

Substantive report Citizens Network Watchdog Poland in 2021

Objectives of the Association

The objective of the Association is to promote and protect human rights and freedom, and civil liberties as well as activities supporting the development of democracy, and to support monitoring and education activities, in particular those taken by members of the Association and individuals cooperating with them, in order to increase the transparency and integrity of public life, including:

- 1) to promote free access to public information;
- 2) to promote public asset management and public policy management that is effective, lawful, transparent, and open to civil oversight;
- 3) to provide technical and financial support to individuals and organisations in exercising civil oversight;
- 4) to take action to promote ethics in public life and anti-corruption activities.

Data relating to the activities of the Association

Two General Meetings of Members took place in 2021.

The first one, on 22 May 2021, was a reporting and election meeting, during which the financial statements and the substantive report for 2020 were approved and the Executive Board was elected. The composition of the Ethics Committee was also completed.

The second one – Extraordinary General Meeting of Members – was devoted to amendments to the statutes. It took place on 5 September 2021.

1. Report and Election General Meeting of Members of 22 May 2021

Due to the state of epidemic, in accordance with Article 10(1b) and (1c), in conjunction with paragraph 1e of the Associations Act – it was a meeting held remotely (Regulation of the Minister of

Health of 20 March 2020 on the declaration of a state of epidemic on the territory of the Republic of Poland, as referred to in the act of 5 December 2008 on the prevention and control of infections and diseases, Journal of Laws of 2020, item 1845).

Due to the term of the Executive Board expiring, the Executive Board was elected for the next four years. The same people who finished their terms joined the Executive Board. Szymon Osowski was elected President, while Katarzyna Batko-Tołuć and Marzena Błaszczyk were elected Executive Board members. Anna Gryta was elected to the Ethics Committee from which Piotr Sołowij resigned. In addition, the General Meeting of Members approved the financial statements and the substantive report for 2020.

2. Extraordinary General Meeting of Members (EGMM)

At the meeting on 5 September 2021, amendments to the statutes proposed by the statutes team were introduced. The amendments involved:

- allowing the EGMM to be convened by members if the executive board is unable to convene the EGMM,
- clarification of voting regulations at general meetings – added regulation that members may only vote in person,
- linking the length of the executive board's term to the reporting and election GMM,
- deletion of the provision that in the event of an equal number of votes during voting at the GMM and EGMM, the vote of the chairperson of the meeting shall be decisive,
- adding to the prerogatives of the GMM the ability to decide on the permanent depletion of financial reserve. Editorial amendments were also made to the statutes.

In addition, in 2021, the executive board adopted a resolution to establish a fund to support civil oversight. The purpose of the fund is to support civil oversight of organisations operating in Poland. In accordance with the 1% Spending Regulations, 15% of the revenue received from the 1% was allocated to the fund. In 2021, the amount was 155 thousand zlotys.

Brief summary of activities in 2021

In 2021, we had to deal with new restrictions or threats to transparency that were introduced quickly and without debate. They included:

1. Diplomatic secrecy.
2. Preventing journalists and citizens from having access to closed preparatory proceedings by prosecutors.
3. Limiting the transparency of animal experimentation.
4. A state of emergency cutting citizens off from information about what is happening at the border.
5. Małgorzata Manowska's motion to the Constitutional Tribunal to declare unconstitutional a number of provisions of the Access to Public Information Act.

In addition, we celebrated 18 years of our activities, which resulted in a reflection on who we are as an Association of about 60 members. Reflection on what we do, how we think, how diverse we are. A series of 13 articles was published that showed our different faces – but always related to the right to information.

Our activities in figures:

- **7,295 is the number of all public information requests we sent out.** This is more than 2,000 less than in the record year 2020. This number largely depends on mailings to municipalities (there are almost 2,500 of them), which we serially asked twice. In addition, we serially asked municipal companies, ministries, forestry departments, and regional chambers of audit. This means a few hundred entities each time. **Hidden in the number of all requests is the number 263. It is the number of individual requests to single institutions we sent out in 2021.** This is 100 fewer than in 2020.
- **1,240 – this is how many cases we received at our free legal clinic.** This is slightly more than in 2020. Another several hundred cases are advice over the telephone not counted by any system.
- **178 – this is how many judgements were made in our cases in administrative courts** (147 at the level of voivodeship administrative courts, 31 at the level of the Supreme Administrative Court). In 2020, there were 55 but this was a decrease due to cases cancelled in the pandemic. Previously, it was about 150-160 cases.
- **189 is the number of texts that appeared on our websites.** This figure is close to 2020 when we wrote 194 texts.
- **20 is the number of webinars and online events** we organised as part of our ongoing civic education and public debate stimulation activities
- **1,000 is the number of people** who benefited from webinars and online events
- **645 is the number of press mentions** about us in the media. This is more than 100% more than in 2020.
- **250** is the number of new people who have engaged in analysing documents on the website sprawdzamyjakjest.pl
- **25 is the number of positions and statements** in the public debate

Description of activities

Selected court cases

2021 was dominated by two cases that, although not completed, engaged our attention and resources. Both could also remove from the Polish legal order or significantly weaken important provisions on sanctions for withholding of information, the relationship of transparency and privacy in the case of public officials, and which entities are obliged to respond to requests for information.

Expenditure from public funds – the case of Lux Veritatis

The first case is our private accusation against the Lux Veritatis Foundation, which has not provided us with information on the expenditures it has made with public funds till the end of the year 2016. The case proceeded in parallel in administrative courts and the criminal chamber of the common court.

In the administrative case, the courts, in consecutive cases, had to point out to the Foundation that it was the entity obliged to provide information; that the requested information constituted public information; that if the Foundation refused to disclose the information on privacy grounds, it had to issue a decision that we could challenge; that privacy does not include information about who public funds went to. The last administrative case confused matters, as in the next step the Foundation did not provide us with the information (the same information we had requested for many years and refused for the reasons given earlier), indicating that it was processed information. Thus, we would have to demonstrate a significant public interest. We pointed out that this is basic information and we do not need to demonstrate an interest. The Foundation issued a decision, but delivered it only to us, not to the attorney in the case. We complained about the inaction, recognising that the decision had not arrived. And a case regarding this inaction started in the courts. We lost in the first instance, but the court did not address at all the improper delivery of the decision that we complained about. The judgement is not final.

In the criminal case, the court was determining whether the Foundation's actions since the end of 2016 and the late response to the part of the request that was answered – regarding public grants received – was a deliberate evasion of the disclosure of information or the result of a combination of different circumstances, acting lawfully, in good faith. There were several hearings in 2021. The prosecutor's office took the side of the defendants, Zbigniew Ziobro – the Prosecutor General – spoke on the case, saying that he did not see a crime; Solidarna Polska MEPs, a group of Polish Senators, and Constitutional Tribunal Judge Krystyna Pawłowicz also spoke. The interest of politicians from the United Right coalition – which was in power in Poland in 2021 – stemmed from the fact that the Lux Veritatis Foundation owns Telewizja Trwam and Radio Maryja, two media outlets that reach their electorate. In addition, both media outlets portrayed our transparency efforts as an attack on Polish Catholics.

Case in the Constitutional Tribunal – possible change in legislation

The year 2021 was also dominated by the case of the First President of the Supreme Court Małgorzata Manowska's motion submitted to the Constitutional Tribunal to rule that a number of provisions of the Access to Public Information Act were unconstitutional. The negated provisions include the range of obliged entities or, for example, whether such entities as the Polish National Foundation, financed not from the budget but by the State Treasury companies, should be subject to transparency. It was this Foundation that conducted the judge humiliation campaign in 2017. At that time, the governing majority undertook first actions at changing the disciplinary system concerning Polish judiciary, which in 2021 became the reason behind the total collapse of the rule of law in Poland. It is worth pointing out that the statutory goal of the Foundation was to promote Poland abroad.

Another negated provision is the relationship between transparency and privacy concerning persons holding public functions. Also these provisions were the subject of huge political controversy regarding the transparency of judges' signatures under letters of support for candidates to the new National Council of the Judiciary. The Chancellery of the Sejm claimed that it could not disclose names of judges who supported candidates due to the protection of their privacy and collision with provisions of the act on election of the new National Council of the Judiciary. This is because the latter did not indicate that these names should be published. The Supreme Administrative Court ruled that the lack of an order is not tantamount to a ban. In the end, the names were published. The transparency of information about who makes decisions, who receives awards in the administration, who uses public assets also constitutes a standard which is negated by the motion of the First President of the Supreme Court.

A panel was appointed to try the case, which was subsequently changed twice. The Constitutional Tribunal judge Krystyna Pawłowicz became the rapporteur. The same person who spoke out on the Lux Veritatis criminal case. One of the provisions under evaluation – the criminal sanction – will be relevant to the criminal case at hand. As a result of the Tribunal's decision, it may be removed from the Polish legal order. The Constitutional Tribunal meeting was scheduled twice and cancelled twice. The first time (17 November 2021), the day before the court session – because the Sejm, which was not given enough time, did not manage to prepare its opinion. The second time (15 December 2021), immediately after the start of the court session, as the representative of the Sejm did not appear due to a clash with voting in the Sejm.

Małgorzata Manowska's motion is the third similar motion filed by the First Presidents of the Supreme Court. Each time, the motions were criticised. The first was submitted by Stanisław Dąbrowski on 4 November 2013. The next First President of the Supreme Court, Małgorzata Gersdorf, withdrew some of the charges from the motion and ordered the rest. Finally, in 2017 – when the Constitutional Tribunal scheduled a hearing, she withdrew the motion, indicating that “it is no longer advisable to support the motion. This is because the matter was sufficiently clarified in the rulings of the Supreme Administrative Court. It is uniformly recognised that the right to public information is subject to restriction on the grounds of the privacy of the individual, with the exception of information relating to persons holding public office that is relevant to the performance of functions related to the office”. At the time, we appealed to the First President of the Supreme Court, Małgorzata Gersdorf, pointing to the role of the Constitutional Tribunal and the possibility of limiting the right to information. When Małgorzata Manowska submitted the motion, we and other organisations called for the withdrawal of the motion. This time unsuccessfully. And the situation changed significantly. While in the previous case both the Sejm and the Prosecutor General's Office filed opinions not supporting the motion, in the case of Małgorzata Manowska's motion, both institutions supported most of the charges. The Constitutional Tribunal also lost its independence during this time.

Together with other organisations – Akcja Demokracja, the ePaństwo Foundation [now the Moje Państwo Foundation], and the Helsinki Foundation for Human Rights – we have been taking action to stop the effects of the potentially devastating decision of the Constitutional Tribunal. First, the ePaństwo Foundation and we (Citizens Network Watchdog Poland), together with more than 100

organisations, submitted twice a petition of civil society actors to withdraw the motion from the Tribunal. Akcja Demokracja joined with a supporting petition from 10,000 citizens. The response to our petitions was negative. Then, we prepared an opinion and organised assemblies. All the organisations waited on standby throughout 2021 – informing the media, observing the Ombudsman's actions, and explaining what might result from the Tribunal's decision.

Legal opinion on the legitimacy of the motion of the First President of the Supreme Court of 16 February 2021 (Supreme Court ref. no.: bsa iv-4 11-1/21) to examine the constitutionality of certain provisions of the Access to Public Information Act of 6 September 2001. Author: dr hab. Michał Bernaczyk.

14

December

2021.

https://bip.siecobywatelska.pl/userfiles/file/Opinie/Bernaczyk_SOWP_Opinia_sprawa_K_1_21.pdf

Petition to the First President of the Supreme Court to withdraw her motion to the Constitutional Tribunal to declare unconstitutional a number of provisions of the Access to Public Information Act. 24 March 2021 [https://bip.siecobywatelska.pl/userfiles/file/petycja_logotypy_pdf\(3\).pdf](https://bip.siecobywatelska.pl/userfiles/file/petycja_logotypy_pdf(3).pdf)

Access to schedules of Constitutional Tribunal presidents – case communicated to Polish government by European Court of Human Rights

In addition to these two dominating events of 2021, there were other important cases.

The first is the European Court of Human Rights' communication to the Polish government of a case concerning the transparency of the schedules of those serving as President and Vice President of the Constitutional Tribunal, Julia Przyłębska and Mariusz Muszyński (although the latter held office only for part of the period of time we were interested in). We asked about the schedules from the period from 1 January 2017 to the date of the request – 6 July 2017. The Tribunal denied access to this information, saying it was not public information, and Polish administrative courts confirmed this decision. This is due to consistency in administrative courts' rulings since at least 2014 and claims that schedules of persons holding high state offices are merely ancillary, technical documents and as such do not constitute public information. We argued, in turn, that knowledge about the actions of those who decide on the actions of the Constitutional Tribunal and possibly have frequent contacts with the ruling party is important from the perspective of social control and preserving the tripartite division of power. We also provided a printout of one of the press reports confirming possible government contacts exceeding the standards that should apply in a democratic state under the rule of law. The media reported visits of the coordinator of special services Mariusz Kamiński to the seat of the Constitutional Tribunal. This took place in the period preceding the Tribunal's examination of the constitutionality of the anti-terrorist act and principles of applying operational control. Soon after taking office, President Przyłębska changed the composition of the adjudicating panel of the Constitutional Tribunal in over a dozen cases, including the one concerning the powers of the special services. Ultimately, a substantive examination of the case did not take place, as the applicant for the case examination by the Tribunal, the Ombudsman, withdrew his motion.

Our case about schedules is not simply about gaining knowledge about what those who headed the Constitutional Tribunal did. We are concerned with the source document. The difference is significant, as it does not make the requesting parties rely on interpretations made by the entities responding to requests. In this case, one of the citizens received the following information: “Mr. Mariusz Kamiński – coordinator of special services, in mid-January paid a courtesy visit to President Julia Przyłębska at the seat of the Tribunal. The purpose of the visit was to offer personal congratulations on her appointment as the President of the Constitutional Tribunal.” Such information is highly inadequate in the context of the importance of politicians' visits to the Tribunal. And the automaticity of administrative court ruling must be negated. It is therefore gratifying that the European Court of Human Rights accepted our complaint. In our complaint, we point to violations of Article 10 of the European Convention on Human Rights.

Awards – a pro-transparency judgement of the Supreme Administrative Court

A success in 2021 that reawakened our hopes for the Supreme Administrative Court's pro-transparency ruling was also a judgement on the transparency of the awards of people paid with public money. Up to this point, including as a result of a number of legal proceedings, it has usually been possible to receive information about the awards paid to decision-makers. In a nutshell, out of the entire pool of prizes paid out, we could only learn some of the amounts and names. Meanwhile, awards, as a discretionary payment, can provide opportunities for abuse of power and unequal treatment of all those who are or are not so rewarded. They are also paid with public money, so by law they should be public. In a case that ended in a favourable verdict for transparency, we asked about the awards of the Minister of Culture and Heritage. The Supreme Administrative Court (III OSK 930/21) upheld our arguments – in its justification, it pointed out that public information is information on public assets, and these assets include the salaries of all employees of the Ministry, along with all components of these salaries. Thus, the amount of funds paid to employees is information about the management of public funds. Hence, it concerns public affairs. Transparency of public financial management, the court notes, is one of the guarantees for the implementation of the constitutional right to public information.

Relations of local governments with business – transparency of contracts

A case of the agreement signed as a public-private partnership between the Gdańsk local government and Immo Park sp. z o.o., involving the construction of car parks in the city centre, was also successful. Consent to disclose details of the contract was not to be given by the city's partner due to the protection of business confidentiality. We had been exchanging letters for many months regarding the extent of the transparency of this contract. The case did not end up in an administrative court; it ended at the stage of exchanging letters and complaining the city's decision to the Local Government Appeal Court in Gdańsk. The documents were published in the Public Information Bulletin of the City of Gdańsk.

After three years, the case of the disclosure of Szczecin's sponsorship agreement with Netto sp. z o.o. was also successful. The issue was how much the company paid to be the title sponsor of the arena,

meaning that the name Netto Arena would appear on the arena. The section of the agreement between Netto sp. z o.o. and the Municipality of Szczecin, in which the parties agreed on the financial terms of cooperation, was covered up (§9). Supposedly, the reason was to protect business confidentiality. The court case began with our application dated 9 January 2018. Back in 2020, the Voivodeship Administrative Court in Szczecin ruled (II SA/Sz 153/20) that disclosure does not threaten the company's market position. Entering into a sponsorship agreement is not a significant innovation in a competitive market. It also does not disclose information about the promotion budget, as a large company like Netto sp. z o.o. undertakes also other activities to promote its brand, and this is only one of its activities. Moreover, competition, based on this one agreement, will not be able to determine how much money the company is getting from other entities. The next agreement, dated January 2021, was fully public from the beginning. At that time, the amount from the previous agreement was also revealed. For its name on the arena, the company will pay the city 617 thousand a year and in the next agreement about 630 thousand a year.

Monitoring and its effects

Report on the state of the municipality

In 2020, we monitored the debate around the reports on the state of the municipality. As a result, we took steps to socialise the debate around the reports. Together with the Pole Dialogu Foundation, we worked with municipalities to bring changes to conversations about the reports. We started in late 2020 as part of a project supported by Open Society Foundations for Europe. Most of the activities took place in 2021.

Our goal was to use the annual report more effectively to initiate a joint discussion among residents, councillors, and authorities on the state of the municipality. As part of the project, civil servants and municipal authorities participated in training sessions to enhance their knowledge and skills in the areas of law, principles of participation, and involvement of residents or presentation of data. It was also an opportunity to exchange experiences on best practices with other municipalities that care about involving residents in the process of creating the report.

In 2021, we also resumed monitoring of the reports on the state of the municipality. This time, we analysed how it is created.

Blocking on Facebook

In 2021, the case of Norbert Orłowski concerning his being blocked on a fan page by the mayor of the City of Ciechanów was pending before the District Court in Płock. This was an important precedent-setting case for us, related to the monitoring of social media blocking implemented two years earlier (in 2019). It was then that we began working with the Helsinki Foundation for Human Rights in this regard.

With the support of the Helsinki Foundation for Human Rights, the journalist filed an action with the Płock District Court, indicating that blocking on Facebook violated his personal rights. The Citizens

Network Watchdog Poland submitted a friend of the court opinion on the matter. In October 2021, the court dismissed the action. In its oral reasoning, the court acknowledged that the case involved important values: freedom of expression, liberty, the right of access to public information, and freedom to practice one's profession, all of which are provided for in both the Constitution and international documents. However, according to the court, since the mayor of Ciechanów runs the fan page on his own, and no city employee participates in running the profile, the mayor was entitled to block the journalist. The court also said that the designation of a public figure's fan page means that the profile is publicly accessible to all, and that freedom of expression and the right of access to information do not constitute personal rights protected under Articles 23 and 24 of the Civil Code.

A friend of the court opinion submitted by the Citizens Network Watchdog Poland – <https://siecobywatelska.pl/wp-content/uploads/2021/06/Opinia-przyjaciela-Sad-Okregowy-w-Plocku.doc.pdf>

Influencing the law and the rule of law

An important part of our activities is to influence the law. In 2021, we achieved great success in proactive disclosure of public information together with Poland.

Central Register of Contracts

In September 2021, the Sejm passed amendments to several acts, introducing legislation to prevent corruption. New legislation was introduced, requiring public sector entities to keep records of contracts concluded and to publish them in the Bulletin of Public Information from 2022 onwards. Thanks to our efforts, the Senate amended this legislation to create a single, central register. Data are supposed to be entered in the register by public finance sector entities. The register itself is supposed to enable mathematical processing of data. This is of great importance for the ability of state services, citizens, journalists, and entrepreneurs to analyse information. It also contributes to savings. Many distributed registers would generate more costs and there would be much less societal benefits than with a central register.

Presentation to the Senate of an opinion to the act on amending the Criminal Code and certain other acts. 6 October 2021. <https://bip.siecobywatelska.pl/userfiles/file/Opinie/Opinia.pdf>

Opinion for the Sejm on the Senate's resolution on the act on amending the Criminal Code and certain other acts. 11 October 2021. [https://bip.siecobywatelska.pl/userfiles/file/Opinie/Opinia-dot_-CRU-11_10_2021\(4\).pdf](https://bip.siecobywatelska.pl/userfiles/file/Opinie/Opinia-dot_-CRU-11_10_2021(4).pdf)

Contribution to the European Commission's rule of law report

In March, we submitted a contribution to the European Commission's 2020 Rule of Law Report. We highlighted several issues we had been raising for years:

- Lawmaking. Including, in particular, the under-documentation of many actions taken; the denial of information about key decisions by indicating that they are internal, working, or technical documents; the discretion of obligated entities and administrative courts.
- Suspension of the ordering of asset declarations and the discretionary classification of some of them as “restricted”. Transparency of the asset declarations of the prime minister, ministers, and deputy ministers. By law, they are public if the person holding such a position decides to disclose the assets themselves. This was supposed to be changed by the pre-election act of 13 October 2019, which is stuck in the Constitutional Tribunal. Eventually, in late 2020, the Constitutional Tribunal ruled that the unconstitutionality of some of its provisions meant that the entire act could not go into effect.
- Lack of transparency of the two largest parties – Law and Justice and Civic Platform.
- Lack of regulation of whistleblowers.
- Lack of rules governing the outsourcing of advertising to the media by public institutions.
- State-owned companies' failure to answer questions from some journalists.
- The unsettled issue of deleting Article 212, concerning the criminal sanction for defamation, from the Criminal Code.
- Failure to elect the Ombudsman in time.
- President's use of privileged position to campaign for election in pandemic.
- Organising the May 2020 presidential election despite the lack of a legal basis and a series of violations regarding the protection of voters' personal data.

In the following months, we were invited to consultative meetings with representatives of the European Commission and in November 2021 with the Commissioner for Justice and Consumers, Didier Reynders. During the meeting, we underscored the importance of protecting the rights of citizens through the judiciary, pointing to our numerous cases concerning the release of voter register data to the Polish Post by some municipality heads and mayors without legal basis. By way of examples, we showed that both the President of the Office of Personal Data Protection evaded pointing out to municipalities that it would be a violation of the law to hand over the data, and the State Election Commission resorted to evasively addressing the issue of the formal signature of the Polish Post's application. Prosecutors do not want to initiate proceedings. And only district court judges can uphold the rights of citizens by ordering the initiation of proceedings.

At the meeting with the Commissioner, we also pointed out that many irregularities would never have been exposed if not for the activity of civil society. Given the main goal of the rule of law report, there should be more support for the activities of social organisations. To find effective ways to do this, a civil society strategy would have to be prepared and implemented. This was the demand made in a report by one of the MEPs, Anna Donath, which was being processed in the LIBE Committee. The report was discussed in the last months of 2021, and thanks to cooperation with MEPs, we were able to develop it with a clear indication of the right to information as a basis for building civil society.

Contribution to the European Commission's 2021 Rule of Law Report. (8 March 2021)
<https://bip.siecobywatelska.pl/userfiles/file/Opinie/Wk%C5%82ad%20Watchdoga%20do%20raportu%20o%20praworz%C4%85dno%C5%9Bci%202021%20tlumaczenie.pdf>

Election of the Ombudsman

At the beginning of 2021, civic Ombudsman candidate Zuzanna Rudzińska-Bluszcz was not elected by the Sejm for the third time. The third time, however – for the first time, there were counter-candidates and the ruling majority – five months late – got down to choosing the Ombudsman. The civic candidate resigned from running for the position of the Ombudsman for the fourth time, deeming the way the Ombudsman was elected to have little to do with the stature of the position and constitutional values. Over the following months, the ruling majority tried by force to select candidates who did not meet basic principles of independence or competence, but was prevented from doing so by the Senate, in which the opposition had the upper hand. At that time, the Constitutional Tribunal, which also depends on the ruling majority, ruled to end the previous Ombudsman's ability to exercise his function while a new one had not yet been elected. Citizens were to be left without an Ombudsman. Together with other social organisations, we were continually raising this issue. As a result of public and media pressure, the ruling majority accepted a competent and independent opposition candidate, prof. Marcin Wiącek. Protection of the principles of the Constitution was successful.

Social organisations gathered in the action Akcja Nasz Rzecznik, of which we had been a leader for many months, decided to build a grassroots initiative to permanently support the office of the Ombudsman. So that the situation of trying to marginalise or make this position dependent will never happen in the future – not only during elections, but also on a daily basis. The initiative was established at the National Federation of Non-Governmental Organisations. It has been monitoring the process of passing a budget for the Ombudsman, how public institutions respond to the Ombudsman's general speeches, and working in teams that develop demands for systemic problems and their priorities.

Action's website: naszrzecznik.pl and the statement of social organisations on the takeover of the office of the Ombudsman by the parliamentary majority (16 April 2021) <https://bip.siecobywatelska.pl/userfiles/file/Opinie/Oswiadczenie%20RPO%202021.pdf>

Purchase of regional newspapers by a state-owned company

At the beginning of the year, the oil company PKN Orlen, in which the State Treasury admittedly held only a 27% stake, but had a decisive voice as the largest shareholder, purchased a chain of regional newspapers and printing plants from the media company Polska Press, which were also used by other newspapers. This information was already known at the end of 2020, but it was in 2021 that the Office of Competition and Consumer Protection approved the purchase. Social organisations turned to the Ombudsman (who at the time was still prof. Adam Bodnar, in office after the end of his term and before the end of his service by the power-dependent Constitutional Tribunal) to challenge this approval. We were one of the appealing organisations, and in our application we pointed out that PKN Orlen would act as a publisher and conduct business in connection with the transfer of ownership of printing plants used by other newspapers. We drew attention to international standards related to media freedom, but also to Article 14 of the Polish Constitution – the Republic

of Poland ensures freedom of the press and other means of social communication. It follows that the existence of any media legally subordinate to and controlled by the government is ruled out.

The Ombudsman challenged the Office's decision, and the court suspended PKN Orlen's takeover of the press. In practice, however – the company was taken over, editors-in-chief were replaced, and more journalists began to quit their jobs.

Application to the Ombudsman to challenge the decision of the President of the OCCP No. DKK-34/2021 dated 05.02.2021.
https://bip.siecobywatelska.pl/userfiles/file/Opinie/Wniosek_do_RPO_Orlen.pdf

Protection of whistleblowers

At the end of 2021, the Polish government prepared a draft act on the protection of whistleblowers dated 14 October 2021. This act, about two months before the deadline for implementing the Directive on the protection of whistleblowers, was to implement its provisions. In conjunction with the “Akademia Antykorupcyjna” Foundation, the Stefan Batory Foundation, the Helsinki Foundation for Human Rights, the Institute of Public Affairs, and the Independent Self-Governing Trade Union “Solidarity ‘80”, we submitted an opinion in the consultation announced by the government.

We pointed out that the preparation of the government draft and its consultation stage came very late if one takes into account that the EU Directive was adopted on 23 October 2019. At the same time, we were highly critical of the fact that this tardiness would be paid for by employers, who were given a very short two-week deadline to comply with the act's requirements for preparing internal signalling procedures. Moreover, according to the act, the preparation of the procedures would be preceded by consultations with trade unions and labour representation. Failure to implement the procedures, in turn, would be subject to criminal sanctions.

We also criticised that for nearly two years there had been no outreach effort on the part of the government to raise awareness among employers of the obligations awaiting them and to build a more positive image of whistleblowers in society. As a result, many entities are now surprised by the announcement of new regulations and immediately treat the new obligations with reluctance.

Another issue raised in our opinion was the draft's failure to root itself in the existing experience of whistleblowers in Poland, publicised by the media and related to the activities of social organisations. A number of high-profile cases of abuse uncovered thanks to employees breaking the conspiracy of silence would not be within the draft's area of influence. Not covered by the scope of the act will remain whistleblowers working in the uniformed services, thanks to whom scandals involving mobbing in the Polish army or inflated procurement quotas for the prison service came to light. Moreover, the draft completely excluded the application of the act's provisions to the protection of classified information.

And finally, we were critical of the provision that the provisions of the act on public disclosure are partially inapplicable if the transfer of information is made directly to the press.

A position paper by the “Akademia Antykorupcyjna” Foundation, the Stefan Batory Foundation, the Helsinki Foundation for Human Rights, the Institute of Public Affairs, the Independent Self-Governing Trade

Union “Solidarity ‘80”, and the Citizens Network Watchdog Poland in consultations of the draft of the act on the protection of whistleblowers dated 14 October 2021. (17 November 2021)
https://bip.siecobywatelska.pl/userfiles/file/Opinie/stanowisko_17_11_2021.pdf

National Recovery Plan

We also submitted an opinion to the National Recovery and Resilience Plan in the section on digitisation. As we pointed out, since the implementation of electronic invoice circulation in business is planned, it would be appropriate to use this change to increase transparency and prevent corruption. We called for making the invoices issued to administrative units public, creating a central invoice register where citizens can see the expenditures of individual municipalities and organisational units, and making it mandatory to make invoices public in the system when executing public contracts. To some extent, though not in connection with electronic invoice circulation, similar demands were met by the Central Contract Register.

In addition, we pointed out that part of the implementation of the National Recovery Plan should be the creation of a database to transparently present the subsidies granted by the state. Such a database would increase the transparency of the system, make it easier to obtain information, and allow data to be grouped in one place for officials, citizens, analysts, and researchers.

Contributions to the National Recovery and Resilience Plan submitted through a consultation form. 1 April 2021.
<https://bip.siecobywatelska.pl/userfiles/file/Wk%C5%82ad%20Watchdog%20Polska%20do%20Krajowego%20Planu%20Odbudowy.pdf>

Laws restricting transparency – issuing opinions

2021 was unprecedented when it comes to the attack on transparency.

The state of emergency was unprecedented in terms of attacks targeting transparency. A state of emergency was imposed on the border with Belarus, and access to information was cut off. In this case, we were mainly concerned with monitoring the consequences of the state of emergency. We found that when requesting information, restrictive regulations were relatively rarely cited, while responses that did not provide any relevant information were a real problem.

However, when it comes to other laws, the restrictions proved severe.

The first such restriction was the amendments to the Foreign Service Act, which introduced the **concept of “diplomatic secrecy”**. We have been struggling with attempts to introduce such secrecy, which is defined vaguely and without imposing procedures each time, since 2011. Previous promoters of such secrecy were therefore politicians from the Civic Platform. However, this was only achieved by Law and Justice politicians, with the open support of Radosław Sikorski, a Civic Platform MEP, who backed the measure during the discussion of the Foreign Affairs and European Union

Committee in the Senate. According to the new definition, diplomatic secrecy means information with which a member of the foreign service became acquainted in connection with the performance of their duties and which, for the sake of the foreign service, could only be made available to authorised persons, and the disclosure of which could harm the foreign policy of the Republic of Poland and damage its international image.

Since the definition is very broad, and the official bears disciplinary and criminal liability for disclosure of diplomatic secrets, we pointed out the powerful chilling effect. Moreover, we were concerned that if an official had a choice of simply withholding information, citing diplomatic secrecy, or imposing the appropriate classification using time-consuming procedures, they might be tempted to choose the first regime. And in doing so, they will not only limit access to information, but also potentially increase the threat of disclosure of inadequately secured documents that should actually be kept secret and secure. In addition, there are no time limits on how long a given piece of information can be withheld, and the discretionary nature of keeping something secret can result in something being secret according to one official and not according to another. The regulations were adopted.

In this regard, we sent an opinion to MPs, prepared by prof. Michał Bernaczyk. 12 February 2021.
https://bip.siecobywatelska.pl/userfiles/file/Opinie/Tajemnica_dyplomatyczna_12022021.pdf

In contrast, another statutory change, in the area of criminal provisions, introduced a provision according to which **access to completed prosecutorial preparatory proceedings is to be possible only with a consent of the prosecutor**. This change is extremely damaging to the rule of law. The prosecutor's office is now dependent on politicians. In many cases of importance to ruling politicians, proceedings end at the preliminary stage. Our organisation sees this at the level of cases involving the transfer of voter register data to Polish Post without the existence of a legal basis authorising this company to conduct elections. Out of 200 notices to the prosecutor's office, only one initiated proceedings. And when courts ordered them to be carried out, files show that often prosecutors do not check at all the grounds for the decision to transfer data and the decision-making processes that took place in the office. Staff members that sent an email or received it – IT specialists, administrative staff, and deputies are questioned, but not municipality heads and mayors. It is not being verified whether data inspectors were consulted on the matter, and whether municipality heads and mayors consulted anyone at all, and why they ignored the warnings they received from social organisations. These negligent acts by prosecutors could be evaluated by the media and social organisations. However, as a result of the new regulations, these entities will be cut off from information which allows to check specific cases. Previously, it was possible to request the table of contents of materials from preparatory proceedings and receive the relevant materials based on a request for information.

The Supreme Bar Council, whose comments we agreed with, spoke strongly on the matter.
<https://siecobywatelska.pl/drugie-czytanie-projektu-ustawy-zamykajacej-jawnosc-teczek-prokuratorskich/> 15 March 2021.

Then, the Act on Amending the Act on the Protection of Animals Used for Scientific or Educational Purposes proved to be a problem. In this matter, we supported organisations protecting animal

rights by pointing out the need for their participation in proceedings concerning the **approval of animal experiments** and **the transparency of documentation related to these proceedings**. While the former demand was met, the latter – regarding transparency of proceedings – was rejected by the Sejm.

Opinion of the Citizens Network Watchdog Poland and the Lex Nova Foundation for Legal Protection of Animals on the draft Act Amending the Act on the Protection of Animals Used for Scientific or Educational Purposes. 30 August 2021. https://bip.siecobywatelska.pl/userfiles/file/Opinie/OPINIA-PRAWNA-Doswiadczenia-jawnosc-udzial-organizacji_docx.pdf

Civic education

In terms of civic education, there were many innovations in 2021.

Monday with a verdict – education on court ruling

Throughout the year, we published articles, promoted on social media, entitled “Monday with a verdict”. We presented one selected court verdict on the right to information every Monday.

(Bez)Nadzieja małej gminy (Hope(lessness) of a small municipality) – a course for those who want local rule of law

For several months, we ran an online course called (Bez)Nadzieja małej gminy (Hope(lessness) of a small municipality) to which we invited people who are active locally and want to learn more about how a municipality works, and talk to others about the biggest challenges they face in their business. The course consisted of 12 evening webinars, which covered topics such as the following: the principles of transparency and the rule of law in Poland; complaints, applications, petitions; the local initiative; the village council fund; the rights and duties of the councilman; the municipal budget; supervision of municipal operations – the role of the governor and the Regional Chamber of Audit; the rules for organising and conducting municipal sessions and commissions; the functioning of auxiliary units in municipalities; municipal management; spatial planning; garbage policy. We invited our own and external expert-practitioners to conduct the webinars. As we enrolled more than 100 people for the course, the group was divided into smaller teams. They were cared for by members of our organisation. In these subgroups, discussions were held, during which the participants shared their knowledge and experiences. Over the summer, the group decided to hold a follow-up meeting at two participants' homes on its own. So, together with the group, we developed a new form of education based on its experience.

School of Watchdog Initiatives – a course for local watchdogs

In 2021, due to the uncertainty of the pandemic, we did not organise the School of Watchdog Initiatives, which requires in-person meetings, but we started recruiting for the VI School of Watchdog Initiatives for provinces in Western, Northwestern and Southwestern Poland. Out of more than 100 applications, 22 people were selected who most closely matched the profile of a watchdog – a person interested in actions of the authorities and willing to remain independent of power, not to

stand for election, to act openly, honestly, and for the common good. Back in 2021, we held our first online meeting, but further meetings, including in-person meetings, were scheduled for 2022.

Cooperation with the Edukacja dla Demokracji Foundation – seminar on watchdogging

A workshop on watchdog organisations organised in cooperation with the Edukacja dla Demokracji Foundation within the framework of the programme “Aktywni Obywatele – Fundusz Regionalny” was also an important event. The workshop was held online and was designed to network the watchdog community. However, from our point of view, a much more important gain was that we were able to tell what is different about the activities of a local watchdog organisation from those of other organisations. We told this story through the mouths of our members from Civic City Lubartów, a member from the foundation Fundacja Wolności and a graduate of the School of Watchdog Initiatives from our town – Stalowa Wola. This event is important because for years we have seen a lack of adequate funding, which could strengthen the activities of such organisations. In 2021, thanks to the high revenue from the 1% and our improved financial situation, we began building a grant programme. Having the material (recording) of the discussion between watchdog organisations, we hope to see the emergence of more well-designed grant programmes or donors willing to allocate funds for this purpose.

Webinars and livestreams

We also held 8 open webinars or livestreams on current events. Most of them were translated into Polish Sign Language, which has also been introduced into the standards of our education – especially universally available one.

Prior to the debates on the reports on the state of the municipality, we held a webinar entitled “Debate on the Reports on the State of the Municipality – Law, Practice, Inspiration”.

On 6 September 2021, on the occasion of the 20th anniversary of the Access to Public Information Act, we held a live “How does digitisation help transparency?” during which we looked at how the conditions for providing access to information have changed after 20 years of the act’s being in force.

On 28 September, in turn, we discussed about the topic “Is there anything to celebrate in Poland on International Right to Information Day?”.

In early September, the livestream “Fundusz sołecki bez tajemnic” (Village fund without secrets) was also popular.

On the occasion of the opening of the two projects, we held two online discussions – “Locally inquisitive – about transparency and the role of watchdogs in Poland” and “Transparency in the lawmaking process”.

On the wave of interest in our school, we held a live “Lesson on transparency, or the right to information at school”, and on the eve of the Open Data Act, adopted in 2021, coming into force, we

decided to bring it closer to our audiences with “Act on Open Data and Reuse of Public Sector Information – what does it give us?”.

Counselling

In 2021, to the online legal clinic porady.siecobywatelska.pl run by the Citizens Network Watchdog Poland, 690 people applied, registering a total of 1,260 cases. This is about 240 more than in 2020.

919 of the reported cases involved access to public information. In other cases, people sought advice on the village fund, the powers of councillors, blocking residents on communal social media, and other residents' rights. In about 120 of cases, we were unable to help because the questions went beyond the scope of our counselling.

The most common problem regarding access to information that clients of the legal clinic reported was that the offices considered that the data requested by the requesting party was not public information (13% of the cases, of which the “internal document” problem appeared in 3% of all reported cases). Just as often, clients of the clinic found it difficult to get a response to a request due to the fact that the information they requested was considered processed (12% of cases submitted to the legal clinic). Sometimes we were also contacted by people who simply wanted to make sure that the application they had prepared was correct and would not encounter the above problems (9% of cases).

Our clients were most interested in topics related to the functioning of public institutions (44% of cases), e.g. audits and inspections or legal services, and the spending of public funds (25% of cases), e.g. the granting of awards or the content of concluded contracts.

We received requests for legal advice from individuals, informal groups, NGO representatives, journalists, councillors, and officials.

The public institutions most frequently controlled by the clients of our counselling service were municipality, city, and district offices (almost half of all cases reported to the counselling service in 2021). Municipal or treasury companies, courts, ministries, schools, or the police were asked far less frequently.

Coalitions

In 2021, we began an ongoing collaboration with CASE ([Coalition Against SLAPP in Europe](#)). We informed what lawsuits against public participation, or SLAPP, are. In Poland loudly resonated the case of the creators of Atlas Nienawiści who were sued by several districts for posting information on <https://atlasnienawisci.pl/> about the districts' adoption of resolutions on the Local Government Charter for Family Rights or resolutions expressing opposition to LGBT ideology. We publicised the Anti-SLAPP competition organised by CASE, in which companies, corporations, and politicians from all over Europe that most often sue human rights defenders, activists, or journalists competed against each other. We encouraged people to sign a petition addressed to the European Commission to take action against SLAPP.