RESEARCH
REPORTS
RECOMMENDATIONS

WATCHDOG ORGANIZATIONS
CURRENT STATUS, CHALLENGES, PROSPECTS

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Introduction – Authors' Perspective

This study was written by representatives of the Association of Leaders of Local Civic Groups. Until 2007 the association was exclusively a watchdog organization dealing with the right to public information to later begin cooperation with the Stefan Batory Foundation, co-creating programs for watchdog organizations. This shift forced representatives of the association to acquire the ability to analyse the developments in the watchdog community, translate the achievements of experienced organizations into the language of fledgling initiatives and seek inspiration abroad that could benefit Polish organizations. Despite troubled beginnings - both due to the lack of systematic knowledge about watchdog activities in Poland, as well as a definitional problem (what can be called a "watchdog activity"?) – today we can say that the effort made yielded unexpectedly positive results. While working on this study we had the opportunity to observe how these years of efforts and attempts to carve their own path by different organizations over time contributed to the small, but strong and highly experienced community it now is. In this study we share our knowledge, subjecting it to evaluation in hopes of stirring a discussion.

Definitions of Watchdog Organizations

The shortest - and classic in Poland - definition of a watchdog organization was proposed over a dozen years ago by the Helsinki Foundation for Human Rights: "Watchdogs – non-government organizations that seek to exercise civic oversight over public authorities (e.g. organizations dealing with human rights, the environment) or civic oversight over the ethics of big business. Organizations representing minorities, professional or consumer groups often have similar functions, though typically this is neither their only, nor main task. Most watchdogs seek to institute systemic changes in the functioning of state institutions."[1]

[1] Nowicki, M. & Fialova Z., (2000) Monitoring Praw Człowieka, Helsinki Foundation for Human Rights, Warsaw, p. 11.

This definition can be used to describe a large part of the community referred to in this report. Its brevity, however, is a limiting factor forcing anyone reflecting on watchdog organizations or supporting such entities to supplement the definition to fit into the appropriate target group.

This difficulty has been raising discussions in the Polish NGO community since at least 2006.[2] At that time, the Stefan Batory Foundation, planning the next edition of grant competitions for "watchdog activity" was met with a problem with informing potential applicants about the type of eligible organizations. To address this, the Foundation complemented the definition and added specific activities: acquisition of information, disclosure of information, efforts to change abusive practices of public institutions.[3]

Similar considerations accompanied discussions between the Association of Leaders of Local Civic Groups and Richard Skrzypiec[4] in 2008. We wanted to have a clear definition of the pertinent community. It is at that time that we started talks with the Klon/Jawor Association, which since the 1990s has been creating a database of NGOs,[5] regarding assigning watchdog organizations to a separate category in the database.

The operationalization proposed then covered the following aspects:

- **keywords**: "watchdog", "advocacy", "representation of interests", "monitoring", "civic (social) oversight", "social change", "investigative (journalism)"

[2] We have participated in these discussions and we can recall them from our own experience. It is probable that this issue posed difficulties earlier, especially that the Stefan Batory Foundation organized grant competitions for watchdogs as early as 2004. This issue was signalled also by the Foundation for Development of Civic Society (see also: http://wiadomosci.ngo.pl/strona/56676.html [accessed 10 September 2012]), and the environmental movement had reflected on the issue of watchdog organizations even earlier (see also: http://watchdog.org.pl/9,18,jak_sa_mozliwe_instytucje_interwencji_obywatelskiej.html [accessed 10 September 2012]).

[3] In 2007 at www.batory.org.pl this was described as follows: "We understand watchdog activities to mean: • **acquiring information** concerning the selected aspect of the functioning of local or central public institutions (e.g. studies, observations, and questionnaires, analysis of documents, experts' analyses, and – civic provocation); • **disclosing information concerning** the improper functioning of local or central institutions of the public life that fails to abide by the principles of good governance (e.g. publishing and disseminating reports, meetings with persons with a potential interest in a problem, articles, press conferences); • **taking action to eliminate** improper practices or change the policy of the given institution or improve the law (e.g. legal actions, including, among others, litigation, legislative initiatives, proposals for regulation changes, complaints or social campaigns, sending petitions, publishing blacklists, awarding disgraceful titles to public persons)" (upon the creation of this study, the text was no longer available on the website, its contents was acquired directly from the representatives of the Stefan Batory Foundation).

[4] Ryszard Skrzypiec has been dealing with watchdog issues since the 1990s, the topic of his doctoral dissertation was civil disobedience – see also: http://zb.eco.pl/article/ryszard-skrzypiec-w-poszukiwaniu-sprawiedliwosci-obywatelskie-nieposluszenstwo-filozofia-i-dzialanie-bzb-29-a134l1 [accessed 10 September 2012].

[5] http://bazy.ngo.pl

• **types of activities:** observation - monitoring, observation, whistleblowing, intervention, provocation,
• **spheres:** public - authorities and administration, private - for profit (business), and non-profit organizations (NGOs),
• **areas**: access to public information, rule of law, public finance management, human rights, environmental protection and other,
• **activity**: formal statutory provisions, operational - most recently (within last two years) completed activities of such nature.

At the time our works were not expanded on, as indicating so broadly defined watchdog organizations from among several dozen thousand entities registered in the databases of ngo.pl would produce an inaccurate result and require a discretionary choice and a quantitative study using the data available would not, as it seems, add any knowledge. We realized that we had to juxtapose several factors and analyse statutes, however, we did not have access to sufficient information to define a minimal combination of features and identify matching organizations. One way to solve this problem would be for organizations to independently declare involvement in watchdog activities and incorporate relevant provisions into their statutes. The combination of a theoretical model with self-identification could assist researchers in providing a more accurate definition of which organizations are indeed watchdogs, and which fail to meet the criteria. There was, however, another problem, which posed a practical limitation for the Klon/Jawor Association in the further development of their questionnaires. The amount of data collected was so large that creating additional categories for a fairly niche activity seemed irrational.

The discussion started then had a different outcome, it prompted the **Central Statistical Office** to include a question about watchdog activity in its **questionnaire** SOF-1[6] from 2009[7] in chapter: "X - Law and protection of law, human rights" as "control of standards in public life, anti-corruption activities, watchdog activities."

[6] Questionnaire made pursuant to Article 30.3 of the Public Statistics Act of 29 June 1995 (Dz.U. of 1995, No. 88, item 439 as amended). on a full sample of public benefit organizations – see also http://form.stat.gov.pl/sof/BadanieSOFw2011.htm [accessed 27 May 2012].
[7] See questionnaire of 2010 concerning watchdogs activities showing the same questions http://form.stat.gov.pl/formularze/2011/passive/SOF-1.pdf [accessed 27 May 2012].

A study of the collective results for 2008 was published in June 2011[8] and presents quantitative data that describe the potential scale of the involvement of organizations in watchdog activities at the time. The results have been discussed in a chapter dedicated to the political function of non-government organizations related to "exerting influence on public affairs. NGOs can exert influence in three aspects: through **the representation of the interests of particular groups, defending the rights of weaker groups and oversight of authorities.**"[9] Only 3% of surveyed NGOs selected activity serving a political function as one three main areas of statutory activities, of which only 6% selected watchdog activity. In absolute numbers this is about two hundred organizations.

In light of the previous deliberations on key words one can wonder how accurate was the separation of watchdog functions from the protection of rights and advocacy - which may also apply to public interest advocacy. Two hundred organizations is, however, a number that seems likely, and even relatively high.

The study also made interesting observations on the nature of such activity. As it turns out, watchdog activity, as well as advocacy, were seldom first choices. Only 14% of all organizations that engage in watchdog activities chose it as the primary focus of their activity (i.e. 28 entities); for advocacy this was 26%, and for protection of rights 35%. Conclusions from the study of the Central Statistical Office are as follows: „[...] "advocacy and watchdog activities undertaken in the scope of specific subject areas (sports, culture, social welfare, health) in which organizations specialize are not subject areas in their own right. These are a form of activity rather than its contents, although they seek to introduce changes in the public sphere and, consequently, undoubtedly inscribe themselves into the political function of civic society organizations. It is also likely that, if the surveyed organizations could select more than 3 fields of activity, advocacy, protection of rights and watchdog activities would be more popular choices."[10]

Another source of information about watchdog activities is the **watchdog activities database** created in 2010 by the Association of

[8] *Stowarzyszenia, fundacje i społeczne podmioty wyznaniowe w 2008 roku* – http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_gs_stow_fun_i_spol_podm_wyz_w_2008.pdf [accessed 27 May 2012].
[9] *Ibid.*, p. 147 [authors' emphasis].
[10] Ibid., p. 149.

Leaders of Local Civic Groups.[11] One of the database's advantage is providing ongoing updates based on information found on the internet, its limitation is that its core is made up of initiatives financed as part of specific grant competitions, thereby preventing the distinction between actual watchdog activities and ostensible ones, that stem from the possibility of securing a grant and that do not seek to influence authorities. Though our association reviews and selects projects, this is mostly done on an ongoing basis. This means that this task is much harder in the case of projects that date a few years back. You can certainly say that a databases that includes some 260 projects and 140 organizations is the only such exhaustive source of information, but an analysis of its contents warrants a critical approach to the materials it contains.

The described database of watchdog organizations and activities shows just how important an element of their definition is consistency in carrying out their mission, clear goals and compliance with ethical standards. This, obviously, applies to each type of organization and perhaps that is why it was not a part of the definition. Carrying out only monitoring activities is not enough for an organization to consider itself a watchdog. If the purpose of monitoring is unclear (even if it only serves to ensure that institutions observe the law), if it is not related to the activities of an organization in the coming years, or if it is exercised in a conflict of interests situation – this does not constitute watchdog activities. Clarity on this issue facilitates a better definition of the activities in question. The Stefan Batory Foundation focused on discussing this issue during grant competitions. Since individual talks about competing projects started to involve discussions with their authors, the Foundation has been successful in selecting project that are well-thought, promising and lead to experiences that inspire further initiatives. **A major qualitative change has taken place within two years**, accordingly, referencing studies conducted in 2008 may not provide a sufficiently accurate picture of the quality of watchdog activities.

This comment is necessary not only in the context of the said database of organizations and watchdog activities, but also to justify why discussing watchdog activities and organizations - at the current stage of their development in Poland - requires a critical evaluation of the

[11] http://www.watchdogi.samiswoje.pl

collected data and often comes down to mentioning specific organizations. This is also important when reading the results of **one of the most important studies on watchdog organizations to date**, conducted under the direction of Richard Skrzypiec in 2010 and 2011.[12] Fifty organizations labelled as, but mostly not self-declared, watchdog organizations were examined using in-depth interviews. Selection of the sample for the study was largely based on predefined criteria, disregarding such important issues as actual objectives, mission and ethics. This in turn meant that the picture that emerges from the study shows that the majority of these are organizations that have little experience, fail to allocate sufficient funds to personnel, and have no plans to communicate with the public. Acknowledging that there surely is a host of matters that require improvement in the operations of existing watchdog organizations or entities involved in watchdog activities, we cannot agree with the results of the aforementioned study. These are in contradiction to our five-year analysis of developments in civic oversight, the palpable change and experiences in educating organizations and watchdog initiatives.

After five years of searching for elements common for watchdog organizations, we can see that this will definitely include the following factors:

• influencing authorities or politics,

• basing judgements on different sources of information – including mandatory references to official documents,

- documenting and propagating knowledge about their activity,

• operating within the confines of the law and awareness that it governs the course of action,

• persistence and endurance of activities - building a strategy to achieve changes resulting from the diagnosed problems,

• readiness for continuing education, developing knowledge, seeking efficient methods and fostering standards of independence and objectivity.

[12] Skrzypiec, R., (2011) Analiza doświadczeń polskich i zagranicznych organizacji strażniczych – http://watchdog.org.pl/wwwdane/files/analiza_doswiadczen_polskich_i_zagranicznch_organizacji_strazniczych___raport_cumulus_2011_vvd7.pdf [accessed: 10 September 2012].

Functions of Watchdog Organizations

Such organizations carry out many functions in the society and in the policy-making process. Meeting all the requirements listed earlier, they become unquestioned **experts in their fields**. They can use this expertise directly for law-making purposes – when they are invited to parliamentary committees, participate in public hearings and consultation meetings in ministries or submit their opinions on the created legislation. They can also serve as experts for the media or for different institutions that want gain a deeper understanding of the subject. In mid-2012 the Campaign Against Homophobia was invited by the Police Headquarters to create an anti-discrimination handbook for police officers. In another example, the Centre for Postgraduate Education of Nurses and Midwives[13] turned to this organization to improve its curriculum to exclude content that discriminates against homosexuals and bisexuals.[14]

Another function of watchdog organizations is **intervening and alerting** - raising unpopular issues, responding to harm done to individuals or groups, as well threats to the democratic system and civil rights. Here one example is the intervention of the Open Republic Association concerning chamsko.pl. The organization filed a notification of a crime committed with the prosecutor's office by "inciting to hatred related to differences in nationality, ethnicity, race, religion and insulting persons of the Jewish nationality."[15] Another example would be the intervention of the Federation for Women and Family Planning concerning applying by some pharmacists the so-called conscience clause and refusing to sell pharmaceuticals (this mainly applies to contraceptives) to patients. The Federation has written on this subject, among others to, the Chief Pharmaceutical Inspector. This drew attention to the problem and allowed the Federation to receive the relevant interpretation of the law and learn how patients can react to a refusal to sell contraceptives – they should report such incidents to the provincial pharmaceutical inspectors. [16] Another manifestation of alerting is the

[13] See also: http://www.kph.org.pl/pl/component/content/article/704-policja-gej-lesbijka-przemoc-antydyskryminacja [accessed 24 July 2012].
[14] See also: http://www.kph.org.pl/pl/component/content/article/706-kph-wspoltworzy-program-nauczania-ckkpip [accessed 24 July 2012].
[15] Letter of 23 April 2012 – see also:. http://www.otwarta.org/index.php/zawiadomienie-o-popelnieniu-przestepstwa-z-art-256-i-257-k-k-dzialalnosc-portalu-www-chamsko-pl/chamsko-pl [accessed: 24 July 2012].
[16] See also: http://www.federa.org.pl/dokumenty_pdf/centrumprasowe/GIF_farmaceuci_odp.pdf [accessed 24 July 2012].

issue raised by the Panoptykon Foundation who enquired how many times in 2011 the courts, prosecutor's office, police and other services used data on citizens' phone calls, and alerted through the media, that people lose their right to privacy far too easily and, in this respect, Poland ranks very poorly in comparison to other countries. [17]

Another function often exercised by watchdogs is **pressuring and reminding** that specific laws should be adopted or actions taken. The Anti-Corruption Coalition of NGOs[18] for years has raised the issue of preparing an anti-corruption strategy by the government. Another informal group of thirteen organizations (not only watchdogs) has been reminding the Polish Prime Minister to join the international initiative for open government.[19] Numerous organizations have long been calling for the introduction of a law on free legal assistance. Organizations of persons with disabilities have reminded about ratifying the Convention on the Rights of Persons with Disabilities. The Polish Anti-Discrimination Law Society has been raising the issue of anti-discrimination law for years. A specific form of pressuring the authorities is attempts to **stop a decision being made** in a specific case. Typically this causes that introducing a given law lowers standards related to the observance of basic rights and liberties and the transparency of state institutions. One example is the efforts of watchdog organizations against the amendment of the Public Assemblies Act in 2012.[20]

Another function of watchdog organizations, perhaps even the most important one, is **introducing actual changes**. This may occur as a result of a court decision. Another example of such action is support for Bogdan Wroblewski, a reporter, by the Helsinki Foundation for Human Rights. The journalist claimed in his suit that the Central Anti-corruption Bureau analysed data from three phone numbers belonging to him, used both for professional, as well as private purposes. The Bureau's acquisition of his

[17] See also: http://www.panoptykon.org/wiadomosc/ile-razy-panstwo-siegalo-po-nasze-dane-telekomunikacyjne-w-2011-roku-publikujemy-najnowsze [accessed 24 July 2012].
[18] See also: http://www.akop.pl/dzialania-akop/oswiadczenia-i-komunikaty-akop/29-maja-2008.html [accessed 24 July 2012].
[19] See also: http://www.akop.pl/aktualnosci/2012-07-12.html [accessed 24 July 2012].
[20] See also: http://watchdog.org.pl/wwwdane/files/list_otwarty___ust_t5zi._o_zgromadzeniach_12.06..pdf [accessed 24 July 2012].

billings constituted, in the opinion of the court, a violation of the right to privacy, confidentiality of communication and journalist confidentiality.[21]

Watchdogs can also be successful in many other ways. One actual change would be to improve the functioning of an institution, creation of a specific law,[22] drafting a curriculum, publishing a manual or to enhance the perception by the media and the society of a given issue or social group.

Many of these functions are also being carried out by other organizations, not necessarily declaring themselves as watchdogs. This in particular applies to think tanks with their own experts, who participate in the policy-making and legislative process.

Whether an organization is a watchdog or uses watchdog methods is often hard to determine and requires an overview of the organization's activity. In reality, however, these doubts only apply to isolated organizations that have notable achievements, as there is little number of such initiatives in Poland.

It is also worth mentioning that, as indicated by our observations, the most often perceived characteristic of watchdogs is that they carry out monitoring and issue reports. The above examples are to show that watchdog organizations should rather seek to actively influence politics. While the above projects apply to activities on the national level, also local advocacy efforts, rather than only monitoring, are a characteristic feature of watchdogs. To prove this thesis, we encourage you to take a closer look at watchdog organizations through the prism of their actions and the difficulties they encounter.

Examples of Watchdog Initiatives and their Areas of Interest

We can see that Polish organizations typically use strategies adapted to their stage of development, the challenges they face, and external factors which may include financing and the authorities, central or local, they control. What is more, the problems faced by such organizations are clustered accordingly to the applied division. It is important to emphasize that **watchdog activities apply not only to human rights, but overall**

[21] See also: http://www.hfhr.pl/pozyskiwanie-billingow-naruszylo-dobra-osobiste-dziennikarza [accessed 24 July 2012].
[22] One of the successes of the organizations (not only watchdogs) is the adoption of the Electoral Code – see also http://isp.org.pl/aktualnosci,1,788.html [accessed 24 July 2012].

governance, **transparency, rule of law**, **accountability, honesty and integrity of public institutions at different levels**. What is more, individual strategies usually envisage numerous educational activities which while reinforcing to the mission of an organization, are more geared towards the goal – comprehension by citizens of specialized activities carried out by the organization. In many cases, recipients of their activities are no longer only public institutions. This is a strategy incorporating both the potential effectiveness of actions, as well as primarily the impact, the ability to mobilize supporters and introduce topics of interest to the public debate.

Organizations Inolved in Political Issues

The first group distinguished by us focuses at least a part of its strategic activities on reviewing legislation or raising awareness about the need for change, it may also highlight threats posed by planned legislation or lack of appropriate regulations. This can be a permanent or one-off activity, stemming from a specific need which then disappears. Such projects require the acquisition of **specific alerting competencies, consulting laws or participation in expert meetings, collecting own experiences and relating to government reports.**

Achieving results in these activities requires great patience, investments in the development of competent personnel, forming coalitions, analysing the effectiveness of actions and building an expert position.

The results of operations are hard to predict, and efficiency is not easily measured. Below are examples of political activities conducted by watchdog organizations:

• Anti-Corruption Coalition of Non-Governmental Organizations, which has a clearly defined goal - following-up on the promises of electoral committees in preventing corruption - though it is not exclusively composed of watchdog organizations,

• The Feminoteka Foundation, which has for several years consistently raised the issue of women's rights and protection against violence,

• Foundation Institute for Regional Development, which conducts advocacy activities related to the protection of the rights of persons with disabilities, especially ocular disabilities,
• Panoptykon Foundation – in the scope of protecting human rights in a surveillance society,
• Campaign against Homophobia - in the scope of introducing to legislation solutions that support equal rights towards LGBT people, such as civil partnerships,
• "All Clear" - a program run by the Hans Asperger Association for Children with Hidden Disabilities - seeking to ensure proper education to children with disabilities.

Organizations Involved in Legal, Public and Educational Activities

The second group of organizations includes entities which, in the framework of existing law, focus on the enhanced functioning of the law or institutions. Usually they change the habitual ways of working of institutions, which provides the best results, or spark a public debate. Please note that this function may change depending on the situation. This group may include:
• CEE Bankwatch Network Citizens, which demands accountability from "international financial institutions" and allocation of funds for investments friendly to people and the environment,
• Federation for Women and Family Planning, which constantly raises the issue of enforcing women's reproductive rights, provides legal support to women and raises the issue during public events,
• Court Watch Poland Foundation - to the extent that by delegating observers to courtrooms it changes the way courts operate and provokes a public debate in this scope,
• Childbirth with Dignity Foundation - to the extent that it constantly raises the issue of patients' rights in Polish hospitals,
• Zagranica Group – to the extent it exercises constant oversight over utilizing funds from Polish Aid in the Ministry of Foreign Affairs,
• Helsinki Foundation for Human Rights – in the scope of reacting to issues pertaining to limiting human rights in the application of existing law,

• Open Republic – to the extent it takes actions against anti-Semitism and xenophobia: by protesting, intervening and calling for the intervention of competent services,
• Polish Society of Anti-Discrimination Law - to the extent that it supports in courts persons that are discriminated,
• Non-Governmental Centre on Access to Public Information in the Association of Leaders of Local Civic Groups - to the extent it constantly raises the issue of changing the practice of exercising the right to information,
• Workshop for All Beings – in the scope of protecting valuable natural sites,
• Anti-Corruption Program in the Stefan Batory Foundation – in the scope of verifying the actual efficiency of anti-corruption regulations,
• Association for Legal Intervention –in the scope of studies concerning the protection of the rights of refugees, prisoners and adoptive families, and legal advisory, which allows for identification of problem areas,
• Pro Collegio Association of Students, Alumni and Friends of the Inter-faculty Individual Studies in the Humanities– to the extent it pursues increasing transparency of public spending on constituency offices, and bringing action against ignoring queries,
• Anti-discrimination Education Association – to the extent in which it engages the Ombudsman and the Government Representative for Equal Treatment in the campaign to change school textbooks,
• Watchdog.edu in the "Student Support Fund" Foundation – to the extent the monitoring it conducts contributes to introducing on universities systems supporting the rational distribution of public funds for scholarships.

Organizations Involved in Local Activities

Another group of organizations is entities that work to change local governance. This may apply to services provided, protection of rights of minority groups and rationality of expenses. Measures implemented at this level also face specific problems, mainly due to the variety of roles played by the local organizations and potential conflicts of interests. On the other hand, the possibility of influencing local authorities is much

greater, just as well the risk of a serious conflict. Examples of some activities are:

• Autonomy Foundation - the extent it monitors anti-discrimination policies and the budget in Cracow,

• Grapefruit Foundation – to the extent it conducts legal activities concerning access to information and monitoring the spending of funds allocated to coping with alcohol-related problems in Oława,

• Stacja Tłuszcz (a local newspaper) – to the extent it exercises ongoing oversight over the compliance of public procurement and the work of the city council in Tłuszcz,

• Homo Faber Association - to the extent it brought about a change in the policy of public offices regarding foreigners in Lublin,

• INTERKULTURALNI.PL Association for Multicultural Poland - to the extent it seeks to modify the policy towards foreigners in Cracow,

• BONA FIDES Mutual Aid Association - to the extent it controls the work of councilmen and public consultations in Katowice.

Data Collectors

Another type of initiatives is organizations that deal with collection of data and making them public. These initiatives are driven by a slightly different logic than the remaining watchdog activities. Although these organizations often make certain interpretations of the collected data, by definition, they leave a lot of freedom to recipients. Social oversight is achieved by disclosing information and subjecting it to civic judgment. Examples of such activities may be:

• EP Foundation, which publishes data on the legislative process on sejsmometr.pl,

• Stanczyk Institute of Civic Thought Foundation, which collects data on politicians in Cracow and searches for connections between individuals,

• Association 61, which collects data on the backgrounds and opinions of politicians,

• Association of Leaders of Local Civic Groups - to the extent it collects documentation on municipalities concerning the utilization of the village fund.

These examples, though largely exhaustive, do not represent a complete catalogue of watchdog organizations. Also these types of organizations should not be treated as separate - this is particularly applicable to the first and second group , in which case the type of actions taken depends on the current situation or particular topic.

What is important, however, is that the proposed division implies occurrence of specific problems in operation and that members of these groups may seek common measures to cope with the difficulties.

Problems Encountered in Watchdog Activity

Access to Public Information

As already mentioned, specific problems depend on the type of actions taken. The first difficulty is, however, universal and crucial to all watchdog activities. It involves **problems with access to public information**.

Information about the activities of the state administration, local government and other bodies carrying out public tasks is an essential prerequisite to effective watchdog activities. Access to documents and other materials used to achieve public tasks is not only an expression of the principle of sovereign power of the people, but also gauge of the declarations of authorities concerning the transparency and openness of their actions. This is very important because transparency of public life should be a standard in a democratic state. This, however, is often only declarative and, as attested by numerous examples, not supported with real actions.[23]

Access to public information is regulated by Article 61 of the Polish Constitution of 1997, which guarantees access to knowledge about the activities of public authorities and public officials, and other persons and agencies to the extent they manage municipal or State Treasury assets or perform public tasks.

In 2002 the Access to Public Information Act of 6 September 2001 entered into force. It defined the manner of access to public information, introducing the principle of non-formalism, promptness and free access. The issues related to access to public information are becoming

[23] Message from studies conducted by the Dialogue Clinic for the Association of Leaders of Local Civic Groups in March and April 2010 - http://informacjapubliczna.org.pl/3,286,co_wiemy_o_prawie_do_informacji.html [accessed: 10 September 2012].

increasingly common in the judicial practice of administrative courts. It is administrative courts that, following the reform of 2011, assumed full judicial review of cases from this area.[24] In contrast to the practices of other countries,[25] the courts, in most cases, do not examine disputes between access to public information and other privileged values (for example, personal data or national security). Their activity focuses on determining whether the given piece of information is public information, or not. A notable practice among public institutions is the assertion that the requested data is not public information. This creates a peculiar legal vacuum, as the only legal remedy that allows to overthrow this position is action for failure to act defined in regulations concerning proceedings before administrative courts. Accordingly, the vacuum is related to the fact that courts which tend to rule in favour of the applicant may only decide that the given piece of information is public information and the relevant public office is obliged to examine the application as stipulated in the Act. In practice, this means that the office will either provide the information, or refuse to do so. Such actions significantly increase the time required to obtain information, thereby often rendering it useless.

Legislative Process on Government Level

Another set of problems mainly applies to the possibility of participating and controlling the lawmaking process. The legislative process at the government level is untransparent as there is no guarantee for the participation of citizens and organizations in consultations of draft legislation. In addition, as a result of the amendment of the Rules of Procedure of the Council of Ministers of December 2011, public participation in exercising oversight over works over bills has been all but eliminated: "The Rules of Procedure of the Council of Ministers has long been perceived by the members of Citizens' Forum for Legislation[[26]] as a piece of legislation which, to the detriment of citizens, is characterized by a lack of sufficient clarity and precision. The *amendment* only adds to this

[24] The amendment to the Access to Public Information Act adopted on 16 September 2011 abolished the dualism of judicial review, depriving common courts of the authority to rule in cases concerning limiting access to public information due to personal data or business secrecy.
[25] Freedom of information: statistics on implementation in central government – http://www.justice.gov.uk/statistics/foi/implementation [accessed 10 September 2012].
[26] The work group was established to conduct advocacy activities following to the monitoring of the legislative process conducted by the Stefan Batory Foundations's Anti-Corruption Program. The group comprises persons participating in the legislative process as lobbyists, experts, social partners or observers, including representatives of NGOs, the academia and scientific community, law firms and public relations companies.

negative situation, rendering, as it seems, the participation of citizens in the lawmaking process optional, marginal and dependent on the whims of the state administration bodies. [...] Under the current law, a resolution of the Council of Ministers may overnight (resolution no. 214 of the Council of Ministers, entered into force on the date in was adopted) completely remodel the process of works over government bills, grant or deny citizens any importance in this process."[27]

Therefore, there are no legal guarantees for the participation of watchdogs in the lawmaking process at the government level. Leaving the decision to the discretion of public officials creates further ambiguities and reduces trust.

Legislative Process on Parliamentary Level

The possibilities for observation and participation in the legislative process at the parliamentary level are much better. However, at this level it is also possible that an organization will not be able to watch the works when it has not received an invitation to the relevant meeting. Bylaws of the Parliament, Article 154.3 stipulate that: "The meetings of a committee, at the invitation of the committee presidium or its chairperson, may be attended by representatives of professional and civic organizations, and experts of committees, as well as other persons." Sometimes organizations that intend to observe the making of a specific law, do not receive such an invitation,[28] which constitutes a real obstacle in exercising oversight. At the same time there is no control of guests invited by members of parliament and senators who in practice may freely move around the parliament and their presence on the meetings of committees is not subject to evaluation of the Chairperson. This creates problems with the transparency of the legislative process and raises doubts as to the actual authorship of some provisions adopted by committee.

[27] Objection of the Civic Legislative Forum to the limitation of citizens' access to the legislative process– http://www.batory.org.pl/upload/files/Programy%20operacyjne/Przeciw%20Korupcji/Oswiadczenie%20OFL_popr_2011-12-20-1.pdf [accessed 10 September 2012].

[28] In 2011 the Association of Leaders of Local Civic Groups was notified by phone that their registration of participation in the Administration and Internal Affairs Committee, during the first reading of the bill amending the Access to Public Information Act, was not approved and they cannot attend the meeting.

Public Hearing

One of the most transparent and open institutions for watchdogs to present their opinion at the level of the parliament is the public hearing. Pursuant to Article 70 of the Bylaws of the Parliament, it is adopted by resolution of the committee examining a particular bill at the written request of the member of parliament who is a member of the given committee. If there is enough political will to prevent a public hearing, no organization stands any chance to present its opinion, often based on much broader knowledge than the materials received by members of parliament or showing other scenarios than the commissioned experts' opinions. Especially that it happens that only one expert's opinion is commissioned – with the same person who participated in preparing the piece of legislation at the government level.[29]

Participation in Court Proceedings

Watchdog organizations are increasingly often becoming parties to proceedings before administrative courts, or join them as participants under Article. 33.2 of the Proceedings before Administrative Courts Act of August 30, 2002.

This legal construct allows organizations to not only actively use legal tools as part of their statutory activities, but also to join court cases interesting from the point of view of the public interest. While provisions provide for such a possibility, it is relatively hard to implement in practice, due to the restricted group of persons that may act as proxies of civic organizations. Civic organizations may act through the representation of a lawyer or legal advisor, but this is an expensive solution that is not always feasible. Article 35.2 of the said Act stipulates that an employee of an organization may also be its proxy. This solution allows for acting without a professional attorney, however, it limits the circle of persons that may represent an association or foundation to only its employees within the meaning of the Labour Code. It seems that this formula does not fit the reality of many civic organizations that cannot afford or do not have the need to establish an employment relationship.

[29] This was the case in the amendment of the Access to Public Information Act of 2011. Parties forming the government coalition voted to reject the motion for a public hearing and the Parliamentary Analyses Office commissioned only one expert's opinion – with a person involved in drafting assumptions to the bill.

Limitations in the Effectiveness of Complaints

Local organizations face other problems associated with participation in the lawmaking process. One significant limitation to watchdog activities at the local level is the existing personal dependencies and connections.

Individuals and organizations seeking to actively influence their environment are constitutionally guaranteed the possibility of filing complaints, motions and petitions concerning the activities of public authorities.[30] The manner of filing complaints and motions is set out in the Code of Administration Procedure. Motions may, in particular, pertain to streamlining organization, enhancing the rule of law, improving work and preventing abuse, protection of ownership, more comprehensive fulfilment of the needs of the populace. Complaints in turn may pertain to negligence or improper performance of tasks by competent bodies or their employees, breach of rule of law or interests of the complainants, and protracted or bureaucratic approach to cases. Complaints may serve to attempt to improve the operation of the local government (for example, improper maintenance of the Public Information Bulletin), or change the behaviour of a specific public official.

At the local government level, however, there are certain problems that can undermine the trust of citizens and organizations as to the due consideration of complaints. In the general opinion, the submission of a complaint regarding the actions of a mayor is pointless when the majority of the municipal council is composed of councilmen supporting the mayor. The manner of investigating a complaint will be received in political, not necessarily factual terms. One example of this is the media reception of the investigation of the complaint against the mayor of Nowy Dwór Mazowiecki: “The councilmen of the audit committee, almost all of which are part of the coalition supporting the mayor, could not have considered the complaints otherwise. No one ever expected a different opinion.”[31]

[30] Article 63 of the Polish Constitution.
[31] See also: http://www.nowodworska.net/index.php?option=com_content&task=view&id=4079&Itemid=177 [accessed 10 September 2012].

Systemic Dependency of Councils

What is vital in this aspect is the systemic issue of the relations between executive and legislative bodies of local government. Municipal (district, province) councils do not have their own expert base that could support them in preparing draft resolutions and the conducted activities in general and, consequently, are forced to rely on the support of the public office. It should be noted that public officials are at the same time the subordinates of the mayor. The most commonly used solution in municipalities is to entrust the preparation of draft resolutions of councils concerning complaints received by the office to the secretary. In practice this also includes those that concern the operations of the executive body.[32] Accordingly, it is the public official who decides whether the complaint against his/her superior is justified or not. The role of the audit committee and the council itself consists only in the adoption or rejection of a draft resolution, rather than the in-depth investigation of a case.

Legislative Initiative

On the other hand, at the level of local government it should be much easier to influence governance. Various municipalities adopt innovative solutions – budget-related consultations (including quasi-participatory budgeting, for example in Sopot[33]) or citizens' legislative initiative (provided for in numerous statutes, e.g. in the capital city of Warsaw). It should be noted, however, that in this respect it is necessary to specify these institutions in generally applicable provisions of law. A particularly sensitive issue is citizens' legislative initiative which, as attested by judicial practice, contradicts the Municipalities Self Government Act. The Provincial Administrative Court in Wrocław expressed the view[34] that a municipal council cannot adopt in its statutes that the citizens are entitled to legislative initiative consisting in submitting draft resolutions. Under the current legislation there are no regulations that would grant citizens of a local government community the right to legislative initiative.

[32] Only secretaries of local government offices turn to the Association of Leaders of Local Civic Groups (which provides legal advice) with questions pertaining to the validity of the complaint against a mayor, explaining that they are preparing a draft resolution in this matter.
[33] See also: http://www.krytykapolityczna.pl/Serwissamorzadowy/GerwinSopotmabudzetobywatelski/menuid-403.html [accessed 10 September 2012].
[34] Ruling of 3 April 2006, case file reference III SA/Wr 584/05.

Data Collectors

In addition to legal issues, organizations face many other problems associated with the practice of public institutions. Entities dealing with use of information for summaries often do not have access to the data in machine-readable format. Public institutions do not treat citizens' queries as indications as to which data should be collected. Some public institutions - such as the Central Statistical Office and the Supreme Court - do not make their databases available to the public, although they are obliged to do so under the Access to Public Information Act. All this contributes to the small number of projects using public data, as their collection is an extremely time-consuming and painstaking process. This did not changed after the amendment of the Access to Public Information Act introduced in 2011. Moreover, it has caused a lot of confusion, which can result in the introduction of licenses with hard to accept terms and fees for documents that were previously free of charge.

Funding

Another important issue is funding. For several years now, it has been clear that the financing of watchdog organizations from the private funds of foundations will diminish significantly. In 2012 the Trust for Civil Society in Central and Eastern Europe will cease to operate. The Stefan Batory Foundation will also receive less foreign funding. This will have a direct impact on the financing of Polish watchdogs. The Open Society Foundation in Budapest is being flooded with requests for funding from all of Europe. The European Commission plans to cut funding as part of budget lines hitherto available to watchdog organizations (Justice and Human Rights and Europe for Citizens programmes). Funds from the Swiss Fund, despite their announcement in the rules of competition, in the first and second edition of their competition for large grants were awarded to a total of three watchdogs initiatives. Funding under grant competitions is becoming less likely. In the coming years, reinforcement may still occur owing to support from Norwegian funds, and in 2013 some organizations may benefit from the funds of the Operational Program Human Capital for watchdog activities. The financial crisis, however, is becoming more and more inevitable, and at the same time watchdog activities are becoming more developed. The need for joint efforts to raise funds from businesses

and reform own strategies in order to attract individual is becoming more pressing. Another task is the attempt to put pressure on the EU institutions not to reduce funding.

Summary

Watchdog organizations in Poland form a community that, while still small, is very competent and open to new experiences. Within this group they face many different problems, depending on the level at which they operate (central or local), and on whether they attempt to influence lawmaking or its enforcement.

In the past two years there has been a qualitative breakthrough in the watchdog community – it has managed to reach a level of experience that allows them to accelerate the process of teaching new interested candidates, showing what goals can be achieved through watchdog activities, prompting the formation of a community.

This rapid growth can be halted by the impending financial difficulties. However, this is still a good time to rethink the strategy of coping with new challenges. The relevant discussion and attempts to find a solution started already in 2011. It is in the interest of watchdogs to approach this problem seriously and attempt to overcome it.

Recommendations

Government

• Rules of procedure of the Council of Ministers should include guarantees regarding the participation of civic organizations on all stages of the lawmaking process.

Parliament

• Consideration should be given to the possibility of introducing to the Access to Public Information Act of a court order to provide public information

• The Bylaws of the Parliament should be amended so as to allow for restricting access to committee and subcommittee meetings only due to technical and accommodation reasons.

• Consideration should be given to the possibility of proposing a public hearing by a group of citizens and (or) organization, so that the policy does not impact the actual possibility of an in-depth examination of bills. For this purpose, it would be necessary to amendment the Bylaws of the Parliament.
• The court proceedings law should be amended to allow for an association to be represented by a member, and in the case of foundations, a member of their statutory bodies.
• The institution of citizens' legislative initiative and budget consultations should be regulated in the generally applicable provisions of law.
• Municipal councils should be given an undisputable possibility to decide about a part of the budget allocation for commissioning experts' opinions and independence from the decision of local public officials.

Non-government Organizations

• In terms of public data collection, court proceedings should be carried out leading to the free acquisition of data (such a suit was already filed by the EP Foundation against the President of the Supreme Court and the Klon/Jawor Association against the Central Statistical Office).
• Motions should be filed with public institutions as per the code of administrative proceedings concerning the collection of data in a machine-readable format. If this method fails, it would be necessary to run a campaign concerning the collection of data, to show their usage and to pressure the Ministry of Administration and Digitization to popularize the idea of collecting data. However, given the slow pace of reforms towards digitization, pressure should be primarily put on institutions from which we wish to obtain data. Organizations that acquire data could analyse the added value stemming from the acquisition and use of data. The results of these works may be also contributed to streamlining administration.
• A strategy should be devised to communicate the mission and create programs for individual support and to join forces in seeking support from Polish business.

• Actions should be taken to increase the funding of watchdog organizations by EU institutions.

Donors

• Experts (assessors) capable of a reliable assessment whether a project falls in the scope of watchdog activities and will bring about real change should be selected.

• Consideration should be given to the possibility of adapting evaluation criteria to the characteristics of watchdog activities that can fail to bring any tangible results for a long time.

• It is necessary to raise awareness about the variety of watchdog organizations and to notice other needs of local organizations and other entities, operating on the central level.

• It is necessary to bolster and financially support local watchdog activities as only these stand a chance to bring about real change in Poland.

• Administration of public funds for watchdog activities should be shifted from ministries to other entities (e.g. in a form of global grant)

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