

Civil society on the crossroads of political game – perspective from Poland and Beyond

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Poland – after the last Parliamentary election – has joined the group of countries that build their self-esteem by promoting national sovereignty, a chosen set of national values and in opposition to any foreign influence. In order to gain political capital, the ruling party’s politicians have started claiming that they are the sole authority when it comes to deciding which course the country should take. Apparently, this also started having a negative influence on civil society, especially so for organizations that obtain some financial support from abroad and the ones dealing with the matters not in line with the conservative, populist government agenda. Situation became the worst for CSOs working on different minorities rights (including women, LGBT, ethnic minorities), antidiscrimination, migrants and refugees support, environmental protection as well as watchdogs. In this article I will try to present main steps of these changes in the conditions for the CSOs sector operation, elaborate a bit on their reasons and discuss some possible future developments.

Drift in the political environment for CSOs operation in Poland¹

The work of CSOs in Poland was hindered by the new government that took office in late 2015. Following a dispute over the composition of the Constitutional Tribunal, the government—led by the conservative Law and Justice Party—significantly decreased public dialogue with CSOs. Some civic dialogue bodies were dissolved and the legislative process rarely included public consultations (what has been a significant downturn in relation to the prior situation). At the same time, central authorities demonstrated various procedural irregularities in the granting of public funds in 2016 and onwards. Several calls were suspended or cancelled without explanation. In a growing number of grant competitions organised by various ministries, organisations with little or no relevant experience won over applicants with extensive relevant experience (just to mention the most important cases of CSOs working on counteracting violence against women and on ecological aims). Moreover, the negative attitude of the government towards CSOs has heightened concerns regarding future access to public funds and emphasized the importance of CSOs sources of funding diversification.

In addition, the ruling party took control of the public media by amending the media law and appointing its own directors, after which the public media began to provide negative coverage of particular CSOs. The main public news programs in the last months of 2016 launched a smear campaign, claiming that some CSOs were associated with the political opposition and misusing public funds. The prime minister and other prominent representatives of the ruling party joined this campaign, declaring that CSOs require stronger regulation. As a result, in late December 2016, the prime minister proposed a new law that would introduce central administration over the civil society sector through a new agency reporting directly to the prime minister - the National Centre for Civil Society Development (with a later name added of “National Freedom Institute”).

¹ To learn more about the issues presented in this paragraph see: Pazderski, F. (2017), “POLAND”, in: “2016 Civil Society Organization (CSO) Sustainability Index for Central and Eastern Europe and Eurasia”, US AID, Washington, <https://www.usaid.gov/europe-eurasia-civil-society>, p. 178-187.

Such modification of public discourse related to civil society organisations has been definitely spread to the fertile ground. Comparative research implemented in 7 countries of Central-Eastern Europe in the project „Have our dreams come true?” (Institute of Public Affairs was one of the partner organisations) show that in the whole region it is equally weak rooting of the CSOs in local communities for which benefit they were supposed to work. This is linked to the loss of contact with their social constituencies². In the countries like that it is easy to direct public opinion against organizations that are presented as financed from "suspicious" foreign resources and carry out activities that are described by political actors or some media as contrary to the national interest.

In addition, there is also rather insufficient perception of the NGOs within Polish society. CSOs are seen primarily through the prism of the most present in the media large foundations, first of all engaged in conducting public money collections and helping those in need. It creates an untruth picture that most organisations are responsible for collection and management of large sums of money without transparent control over their spending³. In addition, reluctance of some people to become engaged in the CSOs activity is also caused by too tight bureaucratic requirements related to CSOs work (as declare 80% of respondents involved in an informal social activity) and burden of financial obligations (declared by 73% of informal social activists)⁴.

National Centre for Civil Society Development – next “national” agency aiming to centralise civic sector in the name of increasing freedom of its operation?

The abovementioned legislation establishing new agency aiming to administer over the CSOs has went through relatively fast track (in comparison with other laws related to the civil society operation that were drafted in previous years with high participation of the third sector representatives) with only facade consultations (nobody have never refer to the fact that out of 49 submitted opinions 33 challenged the very idea of establishing such new body underlying this law⁵). In addition, some important ideas were added to the draft law just before it was filed to the Parliament that were not consulted with the CSOs sector at all. In result, the law has been adopted by both chambers of Polish Parliament in late September 2017 (irrespective to strong opposition from the large majority of the third sector representatives) and signed by the president already on the 13th of October the same year.

According to this new law the National Centre for Civil Society Development will be authorized to govern the sector’s development, specifically by controlling the distribution of all public funds - including governmental, European, and other international funding that comes through the state - dedicated to the development of the CSO sector. As of the moment it is about 100 million Polish zlotys, which are going to get to the organisations. 60 million is the budget of the Citizens Initiative Fund that has existed already before and was distributed by the Ministry of Family, Labour and Social

² Makowski, G. (2012), *Czy spełniły się nasze sny? Wymarzony i realny pejzaż społeczeństw obywatelskich w Europie Środkowo-Wschodniej*, „Trzeci Sektor” No. 26/2012, p. 31-47.

³ Adamiak, P. (2015), *Wizerunek organizacji pozarządowych Raport z badania*, Klon/Jawor Association, Warsaw, http://fakty.ngo.pl/files/civicipedia.pl/public/wizerunek/raport_wizerunek.pdf, p. 6-7.

⁴ Walczak, B., Pazderski, F. (2015), *Spółecznicy, profesjonalni działacze czy obywatelscy malkontenci?*, op. cit., p. 158.

⁵ All documents, including the opinions presented in public consultation procedure, are available on the website of the Chancellery of Prime Minister at: <https://bip.kprm.gov.pl/kpr/bip-kancelarii-prezesa/projekty-aktow-prawnych/3906,Projekt-ustawy-o-Narodowym-Centrum-Rozwoju-Spoleczenstwa-Obywatelskiego.html>.

Affairs. The next 40 million is the amount that the Civil Society Development Support Fund that has been just established through the amendment of the law on gambling adopted in December 2016⁶.

Maybe it is not a huge amount of money, but it is worth to reflect which organisations and how will get access to them. Doubts relate already to the text of the preamble to this new law that was also not consulted with the CSOs (it has been added to its text just before it has been filed to the Parliament for legislative proceedings), where the only religion that is mentioned is Christianity (it is also reflected in further provision of the law establishing the goals for the Centre operation). This raises concerns on possible unequal access to resources granted by the Centre to the organisations gathering representatives of other religions or unbelievers. The risk of unequal or discretionary treatment of various CSOs when accessing grants is confirmed by the subsequent parts of discussed law. It introduces the possibility of adopting new procedures for announcing, conducting and settling competitions for CSOs. For unexplained reasons it also invalidates the current forms of proposals, contracts and reports in competitions (their shape has been repeatedly consulted with the CSOs over the years). In the part of competitions the rules for distributing money will be decided solely by the director of the Centre, who will announce the appropriate regulations in this matter. There will be also Institutional funds for the CSOs, but distributed even without announcing any competition⁷.

This all means that current government obtains strong tool to support chosen part of the sector, creating serious assumptions that these would include mainly the CSOs that follow the government agenda and ideological outlook. And these are not the only funds for the civil society operation that Polish government would like to put hands on.

The Polish-Norwegian chess game

The abovementioned government's position regarding the foreign funding of CSOs and operation of the organisations representing the liberal values has finally reached loggerheads with an unlikely diplomatic opponent, Norway. During negotiations over the roughly €809 million from the [European Economic Area and Norway Grants](#) that was to be accorded to Poland, the discussion took an abrupt turn leaving the possibility that all the funds could be withheld. The cause of this dispute was the proposed €40 million which would be dedicated to supporting the development of civil society in Poland.

The disagreement started when the Law and Justice ruling party (PiS) suggested that the operator for these funds should be the same central agency - National Center for Civil Society Development. One could expect such course of events after reading already a project of a new law announced in December 2016 that proposed establishing such a new entity which would provide centralised administration over the civil society sector.

After some rumours had been exchanged between civil-society sector experts, this idea was announced by the Deputy Prime Minister of Poland, Piotr Gliński, at the end of March, 2017. Since

⁶ See at: <http://dziennikustaw.gov.pl/du/2017/88>.

⁷ For more information on this law see: OSCE/ODIHR. "Opinion on the draft act on the National Freedom Institute - National Centre for the Development of Civil Society of Poland", available at <http://citizenobservatory.pl/ustawa/osceodihhr-opinion-on-the-draft-act-on-the-national-freedom-institute-national-centre-for-the-development-of-civil-society-of-poland/>.

then, we knew officially that the Polish government wants this entity to become the operator for the NGO component of the EEA and Norway Grants.

However, at same time it was learned that the Norwegian government is standing firm on its position that such an operator can in no way be associated with the government if it is to support the development of a strong, independent civil society. This position was officially reinforced by the Norwegian Prime Minister, Erna Solberg, in an interview on the 7th of May, after she had discussed the issue in Brussels with the European Commission President, Jean-Claude Juncker.

As a result, we have found ourselves in a potential stalemate, where the solution could be that one of the players (or both) will overturn the table. The real goal in this game was not which of the players is going to win, but what outcomes it will bring to the Polish civil society as a whole.

But developments in the coming months have fortunately shown that the most neglected scenario has not been realized. This could be similar to the situation that has already happened in Hungary, where Viktor Orban's government in 2014 also wanted to take over control of the Norwegian funds for local CSOs and which ended with the Norwegians stopping the transfer of all their funds to Hungary for more than one year. It might be hard to imagine that the Polish government will resign from getting such an amount of money, but recently we have heard about other economically irrational ideas (i.e. related to the EU refugee relocation mechanism). And this decision can always be rationalised to the public as a form of protection of Polish interests from outside influence. This would mean that Poland wouldn't get any of the Norwegian funds from the whole €809 million until a solution is found.

However, the Polish-Norwegian negotiations at the end have continued and an agreement has been reached just recently. In result, the funds dedicated to civil society are to be separated from the whole sum dedicated to Poland and the EEA and Norway Financial Mechanisms Office in Brussels will choose independently an operating entity in Poland. The Norwegian Prime Minister has actually suggested this solution as one of possible outcomes already in May 2017. However, during the negotiations Polish government has persuaded Norwegians to establish a two-layer system of this funds distribution. In result, the whole sum will be divided on the national and regional strands, which will have separate operators. This enables Polish government to claim that they were successful at least in one of their postulates – of securing more equal distribution of the funds to the whole territory of the country. However, on the other hand this also means that we are still before the final struggle for selecting the operator of this funds – as government would want to keep the control over their distribution at least partially, through the operator of their either national or regional strand. This is something still to be observed, especially due to the fact we are still faced with the smear campaign against former operator of this funds, Stefan Batory Foundation, led by the media and few CSOs that are close to the ruling party⁸ (see also below).

⁸ See articles presenting opposing views of media from both sides of the scene: <https://wpolityce.pl/spoleczenstwo/357794-instytut-ordo-iuris-odpowiada-fundacji-batorego-w-sprawie-funduszy-norweskich> and <https://oko.press/manipulacje-pomowienia-raporcie-ordo-iuris-fundacja-im-batorego-odpowiada/>.

Why the Norwegian Funds are so important for the Polish government...

The stakes in this game on external founding for CSOs operation are quite high if we put the whole situation in a context of the conditions of Polish civic sector functioning. Within the last edition of the Norwegian Funds (2014-2017), around 130 million PLN were spent during the three years supporting NGOs. It was an amount comparable to the funds dedicated to supporting NGOs' operations by the main Polish government's funding programme dedicated to the same purpose – already mentioned Citizens Initiative Fund, FIO (with an annual budget of 60 million PLN). Since PiS went into the last elections with a promise of supporting civil society development, the government needs the Norwegian funds to be able to show the result to their own supporters.

In the previous years, these funds were used to support (according to the guidelines developed with the Norwegians) such aims as increasing citizens' participation in public life, promoting democratic values and human rights, encouraging advocacy and civic control and supporting vulnerable/minority groups (including anti-discrimination education and counteracting hate-speech). To say the least, none of these initiatives are on the top of current government's political agenda.

In this context, being able to transfer Norwegian funds to realising one's own political agenda and supporting the NGOs that are perceived as friendlier to the government's platform (sometimes even directly related to the ruling party) must sound tempting for PiS. Unfortunately, the government's fight to take control over how the Norwegian grants are distributed come at a time when there are growing divisions within the non-government sector. This might also be one of the effects of the defamation campaign that was started, with participation from the government's representatives, against the Batory Foundation – the Polish operator of the last edition of Norwegian Funds⁹. In this campaign, a coalition of conservative (government-friendly) NGOs was involved that was created *ad hoc* in February 2017. As a result, NGOs that are originally meant to build social bonds and foster dialogue within the society are being put in middle of a political fight and are finding themselves divided on ideological terms.

...and how these Funds can support civic sector, instead...

We have to also consider how important the issue of gaining financial support is for the Polish CSOs' sector. From research conducted for the "Report on the State of Civil Society in the EU and Russia"¹⁰ (issued by [the EU-Russia Civil Society Forum](#)), we know that several of the most important factors deteriorating the condition for civil society organisations' (CSOs) operations are the poor level of private donations, weak state support and financing conditions in general. The latter aspect appeared to be especially crucial when considering the main challenges and problems that were indicated by the CSOs' representatives in the survey. More specifically, the research pointed out problems with financial stability (and diversity) as well as public funding (especially from EU funds) and the lack of awareness to sector needs within the society and authorities.

⁹ See the information on their work at <http://www.ngofund.org.pl/?lang=en>.

¹⁰ See Pazderski, F. (2017), "Poland: Expecting Negative Trends", in: "2016 Report on the State of Civil Society in the EU and Russia", EU-Russia Civil Society Forum, Berlin, available at http://eu-russia-csf.org/fileadmin/State_of_Civil_Society_Report/18_05_2017_RU-EU_Report_spaudai_Hyperlink_Spread.pdf, p. 77-93.

After being asked about their own organisations, the same CSOs' representatives highlighted the reduction of funds for activity (amongst other reasons caused also by problems with access to public funds) and the need to search for them from diversified sources as the most significant challenge. In addition, organisational problems, such as a lack of human resources, work overload, a lack of knowledgeable employees and even threats to their future existence appeared. The CSOs working on human rights, especially with different minority groups, are in the worst position as they operate within the public discourse, which has become more discriminatory and based on hate speech and which generally does not garner any reaction from those in power (for more information - see: Polish case study in the ["Report on the State of Civil Society in the EU and Russia"](#)).

Despite the difficulties there are also hopes for the civil society in Poland and Beyond

Probably while reading about problems of Polish civic sector struggling with the government a person knowing the situation in Hungary might find many similarities. It is not surprising, since definitely Poland is going through the path already laid out by Hungary a few years before. In both countries ruling politicians play on the large level of mistrust within the society and gain their political capital on deepening existing divisions and creating new ones (i.e. by establishing parallel CSOs that are close to the ruling parties). In effect, they involve civil society in the political struggle. They also use the poor financial condition of the CSOs and while offering them as a carrot an access to public funds try buying their support. This could end in destruction of the civic organisations independence and losing their mandate to oversight the authorities operations on behalf of (and together with) the regular citizens. Once we agree with a need of an open society for further development of our countries we definitely need to do something with this situation. There are at least few brighter trends in generally rather gloomy landscape that we could build something upon.

Firstly, it is related to some new developments that can be observed within the civic sector in answer to the systemic impediments they are facing. So, CSOs' life without the Norwegian funds would not be strewn with roses. However, it already has gone through difficult times. This situation has also motivated CSOs to act. The Polish sector has started to organise itself by establishing several thematic coalitions. Some CSOs started changing the mode of their operation and have opened themselves up more to the people, building or enlarging circles of their followers and supporters (also more openly asking people for financial donations and using crowdfunding mechanisms). All of these facts have created some potential for counteracting the main problems of the Polish civic sector (to my knowledge valid also for other countries in the region) that have been pointed out for years – the CSOs are too dependent on public support and separate from the society. Once they will overcome these issues due to adopting new internal arrangements and innovative methods for CSOs' operations, the civil society in Poland (and other countries of the region) may still benefit from current struggles. It can come out stronger than before by learning and prevailing over the situation it faces now. What would be needed and could be done by all of us is creating platforms, where CSOs from our countries could exchange the good examples of such new efforts as well as experiences on what has worked out and what didn't

However, there is probably no country on Earth, where the civic sector could be financially sustainable without any public founding. It is even not the case in the United States, which are well known from their strong culture of philanthropy. Thus, once the access to public funding on the national level is shrinking, the second potential would be related to developing at the European

Union level greater financial possibilities for the CSOs working on the values underlying the liberal democracy. Such mechanisms shall enable citizens to act effectively in their own countries to promote and defend the values laid out in Article 2 of the TFEU. As members of the European community we can expect and demand for such common effort aiming to support entities working for the European integration or counteracting the disintegration of the community. Such proposal has been already put on the table as an idea of establishing the European Values Instrument (EVI)¹¹. Such new European financial mechanism could be modelled on existing initiatives that are designed to strengthen democracy outside the EU (i.e. the European Instrument for Democracy and Human Rights or the European Endowment for Democracy). The main goal of EVI tool could be to strengthen pro-democratic and pro-European attitudes in Member States' societies and to improve the awareness and knowledge of democratic institutions and mechanisms.

We all should start lobbying for establishing such financial instrument on the EU level as fast as it is possible (to make its launch prepared already within the next EU Multiannual Financial Framework). However, we also shouldn't forget about the solidarity with the CSOs struggling with the current situation in their respective countries. Once any further threat to downgrading any institution of the liberal democracy occur we shall remember that voices of support always counts, no matter what local politicians from ruling parties and public/governmental media will tell about that.

While speaking about political actors we have to remember that democracy needs political parties. Therefore, irrespective to the poor level of public trust to this entities the CSOs have to work with politicians of European and national level in order to get their support to such ideas as new financial mechanism described above as well as to come up with new strategies for improving the conditions for civil society operation for the time after populist parties governance will finish. Any working groups establishment, knowledge mobilisation and advocacy for developing political strategies alternative to the ones elaborated by ruling parties, can bring very beneficial results for the development of the societies in particular countries in the future.

¹¹ See Pełczyńska-Nałęcz, K. (2017), „A normative empire in crisis – time for a politics of values”, Stefan Batory Foundation, Warsaw, www.batory.org.pl/upload/files/pdf/Batory_Normative%20empire_K%20Pelczynska-Nalecz.pdf.