

Shrinking Space for Civil Society: A Case Study of Poland

Adam PŁOSZKA^{*}

This article discusses the phenomenon of shrinking space for civil society organizations in Poland, a Member State of the European Union and Council of Europe. It describes the tools used by Polish public authorities to restrict the operational capacity of civil society and compares these tools with the applicable constitutional and human rights standards. The article's summary presents recommendations concerning the methods of addressing this phenomenon in Poland, which are capable of being applied in a broader context of other countries of Central and Eastern Europe.

Keywords: human rights, ECHR, shrinking space, civil society

1 INTRODUCTION

The phenomenon of the state imposing restrictions on the operations of civil society organizations (CSOs) is usually described as the 'shrinking space for civil society'. Even though it becomes an increasingly popular theme of public debate, this trend is relatively difficult to grasp from a legal perspective. The reason for this is that states enjoy inherent capacity to use a wide range of tools designed to limit the operational freedom of civil society organizations; the vast majority of those tools are related to the process of applying rather than creating laws. For example, by applying laws instrumentally, the state gains the ability to administratively interfere with the creation and independent operation of organizations. The state may also decide to take or refrain from taking action in response to physical attacks on CSO activists or their offices. However, the mere identification of certain cases of instrumental application of laws is insufficient to consider them as deliberate conduct of public authorities aimed at restricting space for civil society. Such a conclusion would require a certain, long-term and recurrent pattern of behaviour, accompanied by an accumulation of different manifestations of instrumental application of laws. State-orchestrated legislative actions designed to curtail non-governmental organizations (NGOs) operational

^{*} PhD, Assistant Professor at Centre for Human Rights, Faculty of Law and Administration, University of Warsaw, Poland. ORCID, <https://orcid.org/0000-0002-9116-7679>. Email: a.ploszka@wpia.uw.edu.pl.

capabilities (especially by means of budget cuts) are much easier to observe and probably – for this very reason – less frequently used.

The shrinking space for civil society is not a new phenomenon, but it has grown in scale in recent years, especially since the 2005–2006 period.¹ According to data released by the international NGO CIVICUS, only 4% of the world's population living in countries where they may freely use the public space for civil society. However, in 111 countries members of the public face major difficulties in accessing and establishing CSOs and the organizations themselves find it difficult to operate.² The incidence of shrinking space for civil society can also be seen as a litmus test for democracies that move towards an illiberal or even authoritarian model.

The assumption of a human rights perspective in the analysis of this phenomenon leads to the conclusion that the above examples of instruments used by states to restrict the space for civil society are also measures of interference with human rights, in particular freedom of peaceful assembly and association and freedom of expression. As an aside, the European Court on Human Rights (hereinafter: ECtHR)³ in its well-established jurisprudence declared that an interference with rights guaranteed in Articles 8–11 of the European Convention on Human Rights can be justified only by necessity which springs from 'democratic society'.⁴ Based on that notion, any interference in human rights which realizes shrinking space policy might be, therefore, declared unjustified and unlawful.⁵ Apart from interferences with specific rights of individuals, the use of these tools in itself constitutes an intrusion into the general system of human rights protection (both at the national and international level), in which CSOs dealing with human rights play

¹ Douglas Rutzen, *Civil Society Under Assault*, 26(4) J. Democracy 28–39 (2015); See more about the shrinking space phenomenon: Carl Gershman & Michael Allen, *The Assault On Democracy Assistance*, 17(2) J. Democracy 36–51 (2006); Chris van der Borgh & Carolijn Terwindt, *Shrinking Operational Space of NGOs – a Framework of Analysis*, 22(8) Dev. Prac. 1065–108 (2012); Helmut Anheier, Markus Lang & Stefan Toepler, *Civil Society in Times of Change: Shrinking, Changing and Expanding Spaces and the Need for New Regulatory Approaches*, 13(8) Economics: Open-Access, Open-Assessment E-J. 1–27 (18 Jan. 2019).

² CIVICUS, *People Power Under Attack A Global Analysis of Threats to Fundamental Freedoms* 4 (Nov. 2018), <https://www.civicus.org/documents/PeoplePowerUnderAttack.Report.27November.pdf> (accessed 4 Nov. 2019).

³ Convention for the Protection of Human Rights and Fundamental Freedoms. Poland ratified ECHR in 1993.

⁴ See e.g. ECtHR judgment in case of *United Communist Party of Turkey and others v. Turkey* (30 Jan. 1998), application no. 19392/92, § 45. See also ECtHR judgment in case of *Refah Partisi (The Welfare Party) and others v. Turkey* (13 Feb. 2003) (applications nos. 41340/98, 41342/98, 41343/98 and 41344/98).

⁵ The relationship between the phenomenon of shrinking space for civil society and human rights are analysed in detail in: Antoine Buyse, *Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights*, 22(8) Int'l J. Hum. Rts. 966–988 (2018).

a vital role.⁶ This is one of the reasons why the international community strives to oppose this phenomenon in various ways.⁷

The shrinking space for civil society has so far been a problem observed mainly in countries outside Europe. However, several years ago, this phenomenon appeared (and has been persisting ever since) in Member States of the Council of Europe⁸ and of the European Union,⁹ with Hungary and the Republic of Poland being a good example of this trend.¹⁰ Poland's case is particularly interesting as the country's turbulent history seems to provide a solid foundation for the desire to ensure special protection for civil society. Civil society organizations – with the once 10-million strong Solidarity trade union at the forefront – played a key role in Poland's peaceful transition from an authoritarian state behind the Iron Curtain to a democratic country proud of its Council of Europe and European Union membership. The second reason which makes Poland an interesting case stems from the fact that shrinking space policy of the Polish Government is currently among the issues discussed by the European Commission with government of Poland under the Rule of Law Framework.¹¹ The third reason, connected with the second one, is that the policy of shrinking space for civil society pursued by the Polish government is carried out without any amendments to the Constitution. Introducing the latter would require the government to have constitutional majority in the parliament. This fact differentiates the situation of Poland and Hungary as in Hungary shrinking space policy was accompanied by changes to the

⁶ See in general: David Weissbrodt, *The Role of Nongovernmental Organizations in the Implementation of Human Rights*, 112(293) *Texas Int'l L. J.* 293–320 (1977); Laurie S. Wiseberg, *The Role of Non-Governmental Organizations (NGOs) in the Protection and Enforcement of Human Rights*, in *Human Rights: International Protection, Monitoring, Enforcement* 347–372 (Janusz Symonides ed., New York 2017); and also more specifically: Dianne Otto, *Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society*, 18 *Hum. Rts. Q.* 107–141 (1996); Rachel A. Cichowski, *Civil Society and the European Court of Human Rights*, in *The European Court of Human Rights Between Law and Politics* (Jonas Christoffersen & Mikael Rask Madsen eds, Oxford 2013); Lucja Miara & Victoria Prais, *The Role of Civil Society in the Execution of Judgments of the European Court of Human Rights*, 5 *Eur. Hum. Rts. L. Rev.* 528–537 (2012).

⁷ The activities taken by the EU and its Member States to address this phenomenon are summarized in *European Parliament Study Shrinking Space for Civil Society: The EU Response* (Brussels 2017), [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578039/EXPO_STU\(2017\)578039_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578039/EXPO_STU(2017)578039_EN.pdf) (accessed 4 Nov. 2019).

⁸ Council of Europe Commissioner for Human Rights, *The Shrinking Space for Human Rights Organisations*, Human Rights Comment (4 Apr. 2017), <https://www.coe.int/en/web/commissioner/-/the-shrinking-space-for-human-rights-organisations> (accessed 4 Nov. 2019).

⁹ This subject has been recently examined in a study by the European Union Agency for Fundamental Rights. See FRA, *Challenges Facing Civil Society Organisations Working on Human Rights in the EU* (Luxembourg: Publications Office of the European Union 2017).

¹⁰ A very general and concise description of this phenomenon affecting Hungary and Poland is given in: Eduard Nazarski, *Shrinking Space for Civic Space: The Countervailing Power of NGOs*, 35(4) *Netherlands Q. Hum. Rts.* 272–281 (2017).

¹¹ European Commission, *Rule of Law in Poland: Commission Starts Dialogue* [Press Release], <http://europa.eu/rapid/press-releaseMEMO-16-62en.html> (accessed 4 Nov. 2019).

Constitution. Finally, despite great interest of legal scholarship in the rule of law situation in Poland, the shrinking space policy has not yet been covered in literature. For the above grounds, this article presents a detailed analysis of the Polish case.¹²

The main focus of this analysis is on the methods used by public authorities in Poland to restrict the opportunities for civil society groups to engage in public activities. The application of these methods will be confronted with applicable standards stemming from ECtHR case law. It is noteworthy that the ECtHR has not delivered any judgment yet in a case against Poland related to use of such tools in Poland after 2016. However, so far the Court's response to the phenomenon of shrinking space for civil society has been comprehensive and indirect. It concentrated mostly on freedom of assembly and association, as these freedoms have a crucial meaning for the operation of civil society.¹³

Finally, paper evaluates also the acceptability of the use of these tools from the constitutional perspective. The article's summary presents recommendations concerning the methods of addressing this phenomenon in Poland; these recommendations are capable of being applied in a broader context of other countries of Central and Eastern Europe.

2 A CHANGE IN DIRECTION OF DEVELOPMENT OF POLISH DEMOCRACY

An analysis of mechanisms causing the shrinking of space for civil society in Poland should be preceded by a short mention of the change in the direction of the state's development after the 2015 parliamentary elections.¹⁴ An essential element of this

¹² See also Helsinki Foundation for Human Rights report: *The Situation of Civil Society Organisations in Poland* (Warsaw 2017), http://www.hfhr.pl/wp-content/uploads/2017/09/HFHR_situation_ngos_in_Poland_brief.pdf (accessed 4 Nov. 2019).

¹³ ECtHR address shrinking space issue not only in context of freedom of association, but also in connection with other rights guaranteed by ECHR, e.g. freedom of speech, right to liberty. This issue can be (and should be) elaborated in separate research paper. Here, only to give a picture of multifaceted jurisprudence, it is worth to mention three mile-stone judgments delivered by Court in cases of: *Rasul Jafarov v. Azerbaijan* (application no. 69981/14) *Mammadli v. Azerbaijan* (application no. 47145/14), and *Aliyev v. Azerbaijan* (application no. 68762/14 and 71200/14). In these judgments ECtHR found a breach of Art. 18 in conjunction with Art. 5 as the applicants' arrests and detentions had pursued solely the ulterior purpose of silencing and punishing them for their activities respectively in the area of human rights and electoral monitoring.

¹⁴ This issue is a subject of a numerous scientific publications. See especially: Wojciech Sadurski, *How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding*, Legal Studies Research Paper 2018/01; Mirosław Wyrzykowski, *Bypassing the Constitution or Changing the Constitutional Order Outside the Constitution*, in *Transformation of Systems in Central Eastern and South-Eastern Europe in 1989–2015. Liber Amicorum in Honorem Rainer Arnold* (Andrzej Szmyt & Bogusław Banaszak eds, Gdańsk 2016); *Konstytucyjny spór o granice zmian organizacji i zasad działania Trybunału Konstytucyjnego: czerwiec 2015–marzec 2016* [Constitutional dispute on limits of changes re-garding

change is the process of gradual shift towards centralization and departure from the principle of separation and balance of powers between the legislative, executive and judiciary branches of government, which is a key element of the principle of the rule of law. This has been accompanied by the executive branch's attempt to subordinate all independent decision-making centres.¹⁵ This process should be considered completed in the context of the public media, the National Council of the Judiciary (the constitutional body designated to safeguard the independence of the judiciary and judges), the prosecution office (which is supervised by a member of the Cabinet, the Minister of Justice, who is also a Public Prosecutor General – top prosecuting officer in Poland) and the Constitutional Tribunal, which has completely lost its independence.¹⁶ Attempts were also made to limit the independence of the Supreme Court and common courts. These were met with a response: the European Commission launched an infringement procedure against Poland,¹⁷ as well as CJEU has already delivered a significant number of judgments in relation to changes in judiciary in Poland.¹⁸

The change in the direction of development of democracy in Poland also entails public authorities' actions designed to limit the space for civil society in Poland, which have been carried out since 2016, as well as the establishment of the first GONGO (government-organized non-governmental organization) in Poland – the Polish National Foundation – responsible for putting together a smear campaign against the judiciary in 2017, which served as a prelude to the government's attempt to limit independence of courts.

organization and methods of work of the Constitutional Court: June 2015–Mar. 2016] (Piotr Radziejewicz & Piotr Tuleja eds, Wolters Kluwer, Warsaw 2017); Adam Bodnar, *Protection of Human Rights After the Constitutional Crisis in Poland*, 66 *Jahrbuch des öffentlichen Rechts der Gegenwart*, 2018, 639–662; Wojciech Przybylski, *Can Poland's Backsliding Be Stopped?*, 29(3) *J. Democracy* 52–64 (July 2018); Mirosław Wyrzykowski, *The Vanishing Constitution*, in *European Yearbook on Human Rights* 3–46 (Wolfgang Benedek et al. eds, Intersentia 2018).

¹⁵ See *supra* n. 14 and Wojciech Sadurski, *Poland's Constitutional Breakdown* (Oxford 2019).

¹⁶ Compare Wojciech Sadurski, *Polish Constitutional Tribunal Under PiS: From an Activist Court, to a Paralysed Tribunal, to a Governmental Enabler*, 11 *Hague J. Rule L.* 63–84 (2019); Leszek Garlicki & Marta Derlatka, *Constitutional Court of Poland. 1996–2018*, in *Development of Constitutional Law Through Constitutional Justice*, XX Int'l Congress Eur. & Comp. Const. L. 151–168 (Rainer Arnold, Anna Rytel-Warzocha & Andrzej Szmyt eds, Gdansk 2019); Tomasz Tadeusz Koncewicz, *The Capture of the Polish Constitutional Tribunal and Beyond: Of Institution(s), Fidelities and the Rule of Law in Flux*, 43(2) *Rev. Cent. & E. Eur. L.* 116–173 (2018); Stanisław Biernat, *The Rule of Law in Poland*, 5 *Nederlandse Vereniging voor Rechtspraak* 7 (2018).

¹⁷ European Commission; *Rule of Law: Commission Launches Infringement Procedure to Protect the Independence of the Polish Supreme Court* [Press Release], http://europa.eu/rapid/press-release_IP-18-4341_en.htm (accessed 4 Nov. 2019).

¹⁸ See especially CJEU judgment in Case C-216/18 PPU, (Request for a preliminary ruling under Art. 267 TFEU from the High Court (Ireland)) (25 July 2018); CJEU judgment in Case C-619/18 (European Commission v. Republic of Poland) (24 June 2019); CJEU judgment in Case C-192/18 (European Commission v. Republic of Poland) 5 Nov. 2019; as well as CJEU judgment in cases C-585/18, C-624/18 and C-625/18. (Request for a preliminary ruling under Art. 267 TFEU from the Sąd Najwyższy).

3 RESTRICTIONS ON THE RIGHT TO PEACEFUL ASSEMBLY

Essentially, one of the most visible features of shrinking space for civil society is the limitation of the physical space for civil society, i.e. the possibility of peaceful assembly.

In Poland, this was done by way of a legislative amendment. A law enacted on 13 December 2016¹⁹ amended the law governing the exercise of the freedom of peaceful assembly, attempting to restrict this freedom. The date of this amendment bears symbolic significance. On 13 December 1981, at the time when Poland was in the Soviet sphere of influence, martial law was imposed throughout the country in response to mass social protests organized by the democratic opposition. Several years later, on an anniversary of this event, two controversial legal concepts, also designed to target civil society, were introduced into the Polish legal system.

The first one is the concept of ‘cyclical assemblies’. Pursuant to Article 26a of the Assemblies Act,²⁰ the status cyclical assembly may only be granted to assemblies that satisfy the five following criteria at the time of submission of the relevant request. First, to be classified as ‘cyclical’, the assemblies concerned must be organized by the same organizer. Second, they must be held at the same place or on the same route. The third criterion relates to their frequency: the assemblies must take place at least four times a year according to a set timetable or at least once a year on state and national holidays. The fourth criterion is that a cyclical assembly must have been held for the last three consecutive years from the date when the motion to register such assembly as a ‘cyclical assemblies’ were lodged regardless of whether they were formally registered. The fifth criterion is that they need to be organized to commemorate events that are momentous and important for the history of the Republic of Poland.

Assemblies with the ‘cyclical’ status are given priority over non-cyclical assemblies. This priority is manifested in the fact that no other assembly can be held at the place and time of a cyclical assembly.²¹

The second controversial concept introduced by this law is the restriction of the right to counter protest.²² Where two or more assemblies are to be held, even partly, at the same place and time, they may be held simultaneously only if the distance between them is at least 100 metres.

The introduction of these two legal concepts into the Polish legal system was intended to enable the undisturbed celebration of the so-called ‘Smolensk anniversaries’, i.e. monthly marches through the streets of Warsaw, the capital

¹⁹ The Act amending the Assemblies Act of 13 Dec. 2016. (Journal of Laws of 2017, item 579).

²⁰ The Assemblies Act of 24 July 2015 (uniform text: Journal of Laws of 2018, item 408).

²¹ As per Art. 14(3) of the Assemblies Act.

²² As per Art. 12(1) of the Assemblies Act.

of Poland, organized to commemorate the victims of TU-154M government plane crash at Smolensk, Russia, on 10 April 2010, which claimed the lives of ninety-six persons, the majority of whom were top state officials, including the Polish President and First Lady. The commemorations were attended by members of the Law and Justice party, who, after winning the 2015 elections, have been taking part in the event as members of the Government. In view of the presence of government officials, several CSOs organized parallel, separate assemblies to demonstrate their opposition to the government's actions which the CSOs considered to be violating the principle of the rule of law. The introduction of the above legislative changes made the organization of such counter protests illegal.

In this context it is worth to mention that ECtHR declared in many occasions that the right to demonstrate publicly involves the possibility of counter-manifestation. In a landmark judgment in the case of *Platform 'Ärzte für das Leben' v. Austria* (application no. 10126/82), the ECtHR stated that when state takes actions in response to a threat associated with the simultaneous holding of two assemblies, it must take into account the obligation to protect the right to gather both demonstrating groups and seek for the least restrictive solutions, enabling in principle the holding of both demonstrations.²³ Moreover, in one of the recent judgments, in the case of *Lashmankin and Others v. Russia*,²⁴ the ECtHR comprehensively addressed many issues concerning shrinking space policy in Russia related to freedom of assembly. The Court stated that the right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11. The Strasbourg Court underlined that the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact.²⁵

4 AN ATTEMPT TO TAKE CONTROL OF THE FREE CITIZENS OF POLAND FOUNDATION

The process of shrinking space for civil society may involve states resorting to legal tools related to the process of regulation and supervision over the activities of the third sector, which result in obstructing the registration of new organizations or interfering with the operations of existing organizations. A well-established

²³ ECtHR judgment in case of *Platform 'Ärzte für das Leben' v. Austria* (21 June 1988), application no. 10126/82, § 40, 43.

²⁴ ECtHR judgment in case of *Lashmankin and Others v. Russia* (7 Feb. 2017), applications nos. 57818/09 and 14 others.

²⁵ Paragraph 405; *See also* ECtHR judgment in case of *Sáska v. Hungary* (27 Nov. 2012), application no. 58050/08, § 21.

practice in this area in Poland can be barely discerned as the government has so far made only one attempt to interfere in a CSO's activities. Nevertheless, this attempt was a symbolic one because of the choice of the targeted CSO. Moreover, it cannot be ruled out that the attempt is a forerunner of further measures of this kind.

The Government attacked The Free Citizens of Poland Foundation, which was founded by a social movement called The Citizens of Poland. Initially, members of this movement co-organized the aforementioned assemblies accompanying Smolensk anniversaries. When, due to the above changes in the Assemblies Act, they were deprived of the possibility of organising legal counter protests, they made numerous attempts to block and disrupt the Smolensk anniversaries, resorting to the means of civil disobedience. However, this was not the only aspect of the activities of this movement financed by the Foundation. The Free Citizens of Poland were repeatedly involved in different initiatives aimed to protect the rule of law in Poland, and the movement itself became a symbol of resistance against undemocratic changes.

In response to the above actions and a clear reference to the idea of civil disobedience written in the Foundation's statutes, the Minister of the Interior and Administration, which is a body that supervises the Foundation, in 2017 applied for court-ordered suspension of the Foundation's Board and appointment of a compulsory administrator,²⁶ claiming that the Foundation acted unlawfully.²⁷

The registry court in Warsaw, rejected the application in a decision issued on 8 November 2018, invoking Article 12 of the Constitution of the Republic of Poland, which will be discussed below. In the statement of reasons supporting the decision, the court noted that an ideological proclamation published on the Foundation's website, which presents a reference to the notion of civil disobedience, was not a statement of the Foundation's Board, and therefore did not constitute a basis for the Foundation's legal liability. The court also noted that the suspension of the board and ordering of compulsory administration would have

²⁶ Application of the Minister of the Interior and Administration of 20 Nov. 2017 for the suspension of the Board of the Foundation and compulsory administration, ref. DZiK-VI-633-1-230/2017, obtained from the Ministry of the Interior and Administration through a freedom of information request.

²⁷ The legal basis for this application was Art. 14 of the Foundations Act of 6 Apr. 1984 (uniform text: Journal of Laws of 2018, item 1491), which stipulates, in the first subpara., that: 'If an action taken by a foundation's board materially violates the law or provisions of its statutes or is inconsistent with its objects, the body referred to in Art. 13 may set an appropriate deadline for remedying such deficiencies in the activities of the board or may request a change of the composition of the foundation's board within a designated time limit'. Further steps are described in Art. 14, subpara. 2. 'After the ineffective lapse of the time limit referred to in subpara. 1, or in the event that the foundation's board persistently acts in a manner i.e. contrary to law, the statutes or objects of the foundation, the body referred to in Art. 13 may request that a court suspend the foundation's board and appoint a compulsory administrator'.

been a disproportionate measure and that the Minister should first use less intrusive means of disciplining the Foundation. Notably, in the aftermath of the court's ruling, the Minister of the Interior and Administration decided not to exercise his right to challenge the decision. This was probably a consequence of the strong social resistance expressed in the public debate surrounding the submission of the Minister's application.²⁸

Registration or unjustified dissolution of NGOs was discussed by the ECtHR on many occasions, especially in the Azerbaijani context.²⁹ In the case of *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, the ECtHR addressed directly the issue of dissolving a CSO on the ground of the alleged breaches of the domestic legal requirements on internal management of NGOs. The Court declared that such interference in freedom of association was not justified by compelling reasons and was disproportionate to the legitimate aim pursued.³⁰ What is more, in ECtHR jurisprudence is also clear that based on Article 11 of ECHR, CSOs have the right to organize management of their own association and to form their internal organizational structure, which states are obliged to secure.³¹

5 CHANGES IN THE FINANCING OF CSOS

One of the basic tools used by states to restrict space for civil society is limiting CSOs capacity to receive financing. These restrictions apply to both foreign and domestic sources of funding, the latter being direct donations from the public, obtained through fund-raising and/or subsidies awarded by various government agencies. In Poland, so far the main emphasis has been placed on curtailing the domestic sources of state-awarded funding.

The ability of CSOs to obtain funding from government agencies was initially restricted by means of changing the way in which the law was applied, namely by modifying the practice of organising competitions for the co-financing of specific projects. This change was documented by the National Federation of Non-governmental Organizations, an umbrella organization of nearly 130 NGOs operating in Poland. The Federation has set up a database with information on irregularities

²⁸ Decision of the District Court for the capital city of Warsaw of 8 Nov. 2018, case no. WA XII Ns Rej KRS 70572/18/628, obtained from the Ministry of the Interior and Administration through a freedom of information request.

²⁹ See ECtHR judgments in case of: *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan* (8 Oct. 2009); application no. 37083/03; *Islam-Ittihad Association and Others v. Azerbaijan* (13 Nov. 2014), application no. 5548/05; *Ramazanova and others v. Azerbaijan* (1 Feb. 2007), application no. 44363/02; *Jafarov and Others v. Azerbaijan* (25 July 2019), application no. 27309/14.

³⁰ ECtHR judgment in case of *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan* (8 Oct. 2009); application no. 37083/03, § 83.

³¹ ECtHR judgment in case of *Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom* (27 Feb. 2007), application no. 11002/05, § 38.

in grant competitions notified by individual Government's departments from 2016 onwards.³² As the collected information suggests, the possibility of obtaining financing is generally limited by the following practices: (1) organising competitions with very short (sometimes seven-day) time frames between the opening of the competition and the submission of tender proposals; (2) non-transparent annulment of competitions for a failure to obtain the participation of organizations favoured by the competition's organizer; (3) by awarding financing to organizations with little or no experience in carrying out the activities covered by the competition.

One of the most striking examples of controversial reductions in financial support for civil society organizations³³ was the withdrawal of financing previously awarded to two organizations, the Centre for Women's Rights; and the Lubuskie Centre for Women's Rights BABA. Prior to the withdrawal of financing, these organizations were long-standing providers of support services to victims of crime. Thanks to a high level of trust gained among the public, they constituted a crucial element of the system of assistance for victims of crime, which, to a large extent, is based on the participation of non-governmental organizations acting as 'distributors' of victim support services.

The official reason for the refusal to grant financing to these women's organizations was that they directed their assistance only to female victims of crime, while the Ministry of Justice, as the administrator of funds, considered that it was necessary to ensure possibly comprehensive delivery of assistance to *all* victims of crime.³⁴ Moreover, in justifying its decisions, the Ministry instrumentally relied on the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA. This Directive in Article 9, specifies that victims of crime should be treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground, including that of gender. While invoking the

³² *Raport z Repozytorium Ogólnopolskiej Federacji Organizacji Pozarządowych Zestawienie udokumentowanych przypadków naruszenia zasad współpracy ministerstw z organizacjami pozarządowymi w okresie XI 2015–XI 2018* [Report from the database of the National Federation of Non-governmental Organizations. List of documented cases of violations of the principles of co-operation between ministries and non-governmental organizations for the period of Nov. 2015 to Nov. 2018], Warszawa 2018 r.

³³ In a letter of 11 June 2016, the Commissioner for Human Rights asked the Minister of Justice to provide explanations regarding the refusal to grant the co-financing. To read the letter (in Polish), <https://www.rpo.gov.pl/pl/content/odmowa-przyznania-dotacji-centrum-praw-kobiet-lubuskiemu-centrum-praw-kobiet-baba-oraz-fundacji-dzieci-niczyje> (accessed 4 Nov. 2019).

³⁴ Compare the Minister of Justice's reply to the letter of the Commissioner of Human Rights, dated 29 July 2016, which can be read (in Polish), <https://www.rpo.gov.pl/pl/content/dlaczego-niektore-organizacje-pozarzadowe-nie-moga-liczyc-na-dotacje-minister-sprawiedliwosci> (accessed 4 Nov. 2019).

above rationale, the Ministry of Justice completely overlooked the context resulting from the fact that women, statistically speaking, more often become victims of violence, including domestic violence. The data collected by the Polish Police show that in 2016, i.e. at the time when the financing of these organizations was withdrawn, 66,930 out of a total of 91,789 victims of violence were women.³⁵

The real reason for depriving these organizations of funding should be seen in the limitation of the state's involvement in the protection of minority rights, including, in particular, women's rights. Just one example of evidence supporting this claim is the fact that the Ministry of Justice has started working on denouncement of the Convention on Preventing and Combating Violence against Women and Domestic Violence, an international instrument already ratified by Poland.³⁶

Due to difficulties in controlling the flow of government funding to various organizations, a special institution, the National Freedom Institute, was established by the National Freedom Institute – Civil Society Development Centre Act of 15 September 2017. The purpose of the National Freedom Institute is to centralize the flow of money transferred by state authorities to civil society. This Institute is put under strict political control, which is reflected in the fact that its leader, i.e. the director, is appointed by the Committee for Public Benefit Activity, which is made up of members of the Government. The establishment of the National Freedom Institute and the centralization of the scheme for the distribution of funds to non-governmental organizations have been considered in the Article 7 of the Treaty on European Union infringement procedure taken by the EU against Poland.³⁷

In the context of actions taken by states to restrict CSOs access to external (foreign) sources of funding, it should be noted that these sources are crucial for those members of civil society (most notably, so-called *watchdog* organizations) whose financial independence translates into the ability to monitor public authorities. Such organizations, if financed from domestic (government-controlled) sources, may be prevented from criticizing the authorities for fear of losing funding. This type of restrictions may take various forms, such as those occurring

³⁵ Data obtained from the official website of the Polish Police, <http://statystyka.policja.pl/st/wybrane-statystyki/przemoc-w-rodzynie/50863,Przemoc-w-rodzynie.html> (accessed 4 Nov. 2019).

³⁶ In 2016, the Ministry of Justice prepared and submitted for intradepartmental consultations a draft of Poland's denouncement of the Istanbul Convention. A non-governmental organization, the Polish Society of Anti-Discrimination Law, attempted to obtain the wording of the draft by a freedom of information request. Since the Ministry failed to respond to the request, the organization appealed to the Regional Administrative Court in Warsaw, which, in its judgment of 16 Nov. 2017, case no. II SAB/Wa 306/17, ordered disclosure of this information. The Ministry of Justice appealed against this judgment to the Supreme Administrative Court. The appellate proceedings are still pending.

³⁷ See para. 69 of European Commission Reasoned Proposal issued in Accordance with Art. 7(1) of the Treaty on European Union regarding the Rule of Law in Poland, Brussels (20 Dec. 2017), COM (2017) 835 final, 2017/0360 (APP).

in Russia or Hungary, where regulations have been adopted that impose numerous registration, reporting and transparency obligations on organizations obtaining funding from abroad.³⁸ A telling example of this approach is the obligation to use the designation of ‘foreign agent’ in official names of these organizations.³⁹ The public authorities in Poland have not yet adopted such drastic measures. However, attempts were made to appoint the National Freedom Institute the operator of EEA and Norwegian Grants,⁴⁰ but ultimately failed due to an explicit objection from the Norwegian Government.⁴¹

As regards changes in the financing schemes for CSOs, which limit CSOs’ capacity to receive funding, specifically public funding, the European Commission of Human Rights in its early jurisprudence, stated that ‘is not required that the State takes positive action in order to provide private associations with special means enabling them to pursue their aims’.⁴² However, if a state – like Poland – decides to do so, and in doing it discriminates some of CSOs, there might be an issue on the ground of Article 14 of ECHR in connection with Article 11 of ECHR.

6 SMEAR CAMPAIGN

In the course of the October 2016 controversy over the independence of the Constitutional Tribunal, the government-controlled public media outlets spent

³⁸ The changes described above were the reason for undertaking the subject of financing the organization by the Venice Commission last time. Compare *European Commission for Democracy Through Law (Venice Commission) Report on Funding of Associations Adopted by the Venice Commission at Its 118th Plenary Session (Venice, 15–16 Mar. 2019)*, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)002-e) (accessed 4 Nov. 2019).

³⁹ In the Hungarian context, an act introducing such restrictions was a subject of a complaint lodged by the European Commission to the CJEU from 6 Feb. 2018. The complaint alleged violation of Art. 7, 8, and 12 of the Charter of Fundamental Rights of the European Union. On the June 18 2020 CJEU delivered judgment in the case of *Commission v. Hungary*, C 78/18. In which Court declares that, by adopting the law which impose obligations of registration, declaration and publication on certain categories of civil society organizations directly or indirectly receiving support from abroad exceeding a certain threshold and which provide for the possibility of applying penalties to organizations that do not comply with those obligations, Hungary has introduced discriminatory and unjustified restrictions on foreign donations to civil society organizations, in breach of its obligations under Art. 63 TFEU and Arts 7, 8 and 12 of the Charter of Fundamental Rights of the European Union. Compare wider: case *Commission v. Hungary*, C 78/18.

⁴⁰ The EEA Grants and Norway Grants are the financial contributions of Norway, Iceland and Liechtenstein towards the reduction of economic and social disparities in the European Economic Area (EEA) and to strengthening bilateral relations with 15 EU countries in Central and Southern Europe and the Baltics, <https://eeagrants.org/> (accessed 4 Nov. 2019).

⁴¹ See press article: *Vil nekte Polen og Ungarn kontroll over 9,7 milliarder norske kroner*, <https://www.dn.no/vil-nekte-polen-og-ungarn-kontroll-over-97-milliarder-norske-kroner/2-1-79074> (accessed 4 Nov. 2019).

⁴² European Commission of Human Rights decision in case of *X. v. Federal Republic of Germany* (14 July 1981), application no. 9234/81.

several days conducting a media campaign defaming NGOs involved in the defence of non-partisan nature of the Constitutional Tribunal.

During this campaign, it was claimed that these CSOs obtained public funding for their operations through fraud, private and family ties, or political affiliations. The goal of the campaign was to conclusively undermine the credibility of NGOs and vilify their activists. A thing to note in the context of the allegations made in this campaign is that none of the targeted human rights defenders or their organizations has been prosecuted for irregularities in the spending of public subsidies.

In the aftermath of protests of the NGO community,⁴³ these programmes were reviewed by the National Broadcasting Council, a special constitutional body established to protect freedom of speech, the right to information as well as public interests in the radio and television industry.⁴⁴ What is interesting, given that the composition of the National Broadcasting Council was determined by the political forces now in power, the body made a critical assessment of the broadcast materials. This assessment also led to issuing a statement addressed to the President of the Management Board of Telewizja Polska S.A., which reiterated the legal principles applicable to all content disseminated by public broadcasters,⁴⁵ including in particular the principles of impartiality, reliability, pluralism, objectivity, balancing and unrestricted formation of public opinion.⁴⁶

This statement brought little effect. Public media still disseminate news reports which violate the above principles and whose only purpose is to defame NGO activists. A good example of such reporting is a programme aired by a public media organization on 4 February 2019, which was devoted to the activists of The Citizens of Poland who on the previous day staged a protest in front of the building hosting the studio from which the organization's main news programme is broadcast. Apart from one-sided criticism of the protest, the news report in question illegally revealed an image of a group of individuals involved in the protest. They were named, which exposed them to repressive measures at work and put them at the risk of physical attacks. The Commissioner for Human Rights intervened on their behalf with the National Broadcasting Council.⁴⁷

⁴³ Compare the call for action of the social organizations community of 8 Nov. 2016, signed by the representatives of 135 non-governmental organizations, <https://publicystyka.ngo.pl/list-protestacyjny-organizacji-pozarządowych-dolacz-swoj-podpis> (accessed 4 Nov. 2019).

⁴⁴ As explicitly stated in Art. 213(1) of the Constitution of the Republic of Poland.

⁴⁵ In particular, Arts 21(1) and Arts 21(2) (2)-(3) of the Radio and Television Broadcasting Act of 29 Dec. 1992, uniform text: Journal of Laws of 2019, item 361.

⁴⁶ Compare the reply to the above call for action of the social organizations community, signed by the Executive Co-director of the National Broadcasting Council on 2 Feb. 2017, http://www.ofop.eu/sites/ofop.eu/files/documents/odpowiedz_z_krrit.pdf (accessed 4 Nov. 2019).

⁴⁷ See a press article available on the CHR website: 'Ujawnienie w "Wiadomościach" TVP wizerunków protestujących osób może naruszać prawo. RPO pisze do KRRiT i TVP' [Evening News Bulletin's

7 PHYSICAL AND LEGAL HARASSMENT

Media campaigns were accompanied by physical attacks on offices of CSOs.⁴⁸ In 2016 and 2017, two LGBT+ rights organizations were particularly affected by the attacks: the Campaign Against Homophobia and the Warsaw's Branch of Lambda Association. Offices of those organizations were vandalized during a string of after-hours attacks that left the properties' windows broken or painted with neo-Nazi symbols and slogans. Three persons shouting obscenities have tried to force entry to the premises of Campaign Against Homophobia during office hours. The perpetrators were able to flee before the police arrived.

None has been charged in the criminal proceedings launched in those cases as all of them were discontinued, either due to the failure to identify the perpetrators or, in the vandalism cases, due to the low value of the inflicted damage.⁴⁹ The absence of an effective investigation was criticized in a statement issued by the Commissioner for Human Rights.⁵⁰

In the above cases, the lack of an efficient response by state authorities does not seem to be accidental. Law enforcement agencies apply the law instrumentally in order to harass CSO activists who are perceived by public authorities as inconvenient. This shameful practice is well illustrated by the case of group of activists of The Citizens of Poland who have been accused of committing a petty offence that allegedly involved the blocking of a neo-Nazi march. Ultimately, they were acquitted by a court. As their case was heard, it turned out that no proceedings were instituted against any of the participants in the neo-Nazi march who violated the law by chanting neo-Nazi slogans, which is an actual criminal offence under Polish law.⁵¹ Public authorities have applied a similar selective prosecution policy in another case, which involved the bringing of criminal charges against

disclosure of protesters images may be illegal. Ombudsman writes to Broadcasting Council and state-run television corporation], <https://www.rpo.gov.pl/pl/content/rpo-ujawnienie-wizerunku-protestujacych-w-wiadomosciach-tvp-moze-naruszac-prawo> (accessed 4 Nov. 2019).

⁴⁸ See *Information on the Recent Challenges Faced by Human Rights Defenders and Civil Society in Poland Prepared for the United Nations Special Rapporteur on the Situation of Human Rights Defenders*, prepared by: Helsinki Foundation for Human Rights (Warsaw 2016), <http://www.hfhr.pl/wp-content/uploads/2016/11/HRD-report-30112016-FIN.pdf> (accessed 4 Nov. 2019).

⁴⁹ See the press article *Atak na siedzibę Kampanii Przeciw Homofobii – wybite szyby* [Window panes shattered in an attack against the head office of Campaign Against Homophobia] (8 May 2017), <https://kph.org.pl/atak-na-siedzibe-kampanii-przeciw-homofobii-wybite-szyby/> (accessed 4 Nov. 2019).

⁵⁰ See *Oświadczenie Rzecznika Praw Obywatelskich w sprawie kolejnego ataku na siedzibę Kampanii Przeciw Homofobii* [A statement of the Commissioner for Human Rights on another attack against Campaign Against Homophobia] (17 June 2017), https://www.rpo.gov.pl/pl/content/oswiadczenie-rzecznika-praw-obywatelskich-w-sprawie-kolejnego-ataku-na-siedzibe-kampanii-przeciw#_ftn1 (accessed 4 Nov. 2019).

⁵¹ Compare Judgment of District Court for Warszawa-Śródmieście in Warsaw of 4 Oct. 2018, case no. XI W 2059/17.

anti-fascist activists who deployed flares during a street event. They were also acquitted in court proceedings. Also in the course of these proceedings, it was revealed that no similar legal action was taken against any of the flare-toting individuals who took part in the public assemblies held two days earlier to celebrate the National Independence Day.⁵²

In relation to the lack of adequate response of the state to physical harassment of CSOs' offices or of activists, the crucial element in ECtHR jurisprudence will be the doctrine of positive obligations. In this context, in the case of *Wilson, National Union of Journalists and others v. The United Kingdom*⁵³ the ECtHR stated: '[t]he Court observes at the outset that although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations to secure the effective enjoyment of these rights'. Based on this doctrine, it is possible to conclude that absence of determined reaction to physical harassment of CSO activist, as well as on their facilities, violates positive obligation of the state to secure the effective enjoyment of the freedom of association.

8 CIVIL SOCIETY IN THE POLISH CONSTITUTION

The tools currently used by public authorities to limit the space in which civil society can operate should be confronted with the relevant constitutional standards.

This analysis should however be preceded by a remark that every constitution is a certain type of a unique mirror into history. The 1997 Constitution now in force is no different in this respect.⁵⁴ At the time when Poland was behind the Iron Curtain, the development of civil society was severely hampered. This is because civil society is inherently incapable of being fully controlled by public authorities, such as the Government of the People's Republic of Poland. At the same time, however, civil society, and especially the ten-million-strong social movement associated with the Solidarity trade union, played a key role in the democratic transition of 1980–1989. It is therefore hardly surprising that the current Constitution contains very extensive references to various aspects of civil society. Crucially, given this article's thematic scope, the Chapter One of the Constitution, which lays down the principles of the political system of the Republic of Poland, guarantees protection for civil society in Article 12, affording this protection the

⁵² Compare Judgment of District Court for Warszawa-Śródmieście in Warsaw of 22 Jan. 2019, case no. XI W 59/18.

⁵³ ECtHR judgment in case of *Wilson, National Union of Journalists and Others v. the United Kingdom* (2 July 2002) (applications nos. 30668/96, 30671/96 and 30678/96), § 41.

⁵⁴ The Constitution of The Republic of Poland of 2 Apr. 1997, as published in Journal of Law [Dziennik Ustaw] No. 78, item 483.

status equal to other constitutionally-entrenched principles such as the freedom of operation of churches and other religious associations (Article 25), political parties (Article 11) and self-governing professional associations (including the Bar – Article 17).

In accordance with Article 12 of the Constitution: ‘The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational organizations of farmers, societies, citizens’ movements, other voluntary associations and foundations’.

Interestingly, Article 12 appeared at a relatively late stage of the constitution-drafting process. The proposal to include this provision in the wording of the Constitution was motivated by the intention to raise the status of civil society. The drafters of the Polish Constitution stated that the addition of this provision to the Constitution is intended as a means of protecting civil society against the state or public authorities, and in particular designed to shield civil society from excessive control. Article 12 is designed to create an obligation for public authorities to create conditions for the functioning of various kinds of civil society organizations. In the discussion that took place in the Constitutional Committee of the National Assembly in response to the argument that this provision was unnecessary in view of the constitutional codification of specific human rights relating to the creation and operation of non-governmental organizations, it was pointed out that civil society fills the gap between the state and individuals, while particular rights and freedoms of individuals constitute only a detailed implementation of this principle.⁵⁵

Common courts and the Constitutional Tribunal very rarely make references to Article 12 in their jurisprudential practice. This provision has only on a few occasions served as a point of reference in the Constitutional Tribunal’s constitutional review of laws related to civil society. In fact, it was invoked only in cases involving interferences with the freedom of association in trade unions.

Based on those cases, the Constitutional Tribunal – in its composition preceding the constitutional crisis – interpreted Article 12, pointing out that freedom of association is not only relevant in the perspective of the status of the individual, but also constitutes a basic element of the state’s political model laid down in the Constitution.⁵⁶ The Constitutional Tribunal also held that the freedom of establishment and operation of trade unions guaranteed in Article 12 of the Constitution means, first of all, that the state should refrain from interfering in any aspect of their creation and subsequent activities. In addition to the other forms of association and collective human action referred to in this provision, trade

⁵⁵ Bulletin of the Constitutional Committee of the National Assembly, No. 14, at 18–26.

⁵⁶ Judgment of the Constitutional Court of 2 June 2015, case no. K 1/13.

unions are protected against any form of de facto ‘nationalization’, understood as their formal or actual integration into the structures of public authorities. The emphasis put on this ‘freedom’ aspect of trade union formation and activities is a clear expression of a break with the role that trade unions (and other forms of the citizens’ collective action) played in 1944–1989.⁵⁷

Taking into account the Constitutional Tribunal’s interpretation of Article 12, it should be stated that no changes in law or practice of its application, which would aim at limiting the civil society’s ability to act, cannot be reconciled with the substance of the legal norm expressed by this provision.

Under the Polish model of constitutional review of legislation, only *legislative* tools designed to limit the space for civil society may be assessed by the Constitutional Tribunal as to their compliance with Article 12. However, no such review has been performed so far. Since the introduction of these changes, only the previously described amendment to the Assemblies Act has been referred for a constitutional review by the President of the Republic of Poland. Having performed this review based on different constitutional standards, the Constitutional Tribunal ruled that the amendment was constitutional.⁵⁸ However, the ruling in question was issued in the period when the Constitutional Tribunal was no longer independent and its composition consisted of judges without proper authority to decide cases, which raises concerns as to its validity.⁵⁹ In view of the Constitutional Tribunal’s loss of independence, both legal theorists and practitioners have been recently changing their stance on the inadmissibility of diffused constitutional review. Consequently, it is possible that the constitutionality of the aforementioned legislative changes (and any subsequent legislation) will be carried out by common courts on a case-by-case basis.

Regardless of the above, those tools for shrinking space for civil society that relate to the application of law may be reviewed for their compliance with the above constitutional model before administrative and common courts, an example of which was the described attempt to take control over the Free Citizens of Poland Foundation. This perspective demonstrates that guaranteeing the independence of the judiciary is a crucial element of ensuring that CSOs receive adequate legal protection. If it had not been for independent courts, there would probably have been a ‘hostile takeover’ of the Free Citizens of Poland Foundation.

⁵⁷ Judgment of the Constitutional Court of 24 Feb. 2004, case no. K 54/02.

⁵⁸ Judgment of the Constitutional Court of 16 Mar. 2017, case no. K 1/17.

⁵⁹ M. Florczak-Wątor, *Zgromadzenia cykliczne – glosa do wyroku TK z dnia 16 marca 2017 r.* [Cyclical assemblies. A case note on the Constitutional Tribunal’s judgment of 16 Mar. 2017, case no.], *Kp 1/17*. LEX el/2017.

9 CONCLUSIONS – A WAY FORWARD

At present, it is extremely difficult to predict the long-term impact of the above-described actions of Polish public authorities aimed at limiting civil society's ability to function freely in Poland. In any case, in view of the negative consequences of this phenomenon for the human rights system or democracy in general, as described earlier, it is necessary to call for measures that will slow down the pace of these changes or contribute to their reversal.

Alongside various means that can be used for this purpose, it is crucial to ensure that CSOs in Poland are able to receive organizational, professional and financial support from foreign entities, including other democratic states. This support should be either direct or delivered through entities independent of the Government. Involvement of any governmental agency may result in a redirection of this support to GONGO-like organizations backing the government, which in turn may result in a further weakening of societal control over public authorities.⁶⁰ This was essentially the objective of the above-mentioned, Government's unsuccessful attempt to take control of Norwegian Funds.

Another positive effect of supporting civil society is that organizations know best the local context and the ways to effectively prevent the shrinking of the space in which they operate. In the case of Poland, this argument is confirmed for example by the activities of The Citizens of Poland. Members of this social movement, by invoking the concept of civil disobedience and direct application of the Constitution were repeatedly able to secure their right to organize peaceful assemblies, despite the limitations resulting from the adopted legislative changes. However, these successes required prolonged and costly court proceedings during which the activists, figuratively (and legally) speaking, were many times put in the defendants' dock.

Polish civil society received the greatest support from foreign governments and international organizations during the period of democratic transition in the 1990s. Later, especially after Poland's accession to the European Union in 2004, the attention of international sponsors, for obvious reasons, focused on other geographical areas. One of the arguments in favour of refocusing this aid on the region of Central and Eastern Europe, including Poland and Hungary, is the hazard of the proliferation of this phenomenon to other countries in the region. A proof of this conclusion is how explicitly public authorities in Poland have

⁶⁰ Given the *supra*, it is worth acknowledging the adoption at the EU level of a support program for CSOs in which EU assistance is provided directly to CSOs.

See EC Proposal for a regulation: Multiannual Financial Framework: Rights and Values programme 2021–2027, https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-383_en (accessed 4 Nov. 2019).

modelled their policies after the relevant changes adopted in Hungary. Consequently, measures of, ostensibly, a purely internal concern may, in the absence of an international response to their adoption, serve as a model for other countries.

Last but not least, support for the civic sector should be reflected in the participation of other countries or international organizations in proceedings pending before international courts that involve allegations concerning the adoption of laws targeting NGOs.⁶¹ In this context, a key recommendation for international tribunals and intervening states or organizations is that any challenges formulated against legislation and practices of public authority limiting the space in which civil society operates should be perceived in the broader context of the protection of democracy, the rule of law or human rights as values underpinning modern democratic societies.⁶²

⁶¹ No such proceedings have yet been initiated against Poland as compared to Hungary. In addition to the aforementioned proceedings before the Court of Justice of the European Union, Hungarian NGOs have recently brought an application to the European Court of Human Rights alleging that Hungarian legislation violates a number of rights guaranteed by the ECHR. Compare press article: *14 Hungarian NGOs Bring ECHR Case Against New Anti-Civil Society Bill* (31 Jan. 2018), <https://www.liberties.eu/en/news/fourteen-hungarian-ngos-have-brought-an-action-before-the-ecthr/14186> (accessed 4 Nov. 2019).

⁶² See also Jolien Schukking, *Protection of Human Rights and the Rule of Law in Europe: A Shared Responsibility*, 36(2) *Netherlands Q. Hum. Rts.* 152–158 (2018).

