

Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law

Poland

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Contractor: Helsinki Foundation for Human Rights

Author: Małgorzata Szuleka

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1 Civic space developments in 2021

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| 1.1 State of emergency on the Polish-Belarussian border | |
| Area | Safe space and protection |
| Topic | Criminalisation of humanitarian or human rights work |
| Impact | Major |

In September 2021, upon the government's motion, the President of Poland announced the state of emergency on the area along the Polish-Belarussian border.¹ The state of emergency was a response to the growing number of migrants crossing the border since June 2021 and a direct reaction to the situation in Usnarz Górny, a village next to the border, where the group of asylum seekers was caught between Polish and Belarussian border troops for over 2 weeks.

The regulation on the state of emergency introduced numerous restrictions on the civil society organisations and activists who were working in this area providing humanitarian, medical and legal aid to persons crossing the border. The regulation prohibited, among others, organisations of public assemblies in the area covered by the state of emergency, limitations in access to public information and limitations to the access to the state of emergency zone. In practice, all civil society organisations and activists working next to the border were forced to leave the zone and operate outside this area. The state of emergency was introduced for 30 days and prolonged to 60 days. In November 2021, the Parliament adopted a law that became applicable after the expiration of the state of emergency.² The new law also introduced limitations on the freedom of movement, freedom of expression (including access of journalists to the area) and information.

Despite these limitations, the civil society organisations and activists continued to operate outside the state of emergency zone providing humanitarian aid to persons crossing the border. With the escalation of the humanitarian crisis at the border, also the pressure on the civil society organisations and activists grew. Civil

¹ Poland, Council of Ministers' Regulation of 2 September 2021 on introducing limitations of rights and freedoms related to announcing the state of emergency (*Rozporządzenie Rady Ministrów z dnia 2 września 2021 r. w sprawie ograniczeń wolności i praw w związku z wprowadzeniem stanu wyjątkowego*)

² Poland, Act amending the Act on protection of state's border and several other acts (*Ustawa z dnia 17 listopada 2021 r. o zmianie ustawy o ochronie granicy państwowej oraz niektórych innych ustaw*), 17 November 2021

society activists³, the Ombudsman⁴ and the media⁵ reported on the cases of stopping of activists by the police and border guard, imposing fines for crossing the border of the state of emergency zone while providing humanitarian aid, as well as physical and verbal harassment. In December 2021, the police raided the humanitarian aid focal point operated by the Club of Catholic Intelligentsia. The search of the premises and questioning of the activists took almost all night, and the police collected the equipment (including computers) that was used to provide humanitarian aid. The police actions were deemed as disproportional by the civil society organizations.⁶

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| 1.2 Changes in the Education Act | |
| Area | Participation and cooperation with authorities |
| Topic | Other: cooperation between education facilities and civil society organisations |
| Impact | Major |

In 2021, the government started working on the amendments to the Education Act. The proposed bill introduces significant changes in the school's autonomy system and grants more powers to school superintendents supervising the works of educational facilities in the region. One of the key changes concerns potential cooperation between a school and a selected civil society organisation. Currently, if a civil society organization provides certain additional training or workshops for the pupils, only the schools' headmaster's consent is required. In the light of the new law, both the headmaster and parents' council should grant consent to organise training or lessons by the civil society organisation, and this should be further approved by the school superintendent. In the opinion of civil society organisations, such a regulation would allow to effectively block access to schools

³ Grupa Granica, Humanitarian crisis at the Polish-Belarusian border, available at: <https://grupagranica.pl/files/Grupa-Granica-Report-Humanitarian-crisis-at-the-Polish-Belarusian-border.pdf>

⁴ Pacewicz P., Polowania na aktywistki. Komisarz Rady Europy wstrząśnięta cierpieniem migrantów – mówi wice RPO, *Oko.press*, available at: <https://oko.press/komisarz-rady-europy-wstrzasnieta-cierpieniem-migrantow/>

⁵ Mikołajczyk P., Kryzys na granicy. Grupa Granica: Aktywista zaatakowany przez żołnierzy WOT, *Wp.pl*, available at: <https://wiadomosci.wp.pl/kryzys-na-granicy-grupa-granica-aktywista-zaatakowany-przez-zolnierzy-wot-6709003662441088a> Boczek K., Dezinformacja i straszenie. 11 działań służb granicznych wobec aktywistów [KATALOG BEZPRAWIA], *Oko.press*, available at: <https://oko.press/dezinformacja-zastraszenie-agresja-11-dzialan-sluzb-granicznych-wobec-aktywistow-katalog-bezprawia/>

⁶ Helsinki Foundation for Human Rights, Oświadczenie Helsińskiej Fundacji Praw Człowieka w sprawie zdarzeń w Punkcie Interwencji Kryzysowej Klubu Inteligencji Katolickiej, available at: <https://www.hfhr.pl/oswiadczenie-helsinskiej-fundacji-praw-czlowieka-w-sprawie-zdarzen-w-punkcie-interwencji-kryzysowej-klubu-inteligencji-katolickiej/>

for certain types of civil society organisations, e.g. such as those promoting equal treatment or human rights.

In November 2021, the law was directed to the Parliament, however the works on the law have not been completed yet.

According to the results of research carried out by Pole Dialogu Foundation, schools' headmasters and teachers have already self-censored themselves in selecting civil society organizations' education offer as certain problems such as e.g. constitutional rights and freedoms may be found as politicized in the current political conditions. According to the research over 70% of the Polish civil society organisations direct their offer to children and teenagers. Adoption of the changes to the Education Act may severely restrict the works of the civil society organizations in the area of education of children and teenagers.⁷

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| 1.3 Access to public information – expected Constitutional Tribunal’s ruling | |
| Area | Freedom of expression and information |
| Topic | Access to information |
| Impact | Major |

In February 2021, the First President of the Supreme Court directed a motion to verify the constitutionality of certain provisions of the Act on access to public information to the Constitutional Tribunal. In the motion, the President of the Supreme Court argues that the provisions of the Act on access to public information disproportionately widens the catalog of authorities obliged to provide public information. According to the Ombudsman, who joined the proceeding before the Tribunal, the challenged provisions comply with the Constitution and its article 61 granting the right to access to public information.⁸

In the opinion of civil society organisations, the motion "attacks the very core of the right to public information". The organisations also appealed upon the Supreme Court President to withdraw the motion.⁹

⁷ Zalewski P., Wilk W., Gałek M., W stronę współpracy: organizacje społeczne i szkoły, Pole Dialogu, available at: <https://poledialogu.org.pl/wp-content/uploads/2021/09/W-strone-wspolpracy-raport-ws-PD-CEO.pdf>

⁸ Ombudsman Office, Rzecznik przeciwny wnioskowi I Prezes SN do TK ws. dostępu do informacji publicznej, available at: <https://bip.brpo.gov.pl/pl/content/rpo-przeciw-wnioskowi-prezes-sn-do-tk-informacja-publiczna>

⁹ Newsweek.pl, Organizacje pozarządowe do Manowskiej: Złożony przez panią wniosek rodzi zagrożenie, available at: <https://www.newsweek.pl/polska/organizacje-pozarządowe-do-manowskiej-zložony-przez-pania-wniosek-rodzi-zagrozenie/h09m71p>

The Constitutional Tribunal was supposed to hear the case twice in 2021, however the hearing was postponed for 2022.

2 Examples of civil society contributions to the rule of law

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| 2.1 National Recovery Plan – civil society consultations | |
| Topic | Contributing to law and policy making (including involvement in public consultations) |

In March 2021, the Shipyard Foundation (Fundacja Stocznia) in cooperation with the Ministry of Regional Funds and Policy, the Polish Federation of Non-governmental Organizations, and Batory Foundation organised the consultation process of the Polish National Recovery Plan. The social consultations were a civil society initiative as initially, the government did not include the process of consultations as a part of the preparation of the Plan.¹⁰

During five public hearings, civil society organisations, representatives of local governments and entrepreneurs as well as citizens presented comments and suggestions for change for the draft Plan. Altogether over 5500 opinions were presented in the process of consultations.¹¹

However, since the consultations took part at a relatively advanced stage of preparing the Plan, not all concerns raised by civil society were addressed in its final version. Still, as the result of the consultations, the National Recovery Plan was amended to include the role of civil society organisations in monitoring the distribution of funds as well as to include actions dedicated to persons with disabilities and their caregivers.¹²

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| 2.2 Discussion on the restoration of rule of law | |
| Topic | Fostering a rule of law culture (including through advocacy towards public authorities, awareness-raising activities and civic education) |

¹⁰ Krajowy Plan Odbudowy, Wysłuchania dotyczące Krajowego Planu Odbudowy, available at: <https://www.wysluchanieplanodbudowy.pl/>

¹¹ Portal Funduszy Europejskich, Krajowy Plan Odbudowy - podsumowanie konsultacji, available at: <https://www.funduszeuropejskie.gov.pl/strony/o-funduszach/fundusze-na-lata-2021-2027/aktualnosci/krajowy-plan-odbudowy-podsumowanie-konsultacji/>

¹² Portal Funduszy Europejskich, Krajowy Plan Odbudowy - podsumowanie konsultacji, available at: <https://www.funduszeuropejskie.gov.pl/strony/o-funduszach/fundusze-na-lata-2021-2027/aktualnosci/krajowy-plan-odbudowy-podsumowanie-konsultacji/>

In 2021, several civil society organisations presented the "Accord for the rule of law". The document lists the key points that should be implemented to restore the rule of law in Poland. The document, supported by all opposition parties, is one of the first attempts to address the rule of law deficiencies in the system of the state caused by over six-year-long reform of the judiciary. The document concentrates on issues related to, among others, the functioning of the judiciary, the status of judges appointed by the politically captured National Council of Judiciary, and the status of their decisions. The plan is a subject of further developments and legislative initiatives.¹³

¹³ Jałoszewski M., Ważne. Cała opozycja i organizacje społeczne będą razem walczyć o wolne sądy i niezależną KRS, Oko.press, available at: <https://oko.press/wazne-cala-opozycja-i-organizacje-spoeczne-beda-razem-walczyc-o-wolne-sady-i-niezalezna-krs/>