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Global Perspectives on Freedom of Association: Poland

Filip Cyuńczyk

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Freedom of Association: The Case in Poland

Filip Cyuńczyk[*]

I. Introduction

The concept of freedom of association appeared in the Polish legal system together with the regaining of its independence in 1918 and the enactment of its first modern constitution two and a half years later. However, due to the historical perturbations suffered by Poland between the establishment of the Second Republic and its accession to the supranational structures of the European Union in 2004, the 'long duration' of the concrete provisions of the law was not possible. From the creeping change of the regime before the Second World War, embodied in the 1935 constitution, through the periods of war and occupation, Stalinist totalitarianism and the successive authoritarian governments under Moscow's curatorship, the freedom (or right) of association was influenced by subsequent ideologies and the systems of value brought by them. Nevertheless, the adoption of the liberal-democratic Constitution in 1997 provided its contemporary character typical of that system of government. This does not mean, however, that historical experience has not resulted in the formation of local peculiarities related to freedom of association. It appears, among other things, with a pervasive system of statutory provisions and profound constitutional regulation.

I would like to discuss these specificities in this paper by presenting, in part two, a historical outline (2.1). Further, the current legal status shall be addressed. Both the constitutional layer (part 2.2) and the specific laws operationalising this freedom will be analysed. More specifically, I will present selected provisions of the Law on Associations (part 2.2.1), the Act on Political Parties (2.2.2) and the Act on Trade Unions (2.2.3). The third part will deal with the role of the judicial system. Both in terms of its impact on legal reality (3.1) and given the specific responsibilities imposed by the legislature in the laws already mentioned (3.2). In the fourth part of this text, I will discuss the prospects and challenges that reality creates for freedom of association in Poland.

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The main aim of this text is to familiarise the reader with the key institutions that guarantee and operationalise freedom of association in Poland and the local specifics of understanding this freedom.

II. Formal Guarantees

2.1 History of the Normative Layer

Historical references are necessary to point out the direction of the evolution of consideration of the importance of the discussed institution for the legal and political system in Poland. The idea of general opposition to the system of real socialism still plays the most significant role. Nevertheless, the experience of the interwar period is not irrelevant. This is because the memory of the past fundamentally affects the approach to the substance of legal reforms.

Poland regained its independence on November 11, 1918. That was the first-ever form of Polish statehood in the modern sense. The first Constitution of the Republic of Poland was dated March 17, 1921[1] (the so-called March Constitution) and was consistent with the trends of the period. Its liberal character was obvious. It guaranteed citizens a series of political and economic rights, including the right to associate. This matter was covered by Article 108 of the Constitution. According to it, citizens obtained 'the right to coalesce, assemble and form associations and unions'. The detailed aspects of each organisation's activities were predicted to be specified by statutes.

What is worth underlining is that Poland was in line with the later interwar political trends that occurred on the Continent. The beginning of the democratic system's deconstruction began with the military *coup d'état* on May 12, 1926, and its direct consequence, which was the constitutional amendment of August of that year.[2] The amendment was purely practical and focused on strengthening the state executive to the disadvantage of the legislature's power. The period from May 1926 to April 1935 was a time of increasing disjunction between the formal-constitutional reality and political practice.

[1].Act of 17 March 1921, Constitution of the Republic of Poland (Dz.U.1921.44.267).
[2] Act of 2 August 1926, Amending and Supplementing the Constitution of the Republic of 17 March 1921 (Dz.U.1926.78.442).

The final embodiment of the change that was taking place during this period was the adoption of the Constitution of April 23, 1935, known as the April Constitution.[3] It was based on a vision of the state-citizen relationship that was entirely contradictory to liberal values. Article 2(4) established the principle of the indivisible power of the President. The President was the superior authority over the other state organs (Article 3). Citizens, in turn, were obliged to be loyal to the state and diligently fulfil its duties (Article 6). Further provisions detailed the functioning of state organs that were dependent on the President. A consequence of the citizen's subordination to the state was the lack of a catalogue of rights, including the right of association and assembly.

Poland's internal situation significantly transformed with the Second World War and its assignment, as part of the Yalta Agreements, to the custody of the USSR. The Constitution of the Polish People's Republic (hereinafter, the 'PRL') was adopted on July 22, 1952, and came into force as of that date.[4] It was the eighth anniversary of the announcement of the PKWN Manifesto,[5] establishing the so-called People's Power in Poland under the curatorship and control of Moscow. This Constitution was modelled upon the Soviet Constitution of 1936 and carried out the principle of so-called democratic centralism.[6] This principle was expressed in provisions related to the state system and the particular role of the single-chamber parliament (*Sejm*). Therefore, according to Article 1(1) of its Constitution, the PRL was a state of 'people's democracy'. Thus, all laws enacted in the country had to express the will and interests of the working masses (Article 4(1)). According to Article 15(1), the supreme organ of the state power was the single-chamber parliament, the *Sejm*. It was the ultimate exponent of the will of the working class and the embodiment of the people's sovereign rights (Article 15(2)). From our point of view, the third paragraph is crucial. It clearly articulates the principle of centralism. According to its disposition, the *Sejm* was responsible for a) enacting laws, b) exercising control over other government bodies, and c) exercising control over state administration.

The right (not freedom) to associate was initially provided in Article 72 of the PRL Constitution. According to paragraph 1: 'in order to develop the political, social, economic and

[3] Constitutional Act of April 23, 1935 (Dz.U.1935.30.227).
[4] The Constitution of the Polish People's Republic adopted by the Legislative Assembly on July 22, 1952 (Dz.U 1952.33.232).
[5] Jaime Reynolds, ''Lublin' versus 'London' - The Party and the Underground Movement in Poland, 1944-1945' (1981) 16(4) Journal of Contemporary History 617-648.
[6] Adam Lityński, 'Historia prawa radzieckiego 1917-1991. Krótki kurs' [The History of the Soviet Law 1917-1991: A Short Course] (2005) III Miscellanea Historico-Iuridica III 139-176.

cultural activity of the working people of towns and villages', the state provided citizens the right to associate. Paragraph 2 specified a catalogue of associations, and these were: political organisations, trade unions, associations of working farmers and cooperatives, youths, women's, sporting and national defence organisations. Additionally, the catalogue contained cultural, technical and scientific associations. The enumeration was not closed because the legislator left a gateway for the activities of 'other social organisations of the working people'. Paragraph 3 included a reservation that the formation of associations, 'the purpose of which or activities are incompatible with the political and social system or the legal order of the PRL', was forbidden.

With the 1976 amendment to the PRL's Constitution,[7] only the sequence number of the provision providing the right to associate was changed. From that year, the norm was located in Article 84. As part of the amendment, references to the working people were deleted without being replaced by any other term. Apart from these changes, the essential meaning of the norm did not change at all. The Constitution was also amended by adding Article 85, which spoke about the momentous social role of the trade unions. The same happened during the so-called December Amendment (of the 29th December 1989)[8] of the Constitution passed by the partially democratically elected *Sejm*. At that time, the *Sejm* restored the State's name from the period before the PRL Constitution's adoption: the Republic of Poland. Article 84 (previously Article 72) was also amended in this manner. Without changing its content, the term "Polish People's Republic" was replaced by the "Republic of Poland".[9] Consequently, the polity was still, until 1997, providing its citizens the right to associate.

Most important for understanding the social role played by the associations is the phrase 'the Polish People's Republic provides for the citizens.' Nor can the freedom be presented in separation from the principle of democratic centralism. The system was consolidating all activities under the state's leadership. It "was providing" the law but in its own interest and the interest of the system. Therefore, "freedom of association" in terms of the liberal approach was extraneous to the communist system. The initiator, animator and supervisor was the state. In fact, the pattern was the same for other political freedoms. According to Article 71 (Article 83

[7] Law of February 10, 1976 on Amendments to the Constitution of the Polish People's Republic (Dz.U.1976.5.29).
[8] Law of December 29, 1989 on Amendments to the Constitution of the Polish People's Republic (Dz.U.1989.75.444).
[9] ibid.

after the 1976 amendment) of the PRL's Constitution, freedom of speech, printing, assembly and rallies, marches and demonstrations were also ‘provided’. Of course, the functional role of ‘provides’ has changed alongside the political transition. The term "provides" began to be interpreted differently, in a liberal manner.

Nevertheless, the experience of the PRL significantly affected the depth of legislation and semantics of the 1997 Constitution's provisions. The negative attitude of the Polish democratic polity towards the political system imported from Moscow is expressed in its preamble. As the authors stated, they are ‘mindful of the bitter experiences of the times when fundamental freedoms and human rights were violated in their Homeland’.[10] Such a bitter experience for the founders of the third republic was precisely the PRL period.

2.2 The Present Legal Situation: Constitutional Layer

The legal norm that determines the nature of the Polish political system is provided in Article 2 of the Constitution.[11] According to this provision, ‘the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice’ (*przyp*). Freedom of association, derived from the principle of a democratic state governed by law, is based on the following articles of the Constitution: 11, 12, 13, 58 and 59.

According to Article 11, ‘the Republic of Poland shall ensure freedom for the creation and functioning of political parties’. Article 12 refers to types of associations other than political parties: ‘freedom for the creation and functioning of trade unions, socio-occupational organisations of farmers, societies, citizens' movements, and other voluntary associations and foundations’. The norms of both of these provisions are in functional conjunction with Article 13, according to which: ‘political parties and other organisations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be prohibited’.

[10] The Constitution of the Republic of Poland of 2 April, 1997.
[11] ibid.

Articles 58 and 59 of the Constitution specify the cited above. Freedom of association is expressed explicitly in Article 58(1): 'the freedom of association shall be guaranteed to everyone'. The second paragraph is double-edged. On the one hand, it refers directly to Article 13 of the Constitution, as it prohibits associations whose goals or activities contradict the Constitution and statutes. On the other, it specifies which state authorities are responsible for verifying these preconditions. The third paragraph, in turn, states that detailed legislation on the formal framework for the execution of freedom of concrete kind of association should be contained in dedicated statutes. Article 59, in turn, refers to the freedom of association in trade unions (paragraph 1), the rights and duties of trade unions (paragraph 2), the right of unions to organise protests and strikes (paragraph 3) and - finally - possible restrictions on their activities. More specifically, restrictions on unionisation may be enacted only within the scope allowed by international agreements binding on the Republic of Poland.

According to the disposition of Article 58(3), freedom of association should be enforced at the level of specific statutes. Therefore, I would like to discuss how the legislature operates based on the selected provisions of three statutes: The Law on Associations of 1989,[12] the Statute on Political Parties of 1997,[13] and the Statute on Trade Unions of 1991.[14]

2.2.1 Law on Associations

The provisions of the Law on Associations[15] are a logical development of the constitutional norms. According to Article 1, Polish citizens shall fulfil the right of association in compliance with the Constitution's and statutes' provisions. In addition, paragraph 2 refers to the definition of statutory objectives, which are the implementation of the interests of the association's members in relation to public authorities. Paragraph 3 provides for the associations' right to speak on public affairs. The scope of the law's subject matter is defined in Article 7. It applies to all associations except those that: a) operate on the basis of separate statutes and international agreements; b) churches and religious associations; c) religious organisations; and d) election committees of political parties.

[12] Law of April 7, 1989, Law on Associations (Dz.U.2020.2261).
[13] Act of June 27, 1997, on Political Parties (Dz.U.2023.1215).
[14] Act of May 23, 1991, on Trade Unions (Dz.U.2022.854).
[15] Law on Associations (n 12).

The voluntary, grassroots and autonomous nature of associations is specified in Article 2. As a general rule, according to Article 3(1), the right to associate is vested in Polish citizens who enjoy full rights and are of full age. However, the legislature has introduced numerous exceptions to this rule for juveniles and foreigners. Specification of the constitutional legal norm prohibiting the activities of an organisation whose values contradict the values of the polity is located in Article 6. Therefore, the formation of associations that adopt the principle of absolute obedience of their members to the association's authorities is prohibited (Article 6 (1)). In addition, no one may be forced to participate in the association or have the withdrawal right restricted (Article 6(2) sentence 1).

In the case of the Law on Associations, the Polish legislator does not explicitly formulate the right to withdraw. It must be reconstructed from their already mentioned voluntary character. In other words, if membership in the association is not mandatory, no one can force a citizen to continue membership. Predominantly since, as is expressed in the law, no one may suffer any adverse consequences due to belonging to or withdrawing from the association (Article 6(2) sentence 2).

Supervision over associations is dependent on the subjects creating them. Supervision of their activities is, as a general rule, conducted by the self-government District Governor (*Starosta*) having local power (Article 8 (5)(2)). The exception is the situation when local self-governments are creating the association. In that situation, it is supervised by the Regional Governor (*Wojewoda*), the government's local representative (Article 8 (5)(1)). Generally, every association must be registered (Article 8(1)). The exception to this rule exists when other statutory provisions provide otherwise.

2.2.2 Act on Political Parties

The legislator has detailed the constitutional norms on the grounds of the statute on political parties.[16] According to Article 1, a party, like an association, is a 'voluntary organisation' with a name. Its purpose is to participate in public life by influencing state policy and exercising power through democratic procedures. In contrast to ordinary associations, according to Article 2, only full-age Polish citizens can be party members.

[16] Law on Political Parties (n 13).

In contrast to the Law on Associations, the withdrawal from the political party is regulated explicitly in the statute. According to Article 10, 'a member of a political party has the right to withdraw from the party'.

However, not every citizen of full age can belong to a party. Paragraph 2 allows limitations to be imposed on the basis of other statutes. Currently, they exist, for example, in relation to people serving in uniform formations.[17] An interesting legal arrangement is the ban on the existence of political parties in workplaces (Article 7).[18] Indeed, for the PRL period, the Polish United Workers' Party had its basic party organisations not only in workplaces but also at universities or in the military and police units. Thus, the enactment of such a ban on the grounds of the statute is directly determined by the omnipresence of the Communist Party during the so-called People's Poland period.

The second feature of political parties, in addition to the voluntary nature determined by Article 1, is transparency. It is enforced by Article 8. According to its provision, political parties are obliged to shape their structures and operational rules in compliance with democratic standards. These must be carried out precisely through the transparency of party structures, processes of appointing parties' authorities and passing resolutions by the majority of votes.

2.2.3 Act on Trade Unions

Article 1 of the Act[19] defines the substance of trade unions. Firstly, it is a voluntary and self-governing organisation of working people established to represent and defend their rights and professional and social interests (Article 1(1)). Secondly, a trade union is independent in its activities from employers, state administration, local government and other organisations, such as political parties (Article 1(2)). Moreover, according to the statute, no trade union may be located in a privileged position by the authorities and organisations mentioned above.

The Trade Union Act includes within its scope both those who are in an employment relationship under one of the labour contracts and those who perform paid work on a basis other than the employment relationship (labour contract), e.g., those employed under civil law contracts (Article 1[1]). Both of these categories of employed persons have the right to form or

[17] Article 63 of the Act of April 6, 1990 on the Police (Dz.U.2023.171).
[18] Law on Political Parties (n 13).
[19] Law on Trade Unions (n 14).

join trade unions (Article 2(1)). Moreover, trade unions may be formed by uniformed officers and employees of state offices (e.g., the Supreme Audit Office), who, under separate statutes, are not allowed to be members of political parties (Article 3(6)). Furthermore, persons performing volunteer work (Article 3(4[1])) and the unemployed (Article 3(4)) may belong to trade unions.

The primary task of trade unions is to control employers' obedience to the laws that affect the interests of the people mentioned above and their families' interests (Article 8). The Act does not cover the withdrawal from trade unions. As with the case of associations, it must be derived from the voluntary nature of membership in a union.

III. The Role of the Courts in the Enforcement of the Freedom of Association

3.1 Role Played in the Adaptation of the Legal Norms to Changing Reality

The detailed nature of the Polish legislation governing the essential forms of association, as well as its multi-layered nature, do not leave much margin for the creative activity of the judiciary. In other words, unlike many countries, in Poland, this matter has been legislated to such an extent that the activity of the judiciary is reduced mainly to carrying out the tasks indicated in the statutes.

Upon analysis of the case law available in legal information systems, the trend of the majority of the administrative judiciary's decisions over the judgments of the general courts or the Constitutional Court is evident. It is worth noting that in the Polish system, the administrative judiciary does not decide on substantive issues but only examines the legality of the decision of the administrative organ. Consequently, we are dealing with a technical revision of the administrative organs' decisions.

This does not mean, however, that court decisions fulfilling the unique role prescribed for the judiciary under the system of liberal constitutionalism[20] have not occurred in Poland. A vital judgment in which the Constitutional Court signalled to the legislature the incompatibility of

[20] Martin Loughlin, 'What is Constitutionalisation?' in Petra Dobner and Martin Loughlin (eds), *The Twilight of Constitutionalism?* (Oxford: Oxford University Press) 47-69.

the legal state of affairs in force at the time with social realities was the 'K 1/13' judgment passed on June 2, 2015.[21]

The object of the Constitutional Court proceedings was the issue of the catalogue of persons who have the right to form or associate in trade unions. As I pointed out in the previous paragraph, at the moment, this is a maximally broad catalogue, which includes even the unemployed and those who provide voluntary work. Such regulation is a direct consequence of this judgment. In it, the Constitutional Court stated that the previous provisions (that is, those in force until 2015) referring to the possibility of unionisation only by those who perform work under an employment relationship, regardless of the legal basis for its establishment, were too narrow and therefore a violation of the constitutional freedom of association. It was related to the fact that the interpretation of the then version of Article 2(1) of the Law on Labor Unions[22] was reduced to granting this right only to those who were hired under an employment contract and to some persons (but not all) employed under civil law contracts (in addition to the retired and unemployed). Meanwhile, as the Constitutional Court stated, following international standards, that this right should be granted to all those who work without any exemptions. In effect, this provision was amended to the current version and, as discussed in the previous paragraph, Article 2[1] was added.

3.2 Tasks of Courts under the Laws

According to Article 58(2) of the Constitution,[23] it is the duty of the courts to verify whether an association deserves to be registered and to verify the constitutionality of its aims. This provision indicates the significant role of the courts in controlling the legality of associations and the activity of political parties.

Under the Law on Associations,[24] the courts' tasks include registering associations, removing associations from the register, and imposing disciplinary measures on associations resulting from non-compliance with the law. In addition, the court may appoint a guardian in case of a lack of activity by the association's organs.

[21] Ref. of Polish Constitutional Tribunal K 1/13.
[22] Law of Trade Unions (n 14) (version prior to 2015).
[23] The Constitution of the Republic of Poland (n 10).
[24] Law on Associations (n 12).

The procedure for association registration is set out in Article 16. The court is obliged to, among other things, verify the compliance of the association charter with the provisions of generally binding law, as well as whether the founders of the association fulfil the statutory requirements described in the previous subsection (Article 16(1)). If any doubts arise, the court can appoint a hearing (paragraph 2). It may also refuse registration if the statutory criteria have not been fulfilled (paragraph 3). The court shall notify the supervising authority about the registration (paragraph 4).

The court performs the same notification when an association is removed from the register (Article 16(5)). An association may be dissolved either at the request of the supervising authority (Article 31(1)) or at the request of the guardian (Article 31(2)), or at the request of the supervising authority or the prosecutor (Article 29(1) p.2).

In the first case, a request can be submitted in two situations. First, when the number of association members is less than the minimum number of persons necessary for its formation (Article 31 (1) p.1). Second, when the association has no authorities and there are no conditions for their appointment within a period of no more than 12 months (Article 31 (1) p. 2). In the second case, the court dissolves the association at the request of the guardian if, despite its efforts, there are no conditions for the election of the association's authorities within the period specified in the previous section. The third case occurs when the association's activities show gross or persistent violations of the law or the provisions of the association's charter, and there are no prerequisites for restoring lawful activities (Article 29 (1) p. 3). Under the last procedure, the court can allow a turnaround. The court sets a period in which it obliges the association's authorities to eliminate the violations and suspends the proceedings (Article 29(3)). If the violations have not been eliminated after the deadline, the court initiates the procedure upon request or on its own initiative. In case of dissolution, the court appoints a liquidator (Article 36).

The courts may warn the authorities of the association (Article 29 (1) p.1), cancel an unlawful resolution of the association (Article 29 (1) p. 2), and, under certain circumstances, may impose a fine of up to PLN 5,000 (Article 26). A guardian’s appointment occurs when an association does not have a governing body (authorities) capable of performing legal operations. The court does so at the supervisory authority's request or on its own initiative (Article 30 (1)).

The general part of the provisions on political parties,[25] apart from the significant limitation of the catalogue of persons who may belong to them, does not indicate as much about their particular importance. This is evident from the provisions defining the parties' relationship with the judicial system. The particular significance of political parties as distinct from other associations is demonstrated by the special system of courts established by the legislature to deal with parties.

The Polish legislator has solely designated two particular courts. In the current state of the law, these are the Regional Court for the Capital City of Warsaw and the Constitutional Tribunal.

The first is responsible for technical activities. More specifically, according to Article 11, it operates the registry of political parties. Moreover, it registers the party if it finds that the documentation submitted satisfies the law requirements (Article 12(1)). It takes identical measures when a party liquidates. This means that the court removes the party from the registry (Article 12(2)). The Regional Court for the City of Warsaw also collects information about changes in the party's charter, address, or party organs.

Substantive issues, such as whether a party complies with the disposition of Article 13 of the Constitution, are examined by the Constitutional Tribunal. It tests the compatibility of a political party's objectives and principles at almost every phase of its existence. According to Article 14 of the Act on Political Parties, if the Regional Court doubts the constitutionality of the party's charter objectives, it will not resolve the question independently. Instead, it will suspend its judicial procedure and apply to the Constitutional Court to review the case (Article 14(1)). The decision of the Constitutional Court is constitutive for the registry court. According to Article 14(3), if the Constitutional Tribunal rules on the unconstitutionality of the party's charter or any part of it, the Regional Court is obliged to refuse the party's registration. Moreover, the Regional Court's decision is unappealable (Article 14(4)). An analogous procedure is prescribed when changes occur in the substance of a political party's charter (Article 21). Then, however, the effect of the Constitutional Court's decision is that the Regional Court refuses to register the changes. The Constitutional Tribunal also orders proceedings regarding the constitutionality of a party's objectives or activities without a prior request from the Regional Court (Articles 42-44). In case of a ruling on the unconstitutionality

[25] Law on Political Parties (n 13).

of objectives or activity, the Regional Court must immediately remove the party from the registry. The Constitutional Court's mandate derives directly from the Constitution (Article 188, p. 4).

As for the duties of the courts related to the technical side of trade unions' activity in Poland, they (like in the case of the other two forms of association) are registration subjects. As with associations, the local registry court for their headquarters has jurisdiction over them. It comes from the Article 14 of the Trade Unions Act.[26] The trade union must be registered within 30 days of its formation (Article 14(2)). The registration procedure is free of charge (Article 14(3)). According to Article 16, a trade union must notify the court of any change in the content of its internal statutes. As with registration, it has 30 days to do so.

According to Article 17, the court also removes the trade union from the register, confirming its liquidation. This occurs when it has self-dissolved (Article 17(1)), when the enterprise, broadly understood, in which the union operated has been liquidated (Article 17(2)), and when the trade union has had fewer than ten members for more than three months (Article 17(3)).

IV. Future Perspectives for the Freedom of Association

The political situation in Poland is dynamic. The parliamentary elections of autumn 2023 reversed - at least for a while - the trend of building a national illiberalism. Consequently, the motto of the current government is "restoration of the rule of law". This means a comeback to the legal measures demanded by, among others, supranational authorities (the European Union). The liberal side does not seek axiological or historical grounds for the reinterpretation of constitutional liberal democracy, as the previous government did. Nevertheless, the Law and Justice party still has a lot of electoral potential (it even won the last election but did not get a parliamentary majority). Therefore, the two initiatives presented, the legislative one and the one involving creative interpretation of the law in the process of its application, are now only historical. Nonetheless, they show the way of thinking about freedom of association, as portrayed by the second most important political party in Poland, which still influences legislative processes in the state (its representative is the President of Poland).

[26] Law on Trade Unions (n 14).

The issue related to the law's application of the Ministry of Justice, from 2020, addressed to the Constitutional Court to outlaw the Communist Party of Poland.[27] The formation refers by its name to the pre-war party, which was liquidated by Komintern in the 1930s. However, it is not the history but rather the current activities that are the main arguments of the applicants. The ministry based its request on Article 13 of the Constitution. In addition, it stressed that the party's members are undermining Poland's democratic order, and its aims directly refer to the totalitarian experience of the 20th century. An interesting plot point is the matter of diminishing the importance or even undermining of the Katyn massacre, which the Ministry found in the pages of the party's journal. This is particularly significant because the memory of the crime, which was covered up under Communism, is one of the components of the collective memory of the contemporary Polish polity. In other words, the party is supposed to undermine not only the formal framework of the community but also its axiology.

On the other hand, the legislative initiative is connected with a deputies' initiative from the most radical party within the governing coalition at the moment, Sovereign Poland, to amend the law on the transparency of NGO finances. The draft was submitted to the *Sejm* on March 30, 2022,[28] and two months later, it was sent for study by the committee. Since then, it has not proceeded. It is important to note that due to the parliamentary elections in 2023 and the principle of discontinuation of parliamentary work, its further course will depend on resubmitting the draft legislation to the new parliament, in which the political party formation of the drafters lost the majority. Nevertheless, the draft proves state policies' orientation toward associations. The title of the law (on the transparency of NGO financing) and the initiators' justification indicate a willingness to fill legal gaps to identify organisations that use the legal form of an association to operate against a polity. Under the proposed legislation, they postulate the establishment of a register of NGOs financed from abroad directly and indirectly. As foreign sources, they mean: foreign states and their agencies; foreign associations; foreigners; Polish legal persons in which foreign capital holds more than 50% of the stock; Polish NGOs with foreign income of more than 35% of their annual funds. The third sector criticises the draft. They speak explicitly about increasing administrative control over associations and the need to

[27] Prokuratura Krajowa [National Prosecutor's Office], *Prosecutor General's Request to Outlaw the Communist Party of Poland* (December 2020) <https://www.gov.pl/web/prokuratura-krajowa/wniosek-prokuratora-generalnego-o-delegalizacje-komunistycznej-partii-polski> accessed 1 February 2024.

[28] Sejm Rzeczypospolitej Polskiej [the *Sejm* (lower house) of the Republic of Poland], *On Transparency of NGO Financing* (Druk nr 2229) (March 2022) <https://orka.sejm.gov.pl/Druki9ka.nsf/0/1EB54CD5C1D657A4C125884D0038275B/%24File/2299.pdf> accessed 1 February 2024.

expand financial departments to satisfy authorities' need to be informed. This, in turn, is supposed to affect their essential activities negatively, primarily the scale of these operations.[29]

[29] Robert Horbaczewski, 'Politycy chcą lustrować NGO, by wyłapać agentów wpływu z zagranicy Politicians want to lustrate NGOs to catch foreign influence agents]", *Prawo.pl*, 01 April, https://www.prawo.pl/samorzad/jawnosc-finansowania-organizacji-pozarzadowych-propozycje-zmian,514383.html.