²¹ 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

²² Paweł Kościński, Akcja Demokracja broniła sądów. Teraz atakuje ją TVP, a poseł PiS donosi do prokuratury, [Wyborcza.pl](http://wyborcza.pl/7,75398,22255187,akcja-demokracja-bronila-sadow-teraz-atakuje-ja-tvp-a-posel.html), 20 August 2017, available at: <http://wyborcza.pl/7,75398,22255187,akcja-demokracja-bronila-sadow-teraz-atakuje-ja-tvp-a-posel.html>