



The President

Ambassador Janusz Stanczyk
Permanent Representative
of the Republic of Poland
to the Council of Europe

Strasbourg, 23 August 2017

Dear Ambassador

Firstly, I would like you thank you for your letter and explanations.

However, let me once again express my concerns, by referring to the OSCE/ODIHR legal opinion (n°NGO-POL/303/2017 [AIC]) on the draft Act on the National Freedom Institute - Centre for the Development of Civil Society, document attached to my letter.

I reiterate my congratulations for the first consultations on the Draft Law. Although the conclusions of the public hearing are not binding for the public authorities, these consultations should be conducted at all stages of law making process. Paragraph 12 of the mentioned Opinion underlines that “the Polish legislator is encouraged to ensure that the Draft Act is subject to further inclusive, extensive and meaningful consultations up until its adoption, including before the Parliament”. Since the first public consultation, the draft law has undergone several modifications. Such Institute covers all dimensions of the general interest which the stakeholders the most concerned – NGOs - can demonstrate in this respect. For this reason, the public hearings should continue also during the legislative work conduct by Sejm. The public hearings are one of the basic forms of the public participation which includes the promise that the public's contribution will influence the decision taken by the public authorities. The respect of this principal is an essential component of social trust.

As I underlined in our statement from 20 July 2017, the meaningful participation in the management and governance of this future institution constitutes a serious issue. The OSCE/ODHIR opinion point out the weak participation of the civil society provided in the Draft Law (paragraph 13 from A1 to A5). The recommendation included in paragraph 11 suggests to “provide more detail with respect to the modalities and procedures for effective coordination and meaningful inclusion and participation of civil society in the National Institute's work and in the oversight over this new body”.

It goes without saying that each institution created for civil society should include, in the proportional way, the civil society representatives in its governance and guarantee the “safeguards limiting potential government interference” (paragraph 12). The concern about centralization, or grouping decision-making power within the competences of a single body, is also perceptible in the paragraph 13 point C of the OSCE/ODIHR Opinion. One of the recommendations is to limit the direct influence

of the executive over the National Institute and civil society support schemes by “transferring more decision-making powers to the Board, ensuring that the Chair of the Board is elected by the Board members themselves, and removing the power of the Council of Ministers to establish civil society development programs”.

The comparison with existing agencies in other countries seems unfortunate. Each country has its own level of decentralization and own level of control, based on the socio-political tradition and principals of governance regarding to allocated support to civil society sector. As the OSCE/ODHIR opinion underline “in the countries where there is a central entity in charge of civil society support and development (Croatia and Estonia), the financial support provide by this entity is marginal. The focus is made on the capacity development of civil society organizations (non-material support, research, community building, etc)¹.

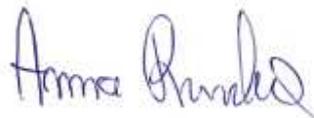
Yes of course, a certain level of coordination between the different ministries of public policy is necessary, especially when it goes hand in hand with transparency in the decision making, and in this case, regarding the distribution of financial support (including those from abroad). As underlined in the OSCE/ODHIR Opinion (paragraph 24), the Draft Law is unclear if the Committee for Public Benefit Activity is an exclusive body which will deal with that funding and other forms of support for civil society development from abroad. This solution can potentially limit the access by civil society organizations to foreign or international resources.

As the attached opinion shows, the Draft Law presents a lot of “grey areas” which should be clarified before adoption by Sejm. After these modifications, the practice that will result from the implementation of this future law will determine its usefulness and purpose. Today, in the actual state of affairs, it is likely that the functioning of the Institute, and the mechanism that is proposed behind, open the possibility of further increasing the governmental control of the NGO sector.

The Committee of Ministers Recommendation 2007(14), which is non-binding document but agreed by all Member States of the Council of Europe, underlines the essential contribution made by NGOs to the development of democracy and human rights, “through the promotion of public awareness, participation in public life, and securing the transparency and accountability of public authorities”.

I would like to assure you that the role of the Conference of INGOs is to support civil society in Poland, in respect of democratic pluralism and diversity, on the basis of international standards regarding the right to freedom of association.

Yours sincerely,



Anna RURKA

¹ *European Center for Not-for Profit Law (ECNL), Paper on Public Funding for Civil Society Organizations – Good Practices in the European Union and Western Balkans (2011), <<http://www.icnl.org/research/resources/ngogovcoop/engb54.pdf>>.*