



Civic Space Report 2023

POLAND



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Organizacji
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About European Civic Forum

European Civic Forum (ECF) is a pan-European network of nearly 100 associations and NGOs across 29 European countries: big federations of associations, national platforms uniting hundreds of thousands of NGOs, and smaller groups working at community level or engaging with the public on local issues. We work to build a democratic and civic Europe that delivers on people's needs.



About Civic Space Watch

Civic Space Watch collects findings and analyses from actors in Europe on the conditions for civil society to operate, capturing national and trans-European trends in civic space. Through ongoing monitoring of social media and regular contact and interviews with a strong network of members and partners on the ground, we strive to provide easy access to resources and improve information sharing within civil society across Europe with, policy-makers and the media.

Key Developments

- 🔍 Human rights defenders, including those working on women's rights, asylum seeker rights and LGBTQI+ rights remain under serious threat
- 🔍 Strategic Lawsuits Against Public Participation (SLAPPs) used to harass activists and independent journalists
- 🔍 Civil society quickly responds to multiple crises under difficult circumstances

Civic space has further deteriorated in Poland. In December 2021, the CIVICUS Monitor downgraded the country rating to “Obstructed” signalling this decline¹. Since then, conditions for civil society, women and LGBTQI+ defenders and journalists have worsened. Despite the European Commission's recommendation in its 2022 Rule of Law report on Poland to “improve the framework in which civil society and the Ombudsperson operate”², the government has failed to do this.

Civil society resources were significantly constrained due to the refugee crisis following Russia's aggression against Ukraine and the ongoing situation at the Poland/Belarusian border, coupled with the economic crisis. Several restrictive pieces of legislation targeting civil society are currently being considered. Harassment against women human rights defenders (WHRDs) advocating for reproductive justice has continued, with several activists from the Polish Women's Strike facing renewed charges for their role in the 2020 and 2021 pro-abortion protests. Freedom of expression is significantly challenged, with journalists, LGBTQI+ activists and whistle blowers facing SLAPPs and the further erosion of media pluralism and independence.

¹ <https://findings2021.monitor.civicus.org/country-ratings/poland.html>

² https://commission.europa.eu/system/files/2022-07/48_1_194008_coun_chap_poland_en.pdf

Institutional, political and socio-economic landscape

Refugee crisis: Russia's war on Ukraine & pushbacks at the Polish-Belarusian border

In 2022, NGOs in Poland tried to recover from the damage caused by the effects of the COVID-19 pandemic.³ However, this was worsened by another huge crisis, which defined the operating conditions of many organisations in Poland. As a result of Russia's armed aggression against neighbouring Ukraine, people fleeing the war, mainly women and children, arrived in Poland at the end of February 2022. More than two million refugees crossed the country's borders in a very short time (a few weeks). By the end of the year, the number of people who had crossed the Polish-Ukrainian border amounted to more than 8.5 million, of whom more than 1.5 million had registered in the country and applied for any form of assistance⁴.

In the absence of prior preparation for such a situation and the lack of coordination on the part of the Polish government, NGOs and individual activists took it upon themselves to organise and coordinate the entire support system. Over time, they were also supported by local self-governments. However, this meant another huge burden for organisations, which for a long time have not received any government support. The first, severely inadequate, programmes dedicated to organisations helping refugees from Ukraine appeared in mid-March 2022⁵. However, at the same time the organisations working with refugees receiving these funds received discriminatory directives from the government that they could not use these funds to support asylum seekers from Asia Minor, Central Asia and North Africa crossing the Polish border with Belarus.

In addition, since August 2021 some CSOs had to carry the responsibility for thousands of lives at the Polish-Belarusian border without support from the public authorities, but rather in an atmosphere of hatred caused by the official propaganda.⁶ As a result of the dramatic situation on the Polish-Belarusian border due to the actions of the services on both sides, including Polish state authorities towards people who want to apply for international protection in Poland (sending a foreigner back

³ <https://fakty.ngo.pl/raporty/rok-w-pandemii-2020-2021>

⁴ <https://data.unhcr.org/en/situations/ukraine>

⁵ <https://niw.gov.pl/10-mln-zl-dla-ngo-pomagajacych-uchodzcom-i-uproszczenie-procedur-zlecania-zadan/>

⁶ <https://oko.press/kryzys-humanitarny-na-granicy-polsko-bialoruskiej-grupa-granica-pomogliśmy-14-tys-osob>

to the border line), there have already been 30 documented deaths and 195 people are considered missing⁷. The crisis remains unresolved, and there have also been dangerous accidents related to crossing the border where a so-called technical barrier has been erected.

The routine use of detention of persons (including minors) who are waiting for their applications for international protection to be examined is also concerning. This results in overcrowding in guarded centres. Asylum seekers should stay in the centre for up to three months, yet this period is de-facto prolonged. Although this is not illegal, detention is in most cases also not required by law. Given that the living conditions in the centres are poor and medical and psychological care is insufficient, the routine use of detention under these circumstances is alarming.⁸ This has also been highlighted in a report by National Mechanism for the Prevention of Torture (NMPT) on living conditions in Polish detention centres.⁹

In 2022, courts have reached several decisions regarding the legality of pushbacks. The Public Prosecutor's Office discontinued proceedings against persons providing humanitarian assistance. Previously, it had initiated proceedings for smuggling people and assisting in illegal border crossings. (These mainly concerned volunteers of the Club of Catholic Intelligentsia). Additionally, several courts have confirmed that border guard officers broke the law by using pushbacks.¹⁰ However, pushbacks continue.

Ongoing rule of law crisis

The events presented above were accompanied by a continuing dispute between the Polish government and the European Commission and other European Union institutions regarding violations of the rule of law in Poland. The Polish government has not adopted any law that would remove the legal defects of Poland's most important judicial bodies. It has also failed to take any action that would lead to the implementation of the judgments of the Court of Justice of the European Union that have already been handed down or to safeguard measures adopted by the same court. In contrast, the Constitutional Tribunal, controlled by the parliamentary majority, has issued several

⁷ https://hfhr.pl/upload/2022/12/sprawozdanie-grupy-granica-pazdziernik-listopad_1.pdf, Kryzys na granicy polsko-białoruskiej. Ponad 6 tys. próśb o pomoc, pół tysiąc interwencji medycznych. Grupa Granica podsumowała rok 2022 (wyborcza.pl)

⁸ <https://bip.brpo.gov.pl/sites/default/files/2022-06/Raport%20KMPT%20-Sytuacja%20cudzoziemc%C3%B3w%20w%20o%C5%9Brodkach%20strze%C5%BConych%20w%20dobie%20kryzysu%20na%20granicy%20Polski%20i%20Bia%C5%82orusi.pdf>

Art. 403. - Ustawa o cudzoziemcach (lexlege.pl)

⁹ Raport KMPT -Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi.pdf (brpo.gov.pl)

¹⁰ <https://hfhr.pl/upload/2022/12/hfhr-legal-brief-on-push-back-judgements-eng.pdf>

rulings declaring the provisions of the EU Treaties incompatible with the Polish Constitution¹¹. The ongoing dispute with the European Commission resulted in the freezing of the transfer of funds from the National Recovery Plan to Poland. By the end of the year, the Polish government had not even sent an appropriate payment request to Brussels.

Culture of impunity for those in power

The parliamentary majority postponed the date of the local elections by six months through a law adopted by Parliament under the express procedure (without any consultation and after rejecting amendments tabled by the opposition parties or the opposition-controlled upper house of Parliament). Originally, these elections should have been held in the early autumn of 2023, probably about a month before the parliamentary elections. According to the parliamentary majority, such a collision of dates would have made it difficult to organise the elections and to separate the financing of the two campaigns transparently. However, a new date has been set for spring 2024, when this vote will clash with the European Parliament elections. Some experts believe that the main reasons for this change was political.¹² Some underline that it was also unconstitutional.¹³ It also creates a dangerous legal precedent for the possibility of moving other elections in the future if they are inconvenient for some in the ruling party.

A culture of impunity amongst those who hold political office is growing. At the end of 2022, the legislature introduced impunity for mayors who broke the law to support the United Right's drive to organise the 2020 presidential election based entirely on postal voting (which was a great failure but generated huge costs from public funds).¹⁴ The incumbent president at the time, Andrzej Duda (associated with the United Right), was the only candidate who could campaign for the election given his Presidential status. He did so under the pretext of fighting the COVID-19 pandemic, with his counter-candidates complying with health restrictions. NGOs successfully fought in the courts for the rule of law, holding those breaking the law at the time accountable. Therefore, the ruling majority introduced an abolition and amnesty.

¹¹ https://poland.representation.ec.europa.eu/news/postepowania-ke-wobec-polski-2022-07-15_pl,informacja-wyroki-ws-push-back-grudzien-2022.pdf (hfhr.pl)

¹² <https://www.rp.pl/polityka/art37390611-flis-wybory-samorzadowe-w-2024-r-pis-sie-przestraszyl-i-zrobil-glupote>

¹³ <https://www.rp.pl/opinie-prawne/art37486101-marek-zubik-przesuniecie-terminu-wyborow-nie-ma-podstaw>

¹⁴ <https://notesfrompoland.com/2020/04/23/polands-postal-election-enveloped-in-confusion-as-government-pushes-ahead-before-legislation-passed/>

These events have been accompanied by the persistence of a high degree of polarisation in Polish society fuelled significantly by the government-controlled public media, private media close to the authorities and lavishly funded by them. All these trends have only strengthened over the time and were even more visible during 2022.

Economic crisis

There was also growing social discontent related to the deteriorating economic situation, especially inflation, which approached 17 per cent by the end of the year.¹⁵ In addition to the government's economic decisions and social policies, the war in Ukraine and the associated rise in global energy commodity prices contributed to this. As the events at the beginning of 2023 showed, the Polish government's manual control of energy commodity prices, especially fuel prices, may also have contributed to the inflation rate in the preceding year.¹⁶ The entire situation and the fall in the purchasing power of money exacerbated negative public sentiment during the year. An intensification of this trend can be expected in the following months of 2023.

¹⁵ <https://stat.gov.pl/wykres/1.html>

¹⁶ <https://tvn24.pl/biznes/pieniadze/orlen-inflacja-grudzien-2022-ile-wynioslaby-inflacja-gdyby-orlen-nie-stabilizowal-cen-ekonomisci-mbanku-komentuja-6596634>

The regulatory environment for civic freedoms

Article 57 of the Polish Constitution guarantees the right to the freedom of peaceful assembly. The Act on Assemblies, adopted in 2015, met all modern requirements of regulating peaceful assembly. However, in 2016, the ruling majority made an amendment, subject to wide criticism. It introduced provisions on cyclical assemblies, which raise objections. Among other things, they are vague and favour one type of assembly. In particular, it restricts the ability of civil society to stage counter-protests or spontaneous protests at the same time as a designated cyclical protest.¹⁷

Most problems connected with protection of peaceful assemblies took place in 2020 and 2021 in relation to the COVID-19 pandemic and the verdict of the Constitutional Tribunal which ruled to impose a near-total abortion ban in October 2020.

Further information on the practice of freedom of peaceful assemblies is described in the section on safe space.

Draft laws concerning for CSOs

The Act on Associations was significantly amended in 2015.¹⁸ It introduced new solutions to reduce conflicts of interest and eased the rules for the establishment of associations. The law itself meets international standards and executes Article 58 of the Polish Constitution.

With regards to the conditions for operations of NGOs, in 2022, some regulations affecting the civil society were introduced, but none of them came into force.

With amendments to the regulations of education organisations (the Education Act), the so-called "Lex Czarnek" (vetoed by the President of Poland in March 2022¹⁹) was revived, once again enacted

¹⁷ <https://obserwatoriumdemokracji.pl/ustawa/projekt-ustawy-o-zmianie-ustawy-prawo-o-zgromadzeniach-druk-sejmowy-1044/>

¹⁸ <https://publicystyka.ngo.pl/dwa-lata-po-wejsciu-w-zycie-prawa-o-stowarzyszeniach;>
<https://publicystyka.ngo.pl/nowelizacja-stowarzyszen-tak-powinny-wygladac-konsultacje>

¹⁹ <https://sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=51EDC1B730F3D2AFC125879D006B1B40>

and once again vetoed in December 2022.²⁰ The Minister of Education and Science claims he is going to submit the same bill for the third time.²¹ Each time the legislative process drains the resources of NGOs, who constantly have to oppose and mobilise against this restrictive legislation. As a consequence, they cannot focus on their mission and are burning out. The proposed bill includes provisions directly regulating the operation of NGOs in schools. These provisions introduce certain bureaucratic procedures that in practice make it very difficult for NGOs to function in educational institutions. There are concerns around how long it will take for an NGO to obtain a "permit" to operate in a school, as well as the fact that in the end one person - the superintendent - will arbitrarily decide on such a permit (they may issue a negative opinion even if the school and the parents give a positive opinion).

A draft law on foreign funding of NGOs is currently with the Parliament since the end of March 2022 and is yet to be passed.²² The draft imposes new obligations on some groups of organisations and will lead to stigmatisation and additional burdens on NGOs. As National Federation of Polish NGOs underlines it is harmful because:

- 🔍 Additional, very extensive reporting duties would be imposed on a large part of organisations, and they would have to identify all of their media communications by adding information about donors.
- 🔍 Private donors would lose their privacy (their personal data will be made public, which will include individuals both from Poland and from abroad).
- 🔍 Revenues of organisations, including foreign funds, would be displayed and presented as 'suspicious'.
- 🔍 The mechanism of control over organisations would be expanded and it would have new financial and penal sanctions at its disposal.

The act is similar to the Hungarian Act on transparency (LexNGO) which the Court of Justice of the European Union deemed incompatible with the EU law.

Freedom of Expression characterised by SLAPPs and lack of pluralism

²⁰ <https://sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=9CDBBCB1C8E1A0F0C12588E200308ED9>

²¹ <https://fakty.tvn24.pl/ogladaj-online,60/przemyslaw-czarnek-zapowiada-ustawe-lex-czarnek-3-0,1129554.html>

²² <https://drive.google.com/drive/folders/1InopDtq2syN5uJkhFfMsHUuLSF853m1d>

Articles 54 and 61 of the Constitution, the Press Law²³ and Access to Information Law²⁴ regulate media freedom in Poland. According to the Press Law (Articles 43 and 44.1), *"Whoever uses violence or unlawful threats in order to force a journalist to publish or refrain from publishing press material or to undertake or refrain from intervening in the press (...) shall be subject to the penalty of deprivation of liberty for up to 3 years; Whoever obstructs or suppresses press criticism (...) shall be subject to a fine or the penalty of restriction of liberty. (2) The same punishment shall be imposed on anyone who, abusing his position or function, acts to the detriment of another person on account of press criticism published in a socially legitimate interest."*

At the same time, the press law emphasises the role of the press: Art. 1. *The press, in accordance with the Constitution of the Republic of Poland, shall enjoy freedom of expression and shall realise the right of citizens to reliable information, openness of public life and social control and criticism.*

However, these laws do not work in practice. Several journalists have been sued or are facing prosecution. This commonly takes place through Strategic Litigation Against Public Participation (SLAPPs), through the criminalisation of defamation under Article 212 of the Criminal Code. The use of SLAPPs which has a chilling effect on critical journalism has been condemned by the journalistic community, civil society organisations and the Ombudsman who have called for a change in these provisions for years.²⁵

For example, on 9th May 2022, *Gazeta Wyborcza* and its journalist Agnieszka Kublik received a pre-litigation warning regarding alleged defamation. This comes after she wrote a report which quoted testimony during the Senate Investigative Committee on Pegasus spyware in which an individual alleged that Piotr Woyciechowski, former head of the Polish Security Printing Works and a member of the Polish National Foundation, was involved in a blackmailing scheme. According to the International Press Institute (IPI), *Gazeta Wyborcza* faces approximately 90 SLAPP cases.²⁶ Additionally, civil lawsuits for high amounts are sometimes brought by publicly funded institutions, financed with state money. At the end of 2022, the chairman of the National Broadcasting Council, the state regulator of the audio visual market, Maciej Świrski, initiated administrative proceedings against the authors of award-winning journalistic investigation on the use of the Smolensk catastrophe to build political capital by Antoni Macierewicz, a Law and Justice (PiS) politician. The chairman is accusing the authors of promoting false information and actions contrary to the Polish state and endangering public safety. The President of the Council must determine whether the possible dissemination of untrue and unreliable information may violate the terms of the broadcasting concession granted to TVN S.A., the television station that broadcasted the report. Numerous media outlets published the

²³ <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19840050024>

²⁴ <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20011121198>

²⁵ <https://oko.press/knebel-dla-mediow-zwlaszcza-lokalnych-wyrzucmy-art-212-2-z-polskiego-prawa;>

²⁶ <https://ipi.media/increased-attempts-to-silence-polands-free-media-through-lawsuits-gazeta-wyborcza/>

journalist's material with free access and the journalistic community acted in solidarity with the authors.

Another well-intentioned but unfulfilled provision refers to pluralism (Art. 2 of the Press Law), which states: *"The state authorities, in accordance with the Constitution of the Republic of Poland, shall create the conditions necessary for the press to perform its functions and tasks, including enabling the editorial offices of daily newspapers and magazines that are diversified in terms of their programme, thematic scope and presented attitudes."* These conditions are not fulfilled by state institutions in any way. On the contrary, state-controlled companies and central government institutions use public money to ideologically or politically support the press close to them. This happens through state subsidies and the allocation of advertisements. Advertisements by central government and state-owned companies are targeted at selected media (close to the ruling party), regardless of their circulation and how that circulation is purchased.²⁷ In different institutions, this process takes place with varying degrees of intensity. However, there is certainly no system in place to ensure pluralism.

The provisions of the Press Law stipulate in Article 3 that: *"A printing and distribution employee shall not restrict or otherwise impede the printing and acquisition of newspapers, magazines or other press publications accepted by the company for printing and distribution because of their editorial line or content."* However, in practice, entities linked to the authorities - state-owned companies - violate the law's provisions by obstructing the distribution of the press without suffering consequences. For instance, Ruch S.A. a company owned by state-controlled oil company, Polski Koncern Naftowy Orlen S.A. (PKN Orlen), has refused to distribute the new newspaper Zawsze Pomorze, founded by journalists who left Dziennik Bałtycki after it was taken over by PKN Orlen.

PKN Orlen takeover- a massive blow to media independence

PKN Orlen is a powerful company in which the state treasury owns 49.9% of the shares and a decisive vote. In 2021, Orlen took over the Polska Press Group, from a private owner, which comprises of 20 regional dailies (and about 150 local weekly newspapers and 10 thematic internet portals with a wide reach). Outside this group, there are only five regional titles, owned by smaller owners. The change of Polska Press' ownership signals serious concerns since PKN Orlen's chairman - Daniel Obajtek - has close ties to Poland's ruling party and has even been typecast as Poland's Prime Minister. Immediately after taking over the media company, Obajtek introduced Dorota Kania, a journalist, to

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https://www.researchgate.net/publication/359603356_OKRES_RZADOW_ZJEDNOCZONEJ_PRAWICY_Analiza_wydatkow_reklamowych_spolek_skarbu_panstwa_SSP_w_latach_2016-2021_Aneks_Wydatki_reklamowe_ministerstw_i_centralnych_urzedow_w_2021_roku_na_podstawie_monitorin

its board of directors. She is associated with private media and has favourably reported on the activities of the United Right, which has been in power since 2015, with PiS leading the way.

While the takeover was approved by Poland's competition regulator, UOKiK, the previous Ombudsman Adam Bodnar challenged the decision at the regional court of competition which on 7th June 2022, dismissed the appeal. Poland's current Ombudsman, Marcin Wiącek decided against filing a secondary appeal against a recent court ruling, which several media outlets condemned.

Access to information frequently blocked

Freedom of information is guaranteed by Article 61 of the Polish Constitution and regulated by the Access to Information Act. Everybody is entitled to request information. The right to information and the Act is crucial for civic participation. In addition, the Press Law mentioned above, refers to this Act as a procedure in which journalists can obtain information.

2022 was not as fraught with problems related to the right to information as in 2021 during which access to information was blocked by several pieces of legislation and a request by the Supreme Courts' First President for the Constitutional Court to declare several provisions of the Act on Access to Public Information unconstitutional.²⁸

However, in 2022 Poland was subject to the Universal Periodic Review (UPR), which further highlighted the challenges of access to information.²⁹ As identified, the right to information does not work and if public authorities "skillfully" use existing procedures to withhold information, there is a good chance they will succeed, with no real sanction for doing so.

Court procedures for protecting the right to information are structured in such a way that it is possible to delay the answering of FOI requests for years. First, the obligated entities can claim that the requests do not concern public information. When they lose in court, they restrict it on grounds such as the protection of other rights. Ultimately, the cases may end up in court for several years.

A common tactic used is changing the reasons for withholding information and the only sanction is usually a small reimbursement of court costs to the winner, paid from the public budget anyway (if the public entity loses). In very rare cases, a fine can be enforced and is also paid from public money. A viable sanction may be the criminal provision of Article 23 of the FOI Act. But in the absence of the rule of law, it does not work either. The prosecution cannot be counted on to bring an indictment against institutions associated with those in power. With persistent efforts, private parties can become subsidiary prosecutors. But this route was also undermined by a judgement of the District

²⁸ <https://siecobywatelska.pl/problems-with-freedom-of-information-in-2021-state-of-play/?lang=en>;

²⁹ <https://siecobywatelska.pl/watchdog-polands-submission-in-the-4th-cycle-of-the-universal-periodic-review/?lang=en>

Court in Warsaw (IX Ka 815/22). The court ruled that in cases involving access to information, as concerning the general good of transparency in public life, neither a natural person nor a legal entity can have the status of a victim, and therefore cannot become a subsidiary accuser. A cassation has been filed in the case. If the verdict is upheld, there is no sanction for failure to realise the right to information. Nor is there any possibility for citizens to act on their own in the face of the inaction of a prosecution service which is dependent on the ruling majority.³⁰

Protection of minority rights

The lack of an encompassing statutory definition of hate speech (with the exception of Article 257 of the criminal code) or hate crime has remained a key problem for years.³¹ As the Ombudsman points out, *crimes committed on the basis of prohibited grounds of discrimination, such as sexual orientation, gender identity, sex, disability and age do not constitute specific crimes (so-called hate crimes) under the current criminal law.*³² This translates into the ineffectiveness of prosecuting crimes committed on the basis of protected characteristics, or the possibility of failing to reliably estimate the scale of the phenomenon.³³

Moreover, as the association of independent prosecutors Lex Super Omnia points out, with this lack of rules, there are also cases of discretionary interference by superiors in ongoing proceedings.³⁴

Discrimination against the German minority

On 4th February 2022, the Minister of Education and Science issued a decree according to which, as of 1 September 2022, the language of all national and ethnic minorities will be taught at the current rate of three hours per week - with the exception of the German minority, for which a reduced rate of one hour per week is envisaged. Another decree of the Ministry of Education and Science has changed to the detriment of the rules for calculating subsidies for pupils or students belonging to the

³⁰ <https://siecobywatelska.pl/apelacja-w-sprawie-fundacji-lux-veritatis-ustne-uzasadnienie-wyroku/>

³¹ [Napaść z powodu ksenofobii, rasizmu lub nietolerancji religijnej] - Art. 257. - Kodeks karny. - Dz.U.2022.1138 t.j. - OpenLEX

³² Marcin Wiącek wskazuje rządowi, co trzeba uczynić na rzecz równego traktowania. Odpowiedź Pełnomocnik Rządu ds. Równego Traktowania (brpo.gov.pl)

³³ <https://bip.brpo.gov.pl/pl/content/rhttps://drive.google.com/file/d/1auwLmpeaNPTitn66TbgFC7I43rWE-Wh0/viewpo-rowne-traktowanie-rzad-odpowiedz>

³⁴ PRZEJAWY EROZJI SYSTEMU EGZEKWOWANIA PRAWA – raport LSO na temat ścigania przestępstw z nienawiści w praktyce polskiej prokuratury w latach 2016 – 2022 – Stowarzyszenie Prokuratorów "Lex super omnia" (lexso.org.pl)

German minority, for whom the minority language is taught in the form of additional study of that language.

The Ombudsman pointed out that these ordinances led to a significant worsening of the legal situation of a certain group of Polish citizens solely based on their German origin.³⁵ In addition, writing to the President of the Council of Ministers, he pointed out that the ordinances exceeded the statutory delegation and indicated that they were unconstitutional. However, he received a reply that the Constitutional Tribunal is responsible for deciding on compliance with the Constitution. This course of action shows once again how the protection of minority rights is affected by the crisis of the rule of law, as the Constitutional Court is not considered an independent body. At the same time, for the last two years it has considered only one complaint referred by the Ombudsman, and in 2022 it held only nine hearings related to six cases. Thus, referring the Ombudsman to the Constitutional Court can only be a manifestation of the cynicism of the authorities.

In April 2022, however, a complaint of discrimination was filed with the European Commission by the Association of German Socio-Cultural Associations.³⁶

³⁵ <https://bip.brpo.gov.pl/pl/content/rpo-premier-mein-jez-niemiecki-ograniczenia-odpowiedz>

³⁶ <https://edukacja.dziennik.pl/aktualnosci/artykuly/8395976,mniejszosc-niemiecka-skarga-polski-rzad-komisja-europejska.html>

Safe space

Intimidation and harassment, including through administrative proceedings, against activists taking part in the 2020-21 Women's Strike and other demonstrations have been ongoing.

Pro- abortion and other activists targeted

Activists who help with access to safe abortion are subject to ongoing repression. In 2022, there was a high-profile trial against Abortion Dream Team activist Justyna Wydrzyńska, the first of its kind in Europe. The activist decided to assist a person who came to her for help with a pharmacological abortion. Possession of drugs for pharmacological abortion brought from abroad for personal use is not illegal in Poland, but assisting in abortion itself is. Wydrzyńska, who was charged with "helping with an abortion" and "possession of medicines without authorisation for the purpose of introducing them into the market," was found guilty of aiding with an abortion and sentenced to eight months of community service³⁷. During the trial several counter-protests have been staged by the pro-life activists and other religious fundamentalists.³⁸

On 20th October 2022, the District Public Prosecutor's Office in Warsaw again filed an indictment against the leaders of the Women's Strike- Marta Lempart, Klementyna Suchanow and Agnieszka Czerederecka-Fabin, who are accused of 'bringing danger to the life and health of many people' in connection with the organisation of October 2020 protests against the Constitutional Tribunal's verdict to impose a near-total ban on abortion.³⁹ They may face up to eight years in prison. In addition, Lempart⁴⁰ also faces charges for insulting police officers and publicly praising crimes during an interview where she discussed vandalism of churches and disruption of masses by protesters and is facing over 100 criminal charges in total. ⁴¹

³⁷ <https://europe.ippf.org/media-center/poland-ippf-en-appalled-guilty-verdict-case-justyna-wydrzynska>

³⁸ <https://monitor.civicus.org/updates/2022/04/30/judicial-harassment-pro-abortion-activist-activists-helping-refugees-polandbelarus-border/>

³⁹ <https://civicspacewatch.eu/poland-prosecutors-indict-abortion-protest-leaders-for-causing-epidemiological-threat/>

⁴⁰ <https://defendthedefenders.eu/marta-updates-people-moving-more-towards-love-and-not-hate/>

⁴¹ <https://monitor.civicus.org/updates/2022/11/04/prosecutors-file-indictment-against-womens-rights-activists-government-continues-target-whrds/>

Additionally, on 29th November 2022 Joanna Scheuring-Wielgus, a member of the Left (Lewica) party, was charged with "offending religious feelings" and "malicious interference with religious worship" under the Polish Criminal Code punishable with up to two years in prison. The charges stem from the MPs' participation in the October 2020 pro-abortion protests, where she and her husband held a banner in a Toruń church reading, "Woman, you can decide for yourself". In December 2020, Prosecutor General Zbigniew Ziobro initiated a motion to strip Scheuring-Wielgus of her parliamentary legal immunity for the protest, which the Polish Parliament voted in favour of in November 2022.⁴²

Dominika Przychodzeń from the Warsaw-based activist group "Cień Mgły" has several proceedings filed against her for taking part in different protests.⁴³ Charges against her are initiated under the pretext of "blocking the road" (Article 90 of the Code of Offenses), "not obeying orders", "refusing to identify oneself" (Article 54), "failure to comply with COVID restrictions" (Article 116 of the Code of Petty Offences), "placing advertisements in a place not intended for this" (Article 63a of the Act) - mainly concerning writing on the pavement with chalk spray, i.e. washable. Police have visited the activists' mother on several occasions which she believes is aimed at harassing her.⁴⁴

Activists are also sometimes punished in connection with 'emotional' statements. In the case of Elżbieta Podleśna, the activist was found guilty of insulting a police officer. Charges were brought against her after she led the rescue of refugees drowning in a swamp. During the rescue, a non-uniformed police officer approached her demanding identification and tried to push her away. The court of first instance found her guilty of insulting the police officer as she had used the words 'rogue', 'murderer' and 'boor' against him. She had therefore shown "contempt during and in connection with activities in the nature of official duties".⁴⁵

While activists are prosecuted under frivolous pretences, police officers who have used excessive force on several occasions against people exercising their right to peaceful assembly, have faced no consequences for breaking the law.⁴⁶

LGBTQI+ defenders face lawsuits

⁴² <https://civicspacewatch.eu/polish-mp-charged-for-taking-part-in-pro-abortion-protest/>

⁴³ <https://oko.press/cien-mgly-na-celowniku-dominika-przychodzen>

⁴⁴ <https://en.odfoundation.eu/a/471729,dominika-przychodzens-two-polands-how-an-activist-oppressed-by-the-state-ruled-by-the-law-and-justice-helps-refugees/>

⁴⁵ <https://oko.press/policjanta-masz-sie-sluchac-zawsze-i-wszedzie-sad-we-wlodawie-skazuje-elzbieta-podlesna>

⁴⁶ <https://oko.press/policja-sciga-osoby-ktore-skrytykowaly-brutalnego-wobec-manifestantki-policjanta>

There have also been several Strategic Lawsuits Against Public Participation (SLAPPs) brought against LGBTQI+ defenders. One of the most famous cases is that of the LGBTQI+ campaign, the Atlas of Hate. Four activists began monitoring anti-LGBTQI resolutions against "LGBT ideology" passed by several municipalities. When they found out that local governments had adopted such a resolution, they created the Atlas of Hate, a map to document the anti-LGBTQI+ resolutions.⁴⁷ In response, local governments filed several lawsuits against the activists for defamation. They are supported by the fundamentalist religious organisation Ordo Iuris. At the end of 2021 the first judgement of acquittal was delivered in a lawsuit brought by the Przasnysz powiat and Ordo Iuris. The court dismissed the case against the Atlas of Hate and charged the plaintiff with costs in the amount of PLN 4,337 (924 €). At the end of 2022, the court in Piotrków Trybunalski dismissed the suit and acknowledged that the activists were acting in the public interest.⁴⁸

In 2019, the Ombudsman filed nine complaints to administrative courts regarding resolutions passed by local governments against LGBTQI+ persons. All the contested resolutions were found by the provincial administrative courts to have been adopted without legal basis and to be invalid due to a gross violation of the law. In 2022, the courts started to consider the cassation complaints of the municipalities, which were dismissed. As a result, in 2022, the Ombudsman wrote to 24 municipalities and 12 counties that had upheld the discriminatory resolutions (as of July 2022, there were still about 80 of them) asking them to be repealed. Most of the local governments to which the Ombudsman wrote did not change their approach.⁴⁹

However, thanks to the advocacy work of NGOs, provisions have been included in the Partnership Agreement and individual programmes (FENIKS) to prohibit grants that use discriminatory and illegal practices. This follows directly from Article 9(3) of EP and Council Regulation 2021/1060. The effectiveness of these provisions will depend on the work of the monitoring committees of EU funds. Organisations upholding fundamental rights are members of these committees. At the same time, the Ordo Iuris Foundation, which provides legal support to local authorities adopting anti-LGBT resolutions, has also entered the committees.

⁴⁷ <https://atlasnienawisci.pl/>

⁴⁸ <https://notesfrompoland.com/2022/12/22/activists-mapping-polands-anti-lgbt-zones-win-in-court-against-county-that-sued-over-atlas-of-hate/>

⁴⁹ RPO: uchylić samorządowe uchwały "anty-LGBT" tam, gdzie jeszcze obowiązują. Odpowiedzi samorządów (brpo.gov.pl)

Funding for civil society

Closer to elections: funding remains a challenge

As regards to national public funding, in 2020, 26 per cent of the incomes came from the self-governments, 17 per cent from the central government and 6 per cent from tax designation by Polish taxpayers.⁵⁰ These proportions may change a lot as a result of the new tax system and the upcoming elections.

Firstly, personal income tax was significantly reduced in 2022, and this means that in 2023 less money from the budget will be received by local governments whose income is strongly linked to this tax. Local governments will be forced to forego some of their expenditures, and this will likely affect the funding of NGO activities.

On the other hand, however, it is possible that some organisations will benefit from the tax changes. Due to the tax reduction, the government had to compensate for the losses of organisations benefiting from the so-called “one percent mechanism”. The organisations who applied for the special statute of Public Benefit Organisation are entitled to get funding from individual taxpayers who decide to assign one per cent of their income tax to such an organisation. Almost 16 million taxpayers⁵¹ decided to use the mechanism in 2022. There are 9,191 organisations entitled to get such funding in 2023⁵² (out of 138,000)⁵³. Therefore, the mechanism is an important source of income for several organisations.

Some CSOs have stepped in to replace the state in terms of treatment and rehabilitation. However, they need to have money for these activities. Under public pressure, the government in mid-2022 increased the share of social organisations in this income tax mechanism from one per cent to 1.5 per cent, which will relate to the income tax due for 2022. Another benefit may accrue to organisations involved in sport, culture and education, as the tax changes introduce additional relief for taxpayers supporting such activities.

⁵⁰ <https://drive.google.com/file/d/1SMFeQ9KgYbdBo9u7Bt62GLYBUrDZRRnQ/view>

⁵¹ <https://www.podatki.gov.pl/media/8580/informacja-dot-kwot-1-nale%C5%BCnego-podatku-dochodowego-od-os%C3%B3b-fizycznych-za-2021-r-przekazanych-organizacjom-po%C5%BCytku-publicznego-w-2022-r.pdf>

⁵² https://niw.gov.pl/opp/wykaz-opp/?export=XLSX&data_scope=all&catalog=150

⁵³ <https://publicystyka.ngo.pl/nawosc-raport-kondycja-organizacji-pozarzadowych-2021-zaangazowane-mimo-przeciwnosci>

However, the upcoming elections mean that some of the grant money from the central budget will probably only start to go to certain social organisations. This is because non-transparent procedures and manual control over state subsidies mean that many organisations have long been excluded from receiving subsidies or, at the very least, are less likely to receive them than organisations associated with the authorities. This is because analyses of the grants awarded show that the National Freedom Institute, a governmental agency responsible for allocating funding to civil society, allocates the largest grants to organisations associated with the ruling PiS party. An even more pronounced use of public funds for the benefit of organisations close to the ruling parties takes place in various ministries. The best example is the Justice Fund, controlled by the Minister of Justice (according to the report of the Supreme Chamber of Control,⁵⁴ these funds were spent in violation of the principles of openness and purposefulness and economy of expenditure and did not serve the implementation of separate and specifically defined state tasks, but rather served the political interests of the party controlling the ministry). Similar irregularities were observed within the dedicated funds distributed at the end of 2022 by the Minister of Education and Science.⁵⁵ The temptation to subsidise friendly and sympathetic organisations can be even greater closer to the elections⁵⁶.

State sources are also lower than they should be because of the lack of funds from the National Recovery Plan and the Cohesion Fund as a result of the rule of law crisis.

Although there is no research yet, it can be assumed that the share of donations from private individuals in the budgets of organisations assisting refugees from Ukraine have increased significantly in 2022.

⁵⁴ <https://www.nik.gov.pl/aktualnosci/realizacja-zadan-funduszu-sprawiedliwosci.html>

⁵⁵ See more: <https://tvn24.pl/premium/dotacje-ministerstwa-edukacji-i-nauki-przemyslaw-czarnek-rozdal-kolejne-31-milion-zlotych-kto-je-otrzymal-6209719> and <https://oko.press/willa-na-mokotowie-dla-fundacji-zwiazanej-z-pis-to-prezent-od-ministra-czarnka>

⁵⁶ https://docs.google.com/document/d/1d88W3uZevPq0MYfE2RL_IatysK9-oMbq/edit;
<https://oko.press/willa-na-mokotowie-dla-fundacji-zwiazanej-z-pis-to-prezent-od-ministra-czarnka>

Civil dialogue and right to participation

Public Benefit Works Council fails to promote civic dialogue

The Public Benefit Works Council is the only body that institutionalises the principle of civic dialogue and cooperation between the public sector and the third sector. It complements the institutions implementing the principle of social dialogue including the Joint Commission of Government and Local Government, the Joint Commission of Government and Episcopate, and the Council for Social Dialogue. It is made up of representatives of government administration bodies and units subordinate to them or supervised by them; representatives of local government units; representatives of non-governmental organisations, unions and alliances of non-governmental organisations. The term of office of the Council is three years, with the current Council's term beginning at the end of 2021.

While an important body, the Council is heavily overburdened and does not serve as a place for conversation between civic organisations and the government. The civil society representatives on the council are ultimately decided by the Minister and his advisory body called the Chairman of the Public Benefit Committee. Unfortunately, as a result of NGO representatives being appointed by politicians, the Council does not include people who have been working in the NGO sector for years and, among others, the CSOs representatives who won the most votes. Due to the lack of elections (and the fact that Council members are ultimately appointed by the Chair of the Public Benefit Committee), the Council does not represent the NGO sector in Poland.

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Convention of Voivodship Councils of Public Benefit Activity

Another form of dialogue, although not formally established, is the Convention of Voivodship Councils for Public Benefit Activity, which is a voluntary agreement with no legal personality. It is not included in any regulations, which the Convention members strongly defend. The reason for this is so that it does not become dependent on any administration. It was established to:

- 🔍 provide a platform of cooperation and exchange of information for representatives of the councils operating on the voivodeships level (regional),
- 🔍 expressing common opinions on matters relevant to the functioning of the voivodeship councils in their sphere of interest,
- 🔍 as well as in the scope of cooperation between public administration and NGOs.

Monitoring Committees

In 2022, through the use of European Union rules, NGOs found themselves on the Monitoring Committee of the National Recovery Plan. Although the government called elections twice, and annulled the elections to the Committee when it turned out that independent organisations were elected,⁵⁷ in the end the same organisations - those working on fundamental rights - were elected to the NRP Monitoring Committee. Moreover, thanks to the involvement of civil society, most of the Cohesion Fund Monitoring Committees included organisations that uphold fundamental rights.⁵⁸

⁵⁷ <https://www.money.pl/pieniadze/pieniedzy-z-kpo-jeszcze-nie-ma-ale-rzad-majstruje-przy-obsadzie-komitetu-monitorujacego-wydatki-6831736249957056a.html>

⁵⁸ <https://ofop.eu/znamy-juz-prawie-caly-obywatelski-sklad-komitetow-monitorujacych-programy-krajowe-finansowane-z-funduszy-europejskich/>

CSOs push back in trying times

Civil society has played a crucial role in alleviating crises: whether in dealing with the rule of law crisis, the Polish-Belarusian border crisis, helping refugees from Ukraine or assisting discriminated groups.

More than half of Poles trust NGOs. Some of them trust foundations and associations, although they have not had any contact with specific organisations. This means that the very term "non-governmental organisation" evokes positive connotations, especially in comparison with other institutions such as the government or public media. At the same time, contact with NGOs, especially personal, results in even greater trust.⁵⁹

A major campaign to discredit organisations took place a few years ago and consisted of linking different people from organisations with politicians and public institutions. Using informational campaigning, there are now materials about individual organisations, including dealing with sex education, LGBTQI+ rights, women's reproductive rights and refugee rights.

Organisations are generally collaborative, as only three per cent of the sector has no relationship with any other entity, and the average foundation or association works with 11 types of partners. The number of contacts with external partners increases with the organisation's budget - more than 80 per cent of organisations with revenues of more than PLN 100,000 (21,270€) cooperate with at least 10 types of entities.

The most important partners of associations and foundations are other Polish CSOs. Contacts within the non-governmental sector most often mean cooperation at the regional and local level. 81 per cent of the organisations maintain relations with other organisations operating in the same field, with 19 per cent of them being in contacts of a frequent and regular nature.

Polish organisations have less collaboration with foreign foundations and associations. Contacts with such entities are maintained by 25 percent of the organisations and are only frequent for three per cent of these contacts.

⁵⁹ <https://publicystyka.ngo.pl/pod-lupa-coraz-lepszy-wizerunek-organizacji>

Organisations declare contacts within the NGO sector and mutual support. 31 per cent of organisations are members of various types of national or international agreements, e.g., unions, federations, networks.⁶⁰

⁶⁰ <https://drive.google.com/file/d/1SMFeQ9KgYbdBo9u7Bt62GLYBUrDZRRnQ/view>

Recommendations

To the government of Poland:

The regulatory environment for civic freedoms

- 🔍 Refrain from supporting Lex-Czarnek, which may eliminate significant expert and diverse education by NGOs and engage in a dialogue with a broad representation of civil society organisations on the support they need to be active in Polish schools.
- 🔍 Scrap the draft law on foreign funding ("Lex Woś") and refrain from any work on other drafts from the field of reporting and transparency, which increase the burden on organisations
- 🔍 Respect and apply the access to information law in accordance with the Tromsø Convention and international standards.
- 🔍 Repeal the regulation which discriminates against German minority by reducing the teaching of the language of German minorities to one hour weekly.
- 🔍 Regulate the management of publicity and information orders from public bodies to external bodies and ensure that the regulation rules take into account the diversity of media and their coverage.

Safe Space

- 🔍 Immediately drop all charges against women human rights defenders who are currently being prosecuted on various charges, including for their role in pro-abortion protests.
- 🔍 Refrain from harassing and intimidating protesters and activists through criminal charges and other means and respect the right to freedom of peaceful assembly as per international law
- 🔍 Drop all SLAPPs against LGBTQI+ defenders and respect their right to freedom of expression
- 🔍 Recognise the central importance of media freedom, pluralism and independence to sustaining democracy in Poland

- 🔍 Drop all SLAPPs against independent journalists and citizen activists concerned with the transparency of public life, refrain from harassing and intimidating them and promote an enabling environment for media independence.
- 🔍 Stop criminalising solidarity with refugees and refrain from harassing activists at the Polish-Belarusian border

The right to participation and civil dialogue

- 🔍 Engage in open, transparent and inclusive consultation with civil society organisations to promote an enabling environment for civil society.
- 🔍 Ensure that organisations have the opportunity to participate in public consultations (on central and local levels), in accordance with the principles belonging to the canon of their conduct.
- 🔍 Reform the Public Works Benefit council to ensure that its representatives, including CSO representation, are independently and transparently selected and appointed.
- 🔍 Introduce effective social dialogue mechanisms, inter alia, through the creation of dialogue bodies with a significant voice, formed by civil society itself, with functioning both in the governmental structure and in the Parliament.

Funding for civil society

- 🔍 Guarantee access to funding for civil society and ensure that funding processes are open, transparent and inclusive.
- 🔍 Ensure that there is funding transparency and equal access to funding for all CSOs, allocated by the National Freedom Institute by reforming the appointment process of the Council to ensure that representatives are not politically affiliated.
- 🔍 Ensure equal access to resources for all organisations in accordance with the law.

About the contributor

The National Federation of Polish NGOs (Ogólnopolska Federacja Organizacji Pozarządowych, OFOP) was established in 2003 by the initiative group of Polish organisations – as a result of a participatory process aimed at establishing a representation body for the third sector in Poland. Currently, OFOP has 132 member organisations.



Ogólnopolska
Federacja
Organizacji
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