



CONFERENCE OF INGOs
OF THE COUNCIL OF EUROPE

CONFERENCE DES OING DU
CONSEIL DE L'EUROPE

**Visit by the Conference of INGOs of the Council of Europe to
Warsaw**

June 2016

**Participation of NGOs in the decision-making process in the
Republic of Poland**

Report

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Introduction

The Conference of INGOs of the Council of Europe visits the Member States in order to better understand the cooperation between NGOs (foundations and associations) and decision-makers, notably the public administration and elected officials in the political decision-making process. Discussion and exchange of experiences during the visits of the Council of Europe delegation are part of a wider analysis of the effectiveness of various forms of civil society participation in decision-making. Each visit is followed by a report which highlights the important issues for the NGOs in that specific moment and specific socio-political context. The final recommendations are also formulated to improve the efficiency of cooperation between NGOs and representatives of the public authorities.

In Warsaw, the Conference of INGOs held an official visit on 1 and 2 June 2016, logistically organized by the European Academy of Diplomacy. During the visit, the meetings were held with representatives of non-governmental organizations active in the field of human rights, social work and civil society development. Special attention was given to anti-discrimination policies and the situation of non-governmental organizations defending the rights of minorities.

During the visit, our delegation met the following public authorities representatives: Mr. Wojciech Kaczmarczyk, Government Plenipotentiary in charge of Civil Society and Equal Treatment; Mr. Rafal Rogala, Head of the Office for Foreigners and his collaborators; Mr. Adam Bodnar, the Ombudsman; representative of the Ministry of Family, Labour and Social Policy, Mr. Janczak - Deputy Director of the United Nations and Human Rights Department, Ministry of Foreign Affairs, Director in the Ministry of Foreign Affairs, Polish delegation to the Parliamentary Assembly of the Council of Europe composed by several MP from majority party, opposition and senate deputies.

The political character of exchanges was mostly possible with persons in the rank of minister, the Polish delegation to the Parliamentary Assembly of the Council of Europe, and with the Ombudsman and his office. Other meetings with public authorities were mostly informative. The meetings with NGOs has gathered the organisations that promote the different political lines and priorities: access to political and civil rights, social rights, protection of mental health, protection of women rights, protection of the LGBTI rights, ethnic minorities rights, protection and promotion of the family and reproduction rights. The meetings with NGOs and authorities allowed the delegation to get acquainted with the experiences and practices of civil participation and existing legal rules.

The delegation of the Conference of INGOs was composed of Anna Rurka (President of the Conference), Daria Miloslavskaya - member of the Expert Council on NGO Law, Director of the International Center for Not-for-Profit-Law (ICNL) in Russia, Antoine Madelin, Director of international affairs at the International Federation for Human Rights and Ivan Nikoltechev of the Civil Society Division of the Council of Europe.

The following report, on the basis of the collected material, presents the legal framework of the functioning and development of the associations and foundations in Poland, the process

of law-making in the current political context and in relation to the role played by the foundations and associations, as well the threats and challenges for NGOs in Poland. The report concludes with recommendations and proposals on follow-up of the situation.

We would like to thank everyone who took time to meet us and share their experiences and expertise as well the European Academy of Diplomacy, our host organization.

I. Context of development of NGOs in Poland in the perspective of social change

Poland has approx. 38, 5 million inhabitants¹. According to the Report of the Government Population Council, 2012-2013 recorded the highest natural population loss, stemming from a lower birth rate in relation to the deaths, but also from the continuous increase in the number of emigrants and small immigration to Poland; "Definitive migration balance remains negative (in 2014 amounted to - 15.8 thousand of persons)". In 2015, mainly the citizens of Russia competed for international protection in Poland, requests for asylum represented only 4.5% of proceedings towards the Ukrainian citizens (7.5% in 2014). Ukrainian citizens, for many years, staying in Poland on the basis of temporary residence permits "decided to stay in Poland for good, 91% of them are the Polish origin (2397 from 3141 Ukrainian applicants have a Pole's Card)"².

1. Registration of associations and foundations and the legal framework of their functioning

Since 2002, Klon / Jawor Association conducts regular research on the condition of the NGO sector³. A recent study (2016) shows that in 2015 there were 17 000 foundations and 86 000 associations (70% of them are active) recorded. 34% of NGOs work in the sector of tourism and recreation, 15% operate in the area of education and upbringing, 13% in the field of art and culture, 6-8% work in the social services sector. "32% of organizations are active mostly at the municipality or country level, 25% at the voivodeship level, 28% work on a national scale, and 10% at the international level."

Since 2002, the number of the longest existing associations increased. "In 2015, organizations operating 11 years or more constituted 43% of non-governmental sector." For 15 years, approx. 5,000 foundations and associations are formed every year. The authors observe (Klon / Jawor Association, 2016) that currently, among all registered organizations, the associations are six times more numerous than foundations, but this ratio may change in the future. The number of newly established

ACCORDING TO ART. 1 PARAGRAPH 2, "THE RIGHT TO FORMING THE ASSOCIATION MAY BE SUBJECT OF LIMITATIONS ONLY AS ARE PRESCRIBED BY THE LAW, NECESSARY TO ENSURE THE INTERESTS OF NATIONAL SECURITY OR PUBLIC ORDER OR THE PROTECTION OF PUBLIC HEALTH OR MORALS OR THE PROTECTION OF THE RIGHTS AND FREEDOMS OF OTHERS

¹ Status on 31 May 2016, according to Statistical Office in Warsaw.

² Ibid.

³ This research is quoted several times in this report. That's why it is important to mention the methodological aspect of this study. The research led by Klon/Jawor Association was conducted on randomly-tiered sample of associations and foundations, registered in the official database. Researchers have identified a groups by: 1) the legal form (association or foundation), 2) the geographic locality 3) the region in which the organization is registered. The data was collected by two methods: 1) 2975 direct interviews 2) 825 online questionnaire. In both cases, the respondents were the persons holding key positions in the organization. In addition, the report include the qualitative exploratory study.

foundations is growing rapidly, and the number of newly established associations is decreasing. According to legal regulations, the establishment and functioning of the foundation is formally simpler. The goals and management of foundations and associations are not based on the same governance rules with associations requiring more formal democratic decision-making structures.

The Polish Constitution, adopted on 2 April 1997 and approved in a national referendum came into force on 17 October 1997. Art. 12 of the Constitution of the Republic of Poland of 2 April 1997 guarantees all citizens freedom of association, including associations, civil movements and foundations.

It provides "freedom of creation and functioning of trade unions, associations, citizens' movements, other forms of voluntary associations and foundations. The Establishment and functioning of associations is regulated by the Law on Associations of 7 April 1989, amended on 25 September 2015. According to art. 1 paragraph 2, "the right to forming the association may be subject to limitations only as are prescribed by the law, necessary to ensure the interests of national security or public order or the protection of public health or morals or the protection of the rights and freedoms of others."

Art. 3 gives associations the right to speak out on public issues. The Constitution of the Republic of Poland bans "the existence of political parties and other organizations whose programs are based upon totalitarian methods and practices of Nazism, Fascism and Communism, as well as those whose programs or activities allows racial and national hatred, violence in order to gain power or to influence the State policy, or plan the secrecy of their own structure or membership (art. 13)."

Polish law provides for two types of associations: ordinary (simple) association and registered association. Ordinary associations may be established by at least 3 members. Their registration does not take place in the Court, but directly on the basis of the application, lodged to the control authorities (local/central government bodies - governor or voivode), competent for the headquarters of the association.

Ordinary (simple) association can acquire rights, including ownership and other property rights, incur obligations, sue and be sued. Each member is responsible for the liabilities of the association without limitation all of its assets jointly and severally with the other members and the association(Art. 40, 1a, 1b). The Registration Court, at the request of the control authority or the prosecutor, may prohibit the establishment of the ordinary association, if the association does not fulfil the conditions laid down in the law (Article 41). An Ordinary association cannot create the unions of associations (federation). The source of financing to their activities can be membership fees, donations, grants (Art. 42.1). An Ordinary association can be transformed into a registered association, if it has at least 7 members and an elected board. The transformation takes effect at the moment of a registration at the National Court Register. Registration of the association is free of charge but still cannot be accomplished online. The last changes to the law allow associations to hire employees and the members of the board "may receive remuneration for activities

conducted in relation to their function."⁴ The association acquires legal personality upon registration in the National Court Register (KRS).

At the time of registration of the association, the Court of Registration may recommend an "explanatory meeting" if the application requires additional rectification. The Court may also dismiss the application for registration, if the association does not fulfil the conditions laid down in law. The Registration Court indicates the control authority at the local level. The control authority may request the Court to dissolve the association, if there is a conflict between the activities of the association and the law or the statutes, however, the decision is of the judicial authority, thus protecting associations from arbitrary or political dissolutions by local authorities.

Trade unions, social movement, social cooperatives, employers' organizations, support groups, church institutions, political parties and organizations which work on the basis of separate regulations (for example the Polish Red Cross) are classified as non-governmental organizations. By law political parties are not considered non-governmental organizations (according to the Act on Public Benefit and Volunteer Work). The NGOs are defined as "not-profit organizations, non-public authority, acting between the public and private area"⁵. The foundations and associations are the strongest group of non-governmental organizations. Non-governmental organizations can apply for the status of "public benefit" organization, opening up additional opportunities for public funds and tax benefits. Rules for their functioning are defined by the Act of 24 April 2003 on Public Benefit and Volunteer Work and the Law on Foundations, amended on 5 August 2015 (Dz.U.2016.395). The Act regulates, among others, rules and forms of cooperation between NGOs and public administration. This legal document mentions the following principles of cooperation: the principle of subsidiarity, the sovereignty of the parties, partnership, effectiveness, fair competition and transparency. The co-operation between NGOs and public administration may take the following forms:

- Commissioning NGOs public tasks under the terms of the Act;
- Informing each other about planned directions of activities;
- Consultations drafts of normative acts in areas related to the statutory activities of NGOs with such organizations;
- Consultations on draft legislation concerning public tasks, with the councils of public benefit activities in the event of their establishment by the competent local government units;

⁴ It is unquestionably an important opportunity for the functioning of the organization, however, report the Klon / Jawor Association (2016) shows that despite the fact that the vast majority (86%) of board members of foundations and associations are actively involved in the life of organization, they are rarely employed in it. Only in 15% of organizations, at least one board member working in it regularly with remuneration.

⁵ Definition of associations by art. 2, paragraph 1 of the Act is similar to the definition of NGO "Association is a voluntary, self-governing, stable union with non-profit aims".

- Creating joint advisory and initiating made up of representatives of non-governmental organizations, entities mentioned in art. 3 paragraph 3 and representatives of relevant public administration bodies;
- Contracts for the local initiative on the terms specified in the Act;
- Partnership agreements referred to in Article. 28a. 1 of the Act of 6 December 2006 on the principles of development policy and the agreement or partnership agreements referred to in Article. 33 paragraph 1 of the Act of 11 July 2014 on the principles of the implementation of programmes in the field of cohesion policy financed in the 2014-2020 financial perspective.

2. Sources of funding

The main sources of funding are government funds (central and local), foreign donors (subsidies from European Union, funds of the Norwegian and Swiss government, German foundation grants). Foreign donors have an increasing role in financing the activities of NGOs, which do not receive grants from national sources, for example because their goals are no longer a priority for the government. This includes the Watchdog organizations whose purpose is to advocate for the rights of sexual minorities, as well as some NGOs that work in the area of climate policy. The continuity of actions led by these NGOs is under threat. Many of them can't plan their activity for more than a year; that fact makes many efforts in public policy area useless where there are no sources for follow-up. This situation seems strange for Polish NGOs which for many years have received grants from the Civic Initiatives Fund for their democratic, human rights and civic initiatives.

As in some other countries, currently Poland is changing the profiles of beneficiaries of public funding. As it was underlined by the NGOs themselves, the organizations which do not follow the political priorities of the government or are considered as a "mainstream" organization of the former government have been denied access to public money. In this context, foreign funds are secured for organizations whose projects, for various reasons including political ones. However, in 2015, foreign public sources from outside of the EU and from the foreign non-governmental organizations represented only 4% of the whole subsidies received by the NGOs analysed (Klon / Jawor Association 2016).

THE PROBLEM ARISES WHEN THE GOVERNMENTS CHANGES THE POLITICAL PRIORITIES. THE PUBLIC GRANTS ARE WITHDRAWN FROM PREVIOUSLY FUNDED SPHERES, THEREBY DEPRIVING THE NGOS OF RESOURCES FOR ACTION.

In Poland, as in many other countries, the democratic transformation of the third sector was greatly assisted by foreign donors. They financed the pilot projects, implemented by national NGOs, in various areas of public policy. With the socio-economic development of the country, the pilot projects have become standards and public authorities took over the funding and responsibility for their implementation. The problem arises when governments change their political priorities. The Public grants are withdrawn from previously funded spheres, thereby depriving the NGOs of resources for action. It contributes to the lack of

continuity in the implementation of the tasks that each government has committed to pursue, for example when ratifying various treaties and international conventions.

The cross-research of the Klon / Jawor Association (2016) shows that in 2005 the European Union funds were used by 3% of the surveyed foundations and associations in 2009 and up to 18% in 2014. In 2014, 18% of foundations and associations benefited from government funds and up to 52% applied for grants from local authorities funds (for 43% of organizations, these efforts have been successful).

In 2015, there was a gap between EU funding periods. The Klon / Jawor Association emphasizes that at the beginning of March 2015, 51% of organizations were provided with less than half of the budget for the next 10 months. Consequently many organizations had to look for other temporary sources of funding, some of them were obliged to lay off employees or run projects without funding. In 2011-2014, the average income of NGOs increased from 18 thousand zloty to 27 thousand zł. (Klon / Jawor Association, 2016).

European Union funds administered by the national ministry, even if characterised by a high level of bureaucracy, gave new momentum to NGOs, enabling them to develop and improve the quality of their action. Formal requirements of EU programs administered by ministries are often much greater than in the case of direct subsidies from Brussels. NGOs have to report a variety of content, and in different formats, in a very short period of time after receiving the grant. This is very inconvenient especially for smaller organizations. A large number of external controls is also a big obstacle for the continuity of projects. For service provider NGOs, the increase of formal requirements impacts on the quality of the projects and, consequently, on beneficiaries of the services.

FORMAL REQUIREMENTS OF EU PROGRAMS ADMINISTERED BY MINISTRIES ARE OFTEN MUCH GREATER THAN IN THE CASE OF DIRECT SUBSIDIES FROM BRUSSELS. NGOS HAVE TO REPORT A VARIETY OF CONTENT AND IN DIFFERENT FORMAT, IN A VERY SHORT PERIOD OF TIME AFTER RECEIVING THE GRANT

In 2015, the first trade union for the NGO sector was created. But still almost half (45%) of Polish associations and foundations are based only on volunteered work, even those based in big cities. Only 35% of organizations have one or more permanent regular employee (Klon Jawor Association, 2015).

Increasingly more organizations maintain relations with the business sector (75% of those surveyed by Klon/Jawor Association), but only 14% of them declared that their relations are permanent and regular. Considering the risk of dependence of the organization on public funds, and thus the risk of losing the ability to appear objective or critical to the public authorities, relations with the private sector may increase the degree of independence of NGOs. The business sector, through cooperation with non-governmental organizations benefits by demonstrating its corporate social responsibility.

A significant source of income for "public benefit organizations" is 1% transmitted by the payers of income tax in favor of the selected NGOs recognized as public benefit organizations. "Received by the public benefit organization, the funds from 1% income tax, can only be used for conducting public benefit activity" (The Act on Public Benefit Activity

and Volunteer Work and the Law on Foundations of 24 April 2003, art. 27. 2). [In 2014, more than 12 million Poles used this 1% option](#), which represents 45% of all eligible taxpayers. The number of taxpayers who decide to do this is increasing steadily. The percentage of organizations which have benefited from the 1% mechanism income provided from this source also increased (6% in 2005, 13% in 2007, 17% in 2009 and 2011, 23% in 2014) (Klon / Jawor Association 2016).

According to the Government Plenipotentiary in charge of Civil Society and Equal Treatment one of the priorities of the newly elected government, is not the support, but the development of civil society, and specifically the organizations which previously (during the mandate of former government) were marginalised (including access to public funding) and not the "mainstream" ones. For the Conference of INGOs, it is important to recall that a failure to respect the plurality of NGOs by any government given their missions and political priorities, is a danger for any democracy. The view that some NGOs are "mainstream" and others not can be a source of discrimination. Any comparison between NGOs should take account of their specificity, divers' missions and profiles.

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NGOs which are described as "mainstream" organisations, that have existed for long years, which have a background and reliable work, expressed great anxiety and lack of understanding of the authorities' decision to refuse to fund their projects. The phenomena of replacing beneficiaries of grants", according to the experiences of other countries, usually leads to much more restrictive measures, and to shrinking the civil space for politically "not friendly" organizations. The Office of the Government Plenipotentiary in charge of Civil Society and Equal Treatment has therefore a challenge to monitor the distribution of the budget allocated to non-governmental organizations, to analyse objectively the criteria for awarding grants in the competitions, and avoid and prevent further discrimination of some NGOs. which are no longer considered "mainstream" ones.

A specific example which met a considerable misunderstanding by the directly affected NGO, as well as the wider 3rd sector environment involved the refusal by the Ministry of Justice to fund the activities of the Women's Rights Center. This organization, together with others, conducted the campaign leading to the ratification of the Convention on Preventing and Combating violence against women and domestic violence, ratified by Poland on 13 April 2015. The Women's Rights Center works for 21 years to support women victims of violence. The formal motive to refuse the grant was that the organization focuses its work on women rights and this group was considered as too "narrow" by the Polish state authorities. For years, the Women's Rights Center has been supported by the Fund for post-penitentiary aid and the Fund for help victims, which are administered by the Ministry of Justice. Five branches of the organization in major Polish cities did not get the expected subsidies. Concerning these facts, we would like to remind that the ratification of the Istanbul Convention obliges the Government to strengthen measures of prevention, protection and

assistance for victims of violence⁶. How will it be done without service provider NGOs that help victims?

II. Participation of foundations and associations in law-making and in decision-making process related to the public policies

1. General overview

36% of associations and foundations surveyed by the Jawor / Klon Association (2016) seek to influence public policy through advocacy action. Polish law and regulations provide several ways to participate directly in the law-making process: Art. 118 paragraph 2 of the Constitution gives the right to a group of citizens (at least 100 000 citizens having the right to vote) to propose a citizen legislative initiative. This initiative can't concern the budget and public finances and cannot propose any changes in the Constitution⁷.

The Law of 24 June 1999 regulates this mode of law-making. However, its feasibility is evaluated negatively by many representatives of NGOs. The following conditions 1) establishment of Legislative Initiative Committee by 15 citizens, 2) collect 1,000 signatures from supporters of the project, 3) sent the notification to the

THERE ARE MANY BARRIERS THAT UNDERMINE THE EFFECTIVENESS OF CITIZENS IN THE EXERCISE OF THIS RIGHT. THESE OBSTACLES RELATE TO FORMAL AND SUBSTANTIVE REQUIREMENTS, BUT ALSO PARLIAMENTARIAN PRACTICE

Speaker of Parliament about creation of the Legislative Initiative Committee 4) collect, during the three months from the notification, at least 100 000 signatures to support the draft law project. The accomplishment of all these conditions makes possible the project presentation in the first reading in the Parliament. Analysis of the Institute of Civil Affairs (Rytel Warzocha A., Uziębło P., Herrmann M , 2012) shows that of 105 projects submitted between 1999 to 2012 only 8 were ultimately adopted by the Parliament. There are many barriers that undermine the effectiveness of citizens in the exercise of this right. These obstacles relate to formal and substantive requirements, but also parliamentarian practice.

⁶ According to the Ordo Juris, lawyer's non-governmental organization, ratification of this Convention was not necessary. In their point of view, the problem of domestic violence does not apply to a significant quantity of population. This, of course, is deny by the police statistics, the practice of social work services, but also by already implemented national procedures in the case of domestic violence (the special procedure named "Blue Card", which was regulated by the Decree of the Council of Ministers dated of 13 September 2011). However, Ordo Iuris states in its communications that the Istanbul convention is ideologically motivated and could lead to "action for the abolition of legal protection for people in the prenatal period of their development."⁶

⁷ This legislative initiative is entitled to a group of at least 1/5 of the statutory number of Deputies, the Senate and the President (art. 235, para. 1 of the Constitution).

A significant number of projects are rejected in the first reading. Legislative Initiative Committee cannot make any corrections after the first reading, but the project can be changed by the authorities without consultation with the applicant. Only strong and highly developed organizations (trade unions, organizations supported by the political parties, etc.) can accomplish the procedure with success (Rytel Warzocha A., Uziębło P., Herrmann M , 2012).

According to principles of legal certainty, only governmental draft laws must be submitted to public consultation. The Law on Government Administration, the Law on the Council of Ministers, the Act on Public Benefit and Volunteer Work, the Law on trade union, the Law on employers' organizations" (Office of Analyse and documentation of the Senate Chancellery (2010))" ⁸, establish a legal framework for conducting public consultations as part of the constitutional principle of social dialogue.

The Law on lobbying⁹ (2006) establishes public hearing, a form of consultation of a legislative body, allowing to every citizen and organization to express their opinions or statement on the draft law. Art. 70a of the Rules of Parliament (2016) allows to carry out a public hearing. "The resolution on holding a public hearing is taken by the parliamentary committee to which the law project has been introduced for consideration".

Even if from a legal point of view the dialogue is obligatory, the opinions on public consultations, collected during the visit, are recurrently negative. Many NGOs are absolutely sure that the process of consultation is not transparent and it is very rare that NGOs receive feedback information about the reasons why their

ACCESS TO PUBLIC INFORMATION IS ONE OF THE INDICATORS OF OPENNESS AND TRANSPARENCY OF POWER. THE CIVIL RIGHT TO INFORMATION IS A TOOL STRENGTHENING THE CIVIL SOCIETY IN THE MONITORING OF PUBLIC ADMINISTRATION DECISIONS

recommendations or proposals were rejected or accepted. From the point of view of the NGOs, for important decisions, the substantial debates are not organised by the authorities. If a debate is organized, it is a pro forma meeting without any substantial answer from the state officials. Information on the consultations comes to the NGOs at the last moment and the key criteria on the selection of the NGOs invited for consultation by the public administration is unclear. Consequently, the greatest influence on political decisions is still by informal contacts with decision-makers. However, this kind of relationship suffers from an inherently lack of transparency.

⁸ Office of Analyse and documentation of the Senate Chancellery (2010). Institution of the public hearing. Analize thematic OT-590, Warsaw.

⁹ Polish law distinguishes between public consultations from the concept of lobbying, which aims to "influence the public authorities in the legislative process." [...] Professional lobbying activities can be conducted only after the entry in the register of entities engaged in professional lobbying activities, which leads the minister responsible for public administration "(Act on lobbying in the legislative process, of 7 July 2005).

Undoubtedly, we can conclude that the public administration should improve its information policy in relation to foundations, associations and citizens. Access to public information is one of the topics of the organization Watchdog Poland, which created a Non-governmental Centre for Access to Public Information. Access to public information is one of the indicators of openness and transparency of power. The civil right to information is a tool that gives agency to society, strengthening civil society in monitoring public administration decisions ("looking at the hands of power").

However, it seems as though the effectiveness of public consultation depends on the attitude of the decision maker responsible for the draft law and of the degree of controversy of the project.

Work focused on improving the efficiency of consultation with NGOs in the legislative process has been undertaken in Poland since 2006. A lot of guidelines and principles on how to involve the non-governmental organizations to the law-making process have been published at the executive level. The last such document, called "Guidelines for impact assessment and public consultation on the government's legislative process" was published by the Ministry of Economy in cooperation with the Office of the Prime Minister. This document provides methods of consultation: on-line consultations, open meetings or public hearings¹⁰. In order to conduct governmental online consultation a specialised platform was created (www.konsultacje.gov.pl¹¹). There are also other alternative websites, somewhat more frequented (eg. MamZdanie.org.pl¹²), where the 3rd sector organizations can publish the draft of their projects for consultation with other organisations.

Ministries also publish draft regulations on their websites. The documents are also published in the Public Information Bulletin (BIP), however it is difficult to label such activities as a public consultation. Why? The protest of the Borderland Federation (uniting 54 NGOs) against the lack of public consultation on the cooperation program with the Ministry of Foreign Affairs (2016-2017) can be mentioned as an example. Information on the consultation was published in the BIP on 17 of May but by mistake, instead of the draft, they published the private announcement. Without any other information, in spite of Borderland Federation's many years of cooperation with the Ministry, the program was adopted

¹⁰ According to the Law on Lobbying Activities (Art. 9) information about the date of the public hearing on a draft regulation shall be made accessible in the Public Information Bulletin at least 7 days prior to the public hearing.

¹¹ The governmental platform can be used only by the citizens who have trusted profile (ePUAP) and confirmed by specific state institutions which means in itself a lack of anonymity, and in the case of others entities- those who have applied for access to the platform.

¹² Platform "MamZdanie", created in 2010, is available to every user after registering on the site. He can express his opinion on the draft documents prepared also at local level. All that the opinions expressed are available not only for the institutions consulting document, but for all site visitors. After the consultation, the invited institution to consultation has the ability (and sometimes even the obligation) to respond to the comments. After the end of the consultation, the document and all formulated in the context of its consultation statements, are automatically transferred to the archives (archiwum.mamzdanie.org.pl), where there is a possibility to re-access to them.

without consultation on 27 June 2016 (Order No. 21). The Borderland Federation denounced this kind of ministerial attitude and requested for the new consultations.

2. Local level

The Law on Associations imposes a duty on the local authorities to create, after consultation with NGOs, the annual or multi-annual program of cooperation with non-governmental organizations. The amendment to the Act on Public Benefit Activity and Volunteerism of August 2015 obliges the local authorities to create Public Benefit Local Councils at every level of decision-making. These councils are advisory bodies for public administration. They are composed of representatives of the third sector and public administration. On the national level (National Public Benefit Council) the representatives of the third sector are chosen between the candidates who have the support of at least 20 organizations.

The research conducted by Jawor / Klon Association (2016) shows that cooperation with the local authorities is evaluated as better by the organizations which were involved with the consultations (Jawor / Klon Association

ONE OF THE CONSEQUENCE OF CENTRALIZATION IS A STRONG CONTROL OVER THE CIVIL SOCIETY SECTOR.

(2016)). The best opinion about this cooperation was expressed by those associations and foundations which received funding from the authorities. However, information collected during the fact finding visit showed that public subsidies limit NGOs criticism on the policies undertaken by their funders. The critical organizations are often subject to increased control, for example service provider organizations which work on the problems neglected by the authorities (prevention of violence against women and assistance to victims of violence for example) may no longer receive the same funds after many years because of unimportant or formal errors. Procedures for appeal from such decision are unknown. Creating a federation or coalition NGOs is, in such situation, an effective defense mechanism, as well as a facilitator to express their criticism without as much risk of discrimination.

3. Government level

The Public Benefit Works Council operates at the government level, as a support to the Minister in charge of social security. However some NGOs stressed that this Council's influence decreases. In April 2016, the organizations working for wide participation of citizens in law-making and public policies united in the "Partnership 13", addressed a request to the Government Plenipotentiary in charge of Civil Society to create a Council of Citizen Dialogue (distinct from Council of Social Dialogue). The request was addressed to the Secretary of State, Government Plenipotentiary in charge of Civil Society and Equal Treatment because his tasks consist in the "preparation, implementation and monitoring of the national program to support civil society, coordination and monitoring of the cooperation between the government administration and the NGOs and other civic institutions". He is also responsible for the prevention of discrimination and for the

implementation of the equal treatment based on sex, race, ethnicity, nationality, religion, creed, belief, disability, age or sexual orientation. The Government Plenipotentiary for Civil Society invited the 13th Partnership platform to work on the proposal for a Civil Dialogue Council.

In March 2016, the Prime Minister's Office organized a conference at which the Government Plenipotentiary for Civil Society and Equal Treatment presented the objectives of the National Program for Supporting the Development of Civil Society. The Program recalls the strategies which already exist, for example the strategy to support civil society development for the years 2009-2015. The third sector activists were invited as experts to work on this issue. At the March conference the proposals to establish a National Centre for Civil Society Development, the Fund of Educational Initiatives, the Fund of Institutional Grants, and Polish Corps for Solidarity were discussed ["as a tool to increase the prestige of long-term volunteering and to build solidarity between generations"](#). The National Centre for Civil Society Development bill stipulates that the Centre (and the National Programme for Supporting Civil Society Development which is going to be implemented through the work of the Centre) will:

- Provide a better horizontal coordination of government policies aimed at supporting the development of the third sector and civil society institutions;
- Offer new or improved financial instruments for building organizational capacity of NGOs;
- Collect and share best practice in the field of civil society organizations in order to build the sector's institutional memory.

The Volunteering Centres were invited to contribute to these proposals.

In June, during the meetings with the Conference of INGOs the representatives of other ministries did not have, at that moment, a clear vision of these projects, they did not know well how new developments will affect the cooperation with non-governmental organizations of various ministerial departments. Now, some months after the fact finding visit, the project to establish such National Centre for Civil Society Development which will coordinate the collaboration between the public authorities and NGOs seems very controversial. The experience of other countries shows that as a consequence of centralization and nationalisation of the third sector there will be a strong control over the civil society sector.

4. Partnership between NGOs and authorities in the law-making process

The exchanges during the visit showed that the political crisis around the Constitutional Court and the procedure of the European Union on the governance in Poland, has affected the trust of many social organizations in the Government and Parliament and the Public Administration, which obviously has an impact on mutual cooperation.

THE CONSTITUTIONAL COURT, AS AN INDEPENDENT, STANDING ON THE AUTHORITY OF THE CONSTITUTION, JUDICIAL AUTHORITY IS A KEY INSTITUTION FOR THE CITIZENS, AND FOR THIS REASON ITS FUNCTIONING CANNOT BE POLITICIZED

The Constitutional Court, as an independent, individual body standing on the authority of the Constitution, the judicial authority, is a key institution for the citizens, and for this reason its functioning cannot be politicized. Given the role that the Court plays in the respect of fundamental rights, it is difficult to understand how it is possible to establish the new legal documents by Parliament, without consultation with the widest possible number of citizens and experts, even if the law does not oblige the authorities to choose this solution. In response to these events, several NGOs working on human rights protection and democracy monitor the rule of law in Poland. In addition, a large civic protest movement of people wanting to protect democracy in Poland—the so-called Committee of Democracy Protection—was established in November.

During the fact finding visit, the members of the parliamentary delegation mentioned that surprisingly frequently draft laws acquire an urgent status. It imposes large stress levels to parliamentarians and does not allow any consultations or public hearings, or consultative conferences. As stated by the Citizens' Office of Legislation, in the period from 16 November 2015 to 15 February 2016, hastiness was the dominant characteristic of the law-making process.

Non-governmental organizations were working at the same tempo as the Parliament, issuing opinions on draft laws, mobilizing to introduce legislative initiatives of citizens, but unfortunately did not have the expected impact. The public hearing was organized by the Parliament on the law on public media, however, this wasn't the case on the amendment of the Police Act (ie. A Surveillance Act) or the Anti-Terror Law.

In this context, non-governmental organizations created the independent Citizens' Observatory of Democracy, which collects the reactions on the legislative changes concerning civil rights and freedoms, rules of law and the political system expressed by social organizations, institutions and legal and academic groups and citizens. The Observatory is [a joint initiative](#) of NGOs focused on the respect and protection of human rights, transparency and accountability of public authorities, and the quality of legislation¹³.

Batory Foundation leads, since 2006 a "Monitoring of the law-making process and work on its transparency and openness." In 2009, the Foundation established the Civic Legislation Forum (CLF) uniting lawyers, academic experts, registered lobbyists and representatives of non-governmental

IN THE CONTEXT OF NON-CONSULTATION BY
POLITICAL DECISION-MAKERS, CIVIL SOCIETY
ORGANIZES OWN CONSULTATIONS IN
PARTNERSHIP WITH OTHER PUBLIC INSTITUTIONS

organizations. One of the conclusions made by the Civic Legislation Forum ([after observation of the law practice in the period from 16 November 2015 to 15 February 2016](#)) is that "most of the 43 laws, on which the Parliament recently worked, were not government drafts, but 77% were introduced by Deputies of the governing party.

As noted by Civic Legislation Forum "special modes are used in the proceeding of the law-making, and the deadlines are extremely short. The public consultations were constrained. Allowing civic organizations and other stakeholders to participate in meetings of parliamentary committees and subcommittees cannot be named as public consultation". The Forum project has observed many instances without consultation by the governmental electronic platform; or followed by the "Report of the consultation" (VI Communication of Civil Legislation Forum).

Amendments to the Act on the Police were adopted by the Deputies on January 15, the Senate adopted it without amendments on 29 January, and the President signed the law on 3 February. The Act introduces, among others, the possibility of the police forces to obtain the information on the visited website by any citizen, via a data communication network, without the control of the General Court and without informing the concerned person.

The content of the law has been questioned by high-ranking state institutions, expert bodies, the opposition parliamentary ombudsman and NGOs. President Andrzej Duda met with critical NGOs proposing to start a discussion about the creation of the "corrective" law based on a social consensus between the organizations and the government or parliament. Since then, no information was given about the willingness to concretely undertake such steps.

The Act of 10 June 2016 on anti-terrorist operations (ie. Anti-Terrorist Law), which amends several other acts, was not consulted with civil society, even though a request was submitted to the Parliament. The law contains many controversial provisions that affect the fundamental rights of Polish citizens and, even more, increase the restriction of the rights of foreigners residing on Polish territory.

As noted by non-governmental organizations "flagrant is the absence of any justification for different level of protection dependant of the nationality of the person" (Panoptikon, 2016). The Ombudsman has organized consultations on this draft with citizens and other debates were organized by NGOs with the participation of deputies, journalists and experts.

Panoptykon foundation was the initiator of the call to the Speaker of the Parliament, "which calls for the repeal of the most dangerous - anti-freedom and anti-civil - regulations [contrary of the Constitution and the European Convention on Human Rights] included in the Anti-Terrorist law." 46 NGOs have signed this appeal. [A separate request was addressed to the President to ask him to not to sign the law.](#)

On 6 June, after the visit of the Conference of INGOs, Warsaw University together with five NGOs organised [a public hearing on the government's draft of anti-terrorist law](#). The meeting was attended by about 280 people, organizations and citizens. The selection of citizens who took the floor during consultation was random. The representatives of Parliament, of the Government and the President's Office were invited to the hearing. Transcription of exchanges has been forwarded to the authorities, who on June 10 took the final form of the bill.

The same type of initiative was taken on the parliamentary law on education. [The hearing was held on 9 January 2016](#), two days after signing by the President of a law reforming the education system. The hearing was organized by the University of Warsaw and the NGOs, which expert area is education and training.

Through these initiatives, the organizers wanted to convince decision-makers to use this formula and talk with the public. Questions, which for us are unanswered, concern the influence of this kind of self-consultation. Have the views and suggestions been incorporated in the content of the final bills? Standards of public participation do not oblige the legislature to take into account all the contributions, but feedback relating to the submitted content is the basis for civil dialogue with the public administration.

III Anti-discrimination policy

On 1 January 2011, the Law (adopted on 3 December, 2010) related to equal treatment, often called "Anti-discrimination law" came into force. Since this date, the governmental authorities in Poland elaborated the National Action Plan for Equal Treatment which concern different public policy sectors: anti-discrimination policy, equal treatment on the market, work and social security system, prevention of violence, including domestic violence, equal rights in the education system, equal treatment in the health care system, equal treatment in access to goods and services. The Association for Lesbian, Gay, Bisexual, Transgender People and Queer, "Diversity Laboratory" and Association "Lowe does not exclude" led a monitoring project and analysed the implementation of the National Action Plan for Equal Treatment in terms of gender, gender identity and sexual orientation (2013-2016). They noted that several conferences and debates were organised with NGOs on the issues related to the equal treatment but any report related to the content or the NGOs contribution was not taken into account and consequently did not lead to increase the efficiency of the implementation of anti-discrimination policy. The data which allowed NGOs to evaluate the progress in the implementation of the National Plan is based on the public information obtained from the public entities (Ministries or state agencies) in charge of the implementation of National Action Plan and from the non-state actors, in particular non-governmental organizations. In the series of activities planned in the framework of the National Plan, the NGOs are mentioned as main partners for policy implementation, but the answers obtained for the public entities show reduced cooperation, which in large part stems from the fact that the authorities do not comply with their responsibility to implement the antidiscrimination national action plan.

The meeting with the Head Minister of the State Office for Foreigners shows that numerous NGOs receive funding for projects which are addressed to different groups of migrants in the administrative detention centers or other places of residence. We noted that these NGOs constitute an interesting partner for the public authority in this sector of public policy. The Minister's Office for Foreigners confirmed that hate speech with regard to minorities (ethnic, sexual one etc.) is a problem in Poland. However, according to his analysis, hate crime is not a social phenomenon; the offenses constitute isolated situations. In Poland the prevention and monitoring of hate crimes is one of the tasks of the Ministry of Internal Affairs and Administration. The official ministerial report shows that from 1 January to 31 December 2015 962 preparatory proceedings, across the country, have been instituted for the acts motivated by hate, against the 698 proceedings initiated in 2014. The most common perpetrators motives in 2015 were as follows: national origin and ethnicity, religion, promotion of totalitarian regime and racial discrimination (MSWiA, 2016). We note that this official document does not indicate other characteristics of victims than their sex (male and female). In addition any hate crimes motivated by age, sexual orientation, mental or physical disability are not mentioned in these statistics.

In a recent report prepared by 3 NGOs (Lambda Warsaw, Association for Legal Intervention and The Diversity Workshop (Piotr Godzisz, Mateusz Wąsik, 2016)) for the 3rd cycle of the

Universal Periodic Review underline that hate crimes are under-reported and under-recorded, due to low confidence in Police and low capacity of Police officers to recognize hate crimes. The only cases reported by the public authority concern those based on racial stigmatisation, but we do not know how many people were attacked due to being perceived as refugees, for instance.

The different ministries support some campaigns led by the NGOs such as the Polish national campaign “No Hate Speech” of the Council of Europe, supported by the Ministry of Education and City of Warsaw, but this kind of accomplishment is not part of a structural action, situating the fight against discrimination as one of the political pillar of each ministry. The changing society in Poland needs more than sporadic and limited action on the prevention of racism and xenophobia. LGBTI or disability hate crimes need to be seriously taken into consideration by public authorities. There is also a need for anti-discrimination policies that also encompass other vulnerable groups, including victims of social exclusion for reasons of extreme poverty or mental illness.

In addition, the nationalistic rhetoric promoted in the political discourse and in the public and pro-governmental media, has a lot of discriminatory elements. How can NGOs protect the population if they are victims of discrimination? In the past NGOs which worked on the gender issue collaborated with schools and other public authorities, while now they are considered as political and antipatriotic organisations that transpose “western ideology”. Should we expect them to be accused of a lack of loyalty to their country and therefore as an agent working for foreign governments? NGOs which defend sexual minorities and human rights are target of attacks, verbal aggression or defamation by the public media and public discourse. It also appears that there is the impression that human rights are not a major preoccupation by many, including NGOs. Taking into consideration the categories under which NGOs have registered, the Ministry of Family, Labour and Social Policy concluded that only a very small percentage of NGOs are working for human rights. This seems to be based on a definition that does not take into consideration the Indivisibility of Human Rights and does not mean that NGOs falling under other categories do not deal with Human Rights issues.

Conclusion and recommendations

Our report is published some months after the visit of our delegation. This is why the information presented here needs to be updated.

The discrediting of “certain” NGOs in public opinion continues. This time, it is not only the LGBTI or human rights NGOs which are the target, but those focused on the development of democracy and the 3rd sector and their leader. The Helsinki Foundation for Human Rights has brought an [official complaint to the National Broadcasting Council](#) (NBC) against several news reports broadcast by the public television’s key evening news programme. [One hundred and twenty-three people](#) signed the protest letter against denigration of NGOs by the public pro-governmental media.

NGOs continue to complain that the principles of dialogue and partnership are not fulfilled, and grants from public funds are granted in violation of the competition procedures, standards of transparency and openness in the distribution of public funds.

“No communication or dismissal of the grant competitions; changes of priorities during the competition and the composition of the grant committee during their lifetime; change of the decision of the competition and ranking lists; allocation of grants to organizations does not meet the formal criteria - are phenomena that are now commonplace” – we read in the [Open Letter sent on 9 November 2016](#) by thirteen persons who have resigned from the Expert Committee set up by The Government Plenipotentiary in charge of Civil Society and Equal Treatment.

This shows that NGOs work in a rather polarised and politicised environment. The polarisation of society and the politicisation of NGOs threaten democracy. NGOs are exposed to challenges which appear to amount to violations of their fundamental rights and freedoms.

Although according to the NGOs, the previous government did not do enough to strengthen the income of families with children, it does not mean that nothing has been done, especially at the local level. The new government has undertaken large-scale measures like the program 500+, which is very appreciated socially because of its impact on the daily lives of a large part of families. However, the rule of law must be above any political division.

Given the situation described in this report,

We recommend public authorities to:

- Immediately stop the campaigns aiming to deteriorate the credibility and legitimacy of NGOs
- Do not introduce the measures that will centralize collaboration between NGOs and public authorities
- Monitor the development of the violation of the right to participation and freedom of association in Poland

- Respect the democratic basis, allowing NGOs to operate in an environment favourable to their own development
- Stop measures that aim to cut off NGOs from accessing public money (EU or national) and guarantee transparency in the formal procedure of granting funds that should be equal for all NGOs
- Reduce the bureaucratic procedures in access to EU funding administrated by the national administration
- Not minimize the number of NGOs acting for the respect of human rights, taking into consideration their indivisibility and ensure that human rights defenders can conduct their work in a constructive and secure legal, institutional frameworks that includes among others, the transparent procedures for access to funding and to public information
- Address any attempts to discrimination towards NGOs
- Attentively monitor threats and attacks against human rights defenders

We recommend NGOs to:

- Create a platform for collecting the evidence based to the decisions taken by administrative authorities in relation to NGOs (allocation or not of the grants, asking for consultations, or denial consultation, etc.)
- Monitor attentively the threats and attacks against human rights defenders
- Establish the respect and dialogue between NGOs by promoting the debate on the vision of desired democracy by civil society in Poland

We recommend International NGOs of the Conference of INGOs of the Council of Europe to:

- Strengthen collective action that aims to guarantee freedom of association and respect of the joint Venice Commission/ODHIR guidelines on Freedom of Association
- Strengthen actions to increase the independence of NGOs of any political party and public authorities which distribute the funding
- Facilitate the access to information at international level and valorise the constructive citizen initiatives.

References:

ECRI ((2015)20). ECRI REPORT ON POLAND (fifth monitoring cycle) Adopted on 20 March 2015. Published on 9 June 2015. <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Poland/POL-CbC-V-2015-20-ENG.pdf>

Government Population Council (2015). Demographic situation in Poland. Report 2014-2015. Institution of the Statistical Publication, Warsaw

Jawor / Klon Association (2016). Kondycja sektora organizacji pozarządowych w Polsce 2015. RAPORT Z BADAŃ. © Stowarzyszenie Klon/Jawor, Warszawa 2016

Office of Analyse and documentation of the Senate Chancellery (2010). Institution of the public hearing. Analyze thematic OT-590, Warsaw.

MSWiA (2016). Analiza przestępczości z nienawiści. Warszawa
http://www.spoleczenstwoobywatelskie.gov.pl/sites/default/files/analiza_mswia_policja.pdf

Research and Social Innovation Laboratory Shipyard, SMG / KRC Poland Media SA (2011). "The final report of the study the effectiveness of the mechanisms of public consultation", commissioned by the Ministry of Labour and Social Policy under the Operational Programme Human Capital 2007-2013, Warsaw

Rules of the Sejm of the republic of Poland, resolution of the Polish Sejm on 30 July 1992., according to legal situation after the change of 7 July 2016.

Rytel Warzocha A., Uziębło P., Herrmann M. (2012) . Citizens decide. Legislative citizen initiative as the tool to form the citizen attitude. INSPRO, Łódź,

Wąsik M, Godzisz P. (2016). Hate Crime in Poland 2012-2016. Report published by Lambda Warsaw, Association for Legal Intervention and The Diversity Workshop 2016. www.lambdawarszawa.org.