



INPRIS

Legal Think Tanks and Governments Capacity Building REPORT

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SLOVAKIA
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2017

Legal Think Tanks and Governments Capacity Building REPORT

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LIST OF ABBREVIATIONS

CJEU – Court of Justice of the European Union

CoE – Council of Europe

CPLR – Centre of Policy and Legal Reform (Ukraine)

CT – Constitutional Tribunal (Poland)

EC – European Commission

ECtHR – European Court of Human Rights in Strasburg

EU – European Union

EKINT – Eötvös Károly Policy Institute (Hungary)

FUPP – Legal Clinics Foundation (Poland)

HCLU – Hungarian Civil Liberties Union

HFHR – Helsinki Foundation for Human Rights in Poland

HHC – Hungarian Helsinki Committee

HPI – Health Policy Institute (Slovakia)

INPRIS – Institute for Law and Society INPRIS (Poland)

ISP – Institute of Public Affairs (Poland)

LRCM – Legal Resources Centre from Moldova

PTPA – Polish Society for Antidiscrimination Law

TIH – Transparency International Hungary

TIS – Transparency International Slovakia

UN – United Nations

V4 countries – Visegrad countries: Czechia, Hungary, Poland, Slovakia

INTRODUCTION

Good governance requires evidence-based, carefully considered decision making. Legal Think Tanks (LTTs) can play an important role in the area of law, policy, and public debate. Reports from six CEE countries (Czechia, Hungary, Moldova, Poland, Slovakia, Ukraine) prove that despite local differences, there are similar challenges pertaining to interactions between think tanks and governments. This report presents common conclusions offered by selected LTTs based on their experience, best practices and recommendations.

The idea of the project and its main objective

Before starting the project “Legal Think Tanks and Government – Capacity Building” we had observed that legal think tanks in the region lack significant influence on policy making in the area of law and justice. The problem was two-fold: a lack of adequate expertise and tools on the side of think tanks and a lack of awareness and eagerness to cooperate on the government side. We found such a situation alarming, since legal think tanks have a crucial role to play in civil society. Throughout the project (which started in late 2015) the situation in some countries changed and civil society organisations, including legal think tanks, have faced new challenges (as briefly described in the background below).

In our opinion, as expressed in the project concept, legal think tanks should enrich and deepen public debate on important issues. Good evidence-based analysis, offered by think tanks, should be crucial in the process of creating good law – in the region such an approach was neglected. The aim of this project was to contribute to changing this situation.

The main objectives of the project, with an emphasis on the regional dimension, were as follows:

- launching a debate on the role of legal think tanks in the region

- strengthening the evidence-based approach to the policy making process
- exchanging good practices among legal think tanks in the region
- enhancing the sustainability of legal think tanks in the region
- researching the situation of legal think tanks in the region

How do we define a Legal Think Tank?

There is a rich body of literature on think tanks, outlining the different definitions and typologies of TTs. Below we present how we understand think tanks for the sake of our project and how we define **legal think tanks** (we had not found previous definitions of legal think tanks, although this term was already in use).¹

As **think tanks** we understand organisations that are:

- institutionalised (have a formal basis for operation)
- fixed (they have a mission, objectives and a specific lifetime)
- independent (in relation to centres of power; however, we are also interested in think tanks that are created by political parties)
- advisory (their main product is expertise, which is available to centres of power, and can be used to create, or implement, a particular public policy; think-tanks are not liable for their decisions)
- offering mid-term analysis oriented on practical implementation (as opposed to long term, theoretical thinking in academia)
- professional (the essence of their operation is to provide high-quality expertise, uninfluenced by particular interests or ideology; think tanks have their own research facilities)
- public-policy oriented (provide expert services in the field of public policy and legislative processes)

¹ See: J. Cooper, *The case for an independent law thinktank*, Guardian, 7 Sept. 2010.

- innovative (preparing innovative proposals and analyses, new solutions)
- not organisations that are focused mainly on dispensing grants or engaged in trainings

DEFINITION

Legal Think Tanks can be described using two factors: either by interest (legal issues, such as legislation, judiciary, etc.) or by the method of approach to solving public or social problems (using legal instruments).

Examples of tools used by legal think tanks include:

- analysis of the state of the law in the field, in particular through the comparison of alternatives
- monitoring of the operation of the legislative, judicial and executive branches
- conducting empirical surveys
- collection, aggregation, analysis, presentation of available statistical data
- analysis and comments on draft legislation, strategic documents, etc.
- taking part in the consultation of legislation, taking part in developing Regulatory Impact Assessment
- creating legislation amendments of existing regulations
- participation in committees, advisory boards and other structures in parliament or the government
- drafting standards and best practices
- more activist actions (amicus curiae brief, strategic litigation, public statements of political character)

Stages and outputs of the project

Country reports. National experts have prepared country reports covering six countries. An excerpt from the template of the country report (part of wider guidelines) is attached to this report. Country reports are based on non-representative samples and qualitative analysis of questionnaires, interviews, and desk research. Country reports are available on the websites of the project partners (only electronic versions).

Legal Think Tanks working conference. INPRIS together with all partners met in Warsaw in March 2017 to discuss findings from the country reports and agree on common conclusions and recommendations for the policy paper and comparative report.

Policy paper. One common policy paper was prepared: “How Legal Think Tanks Provide, or Fail to Provide, Knowledge to Governments in Central and Eastern Europe”. It includes background information, findings, recommendations and good practices of LTTs. Parts of the policy paper are included in the report below. The policy paper is available both in print and in electronic version (inpris.pl) in 7 languages – English, Czech, Hungarian, Polish, Romanian, Slovak and Ukrainian.

National roundtables and dissemination of findings. In order to discuss the conclusions of the policy paper, project partners organised six roundtables in their home countries in September 2017. They are using the policy paper in their work both nationally and internationally, sharing findings with other think tanks and CSOs, to advocate with decision-makers about the role of independent expertise in effective public policies and the legislation process.

Comparative report. This publication has been prepared by INPRIS based on its own research and experience, six country reports written by national experts and the outcomes of the Warsaw meeting. It is available in print and electronic format (in English only).

The contents of the report

In the first part of the report we focus on background information, which puts our conclusions in the country-specific context, as well as on our general findings and recommendations. They reflect, in part, the issues presented in the policy paper “How Legal Think Tanks Provide, or Fail

to Provide, Knowledge to Governments in Central and Eastern Europe”, but go beyond its condensed content.

In the second part, we present the experience, outputs and achievements of legal think tanks in 6 countries. We divide them into thematic sections focusing on the most important developments, projects and best practices. More information on particular countries may be found in the country reports published in electronic format (available on the websites of project partners).

According to our partners’ selection we also include the “think tank cards” of legal think tanks and similar organisations in 6 countries participating in the project. We believe that this may facilitate future international collaboration of these organisations. In country reports one may find more of these cards showing a wider spectrum of organisations, as well as “project cards” presenting particular projects.

The next part comprises some documents, or statements, that we believe are interesting, again in accordance with the selection of project partners. Some of them refer to projects that are worth sharing and present different approaches and methodologies. We also decided to include some documents that reflect most recent developments in some countries, those undermining the role of civil society organisations and their relations with governments.

We also include excerpts from the country report template that shows our focus in the project and scope of country reports.

Finally, at the end of the report one may find more information about all project partners.

BACKGROUND

Legal Think Tanks (LTTs) can play a major role in bringing knowledge to the government (throughout the report, by “government” we mean both the executive branch and legislature on the local, national and international level). The degree and model of cooperation between think tanks and governments belongs to the realm of politics. Political decision makers choose their trusted sources of expertise.

This report offers perspectives from selected LTTs in six countries of the region. These organisations ascribe to liberal democratic values. Said countries vary as to the political options in power and as to the political culture in which our think tanks exist. Also, the last years have seen political shifts at the local scenes, and many of the LTTs have experienced profound change in their relations with governments. For example, after Maidan in 2014, Ukraine has been going through significant transformation efforts and the government draws extensively from the knowledge of various think tanks. In Czechia, Moldova and Slovakia liberal think tanks are also involved in policy making. Until recently this was the case of Hungary and Poland as well. We discuss these efforts in the report below.

Currently, in Hungary and Poland governments are challenging the liberal democratic model, and similar symptoms have begun to appear in Moldova and Slovakia. This results not only in some TTs landing outside the government’s list of sources of expertise, but – more importantly – the idea of cooperation with independent organisations is not in line with governmental policy. The tension goes beyond general scepticism about experts and extends to portraying organisations, or their staff, as public enemies. These governments argue that their democratic mandate allows for more than the change of substantive policies. They are changing the general model of participation of civil society in the governance of the country.

This poses dilemmas for liberal think tanks. They see that values such as democracy, equality, rule of law and respect for human rights, which underlie their activity, are under fire and that organisations and staff are under attack (e.g. via the government-controlled media). The dilemma is to what extent should the commitment to such values influence the organisation's daily work? Is it appropriate for analytical institutions to speak or take action to protect the values of liberal democracy, or should they limit their activity to fact-finding and analysis? Does it further the credibility of think tanks as objective sources of information to act as watchdogs, engage in advocacy, strategic litigation, protests and other political action? Some experts were surprised to find their roles evolve, from analytical staff to "freedom fighters" as a result of their own decisions. In spite of the challenges that such a watchdog role might pose for the analytical work of organisations, some LTTs find that the conflation of roles is inevitable. In fact, as pictured in the report below, LTTs are currently engaging in a variety of activities that complement their analytical efforts. Therefore, although we were able to make a joint list of Findings and Recommendations, their interpretation and application will depend on the situation in the given country.

FINDINGS

There are historical and current examples in the region of **LTTs making valuable contributions** to public discussion, policymaking and lawmaking. Their input comprises independent, interdisciplinary analysis and feedback that enrich the public debate and make the governance process more participatory.

Participation of think tanks in the public discourse requires **openness and capacity building, of both LTTs and the governments**. LTTs have to produce quality analysis and governments should recognize not only in-house research, but also external expertise, as valuable.

Sometimes governments are not interested in drawing from the potential of think tanks.

From time to time, legislation is proposed on the basis of **intuitive, anecdotal evidence**. The legislative process is rushed and excludes public consultations. Independent analysis and commentary from LTTs can create obstacles for the political process and are not welcome.

In the region, **relations between LTTs and governments vary to a great extent**; we find examples of cooperation as well as systemic disagreement.

As countries of the region we have **not arrived at a common model** for the participation of LTTs in public discussion.

In Central and Eastern Europe, civil society organisations, including think tanks, played an important role in the political transition towards democracy and the rule of law in the 1990s and the following years. Currently, however, authorities in some countries do not perceive LTTs as partners in policy debate nor the legislation process.

If we look back, there are many positive examples of LTTs providing valuable contributions to public discussion, policymaking and

lawmaking, to raising standards and introducing systemic changes. We present more details in the description of good practices and in comparative comments below (generally, we tried not to go beyond the last 10 years, therefore authors of country reports covered a limited number of initiatives).

To provide an initial general impression, we can mention several examples of fields where the input of LTTs has been advantageous:

- LTTs monitor judiciary reform and there are many examples of such initiatives. There are many research and monitoring initiatives providing feedback to the judiciary and formulating recommendations for changes. Via Iuris in Slovakia brings various innovative ideas to the judiciary (for instance on judicial ethics). In Moldova, LTTs influence the procedure of the appointment of judges and judicial training. In many countries, LTTs work on opening the judiciary to the media and citizens (in Poland, LTTs have taught the media about courts and vice versa by organising workshops where judges and journalists worked together on communication about the justice system and swapped roles in a mock trial).
- LTTs established the tradition of presenting *amicus curiae* briefs to the courts and developed the practice of target (strategic) litigation in countries of the region. Before, these methods, primarily from the domain of common law had not been used in the region and there were no LTTs or law firms that would pursue public interest in litigation.
- LTTs helped implement the rules of access to public information and make use of legislation on freedom of information extensively. LTTs are often pioneers in this field and serve as a model for others, like the media, politicians, and ordinary citizens.
- Thanks to the involvement of LTTs the judiciary has become more transparent (including access to court rulings and information on the operation of the judiciary).
- In some countries, LTTs are engaged in the monitoring of procedures of selection and appointment to positions in the justice sector, be it the common courts, high judicial positions (Constitutional Court, Supreme Court, International Courts) or other positions like prosecutor general, ombudsman, commissioner for data protection and similar).

- LTTs are engaged in the introduction, research and reform of the legal aid system (both pre-trial and during trial).
- For years particular TTs have engaged in a variety of activities in different fields, many of which have successfully influenced changes of law and policy. In Hungary, for instance, the Eötvös Károly Policy Institute drew up the conceptual basis of the Law on the Freedom of Electronic Information (2003). Also in 2003, in Poland, ISP (Instytut Spraw Publicznych) developed a proposal to extend the referendum on Poland's accession to the EU to two days. Parliament enacted the proposal.

Despite many positive examples of the collaboration of LTTs with the government and their contribution to the public debate, there are still numerous problems that they face. The main question remains, how to convince the government that it should take into consideration the voice of LTTs and involve them in official procedures?

In practice, there is frequently a lack of interest from governments. It may stem from the following reasons:

- government staff doesn't know about the existence of LTTs and their areas of expertise
- there is a lack of trust in the quality of LTTs' work
- cooperation with outside actors creates procedural burdens for government staff
- policies are not based on data and evidence, therefore there is no need to consult LTTs or commission research
- time is essential to the government and the speed of legislative processes excludes possible input of LTTs
- there is no tradition of personal accountability among government staff for the quality of law and regulation
- there are no designed schemes, tools or procedures for government staff to work with outside actors

Concrete examples from two countries show how different reasons may influence the cooperation of TTs and governments.

EXAMPLE

Sometimes governments are simply not interested in drawing from the potential of think tanks. INPRIS, together with other Polish think tanks, has been involved in collaboration with the government in a major, comprehensive and expensive project devoted to designing the system of free, out-of-court legal aid. Despite conducting extensive empirical studies, comparative analyses, collecting hard data, and elaborating proposed solutions (some variations depending on the political will and available funds), the results were not used by the government. Without any public study, based on intuitive and fragmentary data, the government proposed and passed a law (in 2015) which represented a completely different model, and after two years proved to be inefficient and expensive (which TTs had predicted in their analyses and comments on the draft law). The most probable cause of this situation was that the government decided to work on the draft right before the parliamentary elections and wanted to speed up the process, thus simplifying the solutions.

EXAMPLE

Hungarian civil society has faced a huge challenge regarding advocacy efforts over the past 7 years. The situation was not satisfying before 2010 either, but at least CSOs' proposals were usually taken into consideration. Since 2010 it has become extremely difficult to advocate in the professional and political sphere. In the past years, the government has systematically excluded civil society organisations and think tanks from decision-making processes, thus undermining their capability of advocacy. For instance, the Hungarian Fundamental Law and all the amendments were passed without real social and professional debate. At the same time, ironically, cooperation itself has become dangerous for CSOs, as the government does not hesitate to legitimize any of its measures by invoking "dialogue" with civil society even if the latter explicitly deplors that measure during the consultations.

In order to build the capacity of collaboration of governments and LTTs, the barriers and problems should be identified and addressed at the

country level. TTs obviously try to address them, but it is a process, and it is very difficult to reach a stable situation and build a tradition, or customary law of involving LTTs in the government's plans and work.

TTs are still perceived as something new and strange, not an obvious partner for public debate. It may stem from their short history in the region. "The Central European model of think tanks mainly results from the activity of international CSOs which supported the [third] sector, treating it as a source of stabilization aiding further transformation of social and political systems (hence the perception of CEE think tanks as "agents of change").² By 2000, some of the significant international donors started to wind up their support for the organisations in the region, assuming that local CSOs developed the capacity for survival. After the transition period, lasting until around 2013, the "agents of change" were left to fight on their own. Very few organisations were able to raise resources that allow for independent, long-term thinking.

Based on the exchange of opinions of TTs leaders in the six countries covered, as well as relevant literature, we conclude that CEE countries have not arrived at a common model for cooperation of TTs, including LTTs, with governments. Generally, there is no developed tradition for the exchange of information and ideas between the TTs and the government. Most often, such cooperation exists on an ad hoc basis, depending on the individual preferences of particular governments and think tank staff.

Additionally, in a typical case in the countries covered, the economics of running the organisation does not allow for the stability of TTs. In former Soviet bloc countries, we can find quasi-independent research institutes affiliated with universities and National Academies of Science. These kinds of institutions are mostly sponsored by the government. On the other hand, independent TTs face difficulties in obtaining public funding. The business community does not provide financial support of such scope. The revolving-door model seldom works, as important officials would almost never join real TTs, and TTs have limited public visibility. There are no mass-membership organisations that could support their legal think tank activity from membership fees (see below more information on the funding of LTTs).

² P. Zbieranek, *Polski model organizacji typu think-tank* (Polish model of the think tank type organization), Wydawnictwo Naukowe Scholar, 2011, p. 115.

Within the project we undertook an attempt to map LTTs and their activities and analyse their interactions and methods of working with government. The term “legal think tank” is not in widespread use in the countries covered, rather “think tanks” or “civil society organisations” specialising in legal matters. Country experts tried to identify relevant organisations in their countries. “Think tank” is a common, as well as academic, term, but not legal; in none of the countries covered does law define “think tanks”. Civil society is organised in different legal entities: non-for profit organisations, associations and non-entrepreneurial associations, foundations or charity funds. Generally, in the six countries covered there are no serious problems in registering the organisations (despite the law on “foreign agents” that is being discussed in some countries, and was already passed in Hungary).

In terms of the number of TTs in particular countries the Global TT index might provide some perspective (even this data is not fully reliable, since some TTs do not collaborate with the authors of the report, and some organisations do not call themselves TTs, but rather CSOs, even though they fulfil the characteristic of the TT).

Number of think tanks in countries covered

Country	Population in millions ³	Number of TTs ⁴
Moldova	3	9
Slovakia	5,5	18
Czechia	10	27
Hungary	10	42
Poland	38	42
Ukraine	43	47

Table: number of think tanks in the countries covered compared to the country’s population.

In Ukraine there is no official statistic on the number of existing TTs. According to the Global TT index there are 47 active TTs. In 2016–2017 a few research projects on the development of TTs were conducted in Ukraine. According to the Initiative “Think Twice UA”

³ Based on information from Country reports.

⁴ According to: J.G. McGann, *2015 Global Go To Think Tank Index Report* (2016), p. 32, see at: http://repository.upenn.edu/cgi/viewcontent.cgi?article=1009&context=think_tanks.

there are 58 to 70 entities which have the features of a think tank.⁵ According to the Ilko Kucheriv Democratic Initiatives Foundation there are 95 non-governmental, 9 governmental and 2 university (academic) organisations.⁶ In other words, it is not possible to establish the exact number of TTs in Ukraine since the legal form of a TT is not provided for in law. Ukrainian TTs focus on domestic and foreign policy, economics as well as legal and social issues. Considering the current political situation, most TTs concentrate on domestic problems, initiating and taking part in the process of economic and legal reform. In the opinion of national experts, the cooperation of legal TTs with the government is insufficient.

EXAMPLE

The main users of think tanks' research in Ukraine are media, civic organisations, international organisations, state bodies, and some parliamentary factions.

Usually the initiative in starting the interaction belongs to think tanks, rather than the government. However, there are a few senior officials and members of parliament actively seeking cooperation with TTs in such matters as policy design and public discussions.⁷

There is also no legal mechanism established that would describe possible interaction with the government. Think tanks' impact on the design and implementation of state policy is limited and exerted mostly through the media and formation of public opinion.

In a paper "Independent think tanks in Ukraine in the process of policy design: obstacles, prospects and mutual expectation in cooperation with governmental bodies" the Ilko Kucheriv Democratic Initiatives Foundation listed 58 TTs operating in areas where the government needs help the most, namely: comprehensive analysis of society development; ensuring energy supplies to Ukraine; reform of justice; the situation in Donbas and prospects of its development; reform of local self-governments.⁸

⁵ Initiative "Think Twice UA", 2016, <http://thinktwiceua.org/uk/think-tanks/ukraine/>.

⁶ Ilko Kucheriv Democratic Initiatives Foundation, 2017, <http://dif.org.ua/uploads/pdf/1083043079585b860b6ae971.43003343.pdf>.

⁷ Source: Ukraine. Country report.

⁸ *Independent think tanks in Ukraine in the process of policy design: obstacles, prospects and mutual expectation in cooperation with governmental bodies*, 2016, http://policy-analysis.org/wp-content/uploads/2015/01/Dem_init_Think-tanks_141.pdf.

EXAMPLE

After Euromaidan the state administration has become more democratic, so today legal think tanks have the opportunity to participate in promoting reforms in different forms: development of the human rights strategy; creation of an effective system of criminal justice bodies; reform of the legal profession, namely renewal of the judicial corps and improvement of judges' accountability; achievement of real independence of the judges; introduction of new technologies for the organisation of the work of judges and the administration of justice; introduction of a full-fledged jury trial; introduction of international standards into legal education and regulation of legal professions; establishment of an anticorruption court to consider high-profile corruption cases and others.⁹

EXAMPLE**Think tanks as a tool for dialogue between the government and the public**

According to the survey "Independent think tanks and Government: partners in promoting reforms or two parallel worlds?" which was conducted by the Ilko Kucheriv Democratic Initiatives Foundation in 2016, Western donors explained their motivation to support TTs in Ukraine first of all as a desire to strengthen dialogue between the government and the public.

According to interviews analysed in the paper each problem mentioned by officials is also the main preoccupation of at least some TTs. Communication between LTTs and governmental bodies is most efficient when discussing draft law amendments. Many experts believe that the judicial reform announced in 2014¹⁰ is the most important one, therefore LTTs engage in a number of activities regarding judiciary, systemic and constitutional issues trying to influence this process. Many TTs formulate opinions, comment on the drafts and present their recommendations in this field. However, only some recommendations are accepted, most of them are not taken into account, while some are simply ignored.

⁹ Source: Ukraine. Country report.

¹⁰ Source: Ukraine. Country report. Official site of the Council on judicial reform <http://jrc.org.ua/>.

GOOD PRACTICE

Ukrainian TTs were actively involved in **the drafting process of the law on separate anti-corruption courts**. Experts from the Anti-Corruption Action Centre in cooperation with several MPs developed the draft law “On Anti-Corruption courts”, which was registered in the Parliament.¹¹

In Slovakia,¹² a study carried out in 2013 identified 15 think tanks (while in 2015 the Go to Think Tank index listed 18). Seven operated in the field of economics and social affairs, 2 in the area of governance, 3 specialized in foreign and security policies, 2 focused on ethnic relations and minorities, and 1 on general social development, democracy, and political culture. Slovak legislation does not define any specific legal form for TTs.

Apart from TTs, some other organisations have also been classified as think-tank-like organisations.¹³ According to the authors of the country report among these TTs, or TT-like organisations, only a few accept their categorization as legal TTs, or legal organisations.

EXAMPLE

In general, experts consider the **cooperation** of the government with the CSOs sector as **formal rather than substantial**. Representatives of the public administration invite CSOs to participate in various procedures (like the process of preparation of strategies, policies or draft legislation), but the outcomes of discussions rarely include the progressive ideas of TTs.

The government is more willing to cooperate with CSOs when their proposals do not impact the state budget or finances.¹⁴

¹¹ For more information on anti-corruption courts see: R. Kuybida, *Judicial reform: the seven most anticipated events of 2017*, see at: <http://pravo.org.ua/en/news/20871915-judicial-reform-the-seven-most-anticipated-events-of-2017>.

¹² Based on: Slovakia. Country report.

¹³ G. Mesežnikov, D. Smilov, *Independent Think Tanks in Slovakia*, Country report for the *Think Tanks at a Cross-Road: Shifting Paradigms and Policy Dilemmas in Southern and Eastern Europe*, Open Society Foundation, http://www.cls-sofia.org/uploads/files/Publication%20Slovakia_1.pdf, p. 19, consulted in April 2017.

¹⁴ M. Bútorá, Z. Bútorová, B. Strečanský, D. Ondrušek, G. Mesežnikov, *Štúdiá trendov rozvoja občianskej spoločnosti na Slovensku* (Study of evolution trends of the civil society in Slovakia), Bratislava, Október 2011, http://www.minv.sk/swift_data/source/

Representatives of various TTs expressed their negative and critical opinions on their cooperation with the government in the study “Independent Think-tanks in Slovakia” carried out in 2013 by Grigorij Mesežnikov and Daniel Smilov.¹⁵ According to one of these representatives, the state perceived TTs as enemies at that time. Since 2013 not much has changed, given that the government has not changed much and has kept up the negative rhetoric towards civil society organisations.

CHALLENGE

There is weak (if any) political will to support TTs and the CSOs sector. This critical situation may have an impact on the sustainability of certain activities. According to experts on CSOs advocacy, **watchdog and analytic activities may be the first to feel threatened.** They warn that if in the near future their financial sustainability is not improved, there is a risk they will disappear. This might destroy the expressive, analytical and control functions of the CSOs and think tanks sector in Slovakia.¹⁶

The CSOs sector is undergoing serious changes in Slovakia. The most challenging issue concerning the functioning of TTs and CSOs is their financial insecurity. Since 2004 there has been, in general, a considerable weakening of CSOs and TTs, among other reasons, due to a significant decrease of traditional financial resources from foreign foundations, which formed the core funding for most of the TTs.

Moreover, neither state nor philanthropists were strong enough to reverse the situation at that time. According to the director of INEKO, a Slovak think tank, national donors do not support national TTs in order to support development of democracy in Slovakia, as is the case in developed European countries or in the USA. Slovak donors need to see some direct overlap of interests between their activities and TTs’ (e.g. insurance companies financing TTs analysis of the insurance system).¹⁷

rozvoj_obcianskej_spolocnosti/na_stiahnutie/publikacie/Studia-trendov-vyvoja-OS.pdf, p. 11, consulted in April 2017.

¹⁵ G. Mesežnikov, D. Smilov, *Independent Think Tanks in Slovakia...*, p. 26.

¹⁶ M. Bútorá, Z. Bútorová, B. Strečanský, D. Ondrušek, G. Mesežnikov, *Štúdia trendov rozvoja občianskej spoločnosti...*

¹⁷ F. Obratovič, *Kto financuje think-tanky? (Who finances think-tanks?)*, TREND, 24.10.2015, <http://www.etrend.sk/trend-archiv/rok-2015/cislo-42/kto-financuje-think-tanky.html>, consulted in April 2017.

Slovak TTs became the subject of several ad-hoc analyses carried out by different authors, including leading role of the Institute for Public Affairs.¹⁸

LTT experts analyse the law through the comparison of existing alternatives, conduct empirical surveys, provide expert opinions and comments on draft legislation or strategic documents, prepare amicus curiae briefs, engage in strategic litigation and formulate public statements.

EXAMPLE

Despite critical appraisal of the relations between LTTs and government, there is a number of positive examples of TTs **input into policy and legislation**. For instance, CVEK (the Centre for the Research of the Ethnicity and Culture) works on improvement of the protection of rights of national, ethnic and religious minorities. CVEK managed to influence the change of policy and legislation on a number of occasions within projects such as “Racial Prejudice and Discrimination in Foster Care – Time for Change” or “Minority Rights in Slovakia” by undertaking monitoring, analytical and advocacy activities.

In Poland, no statistics tracking the number of TTs are maintained. In the annual Think-Tank Index (gotothinktank.com), 42 TTs are mentioned. Considering, however, the adopted definition of a legal think-tank, the number of such organisations would have to be adjusted upwards, especially if we consider the proliferation of watchdog and advocacy organisations. According to the 2015 report on the condition of the CSO sector in Poland by Klon/Jawor, 28% of Polish organisations engage in some form of legal debate, watchdog, or advocacy work (a pronounced increase since 2012, when such operations were declared by 16% of organisations).

Meanwhile, looking at declarations on the operation of CSOs, 14% of Polish non-governmental organisations describe their work in terms of academic research and gathering, processing and analysing data. This latter group includes TTs. To approach the question in this way, then, TTs are not a particularly large category among Polish

¹⁸ G. Mesežnikov, *Think tanky na Slovensku: skúsenosti a výzvy* (Think tanks in Slovakia: experience and challenges), SME, 29. 05.2001, http://www.ivo.sk/buxus/docs/publicistika/subor/produkt_2109.pdf, consulted in April 2017.

organisations, but their number is gradually increasing. Of the growing circle of organisations which rely on legal tools to affect social and civic realities, we would mention first and foremost watchdog organisations and those devoted to the field of human rights, counteracting discrimination, and the economy.

Polish law does not lay down any provisions concerning the registration and operation of TTs. The operation of Polish organisations is relatively transparent; also, those organisations which apply for, and receive, official “public benefit” status (which entails certain financial advantages) are bound by law to publish detailed financial reports.

On the one hand, as in other countries, there are positive examples of interaction of LTTs with the government such as dialogue and cooperation. This has never been easy and no standards that would last long were developed, but TTs have been able to take part in a serious debate about policies and legislation. Recently, however, in the view of many this process has become much more difficult.

CHALLENGE

In light of the broader political and public climate now prevailing in Poland, TTs find themselves **exposed to turbulence**. Independent TTs, especially those that take it upon themselves to analyse the activities of the government and to criticise them, now find themselves singled out for attack by government representatives and by the public media allied with political powers. This **unfriendly climate** is hardly conducive to the organisations’ work, and it creates additional difficulty in obtaining funds. Apart from that, in less tangible terms, this places additional demands on the resources of TTs; rather than concentrating on their core operations, think-tank experts are forced to spar with the government and to remind everyone about the basic principles of a democratic state and governance.

To give a few examples: in Poland, one avenue for potential cooperation with TTs was the mandatory public consultation of government (executive branch) drafts of statutes. This is a regulated procedure where government staff is expected to interact with CSOs if they offer opinions and comments. However, the legal duty of consultation can be (and often is) seen as a mere formality. In the past, there have been proposals to develop the interaction around the impact assessment procedure where LTTs could look at the regulations and laws ex post

and discuss solutions and scenarios with the government. Some projects of this kind may be developed in the future.

In last two years significant draft legislation has often been introduced as proposals of members of parliament, despite being in reality government proposals. This way the government bypasses the public consultation process that is mandatory for government drafts. This also shortens the time needed for analysis, formulating opinions, and attempts of discussion. Important legal acts are passed in haste, projects are analysed and evaluated by LTTs day and night, leaving no time and place for real debate. This includes the parliament, which sometimes resembles a voting machine, rather than a parliament where different visions should collide, a place, like the Greek agora, where a real debate should be taking place.

No on-going or cyclical studies of TTs are conducted in Poland. Related subjects have, however, been studied at one time or another by academics, CSOs, and by the public authorities.

In Moldova¹⁹ the notion of a think tank is not defined or understood by society. CSOs are registered in the legal form of public associations based on membership, private institutions or foundations. Currently there are approximately 20 active CSOs that might fit the definition of TTs. They focus on issues such as human rights, justice, anti-corruption, good governance and civil society as well as the environment, economy, entrepreneurship and foreign policy.

Moldovan TTs use both “insider” strategies (influencing policy makers through their networks) and “outsider strategies” (using the media, and increasingly, social media, to disseminate policy research).²⁰ After the change of government in 2009 and the European integration of the country announced by the authorities, TTs experienced a **“golden age”** of working closely and successfully with the authorities. As a result, many important public policies and laws were adopted and many reforms were initiated. Following conflicts in the political arena, the environment for think-tank activity worsened. The authorities are becoming less open to cooperation and public participation is respected more as a formality than in terms of real involvement of civil society.

¹⁹ Source: Moldova. Country report.

²⁰ G. Lodge, W. Paxton, *Innovation in Think Tanks*, <https://medium.com/rsa-reports/innovation-in-think-tanks-d1c28b33553f>.

These changes have forced TTs to adapt and to use different methods of research and communication. TTs have increasingly involved mass-media and social media in disseminating their research bringing the topics of public interest to the public debate.

GOOD PRACTICE

Round table as a tool for collaboration

If there is **willingness to collaborate** on both sides, the input of the TTs could be significant. Moldovan TTs use several methods to identify problems and issues for their policy work. One of the schemes used consists of several stages and includes dialogue between TTs and authorities:

- (1) research – using the available information (available public data, previous reports, etc.); organising interviews and surveys if necessary
- (2) elaboration of draft analysis
- (3) organisation of a round table bringing together representatives of CSOs, authorities and development partners and discussing preliminary conclusions and recommendations
- (4) finalising the analysis based on the discussions at the round table.

Currently, legal TTs are monitoring the implementation of policy documents, observing key institutions, elections, as well as the implementation of the initiated reforms. Primarily representatives of CSOs are involved in public consultations on draft laws.

At the request of the Constitutional Court, TTs can submit amicus curiae briefs even if there is no official procedure on amicus curiae in the law. LTTs also use strategic litigation as a way of putting pressure on the authorities. Finally, they present public declarations, appeals and statements to the relevant authorities and to the public. LTTs are involved in the improvement of electoral legislation, public procurement reform, anti-corruption, reform of the criminal justice system, implementation of the Association Agreement, economic development, development of independent media, foreign policy, environmental issues, assistance for CSOs.

EXAMPLE

A good example of the legal TTs' involvement in the legislative process was their participation in the initiated reform of the judiciary. Think tanks were involved both in the drafting of the **Justice Sector Reform Strategy** (2011–2016), and in mixed working groups appointed by the Ministry of Justice for monitoring the implementation of the legislation.

In many cases, the draft laws and regulations prepared and agreed upon between CSOs and the government are adopted by the parliament with significant changes compared to the initial draft. In many cases, the government does not observe the procedures of public consultations during the legislative process.

CHALLENGE

A challenge encountered by Moldovan TTs is the **authorities' resistance** to accept proposals of policy reforms coming from the CSO sector. The cooperation between CSOs and the government often depends on the personal attitude of the government representatives. The staff turnover in the ministries due to the frequent change of governments has led to poor communication between the CSO sector and governing authorities.

The cooperation and dialogue between the CSOs and the government was established following the launch of the European Neighbourhood Policy between Moldova and the European Union in 2005. This led to the adoption of legislation on the cooperation of the non-for profit sector and the government. "The concept of Cooperation between Parliament and Civil Society" prescribes the principles of such cooperation and encourages a friendly legal and fiscal environment for CSOs, the development of civic activism and volunteering and strengthening participation in decision-making.

GOOD PRACTICE

In 2010 the government proposed to establish an institutional framework of collaboration with CSOs by creating the **National Participation Council (NPC)**, a consultative body composed of 30 TT representatives selected by the government in order to contribute to the adoption of public policy decisions which would correspond to the interests of society.

In practice, NPC members were consulted on all pieces of legislation, therefore mistaking the NPC consultation with the public consultation. This led to an overburdening of NPC members and, as a result, a decrease in efficiency along with inability to provide qualitative feedback on important strategic documents.

In 2012 the parliament adopted a new Strategy for 2012–2015 that comprised three pillars:

- Strengthening the framework of participation of civil society in developing and monitoring the implementation of public policies
- Promoting and strengthening the financial sustainability of civil society
- Developing an active civic spirit and volunteering

In April 2017, the government approved a new structure of NPC.²¹ About half of the CSOs selected were previously unknown to the CSO sector and also signed a declaration in support of the amendment of the electoral system (contested by many CSOs). Several active TTs noted that, in practice, authorities used the NPC mechanism for public consultations that actually should be conducted openly, and underlined a lack of meaningful consultation with NPC members on strategic issues.²²

GOOD PRACTICE

A good practice that is worth sharing is **annual conferences in partnership with the Parliament on the cooperation of authorities and CSOs** organised by the CSO Council.

The annual conferences bring many positive effects and shed light on different legal issues and problems which particularly affect civil society.

²¹ Government Office, *Dialogul dintre Guvern și societatea civilă – instituționalizat* (Dialogue between the Government and civil society – institutionalized), 12 April 2017, <http://gov.md/ro/content/dialogul-dintre-guvern-si-societatea-civila-institutionalizat>.

²² Common Opinion of 23 Moldovan Think Tanks, *Participarea efectivă a societății civile în procesul de luare a deciziilor* (Effective participation of the civil society in the decision-making process), 30 June 2016, http://crjm.org/wp-content/uploads/2016/07/CRJM_-2016-07-07-Opinie_SC_cnp_fin.pdf.

In **Hungary**²³ part of more than 40 TTs fit into the typology of Legal Think Tanks. Basically, they focus on research and work in the field of legal issues, as well as public and social affairs. The authors of the country report identified 18 LTTs or CSOs specialised in legal matters.

Most CSOs that deal with legal issues in Hungary are active in the areas of civil rights, freedom of information, and broader constitutional questions. Most of them undertake litigation, either individual or strategic. By comparison, there are fewer organisations that focus on more general institutional and legal analysis, or that approach constitutional issues from a more systematic perspective. Not many legal TTs are active in other areas such as labour law, child welfare, rights of persons with disabilities, or consumer protection, etc. More generally, economic areas of the law, such as antitrust law, corporate law, and regulatory and banking law are vastly neglected among TTs that work in legal areas. In general, international law is neglected in comparison to national law, though this has been gradually changing since the admission of Hungary to the European Union.

There are almost no known legal TTs that focus on the work of municipalities and local governments, as distinct from national institutions, even though local municipalities have a huge impact on the lives of their residents. Very few legal TTs conduct statistical analyses of legal problems as distinct from the analysis of individual pieces of legislation or specific institutions.

Litigation is more prevalent than policy analysis and advocacy. Strategic litigation, as well as filing *amicus curiae* briefs, are important elements of the toolbox of several LTTs. In the past, *amicus curiae* briefs were submitted to the Constitutional Court. But, as pointed out in the country report, due to the destruction of the national constitutional system, in recent years TTs have undertaken a more activist role in litigation at European fora and have filed several *amicus curiae* briefs to the European Court of Human Rights.

²³ Source: Hungary. Country report.

CHALLENGE

In 2009,²⁴ Anna Selmeczi claimed that despite the stable democratic political system that has been operating in Hungary since the political transition in 1989-1990, “think tanks are still only slightly more than **marginal actors** in the processes of policymaking or agenda-setting”.²⁵ Since then, however, the country took an unexpected turn with the government’s steps to build an illiberal state. **The space for civil society and particularly TTs** within civil society, which, by nature, provide a critical balance to governmental authority and promote democratic development, **is shrinking**.

Think tanks, that were “simply” marginal actors with little impact on policymaking and agenda-setting, have become CSOs that are harassed by state institutions and are labelled “paid agents” that “serve foreign interest circles”. According to the authors of the country report, the Hungarian government perceives civil entities that are critical of the government as its enemies, not as partners. Furthermore, due to the destruction of the national constitutional system in Hungary, constitutional values can no longer be enforced before national courts.

CHALLENGE

In the late summer²⁶ of 2013 civil society came under a **series of unjustified attacks**, and in 2014 the government launched unlawful checks and auditing controls against several associations and foundations. [...] As Amnesty International puts it, the harassment and intimidation of CSOs “had a chilling effect on the right to freedom of association and eroded the space for civil society in the country”.²⁷ And though one wave of harassment has died down, it does not mean it is over.

In Czechia²⁸ after the Velvet Revolution (1989), the political transition from a communist regime to a liberal democracy created space for

²⁴ Source: Hungary. Country report.

²⁵ A. Selmeczi, *Hungarian Think Tanks and the European Public Sphere*, 2009, p. 1. <http://eurospheres.org/files/2011/04/Eurosphere-Panel-I-Selmeczi.pdf>.

²⁶ Source: Hungary. Country report.

²⁷ See at: <https://www.amnesty.ch/de/laender/europa-zentralasien/ungarn/dok/2015/hexenjagd-auf-ungarns-ngos/their-backs-to-the-wall-civil-society-under-pressure-in-hungary-1>.

²⁸ Source: Czechia. Country report.

various CSOs, including TTs. The history of TTs is quite short and the term “(legal) think-tank” is not widely used. Nevertheless, the number of TTs is on the rise, their actions are becoming more visible and this corresponds to their bigger impact on public administration. Especially with the country’s accession to the European Union in 2004, TTs have more opportunities to cooperate and adopt a more professional approach. The most recent work mapping the landscape of Czech TTs is “Think Tanks and Policy Discourses in the Czech Republic” by O. Císař and M. Hrubeš (2016).²⁹

Regarding legal TTs, there are organisations that are either interested in legal issues (such as legislation, the judiciary, etc.) or use legal instruments to help solve public or social problems. For instance, the Association for International Affairs (AMO), European Values, In Iustitia, the League of Human Rights, the Otakar Motejl Foundation or Oživení, all share these characteristics. However, each has a different focus (such as human rights, anti-corruption and transparency measures, international politics, etc.) and uses different legal tools to achieve its goals (strategic litigation, cooperation with policy-makers and other stakeholders, issuing of policy papers, among others).

Based on interviews³⁰ with representatives of Czech TTs, authors of the country report describe different approaches that TTs employ to influence policy and legislation. Some TTs are interested in creating new laws and actively participate in this process. Others collect data about laws that already exist, analyse the situation and further cooperate with interest groups, lobby groups or academia. These TTs simply map or monitor the current state of affairs and do not view direct cooperation with the government as vital to their existence. The third group of TTs comments on draft legislation and strategic documents. It was also confirmed, as pointed out in previous research, that among their diverse activities (including advocacy, education, communication, litigation etc.) the majority of TTs leaders view research and analysis as their most important tasks to accomplish.

²⁹ O. Císař, & M. Hrubeš (2016), *Think Tanks and Policy Discourses in the Czech Republic*. In A. Veselý, M. Nekola, & E.M. Hejzlarová, *Policy Analysis in the Czech Republic* (pp. 273–290). Bristol: The Policy Press.

³⁰ Source: Czechia. Country report.

CHALLENGE

The public as well as the government still do not consider TTs relevant partners capable of providing quality analyses without having a **hidden agenda**. This approach is expected to slowly change, reflecting the fact that citizens are becoming more active in civic society.

TTs monitor³¹ legislative processes that concern their area of focus and try to influence decision-makers. TT experts belong to various government working groups and participate in related conferences, seminars and workshops. However, it was also concluded that other lobby groups (with business interests) had stronger negotiation positions and thus often amended laws to suit their interests. TT leaders admit that personal contacts with influential members of the parliament or government officials are a very effective tool to reaching their goals. Also, the communication aspect is becoming more and more crucial. Infographics can carry a message a long way, yet the saturation of media with information creates a demand for skilled experts who could present a key (and often complex) matter in an attractive way.

CHALLENGE

Communication between actors has to improve. The government should clarify its needs and expectations while TTs should declare their abilities. TTs would thus welcome being regarded as natural and empowered partners to the State.

Overall, TTs try to reflect the current political landscape, yet their voice is of interest only to limited groups of people. This is caused by the fact that TTs are a relatively new phenomenon in Czech society, their legitimacy is left unrecognized and, their participation in the public sphere is too often overshadowed by other actors.

For instance, the Czech president, as well as prime minister, support communication channels that are favourable to their stances. Their rhetoric thus labels TTs as just another type of non-profit organisations pushing for a narrow cause, thus are not representative enough.

³¹ Source: Czechia. Country report.

CHALLENGE

The TTs' financial background creates space for scepticism as the relative lack of **transparency** in this matter leaves the public wondering about their neutrality.

However, based on a recent amendment on the association of parties, many TTs are expected to formally declare their affiliation to political parties. The aim of the amendment is to financially support institutions that help strengthen the democratic political system. The activities of these TTs are to be slightly restricted, yet their transformation into a political institute should provide them with significant funding – a problem experienced by most TTs.³²

FINDINGS

A vast share of LTTs in the region resort to **other activities** in addition to the production of knowledge. Many organisations introduce other components: **advocacy, strategic litigation and watchdog activities**.

Recently, some governments in the region and their allies (e.g. media) have been engaging in **political attacks** on civil society organisations including LTTs or their staff.

When LTTs perceive the policies of the governments as a **threat to fundamental values**, like the rule of law and human rights, some of them step up with efforts to push for their causes. They combine traditional think-tank work with (also political) **activism**. For the think tanks, this poses the **risk of losing impartiality** or being labelled as biased or partisan.

Even in the absence of influence on government decisions, or in a hostile environment, it still makes sense to **record political and legal history**: collect and analyse data, stories and other evidence.

³² K. Šopfová (2017) *Stát pošle miliony think-tankům* [online], *Hospodářské Noviny*. Retrieved from <https://archiv.ihned.cz/c1-65849780-stat-posle-miliony-stranickym-think-tankum>.

Some researchers distinguish the model of the Central European think tank as a specific one.³³ Think tanks in the region traditionally engaged in a number of activities, going beyond research, analytical work, and the production of knowledge. Think tanks were always, as it is also shown in the comparative section below, multitasking entities, resembling Civil Society Organisations that work in several fields. However, the current situation, as described in the background information, has caused more engagement in other activities. They have become more frequent or even dominant, as organisations increasingly engage in “actions to defend democracy”. In a liberal democracy TTs ideally conduct research and make recommendations on various issues and public affairs. In an **illiberal democracy, many think tanks have decided they need to adapt** to the circumstances and go beyond the classic advocacy and watchdog role. Most civil society organisations and TTs have faced this challenge: **they feel the urge to do something more in order to protect the rule of law** and democracy. The latest examples include the Hungarian Helsinki Committee, which has become involved in the refugee crisis in an activist manner in addition to legal advocacy. For example, they made leaflets, for activists to encourage them to provide more effective help to refugees.³⁴ In Poland, several TTs and CSOs prepared an information campaign and urged citizens to participate in the protests against an attack on the independence of the judiciary.



The text of the poster: “#OneMoreVeto, Let’s Defend the Courts, Monday, 24.07.2017, at 18.00, in front of the Presidential Palace in Warsaw. #musicfordemocracy” followed by logos of 20 organisations.

³³ See: P. Zbieranek, *Polski model organizacji...*, *passim* and literature quoted by author.

³⁴ Source: Hungary. Country report.

Another interesting phenomenon in Poland was the participation of specialised organisations in a debate and protests pertaining to general issues. In our opinion, such organisations would be unlikely to take to the streets in response to changes in the administration of courts under regular circumstances. They are specialised in their well-defined fields such as women’s rights, LGBT rights, environmental protection, and cyber security. Since the issues under discussion were perceived as fundamental, specialised organisations joined efforts around general issues like the rule of law and democracy.

In some instances, the activity or activism of LTTs has resulted in alleged backlash from governing authorities and related organisations or media.

CHALLENGE

Expert v. freedom fighter

It is one thing for a legal think tank to research the optimal number of assistants per judge, and is quite another thing to discuss the government’s proposal to replace overnight all the Supreme Court Justices. Both problems require competent, objective analysis. The latter issue is so important, and the solution is so controversial, that the staff of the think tank feels the professional and moral duty to go further than research – experts become “freedom fighters”.

Below we include the most up-to-date information (till October 2017) on the situation in the countries covered, where CSOs have been subjected to various types of treatment, including attacks that they perceive as restrictions on democratic freedoms.³⁵

In Hungary, the attempt to discredit civil society organisations critical of government actions and policies has recently intensified and resulted in the adoption of the Law on the Transparency of Organisations Receiving Foreign Funds (anti-NGO law). Under the law, which was passed by Parliament on 13 June 2017, CSOs that receive more than HUF 7.2 million (approx. EUR 24,000) a year from foreign sources have to register themselves as an “organisation supported from abroad” and have to display this labelling in all of their publications. In the period leading up to the adoption of the law, i.e. in the spring and early summer, several international institutions, including the EU Fundamental Rights Agency, the Council of Europe Commission for Human Rights,

³⁵ Based on the information provided by country experts.

and the Venice Commission, expressed their concern about the draft law, to no avail, as domestic protests were not taken seriously either.

In July 2017, the European Commission launched an infringement procedure against Hungary on account of the law, arguing that “the law interferes unduly with fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, in particular the right to freedom of association”. Having issued a formal notice to Hungary – the first step of the infringement procedure – on 13 June 2017, the Commission gave the Hungarian authorities one month to respond. Hungary replied on 14 August, however, the Commission found that the answer did not address the serious concerns put forward by the Commission. In the meantime, on 12 September 2017 a number of Hungarian NGOs drew the attention of OSCE to the shrinking space for civil society in Hungary in a joint statement. Moving into the second phase of the EU infringement procedure, the Commission issued a reasoned opinion on 4 October 2017. Hungary was given a month to respond. However, when the reasoned opinion was announced, it was dismissed as “ridiculous” and “unable to be taken seriously” by the Hungarian Prime Minister.

EXAMPLE

In a speech³⁶ delivered in April 2014 at Balványos Summer University, a major cultural event for ethnic Hungarians in Romania where members of the government regularly address the audience, Prime Minister Victor Orban declared that in order for Hungary to be competitive and successful it has to depart from Western dogmas and ideologies and has to turn into an illiberal state upon the model of Singapore, China, India, Russia and Turkey. He also pointed out that the foundation of a successful society is work and a nation is not a random group of individuals, but a community whose ties have to be strengthened. Out of the several obstacles that, according to him, have to be surmounted on the way to illiberalism he singled out two: the European Union and civil society. While not thinking that it would be impossible to build an illiberal state within the EU, he found that defeating civil society would be a more difficult task to accomplish. Speaking of civil society organisations, the Prime Minister stated that in reality they are not independent entities, but paid political activists who are, moreover, paid by foreign interest groups.³⁷

³⁶ Source: Hungary. Country report.

³⁷ See at: <http://mno.hu/tusvanyos/orban-viktor-teljes-beszede-1239645>.

The Hungarian pattern is being used as an example to follow also in other countries. **In Slovakia**, since 2016 civil society has experienced increasing pressure from the side of “alternative media”, extremists and populists. The attack has been at three levels: political, legislative and the media. Legislative proposals drafted in 2016 by the extremist party ĽSNS on the functioning of CSOs opened a discussion in parliament on the civic sector. It revealed that MPs do not understand the role of an organised civil society, its operation, financing or legal regulation. Critical voices towards CSOs that arose in this debate were left without any proper reaction from democratic political forces and CSOs themselves. Moreover, in April 2017, Prime Minister Robert Fico came with a strong claim that Hungary may be considered as a role model when it comes to regulating organisations receiving financial support from abroad. Also attacks on organisations and their representatives with support from abroad, especially from the US government and Open Society Foundations, rapidly increased and radicalized.

These recent events strongly undermine the perceived integrity and legitimacy of the civic sector and the values that it advocates for and defends. Having in mind the developments in Hungary and Poland, Slovak think tanks are aware that the current situation in Slovakia should be approached with the highest alert and seriousness. According to VIA IURIS, undermining the civic sector is part of a broader strategy of the political elites to limit any real or potential opposition to achieving total power and, inevitably, moving from democracy to semi-totalitarian autocracies. VIA IURIS helped build the civic sector in Slovakia in the 90’s and now it feels a moral obligation to defend it from political control, extremists and alternative far-right media. Since September 2017 VIA IURIS has expanded its program to include a new topic – “Civil Society Defender”. Together with other CSOs they plan to undertake a series of activities intended to defend the role and legitimacy of CSOs. The long-term objectives of the initiative were formulated as follows: defending the space for an authentic, democratic, advocacy-based civic sector as a fundamental pillar of a democratic political system; preventing political and legislative activities that would restrict the democratic process and undermine the functioning of advocacy CSOs particularly in critical areas such as democracy, rule of law, human rights and anticorruption; cultivating political, social and media debate on the importance of the civic sector, aspects of its functioning (including funding) and about the contribution of the CSOs to the development of democracy, freedom and functional, broadly understood civil society.

In Moldova, a new draft Law on Non-commercial Organisations was discussed in 2017. The worrisome provisions limit external financing of non-commercial organisations and introduce additional reporting rules and sanctions. August 2017 was the deadline set by the Ministry of Justice for the public to submit comments to the draft. More than 30 organisations signed a joint legal opinion in which they highlighted the problematic articles and their dissonance with the international and European standards on freedom of association. CSOs representatives pointed out in particular the absence of a genuine legitimate aim for the existence of such restrictions and their possible negative effects on the financial sustainability of over 80% existing CSOs in Moldova. The opinion builds on the previous joint declaration signed by 78 CSOs in which the signatories qualified the attempt to limit foreign funding of CSOs as endangering the functioning of democracy in Moldova. Donor community representatives and international organisations, such as Amnesty International and Freedom House, expressed their concerns on the initiative, as it lacks means for promoting an enabling environment for CSOs in Moldova. The Ministry of Justice eventually gave up on the amendments. Nevertheless, this seems to be one of the initiatives launched against civil society organisations in the last year. Representatives of the public authorities are “penalizing” civil society organisations and non-affiliated media representatives for their critical voices. They are accused, among others, of promoting a “poor image” of public institutions or promoting partisan political views. Moreover, some non-governmental organisations and media institutions have become “undesirable” for some authorities and are excluded from their dialogue with civil society.

In Poland the political situation has been very dynamic since the parliamentary elections in autumn 2015. The new government quite rapidly has been introducing fundamental systemic changes in the most important areas of state, one by one. The activities of the so-called “good change” (*dobra zmiana* – governmental slogan) might be seen twofold from the point of view of our interest.

Firstly, LTTs have engaged in analytical, professional work on the proposed changes by formulating opinions, statements, taking part (if possible) in the legislative process, but also by defending what they define as rules of liberal democracy, rule of law and human rights. LTTs and CSOs have authored a number of common statements, opinions, alerts, both nationally and internationally pointing out the threats to democracy. LTTs and CSOs even prepared a first motion to the Venice

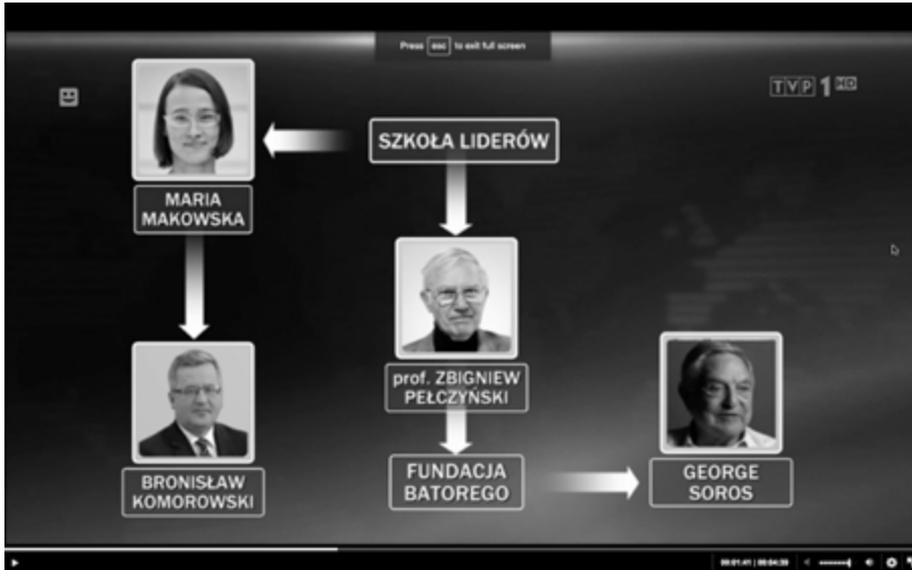
Commission pointing out the governmental activities aimed at limiting judicial independence and constitutional control.

Secondly, a separate field of activities is the relationship between the government and civil society. As mentioned below (see Common Efforts in Times of Crisis), CSOs have undertaken a number of initiatives also aimed at building a common strategy of defence and outreach.

At least some points characterising the new policy of the Polish government towards LTTs and other CSOs should be mentioned. Organisations are openly criticised by the government and public media.

As reported by the Helsinki Foundation for Human Rights “At the end of October 2016, the public media carried out a smear campaign aimed at certain CSOs working on the rule of law and fundamental rights, and which had received public funding for their work. The campaign began with news reports that were originally directed at a former judge of the Constitutional Tribunal who had expressed criticism of government reforms. The public media used the fact that the judge was a board member of a particular NGO to attack the organisation. Public media made unsupported allegations that this organisation fraudulently received public funding. Public media adopted a similar approach towards other CSOs. Although largely relying on publicly available documents, the broadcasts presented themselves as revelatory of hidden information and suggested that some organisations received public funds in a non-transparent way due to family and personal ties. The allegations were unsupported by any evidence suggesting a breach of the law or any other irregularities such as wasting or improper spending of public funds”.³⁸

³⁸ Helsinki Foundation for Human Rights, *The Situation of Civil Society Organisations in Poland*, 2017 http://www.hfhr.pl/wp-content/uploads/2017/09/HFHR_situation_ngos_in_Poland_brief.pdf referring to D. Bychawska-Siniarska, P. Godzisz, Z. Warso, *Information on the recent challenges faced by human rights defenders and civil society in Poland*, <http://www.hfhr.pl/wp-content/uploads/2016/11/HRD-report-30112016-FIN.pdf>.



Infographics used on Polish national TV's Channel 1 news: an example of the report on links between selected Polish CSOs, George Soros and the former President of Poland.

Another example of media campaigns targeting CSOs is a talk show on public TV advertised as follows: “Who decides that millions of Euros go to gay and feminist organisations? Why is public money paid to “Rainbow families full of strength and glory”, “Freedom from Religion” or “Equality for all”? What role does George Soros play in this process? All about this in “Worth Talking” (*Warto rozmawiać*), I invite you to watch today, at 22:25, on TVP1!” (30 March 2017).³⁹

The activities of a number of LTTs and CSOs are being criticized by the members of government. This refers, for instance, to organisations which received funding from the “Norwegian Funds”. The current government wanted to take over the Norwegian funds for CSOs and distribute it itself (the negotiations with the Norwegian government ended up with some compromise).

To give a concrete example: the previous Government Plenipotentiary for Civil Society and Equal Treatment (responsible for organising the Governmental Centre for the Development of Civil Society) W. Kaczmarczyk, said on 11 April 2017 during a press conference also discussing the priorities of Norwegian funds: “It is difficult to

³⁹ See at: <https://vod.tvp.pl/29427705/30032017>.

understand the priority for combating discrimination. Poland is a civilized country. There are no things that require rapid interventions at the level of international programs that would counteract discriminatory phenomena in Poland”.⁴⁰

The Deputy Prime Minister P. Gliński (serving also as the Minister of Culture) took part in this press conference. He also expressed his opinions in an interview he gave on 30 March 2017. “Question: What is the chance of a change? Answer: I think big. I do not think that the (CSO) Batory Foundation could again be the operator. However, it is necessary to negotiate with the Norwegians. Our proposal is for the operator to be the governmental National Centre for the Development of Civil Society. We believe that Norwegian funds should become public funds at the disposal of the Polish government. They should be distributed here”.⁴¹

One of the latest developments is the new act passed in September 2017 by parliament: The Act on the National Institute of Freedom – Centre for the Development of Civil Society. As experts point out, the Institute, “contrary to its name, may constitute a threat to human rights and freedoms. [...] it opens the door to the legal circumvention of the rules regarding the granting of funding, which had been worked out over the years in broad debate and dialogue between civil society organisations and several governments [...] many of those that have been observing the most recent changes in the law see the act as the next step in taking away freedom and increasing divisions, surveillance, and dependence”.⁴²

One more event might be mentioned. In September 2017, the morning after protest marches and demonstrations in defence of women’s rights and reproductive rights (the first anniversary of the “Black March”), “the police entered offices of several organisations that help women affected by violence. From at least one of the places, the police took away a computer with data of the organisation’s clients. The police claimed that its entrance was related to the investigation into the mismanagement

⁴⁰ See at: <http://wiadomosci.ngo.pl/wiadomosc/2048147.html>; <https://oko.press/by-ly-pelnomocnik-ds-rownego-traktowania-polsce-dyskryminacji-popis-ignorancji-kaczmarczyka/>.

⁴¹ See at: <http://wpolityce.pl/polityka/333701-nasz-wywiad-wicepremier-glin-ski-madre-panstwo-powinno-wzmacniac-slabszego-z-funduszy-publicznych-zaczna-korzystac-male-lokalne-organizacje?strona=2>.

⁴² See more at: K. Batko-Tołuć, *Is the National Institute of Freedom a deserved name?*, October 2017, at: <https://siecobywatelska.pl/is-the-national-institute-of-freedom-a-deserved-name/?lang=en>.

of funds in the Ministry of Justice in the years 2012–2015. However the moment when the entrance took place, the smear campaign against the Black March by the right wing and public media and ‘arresting’ the computer do not seem to be unrelated to everything that decides on the climate of approval for violating and limiting right and freedoms”.⁴³

Finally, **in Ukraine**, some CSOs have recently reported mounting pressure from authorities and related actors.⁴⁴ Among others, this pertains to organisations that play the role of legal TTs, e.g. the staff of anti-corruption organisations is required by recent legislation to disclose personal property, even if they do not receive public funding or exercise any official authority. The duty is vague and extends to individuals who cooperate with the organisation; its violation triggers criminal sanctions. Organisations believe that they are targets of legal harassment by criminal authorities, negative PR campaigns, and politically coordinated physical attacks.

Wrapping up the situation in different countries of the region, one can see that such problems are not specific only to legal TTs. Legal TTs are among other types of CSOs who find themselves under pressure. Though at the same time many legal TTs are also among recipients of some public funding, as many other CSOs. What is specific to legal TTs, or to organisations that combine this role with other activities, is that legal TTs often comment on changes in law, in particular on laws that affect civil society, governance, the legislative process and the justice system. Staffs in many TTs have learned that mere objective reporting and analysis on these topics can be perceived by the government as a challenge that invites backlash. Common themes in attacks on CSOs include:

- acting as a foreign agent or traitor if the organisation receives money from foreign/international donors or works with foreign organisations or governments or even just uses the legal mechanisms provided by international law (like submitting a shadow report to UN bodies).
- acting as an agent of opposition politicians or political parties because of criticising of the current administration

⁴³ K. Batko-Tołuć, *Is the National Institute of Freedom a deserved name...*

⁴⁴ Human Rights Watch, *Ukraine: New Law Targets Anti-Corruption Activists, Journalists*, <https://www.hrw.org/news/2017/04/05/ukraine-new-law-targets-anti-corruption-activists-journalists>.

- depicting remuneration for work or services by staff as distribution of funds to cronies, only because such cost make up a significant share of the budget of the organisation

As discussed in examples above, negative consequences for think tank activities of CSOs also include:

- excessive tax and other audits by authorities
- discrimination of organisations as regards public funding
- introduction of new rules towards more power and less accountability on the side of government in decision making as regards public funding for CSOs

Responding to problems and attacks described above, LTTs in countries of the region undertake various common efforts.

GOOD PRACTICES

Common efforts in times of crisis

In some countries, the crisis of liberal democracy and the rule of law, as well as attacks on organisations, have induced LTTs **to unite, defend and counteract**.

HHC (Hungarian Helsinki Committee), EKINT (Eötvös Károly Policy Institute) and HCLU (Hungarian Civil Liberties Union) have created the **Rule of Law Defenders Platform** focusing on constitutional issues. This collaboration, including other CSOs, has played a crucial role in enabling organisations to comprehensively analyse the changes. The Platform has reviewed and publicly discussed modifications of the constitutional system by the government, submitted criticism in joint opinions (including open letters to international bodies), as well as published fact sheets, for example on the administration of courts, mandatory retirement of judges, rights of the opposition, the Constitutional Court and independence of the Data Protection Authority.

In Poland, recent steps of the government towards the curtailment of the rule of law led to the establishment of the **Citizens Observatory of Democracy** (citizenobservatory.pl), an initiative of several TTs that promote transparency and accountability of public administration, rule of law and protection of human rights. The

Observatory keeps track of, and publishes, opinions on laws that affect civil rights and liberties, the rule of law and the political system (authored by TTs, CSOs, academics, lawyers and other professionals).

In 2017, following the attacks on CSOs, as well as the announcement of future changes in the law targeting civil society, a much bigger **group of TTs and CSOs** (around 40) began to meet in order to build a strategy of positive outreach and self-defence.

The Legal Expert Team was also established by the Stefan Batory Foundation during the attack on the independence of the Constitutional Tribunal in 2015. The Team's mission is to evaluate legislation proposed by the government in regard to the political system. The team assesses constitutionality and compliance with international standards and the rule of law.

In Moldova, a number of TTs and CSOs have expressed their concerns in **common declarations** (available at crjm.org): “On the worsening environment for civil society organisations and mass-media in the Republic of Moldova” (March 2017) and “The attack on civil society organisations because they oppose the amendment of the electoral system, which is inadmissible and erodes trust in state authorities” (May 2017).

Slovak TTs and CSOs, led by STI (Slovak Transparency International) conducted the **Campaign for Preservation of Freedom of Information Act**, in 2014–2015 and opposed an amendment that would weaken the FOIA. LTTs analysed the amendment's impact, conducted a public survey, presented their opinion in the legislative process and led a public campaign.

Jingling for Change (Štrngám za zmenu) is an initiative of Slovak CSOs (VIA IURIS, SGI, Pontis Foundation and – till March 2016 – Foundation Let's Stop Corruption) established as a reaction to the phenomenon of “state capture”, where real power is held by a few powerful businessmen who influence political decision-making, which results in corruption and the weakening of the rule of law. The goal was the adoption of concrete measures in relation to police, prosecution, courts, and the audit authority. Negotiations with political parties took place before the parliamentary elections in 2016. One of the current coalition parties promised at that time to enforce proposed measures. Changes pertaining to the judiciary were adopted in 2017.

FINDINGS

Considering the amount and sophistication of legislative and policy work, there are few public funding programs dedicated to institutional support and independent policy research.

Conflict with the government reduces the scope of public funding available to TTs and the scope of their activity. Political attacks extending to the donor make the funding of TTs work more challenging.

LTTs seek to diversify their sources of funding. Existing strategies include crowdfunding, business activity, cooperation with the bar and law firms, legal publishing houses, employers' and labour unions.

The LTTs occasionally receive funding from governments. There are only a few organisations that state agencies commission research or analytical work from. A tax deduction (1 or 2% of PIT, depending on the country) that might be donated for non-profit is also a way of obtaining public money.

EXAMPLE

Financial struggles of think tanks in the region⁴⁵

In Hungary, project-based financing – a major source of funding – leads to the fact that TTs engage in activities that are not of their primary expertise and interest. Some CSOs were recently forced to close down due to financial reasons. CSOs cannot count on significant voluntary donations and there is practically no available state funding. Donors tend to fund projects rather than provide operational funds, which means that the donors define the activities of CSOs to some extent and as a result, independent CSOs are increasingly becoming donor-organised organisations (DONGOs).

In Czechia, TTs often have resources to organise a conference or workshop, but not enough to employ an expert for a longer period of time. Thus, the sustainability and quality of think tanks' work is hindered.

⁴⁵ Source: relevant Country reports.

In Moldova, according to the survey results, over 83% of CSO budgets continues to depend on foreign donors' funding.⁴⁶ According to the study on fundraising from local sources, about 76% of institutions and individuals who made donations during the year gave it to the Orthodox Church and convents, while just 7% donated to CSOs.

In Poland, TT organisations endeavour to secure financing through general competitions and through sources open to all CSOs. Previously, Polish TTs drew their financing from private sources, first and foremost from foreign donors. Over the past ten years or so, however, such possibilities have become limited, as foreign donors, primarily American ones, have reduced their financial commitments to such projects. Polish business circles rarely support the activities of TTs. Some TTs attempt to combine their activities with commercial operations, whether connected with their core TT activities (e.g. formulation of opinions and expert studies for fee-paying clients) or ranging into other subject areas (e.g. training, online sales of publications and other products). While few organisations have been able to turn such initiatives into a major revenue source, they do contribute to overall financial stability.

In Slovakia interviewed think tankers agreed on the fact that the TT and CSO sector is going through a crisis where the financial aspect plays an important role. In addition, corporate foundations or corporations prefer to support smaller, publicly attractive and non-controversial activities of CSOs, but not public interest activities. Quite often companies expect from TTs quick and visible results which might be possible in a charity organisation, but not in research and analytical activities.

In Ukraine, think tank work depends, to a vast extent, on international support. Activities of TTs would be impossible without support of foreign funds as almost 90% of their budgets are formed thanks to support of international institutions.

⁴⁶ Contact Centre, *Fundraising from Domestic Sources. Opportunities and Perspectives*, Chisinau, 2016, http://fhi360.md/docs/Annex%205_Fundraising%20by%20Moldovan%20CSOs%20from%20domestic%20sources.pdf.

Most LTTs mentioned in the present report finance their activities from international funds and projects. State funding is in reality rarely available and for some CSOs not preferable (in order to preserve independence from the government). More often LTTs receive external funding from both private donors and international organisations. The major international donors are: European Commission, EEA and Norway Grants, OSCE and ODiHR (especially in Ukraine), UN agencies, International Visegrad Fund; Open Society Foundations; CEE Trust (until 2012); The Kellner Family Foundation; German foundations: The Friedrich Naumann Foundation for Freedom, Hanns Seidel Stiftung, Heinrich Böll Stiftung, Konrad Adenauer Stiftung, The Rosa Luxemburg Foundation; embassies of several countries, like USA, UK or the Netherlands (more donors are listed in respective country reports).

A large part of EU financial support is received through the European Social Fund and Cohesion Fund. In some countries, like Slovakia, TTs point out the arising problem in obtaining EU financial support, due to the different approach between the state's and the EU policy priorities. The EEA/Norway Grants and the Open Society Foundations play in a crucial role in running LTTs projects. However, in Hungary and Poland, the government has attacked CSOs who received money from Norway Grants.

Moreover, especially recently in countries like Hungary, Poland and Slovakia, also partially in Moldova, the financial support received from abroad is used as an excuse to paint the LTT and CSO sector as the opposition to the government and state policy, as foreign agents representing somebody's interests. Private media often use TTs' expert voice as a tool to confront government policy, which may have a negative impact on LTTs work and perception by the public.

Crowdfunding is not yet a popular way to obtain significant funding, but is slowly developing. In Hungary, for example, crowdfunding is used to collect money for impact litigation.

Most of the funding sources mentioned above are characterised by the same basic problem since they are tied to specific projects, they can hardly, if at all, contribute to covering the day-to-day costs of a think tank's operations (such as administrative costs). In particular, funds from these sources may not be used to finance remunerations of salaried employees who are not directly involved in the given project. There is very little room for inclusion in the project costs of those expenses which, while associated with the project at hand, also overlap with

the given think tank's core operations, as defined in its charter. Such a situation quite often leads to so-called "grantosis" – LTTs engage in activities that are not of their primary expertise and interest only in order to receive money to keep afloat.

Summing up the Financial Challenges of LTTs

Only rarely can LTTs secure a direct government grant for research or analytical work. The authorities are loath to take advantage of this possibility; when they do, it is usually in the context of legislative work or of preparing strategies and programmes.

Private business in the region has not developed a tradition, or a practice, of supporting the work of TTs. Entrepreneurs in the region prefer to contribute to popular charitable or educational initiatives. Apart from that, many corporations active in the region have established their own foundations which are active in the field of corporate social responsibility.

Significantly enough, recent years have brought an expansion in the range of fundraising training for organisations, specifically as regards teaching CSOs to solicit funding other than grants. In Poland there is also specialised training addressed specifically to watchdog organisations. This can be taken as signifying a demand among CSOs for such training, and that CSOs are becoming aware of the need to improve their skills in this regard. Some organisations have been putting their newly gained skills to use in building civic support networks, promoting themselves and their work and appealing to their sympathisers to regularly donate even small amounts. Some success in this regard has been achieved, for example, by the Citizens' Network Watchdog Poland.

Recent years have also brought advances in crowdfunding, with organisations trying to finance specific projects with small contributions made by large numbers of internet users. Some organisations have been successful in using various crowdfunding formulas (even if the aggregate amounts thus collected were relatively modest), while others have met with disappointment. Additionally, some of the prevailing problems are related to the fact that, for instance in Poland, the very concept of crowdfunding – at least in some scenarios – has become the object of legal questions, some of them from the realm of tax law.

GOOD PRACTICE

In Poland several leaders of a CSO movement have recently established (2016) **the Citizens' Fund** (funduszobywatelski.pl), created to support individuals and institutions working to protect civil rights and freedoms, constitutional values, social peace, and safe spaces for debate. The Citizens' Fund draws most of its financing from private donations and from 1% personal income tax allocations; having assembled some funds, it started active operations in 2017.

RECOMMENDATIONS FOR LEGAL THINK TANKS

These recommendations have to be applied with respect to the context, which can vary to a large extent in particular countries (e.g. in “illiberal democracies” governments tend to systematically ignore, even attack, liberal think tanks).

Cooperation with authorities may comprise not only research, analysis, production of reports and their dissemination, but also **other forms of dialogue**, in particular participation in councils, teams, and advisory groups (depending on the local situation and tradition).

In order to deliver **quality work**, and remain credible, LTTs have to produce analyses that address the **full spectrum** of relevant viewpoints and arguments.

The strength of LTTs should lie in an **interdisciplinary approach**, combining legal analysis with the consideration of economic, sociological, psychological, political and other factors. TTs should promote such interdisciplinary approach.

LTTs can derive benefits for their mission if they engage in dialogue with governments. The dialogue can take the form of intellectual exchange (reports, seminars, articles in the press, etc.) or can comprise cooperation within the practice of governance or policy/law making. Forms and degrees of such cooperation include research upon requests, consultation in drafting of documents, drafting proposals for laws or regulations and participation in advisory bodies.

Practical interaction can offer additional information about the topic of interest for the think tank. It offers a chance to develop the “feel” of the issue which might be hard to come by within theoretical inquiry. In particular, such interaction can be helpful to spot issues that are key for decision makers. Cooperation might be an efficient way for the organisation to bring its message to the attention of decision makers.

Benefits of cooperation do not invalidate the constraints that have to do with ethics or with methodology of knowledge. For example, cooperation with the government may be problematic due to conflict with other tasks of the organisation. If the organisation is involved in watchdog activities, it might be impossible for the think tank to participate in some official projects or structures. For the sake of the organisation's independence, some LLTs might not be able to participate even in advisory roles. Notwithstanding such practical conflict of interest, it should be recognized that some organisations or experts might want to keep their distance from decision makers in order to maintain intellectual independence: a clear view of the situation, not clouded by the subjective, internal perspective and personal considerations.

We do not believe that there is a one-size-fits-all model for organisations. We are liberal in terms of involvement of CSOs with the government and other decision makers (the same goes for involvement with international organisations, foreign governments, businesses, etc.).

We insist, however, on two conditions: consistency with mission and transparency. Regarding consistency, cooperation with government conflicts with watchdog work. In complicated cases where the organisation faces an honest dilemma about potentially conflicting roles, it helps to stress transparency, making an extra effort to disclose – in detail – all the considerations, so that the readers (or other group of recipients of the TTs work) can make an informed judgment as to the objectivity of output. Such questions can be addressed, for example, in the organisation's code of conduct.

EXAMPLE**How think tanks in Czechia approach independence**

Every TT we interviewed in Czechia has a Code of Ethics (the Country Report contains a list of interviewed TTs). Think tanks try to cooperate with interested groups; however, they keep an eye on their independence and transparent procedures. Cooperation in the form of personal consultations, writing drafts of law, invitations to seminars and talks etc. is standard if the relationship helps enforce the think tank's interest and if such actions are not against the Code of Ethics. Independence of think tanks is very important if the think tank wants to be influential and recognized. Usually, this is approached by the think tanks' transparent activities. Also, all economic income should be transparently declared. It is also very important for think tanks to be trustworthy and influential, thus they strive to be independent. Cooperation with political parties is not completely off the table, however, each think tank has to consider whether the connections are appropriate and be aware of the need to be transparent and clear about the possible cooperation.

In a world where the marketplace of ideas is sometimes a battlefield, maintaining objectivity can present a challenge. Think tanks are populated by humans, not machines, so emotions and behaviour can play a role in the output of the organisations. Legal think tanks operate in the area which is by nature related to politics. Sometimes "real" politics enters their areas of activity bringing along its toolbox for conflict management including the dark arts: manipulation, corruption, character-assassination, negative PR and the like (e.g. in 2017 the Polish government initiated a two-million-euro national advertising campaign presenting Polish judges as corrupt and incompetent). On such occasions think tanks sometimes face specialists and great budgets they can never outbid. It can then be challenging for think tanks (and to their staff if personally under attack) to include opposing views into their analysis. We recognize that in some cases it is part of the political agenda to make objective thinking and communication difficult.

CHALLENGE**Supporting destruction v. supporting good ideas**

Your government is hard at work dismantling the independence of the judiciary. At the same time, and in the same package, the government proposes changes aimed at raising the efficiency of courts. Your organisation has the choice of boycotting the government or playing into the government's hand by supporting good proposals. A boycott means that the organisation cuts itself off from dialogue with the government and diminishes its influence over important policy issues. Cooperation with the government may be leveraged by politicians for destructive ends.

In our opinion, despite all difficulties, the most important currency of the think tank is its credibility, and credibility relies on objectivity. Think tanks can follow the example of academia here, where scientists must seek the truth. Think tanks are not the same as academia, as they are more involved in practical tasks, such as formulating policy. In some instances they offer recommendations and advance causes which is not the job of academia.

When addressing the need for objectivity in their output think tanks can refer to various practical points of reference, for example, academic research standards. Another example of a practical point of reference is the NPOV (Neutral point of view) policy for Wikipedia authors and editors which has been tested by millions of users since 2001.

EXAMPLE**Neutral point of view (NPOV) Wikipedia policy**

All encyclopaedic content on Wikipedia must be written from a neutral point of view (NPOV), which means representing:

- fairly,
- proportionately, and, as far as possible, without editorial bias,
- all of the significant views,
- that have been published by reliable sources on a topic.

What appears from the country reports is that successful LTTs bring together not just legal analyses, but also perspectives of: economists, human rights experts, political scientists, sociologists, social-psychologists, communication experts and journalists. This is an added value of TTs work, as governments often narrow down their perspective. In the modern world an interdisciplinary approach to understanding social and legal phenomena, as well as to reforming and improving legal institutions, should be a must. LTTs are in the position to promote this way of thinking.

Interdisciplinary activities can offer an advantage for think tanks over academia or government. Think tanks, as smaller organisations often with more lean and flexible administration, less regulated than universities, can more easily start projects and teams across disciplines. In terms of interdisciplinary activity, think tanks can well complement academia by providing a forum for academic researchers to embrace interdisciplinary methods.

GOOD PRACTICE

In February 2016 EKINT made a comprehensive analysis on the planned (and since adopted) sixth amendment of the Constitution, which introduces a special state of emergency in the event of a terrorist threat. The study examined the issue from aspects of **constitutional law, security policy and social psychology**.⁴⁷

Some think tanks also underlined the necessity to have “a good quality interdisciplinary research team that follows developments in the country and abroad and is able to spot not only the topic, but also an angle to take up the issue.”⁴⁸ Using this approach interdisciplinary TTs groups are more effective in identifying issues.

⁴⁷ Source: Hungary. Country report. See: http://ekint.org/lib/documents/1469175368-ek-int_terrorveszelyhelyzet_elemzes.pdf.

⁴⁸ Source: Slovakia. Country report. Questionnaire submitted by CVEK in August 2016.

GOOD PRACTICES

CVEK is an organisation interconnecting **sociological and legal** approaches in promoting the inclusion of marginalised population groups, especially minorities (the Roma, migrants, others). In their experience having an interdisciplinary research team is very important for the quality of their work. Through sociological research they acquire knowledge that is mostly dedicated to the barriers to creating an inclusive society. These research findings are grounds for advocacy and other activities, such as commenting on legislation and public policies related to marginalised communities.⁴⁹

TIS created its web portal “Open Courts” combining **legal, sociological and information technology** expertise.⁵⁰

VIA IURIS also has experience in cooperation with **investigative journalists**. Through cases of corruption revealed by journalists VIA IURIS illustrated systemic problems impeding a proper investigation and punishment of corruption performed by high functionaries and politicians.⁵¹

Some of the TTs in Slovakia focus on very specific topics and then others have a broader scope of research. Among those who focus on one particular policy field is HPI (Health Policy Institute). Its experts feel that specialisation in one policy area, in their case is the healthcare system, allows them to produce higher quality results. They argue that such products may be more interesting for the market. HPI’s research team contributed in an important way to the health reform in Slovakia in early 2000’s. Their analytical work and expertise is well known also in other Visegrad countries, mainly Hungary and the Czech Republic whose governments consulted them on various occasions.

Specialisation of think tanks may be beneficial to the quality of findings. However, there are also contrary opinions saying that it is unfortunate that Slovak TTs focus only on one issue given that Slovakia is a small country, in comparison to large countries like the USA, or Germany, where such specialisation can work well.⁵²

⁴⁹ Centre for the Research of Ethnicity and Culture CVEK, <http://cvek.sk/en/about-us/>.

⁵⁰ Transparency International Slovakia, website Otvorené súdy (Open Courts), <https://otvorenesudy.sk>.

⁵¹ Source: Slovakia. Country report.

⁵² Source: Slovakia. Country report.

TTs cover many issues, however there are also subjects not covered that are seen as gaps. Some organisations agree that there is, for instance, a lack of adequate think-tanks activities regarding the system of public education in Slovakia,⁵³ as well as law and economics – which is regional phenomenon.

Example. Recommendations of Hungarian LTTs regarding the legislative process

1. The scope of the Act on Public Consultation shall be amended, guaranteeing the consultation of all legislative proposals regardless of the source of the draft.
2. Exceptions shall be limited – circumventing consultation can be accepted under no circumstances.
3. Unlawful failure in consultation shall lead to constitutional consequences implying the invalidity of the relevant norm.
4. Online platforms used for civil consultation shall be improved based on the needs of users.
5. At least 15 days shall be provided for the consultation of each draft.
6. Legal think tanks shall publish data on informal meetings to ensure sufficient transparency.
7. Legal think tanks shall take further steps in enforcing the guarantees of publicity regarding the parliamentary stage of legislation.⁵⁴

⁵³ M. Hanus, J. Majchrák, *Fabriky na myšlienky* (Idea factories), Weekly Týždeň, 15 September 2007, <http://www.tyzden.sk/casopis/916/fabriky-na-myslienky/>, consulted in April 2007.

⁵⁴ Source: Hungary. Country report.

RECOMMENDATIONS FOR LEGAL THINK TANKS

TTs should cooperate with academics and act as a **transmission belt between academia and policymakers**. For example, TTs can formulate policy recommendations on the basis of academic work, or serve as a point of contact. For this end, TTs should **keep track** of current trends in academia. It is also worthwhile to **inspire** academia to look at questions that have a practical dimension for policy work.

LTTs may help in **preserving institutional memory** (something that public institutions often lack; changes of law are often made without consideration of already existing evidence). TTs can create online libraries and databases focused on particular topics.

Academic research is often theoretical, abstract and far from the possibility of practical implications. Legal think tanks are needed to “translate” the ideas and results of research into public policy, and to gather knowledge and information needed to create evidence-based policies. The legislative process should begin with identifying problems through thematic study needs. Governments should have open formal and informal channels of communication with LTTs in order to receive expert advice and feedback. In the region, the tradition of requesting expertise from law professors is strong. Meanwhile, think tanks operate as a team, since it is much easier to solve the problems through teamwork. In this context, organisations are more effective than the individual.

We can identify several ways in which academia cooperates with think tanks. This is one of the areas in which LTTs experience varies greatly from country to country, from frequent collaboration with academia and academics to almost non-existent.

For instance in the **Czech**⁵⁵ environment, it is usually research activities or joint organisation of thematic roundtables (e.g. on constitutional law, health laws) that provide the opportunity to cooperate. **The partnership is believed to work for the most part**. For instance, a key element includes think tanks’ offers of unpaid internships to students. The academic and think tank membership often overlaps as some think tank researchers also work at universities and vice versa. Think tanks and academia also cooperate on research activities, which, as previously mentioned, could be used to provide data for think tanks’ advocacy

⁵⁵ Source: Czechia. Country report.

activities. On the other hand, there are also some cases of unsuccessful cooperation. For instance, think tanks interested in foreign policy state that academia did not want to cooperate with them at all.

In Slovakia⁵⁶ there is **very rare cooperation** between academia and CSOs as such (only occasional cooperation between some of the university professors and experts from TTs). Co-operation **with LTTs is actually almost non-existent**. Academia in Slovakia is rather conservative and closed, not reflecting current social issues. In fact, the majority of established TTs were created in the 1990's when researchers and experts from different social areas realised that academia and universities were not doing enough quality research and were trapped in their past. Researchers who wanted to do quality research on current social problems thus moved to think tanks. For instance, the representatives of Slovak TTs showed a critical attitude to academia during the preparation of the study "Independent Think Tanks in Slovakia".⁵⁷ The economic TTs were among the most negative and sceptical ones.

Still, there are some interesting examples (even rare) of good cooperation between academia and think tanks. CVEK in partnership with the Economic University in Bratislava implemented the first university affirmative action program in Slovakia which shall contribute to addressing educational gaps between Romani and non-Romani population. In partnership with the University CVEK has regularly helped young Roma to integrate through grants and scholarships.

CHALLENGE

Academia and think tanks operate in a completely different manner. However, these various modus operandi – a very flexible one of think tanks, reacting to current social problems and functioning in a more unstable financial situation, in contrast with the other model, which is more conservative and socially isolated, **may be complementary** and can generate very interesting common results. Each sector has its own specific methods and knowledge which could be mutually enriching.

⁵⁶ Source: Slovakia. Country report.

⁵⁷ G. Mesežnikov, D. Smilov, *Independent Think Tanks in Slovakia...*, p. 28–29.

Examples of cooperation between academia and think tanks

Exchange of information. Organisations and academia can (regularly) share information on on-going projects (methodology, scope of the subject matter, etc.) and their results in the form of data, reports and policy papers.

Spotting research topics and sharing ideas for research. LTTs often run into practical issues where research is lacking. They can signal such topics and issues to academia for use in scientific work or for teaching (e.g. as topics for thesis or papers or research grants).

Spreading information about results of research, e.g. by organising competitions for the best academic paper or book on a topic of interest important to the think tank.

Granting access to data by the organisations to academic researchers. Organisations collect and produce data often on a daily basis or over long periods of time. Sometimes this is the same information that academia is looking for or just might use.

Joint efforts to design research tools. In empirical legal studies think tanks and academia are natural partners to cooperate on designing standard research tools (questionnaires etc.).

Formulating recommendations. Think tank experts can serve as a transmission belt between academia and government as universities often lack channels for talking with decision makers and most often complete their research with findings that do not formulate recommendations.

Joint fundraising initiatives. There are sometimes (for instance in Poland) funding possibilities for common projects of academics and think tanks. Most often these are research projects that require joint application of researchers and some organisations, institutions (including civil society organisations) that focus on implementation of recommendations stemming from the research.

Think tank experts often originate from academia. If TTs experts originate from universities or still work as academics, the possible collaboration between TTs and universities/research institutions is much easier.

GOOD PRACTICE

Common cooperation of think tanks and academia⁵⁸

Cooperation of think tanks with academia is **widely spread in Ukraine**. Scholars take part in think-tanks projects and experts get involved in teaching and training. Such cooperation takes place on an “outsourcing” basis. The applied nature of think-tank activity gives scholars the chance to implement their theoretical findings in practice.

Think tanks work in the “**politics – science – society**” triangle. Think tanks link these three areas and serve as a **mediator** in interaction between them.

For example, the Centre of Policy and Legal Reform has for many years closely collaborated with the Department of Administrative Law of the Koretsky Institute of State and Law of the Academy of Sciences of Ukraine. Thanks to this cooperation the Centre emerged as a full-fledged think tank. By working together experts learned a lot from scholars, studied new methodology thereby improving the quality of their analytical findings. On the other hand, the Centre taught scholars a lot because experts were much more dynamic; they studied foreign experience and closely communicated with politicians and officials. This cooperation was thus symbiotic in nature.

It is the experience of think tanks in the region that governments often lack not just strategic planning but also institutional memory. Especially when there are frequent changes of governments (or ministers) new people start new projects, new reforms and new experiments, often not taking into consideration previous work, research, data, ideas and recommendations. Think tanks may therefore play the role of the thematic library by collecting relevant data in the field of their interest and presenting it, or at least listing it, on their websites. Since think tanks often have a practical approach these libraries do not include only theoretical and scientific publications (that are easy to find in traditional libraries), but mainly materials of a different kind: publications of CSOs, reports, policy papers, analyses, statements, opinions, important news articles, rough data, drafts of legislation, etc.

⁵⁸ Source: Ukraine. Country report.

It is also good practice to keep copies of printed materials even for some years. When decision makers change, we can provide them with relevant publications that in the meantime disappeared in the ministry.

GOOD PRACTICE

Encouraging collaboration with academics

INPRIS has been trying for years to engage academics in common work as well as to interest them in specific fields or topics, so they conduct empirical research relevant to TTs work and social needs. Proper empirical sociological data is lacking in many fields; socio-legal studies are especially important. In the project devoted to collaboration between sociologists and CSOs, INPRIS described both circles, their needs, criteria for good collaboration, their limits etc. in a Policy Paper “Badania pomocy prawnej. Organizacje społeczne a socjologowie prawa – perspektywy współpracy” (*Legal Aid Research. Social Organisations and Sociologists of Law – Cooperation Perspectives*).

INPRIS involves academics also in practise. The biggest success is in the field of research on legal services, legal aid, and legal insurance. We have managed to interest representatives of different branches including – sociology, sociology of law, law and economics, economy, theory of law (including modern legal tools and artificial intelligence). Academics not only participated in these activities and programmes run by INPRIS, but more importantly, thanks to this collaboration, they widened their scientific interests and continue to conduct similar research and analyses after the common projects are finished. In addition to advocating for the research of social phenomena, for empirical studies, for collecting data, advocating for politics based on facts TTs should inspire academics and interest them in given topics. It is a very important role for the think tank community.

RECOMMENDATIONS FOR LEGAL THINK TANKS

LTTs have proved **more effective when working together**. **Partnerships and coalitions** of LTTs broaden resources, improve quality, increase visibility and impact. When attacked, organisations working together are stronger.

There are many examples of TTs working in partnerships or even large coalitions. This has happened before, but somehow is more popular right now. Above, in the section “Common Efforts in Times of Crisis”, we provided several concrete examples of current cooperation between think tanks, driven by special circumstances in certain countries. In such instances, growing pressure from the government enhances the will for cooperation. When facing an emergency, organizations that represent different backgrounds and agendas are ready to close ranks, despite differences. Protests in Poland in defence of the Constitutional Court and the Supreme Court are such an example. Cooperation, however, occurs not only in “times of crisis”; it has proved to be effective in a number of projects and activities.

Hungarian⁵⁹ think tanks and CSOs often struggle to ensure enough financial and human resources for larger, more comprehensive projects on their own. Cooperation with each other is therefore essential to carry out extensive work. Publishing joint statements guarantees a larger audience and increases the chance that the national and international media report on the case. Publicity could be crucial to reach goals and increase the society’s support of specific cases and, in general, civil advocacy as well. Furthermore, the cooperation of different organisations suggests that the case in question is more significant, more urgent or that there is a broad professional consensus behind the statements. This latter argument also strengthens the position of the cooperating organisations against the government or the state bodies if negotiations are launched.

In Czechia⁶⁰ TTs often engage in policy influence by developing campaigns and acting in coalitions. Major reforms were advocated this way, such as the adoption of the Law on the Inclusion of Persons with Disabilities. The ČOSIV (Czech Expert Society for Inclusive Education) was created as an umbrella organisation to support the advocacy of individual TTs. Joint efforts resulted in a change of the

⁵⁹ Source: Hungary. Country report.

⁶⁰ Source: Czechia. Country report.

law. Other examples include: package of laws regarding “gender”, the Law on Equality, the Law on the Ombudsperson, the Law on Control of Tobacco Products, etc. In all of these reforms, think tanks were successful due to their expertise and quality of their research. In the process of adoption of the amendments to the Law on the Control of Tobacco Products, initiated by the Ministry of Health, think tanks played an important role providing the necessary research and arguments in favour of the amendments. On the other hand, organisations report that the costs associated with cooperation are often significant in terms of time and complexities of decision making. If organisations that advance the same cause compete at the same time for the same resources (donors, public attention etc.), cooperation becomes even more of a challenge. Below we list just a sample of projects that are run by partnerships or coalitions. More can be found in the Country Reports.

GOOD PRACTICES

Partnerships and coalition building

In Poland, a coalition of several TTs including HFHR (Helsinki Foundation for Human Rights), ISP (Institute of Public Affairs), FUPP (Legal Clinics Foundation) and INPRIS conducted research and advocated for years for the establishment of the **out-of-court legal advice system** (finally introduced in 2016).

PTPA (Polish Society for Antidiscrimination Law, ptpa.org.pl) runs the **Coalition for Equal Chances** of over 70 TTs and CSOs devoted to participation in the legislative process and advocacy in the field of non-discrimination.

Foundation of University Law Clinics (fupp.org.pl) is a network and umbrella organisation that conducts research and advocates for the clinical movement in law schools.

In Moldova, a good example of common effort was the public **Appeal to the President** not to promulgate the Law on the Ombudsperson adopted by the Parliament. As a result, the law was returned to the Parliament, which made important amendments.

Another coalition, **Life without Violence**, actively promoted the amendment of the Law on Domestic Violence. New regulations came into force in 2017 and included additional protection mechanisms for the victims.

In Ukraine, coalition building is common. The creation of a non-profit entity **The Ukrainian Think Tank Liaison Office in Brussels** (ukraine-office.eu) emerged as a response of the expert community to the need of increasing its impact on both Ukraine's European integration policy and EU's policy towards Ukraine. In 2013, nine Ukrainian TTs supported the idea and made contributions as Office members. Currently, the Office represents and unites 21 TTs, issues the Ukraine Analytical Digest and since 2016 has organised the annual **Brussels UkraineLab**.

Human Rights Agenda (humanrightsagenda.org.ua) is an informal coalition of organisations focusing on monitoring, analysis and development of legislation in accordance with human rights standards.

Reanimation Package of Reforms (RPR) is a coalition of 80 CSOs and 22 expert groups that pooled their efforts to facilitate crucial reforms (they take part in drafting laws and monitor implementation).

RECOMMENDATIONS FOR LEGAL THINK TANKS

If a TT aims to preserve its **independence**, it needs to set up strict rules of possible cooperation with politicians (e.g. supporting political parties, speaking on behalf of a party, drafting the programme of a political party).

EXAMPLE

INPRIS makes an independence pledge on its website. It does not have a code of conduct

"We put a high value on the opportunity to work with public and private institutions, but we remain intellectually and administratively independent. INPRIS is not affiliated with any political group, and does not aspire to become associated with political groups. The same principle applies to our relations with law firms and other businesses. We do not speak for anyone. We say and write only what we consider right, no matter with whom we are cooperating or who supports us." (inpris.pl)

CHALLENGE**Objective analyst v. opposition supporter**

Your organisation distributes policy recommendations and wants to engage in public debate and the legislative process. The government ignores recommendations. Only the opposition parties express interest and invite you to an exchange of views. Your organization provides expertise to them and when invited engages in closer collaboration with the opposition. The government starts to portray your think tank as a partisan and unreliable organization.

It can be useful for the think tank to treat the question of independence as part of overall planning. There can be degrees and different models of independence (e.g. as regards acceptable sources and conditions of financing and procedures for maintaining independence). Think tanks can eliminate some challenges by deciding about the independence policy ahead of practical problems, for example in codes of ethics. We recognize that the choices here can be complex. E.g. think tanks that are not independent in terms of financing, governance or setting the research agenda (party-affiliated think tanks) can insist on independence as regards research conclusions. The same goes for think tanks that are independent but contract for particular services (e.g. the think tank conducts an analytical study for a political party in exchange for remuneration). Whatever the solution here, we advocate that think tanks remain transparent as to the limits of their independence and consistent in the application of such policies. We also insist on not to calling an organisation a “think tank” if it is doing work for hire and in that it is willing to relinquish its independence as regards research conclusions.

Sometimes, think tanks are pushed by political turmoil into a spot where they are perceived as allies or enemies of political actors. Because of their subject of interest, legal think tanks can often end up in such a situation. This can result not only in problematic communication around the think tank (criticism) but also in unfriendly actions against the think tank.

EXAMPLE**Evolution in Hungary: away from independence and towards DONGOS⁶¹**

Rather than clear-cut and exclusive categories of independent vs. dependent institutions, independence might be conceived as a scale that ranges from autonomy and independence through quasi independence and affiliation to express dependence on the major source of funding. Hungarian think tanks show various degrees of independence. The think tanks examined in the present report all consider themselves to be independent NGOs whose major source of funding comes from grants awarded in open tenders (EU, Visegrad Fund, EEA/Norway Grants, Open Society Foundations) and citizens' donations constitute a minor part of their income. However, as these independent (i.e. not party affiliated) NGOs have to rely increasingly on international donors, the scope and agenda of tenders have started to shape their activities, pushing them in the direction of DONGOS: what they engage in is, to some extent, determined by the policy focus of the international donors.

Among **Slovak**⁶² think tanks there seems to be a general accord that one of the most important things is to stay independent from government or political parties. As concluded in the study on Independent Think Tanks in Slovakia: "Most of the think tankers understand their work as more than provision of expertise for the government. They insist on the link with civil society and on the controlling function over the government. Therefore, as it will be seen, independence from the government remains a top priority."⁶³ Despite efforts to appear nonpartisan, they are often perceived and associated with centre-right and liberal parties. The ideas of TTs were often overlapping with the programmes of centre-right political parties, which actually led to frequent cooperation. Specifically after parliamentary elections in 1998 and in 2002 several think-tank experts left TTs and became part of the governments created by the centre-right parties. On the one hand, this reflects their expert knowledge and skills, but on the other hand it questions their impartiality and undermines their independence as this close cooperation connects these TTs with certain parties.

⁶¹ Source: Hungary. Country report.

⁶² Source: Slovakia. Country report.

⁶³ See: G. Mesežnikov, D. Smilov, *Independent Think Tanks in Slovakia...*

From the perspective of Slovak think tanks, independence excludes exclusive public funding of think tanks. Some think tanks reject public funding entirely and some accept it partially, but only for a project, not for the institutional base.

Nowadays, however, this system of functioning and financing of think tanks, which they consider as guaranteeing them independency, is questioned by conspiracy movements currently more visible in society. This is discrediting them in the eyes of the public that is beginning to doubt whose interest these organisations represent. The conspiracy rhetoric is also used by governmental representatives. This is a very dangerous situation that is weakening the position of think tanks and other similar organisations. On the other hand, it also pushes TTs and CSOs to think how to regain public and strengthen their position of the objective experts working in the public interest.

RECOMMENDATIONS FOR LEGAL THINK TANKS

Social perception is important for political decision makers (e.g. in surveys). It is useful for think tanks to **identify the audience** of their findings. If the organisation cares about the **impact** of its policy work, it might consider **speaking directly** to the public and the media, not only to experts and the political class. In such **communication**, the think tank needs to explain expert opinions to **lay people**. For this challenging task, **information technology** may prove useful with visual and social tools.

The think tank community is undergoing a transformation of its role in society that affects their communications, strategies, and their research. Think tanks are strengthening their internal structures and regulations in order to be prepared to navigate the turbulent times ahead. They also have become more transparent and forthcoming about their activities, budgets and reports. Strict donors' requirements have brought about greater transparency and more internal regulations. TTs have also changed methods in bringing in new researchers, often they collaborating with external experts. Another topic within this area is crisis communication when legal institutions are under attack (e.g. Parliament's assaults on the independence of courts).

The LTTs and CSOs use a wide range of available communication channels and tools to provide efficient information to the public (e.g. social media platforms, websites, blogs, newsletters and mailing lists,

organised events and campaigns). However, TTs also face numerous problems, of different character, when it comes to the media.

Ukrainian TTs underline problems with journalist’s attitude towards TTs’ experts providing analytical information. There is lack of tradition of collaboration and lack of interest for the TTs expertise, publications. The situation needs to be improved towards establishing a dialogue between the experts and the traditional media. In **Slovakia** and **Poland** expert knowledge is used by the mainstream media as an independent voice and opinion for the public, especially in the debate between the government and representatives of the opposition.

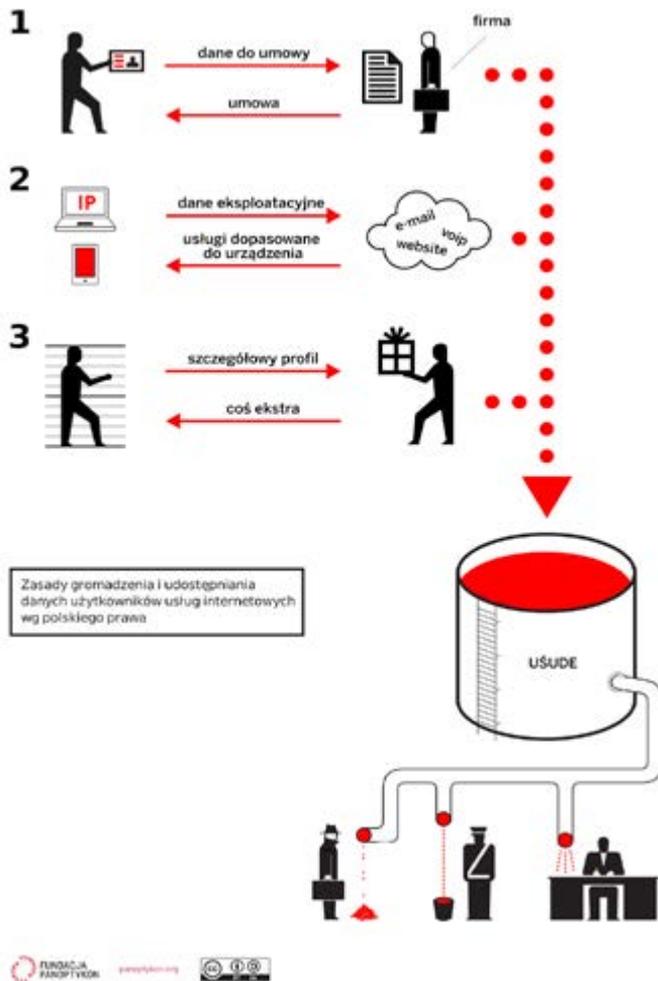


Illustration: Polish infographic on data collection on the Internet (by Panoptykon).

Technologies affect the way think tanks communicate. Almost all important TTs use websites and social media accounts where they disseminate their research, infographics, videos, broadcasts of events, etc. Public relations staff is more and more present in TTs. They communicate more with the mass media by organising offline meetings and clubs with journalists. One good practice is providing trainings to journalists on legal issues, such as integrity system, asset and interests declarations, explaining the court decisions, laws and other subtleties of law.

EXAMPLES

Blogs of Hungarian Legal Think Tanks

Eötvös Károly Policy Institute's blog connected to the University Citizen project: egyetemidemokracia.blog.hu.

Transparency International Hungary's anti-corruption blog: <http://korrupcio.blog.hu>.

HCLU's blog on general issues: ataszjelenti.blog.hu.

Hungarian Helsinki Committee blog: helsinkifigyelo.blog.hu.

Mérték Media Monitor blog: mertek.hvg.hu.

Digital graphic and visual representations of information is a developing trend in the region, because, as put by Moldovan experts, potential supporters can be found online rather than offline. **Moldovan** think tanks are adapting to the new reality and needs for a more compact and dynamic representation of information. Long reports are replaced by short analysis documents, policy analysis and policy documents. Think tanks tend to dedicate more time to the promotion of the recommendations of their analysis. This tailors a new format of the documents and of the language used: more accessible, easily read and understood.

There are also CSOs that focus on supporting other CSOs as regards public communication. For example, several **Polish** think tanks collaborate with Akcja Demokracja (Action Democracy, akcjademokracja.pl), an organisation that specialises in campaigning and communication, in particular on-line. Collaborating organisations divide tasks: a think tank helps to develop the subject matter of the message, provides, or helps, to acquire information, facts, data, whereas

Akcja Demokracja works on the final formulation and delivering the message to the public.

Communication is also crucially important for public education. Think tanks that care about upholding certain values (e.g. independence of the judiciary) often face the need to step up communication. **In Poland**, after 2015, when many fundamental legal concepts have been challenged in politics, numerous think tanks have devoted a much larger share of their effort to communication. Often communication is the topic of the day among think tank staff. A vast numbers of lawyers, experts, and managers in LLTs have become semi-professional PR staff.

Both, “law in books” and “law in action”, rely on communication – e.g. lawmakers communicate with the public by enacting laws, courts communicate by handing down judgments, etc. Such communication belongs to important subjects of research interests for legal think tanks. This has to do with activities like oral communication of judges with people present in the courtroom, written justifications for judgments, with the language of legislation, etc.

EXAMPLES

How Hungarian think tanks use technology⁶⁴

KiMitTud (Who Knows What) is a freedom of information request platform run by Átlátszó.hu (kimittud.org). This is an online tool for obtaining information from government departments, agencies, and state-owned companies. Citizens may use the generator to request information. Requests and replies are published on the website. Since 2012, media, citizens and political parties have filed more than 9,500 freedom of information requests. Experts at KiMitTud are in contact with legal officers of the state institutions in charge of the administration of freedom of information requests. They use this informal network to promote professional dialogue via workshops and other events.

In 2015 Mérték Media Monitor published several **e-learning materials** on their website on the issues of hate speech, individual rights, the right to information and data protection. These materials contain descriptive information, questionnaires and explanations. In this way, this e-learning platform reaches a larger audience.

⁶⁴ Source: Hungary. Country report.

Red Flags (redflags.eu) is a project of K-Monitor, PetaByte and TIH, with the support of the EU, that aims to enhance the transparency of public procurement in Hungary and fight corruption. The project makes an example of using innovative technical solutions by LTTs. An interactive tool allows for the monitoring of procurement process and its implementation in order to highlight risks of corruption. The tool automatically checks documents from the Tenders Electronic Daily and with the use of algorithms flags risky procurements. Although risky does not mean corrupt, flagged documents are worth checking. Users can subscribe to receive alerts when risky procurements are published.

GOOD PRACTICES

Newsletters are a well-established method of informing the public about the activities of TTs and essential developments in the field, for example, the Legal Resources Centre from Moldova (crjm.org) translates the newsletter into several languages, including English.

LTTs use **social media** in their outreach. Some organisations use social media as an educational tool – such as AMO (amo.cz) in Czechia focusing on international law and relations, or the **lawyers' initiative Free Courts** (Wolne Sądy) in Poland where lawyers, journalists, artists, doctors and other professionals explain the importance of independent courts in short videos on social media.

Visual representation of information is a developing trend for TTs. In Poland, INPRIS was among the CSOs spearheading **cooperation between lawyers and visual artists**. INPRIS organised interdisciplinary workshops on infographics, designed infographics on the Constitutional Tribunal, the EU Charter of Fundamental Rights, or the Internet “Notice and Takedown” procedure.

In Moldova, the economic TT Expert–Group runs the **BudgetStories.md** website that hosts infographics and interactive apps intended to provide **clarity on public expenditure** in various sectors. It shows the analysis in a descriptive and accessible visual form and it helps citizens understand the functioning of public finances and their impact on everyday life.

In Ukraine, within the **Reforms Speedometer** of the Centre of Policy and Legal Reform (supported by the EU, eu.pravo.org.ua), experts use an algorithm to measure the progress in three reform

areas: constitution, judiciary and prosecution. The arrow of the speedometer shows the score pertaining to Ukraine's implementation of European standards and recommendations for a given moment (in June 2017: 43 of 100).

RECOMMENDATIONS FOR LEGAL THINK TANKS

CSOs can benefit from **membership fees**. The American Civil Liberties Union (ACLU) has over 1 million members. A high level of income from fees allows for a greater independence. It would be unusual, in our opinion, for an expert organisation, like an LTT, to arrive at such a high membership. Rather, we would expect fee membership in organisations that combine activist and analytical roles.

LTTs can look for **"anti-fragile" solutions**. For example, political pressure on organisations can induce outside experts to offer pro bono work if the think tank reaches out to volunteers.

As discussed in the findings section, many legal think tanks in the region are struggling financially. This stimulates the organisations to explore various sources of revenue and innovate. One option that has become popular is crowdfunding. For TTs that face attacks and cuts in funding, this may be the only solution. Crowdfunding also helps to sustain independence as well as has the additional benefit of involving citizens that identify themselves with an important mission.

GOOD PRACTICES

CSOs crowdfunding in the region – successful campaigns

In Czechia, successful campaigns were run to secure funding for strategic litigation, advocacy activities or support for the organization (e.g. Evropske Hodnoty – European Values).

In Poland, Citizens Network Watchdog Poland collects money for projects pertaining to access to information, HFHR collected money for the "Manual for Whistleblowers", Court-Watch Polska raised money for the production of an educational board game on law "Prawopolis".

We recommend looking at another funding option that is available to some organisations: membership fees. In the CEE region we cannot expect the scale of the ACLU (the American Civil Liberties Union,

which has over 1 million members, activists, and supporters and had over \$ 100 million in revenue from membership dues in 2016), however we find this avenue not explored enough in the region. One important factor is that funding from membership fees offers independence for the organisation from institutional donors and government.

GOOD PRACTICE

Membership fees as a starting point

In Poland, Holda Association (<http://stowarzyszenieholda.pl>) is an organisation focused on debate, education and activism in the area of constitutional law, criminal law and human rights. During the 7 years of its operation over 100 members have joined (lawyers: academics, advocates, judges, legal advisors, notaries, lawyers from CSOs). Yearly minimum dues per member are the equivalent of 50 euro. This allows (some members pay more than the minimum) for a budget that covers small administrative costs of the organisation with a surplus.

DEFINITION

Antifragility is a property of systems that increase in capability, resilience, or robustness as a result of stressors, shocks, volatility, noise, mistakes, faults, attacks, or failures.⁶⁵ Though the concept is controversial,⁶⁶ it is worth noting that think tanks can grow under stress and in some respects *because of* stress. Liberal think tanks can try to turn the attacks to their advantage.

⁶⁵ N.N. Taleb, *Antifragile: Things That Gain from Disorder*, Random House, 2012, p. 430.

⁶⁶ E.g. T. Kovalenko, D. Sornette, *Dynamical Diagnosis and Solutions for Resilient Natural and Social Systems*, Global Risk Forum Davos, 2013, p. 7–33.

EXAMPLE

Ideas for antifragile behaviour of LTTs in the face of government pressure

Draw on the potential of volunteers who are idealistically motivated exactly because of the pressure your organisation faces.

Use attacks as rationale for cooperation between organisations that face similar pressure (pool resources, share information).

Use the occasion to audit for tax and legal compliance.

Drop unimportant projects, focus on key topics.

When recruiting, advertise the pressure in order to draw staff who are unafraid to fight.

At least occasionally, read the hate mail and hate speech online directed at you or your organisation, or the sector, in order to develop resilience when facing pressure and adverse views.

Burst the bubble – spread the activity of your organisation to new audiences, e.g. if you have only been active in a big city, think about small towns; if you've mostly been cooperating with organisations that share your views, try the other side of the political/ideological spectrum; engage your critics and their audience.

Consider establishing links with former dissidents from Soviet times. This might be a challenge if the mission of your organisation grew around different goals and mind-set than the underground activity from decades ago. For example, if your organisation focuses on high-tech development, vast differences are likely to exist. Still, you can draw strength and wisdom from conversations, informal cooperation, advice from people who endured government pressure, worked with little financial support, etc.

RECOMMENDATIONS FOR GOVERNMENTS

Governments should **ensure public participation** in policy and decision-making, engage in **real dialogue** with independent institutions (e.g. present frameworks for public policies in advance, offer draft legislation for consultation, include experts with diverse backgrounds in advisory teams, hold public hearings).

In many countries public consultation of drafts is mandatory under the laws and regulations that govern the legislative process. But the practice is more complex, often very unsatisfactory, as noted in several places of this report.

Therefore, notwithstanding the legal obligations, we advocate that governments should be open and responsive with the legislative process. We realize that openness of the process and readiness for consultation are part of the political game. We can offer one important caveat. Other considerations aside (e.g. corruption), lawmaking is inherently difficult and deals with multiple uncertainties. Even for savvy politicians and civil servants it is easy to make mistakes in lawmaking. When there are not enough eyes looking at the draft, or when the draft develops in a bubble where no outside comments are allowed, the authors of the mistakes risk not only the anger of the electorate, but also playing into the hands of their political opponents.

In Czechia TTs⁶⁷ provided suggestions related to their better cooperation with the government. Specifically, they would welcome a certain “division of tasks”. This means that the government should identify tasks it wants to accomplish (or research) in specific areas, and coordinate tasks that would support this activity with think tanks. Thus, governments should use think tanks not only as platforms for discussion, but also approach them as policy-making bodies.

⁶⁷ Source: Czechia. Country report.

EXAMPLE**Unintended consequences of ignoring input of an LTT in legislative process**

In Poland, in 2015, the previous parliament introduced amendments to the procedure for electing justices to the Constitutional Court. During the legislative process, Helsinki Foundation for Human Rights warned, in the opinion submitted to the Senate, that the amendments were most likely unconstitutional. The red flag was ignored, new provisions were enacted in great haste, and on their grounds, new justices were elected to the Constitutional Court. Soon thereafter, in the wake of the next parliamentary elections, a major constitutional crisis erupted. The amendments passed have been declared partially unconstitutional and some elected justices were never able to assume the office. This paved (or made it easier to justify, since it was planned anyway) the way to a massive unconstitutional assault on the Court by the political opponents of the authors of the amendments.

In Moldova the impact of think tanks on the creation of public policy remains limited. However, inclusion of the third sector in the legislative process has gradually improved in the last years. Moldovan think tanks have been particularly active in the field of justice, anti-corruption, human rights, civil society and have played a significant role in the drafting of legislation regarding judicial and civil servants integrity, and monitoring the implementation of reforms. There are several organisations engaged on a regular basis in research and advocacy on any matter related to public policy.⁶⁸

Think tanks and civil society organisations have played a crucial role in the process of transition from a totalitarian regime to liberal democracy **in Slovakia**.⁶⁹ Despite such an important role, government still does not perceive TTs as partners in the policy-making process. Currently, there is even rising hostility towards CSO sector (including think tanks) in Slovakia from some of the governmental representatives and politicians, pointing out that financial support of CSOs coming from abroad is determining the anti-state activities of such organisations.

⁶⁸ D. Cenuşa, *Consolidarea societăţii civile din Republica Moldova* (Strengthening civil society in the Republic of Moldova), Chisinau, 2007, p. 7, <http://ong.md/uploads/docs/Documente/rapoarte/Consolidarea%20societatii%20civile%20din%20RM.pdf>.

⁶⁹ Source: Slovakia. Country report. Based on: G. Mesežnikov, D. Smilov, *Independent Think Tanks in Slovakia...*, p. 3.

Moreover, since the most intensive cooperation with think tanks and CSOs happened under the government of centre-right parties, they are now accused of being politically connected to those parties. In response to these accusations, think tanks note that they do not compete with the government and they are critical in order to defend an idea, not a political party. Experts warn that undermining the work of think tanks threatens freedom of scientific research in Slovakia.⁷⁰ Think tanks are still not treated as a source of qualified expert opinion on various topics of public administration. Their opinion is usually promoted by the media when confronting the ideas of the government.

Some LTTs face the challenge described below as the result of some governments abstaining from dialogue with CSOs and rushing the lawmaking process.

CHALLENGE

Moot comments v. absence in the debate

Fast-paced legislation often pushes think tanks into a position, in which they lack time for analysis. At times important laws are enacted in a matter of days. The organisation faces the choice between remaining silent or getting involved in frantic work where the quality is unsatisfying and the result may prove useless. Or even worse, the debate is held only for the record and is used to merely legitimize predetermined decisions.

⁷⁰ Institute for Public Affairs (IVO), *IVO Think Tank Protested against PM Fico's Reaction to 2007 Slovakia Report*, official website of IVO, Bratislava 2007, <http://www.ivo.sk/5258/en/news/ivo-think-tank-protested-against-pm-fico%E2%80%99s-reaction-to-2007-slovakia-report>, consulted in September 2016.

RECOMMENDATIONS FOR GOVERNMENTS

It is useful for the government to develop **internal think tanks**. Such think tanks can serve as a **channel of communication** with external, independent think tanks. Government experts can serve as interpreters for politicians and government officials when communicating with outside experts.

Internal think tanks are useful for the public debate only if: their professional independence is ensured, and they are not **pseudo-think tanks** that serve only to support government policies, provided that does not reduce the accountability of the government, and operate under anti-corruption policies.

Usually, one cannot approach the prime minister with a 500-page-report even if it is quite important. It is useful for the government to have structures that absorb such sources of information. Internal government think tanks can translate that to the decision-makers. They can also play the useful role in bridging the gap as regards the deficit of trust of political decision-makers towards outside experts, academia, lobbyists, etc. Decision-makers can ask the internal think tank to police the work of outside think tanks, select the competent institutions, follow up with questions on the subject matter and methodology etc.

We consider openness of the internal government think tanks a good practice:

- the government should invite independent experts to participate in the programming of the work of such institutions
- the government should make the products of research and data available to the public (see next recommendations below)
- internal think tanks should be open to and eager to accept challenges from outside experts or institutions to discuss their methods, findings and recommendations

A recommended tool would be cultivating (and using) possibilities for contribution by CSOs and LTTs to studies being pursued by public research institutions – such as in Poland, the Institute of Justice affiliated with the Ministry of Justice or the Institute of Labour and Social Affairs affiliated with the relevant ministry.

EXAMPLE**Generational change in the Ukrainian government facilitates cooperation with LTTs⁷¹**

The level of cooperation between think tanks and government was much more limited three years ago and analytical capacity of think tanks had been hardly used. The situation changed after the “revolution”, namely after the change of power. As a result, many young and progressive people from the public sector and businesses interested in fundamental change were elected to Parliament. Their approach involves collaboration with analytical institutions whose authority has become the marker of the MPs’ quality solutions.

EXAMPLE**Empirical surveys of Ukrainian public servants as a way to raise their awareness about the role of TTs**

According to the survey “Independent Think Tanks and Government: Partners in Promoting Reforms or Two Parallel Worlds?” 158 government officials were interviewed by email questionnaires. Among them were 75 representatives of local governments.

The officials believe that Olexander Razumkov’s Ukrainian Centre for Economic and Political Studies is the most beneficial (more than half of all respondents of the survey have indicated it). Then Ilko Kucheriv’s Democratic initiatives Fund, Centre of Policy and Legal Reform, and Ukrainian Centre for Independent Political Research were also indicated.⁷²

As opposed to the CSOs whose agenda is shaped by their management, advisory boards or indirectly by decision makers they react to, whose agenda is influenced by donors, but who maintain independence from political forces, there are government-affiliated institutions (GONGOs) at the other end of the spectrum that mostly provide analyses in line with the policies of the government. Especially in Hungary and Poland these types of institutions are being established. In Hungary the Századvég Foundation might be mentioned as an example.

⁷¹ Source: Ukraine. Country report.

⁷² Survey *Independent Think Tanks and Government: Partners in Promoting Reforms or Two Parallel Worlds?*, p. 33, 2016, <http://pasos.org/wp-content/uploads/2016/08/ThinkTankStudyUkraine.pdf>.

EXAMPLE**Hungarian mysterious government advisor⁷³**

According to the Századvég Foundation's website its mission is to provide research upon which government decisions can be based and to provide support in creating a successful national strategy. In an interview in January 2017 the chairman of the foundation's board of trustees described the organisation as a kind of "ministry of thought", implying that their main task is to support the government and the prime minister with their counselling activities. He also revealed that the foundation accomplishes its work based on a framework contract with the government on counselling and research. Branding itself as "the most important brain trust", the foundation's declared mission is to support the government.⁷⁴ While it primarily conducts research in the field of economics, its profile encompasses the digital economy and energy, and after the first peak of the refugee crisis in the fall of 2015 it established the Migration Research Institute.

In spite of the fact that the foundation has a framework contract with the government, it does not disclose its work to the public and a series of legal procedures has been launched so that the public money spent on research by the foundation could to some extent be revealed. A journalist represented by the Hungarian Civil Liberties Union sued the Office of the Prime Minister and demanded public access to the studies that the government ordered from the consortium of Századvég Political School, Századvég Economy Research Center and Strategopolis for almost 4 billion HUF.⁷⁵ The Office rejected the journalist's inquiry as to the content of the contract several times. The Office claimed that the studies in question were materials upon which decisions would be based and their publication would breach public and national safety interests as well as national economy interests.

⁷³ Source: Hungary. Country report.

⁷⁴ See at: <http://www.szazadveg.hu/hu/szazadveg-csoport/alapitvany/migraciokutato-intezet>.

⁷⁵ See at: <http://vs.hu/kozelet/osszes/a-miniszterelnokseg-atadta-a-kiperelt-szazadveg-tanulmanyokat>.

The studies were finally released in February 2016. The government expressed its satisfaction with the performance of the consortium and stated that they would continue to count on its work. Referring to the reasonable price of the commissions, the government was not willing to make any change in the contract. Beyond government circles, however, the materials published did not elicit unconditional praise: the vs.hu news portal commissioned a review of the studies and experts found that most of the materials were meaningless compilations of data, and not dated.⁷⁶

RECOMMENDATIONS FOR GOVERNMENTS

The government should publish important **public information** and secure free access to it.

Authorities should be open to **independent evaluation and ex-post impact assessment** of their actions, legislation and policies. They should provide funding for external analysis and research.

Authorities should **analyse and address** products submitted by LTTs. The quality of the work of LTTs requires the government to formulate comments and arguments – a **substantive reaction** to the analysis and recommendations offered by outside experts.

There are areas of policy work where it's hard for the government to acquire knowledge because of a lack of direct interaction with some of the stakeholders (e.g. patients, victims of crimes, tenants). It can be useful for the government to work with LTTs who are specialized and may act as **intermediaries**.

Access to public information is a crucial tool for LTTs' work. Often TTs conduct basic empirical research, but in most cases they need to use information collected by the government and its agencies, such as statistical data, expert opinions, research results, draft documents, regulatory impact assessments, etc.

⁷⁶ See at: <http://vs.hu/kozelet/osszes/sir-es-nevet-a-szakma-ezeken-a-kutatasokon-szazad-veg-aktak-ii>.

In the countries of the region laws on access to public information/ Freedom of Information Acts (FOIA) have been adopted and governments have committed to the concept of open government. However, even the process of development of FOIA in the region is in itself a success story, recently we witness attempts at limiting full access to public information that exceed the “usual” reluctance of the authorities to share information.

According to the interviews conducted with TTs, CSOs and media representatives, for instance in **Moldova** there is a general agreement, that **in recent years the situation regarding access to information has worsened** considerably. TTs note a tendency to limit media access to public information. Journalists complain that in the last 2–3 years they have faced more limitations.⁷⁷

Most state institutions do not comply with the legislation and provide incomplete, inaccurate information. Interviewees describe the poor quality of the provided information as challenging. State authorities give various unclear reasons to refuse providing information presumably based on the status of the information such as “state secret” or “personal data”. This creates serious obstacles to CSOs and journalists to investigate, for example, cases of corruption. Even if information is provided, it is often presented in summary or rudimentary form.

EXAMPLE

Transparency of candidates for judicial posts

The courts blocked a request from the **Journalistic Investigation Centre** pertaining to the refusal of the President of the Republic of **Moldova** to provide them with information about all the refusals to approve candidates for the position of judge during the period 2001–2015. The Supreme Court of Justice motivated the refusal claiming interference in the private lives of the candidates and state secrets.

According to country reports, access to information remains a problem also for think tanks. Not all information can be found on the websites of the governmental institutions, and the necessary document cannot always be tracked via a conversation with a person responsible from a given Ministry.⁷⁸

⁷⁷ See results of the survey done by Rise Project at: <http://media-azi.md/en/stiri/ingredients-investigative-journalism-time-money-and-strong-nerves>.

⁷⁸ See Moldova. Country report, AGER Think Tank Card.

Quite often organisations challenge the refusal of providing information in courts. In **Poland** for instance they have won numerous FOI cases every year in administrative courts (that includes also cases against the Supreme Court or Constitutional Court presidents refusing to provide certain information).

GOOD PRACTICES

Networking in order to struggle for access to public information

In **Ukraine** the **Centre for Democracy and Rule of Law** has created and coordinates the **Network of Defenders of the Right to Access Information** as a union of lawyers and civic activists from the whole country that asserts that public information has to be fully provided by state authorities to citizens (cedem.org.ua/en).

In Poland the Citizens Network Watchdog Poland⁷⁹ (defining itself as “an independent, apolitical and non-profit organisation in the form of a watchdog and think-do-thank organisation for the public benefit”) have around sixty actively involved members from across the country who are experts-practitioners in the area of right to information and about 300 people engaged in working for openness and transparency. Additionally, the number of people who support their ideas, sign petitions, comment on the topic of openness (currently around 3,000) is growing.

The bottom line of the **Slovak** FOIA is “everything is public, unless it is secret”. State authorities and institutions, as well as local governments and companies using public funding are obliged under FOIA to provide requested information which they possess in due time. If they refuse, they have to issue an administrative decision, which can be reviewed by courts. FOIA is well known and widely used, although public authorities aiming to restrict their obligations constantly attack it. In the case of sensitive information, public authorities repeatedly refuse access to information and it may take months and years before they finally disclose it, when it is already useless for the applicant.

⁷⁹ See organization card in the: Poland. Country report.

EXAMPLE**Survey on access to public data in the legislative process**

In 2015 **EKINT** wrote a background study on the commitments undertaken in the framework of **Hungary's** participation in the Open Government Partnership (OGP) program. The aim of the research was to see how social consultation works in reality, especially whether the government meets the requirements and ensures access to data of public interest in the social consultation phase of legislation. The in-depth assessment of the governmental website indicated in the law yielded a sombre research result: social consultation in practice does not at all meet the alleged purpose of the legislator. Access to data of public interest related to social consultation is practically impossible, or if it is possible, it is unnecessarily complicated, non-transparent and full of obstacles.

Shortly after the research, the government passed a decision (no. 1460/2015) to draw up a second action plan pertaining to the commitments undertaken in the period 2015–2017 in the framework of the OGP program. It may indicate that mentioned concerns have been noticed.

With regard to **open data**, the situation in the region is more difficult. The process of the public administration digital services in countries covered by this report is quite slow and problematic. Significant amounts of public funds were spent in order to modernize and introduce IT into public administration, but the results are not adequate and sometimes (like for instance in **Slovakia**) innovations are almost dysfunctional. As a reaction to this inefficiency, a civil association **slovensko.digital** emerged – a group of independent IT experts that came with proposals to make the process of the digital services more efficient and less costly.

It should be stressed that problems with access to data depend a lot on particular public institutions. There are some websites that work very well and contain a lot of useful information, whereas other institutions have very antiquated web sites with little relevant information. Even if there are some standards in the legislation, in practice they are not fully implemented. Furthermore, there is often no regulation on keeping public data on the Internet, thus important information might be simply deleted.

Access to data and public information is crucial for LTTs and is a good example of the interdisciplinary character of TTs work. Natural alliances with IT experts are beneficial. In **Poland** the foundation e-panstwo is a good example of a collaboration of lawyers, IT specialists and other professionals. One example of its work is the copying of data (big volume) when there is a risk that this data may disappear. After some unexpected disappearances experts, have become more suspicious and try to predict which data may disappear and ask specialists to copy it. Similar organisations exist in other countries.

EXAMPLE

Lack of institutional memory – disappearance of public data

In **Poland**, public data disappear from the governmental sites. For instance, the change of the government in 2015 resulted in the **unexpected, unannounced disappearance of important data** – on the sites of the Constitutional Tribunal (for example: 3 CT verdicts that are not accepted by the current government; all information collected since 2012 by the “Constitutional Observer”), on the sites of the government (for example data regarding the crash of the Polish plane with many representatives of Polish institutions in Smolensk in 2010). At the same time the website of the President includes historic sections with information collected during previous administrations.

In the opinion of Czech TTs, there is a serious problem with access to data in **Czechia**. Some underline that important, sometimes crucial data they need for their work are not collected and they must do surveys and collect data themselves. One example provided is the case of data on sterilization of women with disabilities (sterilization must be approved by a court of law). Since this issue is very sensitive and there is a risk of malpractice (overuse of sterilization), there should be statistical data collected. The state, however, is not collecting the data, forcing TTs to do it themselves.

GOOD PRACTICE**Access to court decisions**

In Slovakia it is especially difficult to access court decisions on the courts' websites. The legislation imposes on courts an obligation to publish all valid decisions within 15 working days since validity. However, it is often a very laborious process to access requested decisions – not all decisions are published, or the searching system on courts' websites is obsolete. In response, an interesting initiative came from **Transparency International Slovakia**. TIS uses open data and created a website **otvorenesudy.sk** where the public can access broader data on courts, judges, selection procedures of judges and their decisions.

To sum up, access to public information and open data policy is crucial for TTs work and should be secured by the government. When think tanks engage in field research to collect data, they should **share** these data with the state authorities.

All countries have struggled with the **openness (or lack thereof) of authorities to independent evaluation and ex post impact assessment** of their policies, not to mention providing funding for it. Very often decision makers do not perform proper research before introducing new policies or legislation, so the situation when they do it ex post is even more seldom. Only occasionally an obligation to perform the evaluation of policies is included in regulations. In fact, for quite some years, CSOs and TTs were the ones that introduced civil servants and decision makers to such concepts as: evaluation, impact assessment and ex post impact assessment, sunset clause, and pilot study/project for piloting the quality of the policy proposed and similar.

Obviously all LTTs enhance governments to evidence based policies and evaluation of policies and legislation. Planning ex post impact assessment should be a routine activity of legislators and decisions makers who want to address social issues. But authorities should also be open to external analyses and opinions and seek them out in order to have an independent view. However, even if TTs do not provide ex-post impact assessment themselves they are a very good source of information.

To a small extent, **LTTs in countries covered by a project engage in ex-post analysis of the law and impact assessment**. This is a small (much too small), yet growing, element of practice, and one in which legal think tanks have great potential. The public partners should be

encouraged to cooperate in this regard, also with respect to funding, which is, apart from lack of political will, the main obstacle. From many potential reasons of this state of art there are two fears on the side of decision makers that were voiced in interviews. First, politicians are afraid that critical quality ex post impact assessment would undermine their position as authors of the reforms. Second, professional impact assessment is difficult and might be costly so the factor of saving money is underlined, even the improvements introduced as a consequence of impact assessment may easily outweigh the cost of research.

EXAMPLE

The role of think tanks in Slovak reforms⁸⁰

According to the **Slovak** study “Civil society organisations demonstrated their expert potential by becoming a source of alternative approaches to public policy, by creating alternative proposals together with **critical review of existing ones**” experts consider that various Slovak think-tanks played a very important role in the process of transformation of Slovakia and especially in enforcement and defence of reforms (tax reforms, education, social system, public administration, health care system etc.). Think tanks came to fulfil the vacuum where the state institutions and academia were not able to flexibly elaborate and effectively implement modern reforms. According to Grigorij Mesežnikov, the success of Central European think tanks to enforce reforms in the context of inflexible bureaucracy was possible due to various factors: independence, organisational flexibility, high-expert quality background, high communication capacities and financial support from foreign partner organisations.

GOOD PRACTICE

Advocating for quality legislative procedures

Polish TTs have been focused for years on the methodology and practice of the lawmaking process, advocating for changes that would make it transparent, evidence-based, and open for social consultation. **Citizens Legislative Forum**, affiliated with the SBF (Stefan Batory Foundation) is an example of cooperation of TTs and CSOs leaders, researchers and business representatives. Since 2009, the Forum has been monitoring and assessing the legislative process as well as advocating for its enhancement.

⁸⁰ Source: Slovakia. Country report.

Shall authorities analyse and substantively address products provided by LTTs? If we assume that LTTs work is of good quality and touches upon important social issues, the lack of analyses of their products on the side of the government and an absence of reaction, demonstrate not only a lack of respect, but also a lost opportunity to obtain additional data, knowledge and perspectives.

There are no formal procedures that would enforce a true substantive reaction by the government to the data, analyses, comments or arguments submitted by think tanks. It is easy for the government to imitate the exchange of thought, even if some kind of reaction is mandatory, for instance within the procedures of legislative process (public consultations). Obviously this may lead to insufficient knowledge of decision makers about their own work and wrong regulatory and policy decisions.

Ignoring the work of TTs may also potentially contribute to the misuse of public funds. Not just in a consequence of wrong regulatory decisions that cost money, but also by disregarding surveys or analyses of independent experts and TTS that were funded, as it happens from public funds.

EXAMPLE

Wasting of the work of think tanks funded from public money

In Poland, as already mentioned above, outside experts were asked to develop ideas and solutions for the system of out-of-court legal aid. The government, however, almost completely ignored the research and proposals elaborated

Apart from political decisions as to the systemic issues, like the structure of the out-of-court legal advice system, irrational lack of willingness of decision makers to include recommendations of TTs results in a rejection of simple solutions that are not costly, but could potentially help authorities in addressing social problems. For instance, some recommendations suggested how, in an easy way, the state – via the created free out-of-court advice system – might collect very detailed and important data on legal problems of citizens. It was not introduced.

GOOD PRACTICE

Inspiration from the work of independent LTTs

In her annual reports the President of the **Hungarian National Office for the Judiciary** regularly points out that her office pays special attention to maintaining good relations with LTTs such as TIH, the HHC, the HCLU and EKINT.

For instance, in the 2015 report, the President mentions that she pays due attention to comments provided by civil organisations concerning court management, including starting dates of trials. The report also identifies investigations that were ordered based on recommendations of LTTs, e.g. the HCLU or HHC.⁸¹

There are lots of CSOs and TTs that for years have been specialising in **specific fields**. The consequence of their focus, dedication, years of experience is often very **deep expert knowledge of their constituencies**, knowledge that nobody else possesses. It is important that authorities do **recognize experience** of those CSOs and TTs and make use of it.

CSOs, oftentimes interact closely with individuals and institutions that are directly involved in problems under research, e.g. patients, landlords and tenants, consumers, victims of violence etc. Policymakers sometimes do not have such direct channels of communication or relations because of bureaucratic procedures, sensitivity of issues etc. In such cases LTTs can act as intermediaries and, for instance, collect data that would be unattainable for the government or much difficult to collect.

EXAMPLE

How TTs expertise may help government design policy

In 2013, the **Child Rights Information Centre in Moldova** (CRIC) supported the Ministry of Education in developing the regulation for school pupils' councils and the National Pupils' Council (NPC). The NPC acts as a consultative body for the Ministry of Education on policies developed and affecting children. The authorities recognized the importance of involving children in decision-making and the NPC was included in the budget of the Ministry of Education since 2015. So the initiative came from outside, but now the NPC is run by the Ministry of Education on their own, with little support from CRIC.⁸²

⁸¹ See at: http://birosag.hu/sites/default/files/allomanyok/obh/elnokei-beszamolok/2015._eves_elnoki_beszamolok.pdf.

⁸² See CRIC Think Tank Card in: Moldova. Country report.

GOOD PRACTICE**In between courts and citizens**

In some countries LTTs act as **intermediaries between courts and judges** (including official judicial bodies and judges associations) **and citizens**. For instance **in Poland INPRIS, together with the National School for Judiciary and Prosecution**, have conducted research and organised a conference on **collaboration, communication and interactions of LTTs with the judiciary**.

Divided into several panels both judges and representatives of LTTs and CSOs shared experiences and feedback on trial observation projects, delivery of amicus curiae briefs, supporting parties during trials, training for judges and educational projects on courts for citizens. A similar project, funded by the **International Visegrad Fund**, was carried out among LTTs from six countries (more at inpris.pl).

RECOMMENDATIONS FOR GOVERNMENTS

Governments should consider their **strategy of collaboration** with LTTs. Regular (e.g. annual) meetings with CSOs, developing a program of collaboration with CSOs are good examples to follow.

Governments should **implement recommendations of international bodies** and organisations regarding the participation of civil society representatives in governance. For instance “Minimum Standards on Non-judicial Members in Judicial Governance” (2016), elaborated by the European Network of Councils for the Judiciary (encj.eu) provide for such participation in bodies responsible for the appointment and promotion of judges, complaint and disciplinary procedures. LTTs experts may become **natural candidates** for such roles.

What we are advocating for is participation of LTTs in the public debate and policy decisions. To make this possible we need quality TT products, but also willingness on the side of authorities. Any formal governmental decision or procedure that would facilitate the collaboration or interaction with TTs might be helpful, be it on the governmental level, or the level of particular authorities, like ministries, agencies etc. Once there is a general strategy of collaboration, TTs may use it as a point of reference in their contacts with representatives of authorities. In the countries covered we have identified several examples of methods of collaboration, including a more strategic approach. Different solutions are possible. The most important to start with is political will that is necessary to build – a tradition of collaboration and interaction with external experts, so that such cooperation becomes a natural element of public debate-something that nobody questions and is not dependent on political will.

GOOD PRACTICE**Annual meetings of the government and CSOs**

In **Moldova**, the **CSOs Council** (consiliulong.md) organises an **annual conference** in partnership with the Parliament **on the cooperation between authorities and civil society**. In 2016, it focused on the mechanisms for cooperation between the parliament, government and civil society; role of the civil society in the implementation of Association Agreement with the EU; and transparency in decision making (this led to the amendment of the Government Regulation on transparency).

These kinds of regular meetings are a good way of keeping each side up to date. It is also advisable that particular agencies organise similar gatherings in their fields (for instance the **Ministry of Justice could organise regular meetings with LTTs** in order to exchange information about its project results and receive feedback).

GOOD PRACTICE**Ministry and CSOs: programs of collaboration**

In 2015, **Polish ministries** were obliged to draft a **program of collaboration with CSOs. LTTs took part in the process**. The Ministry of Justice prepared such a program for the justice sector. The program envisaged collaboration, also in the form of donations or co-funding. Due to the change of the government at the end of 2015 this process stopped (see attachment on the program of collaboration below).

In **Slovakia** there are two possible ways to include LTTs in preparation of state materials. The first is an **active way** – inviting TTs to participate in working groups of respective ministries (this happens in all of the countries covered). It also happens that some ministries create their own analytical, research institutes and are more reluctant to collaboration with external experts since they use their own expertise in developing policies and strategies.

The second way, again like in all countries covered, **does not require** any activity from public authorities – it is the participation of TTs in **legislative procedure** by submitting comments and proposals to draft legislation during so called inter-departmental discussions or public consultations. The ministries are usually obliged to allow the public to participate in this process. In Slovakia a quite unique procedure is in place. If more than 500 persons support comments and proposals

submitted by the public, the authority is obliged to discuss such proposals with representatives of the public. The ministry shall either accept or reject comments and proposals submitted. If rejected, the head of the respective authority has to discuss the rejected public proposals. The draft is then submitted to further stages with a note about conflict between promoter and the public.

EXAMPLE**Recommendations of Ukrainian experts on how to attract accumulated knowledge from think tanks by public authorities and local self-government bodies⁸³**

1. Each ministry shall have an advisory body, i.e. the board including representatives of the most influential think tanks or research institutions in the ministerial area of focus. This would be one of the main channels of influence on public policy.
2. The think tanks shall always produce analytical materials on the assessment of the situation, identification of problems, recommendations for their solution. These materials are to be distributed and considered by the experts in the government.
3. Whenever the government is preparing some kind of reform or serious document, a working group is to be formed with the obligatory participation of independent experts, especially from think tanks.
4. Each document drafted by the government as part of policy analysis shall always be up for public debate. The think tanks are to be among the most active participants of these public discussions because of their drafted materials.
5. Think tanks shall prepare periodic monitoring reports on public policy of the state.

⁸³ Source: Ukraine. Country report.

GOOD PRACTICE**Government competition for a law proposal – an innovative approach towards think tanks**

The Ministry of Science and Higher Education in Poland announced in 2016 an open competition for drawing up concepts for reforming higher education in Poland. In the initial stage, interdisciplinary teams from academic institutions or NGOs could apply for three grants. The tasks for participants included: (a) research; (b) drafting of the proposal; (c) consultation of the proposal with Polish academia. Fifteen applications were submitted; two teams from universities and one team from an independent legal think tank (Allerhand Institute) won. In 2017, the Ministry drafted and published for consultations its initial proposal based on the submissions. Also all extensive studies and consultation reports by the competition participants have been published.⁸⁴ As of October 2017 the proposal is under discussion.

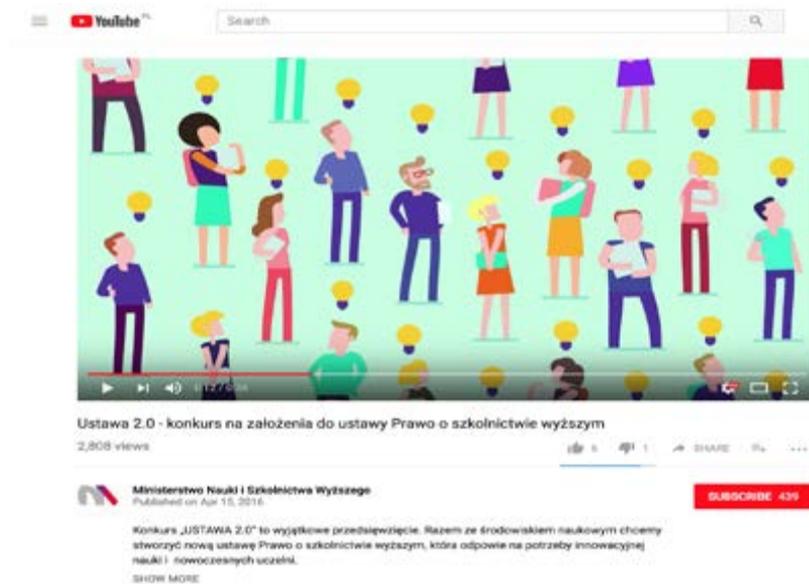


Illustration: Announcement of the Polish Government inviting organizations to the competition for drafting the proposal of a new law on higher education.

⁸⁴ E.g. A. Radwan (ed.), *Plus ratio quam vis consuetudinis*, http://ustawa20.allerhand.pl/wp-content/uploads/2017/03/Plus_ratio_quam_vis_consuetudinis_ebook_wydanie2.pdf; other drafts at: <http://www.nauka.gov.pl/ustawa20/>.

Modern democratic governments include civil society representatives in governance in one way or another. This may also be done in the form of formal participation of civil actors in different bodies that take part in policy shaping. It should be a standard that decision makers base their opinion not just on internal experts and civil servants, but also on the input of independent experts and TTs. There are some international documents that support this kind of approach. Since we are focusing on LTTs let us use the example of the “Minimum Standards on Non-judicial Members in Judicial Governance” (2016), elaborated by the European Network of Councils for the Judiciary (encj.eu). This document requires (of course as a soft law, an opinion of the organisation) that in all the bodies that deal with judicial governance, such as National Councils of the Judiciary (or other bodies responsible for instance for appointment and promotion of judges, disciplinary procedures or complaints mechanism) there should be members representing society. These might be people from different background (academic, CSOs, different professions), but it seems obvious that members and experts of LTTs might be a good reservoir of such civic members (see the minimum standards in the attachment below).

A good example of using the experience of LTTs experts is the case of **Ukraine** where during the recent reform of the judiciary representatives of think tanks became members of an advisory body, the Civic Integrity Council, which facilitates High Qualification Commission of Ukraine in finding out whether judges (or candidates to positions of judges) meet the criteria of professional ethics and integrity for purposes of qualification evaluation. Representatives of civil society also became members of the Senior Civil Service Commission. This collegiate body coordinates requirement to fill senior posts, conducts the selection of officials and assesses the validity of proposals regarding the dismissal of such persons.

In **Poland**, the President of the Republic may appoint one member of the National Council of the Judiciary (out of 25 members, mostly judges and members of parliament). Traditionally, Presidents have appointed a judge or former minister of justice. In the years 2010–2015 for the first time the President appointed a representative of the LTT community arguing that civil society should also have its representation in the Council.

EXAMPLE**Forming the new Supreme Court**

According to the law “On the judiciary and status of judges”, at least 65 judges had to be appointed to the new Ukrainian Supreme Court by the end of March 2017. For the first time, not only judges, but also legal scholars and advocates, were competing for judicial positions in the highest judicial body. The Civic Integrity Council, made up of recognized civil society organizations and Think Tanks, was also screening candidates. For instance, experts of CPLR, Centre UA, and Transparency International Ukraine were elected for membership in the Civic Integrity Council. At the beginning of 2017, the Civic Council’s opinions finding that certain candidates are lacking integrity were given greater weight, as overcoming them now requires the vote of two thirds of the High Qualification Commission’s members (10 out of 16).

RECOMMENDATIONS FOR DONORS

Grant programs **specifically for think tanks**, including LTTs, would ensure stability and quality of socially important work. It is advisable to formulate funding programs by identifying **specific needs** of the individual country (e.g. judiciary, human rights, lawmaking, access to information). A good example is the **Think Tank Fund** which was active for several years within the Open Society Foundations.

In the interconnected world, policy and legal analysis requires that LTTs look at the international context, even when dealing with local issues. This stimulates **exchange of ideas** across borders and contributes to **common values**. Supporting LTTs that do such work locally can fall into the mission of some international bodies or programs: European Commission, EEA and Norway grant programs.

In order to build research and advocacy programs, make **strategic choices**, but also respond to **ad hoc needs**, LTTs need **long-term financing**. For think tanks, it is crucial to address the topic for a longer period (usually minimum 2 years) rather than conduct a single study or report.

Most of the funding sources mentioned in the report are characterised by the same basic problem – since they are tied to specific projects, they can hardly, if at all, contribute to covering the day-to-day costs of a think tank’s operations (such as administrative costs). In particular, funds from these sources may not be used towards remunerations of salaried employees who are not directly involved in the given project. There is very little room for inclusion in the project costs of those expenses which, while associated with the project at hand, also overlap with the given think tank’s core operations, as defined in its bylaws.

Regardless of TT’s own efforts to raise funds with new methods (like crowd funding), they still count on entities willing to donate to this socially important activity.

There is a need for institutional support, i.e. support that helps to create expert and organizational resources, helps create institutions – it is very difficult to fundraise sources for this. This support is especially important for young organizations which do not have an institutional background yet, they do not have a “brand”, nor a social setting that would allow them to raise enough money (first the organization must show people what it can do, and only then may expect support).

CHALLENGE

Grantosis v. problem-oriented funding

Many think tanks in the region find it difficult to raise funds for their preferred and socially relevant areas of research. In order to survive, some organizations undertake projects only to earn money which distracts them from their core mission.

Another problem is how to secure funding for more and more popular projects conducted by coalitions of organizations. Our previous analysis of the cooperation between think tanks enabled identification of discrete benefits. Organizations acting together can make a bigger impact and take their message to a wider audience. They can draw upon a larger pool of competences since every organisation involved has its own area of specialisation, its own expert base, and its tested toolbox, so cooperation allows for the sharing of these resources. Finally, there is the aspect of more rational resource management achieved through division of labour. The key problem arising in the context of such cooperation is, however, that of the resources devoted to coordination. In order to put large-scale operations and a large number of partners to good use, a professional approach is called for, with the appropriate financial outlays and coordinating personnel. All too often, think tanks are unable to muster sufficient financial and human resources, leading to a situation where joint action proceeds at the expense of other areas from which resources must be diverted and, at the end of the day, the quality of cooperation is less than optimum.

It is debatable among think tanks (that in fact sometimes compete with each other) whether **building coalitions** helps to secure funding that organisations usually obtain on an individual basis. There are donors and programs, however, that require or encourage coalitions; this may be an **additional funding opportunity** (e.g. the International Visegrad Fund promotes international cooperation that allows for exchange of ideas; the same can be said of some of the EU-funded projects). Donors should consider supporting both national and international partnerships

and coalition-building based on engagement in common values, such as European values. Finally, it is also important that donors give freedom and flexibility to TTs to define their priorities in response to local needs.

EXAMPLE

Advocacy for the creation of a new EU funding possibility

Polish CSOs and TTs, led by the Stefan Batory Foundation⁸⁵ and supported by organisations from all over the EU, have started an initiative and advocacy campaign aimed at creating a new EU financial initiative that would help civil society organisations in the EU countries actively engaged in the promotion of democracy and EU values. The ***Appeal Towards a Value-Driven European Policy*** was developed. The plan is to collect signatures from organisations from EU countries and hand the appeal over to the Members of European Parliament and European Commission representatives during an advocacy visit in Brussels in December 2017. Initiators hope that MEPs will start to work on the procedure that will hopefully end in the adoption of **the European Values Instrument (EVI)** by the European Parliament as a part of the Multiannual Financial Framework (MFF).

In *The Appeal Towards A Value-Driven European Policy* we read: **“[...] More and more EU Member States have seen the need for an increased focus on fostering such values as freedom, equality and the rule of law.** This was explicitly raised by the President of the European Commission in his annual state of the union address in August 2017. The European Union needs a common policy of strengthening of its fundamental values⁸⁶. This policy must not solely rely on statutory sanctions under EU treaties or threats to reduce payments from the cohesion funds. And it must not remain solely declarative.

A coordinated, value-driven policy must predict realistic financial support for active citizens and civil society organisations that share and promote European ideals.

⁸⁵ See at: batory.org.pl.

⁸⁶ See also: *Common appeal to European leaders by European Civil Society Organisations and Trade Unions. The Europe we Want: Just, Sustainable, Democratic and Inclusive* (March 2017), <http://www.caneurope.org/docman/climate-energy-targets/3050-the-europe-we-want-just-sustainable-democratic-and-inclusive/file> or *Scenario 6. Sustainable Europe for its Citizens* (June 2017), http://www.ifoam-eu.org/sites/default/files/ngo_policy_6th_scenario_position_20170620.pdf.

We urge the European Parliament, the European Commission and the European Council to consider the launch of the specific support instruments to promote European values and Europe as a value in the EU Member States. Below we propose the establishment of **the European Values Instrument (EVI)** which could be modeled on existing initiatives that are designed to strengthen democracy outside the EU (such as the European Instrument for Democracy and Human Rights with a budget of EUR 1.4 billion for 2014–2020 or the European Endowment of Democracy). **The main goal of EVI would be to strengthen pro-democratic and pro-European attitudes in Member States' societies and to improve the awareness and knowledge of democratic institutions and mechanisms."**

In Slovakia think tanks agree on the fact (and it also reflects the situation in more countries of the region) that TTs and CSOs sector is going through a crisis in which the financial aspect plays an important role.⁸⁷ The culture of philanthropy is not very developed and it is very difficult to convince donors to finance some TT activities if they do not overlap thematically with their business activities. They do not support think tanks only to support the development of democracy.⁸⁸ In Slovakia, however, (it is a good example to follow), there are some big companies which have created their own sources (corporate foundations) to support CSOs through the mechanism of tax assignation. Annually they assign 2% of their taxes to the foundations they created, and through grant calls they provide support to CSOs projects.

In the cases of **Moldova** and **Ukraine**, what is being accepted as obvious nowadays – predominantly foreign funding – used to be the case also in the V4 countries for years. However, using foreign sources is being attacked in all V4 countries as proof of lack of patriotism, being a foreign agent, etc.

Since the proclamation of Ukraine's independence a circle of foreign donors has been established. By supporting democratisation processes in the country they foster the emergence of civil society, including support of independent analytic research. Without the support of foreign funds activities of TTs would be impossible since almost 90% of their budgets are formed thanks to support of international institutions.

⁸⁷ G. Mesežnikov, D. Smilov, *Independent Think tanks in Slovakia...*, p. 25.

⁸⁸ F. Obradovič, *Kto financuje think tanky...*

International funds mostly invest in programs on strengthening civil society's participation in development, implementation and monitoring of key reforms, improving human rights, the fight against discrimination, and anti-corruption activities.

Donors who are interested in promoting reforms in Ukraine do not see themselves as key users of research and analysis. According to the survey within the framework of the project "Independent Think Tanks and Government: Partners in Promoting Reforms or Two Parallel Worlds?" (conducted by Ilko Kucheriv Democratic Initiatives Foundation in 2016) the Western donors explained their motivation first of all as a desire to strengthen dialogue between the government and the public. They indicated that the role of TTs is to promote reforms, produce public expertise, and engage with such government entities as the National Council of Reform (NCR). Donors support TTs in developing high-quality research, which can encourage public debate and influence public opinion.

But what will happen when those foreign donors end their support? First of all, civil society does not have to survive in the same shape – perhaps in the time of transition more activities are needed, and later, fewer. However, if you are building a culture of research and discourse, it is worth keeping the institutions that guarantee it. Donors should therefore consider how to build a culture and tradition of financing TT activities within the country. To a large extent, the V4 countries have failed in this matter, so it is worth considering how to avoid the same mistakes.

It seems from the experience of some TTs in the region that there are still funding possibilities not fully explored or ones that could be tested or promoted. One is the collaboration (with funding element) with the legal profession. Bar associations and professional associations of licensed lawyers which operate their own research arms occasionally cooperate with think tanks. For example, the National Council of Attorneys in **Poland** (*Krajowa Rada Radców Prawnych*) has financed two INPRIS studies concerning new Polish civil procedure and the practice of mediation. It also contributed to the EU project on the Charter of Fundamental Rights of the European Union (covering training and elaboration of the manual for lawyers on the Charter). In the past, the Council fully financed a similar project devoted to the European Convention on Human Rights conducted by the Helsinki Foundation for Human Rights (a series of trainings in all jurisdictions and preparation of a practical manual on the implementation of the convention).

Natural cooperation partners seem to be Legal Publishing Houses. In **Poland** they engage in different initiatives. Sometimes in the modest form of providing awards in legal competitions, sometimes on a much bigger scale – for instance FUPP collaborates with C.H. Beck and publishes different publications free of charge or at a small cost. It also supports university law clinics with free access to the law databases. The Wolters Kluwer publishing house likewise supports different research initiatives, publications and conferences.

Current donors of TTs work could consider programs that would bring more local, national actors on the donors' scene. For instance, as mentioned above, it stems from all country reports that private business in the region has not developed a tradition, or a practice, of supporting the work of think tanks. Entrepreneurs are more willing to contribute to charitable or educational initiatives (some, additionally look for media coverage that is very probable in such cases). But there is not much of a tradition of donating to research, analysis or watch-dog activities. The assistance of current donors in building the local tradition of business involvement in such causes could be helpful. These could base on programs of collaboration with large corporate law firms that appear in some countries. Occasionally, they donate to TT projects. For instance DLA Piper donated in **Poland** to the monitoring of the operation of commercial courts done by TTs (HFHR and FOR). But usually law firms focus mainly on pro bono work of their lawyers that assist LTTs or CSOs in strategic litigation programs or delivery of legal services for CSOs or their clients.

GOOD PRACTICE

New civil society independent fund

In Poland a group of representatives of organisations and eminent individuals have recently created (2016) **The Citizens' Fund** (funduszobywatelski.pl), a special fund established in order to support individuals and institutions working to protect civil rights and freedoms, constitutional values, social peace, and safe spaces for pluralistic public debate. The Citizens' Fund draws most of its financing from private donations and from 1% personal income tax allocations; having assembled some initial funds, it promised to commence active operations in 2018. It is so far a modest initiative, but hopefully it will grow in the future.

RECOMMENDATIONS FOR DONORS

Donors should **not require implementation** of LTTs recommendations or solutions. Implementation depends on political conditions. Evaluation of the project should determine the quality of the work and products. Even if not implemented at once, quality analysis may prove useful in the future.

As LTTs rely on experts, **staff costs** can be higher than in other CSOs.

Considering current challenges in some countries of the region, like black PR and politically motivated attacks on TTs and their staff, organisations should secure funding and build skills as regards **conflict/crisis management** (in particular, public communication); they may also need resources for legal fees and court costs.

TT experts recognize the donor's dilemma – if a TT has no influence, why finance it? However, it is not always quite so, because many ideas break slowly and gradually, and although they require time, work and effort, they eventually bring success. Experts point to the fact that their work is “long-distance running” and not always are they able to report results of their work in the framework of a project lasting only 6 months.⁸⁹ For instance, in the legislative process, there are issues TTs cannot control and it is impossible to state when (and if ever) there will be a positive result. The effect, therefore, cannot always be “a change”, but also introducing to the public debate specific topics or proposals based on comprehensive research and analysis.

It may also be worth investing in programs that serve not only research or analysis, but also the development of communication and cooperation channels TTs and Governments should developed.

In all countries covered there is a system of tax deductions for civil society initiatives (from 1 to 2% of personal income tax) in place. CSOs, including TTs, are trying to use this mechanism in order to widen their donor net. Strategic donors could consider providing support or training on methodologies of effective fundraising – how to reach citizens in order to convince them to donate not just to popular causes, like humanitarian aid and religious organisations, but also to activities of LTTs.

⁸⁹ F. Obradovič, *Kto financuje think tanky...*

In **Poland**, for instance, the past year has brought an expansion in the range of fundraising training for organisations, specifically as regards teaching CSOs to solicit funding other than via traditional grants, including training addressed specifically to watchdog organisations. This shows that there is a demand among CSOs for such training. Some organisations have been putting their newly gained skills to use in building civic support networks, promoting themselves and their work and appealing to their sympathisers to regularly donate even small amounts. Some success in this regard has been achieved, for example, by the Citizens' Network Watchdog Poland.

Finally, especially difficult circumstances faced recently by LTTs in the countries of the region (including defamation campaigns and other attacks as described above) call for a special approach regarding crisis management, communications and, unfortunately also court and legal representation costs. Many organisations are trying to build support networks using, for example, lawyers' pro bono schemes, or helping each other, however these resources are not sufficient, so donors should consider assisting in those needs.

LTT'S EXPERIENCE IN CHOSEN THEMATIC FIELDS

Sharing experience. Different LTTs in the region have gained experience over the years, also as regards collaboration and interaction with governments. In part they are similar, but often they are different, depending on the local ideas, needs, interests, challenges or political situation. In order to introduce practices that have already proven successful in one country, in order to innovate, to question stereotypes and traditional approaches, it is important to know the experience of others, become inspired and learn from each other. Knowledge of someone else's experience may also help in developing common projects or regional strategies.

Sample. We present below some examples that have been selected from country reports (we have omitted most of the footnotes that might be found in country reports). In each theme we show some examples of LTTs projects, experience, approaches. We focus on several fields that are characteristic for the public engagement of such organisations:

- Legislative process
- System of justice, the judiciary
- Legal profession
- Access to justice
- Legal education
- Language of the law (quality, communication)
- Internationalisation of the law & litigation before European fora
- Human rights, equality, discrimination
- Information society and the legal system and administration
- Monitoring and participation in selection and appointment procedures for public positions

We asked national experts to analyse the activities of LTTs in these fields – for more details and footnotes we recommend six Country Reports available at inpris.pl.

LEGISLATIVE PROCESS

Only banana republics pass huge legislation without cost analysis and serious debate.

L.H. Summers, former Treasury Secretary and President of Harvard University on Twitter, Sept. 19, 2017

Civic participation⁹⁰ is an important factor in guaranteeing the legitimacy of legislation. In a representative democracy, the average citizen has neither the chance nor the motivation for the profound examination of legislative proposals. People gain information via LTTs which are in possession of the necessary professional knowledge for forming opinion. In this regard, limiting the possibilities of TTs' participation means narrowing citizens' right to information and participation.

Hungary. Changes in the legislative process are monitored by the Rule of Law Defenders' Platform. EKINT has drafted a policy paper on "Civil Participation in the Legislative Process" based on the mandate of a nascent cooperation of LTTs and other civil entities (CÖLÖP).⁹¹ K-Monitor, Atlatzo.hu and TIH have a joint minimum program against corruption (ezaminimum.hu), which defines problems and proposes measures regarding the transparency of legislation and the level of involvement.

There are constant problems with **bypassing of the official procedure** and consultations and proceeding in a rush with no time for discussion, no information on drafts etc. In reality, after the competent ministry finishes the draft, an individual MP submits the proposal, as his/her own, while the Government remains in the background. In the 2010–2014 governmental cycle this method became an effective means for **neglecting the opinion** of LTTs. Furthermore, the Act on Public Consultation limits the scope of consultations introducing a number of exceptions. The majority of LTTs have lost strategic connections in lawmaking to such an extent that the process can be seen as a **tendency directed at excluding** TTs entirely from the legislative process.

⁹⁰ Source: Hungary. Country report.

⁹¹ For reasons outside the scope of EKINT, the policy paper has not been published.

Moldova. TTs monitor the transparency in decision-making at the level of Parliament, Government and local authorities. The law expressly prescribes that CSOs can make recommendations by submitting opinions on draft laws, issuing public appeals or declarations, or organising press conferences.

At least 10 working days have to be provided to interested parties to present comments on the drafts elaborated by the Government and 15 working days in the Parliament. The authorities should publish the summary of the objections and comments submitted, and state the reasons if they were not accepted.

Public consultations can be organised as: public debates, public hearings, opinion polls, referenda, expert interviews, and the creation of standing or ad hoc task forces involving civil society representatives. **Roundtables** are usually organised by CSOs working in a particular area and not the Government. In reality, authorities also fail to provide explanation when the recommendations provided by TTs are not taken into consideration.

Example. The law enabling transferring part of the tax for social purposes was adopted in 2014, but the mechanism could not enter into force because the Government neglected to adopt a Regulation with the implementation rules. In 2015, **LRCM** prepared a paper on the shortcomings of the Law.⁹² A roundtable of TTs and CSOs and targeted meetings with decision makers followed. Several deputies agreed to introduce amendments, which were later adopted. LRCM also got actively involved in drafting of the Regulation. It was adopted in 2016 and the mechanism started to be applied in 2017. Individuals for the first time could decide – choosing beneficiaries – on their tax designations.

Poland. LTTs have devoted considerable attention to the legislative process and to public consultations. In 2012, CSO experts drew up **7 Rules of Consultation**, a guide to the key principles concerning consultation of legislative acts, which was then incorporated into the **Better Regulations** for 2012–2015 government programmes. The 2015 elections, meanwhile, have brought changes that left TTs with reduced influence on lawmaking.

⁹² Legal Resources Centre from Moldova, *Impact of the 2% Law on the Financial Sustainability of Civil Society Organizations*, Chisinau, 2015, <http://www.crjm.org/wp-content/uploads/2015/06/CRJM-DPP-2la-suta-eng.pdf>.

Good practices. Since 2009, the **Citizens' Legislative Forum** affiliated with the Batory Foundation has been monitoring and assessing the legislative process. The Forum brings together LTTs and other experts, researchers and CSO leaders active in projects designed to improve the quality of the legislative process and opening it up to the voice of citizens. The Forum publishes regular analyses.

Important studies on the legislative process were conducted in 2014–2015 by the **Unit for Social Innovation and Research “Shipyard”**, which scrutinised the actual practice of Polish ministries in legislative consultations, produced case studies, and explored the barriers to legislative cooperation between TTs, CSOs and administration.

Some TTs (like HFHR or Ordo Iuris) have established **special units** whose tasks include **observation of the legislative process**.

A **promising area** might be **cooperation of TTs with leading law firms** as regards pro bono advice on regulatory matters. For instance, organisations representing rights of persons with disabilities joined forces with a recognised law firm in preparing draft legislation designed to counteract discrimination and implement the UN Convention on the Rights of Persons with Disabilities.

Slovakia. Some TTs commented on the regulation of the legislative process itself. They found it not very transparent, vague and rather unfriendly towards public participation. After the joint effort of VIA IURIS and the Conservative Institute of M.R. Štefánik (KIMRŠ) the legislation changed in 2015 and the law now guarantees public participation in the legislative procedure.

TTs can participate in the legislative process by commenting legislative proposals and proposing relevant changes. The new version of the legislative rules broadens possibilities to completely avoid public commenting of legislation submitted by ministries. Even more problematic continues to be the legislative process in Parliament where **no public participation is permitted**.

Examples. Participation in the legislative process on a regular and long-term basis with pertinent and expert input has brought to some TTs a stronger negotiating position and they have become recognised and accepted as experts by the ministries. For example, **VIA IURIS achieved success in several cases** when commenting legislation on

judiciary or prosecution, as well as on public participation and access to information issues. In 2012, a long lasting fight on access to judicial decisions resulted in new legislation that obliges courts to publish all decisions. In 2015, a new Code of Administrative Court Procedure was adopted and VIA IURIS's proposals on higher standards for justification of court decisions were adopted.

Ukraine. In order to participate in the legislative process TTs in Ukraine have to overcome various obstacles.

Example. One of the most outstanding examples of advocacy is the civic platform **Reanimation Package of Reforms for Ukraine**, which unites **73 leading CSOs** and experts from all over Ukraine, and serves as a coordination centre for the development and implementation of key reforms in Ukraine.

Experts of the platform have become engaged in designing and drafting dozens of bills, but also have advocated and pressured the executive and legislative powers to implement these reforms and/or assist their implementation. **The coalition has succeeded in:**

- Establishment of the anticorruption bodies – National Anticorruption Bureau, Specialised Anticorruption Prosecution Office, National Agency on Corruption Prevention;
- Legislative support for merging of local communities, significant broadening of their financial and managerial capabilities;
- Change of rules on the gas market, their harmonisation with European standards;
- Participation in developing legislation on judicial reform;
- Implementation of civil service reform in line with principles of transparency and political neutrality.

SYSTEM OF JUSTICE, THE JUDICIARY

Hungary. The transformation of the Hungarian constitutional system initiated in 2010 by the newly elected parliament diametrically reshaped the justice system. In 2016, Parliament passed a law that established a courts administration unit – a unique solution in Europe. The administrative powers are vested in one single person – the President of the National Office for the Judiciary.

Good practices. The transformation of the judiciary was monitored, analysed and also criticised by TTs, especially the **Rule of Law Defenders Platform** which published factsheets and analyses (in Hungarian and English)⁹³ on, among others: the Administration of Courts and Standing of Judges; Mandatory Retirement of Judges; Administration of Courts (all in 2012).

In 2014 the Platform together with TIH issued factsheets on the rule of law developments in Hungary that included measures threatening the independence of the judiciary.⁹⁴ Also, a group of LTTs with Mérték Media Monitor assessed the deficiencies of the rule of law (including the judiciary), democracy, pluralism and respect for human rights in Hungary.⁹⁵

Example. In 2011, pleading the transformation of the system of judicial administration, the six-year-long mandate of **Andras Baka**, the President of the Supreme Court (and ex officio the President of the National Judicial Council), was prematurely terminated after two years. In this case LTTs undertook a more activist role. The Strasbourg Court allowed the three Hungarian TTs to intervene in the case on behalf of the applicant A. Baka, who sued Hungary in 2012.⁹⁶ In 2014, the ECHR concluded that there had been a violation of the Convention. The case was referred to the Grand Chamber that held that Hungary violated the right to access to a court and the freedom of expression of the former President of the Hungarian Supreme Court.⁹⁷

⁹³ See at: www.alaptorveny.eu.

⁹⁴ See at: http://helsinki.hu/wp-content/uploads/Hungary_fact_sheets_20140921.pdf.

⁹⁵ See at: http://helsinki.hu/wp-content/uploads/Disrespect_for_values-Nov2014.pdf.

⁹⁶ See at: http://helsinki.hu/wp-content/uploads/HHC-HCLU-EKINT_3rd_party_intervention_Baka_v_Hungary.pdf.

⁹⁷ *Baka v Hungary* App. No. 20261/12 (23 June 2016).

Moldova. To date, judicial independence in Moldova is severely affected both institutionally and by individual judges who do not think of themselves as independent. According to reports of local TTs, no substantial achievements took place in the period of 2013–2015. The most challenging elements of the reform – the optimisation of the judicial map or reform of the Prosecutor’s office though – were adopted in 2016. The general public’s level of trust in the justice system remains low (only 7.8%)⁹⁸ despite the Government having declared justice reform as one of their priorities.

Good practice. CSOs were involved in drafting the **Justice System Reform Strategy** for 2011–2016 (JSRS) and the draft action plan for its implementation. Since its adoption, TTs have been involved in the monitoring process, while some actions prescribed in the strategy were actually performed by TTs.

One of the core activities prescribed by the JSRS is **the reorganisation of the judicial map** adopted in 2016. The law provides for merging several first-instance courts (from 44 to 15). This reform will create the necessary conditions for ensuring quality of justice and efficient spending of public funds. The workload per judge currently varies significantly; discrepancies create inequalities in terms of both quality and access to justice. The reform was prepared based on a study carried out by a Moldovan Think Tank.⁹⁹ Given the importance and sensitivity of this issue, a feasibility study was conducted (mainly by the LTTs and foreign donor community representatives) in order to convince decision makers to go for the reform on the optimisation.¹⁰⁰

Examples. Moldovan LTTs **monitor the implementation** of JSRS. Six monitoring reports were developed during the 2013–2014 monitoring mission.

TTs have also been involved in **monitoring the activity of the Superior Council of Magistracy** (SCM) focused on the transparency and efficiency of the judiciary (the Council deals with the career of judges, professional

⁹⁸ Institute for Public Policy, *Barometrul Opiniei Publice* (Barometer of Public Opinion), Chisinau, October 2016, page 42, http://www.ipp.md/public/files/Barometrul/BOP_10.2016.pdf.

⁹⁹ Legal Resources Centre from Moldova, *Study on optimization of the judicial map in the Republic of Moldova*, Chisinau, 2014, http://crjm.org/wp-content/uploads/2014/06/2014-Study-Optimis-Jud-Map-MD_en-web.pdf.

¹⁰⁰ USAID, *Feasibility Study for Court Optimization*, Chisinau, 2016, <http://crjm.org/wp-content/uploads/2015/08/Moldova-Court-optimiz.pdf>.

training, discipline/ethics and courts' management). Civil-society objectives include improving the efficiency and transparency from the perspective of organisation of the Council's meetings, and the procedure for adoption of decisions.¹⁰¹

According to the recent draft law, **judgments delivered by courts might not be public on vague grounds**: if this is “in the interest of respecting morality” or “a measure strictly necessary by the special circumstances not to prejudice the interests of justice”. In October 2017 several CSOs and journalists issued a public appeal to the Council regarding the draft Regulation and started a media campaign calling on the SCM to give up, or improve, the regulation. In response, the SCM approved a better version of the Regulation on publishing of court judgments, while journalists, lawyers and CSOs representatives were protesting outside the venue.

Poland. As already mentioned in the report, since the end of 2015 the judicial system (and separation of powers) has been facing an unprecedented attack by the ruling party, an attack that is officially called a “judicial reform”, but by most experts (academics, practitioners, civil society) is seen as a coup – a government takeover of the independent judiciary (Constitutional Court, National Judicial Council, Supreme Court, common courts). All liberal LTTs (sometimes also joined by conservative ones) united their forces in order to protest, manifest their disagreement, and to support institutions and judges attacked. The years 2016–2017 were years of constant struggle, monitoring of developments, analyses and formulating opinions for both local and foreign actors, organising protests, letters, preparing endless motions to the parliament, government, president etc.

Good practices. Project **Efficient Court. Collection of best practices** (Sprawny Sąd) implemented by the Iustitia Polish Judges' Association and the HFHR. A group of judges led by a TT expert did surveys, compared notes, identified and described best practices from local courts (regarding many practical issues such as services for clients), and considered how they might be popularised and eventually become standards. These experiences were also drawn upon by the National School of Judiciary and Public Prosecution in testing best practices at individual courts.

¹⁰¹ Relevant sources and reports are listed in: Moldova. Country report.

Court Watch Polska Foundation runs projects regarding the judiciary. The biggest is “court watch” – court hearing observation done by lay people in courts according to the questionnaire. Observers have already watched and evaluated over 30,000 hearings.

The project **Together or Apart? Collaboration, interactions, communication of the Judiciary and Civil Society Organisations** (firstly conducted in Poland and then continued within a grant from the Visegrad Fund as an international exchange of experience and ideas). The project run by INPRIS concerned strengthening cooperation between LTTs and CSOs and the judiciary. We observed that LTTs and CSOs are getting more and more involved in various activities related to the judiciary, including: monitoring of the judiciary (of courts’ activities, communication with citizens, judges appointments), trial observations (court watch), strategic litigation, involvement of CSOs in court trials, amicus curiae, trainings and workshops for judges organised by expert TTs, collaboration of TTs with judges’ associations, CSOs as organisations educating citizens in about the judiciary). It is important that, when performing these tasks, civil society collaborate with courts and judges, provide them with feedback and at the same time, that judges understand the goal of CSOs involvement and are open to communicate with citizens.

Slovakia. Transparency International Slovakia (TIS) monitors and analyses the state of corruption and transparency of public administration bodies and public institutions. Based on its research, TIS considers the judiciary as one of the most corrupted public sectors¹⁰² and it initiates public debate and advocates for reforms.

Good practices. Despite the obligation of courts to publish their decisions, in practice it is often difficult to access them. This is mainly due to user-unfriendly official websites, but also not all decisions are published online. In response, TIS created, using open data, a website called **Open Courts** (otvorenesudy.sk).¹⁰³ The website enables the public to access broader data and use various filters to obtain information on courts, judges, selection procedures of judges and their decisions.

¹⁰² Transparency International Slovakia, *Súdnictvo* (Judiciary), official website, <http://www.transparency.sk/sk/temy/sudy/>, consulted in April 2017.

¹⁰³ Transparency International Slovakia, *Otvorené súdy* (Open courts), http://otvorenesudy.sk/selection_procedures/search, consulted in April 2017.

A fruit of long-term efforts and engagement of **VIA IURIS**, the Ministry of Justice and Judicial Council now consult this TT on various judicial issues, such as rules of selection of judges, disciplinary proceedings and Code of Ethics. For instance, in 2016 VIA IURIS experts were invited to join a **working group** that discussed regulations of appointment procedures for judges, their evaluation and disciplinary accountability. Similarly, the Judicial Council requested VIA IURIS to participate in joint research of public opinion on judicial credibility. Results revealed that in comparison to 2015, more people trust in Courts. While in 2015 it was 22%, in 2016 the number rose to 33%.

Amicus curiae briefs are not forbidden, but are not legally recognised in Slovakia. They are used very rarely. For instance, the European Information Society Institute (EISI) filed *amicus curiae* briefs in some intellectual property cases. TTs prefer to use media to communicate their opinion on various cases of public interest.

Ukraine. In general, governmental officials at least do not avoid communication on draft proposals elaborated both by the government or by TTs. TT experts participate in **the Council on Judicial Reform** – the consultative body created by President – and may influence the process of judicial reforms announced in 2014.¹⁰⁴ A significant number of TTs' comments and recommendations are taken into account, however many are ignored.

LTTs engage in a number of activities related to the judiciary, including: monitoring of disciplinary and criminal proceedings against judges; gathering information about judges and candidates for judicial positions for the purpose of qualification evaluation; trial monitoring; advocacy at the national and international level.

Good practice. The objective of the project **Ukraine–EU Speedometer** conducted by the Centre of Policy and Legal Reform (CPLR) is to visualise (graphically) the progress Ukraine has made in the implementation of three major reforms – constitutional, judicial and reform of prosecution. For this purpose CPLR has singled out 144 recommendations of various European bodies (Venice Commission, Consultative Council of European Judges etc.), evaluated their

¹⁰⁴ See at: jrc.org.ua.

implementation status according to 200 point scale, and monitors progress in implementation of recommendations.¹⁰⁵

LEGAL PROFESSION

LTTs often participate in organising training for professionals (see below section on legal education) and sometimes engage deeper (e.g. provide opinions and analyses on the organisational rules of the legal professions).

Moldova. Various reports have identified a number of **shortcomings** concerning the functioning of the Bar Association, especially in regard to entrance to the profession, continuous professional training, as well as disciplinary liability of lawyers. The Bar Association have developed several strategic documents that they implement, however, no set of indicators to assess and monitor the progress of implementation has been developed.¹⁰⁶ The Bar suffers from lack of organisation, leadership and vision. The quality of services of both private and legal-aid lawyers is questionable.

The collaboration between the Bar and TTs is quite limited, but LTTs conduct research, provide training and publish reference materials. In this way, the CSO sector is helping the Bar Association build its capacity.

Poland. The biggest three problems that came to the attention and engagement of LTTs were: very limited access to legal professions (advocates, legal advisors, and notaries public), the merger of advocates and legal advisors into one profession and disciplinary responsibility.

Both LTTs and the legal profession are also engaged in building a pro bono work culture among lawyers and collaborate on various projects.

Examples. LTTs successfully advocated for years for the **opening of the profession** that was deciding by itself on the number of new members admitted. The Constitutional Court and the parliament introduced

¹⁰⁵ See at: eu.pravo.org.ua.

¹⁰⁶ Promo-LEX, *Progress in the reform of the legal profession in Justice*, Chisinau, 2016, https://promolex.md/wp-content/uploads/2016/12/web_Raport_Promo-LEX_Avocatura_draft.pdf.

changes towards the opening up of the profession, thus leading to a significant increase in the number of lawyers.

HFHR has been successfully advocating for **open public hearings within disciplinary proceedings** for lawyers. This has been gradually introduced over the years in all legal professions.

LTT experts prepared a policy paper **New Bar** (*Nowa Adwokatura*) that advocated for the merger of two very similar professions and creating one, modern, trusted profession. The MoJ created a working team New Bar that prepared a draft law on the merger, a law that was unfortunately never passed. Poland remains the last country with the post-Soviet system of two almost identical professions – advocates and legal advisors.

Good practices. Alliance of Legal Professions (*Porozumienie Zawodów Prawniczych*, prawnicyrazem.pl) is a forum for cooperation among all legal professions and think tanks forming **Civic Forum** (*Forum Obywatelskie*). The Alliance strives to enable the various legal professions to speak with a single voice and to work more closely with one another; towards these ends, it participates in consultations of legislation. This is a relatively new initiative (created two years ago) and operates based on an agreement signed by its members.

Polish LTTs have been cultivating cooperation with legal practitioners willing to take on **pro bono cases**. The FUPP operates Pro Bono Centre within which lawyers assist non-governmental organisations. HFHR runs a strategic litigation programme focused on precedent-setting cases. PTPA established a network of lawyers providing pro bono services in strategic, discrimination cases. Due to the new needs in the situation where CSOs and citizens protesting against the government become the object of attack, new networks of pro bono lawyers are created to assist those citizens and organisations.

Slovakia. Within **annual conferences** from the cycle **Public Interest Law, VIA IURIS** discussed judicial ethics, judicial disciplinary proceedings, cogency and transparency of court decision-making, as well as delays in court proceedings. Lawyers, attorneys, as well as judges and the Minister of Justice attended the conferences. They always resulted in a series of recommendations, in some cases successfully incorporated into the national legislation.

Example. In 2013 VIA IURIS published an **analysis on the professional ethics of judges** comparing the Slovak Code of Ethics and foreign codes, decisions of disciplinary courts and opinions of advisory judicial committees or judicial associations. This publication serves as a source of information for expert debates, but also as a useful guide for judges to address ethical dilemmas. VIA IURIS has also organised a workshop for judges on professional ethics and personal management of power. It was followed by an expert conference on judicial ethics, attended by more than 50 judges and other legal professionals. A conclusion from the conference was unequivocal: “Let’s bring judicial ethics back to the game”! The main reasons were high level of public distrust in judiciary and unclear rules in several areas of execution of judicial power.

Ukraine. LTTs are not currently very active in this field, but are involved in the development of the concept of **uniform access to legal professions**.

Example. In 2016 the Ministry of Education formed a working group to develop the **Concept of Legal Profession Development** which includes representatives of LTTs. The concept provides for creation of uniform access to legal professions – of a judge, advocate, prosecutor, notary – via a **unified graduation exam** in law.¹⁰⁷ However, besides the government, leadership in promotion of single access is kept by OSCE and USAID and TTs’ involvement is limited to expert participation.

ACCESS TO JUSTICE

In countries of the region TTs and CSOs quite often provide some kind of legal assistance to those in need. This kind of combination, being at the same time a TT and source of legal aid is quite characteristic. Sometimes TTs limit themselves to strategic litigation. Additionally LTTs study, analyse the system and formulate recommendations for changes.

Czechia. There are a few organisations providing **legal assistance to different constituencies**. IN IUSTITIA provides legal assistance to individuals exposed to hate violence. The League of Human Rights tries to empower individuals (especially from disadvantaged Roma

¹⁰⁷ To see full text of the Concept visit: <http://uba.ua/documents/2016%20-%202009%20-%202014%20-%20Education%20Concept.pdf>.

communities), by helping them access justice. The League, however, focuses on individual cases where human rights were violated in order to push for systemic legislative change.

Good practice. The organisation Oživení strives to reduce the occurrence of corruption, conflict of interest, clientelism and other forms of abuse of public power to private gain; helps to provide victims of corruption with a range of services including legal counselling. Besides its **offices** and a **hot line**, Oživení has also created a **mobile legal counselling** office – “CorruptionLess Tour”. Oživení’s lawyers travel twice per year to cities and municipalities around the Czech Republic and discuss anti-corruption cases, organise debates and solve specific legal problems.

Hungary. Several leading LTTs provide free legal services for citizens in different fields.

Example. The **HHC** has a more systemic approach and focuses on **the operation of the ex officio defence counsels system** conducting empirical research (e.g. the study of 150 actual case files) and proposing improvements (based also on comparative research). The HHC developed an **assessment questionnaire** with the help of an expert group involving participants of key stakeholders, aimed at the basic assessment **of the quality of ex officio legal counsels’** performance on the basis of case files.

Moldova. Legislation expressly prescribes the possibility for TTs to be actively involved in the delivery of legal aid. Article 17 from the Law on State-guaranteed Legal Aid provides for the delivery of **primary legal aid** by CSOs and LTTs who can collaborate by signing cooperation agreements. LTTs are also entitled to provide **qualified legal aid** (secondary), with the exception of criminal and administrative trials.

The overall goal of the partnership between state institutions and LTTs is to provide primary and qualified legal assistance using a holistic approach including other (not legal) forms of assistance to: female victims of crimes, persons with disabilities (especially young). Based on this scheme in 2015–2016 over 300 persons were counselled or referred to Territorial Offices for receiving qualified legal aid.

Poland. Polish LTTs are traditionally active in the area of access to justice, and have studied this subject for many years. The first major report that included an analysis of the legal aid system was published by the HFHR in 2003. Since then several TTs created an informal coalition to pursue the systemic approach to access to justice.

Example. A joint initiative of a coalition of LTTs and CSOs (INPRIS, FUPP, ISP, and the Civic Advice Office Union) which, working together with the government, prepared a draft of **systemic solutions** concerning legal and civic advice, incorporating the results of in-depth studies. Some of the conclusions thus presented were taken into account by the government in preparing the legislative act regarding pre-trial legal aid. For the first time LTTs engaged economists, sociologists as well as experts in finances in this process.

Good practice. The role played by **university legal clinics** in Poland merits some emphasis. The concept of the clinics has taken deep root in Poland, more so than anywhere else in the region, and they have grown into established institutions (all law schools have a clinic as a part of the curriculum). In the case of an inadequate state system, for many years clinics served not just educational purposes, but also were a serious provider of legal aid with thousands of cases per year. The **Legal Clinics Foundation** (FUPP) was set up to coordinate collaboration between different university law clinics and to pursue advocacy work for better access to legal aid and on behalf of clinics. FUPP thus also play the role of LTT conducting surveys, preparing different publications on clinics, engaging in the legislative process and advocacy.

Slovakia. Only attorneys and law firms may provide legal aid and legal services.¹⁰⁸ CSOs are not entitled to provide legal services, however, some CSOs provide assistance to people within specific topics through their cooperation with attorneys.

Example. One of the key topics for VIA IURIS is **access to justice in environmental matters**: providing analyses on the state of legislation; engaging in legislative processes; delivering workshops to actors from civil society in order to empower them legally and teach them how to use the legal instruments to defend their rights. For over 20 years VIA IURIS held seminars for environmental activists, especially on environmental and administrative law.

¹⁰⁸ Act no. 586/2003 Coll. on Advocacy of 4 December 2003, Section 1.

Ukraine. Apart from state services based on the law “On Pro Bono Legal Aid”, there is also a network of TTs and CSOs that provide such assistance for the people. In particular, UHHRU provides legal aid through the **Public advice centres network**. There are 29 centres currently operating in 24 oblasts.

TTs also focus on monitoring programs covering chosen aspects of access to justice, analyse problems, and formulate recommendations based on survey results. One example is research on equal access to the courts for people with disabilities conducted by **Law and Democracy**.

LEGAL EDUCATION

In the region, there are organisations which work towards educating lawyers as well as towards fostering legal knowledge / culture among the public at large.

Czechia. **University law clinics** are very popular among students. An interesting phenomenon is the attraction to these clinics by students from different faculties. For instance, medical and legal students can discuss the liability of doctors and hospitals. Still law clinics are not considered a standard part of the curriculum in Czechia.

What needs special attention and research is the **problematic reputation of certain law faculties**, which have allowed number of students (including well known politicians) to complete their studies in a very fast and non-transparent way.

Hungary. CSOs and LTTs engage primarily in developing teaching materials and organising trainings.

Examples. Over the past ten years the HHC has offered several professional practical trainings for legal practitioners, especially for judges (sometimes together with the Hungarian Judicial Academy) but also prosecutors, defence counsels, and policemen, in the field of **discrimination and hate crime**. The HHC also collaborates on the international level by preparing electronic course manuals for judges

and prosecutors on effective criminal justice against hate crimes, commissioned by the HELP program of the CoE.¹⁰⁹

Good practices. Building on its training experience,¹¹⁰ the HHC launched its **Equal Treatment Law Clinic** in December 2008 in cooperation with ELTE University, Budapest, and the University of Miskolc. The program was aimed at sensitising law students to antidiscrimination issues while providing them with practical working experience in the field.

EKINT and HCLU, together with three other CSOs launched a program entitled **Freedom of Information Law Clinic** in 2008 as a joint initiative of the Justice Initiative project of Open Society Institute, the Faculty of Law of Eotvos Lorand University and civil society organisations.

Poland. Legal **clinics** have proved to be a success, becoming fixtures of law faculties and introducing new elements to the legal education system (as already described above).

Good practices. Journalist in a Court, a project pursued more than 10 years ago, but still worth mentioning. Over the years HFHR and Iustitia, supported by the Batory Foundation, organised regional seminars that featured moot trials during which judges and journalists would swap roles and proceed with court hearings – and, respectively, covering as media – a hypothetical court case based on an actual court file. Before the moot, each group would coach the other on their roles.

Series of seminars on **counteracting discrimination**. The first series comprised training for judges organised by the PTPA. The second, run by the THEMIS Judges' Association and INPRIS, involved several regional workshops which brought together judges and representatives of local antidiscrimination organisations to discuss application of antidiscrimination law.

INPRIS – working together with its foreign partners – have sought to popularise the **Charter of Fundamental Rights of the European Union** among lawyers. These efforts include preparation of a manual and training for judges and lawyers.

¹⁰⁹ See at: help.ppa.coe.int.

¹¹⁰ See at: <http://www.helsinki.hu/antidiszkrimacios-treningek/>.

Also **legal education for citizens** has a long history in Poland. Just to give a few examples: Iustitia issued a manual for youth the **Legal First Aid Kit** (Apteczka prawna), in which they provide user-friendly accounts of key legal concepts; **Holda Association** of lawyers runs an annual **Constitutional Week** (hundreds of lawyers go to schools to conduct interactive lessons, based on scripts about the Constitution); **Free Courts** initiative (Wolne Sądy) explains (via Facebook) the importance of judicial independence and legal issues to citizens; INPRIS have prepared an interactive **strategic game My Law** (Moje Prawo) that teaches the legislative process and citizens' involvement in it; Court Watch Polska produced a **strategic game, Prawopolis**, that familiarises players with the profession of lawyer and court cases.

Ukraine. LTTs are mostly focused on human rights trainings for both lawyers and non-lawyers. They also organise trainings on trial monitoring, combating corruption, etc.

For example within the project, **Trial Monitoring in Ukrainian Courts**, the Centre of Policy and Legal Reforms organise a 4-day training for 50 future trial monitors. After the training, all participants are assigned to undergo a two-month mentoring with national experts on trial monitoring.¹¹¹

LANGUAGE OF THE LAW (QUALITY, COMMUNICATION)

Whether citizens can easily understand legal rules and provisions and have smooth access to them is of utmost importance. In countries of the region experts observe the decline in the quality of the legislation process and law texts, sometimes a lack of transparency of legislature or difficult access to law, for free. Also court rulings delivered by judges need more attention since they are often in “legalese” and not comprehensible for citizens.

Czechia. The language of law is not easily comprehended and Czech TTs feel the need to adjust their communication style on important legal issues to 21st century media channels. **Infographics** are quite a popular way of spreading information on specific topics (e.g. legal guardianship) or current law amendments. The League of Human Rights used

¹¹¹ See at: http://pravo.org.ua/en/about/projects/#osce_trial_monitoring.

infographics to inform about the Amendment of the Law on Education in September 2016 that they supported. Short spots on YouTube are also a common strategy. In times of “fake-news” **creative forms of communication** should be supported even if this requires increased spending.

Hungary. **Omnibus regulations** have, unfortunately, become a widespread practice in legislation: in a single act a wide variety of disconnected issues are regulated, which renders the process of modifications highly unclear and non-transparent. The purpose of LTTs in such cases is to draw attention to amendments that the government wants to **hide from the public**. For instance, the entire act on the budget for 2017 was heavily criticised by 16 CSOs, among them LTTs Átlátszó.hu and K-Monitor have made a comprehensive analysis concerning its transparency.

Moldova. Besides infographics, LTTs use **interactive applications** in order to track and inform the public in regard to reforms conducted by the Government. One particular example relates to the **EU Association Agreement process**. The Government committed to implement a number of structural reforms and published in 2016 the Priority Reform Action Roadmap (PRAR) that includes 69 measures grouped in 13 main reform areas. TTs used online sharing tools in order to **track in real time the implementation** progress for each measure. The integrated app was updating in real time information about the implementation of each measure of the roadmap.



Illustration: The app for monitoring the priority reform roadmap (March–August 2016).

Source: <http://www.expert-grup.org/media/k2/attachments/FP-ENG3-02.08.swf>.

Poland. Legal **infographics** have become a standard way of communication among LTTs. In order to popularise them, INPRIS organised a number of events bringing together lawyers, designers and coders. The collaboration of INPRIS with **art academies** has also been also fruitful, engaging art students in socially important projects (a series of **posters** on independent judiciary and constitutional control).

Good practice. INPRIS, in collaboration with **THEMIS**, organised in the Supreme Court a conference on the “**style**” of **judicial verdicts and justifications** (“Justification of Judgments and the Efficiency of Justice”) bringing numerous experts from different fields – to share their good practices from other fields (like state administration) and to provide judges with feedback on their work. Legal limitations were also discussed.

Slovakia. VIA IURIS in 2009 organised a conference and publication on **Persuasiveness and Transparency of Judicial Decision-making** on sufficient reasoning in judicial decisions, access to them, criticism of judiciary and persuasiveness and transparency of judgements. In 2015 VIA IURIS participated in a preparation of a new Administrative Judicial Procedure Code that included provisions stipulating more precise requirements for justifications of the court decisions in order to increase their quality and accessibility.

Ukraine. A relatively new effort is the **Legislative Technique: A Legal Norm Designer’s Handbook** published by the Civil Society Institute in 2011. Authors share their personal legislative experience and, using some Ukrainian laws as examples, show why it is so important to comply with legislative technique in the bill-drafting process.

INTERNATIONALISATION OF LAW & LITIGATION BEFORE EUROPEAN FORA

It is crucial for LTTs to know the international standards and use them in daily analytical work, preparing shadow reports for international institutions, in strategic litigation and advocacy efforts. International standards are in fact an important tool for enforcement of necessary improvements at a national level.

Hungary. LTTs and CSOs traditionally take part in **monitoring and reporting** on the implementation of human rights conventions and other international obligations. Due to the destruction of the previous constitutional system, in recent years TTs have undertaken a more activist role.

Hungarian TTs engage in **shadow reporting** primarily upon international initiatives. The aim of these reports is to shed light on the real situation in Hungary concerning democracy, the rule of law and the effectiveness of human rights.

Examples. In 2011 the **Rule of Law Defenders Platform** wrote a letter to the European Commission Vice-President to provide **alternative answers to questions** posed to the Deputy Prime Minister concerning, among others, the reduction of the mandatory retirement age of judges, the early removal of the Supreme Court President and the reorganisation of the judiciary.

The Platform also turned to the European Commission to **initiate an infringement procedure** against Hungary concerning the abolishment of the independent institution of the data protection ombudsman. In 2014 **the CJEU** established that the replacement of the office with the National Authority for Data Protection and Freedom of Information was unlawful.

The HHC provides **representation before the ECHR in strategic cases**. One of the HHC's most important achievements was the ECtHR decision (2015) that obliged Hungary to **decrease prison overcrowding**, a mass and structural problem in the country (Varga and others v. Hungary).

An example of engagement of LTTs in **monitoring the implementation of ECHR decisions** is the 2016 HHC report drawn up in connection with the ECHR's decision on life imprisonment without parole.¹¹² The report is based on data from extensive research and includes a list of recommendations regarding the procedure of the Committee of Ministers.

Hungarian **members of EKINT** think tank filed the complaint to the ECHR (Szabó and Vissy v. Hungary). The Court held that the regulation of secret surveillance based on ministerial order violates the right to respect for private and family life. The regulation, still in force, allows for

¹¹² *László Magyar v. Hungary*, Application no. 73593/10 (20 May 2014).

the Minister of Justice to order the secret surveillance of any individual by the Counter-Terrorism Centre without any judicial control.

Moldova. Moldovan LTTs took an active part, both nationally and internationally, in the framework of the **Universal Periodic Review** (UPR) of Moldova during both cycles of revision. Based on their submissions the UN Human Rights Council prepared summaries both for the 2012 and 2016 revisions. LTTs are also involved in the process of the implementation of the recommendations.

Several LTTs are involved in **strategic litigation before the ECHR**. Until 2016, Moldova was in the top four countries according to the number of cases per capita. LTTs also started to use another instrument offered by the Committee of Ministers that monitors the state of execution of the ECtHR judgments. During the proceedings before the Committee, individuals and CSOs can contribute by submitting comments on the execution of both individual and general measures taken by the State. Several TTs already used this mechanism.

Poland. Referring to international standards was always a *modus operandi* for LTTs. HFHR created the **Strategic Litigation Project** that uses local and international courts (they also started delivering *amicus curiae* briefs to important cases in international tribunals, even if cases did not originate from Poland). The project has been very successful and is also currently continued by the Polish Commissioner for Civil Rights Office (Ombudsperson), since the project manager is now the current Commissioner.

Numerous LTTs prepare **shadow reports** and present them in front of the human rights bodies. Additionally LTTs communicate and ask for action outside the periodic reviews – for instance, writing (or meeting with) Venice Commission, UN Rapporteur on Independence of Judges and Lawyers, and the CoE Human Rights Commissioner. Despite the fact that shadow reporting was done for years, currently LTTs experts involved are named by politicians and media close to government as **traitors** that complain to foreigners about their country.

Slovakia. International and European law are important references for LTTs, which support their argumentation when advocating for some particular changes in legislation or designing the state policies. VIA IURIS

and other LTTs always **reflect standards set by European law** in their areas of interest.

Ukraine. Main efforts of LTTs are directed at the **implementation of provisions of EU-Ukraine Association Agreement (AA)** as well as at the approximation of legislation to European standards in areas covered by the AA. The Ukrainian Centre for European Policy regularly conducts **monitoring** of the current state of the implementation and recently has reported on a slow pace of this process.

HUMAN RIGHTS, EQUALITY, DISCRIMINATION

Issues of human rights, equality, and discrimination are not priority issues for the governments in the region. This is why the involvement of CSOs and TTs is crucial. In all countries of the region LTTs focus on research, reporting, advocacy and education, but also on monitoring and documentation of human rights violations; sometimes in order to protect victims in national and international courts. As underlined by Hungarian experts the European Union is premised on the respect for human dignity, freedom, democracy, equality, the rule of law, and human rights – including the rights of persons belonging to minorities. Lately, these fundamental values have been systematically disrespected in some countries of the region. This has created new challenges.

Czechia. Initially, TTs and CSOs dealt with issues related to police violence or public sector malpractices. This was underpinned by the change in the political system and reflected the transition period from Communism to a liberal democracy. Currently, the issues are more specific, concern more with **individual liberties**. Also, it is specifically in this area that TTs interact with the Government – the signatory of international agreements – pointing out to malpractices or lack of implementation and advocating for improvements.

Hungary. The **Hungarian Civil Liberties Union** manages specific human rights programs concerning issues like disability rights, freedom of assembly and expression, freedom in education, freedom of thought, conscience and religion, patients' rights, self-determination and the equality of Roma people. The HCLU publishes policy papers on legal policy issues involving fundamental rights (also in English).

The **Hungarian Helsinki Committee** has broad expertise in the protection of the rights of refugees and of detainees. The HHC reviews and analyses legal rules that include provisions on refugees and migrants, e.g. the Asylum Act, the Act on State Border, and provides a summary of their implementation and practical consequences.

Good practice. The HHC offers an **online reporting form for refugees** who have experienced violence by the authorities at the Hungarian-Serbian border,¹¹³ and also provides basic information for refugees about their rights.¹¹⁴ Based on a tripartite **cooperation** agreement in 2006 the National Police Headquarters, the UNHCR Regional Representation in Central Europe and the HHC each year present their annual report on border-monitoring activities. Each report presents joint recommendations to Hungarian authorities.

Moldova. Monitoring reports on the human rights situation in Moldova are prepared on a regular basis. For instance, **Promo-LEX** publishes reports on human rights since 2007. TTs also monitor the implementation of the ECHR judgments.

Examples. One of the most important advocacy campaigns of Moldovan TTs and the **Platform for Gender Equality** consisted of successful promotion of the "gender package of laws", including prohibition of sexist advertisement, the right to 14 days of paternity leave paid by the state and a mandatory quota of 40% representation in the Parliament of representatives of the other sex.

TTs were also involved in successful advocacy for the ratification of the **UN Convention on the Rights of Persons with Disabilities**, the adoption of the Law and Strategy for the Social Inclusion of Persons with Disability.

Poland. HFHR, the biggest human rights organisation rooted in the underground movement during the communist era runs numerous projects targeted at different audiences, both nationally and internationally. One of its greatest ideas was a course (similar to postgraduate studies) for professionals from all over the country. Thanks to this long-term project hundreds of teachers, lawyers,

¹¹³ See at: http://www.helsinki.hu/wp-content/uploads/Form_to_Report_Abuse.pdf.

¹¹⁴ See at: http://www.helsinki.hu/wp-content/uploads/tajekoztato_aCSOI.pdf1.

policemen, academics, civil servants, judges and other professionals received proper training they could use in their daily activities.

HFHR has a strong analytic team that, especially in recent years, provides analyses of draft laws and takes part in the legislative process.

Non-discrimination is still a challenge in Poland, the last country of the EU to designate an equality body (required by European directives). The gap was, and still is filled by LTTs and CSOs, like PTPA – that focus on research (e. g. surveys regarding discrimination cases in the courts), strategic litigation, as well as training for lawyers and pro bono initiatives.

Slovakia. CVEK focuses particularly on **ethnic, language and religious minorities** and in this respect it strives to contribute to building a more just and cohesive society through research, analytical and educational activities. CVEK has prepared a **handbook on temporary equalising measures** (i.e. **affirmative or positive action**) on the grounds of ethnicity and gender in partnership with the Ministry of Justice in 2014–2015.

Ukraine. The situation of human rights significantly changed after the Euromaidan revolution (winter of 2013/2014). Since then CSOs and LTTs have been engaged in three most important tasks: combating impunity and bringing to justice those responsible for brutal human rights violations, crimes against humanity, and war crimes during the Euromaidan and armed conflict in Crimea and Donbas; a search for an effective defence of human rights on the occupied territory of Donbas and within annexed Crimea as well as the implementation of reforms in compliance with international standards.

Examples. In 2015, in close cooperation with civil society the **National strategy on human rights** until 2020 was developed (signed by the President). The Cabinet of Ministers also adopted a plan of action for the implementation of the strategy with a list of tasks. The **implementation is closely monitored** by LTTs.

A number of CSOs and LTTs created the **Platform Human Rights Agenda**¹¹⁵ – an informal coalition. The Platform works to elaborate and advocate the adoption of human rights related legislation by Ukrainian Parliament and the government.

¹¹⁵ See at: <http://humanrightsgenda.org.ua/>.

INFORMATION SOCIETY AND THE LEGAL SYSTEM AND ADMINISTRATION

LTTs in the region are more and more active in this area, and their track record features interesting, and significant, achievements. They focus mostly on: access to public information, application of modern technology for access to data and its dissemination and analysis in the spirit of “open government” and on protection of rights and freedoms in the context of fast-changing technologies and growing surveillance.

Czechia. The **Otakar Motejl Fund** contributes largely to **transforming public administration** into an effective and transparent service. It funds CSOs and small local initiatives. Its major activities include the push for **access to open data** in municipalities, the creation of **Corrupt Tour** (realised by Oživení) and also related **online platforms** (www.nasstat.cz and www.hodnocenikraju.cz). These initiatives serve not only to provide citizens with information about the quality of their local administration, but also provide data on taxes, offer webinars and options to control or monitor their elected leaders.

Hungary. As already mentioned in the application submitted by EKINT, the ECHR established that the practice of tapping telephone conversations, monitoring Internet communication and the use of other **secret service tools** without judicial approval is contrary to the Convention.

Other very interesting projects, like KiMitTud (**Who knows what**) or **Red Flags in Public Procurement** were already described above.

Poland. The most important contribution of CSOs and LTTs comprises active involvement in **administrative and court proceedings** against public institutions, enforcing **citizens’ rights to information**. These efforts have achieved a considerable number of important precedents before the courts and have helped drive a gradual shift in the practices of public institutions, which – increasingly often – post online information about their operations, share their data bases, maintain publicly available registers of contracts, etc. Prominent examples include **Citizens Network Watchdog Poland** (siecobywatelska.pl), the **Stańczyk Foundation** (stanczyk.org.pl), and the **E-Państwo Foundation** (epf.org.pl).

The Project Poland Association's **Digital Centre** (centrumcyfrowe.pl) and the **Allerhand Institute** (allerhand.pl) pursue efforts in the legislative and public policy fields (at both the national and EU level) in areas such as **access to knowledge and information, personal data protection, and copyright law**.

The question of **gathering data about citizens** (means and scope) has been gaining new currency. Authorities pass regulations which give expanded surveillance and data collection powers to a range of uniformed services and institutions. Also private business is collecting and using customer data. These issues have become the subject of monitoring by LTTs, most notably the **Panopticon** Foundation (panoptykon.org).

Good practices. The past few years have brought a number of important projects in this area. The e-Państwo has launched “Sejmometr.pl”, which **monitors legislative work** of parliament, and “Mojepaństwo.pl”, which **collates data from court registries** so as to track various affiliations between individuals and institutions, collects financial data, and follows other activities of public and private institutions.

The Article 61 Association, within the project **I have right to know** (Mamprawowiedzieć.pl), publishes information about members of parliament and of local self-governments (sitting as well as aspiring).

A coalition of CSOs, private businesses, and the University of Warsaw produced a **system for analysing court rulings** (www.saos.org.pl), which presents judgments for download and offers an assortment of search, viewing, and collective analysis tools.

Slovakia. There is a long-lasting problem with access to judicial decisions. Various TTs regularly criticise the situation, that despite the legal obligation, courts do not publish all decisions. Moreover, searching possibilities on courts' web sites are so obsolete that it is difficult to find the decision sought.

Examples. Transparency International Slovakia created (using open data) a **website Open Courts** (otvorenensudy.sk) which enables public access to broader data on courts, selection procedures of judges and judicial decisions.

Citizen, Democracy and Accountability has created a website with a special focus on **discrimination** where also court's decisions in relation to this area are compiled (diskriminacia.sk). In this project an interdisciplinary group takes part – authors include experts in psychology, law, sociology, as well as people directly involved with discriminated individuals.¹¹⁶

The Ministry of Justice has launched a new **legislative and information web-portal** SloV-lex.¹¹⁷ The portal shall enable access to legislation and judicial decisions, as well as to monitor and join legislative process. The web portal was monitored by LTTs who commented on deficiencies and proposed suggestions for improvements.

Ukraine. TTs promote strategic changes for information society development. For instance, the Reanimation Package of Reforms is drafting the Concept and the Action Plan on **e-democracy development**. The Centre of Policy and Legal Reform has conducted analytical research on e-democracy and e-governance framework of e-state in Ukraine. Results and recommendations were presented in a publication “E-state: New Management Effectiveness”.

Furthermore, Ukrainian legislation on information society is old-fashioned and controversial. Thus, TTs are to draft proposals for **development of a legal framework** in the e-governance, e-democracy, and innovation areas.

MONITORING AND PARTICIPATION IN SELECTION AND APPOINTMENT PROCEDURES FOR PUBLIC POSITIONS

This is still quite a new subject for LTTs, who nevertheless believe that elections and appointments to key public positions (especially dealing with civil rights and liberties) should not occur without civic scrutiny. The public has the right to know the ethical and professional qualifications of the candidates. While any political elections bring media attention and vivid public debate, appointments to other, also important positions, be it within the judiciary or other independent authorities, for years did not bring any attention and debate. This is slowly changing.

¹¹⁶ See at: <http://diskriminacia.sk/kategoria/sudne-rozhodnutia/>.

¹¹⁷ SLOV-LEX, Slovak legal information portal, <https://www.slov-lex.sk/web/en>, consulted in August 2017.

Hungary. A group of LTTs and CSOs has successfully persuaded the government to nominate candidates to the Hungarian vacancy at the ECtHR in a **transparent way**. Judges are selected by the Parliamentary Assembly of the CoE from a list of three nominees submitted by the member-state government. According to the CoE regulations, the selection procedure shall be transparent and fair, including an open tender for the post. But the Hungarian government selected and submitted (in secret) three individuals. Following the protest by several CSOs, in September 2016 the government decided to withdraw its list and announce an open call for the post. TTs called for the candidates to publish their applications on a platform dedicated to this issue: <http://emberijogibiro.hu>.

Moldova. LTTs work on improving the mechanisms of **selection and promotion of judges** by promoting merit based and transparent procedures. They track the results of appointments and promotion contests and inform the stakeholders and the media on situations in which criteria have not been met.

Poland. Since 2006 HFHR, INPRIS (since 2009, for the first couple of years Stefan Batory Foundation) and the Polish Section of the International Commission of Jurists have run the project of the **Civic Monitoring of Candidates to Constitutional Tribunal**. Later on TTs started to enter into coalitions with other TTs for the purpose of monitoring the election, appointment, nomination process of candidates for various public positions in Poland: The Commissioner for Civil Rights (Ombudsperson), the Chief Commissioner for Protection of Personal Data and the Prosecutor General. Other organisations monitored several other institutions, like the National Broadcasting Council.

The Coalition undertakes the following activities to advance an informed, fair and transparent election procedures: conducts independent research, collects and publishes data on the candidates; asks the candidates to answer a detailed questionnaire on their career and qualifications; organises public debates with candidates; monitors the parliamentary proceedings in the election/appointment process.

Slovakia. The project **Windows to the Judiciary** by **VIA IURIS** emanated from the assumption that the personality of a judge is key

to the proper functioning of the judiciary. The objective was to monitor judges' selection processes for common courts and Constitutional Court and for important positions within judicial administration (president of the Judicial Council, presidents of courts etc.). Monitoring constituted a tool for public control and it allowed assessing legality and quality of tender processes and its outputs were a basis for legislative changes. VIA IURIS created a web site "*zadobruvolbu.sk*" (**for a good election**), a tool to inform the public on particular candidates and the importance of a good choice among them. The main idea was to create pressure on those responsible for choosing judges with adequate personal and professional capacities. The campaign also used a video¹¹⁸ to communicate to the public why the election of judges concerns them.

¹¹⁸ Official website of the Campaign "For a Good Election", <http://zadobruvolbu.sk/>, consulted in January 2017.

LEGAL THINK TANKS IN THE REGION – PARTNERS’ SELECTION

We asked each partner taking part in the project to prepare Think Tank Cards (TTC) of selected organisations from their countries. Each partner provided some cards based on its choice of the organisations (that agreed to be listed) they would like to recommend or whose best practices they would like to highlight. This is not a complete list of LTTs from the six countries. Also, due to the size of the report we had to limit TTC to a maximum of 5–6 organisations per country. Some partners included more information on LTTs in their countries and particular projects they run, or are proud of, in country reports available online.

UKRAINE

CENTRE OF POLICY AND LEGAL REFORM (CPLR)

Year of establishment: 1996

CEO: Ihor Koliushko; Contact information: centre@pravo.org.ua

Mission

To support the implementation of institutional reforms, which would aid the establishment of democracy, rule of law and proper governance in Ukraine.

Key areas of activity and expertise

CPLR elaborates and promotes the implementation of reforms in Ukraine in such areas as constitutional order, public administration, the judiciary, criminal justice, combatting corruption, European integration, access to public information and e-government.

Activities and Projects

Trial Monitoring in Ukrainian Courts; Evaluation of an Alternative (Shadow) Report on the Assessment of Effectiveness of State Anti-Corruption Policy; Promotion of the Public Administration Reform; Strengthening the capacity of civil society organizations in the regions of

Ukraine to influence state authorities and local self-government in order to accelerate reforms, by providing training and consultation to local activists; Strengthening the role of civil society in the constitution-building through conducting informational campaigns; Public anti-corruption expertise of the draft laws; Justice in Ukraine (strengthening transparency and independence of the courts in accordance with European standards).

The Centre focuses on the analysis of the state of the law in the field, in particular through the comparison of alternatives, monitoring of the operation of the legislative branch, the judiciary and government agencies, collection, aggregation, analysis and presentation of available statistical data, analysis and feedback on draft legislation, strategic documents, creating amendments of existing regulations, participation in committees, advisory boards and other structures functioning at the parliamentary level or in government.

Achievements in the sphere of policy development:

Development of the concept of the creation of the administrative courts system in Ukraine and participation in the drafting of the Code of Administrative Justice that was adopted by the Verkhovna Rada in 2005. The Code introduced the system of administrative courts and administrative procedure.

Development of a draft Law “On access to judicial decisions”, which was adopted in 2005 and which stipulated the creation of a Unified State Register of courts’ decisions. The Law introduced a free national portal open to the public as the first in Europe that publicises most of the decisions of domestic courts.

Development of the concept of judicial reform and the draft Law “On the judicial system and status of judges” (a version of the draft was adopted in 2010 but unfortunately it was so distorted that it had a negative impact on the judicial system).

Active participation in the drafting of the new Code of Criminal Procedure and the draft Law “On legal aid” adopted in 2012. The Code and the Law replaced the soviet Criminal Procedure with the contemporary human-rights-oriented approach to criminal investigation.

Preparation of the Green and White Papers of the Ukrainian constitutional reform. Participation in the preparation of, and advocacy for, the consideration and adoption by the Verkhovna Rada of the Law of Ukraine “On prosecution office” of October 14, 2014. Introduction

of European standards of criminal prosecution and the status of attorney general in contrast to the former soviet system of prokuratura.

Problems and Barriers

Inability of the government to work with the experts, lack of effective mechanisms for cooperation between the government and the think tanks, low professional level of state structures.

Resources of the Organization, Possible Areas of Cooperation

The organisation has 25 staff and external experts in its office in Kyiv and all the necessary equipment for their work. CPLR is a member of the following coalitions: Reanimation Package of Reforms and the Ukrainian Think Tank Liaison Office in Brussels.

Other Information

The Centre receives financial support from: the International Renaissance Foundation, the Embassy of the Kingdom of Netherlands in Ukraine, the European Commission, USAID (Program of the Government of the USA), OSCE, Think Tank Fund, the Council of Europe, Open Society Institute, and other donors.

HUMAN RIGHTS INFORMATION CENTER (HRIC)

Year of establishment: 2012

CEO: Tetiana Pechonchyk; Contact information: <http://humanrights.org.ua>

Mission

The organisation's mission is the improvement of the human rights situation and establishment of the rule of law in Ukraine.

Key areas of activity and expertise

The Human Rights Information Centre is engaged in awareness raising, educational activity monitoring, documentation and research as well as national and international advocacy in the field of human rights.

Activities and Projects

Spreading information about the human rights situation in three languages (Ukrainian, Russian, English) through our own media portal, social networks on Facebook, Twitter, YouTube channel, and through the media outlets; Cooperating with media outlets in Ukraine (Ukrayinska Pravda, Deb, Radio Liberty, Livyi Bereh, Focus, etc.) and abroad; Developing and implementing awareness-raising campaigns on

human rights, such as the anti-discrimination campaign “Discrimination Restricts. Resist!” (in cooperation with other organizations); Providing support to human rights journalists; Helping human rights organizations establish contacts with the media; Organizing and holding media events (press conferences, round table meetings, street performances and so on) concerning human rights issues; Conducting contests for journalists and giving small grants to raise professional standards in the field of human rights and non-discrimination.

Holding workshops on cooperation with the press for press secretaries, PR – managers, human rights organizations and civil society activists; Holding the educational course on human rights and children’s rights, as well as on specifics of work with children and adolescents at risk (for lawyers, civil society activists and social workers); Holding training sessions for journalists on human rights, non-discrimination and ethical standards in covering the issues of minorities and vulnerable groups and specifics of coverage of places of detention; Organizing training sessions on safety for journalists and human rights activists working in crisis regions.

Monitoring places of detention in Ukraine within the framework of the National Preventive Mechanism (NPM); Monitoring the human rights situation in Crimea within the work of the Crimean Human Rights Field Mission.

Preparation of a baseline national study on human rights to measure human rights awareness, identify systemic human rights deficiencies and common misperceptions, outline the gap between human rights perceptions in the population (what people think) and “professional” human rights experts’ perceptions (in cooperation with the Ombudsman Office and UNDP-Ukraine). Cooperating with the Ukrainian authorities to seek adoption of new legislation in the field of human rights; Informing international organizations and missions about the human rights situation in Ukraine, participating in advocacy trips to the UN, the OSCE and the Council of Europe, preparing reports and alternative reports on the human rights situation in Ukraine for international organizations.

Best Practices

During the Revolution in Kyiv in 2013–2014, the Human Rights Information Centre within the framework of the voluntary initiatives Euromaidan-SOS was engaged in documenting information about the victims and coordinating assistance to their families.

On March 5, 2014, together with Russian and Crimean human rights activists, the Human Rights Information Centre launched a Crimean field mission of human rights. During a year and a half CMM was the only permanent monitoring mission on the Crimean Peninsula and has become the authoritative source of information on the situation in Crimea to the UN, the Council of Europe, the OSCE and the Ukrainian authorities. In July 2015, the Mission stopped their work in Crimea after it was listed in the “stop list” of the Council of the Russian Federation that led to the recognition of CMM as an “undesirable” organization in Russia and occupied Crimea.

Resources of the Organization, Possible Areas of Cooperation

The organisation has 25 staff and external experts in its office in Kyiv and across Ukraine (including Crimea).

HRIC is the member of the following coalitions, associations and groups: Coalition for Combating Discrimination in Ukraine, Human Rights Agenda Platform, Coalition for Combating Impunity of Crimes Against Humanity, Diversity Initiative, Coalition “Initiative Group on Human Rights in Crimea”.

Other Information

Financial support to HRIC is provided by International Renaissance Foundation, UNDP in Ukraine, the Embassy of the Kingdom of Netherlands in Ukraine, the European Commission, the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Ministry of Foreign Affairs of Switzerland, Deutsche Welle, the Institute for Peace and War Reporting.

RAZUMKOV CENTRE

Year of establishment: 1994

CEO: Anatoliy Rachok; Contact information: razumkov.org.ua

Mission

Encouragement of the creation of a democratic, socially-oriented European state in Ukraine based on the rule of law, development of civil society, improvement of the quality of life of its citizens, as well as the international image of the Ukrainian state and the attainment of its national interests.

Key areas of activity and expertise

Research is conducted in the following main areas: domestic and legal policy, foreign policy, public administration, national security, national

defence and military development, socioeconomic development, international relations, international and regional security.

The Razumkov Centre has its own sociological service, whose research enjoys a high degree of credibility among domestic and foreign clients.

Activities and Projects

“Constitutional Process: Current Results, Risks and Prospects” (2016); “Constitutional Process in Ukraine: New Realities, New Challenges, New Approaches” (2015); “Law Enforcement Reform in Ukraine: Status, Areas for Reform, Issues” (2015); “Constitutional Stage of the Judicial Reform in Ukraine: Prospects and Risks” (2013); “Constitutional Reform in Ukraine: Progress and Prospects” (2007).

The goal of the Project “**Constitutional Process: Current Results, Risks and Prospects**”¹¹⁹ (2016) is to increase trust in, and awareness of, the society on Constitutional reform in the fields of the improvement of the principles of justice, human and civil rights that are implemented according to European standards and with maximum regard for social needs; to create conditions instrumental to conducting the constitutional process in Ukraine.

The main objective of the project “**Law Enforcement Reform in Ukraine: Status, Areas for Reform, Issues**”¹²⁰ (2015) is drawing the attention of the state’s political leaders, legislators, representatives of the expert community and Ukrainian society to the key problems of law enforcement in Ukraine; justification of the objective need of fundamental changes (reforms) of Ukrainian law enforcement; formulation of conceptual approaches and concrete proposals for the reform.

Under the project “**Constitutional Process in Ukraine: New Realities, New Challenges, New Approaches**”¹²¹ (2015), the Razumkov Centre has prepared an analytical report containing, in particular, analysis of the most notable draft amendments to the Constitution of Ukraine.

The Razumkov Centre published the “**Anthology of the Constitutional Process in Contemporary Ukraine**” (2017), where the most important normative acts and other sources that define the content and peculiarities of the constitutional process in Ukraine have been summarized for the first time in Ukraine: from the Constitution of 1978 and draft

¹¹⁹ See at: razumkov.org.ua/uploads/journal/eng/NSD163-164_2016_eng.pdf.

¹²⁰ See at: http://old.razumkov.org.ua/eng/files/category_journal/zhrnl_Melnyk_militsiya_2_5_2015_ENG_N5_site.compressed.pdf.

¹²¹ See at: <http://old.razumkov.org.ua/eng/journal.php?y=2015&cat=214>.

amendments to the Constitution to the conclusions of the Venice Commission and the Constitutional Court of Ukraine.

Best Practices

The main achievement of the Razumkov Centre is its ability to maintain high academic standards by delivering high-quality analysis and developing practical recommendations that are ready for use by the authorities. Centre's experts are involved in consultative, advisory and other subsidiary bodies, namely, the Constitutional Commission (Viktor Musiyaka, Deputy Chairman), the National Unity Council under the President of Ukraine (Yuriy Yakymenko) and have also sat on the commission tasked with nominating the chairperson of the National Anticorruption Bureau (Viktor Musiyaka). Six Razumkov Centre experts sat on consultative and advisory panels as their members.

Resources of the Organisation, Possible Areas of Cooperation

The Centre has 36 permanent staff, 6 research programs and its own Sociological Service capable of conducting nation-wide public opinion polls on a regular basis. The Razumkov Centre produces: at least 6 research projects per year; dozens of exclusive expert comments for domestic and foreign media weekly; over 100 articles for Ukrainian and foreign academic journals and media per year.

UKRAINIAN HELSINKI HUMAN RIGHTS UNION (UHHRU)

Year of establishment: 2004

CEO: Arkadiy Bushchenko; Contact information: www.helsinki.org.ua

Mission

The realization and protection of rights and freedoms by promoting the practical implementation of humanitarian articles of the Helsinki Final Act of the Conference for Security and Cooperation in Europe (1975), other international standards based on it and international human rights obligations accepted by Ukraine. UHHRU promotes the development of a just society based on respect for human life, dignity and harmonious relations between the individual, the state and nature through the creation of a platform for cooperation.

Key areas of activity and expertise

Ongoing monitoring of the human rights situation in Ukraine and informing the public about violations of human rights and fundamental freedoms; Legal assistance to victims of human rights violations, including support for strategically important cases; Protection of human

rights and fundamental freedoms in the courts in cases involving authorities and bodies of local self-government; Human rights research and analysis, including regular monitoring of draft laws and legal acts, as well as preparing and advocating independent legislative initiatives; Resisting the adoption of normative acts that could lower human rights safeguards; Human rights education and awareness – conducting awareness-raising campaigns, educational seminars, trainings and courses for various target groups; Developing and providing support for the network of human rights NGOs in Ukraine.

Activities and Projects

“Protecting Human Rights through Improved Access to Legal Aid” (“Human Rights First” Project) 2015. Responding to the growing demand for legal aid services from citizens, the UHHRU offers legal assistance to the victims of human rights violations, supports strategic case litigation, conducts human rights public awareness campaigns, and advocates for legislative and policy changes to improve the human rights situation in Ukraine.

The activities of the UHHRU **Public Reception Offices network** (PROs) are aimed at the provision of high quality, free legal aid primarily to low-income and vulnerable citizens.

“Increased Capacity of the **Strategic Litigation** Centre in the Selection of Strategic cases” – development of the criteria for selection of strategic cases, an electronic system of case-management setup and, technical assistance provided to personnel of the Strategic Litigation Centre.

“Improved Capacity of the UHHRU Network to Recommend Human Rights Policies” – work on the establishment of an advocacy team, a guide on specific issues for advocacy campaigns and legislative projects, thematic reports.

“Responding to Human Rights Violations and Empowering Citizens and Human Rights Defenders in Ukraine” (Human Rights in Action) Activity (USAID), 2014–2017.

Best Practices

Jointly with the Ombudsperson’s Secretariat, the UHHRU **launched a human rights-based audit at the regional level** aimed at the elaboration of human rights “passports”/profiles (scoring/ranking system) of each oblast as a mechanism of permanent human rights monitoring and peer review that is expected to result in greater respect for human rights at the community level (2016).

The **Human Rights Abuse Documentation Centre** has been established as an important agent in the fight for truth, justice and reparation in order to continue (at the national level) the work on the provision of assistance to all victims regardless of their status and political views. This is achieved through the study of current and former conflict-related events, safe and secure documentation of atrocity crimes and interaction with relevant state agencies (2015–2016).

An annual study of national case law in terms of the application of the decisions of the European Court of Human Rights (ECtHR) by the Ukrainian courts.

Resources of the Organization, Possible Areas of Cooperation

UHHRU is an independent formal coalition of 28 leading human rights organisations from 14 oblasts (with Secretariat in Kyiv), operating 35 legal aid centres in 24 oblasts of Ukraine. Annually, the network provides legal services to more than 25,000 people in need.

UHHRU is the largest Ukrainian NGO working in the occupied Crimea and the only organization producing a comprehensive annual report on the state of human rights in Ukraine.

UHHRU lawyers have won numerous strategic cases in the European Court of Human Rights, which has had an impact on the country's legal systems.

ILKO KUCHERIV DEMOCRATIC INITIATIVES FOUNDATION (DIF)

Year of establishment: 1992

CEO: Iryna Bekeshkina; Contact information: <http://dif.org.ua/>

Mission

To influence public authorities and civil society through revealing key issues of Ukraine's democratisation and providing expert support in the process of Ukraine's transformation into a consolidated democracy.

Key areas of activity and expertise

Research and analysis of the main trends in public opinion and its influence on public policies; Domestic reform of the political and party system; Electoral sociology, monitoring of electoral moods and conducting exit polls in Ukraine; European and Euro-Atlantic integration; Policies towards occupied and liberated territories in the Donbas region with the aim of their reintegration; Strengthening the capabilities of Ukrainian think tanks

Activities and Projects

Together with the Centre of Policy and Legal Reforms, DIF has co-implemented the project, “**Overcoming Informal Practices in the Judiciary**” in December 2014 – February 2015. In the framework of the project, DIF conducted:

- a public opinion poll on attitudes of Ukrainians towards the judiciary and judicial reform;
- a survey of more than 1,000 judges on their attitudes towards judicial reform and ongoing processes in the judiciary;
- a survey of 27 experts (advocates, human rights activists, lawyers, non-governmental experts);
- a press conference “Judiciary and judicial reform in the eyes of citizens, experts, and judges – points of contention”.¹²²

Best Practices

The survey of judges Report “Judicial Reform: Area of Tension”¹²³ was unprecedented in its scope, as more than 1,000 judges answered the questionnaire. This allowed DIF to get a full picture of attitudes towards the judicial reform among its main stakeholders.

In November 2016, DIF in cooperation with the Human Rights Information Centre and the Ukrainian Parliament Commissioner for Human Rights conducted a large-scale, nationwide human rights survey at the request of the UNDP in Ukraine. In addition, DIF surveyed 7 groups of stakeholders (MPs and deputies of local councils, civil servants, policy, judges, human rights activists and teachers) on the topic of human rights protection.¹²⁴

¹²² Recording available at: <http://old.dif.org.ua/ua/multimedia/kkrfgkeprkhpe.htm>).

¹²³ Available in Ukrainian at: <http://dp.court.gov.ua/rsu/154124/>.

¹²⁴ The final report available at: http://www.ua.undp.org/content/dam/ukraine/docs/DG/Ombudsman's%20project/HumanRightsUa_Final.pdf.

SLOVAKIA

VIA IURIS

Year of establishment: 1993

CEO: Milan Šagát; Contact information: viaiuris.sk/en/home/

Mission

Since 1993, VIA IURIS has been helping citizens protect their rights and participate in decision-making on public affairs. VIA IURIS contributes to the accountable and effective functioning of the state and municipal institutions, participates in the reform of the Slovak judicial system and draws attention to injustice, violations of laws and lack of transparency.

VIA IURIS is an expert organisation which cooperates with a team of lawyers and uses mostly legal tools to protect and promote public interest such as legislative and analytical work, strategic litigation and legal assistance, organising professional conferences or non-formal education.

Key areas of activity and expertise

Participation of the public in the administration of public affairs; responsible functioning of the judiciary, prosecution service and police.

Activities and Project

Project “**Personality of the Judge – the Key to a Good Judiciary**”

The project emanated from the assumption that the personality of judges is key for the good functioning of the judiciary. The objective of the project was to monitor selection processes in courts (for general courts and the Constitutional Court of the Slovak Republic) and also for important positions within the judicial administration (president of the Judicial Council of the Slovak Republic, presidents of courts etc.) and to discuss the scheme of these procedures. Monitoring constituted a tool for the public control of these selection procedures and at the same time it allowed the organisation to assess the quality and legality of the tender process. The findings of the monitoring constituted a basis for further legislative drafts.

This project took place at a time (2013–2015) when several key positions in the judiciary were going to be elected (President of the Supreme court, President of the Judicial Council of the Slovak Republic and 3 new judges of the Constitutional Court of the Slovak Republic, as well as representatives of Slovakia to international judicial bodies). It was an

important moment because along with the new President of the Slovak Republic who has competences in the nomination of judges there was even stronger hope that the situation in the judiciary could finally change. In the framework of the project VIA IURIS created a website “zadobruvolbu.sk” (“for good election”) which operated as a platform informing the public on particular candidates and on the importance of a good choice among candidates. The main idea was to create pressure from the NGO sector and from citizens on people responsible for the selection of judges to choose judges with adequate personal and professional qualifications. This campaign also used a video to communicate to the public, in a clear and persuasive manner, why the election of judges concerns us. This project also included monitoring of the Judicial Council.

As a result, of long-term efforts in these areas, the Ministry of Justice or the Judicial Council now consult VIA IURIS on various judicial issues, such as the rules concerning the selection of judges, disciplinary proceedings and the code of ethics. For instance, in September 2016, VIA IURIS experts were invited to become members of a working group that will be discussing legislative regulations of tender procedures of judges their evaluation and disciplinary accountability. Similarly, the Judicial Council invited VIA IURIS to participate in joint research of public opinion on judicial credibility (which is currently an on-going process). Results of the public survey were published in October 2016 and revealed that in comparison to 2015 people have more trust in courts. While in 2015 it was 22%, in 2016 the number rose to 33%.

“Windows to the Judiciary”

Monitoring of selection procedures of judges, together with project partners between 2011–2013.

Public Interest Law conferences “Access to Justice: Barriers and Solutions” (1999 – now)

Legal experts, judges and lawyers from Slovakia and abroad participate in these conferences in order to discuss selected problematic aspects of the judiciary (e.g. ethics and disciplinary proceedings, cogency and transparency of judicial decision making, delays in judicial proceedings). These expert meetings provide recommendations as a result of a consensus among different actors and thus have a rather high legitimacy. The outcomes often later lead to legislative amendments.

Legislative activities

VIA IURIS has been regularly monitoring legislative activities in areas of its concern at the national level to prevent adoption of legislation which does not respond to the public interest and international standards which are binding for the Slovak Republic. Involvement of VIA IURIS in legislative activity is very intensive and concerns different legislative areas. We can, for instance, mention successful participation in the process of recodification of Civil Procedure Code and Code of Administrative Court Procedure in 2014–2015 which entered into force in July 2016. In recodification discussions VIA IURIS helped to set higher standards of quality requirements of reasoning of courts decisions. In the past VIA IURIS also successfully enforced a legal obligation to publish decisions of courts. In 2014 VIA IURIS successfully proposed the amendment to the Act No. 385/2000 Coll. on Judges where new provisions requiring recording of the oral part of selection procedures of judges were integrated.

In 2015 and 2016 VIA IURIS was involved in discussions on new rules regulating the legislative process on the governmental level where we were defending the right of public to effectively participate in the legislative process.

Best Practices

Public interest law conferences which are now recognized and important platform for discussions/interactions on various topics on access to justice. Among participants there were also ministers and other representatives of the Ministry of Justice.

Monitoring of appointment procedures for judges, which also resulted in legislative proposals. Experts from VIA IURIS are also members of selection committees.

Problems and Barriers

Despite examples of good cooperation with the government, this relationship is not always stable, since it depends on the government and specific ministers. Cooperation with the government is also a formality since the government needs to officially prove that it cooperates with independent experts. Moreover, governments often consider CSOs to be enemies because they criticise its activities. Therefore, think tanks and their opinions and proposals are not always taken into account.

Resources of the Organisation, Possible Areas of Cooperation

VIA IURIS main area of possible cooperation is the judiciary: disciplinary proceedings, the selection of judges, the Code of Ethics, access to justice, access to information, public participation and prosecution services.

TRANSPARENCY INTERNATIONAL SLOVAKIA (TIS)

Year of establishment: 1993

CEO: Gabriel Šípoš; Contact information: www.transparency.sk

Transparency International is the world's largest anti-corruption organisation with more than 100 national units.

Mission

The mission of Transparency International Slovakia is to reduce corruption by increasing transparency and reducing red tape. We observe those in power, propose policies and engage people in the fight against corruption.

Key areas of activities

- Government
- Healthcare and health management
- Public procurement
- Self-government – transparency, eLearning
- Judiciary
- Access to information
- Citizen empowerment
- State-owned companies
- Media

Activities and Projects

Campaign for the preservation of the Freedom of Information Act

Law No. 211/2000 Coll. on Free Access to information (Freedom of Information Act – FOIA) is an important tool for the control of public institutions by the public. Given that self-governing territorial units and public companies were criticising FOIA for creating ways to abuse the law, the Ministry of Justice prepared a proposal for an amendment. The proposed amendment however, narrowed the scope of free access

to information. It also proposed to impose charging for information. Such modifications posed the threat of control of public institutions and their transparency, and jeopardized the utility and effectiveness of FOIA itself. TIS's intention in this project was to impede the adoption of such legislation and to improve legislation already in force. In this sense TIS proposed and submitted a collective comment to proposed legislation. The amendment was not adopted since the ministry dismissed it.

TIS also became a member of a commission preparing an amendment to FOIA, but these amendments were not adopted and the commission stopped its operation.

“Open Courts”

To enhance the accountability of judges and courts, Transparency International Slovakia created an open-data portal which includes manually collected and calculated data about the performance of judges and courts. It visualizes various data on their in-court activity and out-of-court behaviour. This portal enables the public to observe and discuss the decisions of individual judges. The Open Courts web site was created to provide improved access to judicial information, provide some rudimentary comparison of judicial performance of individual courts and justices based on statistical analysis. Improved access will be provided by an advanced, speedy and up-to-date search engine for rulings and proceedings.

Best Practices

The “Open Courts” project is very interesting because works with open data, but in a much more user-friendly way.

Problems and Barriers

The problems are similar to those of other think tanks and NGOs which means that there is an unstable relationship with public administration which is mostly marked by the perception of think tanks as enemies of the state. Thus, cooperation is not very frequent or it can be merely formalistic.

The web portal “Open Courts” is not accepted by all stakeholders. Some judicial representatives believe that this web portal is only “stealing” already existing open data published on the websites of courts. The only thing they have done was to place it on a newly created web site.

Resources of the Organisation, Possible Areas of Cooperation

TIS has excellent expertise in data analysis and systematisation of information. In relation to the judiciary TIS has at various occasions pointed out strong nepotism and corruption within the Slovak judiciary.

SLOVAK GOVERNANCE INSTITUTE**Year of establishment: 2001****CEO: Ctibor Košťál; Contact information: www.governance.sk****Mission**

Its mission is to propose and promote solutions for good, accessible, transparent and effective public services for the citizens of Slovakia and other countries.

Key areas of activity and expertise

Public administration and fiscal policy (including public administration management and reform, fiscal management and organisational issues, organisational audits, assessments and restructuring, capacity building and institutional strengthening in the public sector, including human resources and development of civil service professional standards, training design and delivery); Policymaking process and policy development; Employment and social policy; Knowledge economy and education policy; Management and evaluation of Structural Funds and other developmental financial instruments.

Activities and Projects

Extensive consultancy experience not only in Slovakia, but in other countries as well, primarily in Central and Eastern Europe; Experience with designing economic and social reforms from the position of a think tank (non-governmental organisation) – including participation in expert teams of several ministries and government institutions in Slovakia and abroad; Active academic participation in relevant fields of research providing the possibility to keep SGI staff informed in fields such as public administration, policy making, public administration management and individual policies. SGI employees have contributed by large to the establishing of a Public Policy MA programme at Comenius University in Bratislava. Currently, a large section of SGI staff conducts teaching and research within this program.

“Policy workshops for V4 think tanks”

The project has aimed to promote evidence-based policymaking and policy learning among Visegrad countries. It has initiated dialogue between local think tanks by collecting empirical research in three policy areas and organising two workshops to discuss results and formulate policy recommendations.

Best Practices

An example of a good practice of cooperation is the international project **“Inviting Stakeholders to the Process of Monitoring Anticorruption Legislation and Policies in Poland, Czech Republic and Slovakia”** in four thematic groups relevant to the prevention of political corruption and misuse of public funds: a legal framework of the access to information on the administration of public funds (public procurement, EU funds, state-owned enterprises); Act on Civil Service and depoliticisation of civil service; financing of political parties, and transparency of the legislative process and lobbying regulation. Actors from the public administration also participated in this process

Problems and Barriers

Despite examples of good cooperation with the government, this relationship is not actually stable and well-functioning. The cooperation with the government is often a formality performed in order to officially state that they cooperate with independent experts, but in reality, they perceive them as enemies rather than partners. It should be stressed here that the attitudes of the government towards think tanks and NGOs always depend on its composition. Finally, different ministries can have different attitudes and be more or less open to the contribution of think tanks.

Resources of the Organisation, Possible Areas of Cooperation

SGI with its long-term experience and expertise is one of the most respected and influential think tanks in Slovakia. They are also part of an initiative of NGOs “Jingling for Change”. This initiative has offered solutions and concrete measures to fight political corruption.

HEALTH POLICY INSTITUTE (HPI)

Year of establishment: 2005

CEO: Tomáš Szalay; Contact Information: <http://www.hpi.sk/en/>

Mission

HPI is a think tank concentrating on health policy and the economy of health care in Slovakia and Central and Eastern European countries. Its mission is to enforce values which financially support sustainable health-care systems that are flexible in responding to population needs. It also enforces innovative solutions for health-care systems, health insurance companies and a client approach to patients and insured persons.

Key areas of activities

Health care system, Health management, Health insurance.

Activities and Projects

Analysis of the regulatory framework and reform proposals for the health surveillance authority. HPI has been organizing a regular quarterly legislative seminar since 2011. The aim of the seminar is to bring an overview of the adopted and planned legislative changes in the Slovak healthcare sector. The seminar is intended for professionals and economists from health insurance companies, banks, commercial insurance companies, investors, providers, hospitals, doctors, pharmaceutical companies, companies selling medical devices and other organisations operating in the healthcare sector. Lunch with a discussion is also always part of the seminar. Consultations for members of the Slovak Parliament and members of the Healthcare Committee of the parliament.

Problems and Barriers

Each think tank represents certain values, mostly liberal, and if the government does not agree with these there will hardly be any cooperation. This is very much true in the case of HPI when the government of social-democrats came into power. It promoted the model of a single state health insurance company, while HPI was arguing the opposite to keep the model of various health insurance companies.

Resources of the Organization, Possible Areas of Cooperation

Excellent expertise in health care systems and management which is often used by governmental or parliamentary representatives. HPI is a well known expert in the Visegrad region, but they also have experience with other countries from Europe or America.

POLAND

ALLERHAND INSTITUTE OF ADVANCED LEGAL STUDIES

Year of establishment: 2010

President: Arkadiusz Radwan; Contact information: allerhand.pl

Mission

The Institute's mission is to contribute to the improvement of the quality and transparency of law in Poland, and raise legal awareness. The Institute also contributes to law reform at the EU level. Further activities involve assistance in reform endeavours in transitional economies.

In pursuing its mission, the Allerhand Institute wishes to enrich the public domain by making available the results of its studies and research to policy makers and legislators in Poland and the European Union, (i.e. European Commission, European Parliament, OECD, various national ministries and governmental agencies). The Institute's track record embraces expert assistance projects for Ukraine and Moldova.

Key areas of activity and expertise

The Institute specializes in commercial law, corporate governance, insolvency & restructuring law, financial regulations, capital market law, constitutional law, higher education law, intellectual property, privacy and others. The Institute is also interested in transformation of the law, Law & Economics, judicial system reforms, ADR (arbitration & mediation), legal ethics, legal transplants, Europeanisation of law, comparative legal studies and legal history.

Experts affiliated with the Institute take part in national advisory bodies and working groups, they have participated, among others, in the creation of the Act of Restructuring Law, adopted by Parliament in April 2015, played a substantial role in the work of the Team of the Minister of Justice for the amendment of the Bankruptcy and Reorganization Law, as well as were involved in the work of international expert groups, inter alia the United Nations Commission on International Trade Law (UNCITRAL), Informal Company Law Experts Group (ICLEG), European Association of Insolvency Office (EAIO), European Corporate Governance Codes Network (ECGCN) and others.

The results of Allerhand's scientific research and development work are published by the Institute in the form of expert reports, analyses, reports, books, working papers and substantive recommendations for legislative bodies.

To fulfil its mission of raising public awareness and promoting legal knowledge, the Institute organises seminars, conferences and trainings on various aspects of law, as well as a prestigious series of nation-wide thematic Allerhand Summits, that provide a forum for expert discussions and aspire to develop solutions that will improve the functioning of the Polish legal system and institutional framework.

The Institute organises inter alia successive editions of the Law Summits, such as the Polish Insolvency Law Summit (INSO), Polish Restructuring Law Summit (KongRes) or the Polish Summit of Financial Market Regulation (FinReg) or Company Law Reform in Central and Eastern Europe Conference (CECL).

The Allerhand Institute is also involved in public interest law, including civic activism, advocacy and strategic litigation.

Activities and Projects

Ustawa 2.0 (Act 2.0) – A Ministry of Science and Higher education grant for the preparation of guidelines for the new Act on Higher Education in Poland. The work of the interdisciplinary scientific team was published in the book *Plus ratio quam vis consuetudinis. Science and Higher Education 2.0. Outline of reform.*

Innovation PL + US (Innowacja PL+US) – A project implemented by the Institute since November 2016 to support entrepreneurs from the Małopolska region in the process of the international development of their business. The project is cofinanced from the EU.

Law, Money and the Jewish Minority – a project realized in cooperation with the Stradom Dialogue Center (Stradomskie Centrum Dialogu) and financed by the National Bank of Poland (NBP). The project was devoted to the presentation of the role of the Jewish minority in shaping Polish legal and economic thought, with particular emphasis on the contribution of prof. Maurycy Allerhand and Artur Szyk, the illustrator and author of the graphics for the privilege granted to the Jews in 1264 by Prince Boleslaw Pobożny, the Kalisz Statute.

SMART – Sustainable Market Actors for Responsible Trade: 693642 (in progress); the Allerhand Institute is one of the institutions participating in an international scientific project with the aim of studying the barriers and drivers for market actors' contribution to the UN Sustainable Development Goals within planetary boundaries, with the aim of achieving Policy Coherence for Development.

Assessment of the approximation level of the present company, corporate governance, accounting and auditing legislation and existing practices in Ukraine to EU standards and practices: FWC COM 2011.

Development of the Polish and German concept of employee participation in small and medium enterprises based on the ESOP model: PNFN/DPWS Nr 100187.

Allerhand Advocacy – a voluntary project for law and economics students and graduates which focuses on interventions, strategic litigations and cooperation with the media (2016 and 2017 edition).

Chance 2.0 (Szansa 2.0) – a project dedicated to excessively indebted people who do not conduct business activity (consumers) and aimed at preventing the social exclusion of individuals at risk of consumer bankruptcy. The project cofounded by the EEA Financial Mechanism (2015/2016). The Institute has developed a pilot advisory service for debtors at risk of insolvency or debtors who are not capable of filing an application for consumer bankruptcy by themselves and helped more than 30 people till July 2017.

Reports

Allerhand Working Papers – a series of scientific reports with the aim of rapid dissemination of research and analysis from the field of law and economics. The Allerhand Institute has published twenty working papers so far (please see TT Card in the Poland- Country Report).

Resources of the Organisation, Possible Areas of Cooperation

The Institute is eager to cooperate with NGOs in areas regarding its field of expertise.

CITIZENS NETWORK WATCHDOG POLAND

Year of establishment: 2003

CEO: Szymon Osowski; Contact information: siecobywatelska.pl/;

Resource centre: informacjapubliczna.org/

Mission

The mission of the organisation are actions popularising and implementing the idea of good governance. The idea of good governance is seen as inherent for responsible, open authority which is sensitive and responsive to social needs. It is open to dialogue and civic control, and to assume responsibility for its decisions and actions.

Key areas of activity and expertise

Freedom of information, human rights, civil oversight, legal frameworks for civic engagement.

Activities and Projects

Litigation. The organisation gets involved in requesting information that is crucial to people (on issues that people bring up during its consultation meetings) or information regarding decision making, such as the schedules of ministers, emails on the decision-making process, etc. Often these actions end up with court proceedings. The organisation has already been involved in above 500 court cases.

Creating a public debate: Furthermore, the organisation engages in public debates, through press articles and articles that are published in specialist magazines, through participation in debates and meetings. It is also active on social media.

Legal consultations: For those who have started to exercise their rights, the organisation provides legal consulting services, mostly online. Interest in those consultations has grown from 500 consultations in 2011 to approx. 2000 consultations in 2017.

Monitoring: The organisation monitors practical implementation of legal regulations, e.g. regarding municipal companies, transparency and freedom of information.

Publications: The organisation prepares manuals and analyses. It publishes glosses to the verdicts on freedom of information, critical analyses on concepts of “internal documents” or “abusing “the right to information; analyses on the international standards in freedom of information or on local activism in civil oversight, as well as many others.

Engaging with institutions: Another direction of the organisation’s activity is raising awareness of different public entities on their obligation to be open and transparent.

Resource centres: the organisation also runs three on-line resource centres: on freedom of information informacjapubliczna.org/; on watchdogging watchdogportal.pl/; on citizens’ decision making regarding “Solecki Fund” (participatory budget in the rural areas) funduszesoleckie.pl/.

Best Practices

Mainstreaming of a practice on proactive publication of contracts signed by public institutions is becoming a common practice and is included in bills prepared by some of the political parties. Successful implementation of the Law on the Solecki Fund through legal support and analyses used by ministries, MPs and local authorities; encouraging some parties to provide publications of their spending.

Problems and Barriers

The Citizens Network Watchdog Poland sees the reluctance of several governments to document its proceedings and open the debate to all possible stakeholders as a major problem in its activity. Governments tend to select participants for different meetings, do not inform the public about planned meetings, do not prepare reliable minutes from meetings and make it difficult for civil society organisations to feel treated in a fair way.

Resources of the Organisation, Possible Areas of Cooperation

Experts on freedom of information, human rights, legal frameworks for civic engagement, civil oversight and creating an environment for civil society; authors of texts on anticorruption policies, transparency of decision making; transparency of the judiciary, executive and legislative branches; transparency of municipal companies or financial mechanisms for civil society development.

Tools to share – open contest for glosses by students, academics and anyone interested; IT tools to put pressure on the decision makers; litigation strategies that include getting people involved; legal education; education (on-line and traditional) for advocacy and watchdogging.

Cooperation – member of coalitions related to transparency in Poland (Anticorruption Coalition of NGOs and Coalition for Open Government Partnership) and abroad (informal coalition led by Access Info Europe, Alter EU). Member of the EU–Russia Civil Society Forum and its advocacy group.

ePAŃSTWO FOUNDATION

Year of establishment: 2010

CEO: Daniel Macyszyn; Contact information: epf.org.pl/en/

Mission

The aim of ePaństwo Foundation is to develop democracy, open and transparent authorities and civic engagement. ePaństwo takes various

types of public data and, using the power of the Internet and new technologies, present it to citizens free of charge. We give citizens the knowledge and tools to improve their country.

Key areas of activity and expertise

Open data, freedom of information, good governance, civic participation.

Activities and Projects

Activities related to legal issues:

- leading strategic litigation related to access and reuse of public information
- developing an open data policy in polish cities
- monitoring of the operation of the legislative branch and government agencies
- participation in public consultation at the national and European level
- promoting standards and good practices in issues at the intersection of law and technology,
- initiating policy action in cases concerning access to public information as well as the re-use of public information

Projects related to legal issues

Strategic litigation

In justified cases, we file and conduct lawsuits against public authorities in areas related to the access and reuse of public information. Litigations are performed mainly in cases where we cannot access public information in other ways or in situations in which we see high educational potential in a court case. One of our litigations concerns the source code for software solutions developed for, and owned by, the public administration.¹²⁵

Open Data Policy

One of the challenges faced by our organization is to evolve an open data policy at the municipal level in Poland. We believe that only a society that knows and understands the functioning of public authorities can assess its activities properly. We want to increase access

¹²⁵ See at: <https://joinup.ec.europa.eu/news/poland-court-govt-source-cod>.

to public information published in open and structured formats, which enables the analysis and re-use of data. The objective of this project is cooperation with local governments and the promotion of a proactive model of releasing public information online.

Law monitoring

We monitor legislative activities and newly introduced legal acts in areas pertaining to the access, re-use, flow and protection of data. We constantly attempt to be an important voice in public discussion, both at the national and international level.

Reporting activities

We aim to deliver public data analysis in a few specific areas in the form of modern, interactive infographics and reports. Our current areas of interest are issues related to how public authorities use the Internet in governance and public money flow.

My Country (mojepanstwo.pl)

This is a public information database in Poland with rich links between data, a powerful full text search, alerts and tools for managing data. It provides data sets about the work of the Polish Sejm, the Government, statistical data and many others. Through this project we want to increase the involvement of citizens in public governance and facilitate access to public information.

Best Practices

On the local level, we help local governments implement Open Data policies as part of the local law. All of them are still working hard to fulfil their responsibilities.

Due to our cooperation with *Gazeta Wyborcza*, the popular, national daily published articles supported by our data. One of the articles made Ewa Kopacz, the Speaker of the Sejm, change the rules regarding MPs' speeches.

Problems and Barriers

Poland and many other CEE countries are facing a crisis of democratic institutions, such as independent judiciary (including constitutional court). This can lead to the lack of accountability and responsiveness of public institutions as well as the lack of political and criminal responsibility of those holding public posts.

The crisis of the European Union (Brexit, lack of trust in EU institutions, immigration, elections in France and Germany, etc.) will have

a tremendous impact on CEE countries with the on-going risk of putting civil society organizations and public institutions in a vulnerable position.

Less democracy is less transparency. Governments may limit access to important data concerning public procurement or contracting. And they may release a lot of data which is irrelevant to a transparent and accountable state (transport, services etc.) creating the impression that the state is open.

Resources of the Organisation, Possible Areas of Cooperation

Perseverance and sustainability: As a product-oriented organisation we make sure that our solutions are practical, but also have long-term sustainability. After 7 years of work, our first projects like the *mojePaństwo* platform or the Personal Democracy Forum are still used and maintained as they represent a coherent vision of the change we want to achieve.

Strong network: The *ePaństwo* Foundation (EPF) is well established and recognized as one of the leaders of the Open Data movement in Europe. Our brands, such as *mojePaństwo*, *TransparenCEE*, Personal Democracy Forum CEE and Code for Poland are strong landmarks in the civic tech landscape in the CEE region. We are also keen to collaborate with other organisations as well as public institutions on the local and international level, which makes us a “go-to-organisation” regarding cross-country cooperation and partnerships. EPF started the international network called *TransparenCEE*. We also play an active role in the International Open Data Charter and Code For All.

Experienced team: Our team of 9 people reflects a wide range of skills and diverse knowledge (from programmers, through lawyers to sociologists) which allows us to look at challenges we face from many points of view.

CIVIL DEVELOPMENT FORUM (FOR)

Year of establishment: 2007

CEO: Agata Stremecka – President: Leszek Balcerowicz – Board Chairman; Contact information: www.for.org.pl

Mission

The Civil Development Forum (FOR Foundation) is a non-governmental think tank based in Poland, aimed at promoting and defending economic freedom, the rule of law, individual liberties, private property, entrepreneurial activities, and ideas of limited government. Its activities

are based on the vision of a society with favourable conditions for growth and productive activities, combining labour, entrepreneurship, innovation, saving, investment and obtaining knowledge. FOR aims to achieve its goals through fact-based reports and analysis, efficient communication, and civil society mobilisation.

Key areas of activity and expertise

Economic policies include: monitoring the governmental activities, public finance (including public spending and revenues, public debt and the tax system), the labour market, economic freedom and civil liberties, the rule of law and its importance for freedom and economic growth, the efficiency of the justice system, the independence and transparency of the legislative process, access to public information.

FOR's key projects:

- research on important topics related to the Polish economy and rule of law in Poland
- analysis and comments on draft legislation, strategic documents, policy proposals, statements by politicians etc.
- taking part in the consultation of legislation on the legal system, the judiciary and rule of law
- the “Public Debt Clock”, www.dlugpubliczny.org.pl in the city centre of Warsaw
- “Economic Comic Books” – economic and civic education for pupils
- “Monitoring of Economic Freedom” – we monitor how legislation affect economic freedom and rule of law, www.monitor.for.org.pl
- “Leszek Balcerowicz Schools” – educational seminars and workshops for students
- the “Tax Calculator” – building awareness of public finance
- research on the justice system from the perspective of its efficiency and independence and drafting policy recommendations; if possible we try to perform comparative analyses and use legal and economic tools
- we use the right to public information to collect data and information for our research in various areas
- regular appearances in traditional and social media

Best Practices

- thematic alliances between non-governmental organisations which normally promote very different ideas in emergency situations (e.g. serious threats to rule of law or the constitution)
- cooperation with local and international partners
- cooperation with entrepreneurs and business organizations

Problems and Barriers

- problems with access to key decision makers and public television under the current government
- lack of an appropriate response for opinions submitted during public consultations
- attacks on NGOs in the media by government representatives without any legitimate foundations
- problems with the insufficient transparency of the public sector

Resources of the Organisation, Possible Areas of Cooperation

- our staff and experts, including the founder of FOR Professor Leszek Balcerowicz
- experience in cooperation with traditional media and experience with social media
- the credibility of the brand
- cooperation possible in comparative analysis, research and thematic alliances (e.g. open letters)
- we focus on economic issues so that we can also cooperate by providing economic information and economic tools for legal research

Other Information

- FOR is a member of the 4Liberty.eu Network (www.4liberty.eu) and the Epicenter Network (<http://www.epicenternetwork.eu/>)
- *Democracy and Rule of Law in Poland: U.S. Helsinki Commission Briefing* – speech by Marek Tatala, Vice-President of FOR (July 2017): <http://4liberty.eu/democracy-and-rule-of-law-in-poland-u-s-helsinki-commission-briefing/>
- FOR (in tandem with CIPE and other regional partners) contributed to launching a declaration asserting the crucial role of democratic

values and free market principles for Central and Eastern Europe:
<http://democracyontheline.org/>

HELSINKI FOUNDATION FOR HUMAN RIGHTS

Year of establishment: 1989

CEO: Danuta Przywara; Contact information: <http://www.hfhr.pl/en/>

Mission

The mission of HFHR is to promote human rights as indispensable for the functioning of the state and to strengthen respect for those rights in the society. The major values supported by the HFHR are: freedom, rule of law, equality and human dignity.

Key areas of activity and expertise

The Foundation is the only organisation in Poland, which **covers all issues related to human rights**. HFHR conducts national and international trainings, organises conferences and seminars. It provides expert consultation in the area of human rights and freedoms to individuals as well as to non-governmental organisations and state institutions (such as parliamentary committees, the police, the judiciary, the prison service, the border guard, public health service).

Within the framework of its mission, HFHR conducts several legal programmes:

Monitoring of the legislative process in regard to the of justice system – This programme is dedicated to the monitoring of all stages of the legislative process, as it pertains to the administration of justice. The programme’s experts formulate analyses, opinion statements and recommendations concerning drafts of bills in the domain of the administration of justice.

Strategic Litigation Programme – In the purview of this programme, the Helsinki Foundation for Human Rights participates in , or opens strategically important administrative and court proceedings.

Observatory of Media Freedom in Poland - This programme monitors the standards of protection of the freedom of expression in Poland, as well as cases in which such standards have been violated.

The Legal Intervention Programme – This is concerned with cases in which violations of the rights and freedoms of the individual, in particular those guaranteed by the Constitution of the Republic of Poland

and the European Convention for the Protection of Human Rights and Fundamental Freedoms, have occurred.

The Programme of Legal Assistance to Refugees and Migrants – The scope of this programme includes providing legal guidance free of charge to foreigners who apply to the Foundation, as well as the undertaking of legal action.

Resources of the Organisation, Possible Areas of Cooperation

The HFHR has **tremendous expert potential**. Its area of competence includes both Polish and international law, and HFHRs participation guarantees a solid expert level for any cooperation.

The Foundation is not a theory-driven organization, rather, it is intensely involved in a number of **individual, ongoing human rights cases**.

The Foundation and its experts are **inspiring and willing to share** with others. The Foundation takes the initiative in sharing its resources and establishing ground for cooperation between different organizations, training and encouraging them to develop the human rights sector in Poland.

Other Information

Since 2007, the Foundation has held consultancy status at the United Nations Economic and Social Council (ECOSOC).

INPRIS – INSTITUTE FOR LAW AND SOCIETY

Year of establishment: 2009

CEO: Łukasz Bojarski; Contact information: inpris.pl

Mission

Mission of INPRIS is to improve the quality of the law and standards of governance in Poland.

INPRIS is an independent institution that is open to cooperation with various groups and experts both in Poland and abroad. The focus of INPRIS is interdisciplinary: to combine legal analysis with insights from other fields of study (e.g. economics, sociology, finances, psychology and information science).

Key areas of activity and expertise

Legislative process, judiciary, legal professions, system of free legal assistance, legal education, legal language and communication.

Key activities and projects

OMX – Research and monitoring of the vetting and election process for the Constitutional Court Judges and other public posts (including Inspector General for the Protection of Personal Data, Attorney General and Human Rights Ombudsman). We are working on systemic solutions for appointments to top public positions; proposed model regulations would permit the creation of more effective and durable legal solutions. We have shared our experience from the OMX project in other Central and Eastern European countries.

We engage in monitoring of the public authorities' actions regarding the independence of the judiciary – observing the activities of Polish authorities, analysing draft legislation and cooperation with other organisations to defend the independence of Poland's judiciary.

In collaboration with the National School of Judiciary and Public Prosecution, we conducted analyses and prepared a conference on interactions between the judiciary and civic organisations.

Legal Aid: we have conducted analyses examining the legal needs of Polish society; we have cooperated in the creation of a proposal for a model for legal and citizens' advice procedures; we maintain the INPRIS Internet Library, which contains materials relating to the reform of free-of-charge legal assistance. Education for CSOs on legislation and regulatory impact assessment – e-learning and training for CSOs representatives.

Research and education for judges and lawyers on the Charter of Fundamental Rights of the EU. This project is being implemented as an international partnership; as part of its Polish segment, INPRIS has prepared Poland's first Charter of Fundamental Rights handbook for lawyers and a guidance document for CSOs as well as provides trainings for judges, lawyers and CSOs.

We are involved in a research and recommendation policy project on how legal think tanks in the region provide expertise to governments. Countries of research: Poland, Czechia, Slovakia, Hungary, Moldova, Ukraine.

Legal education. We have conducted the "Water Project" (university student-led simulations concerning the division of joint water resources between Israel and Palestine); we have created the strategic simulation game "Twoje Prawo" ("Your Law"), which teaches citizens how to influence the legislative process, and encourages them to do so. We have prepared analyses and recommendations concerning effective legal education.

Infographics and Law: We conducted series of interdisciplinary seminars, workshops and pilot projects on Infographics and Law (on topics such as liability credit card fraud, notice and take down procedure on the Internet, Constitutional Tribunal, rights of disabled persons, etc.).

Working together with an association of judges, we held a series of seminars and prepared a publication on joint efforts by the judiciary and CSOs to combat discrimination.

We have studied the practical impact of the amended Code of Civil Procedure in judicial practice and barriers impeding popularisation of mediation in Poland.

MOLDOVA

PROMO-LEX ASSOCIATION

Year of establishment: 2002

CEO: Ion Manole; Contact information: www.promolex.md

Mission

Promo-LEX Association is a non-governmental organisation that aims to advance democracy in the Republic of Moldova, including the Transnistrian region, by promoting and defending human rights, monitoring the democratic processes, and strengthening civil society.

Key areas of activity and expertise

Promo-LEX Association implements two programs: Human Rights and Monitoring Democratic Processes.

The overall goal of the Human Rights Program is to promote and implement international human rights standards in the Republic of Moldova.

Priority areas of research under the Human Rights Program are: promoting access to justice and effective legal remedies for inhabitants of Transnistria, combating torture and inhuman or degrading treatment, promoting and defending liberty and security, preventing and combating gender-based violence, combating discrimination and promoting equality.

The Monitoring Democratic Processes Programme aims to improve the quality of, and increase citizen's trust in, democratic processes in the Republic of Moldova. Under this programme, Promo-LEX observes and monitors electoral processes, sectoral reforms and decision-making processes in the Association's priority areas.

Activities and Projects

The organisation's activities on priority issues include: review and analysis of the national legislation in accordance with international standards and UN and CoE treaties and conventions; Providing comments and feedback on the proposed amendments to the national legislation; Monitoring the enforcement of the legislation and practice; Participation in elaboration and monitoring of the implementation of the National Human Rights Action Plans; Human rights monitoring in the Transnistrian region; Legal aid and assistance and strategic litigation at the national and international level (ECtHR, UN Treaty Bodies);

Monitoring the enforcement of decisions on strategic cases (issued by domestic courts and ECtHR); Participation in national platforms and working groups on legislation amendments; Organizing trainings for police, prosecutors and judges on law enforcement and good practices in relation to human rights in the Transnistrian region; Elaborating and submitting alternative reports and submissions to UN Treaty Bodies and Rapporteurs; Elaborating general and thematic reports on human rights; Conducting awareness-raising and information campaigns on human rights issues; Monitoring of court hearings; Elaborating monitoring reports on the enforcement of legislation; Drafting and lobbying recommendations to improve legislation, policies and practices; Organising public events with relevant stakeholders; Training workshops for law professionals, etc.

Best Practices

During 2015–2016, Promo-LEX in Partnership with the National Justice Institute and the General Police Inspectorate organised 8 trainings for 169 prosecutors, judges and police officers on uniform procedures for investigating and prosecuting cases of human rights violations in Transnistria.

Promo-LEX Association, in partnership with local and international civil society organisations, participated in the development of seven Universal Periodic Review Reports: the condition of human rights in the Transnistrian region of the Republic of Moldova; Development of civil society in the Transnistrian region; Restrictions of the right to elect and to be elected and of the political rights of citizens; Torture and ill-treatment in Moldova; The duties of the State and rights of survivors; Promotion of gender equality in Moldova; Domestic violence and violence against women; The rights of people with mental disabilities in the Republic of Moldova.

In September 2016, Promo-LEX submitted an alternative report to the UN Human Rights Committee regarding Moldova's third periodic report regarding the implementation of the International Covenant on Civil and Political Rights.

During its eighth sitting on January 28, 2016, the Parliamentary Assembly of the Council of Europe raised the case of Promo-LEX (criminal charges against Promo-LEX initiated by the Transnistrian KGB because of the organisation's human rights activity in the region), as well as the issue of human rights defenders in conflict zones. On 28 January 2016, PACE addressed the Member States of the Council of Europe to invest efforts in order to protect human rights defenders and ensure an enabling

environment for NGOs. In this respect, two resolutions were adopted. This is a direct result of Promo-LEX advocacy efforts (submissions to PACE and Mailis REPS, Rapporteur of the Committee on Legal Affairs and Human Rights, working meetings) to raise the issue of human rights defenders' work in regions of conflict.

In May–June 2016, Promo-LEX Association, in partnership with the General Police Inspectorate of the Ministry of Internal Affairs implemented an information and awareness-raising campaign on domestic violence and protection mechanisms called “Preventing Violence through Art”. The campaign covered 12 rural localities and reached over 2,000 people.

Promo-LEX is a member of the platform on Gender Equality in Moldova. In 2015–2016 Promo-LEX was actively involved in the process of amending 11 pieces of legislation with reference to equality and non-discrimination and gender equality.

Promo-LEX is a member of the National Coalition “Life without Violence” and in 2015–2016 was actively involved in promoting an amendment of the national legislation in the area of domestic violence.

Problems and Barriers

In many cases the cooperation between CSOs and the Government depends on the person leading the department or the ministry, etc. and on his/her attitude and perception of CSOs role. Some are very open to collaboration, some are totally reluctant. In many cases, the draft laws and regulations prepared and agreed on between CSOs and the Government end up being adopted by the Parliament but with significant changes compared to the initial draft. In many cases the Government does not observe the procedures on transparent decision-making and consulting the CSOs – many draft laws and regulations are posted with huge delays.

Resources of the Organisation, Possible Areas of Cooperation

Promo-LEX core staff includes 25 employees (the number increases during the implementation of the monitoring missions implemented by the organisation).

In addition, Promo-LEX has a nationwide network of observers which can be involved to monitor election processes, but also for other democratic processes (justice sector reform monitoring for instance, which was done during 2012–2014; court hearings monitoring, human rights monitoring, monitoring of the police, etc.).

Promo-LEX Association is a member of several national and international networks and platforms.

LEGAL RESOURCES CENTRE FROM MOLDOVA (LRCM)**Year of establishment: 2010****CEO: Vladislav Gribincea; Contact information: www.crjm.org****Mission**

The Legal Resources Centre from Moldova (LRCM) is a Chisinau based non-profit non-governmental organisation. LRCM is a think tank with extensive expertise in analysing the activity of, and reforming, the justice sector; reporting on human rights and representation before the European Court of Human Rights (ECtHR); ensuring equality and non-discrimination, as well as in promoting reforms for an enabling environment for civil society organisations. The LRCM operates in the Republic of Moldova.

The LRCM believes that adequate and sustainable respect for human rights in Moldova can be ensured through systemic changes in the legislation, court system, prosecutors' office and legal profession. Many of these changes failed due to the lack of expertise. We strive to address this deficit by promoting professional, methodology-grounded, high quality analysis in all our interventions and by remaining an independent and constructive partner for governmental and private stakeholders alike.

Key areas of activity and expertise

The current main activities of LRCM are focused on reforming the justice sector in the Republic of Moldova, monitoring the transparency and efficiency of the judiciary, strengthening the legislative framework on the functioning of civil society organisations and implementing the best human right standards in the Republic of Moldova.

Activities and Projects

Upon a request from the Ministry of Justice, LRCM developed studies on the optimization of the judicial map, specialisation of judges and optimisation of the structure of the prosecution service. Based on these studies, in 2016, the Parliament voted for the optimisation of the judicial map, reducing the number of district courts from 44 to 15. This is one of the most important reforms of the Moldovan court system since Moldovan independence in 1991.

Between 2013 and 2016, the Executive Director of the LRCM led the interdepartmental working group for the reform of the prosecution service. In 2016, Parliament passed the new Law on the prosecution service, prepared by the working group. It involves the most serious reform of the Moldovan prosecution service since Moldovan independence.

In 2012 and 2015 LRCM published two reports about execution of judgments of the ECtHR by the Republic of Moldova. The report highlights the problems in execution of ECtHR judgments and makes recommendations for improvement of the situation. Based on findings from the first report, a new Law on Governmental Agent was adopted in 2015.

LRCM recommendations led, in 2012, to the improvement of the provisions of the Moldovan Criminal Code sanctioning torture.

LRCM recommendations on streamlining judicial procedures and respect for human rights led, in 2012, to amendments to the Criminal and Civil Procedure Codes of Moldova.

In 2015 LRCM published an analysis of the compatibility of Moldovan legislation with European standards on equality and non-discrimination, focused on the legislative framework and national jurisprudence, including the activity and efficiency of the legal remedies offered by the Equality Council that led to a new approach by the Equality Council in dealing with the cases.

In 2013, our effort of monitoring the Superior Council of Magistracy (SCM) resulted in the report “Transparency and Efficiency of the Superior Council of Magistracy of the Republic of Moldova 2010–2012”. Unfortunately, the SCM did not implement our recommendations.

In 2015–2016, LRCM advocated and participated in drafting the percentage designation mechanism in Moldova (both the Law and the Governmental Regulation). As a result of our and other CSOs efforts, the mechanism began to be applied in 2017.

Best Practices

Starting with 2014, LRCM has published a quarterly newsletter on the main events in the judiciary, anti-corruption, human rights and civil society issues. It is translated into English and starting with mid 2016 into Russian as well. We noticed a heightened interest in our activities after using different interactive methods of presentation of the information, such as infographics. LRCM included infographics on the anonymisation of court decisions, reasons for court optimisation, phone tapping etc. The Republic of Moldova has a significant Russian-speaking population (Ukrainians, Russians, and Gagauz etc.). Translation into Russian of some of our documents increased the interest in the work we are doing, such as newsletters, infographics, guidelines, videos. LRCM has developed a database with contacts of relevant CSOs, authorities, donors, journalists and partners that we use in our advocacy efforts.

Problems and Barriers

Authorities' resistance to accept policy reforms coming from the CSOs especially when unpopular & sensitive, but necessary reforms are promoted by the CSO sector.

Resources of the Organisation, Possible Areas of Cooperation

LRCM is eager to cooperate on the local, national, regional and international level in its field of expertise, including, but not limited to: improving the efficiency and transparency of the Moldovan judiciary; promoting effective judicial accountability mechanisms in Moldova; promoting anti-corruption mechanisms; promoting effective implementation of the European Court of Human Rights judgments by Moldova; promoting improvements to the core legal framework regulating the functioning of CSOs; promoting new legal provisions for ensuring fiscal and financial sustainability of CSOs; promoting mechanisms for effective CSO participation in decision-making processes.

CHILD RIGHTS INFORMATION CENTRE MOLDOVA (CRIC)

Year of establishment: 1999

CEO: Cezar Gavriliuc; Contact information: www.childrights.md

Mission

CRIC contributes to an environment enabling protection of rights, strengthening the capacities of the duty bearers and empowering rights holders to claim their rights. We will permanently monitor state efforts on the implementation of its obligations under the UN Convention on the Rights of the Child (CRC).

Key areas of activity and expertise

CRIC strategic priorities for 2016–2020 focus on the following areas of children's rights: establishing children as subjects of rights / children as right-holders, family environment (and alternative care), education and protection from all forms of violence.

In all the areas, CRIC applies the following approaches: strengthening systems, structures and mechanisms to make children's rights a reality; strengthening Capacities of Rights Holders to claim their rights and encouraging Duty Bearers to fulfil their responsibilities; mainstreaming the application of the CRC General Principles.

Activities and Projects

The organisation's main activities include: supporting the development and implementation of child protection policies, especially in the education system (developing policies and methodologies for child abuse prevention and reporting, training teaching staff, monitoring the implementation of the policies); Promoting children's participation in the decisions affecting them, especially in the education system (developing policies and methodologies for child participation, training teaching staff, empowering children by creating opportunities to participate, monitoring the implementation of the policies); promoting human rights education (developing methodologies and teaching materials, training teachers); involving children in the monitoring of their rights; reporting to authorities and UN Committee on the Rights of the Child.

Examples of interaction and collaboration with the government:

- Analysis of the state of the law in the field, in particular through the comparison of alternatives,
- Monitoring of the operation of the legislative, judicial and executive branches of government
- Conducting empirical surveys
- Collection, aggregation, analysis and presentation of available statistical data
- Analysis and comments on draft legislation, strategic documents, etc.
- Taking part in the consultation of legislation, taking part in developing Regulatory Impact Assessment
- Creating legislation amendments of existing regulations
- Participation in committees, advisory boards and other structures functioning at the legislative and executive level
- Drafting standards and best practices

Best Practices

In 2013 CRIC supported the Ministry of Education in developing regulation for pupils' councils in schools and the National Pupils' Council (NPC). The NPC acts as a consultative body for the Ministry of Education on the policies developed for, and affecting, children. The importance of involving children in decision-making processes was recognized by the authorities and the NPC has been included in the budget of the

Ministry of Education since 2015. The capacities in the MoE were built by CRIC and now the NPC is run by the MoE on their own, with little support from CRIC.

Problems and Barriers

Lack of capacities in general, and related to children's rights in particular. Lack of a long-term vision and planning skills. Political instability, corruption and favouritism.

Resources of the Organisation, Possible Areas of Cooperation

CRIC has experts in children's rights, children's participation, children's rights education, protection of children from violence.

CRIC has developed methodologies for teaching children's rights in the school context.

INSTITUTE FOR EUROPEAN POLICIES AND REFORM (IPRE)

Year of establishment: 2015

CEO: Mr. Iulian Groza; Contact information: <http://ipre.md/>

Mission

IPRE's mission is to accelerate the European integration of the Republic of Moldova by promoting sustainable reforms, increasing participatory democracy and strengthening the role of citizens in decision-making processes and promoting public policies.

Key areas of activity and expertise

We aim to contribute to community development, strengthening of civic activism and participatory democracy; to develop public policies that will ensure the sustainable transformation of the Republic of Moldova based on the European development model; to promote public policies through advocacy at the national and local government levels.

IPRE Research & Projects Development and Implementation agenda is worked out in six key departments: European Integration, Justice and Anticorruption, Economic Development, Social and Health Policy, Foreign and Security Policy, Public Administration Reform.

Resources of the Organisation, Possible Areas of Cooperation

IPRE Management: IPRE General Assembly – Formed by 23 IPRE Members; IPRE Board – 4 members, including the acting Chairman of the Board and 9 additional new members to be endorsed (by 2016) and 3 Honorary Members of the IPRE Board (no-voting rights).

IPRE Staff includes 26 persons: 10 full-time employees (FTE) – Executive Director, 3 Project managers; 3 project assistants, 1 Communication Officer; 1 Chief Accountant; 1 Office manager; 16 part-time employees (PTE): Co-Executive Director, Project Development Director; 6 Team leaders (policy moderators); 6 associate experts; 2 regional coordinators (IPRE Offices Cahul and Balti).

IPRE results background: IPRE is an action centre for research and analysis, founded by a team of national and international experts.

In one and a half years IPRE managed to achieve the following results that add value to our activities structured in three main areas:

I. Community development, strengthening civic activism and participatory democracy

- We have created a network of volunteers
- We have founded local participation councils
- We have consulted citizens on the local level in the process of developing public policy proposals.

II. Public policy development:

- We have developed policy proposals in a range of areas, in particular in the competition law, judiciary reform and anticorruption, energy, economic development, EU association agreement, public administration reform and the banking system.

III. Advocacy:

- We have organised public debates with civil society, development partners, entrepreneurs, as well as local and central authorities
- We have promoted, explained and popularised, our public policies proposals through videos and info-graphics
- We have actively used media platforms on the national, regional and international level
- We have become the most followed think tank in Moldova on social networks.

These results were possible thanks to a unique pool of knowledgeable national and international experts with civil society and public administration backgrounds. This has helped IPRE to present itself as an organisation that manages to effectively create synergies between citizens' empowerment, public policy development and advocacy activities on the national and local level.

Moreover, IPRE is currently one of the leading experts' organisations that ensure permanent monitoring on the implementation of the EU–Moldova Association Agreement by issuing regular reports and thematic policy papers.

Partnerships

In 2016, IPRE joined the National Platform of the Eastern Partnership Civil Society Forum.

WOMEN'S LAW CENTER (WLC)

Year of establishment: 2009

CEO: Angelina Zaporozjan Pircari; Contact information: <http://cdf.md/>

Mission

WLC's mission is to promote the protection of women's rights and contribute to the prevention and combating of domestic violence (DV) in Moldova. WLC supports an approach based on human rights protection and promotes change at the individual, community and systemic level.

Key areas of activity and expertise

Our main activities and goals include: prevention of domestic violence and violence against women in order to improve the behaviour, attitudes towards and perception of DV amongst the target population, as a result of the advocacy and lobbying, awareness raising, capacity building and networking efforts; effective prosecution of DV so that legislation is consistently applied with victims benefiting from adequate legal remedies and protection and aggressors receiving appropriate sentencing; protection of, and direct assistance to, women and children, victims and potential DV victims so that they feel empowered and proactive and seek adequate assistance and support; policy changes through WLC contributions to the DV law, strategy, other research and analysis; Acting as an agent of change and organisational role model for other organisations.

Activities and Projects

"Strengthening Capacities of Prosecution and Judicial Response to Domestic Violence in Moldova".

Main objectives: legal education of judges and prosecutors, assessment of access to justice of the victims of human trafficking and domestic violence through court monitoring.

Outcomes: curriculum, manual and training report, manual for the monitors and court monitoring report, cooperation with the Government,

cooperation with judiciary bodies, Ministry of Justice, Superior Council of Magistrates and Superior Council of Prosecutors, National Institute of Justice.

“Strengthening capacities of the WLC strategic areas”.

Main objectives: legal education of police (strengthening capacities of the Law Enforcement Response to Domestic Violence and for adequate legal remedies to victims of domestic violence); access to justice (primary and comprehensive legal protection and assistance to victims and potential DV victims); strategic litigation of cases, policy and legislation process nationally and internationally; nationally promoting changes to the DV Law. Internationally – UPR submission with a number of legal recommendations, promotion and advocacy.

Outcomes: curriculum, manual and training report, standards of assistance, report on the assisted cases, cases submitted to the international bodies, amendments to the DV law, Criminal, Civil and Misdemeanour Codes, UPR recommendations on DV approved by the State; cooperation with the Government, Police Inspectorates, the Ministry of Internal Affairs, the Police Academy, the judiciary, the Ministry of Family and Social Affairs, the Ministry of Health, State-Guaranteed Legal Aid Parliamentary Commissions, the Ministry of Justice, and the Ministry of Health.

“Prevention and combating of violence against women and domestic violence”.

Main objectives: Development of a National Strategy on the prevention and combating of domestic violence against women; Cooperation with the Government and with the Ministry of family and Social Affairs.

Best Practices

Development of the training curriculum for police officers; increase in the number of referrals by the Police Inspectorates; engagement of the NGO by the Ministry of Family and Social Affairs in the drafting process of the National Strategy on Combating Domestic Violence.

Problems and Barriers

Difficulties in setting up cooperation with the Ministry of Health. Once there is a change of government it always takes time to re-establish contacts with the Ministries. The key supporters of the cooperation/partnerships with WLC are not necessarily the most important ones.

Resources of Organisation, Possible Areas of Cooperation

The key resources of the organisation are its staff, experts, proven work methods, tools and partnerships.

HUNGARY

EÖTVÖS KÁROLY PUBLIC POLICY INSTITUTE (EKINT)

Year of establishment: 2003

**CEO: László Majtényi and Bernadette Somy; Contact information:
www.ekint.org**

Mission

EKINT wishes to contribute to raising the professional and general awareness and to shaping the political agenda in issues related to the quality of relations between citizens and public institutions. The Institute is deeply committed to the liberal interpretation of constitutionality, constitutional democracy, and individual rights, and works to support initiatives instrumental in bringing about a civil political culture inspired by the spirit of solidarity.

Key areas of activity and expertise

EKINT pursues three different types of activities, and therefore addresses three different types of audiences. Firstly, through issuing positions on momentous political issues, hosting conferences, and authoring various publications and declarations, we seek to reach the general public, the entirety of the democratic political community. Secondly, by drafting specific policy proposals, conceptual papers and background studies, we turn to political decision makers directly with a view to enhancing a constitutional, liberal perspective in legislation. Thirdly, the Institute engages in conducting long-term surveys and studies that investigate the state of certain institutions of the republic (e.g. the judiciary, the police, municipalities) as well as the state of certain public services (e.g. education, health care, the financing of culture). These investigations address the representatives of the relevant professions.

In the last decade, EKINT has established itself as a distinctive and well-known voice in Hungary's public life. Recently EKINT has become the most relevant advocate of the restoration of constitutionalism. The Institute is the only NGO in Hungary which represents constitutionalism as a complex and comprehensive system of values. For the public actors interested in restoring constitutionalism the opinion of the Institute cannot be neglected.

Activities and Projects

In recent years EKINT has focused on three major areas:

- EKINT puts great effort into preserving constitutional values and protecting the institutions of the republic. We closely monitor, document and analyse the dismantling of constitutionalism in Hungary. By issuing public statements and initiating various legal procedures, we adopt a firm stance in defence of core constitutional values and their survival. The Institute is one of three NGOs that comprise the platform called “Defenders of the Rule of Law”, the other two NGOs being the Hungarian Helsinki Committee and the Hungarian Civil Liberties Union.
- From the outset, EKINT has subscribed to the view that the Fundamental Law of Hungary (the Constitution) has, ever since its adoption in 2011, derailed from the course of constitutional democracy, both in its original form and in its various subsequent amendments. As the foremost domestic proponent of the cause of restoring constitutionalism in Hungary, the Institute considers it its fundamental mission to keep constitutional restoration on the political agenda and to contribute to the creation of public law and policy proposals indispensable for the success of that restoration effort.
- Although not a human rights NGO in the primary sense of the term (because it extends legal protection to individuals only on rare occasions), EKINT frequently speaks out on human rights related issues, a field that features emphatically among its research topics. In recent months – as a reaction to the current political situation – we have been focusing on fields where institutions are gradually losing autonomy, such as education (schools and universities), the arts and the churches. We have also contributed to raising awareness of the Hungarian state’s inadequate response to the refugee crisis.

Best Practices

The Law on Freedom of Electronic Information, adopted on 4 July 2005 by the National Assembly, was based on the guidelines drawn up by EKINT in 2003. Since then the law was incorporated into Act 112 of 2011 on the Right to Informational Self-Determination and on Freedom of Information.

Problems and Barriers

The problem with interaction with the government is not only that the government is unwilling to cooperate with think tanks that criticize its steps taken in the direction of dismantling the constitutionalism, the rule of law and liberal democracy as such, but it openly attacks them and labels them as paid agents who serve foreign interests. EKINT is surely

such a paid agent in the eyes of the government, as it was founded by György Soros, who has openly opposed the current government. The latest threat from the government has been that it will consider submitting a list of 22 NGOs to secret service screenings. Obviously, under such circumstances one cannot speak of any possible cooperation in professional issues.

Resources of the Organisation, Possible Areas of Cooperation

EKINT was founded by the Soros Foundation. It has a staff of 9, including lawyers, a political philosopher and a communication expert. It has worked together with other NGOs several times, e.g. HCLU and HHC. The Institute is open to cooperation with like-minded NGOs in projects that suit its above-mentioned expertise and interest.

HUNGARIAN CIVIL LIBERTIES UNION (HCLU)

Year of establishment: 1994

Executive Director: Stefánia Kapronczay; Director of Programs: Máté Szabó; Contact information: <https://tasz.hu/>

Mission

The Hungarian Civil Liberties Union is a human rights NGO. Since our foundation in 1994, we have been working in order to raise awareness on fundamental human rights in Hungary and their enforcement against the undue interference by those in positions of public power. The HCLU monitors legislation, pursues strategic litigation, provides free legal aid assistance in more than 2,000 cases per year, provides trainings and launches awareness-raising media campaigns in order to mobilize the public. The HCLU is working with a staff of 30 people with an annual revenue of approximately 190 million HUF. We do not accept any state funding or any donation from political parties. Our revenue comes from private individuals, companies and private foundations.

Equality Project

The Equality Project of HCLU works against state-level discrimination of the most vulnerable groups within society, as well as to create equal opportunities for these groups. The Project focuses on the Roma people living in extreme poverty and on people living with disabilities. Furthermore, the Project also addresses the infringements of the rights of people living with HIV. By supporting our partner organisations, we also adhere to the equal rights of other vulnerable groups, especially homeless people, refugees and members of the LGBTQI community.

Privacy Project

The main objectives of HCLU's Privacy Project are to ensure that state intervention into the private life of citizens occurs only to the extent that is absolutely necessary and to ensure that the state offers relevant services that are required for citizens to exercise their fundamental human rights (health care, public education or social services) at an adequate level. We pay special attention to the right to free choice related to decisions on healthcare (e.g. abortion); to the rights of patients, to the implementation of freedom of belief, to state-level drug policy and to the protection of personal data.

Political Freedoms Project

The main goal of HCLU's Political Freedoms Project is promoting the freedom to judge those holding public office and ensuring that citizens who express a critical opinion about them do not have to face any disadvantage. We pay special attention to freedom of expression and freedom of the press, the right to assembly, the transparent operation of the state and the freedom of information that assists it, as well as the exercise of participatory rights, especially the right to vote.

ATLATZSO.HU INVESTIGATIVE JOURNALISM CENTRE

Year of establishment: 2011

CEO: Tamás Bodoky (editor-in-chief); Contact information: <https://english.atlatzso.hu/>

Mission

The atlatzso.hu is a watchdog NGO and investigative journalism outlet to promote transparency, accountability, and freedom of information in Hungary.

Key areas of activity and expertise: as a legal think tank conducting policy advocacy and litigation in the area of freedom of information and freedom of the press.

Activities and Projects

Monitoring legislation and government practice on freedom of information, freedom of the press and anti-corruption actions; strategic litigation and legal support on the basis of FoI requests; operation and legal support for the FoI request platform KiMitTud (kimittud.org). Anti-corruption policy advocacy in "Ez a minimum" (That's minimum) Initiative (<http://www.ezaminimum.hu/>) for a basic anti-corruption public

policy program at the level of individual state bodies/local municipalities (with other anti-corruption NGOs).

Best Practices

Most of our best practices are based on low- and middle-level technical cooperation. As the operators for KiMitTud, we are in close contact with almost all of the legal officers of the ministries and other governmental organisations in charge of the administration of freedom of information requests. We use this informal network to promote a professional dialogue via workshops, trainings and other events, but this work does not have a direct impact on governmental policy decisions.

Among the rare exceptions to constructive high level cooperation are our “uncredited” “Ez a minimum” Initiative projects, where we gave proposals and legal support for individual state organs informally. The relative effectiveness of such efforts reflects the current political environment for cooperation with the government in our core activities.

Problems and Barriers

As far as anti-corruption issues are considered as part of party policy agenda by almost every actor (not only by the government and the governing party), and transparency issues are very closely connected with (suspected or denied) corruption in public debate, a certain level of the influence of (party) politics on collaboration and communication is inevitable. However, things have become much worse since the Hungarian Government began to use the general condemnation and defamation of critical NGOs as a tool of legitimization in its public statements. The hardest part of the job is to initiate communication and show the will for constructive debate under these circumstances.

Resources of the Organisation, Possible Areas of Cooperation

Apart from our legal and IT experts whose already shared expertise is the basis for our public proposals and opinions, we think that the know-how needed to operate a nationwide FOI request system is the resource which could be the most valuable for the government. Unfortunately, this task is one of the rare exceptions where the current government does not show interest in nationalising private sector projects.

Other Information

The English-language page referenced above gives a general, yet informative overview on the activity, while the documents of our organisation’s recent public policy project, the conference Open Skies, Open Societies: How Civil Society Can Use New Technology for Social Change, May 9–10, 2016 can be accessed here: <http://dron.atlatszo.hu/>.

THE HUNGARIAN HELSINKI COMMITTEE

Year of establishment: 1989

CEO: Márta Pardavi, András Kristóf Kádár, Co-chairs; Contact information: www.helsinki.hu

Mission

The Hungarian Helsinki Committee is a public benefit human rights organisation that protects human dignity through legal and public activities. It provides help to refugees, detainees and victims of law enforcement violence.

The HHC focuses its efforts so that:

- all migrants in need of international protection (refugees, stateless persons, unaccompanied minors) have real access to protection and the possibility of a dignified life in safety
- the right to liberty and the right to be free from torture are respected (including in criminal procedures and in any form of detention)
- the right to a fair trial and equality before the law is respected
- the rule of law and the system of democratic checks and balances prevail, with active citizens and independent civil society willing and able to take action against human rights abuses
- potential change-makers are equipped with the necessary knowledge, skills and attitude to bring about sustainable improvement in related human rights policies

The organisation has a staff of more than 25 professionals. Its members include lawyers, attorneys, economists, sociologists and journalists. In the early years, it mainly focused on free legal assistance and representation while today its portfolio also includes legal and public advocacy, research and professional training activities spanning a wide range of fields.

Activities and Projects

To achieve our goals, we do:

- **free legal counselling**, which “channels in” cases for strategic litigation and up-to-date information about state practices for evidence-based advocacy
- **strategic litigation** before domestic and international courts, also to support our advocacy activities

- **monitoring** of state practices and detention/reception facilities
- **research**, in support of evidence-based advocacy and training activities, often considering issues not yet researched by anyone else
- **legislative advocacy**, including commenting on draft legislation
- **international advocacy**, by constantly informing and lobbying with international stakeholders that are able to influence domestic policies
- **awareness-raising and media work** through direct outreach to hundreds of journalists, social media, blog, off-line events, etc.;
- **international cooperation**, including active participation in crucial networks such as the European Council on Refugees and Exiles, the International Detention Coalition, the European Network on Statelessness or the JUSTICIA European Rights Network;
- **training and capacity-building**, promoting inclusive, innovative and interactive methods.

We strive to achieve **sustainable and systemic policy change** (e.g. partly due to our decade-long efforts, the new Criminal Procedure Code is finally reforming the system of state legal aid in criminal matters, enhancing safeguards against torture and for due process).

The HHC operates in **Hungary**, but many of our activities are implemented in larger **regional or pan-European** initiatives. Our training activities have an **increasingly global** scope.

The HHC is **one of the few remaining actors ready and able to publicly challenge inhuman, unlawful and undemocratic state policies** in a constantly shrinking democratic space in Hungary.

Key activities and achievements

We provide otherwise unavailable legal assistance to particularly vulnerable people, including legal assistance to 5,824 forced migrants (2015–2017).

In 2016, we assisted 1,168 victims of human rights violations by law enforcement agencies (including detainees in prisons).

Despite a shrinking space for CSOs advocacy, we still manage to overturn unlawful government policies and decisions through strategic litigation. Between January 2015 and June 2017, 4 out of 5 (!) HHC-represented asylum appeals were successful and with our help, 58 asylum-seekers were released from unlawful detention.

Despite massive governmental efforts to silence critical voices, we continue to inform international stakeholders and the Hungarian public about human rights violations.

We promote pioneering research and innovative knowledge development for effective human rights work, even far beyond the borders of Hungary.

In the past 10 years, HHC experts trained over 3,800 lawyers, state officers, judges, professors, UN and NGO employees, etc. from over 80 different countries.

The HHC-managed Refugee Law Reader, (www.refugeelawreader.org) a unique multilingual teaching tool, has reached 133,700 users worldwide by 2017. This capacity-building initiative has helped 22 professors start teaching refugee law and 7 of them initiated a refugee law clinic on 3 continents.

Our work inspires numerous other organisations in and outside the country and shows an alternative to apathy and giving in to lowering standards.

MERTEK MEDIA MONITOR

Year of establishment: 2011

CEO: Ágnes Urbán; Contact information: www.mertek.eu

Mission

Mertek is a committed believer to European and international human rights standards and constitutional democracy. It has undertaken to review the implementation and impact of the Hungarian media laws adopted in 2010 and the resultant media policy measures; to contribute to the Hungarian and European discourse on freedom of expression and press freedom through its professionally grounded analyses and position papers; to promote the transparency of media policy decisions; and to ultimately exert pressure on media policy and regulatory decision-makers.

Key areas of activity and expertise

Based on legal, journalistic, sociological and economic expertise, Mertek evaluates media policy measures and lays out its own policy proposals. Its activities are comprised of: legal analysis and impact studies – which allow for the evaluation of the impact of the new media laws on the broader market and content coverage, as well as on journalists' conduct,

thus promoting the effectiveness of freedom of the press and maintaining democracy.

Mertek Media Monitor aims to compensate for the lack of operating transparency of the state authorities overseeing the media and provides a significant base for the future review of media regulation and media policy.

Assessment of the media law also includes broader sociological and economic analyses. The multidisciplinary approach includes: monitoring of journalists' practices and attitudes; the analysis of media market trends with special regard to the pluralism of local media markets and the shaping of printed and online media markets; the analysis of media contents from news to tabloids with special attention to public service media, in order to explore the phenomena and changes that can be traced back to regulation.

Activities and Projects

Analysis of state authorities overseeing the media and their decisions, along with court decisions relevant to media content, constitutional court decisions, judgments of the ECtHR.

Monitoring the effectiveness of the regulation: development and application of the press freedom index that gives an overview about the impact of media laws on journalism, media market and content supply. Study of the journalists' and editors' attitudes and personal experiences through surveys and interviews. Analysis of materials disclosed by the program monitoring service of the state authorities overseeing the media.

Regular analysis of the technological, economic and social environment of the media system: monitoring foreign regulations and media political tendencies, research to identify profession-specific problems in journalism. **Advocacy for the freedom of the press and strong publicity, widespread publication of the results:** incorporating the results into communications and law courses of universities, workshops, and professional discussions for journalists.

Best Practises

Continual monitoring and analysis of the decisions rendered by the Hungarian Media Authority.

A press freedom index that tracks the attitudes of journalists, media owners and media managers, and the attitudes of the audience as well;

In cooperation with other Hungarian civil organisations, MerteK joins European initiatives to shape the future of media regulations. It is also involved in international research projects. Its analyses were used by the European Parliament and Freedom House, among others, and the Council of Europe issued responses to its position paper.

Problems and Barriers

Collaboration and communication with the Government is limited, and is strictly based on data requests sent to different institutions (Media Council, Public Service Media) or complaints sent to Media Council. The data are usually provided, the Media Council complaints did not have any results.

MerteK Media Monitor was never harassed by any government authority (National Tax Authority, Prosecution), like some other NGOs in Hungary.

Resources of Organization, Possible Areas of Cooperation

The main resources of the organisation come from the following foundations Open Society Foundations, Fritt Ord, Stichting Democratie & Media, Visegrad Fund, Google – Digital News Initiative Innovation Fund.

CZECHIA

ASOCIACE PRO MEZINARODNI OTAZKY – AMO

Year of establishment: 1997

CEO: Vladka Votavova; Contact information: www.amo.cz

Mission

The mission of AMO is to promote research and education in the field of international relations. AMO facilitates the expression and implementation of ideas, thoughts and projects to increase education, mutual understanding and tolerance within society.

Key areas of activity and expertise

International relations, Foreign policy, Education in Foreign policy.

Activities and Projects

The main areas of our activity include:

The Legislation Process – Policy making (monitoring, participation in committees, communication through mass media, collecting data, connection with people who are involved in the legislative process).

Legal education – education in Foreign and European Policy.

Agenda for Czech Foreign policy – Annual publication on the foreign policy of the Czech Republic, that critically assesses the conduct of the Czech Republic on the international stage in each year and offers policy recommendations for the next year. The Agenda is a subject of interest to officials of several Czech ministries (MFA etc.), political parties' members and foreign diplomatic services in the Czech Republic.

Within its field of interest, AMO conducts various kinds of research (e.g. foreign policy strategy, European policy strategy and most importantly a concept note on human rights and transition assistance). AMO tries to advocate for a specific legal frame supporting the development of human rights not only in the Czech Republic but especially abroad. In a concept note on human rights and transition, they cooperated under the umbrella organisation DEMAS, and tried to develop a coherent strategy with specific goals in cooperation with Ministry of Foreign Affairs. Their research activities are e.g. aiming at a better understanding of policy-makers in security policy.

Best Practices

Working groups, Round Tables, Group of External Consultants – they are invited as experts on foreign affairs. AMO is also part of the National Convention on the EU – concrete details are in the card of European Values.

Problems and Barriers

The state or government should be more open to third sector expertise. This would consist of understanding what can be gained from the third sector and a clear definition of what is expected from the third sector.

Resources of the Organisation, Possible Areas of Cooperation

AMO consists of experts in their field, most of whom also work in academia where they broaden their knowledge about foreign policy. The state could use their knowledge regarding foreign affairs.

IN IUSTITIA

Year of establishment: 2009

CEO: Klára Kalibová; Contact information: www.in-ius.cz

Mission

The aim of the organisation is to educate the public on hate crimes and to facilitate a discussion about it. The organisation also actively helps victims and witnesses of hate crime, which also includes legal aid. They cooperate with other organisations which are focused on the same topic. The mission of the organisation is to provide social care, legal information and free representation in the court. They also help vulnerable people and women without shelter and protect them from human rights violations.

Key areas of activity and expertise

Hate crime, social care, free representation in court, racism, anti-Semitism, islamophobia, homophobia, gender based – violence, ageism, health status.

Activities and Projects

Our principal projects have included:

The project “Hate crime in the Czech Republic – analysis and monitoring”. The aim of the project is to raise awareness about hate crime in the Czech Republic through monitoring of hateful incidents and their analysis. This data will be published in a report on hate

violence. The second aim is to support vulnerable communities and educate them about human rights.

The project “Consulting Justýna MHMP” (2016) – these activities are conceived as a legal and social consulting service. These activities follow up on a crime prevention program from 2015. There are several aims: strengthening the legal awareness of threatened communities, searching for victims of hate crime, encouraging cooperation and providing social care to victims of hate crime within the legal system. The organisation In Iustitia is basically interested in a situation, where the laws already exist, but there is some trouble with the implementation of those laws into practice. The organisation proposes changes according to its area of research. They elaborate analysis of the current state of the law and monitor its implementation, take part in consultations of new legislation and create legislation amendments of existing regulations.

In Iustitia monitors and cooperates with the government on the implementation of the law around hate speech and hate crime. Furthermore, they participate in a working group of the Ministry of the Interior, and in a governmental body called Agency for Social Inclusion (Agentura pro sociální začleňování). In both of those groups, they try to develop best practices and draft legislation, which combats hate crimes and/or hate speech.

Resources of the Organisation, Possible Areas of Cooperation

The organisation has long-term experience in education on hate crime. They have educated professionals (e.g. social workers) as well as teachers and youth about how to recognize hate crime/hate speech and how to work with it.

LEAGUE OF HUMAN RIGHTS

Year of establishment: 2000

CEO: Dan Petrucha; Contact information: <http://llp.cz/>

Mission

The organisation defends the rights and freedom of citizens in the Czech Republic. They help people to know their rights. They support systematic changes, which improve human rights especially in the field of healthcare, education, the judiciary and police. Their vision is a society, in which human rights are respected and where every person can claim justice in the case of violation.

Key areas of activity and expertise

Human rights, the education system, welfare and the social system, the judiciary and police.

Activities and Projects

The League of Human Rights is active in several topics which relate to legal issues. In general, the area of focus is human rights and legal education. The experts primarily concentrate on strategic litigation in specific health care cases, cases of people with disabilities and cases involving police violence. In those areas, they educate students of law as well as the broad public.

The League of Human Rights is interested in the issues in the legal system, possible changes and legal remedies. It is not a matter of just a few individual projects because of the many areas which were mentioned before. One of the projects in the health care system is called Fair Hospital. This project focuses on the explanation of health care to the broad public. Health care law is a very complicated area in the Czech Republic and people often do not know what their doctor is allowed or not allowed to do. Furthermore, in this area, there is education of law students in health care law. The League of Human Rights supports the freedom of choice in vaccination and obstetrics – especially through strategic litigation (sometimes free legal assistance is granted).

The League of Human Rights also supports better and faster justice, especially the formation of a new independent control body for police behaviour.

Best Practices

Some of the best practice concerns cases won in front of the European Court of Human Rights – one of the latest is a case from October 2016, when the ECtHR ruled that the Czech Republic was responsible for malpractice in locating people with disabilities placed in residential homes without their consent (Červenka against Czech Republic). Some cases were also won in Czech courts. Such court decisions also have the potential to change the practice – e.g. some of the decisions on mandatory vaccination.

DOCUMENTS, STATEMENTS, ACTIVITIES

Below we include the selection of documents that are relevant for our subject and work of LTTs. The selection is based on the choice of project partners who thought that this information is worth being shared (full versions of the documents, with all footnotes, are included in the respective country reports).

Threats to the process of transition from institutional to community based care in the Czech Republic

Prague, 21. April 2015

JDI – JEDNOTA PRO DEINSTITUCIONALIZACI

1. Main issues and threats

regarding system of social care:

- 1.1. There are 16,000 persons with disabilities in Czech institutional care establishments. And around 8,000 children in institutional care.
- 1.2. Persons with disabilities living in the community do not have required support from community based services; they don't have enough money to cover support essential to an independent living.
- 1.3. Still, new institutional care services are being built. There is significant increase of places in so called "homes with special regime" (locked-up institutions). Institutional care for elder people is rising.
- 1.4. Existing institutions are being developed and rebuild (in the name of so called "humanization"). Even using money from EU funds.
- 1.5. The whole system of social care is designed to favour institutional care (most of money spend on care for people with disabilities goes to the institutions).

regarding use of European Structural and Investment Funds as a means of promoting social inclusion:

1.6. There is no strategy for transition from institutional to community based care in the Czech Republic, even though it is one of ex ante conditionalities for ESIF.

1.7. There is a substantial threat of ESIF money being used to develop institutional care in the Czech Republic; there are no clear criteria in the Operational Programmes to ensure support of community based care and rule out financing of institutional care.

1.8. There is a threat Czech Republic will avoid ex ante conditionalities and ESIF money will be again used to develop and rebuild institutional care (in the name of so called “humanization”).

For details see: Threats to the process of transition from institutional to community... Appendix. Data and sources.

2. What the Czech rep. has done so far in the area of deinstitutionalization of social care

2.1. Ministry of Labour and Social Affairs (MoLSA) has started the process of transition from institutional to community based care (so called “transformation”) in the years 2009–2013.

2.2. MoLSA support transformation of selected institutional care homes. During a MoLSA project in the years 2009–2013 some 540 people left institutional care. That is 2.3% of all institutional care residents.

2.3. Part of ESF money has been used for transformation.

2.4. MoLSA set transformation (deinstitutionalization) as one of goals in National Strategy of Social Services for the year 2015.

2.5. MoLSA has created, with the help of ESF money, a complete and complex set of methodological and analytical materials, which can be used to further the deinstitutionalization of social care in Czech rep.

2.6. There is a substantial network of ex-users of institutional care, informal carers, experts and organisations who have experience with deinstitutionalization of social care and are ready to share them.

2.7. There are examples of good practice in deinstitutionalization in the Czech Republic.

3. Key steps to further deinstitutionalization: what needs to be done

We call on MoLSA as the institution responsible for social care to:

3.1. Create a strategy for transition from institutional to community based care, including:

- a. clear definition of institutions to undergo transformation;
- b. clear steps and objectives, including a timetable, to leave an institutional model of care;
- c. clear measures to create a system of support for families and people with disabilities living in the community, including a timetable.

3.2. Create clear mechanism to ensure money from ESIF is used to promote social inclusion and the transition from institutional to community based care, in accordance to A19 of CRPD. The results of individual projects funded by ESIF should be people leaving institutional care, lower number of beds in institutional care and increased capacity of community based care.

3.3. Include civil society organisations and representatives of persons with disabilities and other concerned people in the preparation of strategy for transition from institutional to community based care and the national strategy of social services.

3.4. Create incentives for regional governments (as major providers of institutional care) to make the transition from institutional to community based care.

JDI – we are a wide group of ex-users of institutional care, people with disabilities, organisations and experts motivated, experienced and ready to help with the transition from institutional to community based care.

Independent Civil Society under attack in Hungary – Statement by Hungarian NGOs

(footnotes excluded)

OSCE HDIM 2017; Working session 2: Fundamental freedoms I.

Freedom of peaceful assembly and association – National human rights institutions and the role of civil society in the protection of human rights

Tuesday, 12 September 2017

The undersigned civil society organisations from Hungary wish to draw the attention of the Organisation for the Security and Cooperation in Europe (OSCE) to the alarmingly shrinking civic space for civil society and the growing obstacles faced by human rights defenders in Hungary.

The Law on the Transparency of Organisations Receiving Foreign Funds (Anti-NGO Law)

The Law on the Transparency of Organisations Receiving Foreign Funds (Anti-NGO Law) was adopted on 13 June 2017 by the governing majority of the Hungarian Parliament, despite repeated domestic and international objections.

The law is part of a series of measures that began in 2013 designed to discredit and silence civil society organisations that are trying to hold the government to account to its obligations concerning anti-corruption, environmental protection, fundamental rights, democracy and the rule of law. Other measures include unfounded allegations by members of the Hungarian government, misleading reporting from government-friendly media, the terms of the “Let’s Stop Brussels” so-called consultation, as well as a series of unjustified investigations in 2014 against NGOs that had received funds from the EEA Grants NGO Programme.

Under the Anti-NGO Law, any civil society organisation that receives over about USD 28,000 per year from foreign sources should register as an “organisation receiving foreign funds” in a state register, and should display this stigmatising label on all of its publications. Failure to comply with the law could lead to a judicial procedure that could impose fines or even result in the court dissolving the organisation.

The ability to seek, receive and use funding is inherent to the right to freedom of association and essential to the existence and effective, independent operations of any organisation. Labelling NGOs or mandating separate registration for NGOs that receive foreign funding will likely single out and therefore stigmatize NGOs that receive such funding and has been seen as hampering their work, including ability to access and raise resources also domestically.

Grave concerns by international actors

Many international bodies and human right institutions have expressed grave concerns about the draft of the Anti-NGO Law.

After a country visit to Hungary in January 2016, the UN Special Rapporteur on the situation of human rights defenders, Michel Forst expressed concern in March 2017 about the continued stigmatization of human rights defenders in Hungary and about the chilling effect of the inflammatory language used by senior government officials on the public perception of the value of civil society. The Council of Europe President of the Conference of INGOs and the President of the Expert Council on NGO Law issued a statement on 7 March 2017 to urge politicians

to refrain from using accusatory and labelling rhetoric and to respect some key principles to ensure that fundamental rights are not infringed.

The EU Fundamental Rights Agency and the Council of Europe Commissioner for Human Rights also expressed their concern about the compatibility of the draft law with European fundamental rights standards. The Parliamentary Assembly of the Council of Europe requested the Hungarian government to suspend the national parliamentary debate on the draft law pending the opinion of the Venice Commission. The Government of Hungary was requested to withdraw the draft law, outright, by European Parliament Resolution of 17 May 2017 on the situation in Hungary.

The European Commission for Democracy through Law (Venice Commission) issued a final opinion on the draft Law on 16 June. The Venice Commission stressed that the legitimate aim of ensuring transparency of civil society organisations in order to prevent undue foreign political influence, the fight against money laundering and the financing of terrorism cannot be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work. The Venice Commission expressed concerns that the Law will cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination.

In July 2017, the European Commission launched an infringement procedure on account of the law on foreign-funded NGOs. The Commission found several violations of EU law, namely that the Law interferes unduly with fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, in particular the right to freedom of association. The Commission concluded that the new law could prevent NGOs from raising funds and would restrict their ability to carry out their work. The new registration, reporting and publicity requirements foreseen by the law are discriminatory and create an administrative and reputational burden for these organisations. These measures may have a dissuasive effect on the funding from abroad and make it difficult for the concerned NGOs to receive it.

The Anti-NGO Law is unnecessary, stigmatising and harmful

To date, 233 Hungarian NGOs have publicly condemned the Anti-NGO Law as we believe it is unnecessary, stigmatising and harmful. Unnecessary, because Hungarian civil society organisations are already transparent in their operations, provide accurate information about their donors and finances in annual reports and carry out their activities before

the public. Stigmatising, because the law implies that organisations which work for the benefit of Hungarian society by receiving international grants for their work pose a threat to the country. Harmful, because it undermines mutual trust in society and questions the right to freedom of expression.

There is a reason to fear that the newly adopted law will not be the endpoint of the several years long governmental campaign to denounce Hungarian civil society organisations. On the contrary, this is a new step in a long process that aims at fully discrediting civil society organisations. However, there can be no real democracy and civil liberties without independent and critical thinking and a strong civil society.

The undersigned Hungarian NGOs reaffirm that the Law on the Transparency of Organisations Receiving Foreign Funds is unnecessary in a democratic society and should be repealed.

After the Anti-NGO Law came into force at the end of June 2017, 23 civil society organisations filed a joint complaint to the Constitutional Court of Hungary as we allege the law breaches constitutionally protected rights to a good reputation, privacy, freedom of expression and freedom of association.

Recommendations

We call on the OSCE and OSCE Participating States to:

1. Continue monitoring the situation of human rights defenders and independent civil society organisations in Hungary and intensify efforts to empower and support them, including through political, legal and financial assistance.
2. Urge the Government of Hungary to fully implement the OSCE Guidelines on the Protection of Human Rights Defenders. Most notably, the government should be urged to refrain from using accusatory and labelling rhetoric against human rights defenders and independent civil society organisations; instead, it should be encouraged to take proactive steps to counter discrediting of human rights defenders and independent civil society organisations by political leaders and in the media.
3. Engage with the Government of Hungary to encourage meaningful dialogue between the Government and civil society, in order to ensure that institution-building, development and other programmes are human rights compliant.
4. Explore and strengthen non-governmental, alternative sources and means of funding for independent civil society, with a view

to ensuring free and non-politicized access to funding for all civil society organisations.

5. Monitor the impact of legislation as well as other measures and related actions (including communication) by state actors and the media targeting the funding and operations of civil society organisations in Hungary.

Signed by the following Hungarian civil society organisations (31 TTs and organisations signed)

Study on optimisation of the judicial map in the Republic of Moldova

The study on optimization of the judicial map in the Republic of Moldova is a good example of cooperation between the Government and civil society in Moldova. At the request of the Ministry of Justice, Legal Resources Centre from Moldova carried on the study and, as a result, the Law on the optimization of the judicial map was adopted by the Law no. 76 of 21 April 2016.¹²⁶ The Law provides for optimization of judicial map by merger of first instance courts, providing for minimum 9 judges per court and hence reducing the first instance courts from 44 to 15. See below the Executive Summary of the study.

Study on optimisation of the judicial map¹²⁷

Published with the financial support of the US Embassy to Moldova within the program to assist in the implementation of the Justice Sector Reform Strategy (JSRS) for 2011–2016.

Executive Summary

The study on optimization of the judicial map in the Republic of Moldova was produced within the project of the Legal Resources Centre from Moldova (LRCM) – “LRCM contribution to the implementation of the Justice Sector Reform Strategy: Pillars I and II”. The project included two additional studies: the study on specialization of judges and feasibility of creating administrative courts in the Republic of Moldova and the study on optimisation of the structure of the prosecution service and of the number of prosecutors in the Republic of Moldova. The project was funded by the US Embassy in Moldova within the program to assist in the implementation of the Justice Sector

¹²⁶ <http://www.legis.md/cautare/rezultate/97419>.

¹²⁷ http://crjm.org/wp-content/uploads/2014/06/2014-Study-Optimis-Jud-Map-MD_en-web.pdf.

Reform Strategy (JSRS) for 2011–2016, approved by the Parliament on 25 November 2011, and its action plan. The content of the study is the full responsibility of the LRCM.

This study is provided by JSRS strategic direction 1.1., specific intervention area 1.1.1. The study only looked at the district courts and the courts of appeal and, respectively, provides recommendations only for these courts.

One of the main challenges of carrying out the study was lack of ready to use data and the need to both identify relevant data and collect them particularly for this study. For providing a clear picture to the reader, the data collected for the study are explained in detail. The main data used for the study include the workload of courts for 2010–2012, the number of judges and of non-judge staff for 2010–2012 and for 2013 and the socio-demographic data for 2010–2011. The authors emphasize the need for a more thorough approach to the workload of courts, which takes into account the different levels of complexity of cases, rather than the use of the traditional approach to include all cases and divide them by number of judges. The authors also emphasize the need for improving the data collection in the judicial system, which means that all courts should use the Case Management Integrated Program for examined cases.

The main method used for the study is the Data Envelopment Analysis (DEA), which was used for calculating the assignment of judges per courts. The DEA-models have been supplemented by various other models, including a regression model to assess the statistical relationship between court workload and population characteristics, and a ratio model which is used to estimate the optimal number of non-judge staff per court. Annex 1 explains in more detail the best practices used internationally for measurement of court efficiency, allocation of staff and assessment of court structure.

The study is structured in three main parts. In the first part, chapter 1 and 2, it explains why optimization of courts is beneficial in Moldova and describes in detail the methodology applied for the study. The second part, chapter 3, includes an analysis of allocation of judges and non-judge staff per courts. The third part, chapter 4, includes recommendations for optimizing the judicial map in Moldova by merging certain courts.

The study concludes that optimisation of judicial map is beneficial for Moldova. The main arguments for optimization of the judicial map are to create conditions for enhancing quality of the justice and a better use

of public funds in the judicial field. The study focuses on how best to assign judges and non-judge staff per courts in order to ensure an even workload among courts and makes recommendations in this respect. Ensuring a relatively even workload among different courts ensures not only an efficient use of public funds, but also creates a healthy environment for delivering qualitative justice. It also ensures a fair functioning of the system by providing equal remuneration for the similar amount of work performed.

The study does not provide an estimate for the optimal total number of judges in the system and does not analyse the Supreme Court of Justice (SCJ). Recommending an estimate for the total number of judges and making recommendations for the SCJ would require a different methodology and much more detailed analysis of the actual work processes in courts than what have been possible within the scope of this project. The study includes two estimates for allocation of judges per court and recommends one of these models, with specific numbers, for allocation of judges per each district and appellate court. The implementation of recommendations would mean reallocation of 66 judge-positions within the system. The study also recommends the necessary judge-time per investigative judges per court and recommends adopting a more flexible approach for assigning investigative judges per court based on the workload, rather than using one approach of 1–2 investigative judges per all courts. Where the workload does not justify a full-time position of an investigative judge, the respective judge should handle other types of cases as well. The study provides two estimates for allocation of the non-judge staff per district and appellate courts. The exact recommendations on the number of judges and non-judge staff to be adjusted per each court are provided in Chapter 3 of the study (Tables 1, 2, 3, 6 and 9), as well as in Conclusions and Recommendations.

The chapter includes three scenarios for potential merger of courts. These scenarios are based on the minimum number of judges per court. The scenarios include proposals for merger of all courts that are below 5, 7 or 9 judges. *Scenario 1* recommends 13 district courts, including the 2 specialised courts, for merger due to the fact that they have less than 5 judges (1–4 judges). These courts are: [... courts listed]. *Scenario 2* recommends 27 district courts, including the 2 specialised courts, for merger due to the fact that they have less than 7 judges (1–6 judges). These courts are: [... courts listed]. *Scenario 3* recommends 34 district courts, including the 2 specialised courts, for merger due to the fact that they have less than 9 judges (1–8 judges). These courts are: [... courts listed]. All three scenarios recommend closing the current two

specialised courts (Military and District Commercial Court) due to low workload.

The merger recommendations are only provided as examples of potential mergers. A more in-depth analysis of the best options could be further done, to look in more detail at the geographic distances between the merged courts, the accessibility of public transportation, the costs necessary for improving the courts' infrastructure and the impact of amending the judicial map on other justice sector institutions. As most of the buildings of the current courts in Moldova are in need of renovation or capital investment in order to provide adequate conditions for the functioning of the court, investments are necessary in any way. However, specific costs analysis should be done for deciding on the best options for merger and the scale of the necessary investment.

The study is primarily meant for the policy-makers that can decide on the allocation of judges and non-judge staff per courts and the structure of the judicial map. The main policy-makers with these competences are the Superior Council of Magistracy, the Government, in particular the Ministry of Justice and the Ministry of Finance, and the Parliament. We hope that the study will be useful for them, as well as for the judiciary and other representatives of the justice sector and public administration.

Declaration of civil society organisations (Moldova), 19 May 2017

The attack on civil society organisations because they oppose the amendment of the electoral system is inadmissible and erodes trust in state authorities

Supporting democratic institutions and expressing opinions on issues related to the electoral system do not represent political affiliation. We invite the representatives of public authorities, political parties and media institutions to refrain from attacks on civil society organisations that are active, independent and have critical views on the initiatives of the authorities. We call for a return to an open dialogue with all civil society organisations in order to promote the rule of law and the reforms that are really necessary in the society.

On 5 May 2017, several civil society organisations condemned (declaration available in Romanian, Russian and English) the manner in which the draft law no. 60 (proposing the introduction of the uninominal system in the parliamentary elections) and the draft law no. 123 (which envisaged the introduction of the mixed system) (50%

on party lists and 50% according to the uninominal system) were adopted in the first reading. Both draft laws were voted with serious procedural violations and without the Venice Commission's opinion, although this was requested, while the promoted amendments are crucial to the functioning of democratic institutions in the country. Between 5 and 14 May 2017, protests were held daily in Chisinau, attended by representatives of civil society. Protests were organised to raise public and Parliament's awareness about the serious consequences for democracy of the adoption of these draft laws.

On 15 May 2017, during the TV show "Punctul pe Azi" from TVR Moldova, the Speaker, Andrian CANDU, mentioned that the electoral system will change from the proportional into the mixed one regardless of the views against this change and that now the discussions are being held only about the improvements to the draft laws. Mr. Andrian CANDU has also labelled the organisations that publicly opposed the initiative to amend the electoral system as "politically affiliated organisations". According to the Speaker, the statement that an electoral system is bad for the country is a political decision and a political discourse which NGOs should not have. Some media sources affiliated to political parties made similar assertions. Moreover, the day before, on 14 May 2017, the authorities undertook a series of measures to discourage citizens from participating at a protest. Numerous local bus routes to Chisinau have been cancelled and local train services have been stopped throughout the country. Also, there have been reported symptomatic cases imposing fines to several drivers who were transporting citizens to Chisinau.

At the same time, Speaker's statement that the decision to change the electoral system in the mixed system has already been taken before the Venice Commission's opinion is worrying, because this opinion might be a negative one. Democracy does not mean the right of the government to make decisions at the expense of democracy, through unilateral measures and manipulation of the public opinion. The draft law on the introduction of the mixed electoral system in general has not been subject to public hearings and debates. It was suddenly introduced on Parliament's agenda on 5 May 2017 in the absence of the approval of the Government and of the parliamentary committees and was voted on the same day.

The signatory organisations underline the importance of plenary involvement of the society in the debate on proposed reforms, especially when it comes to changing the electoral system, and especially when in the neighbouring countries the proposed system proved to be

detrimental to democracy and encouraged corruption. The change of the electoral system has direct consequences on the functioning of the state. It depends on the electoral system to what extent the elections will truly reflect the will of the people. Changing the electoral system is not a decision that belongs only to the governing parties, but is a decision of high public interest which determines the manner in which the state functions further, and therefore is an issue which must be widely debated in the society.

Civil society organisations have not only the right, but also the responsibility to engage when reforms that endanger the rule of law and democracy are promoted. That is why expressing opinions on the change of the electoral system is not political affiliation, but the civic responsibility of every citizen and of every civil society organisation in the Republic of Moldova. Organisations that criticized the initiatives to change the electoral system have operated with valid arguments and have exemplified the relevant experiences of neighbouring countries. Their arguments have not been followed by adequate answers. Instead, they are being attacked in a manipulative manner. Attacks against active civil society organisations lead to the division of the civil society, through the use of different methods, including trolls and organisations affiliated to the power. Tolerance of aggressive rhetoric of political leaders with high positions in the legislative branch can stimulate the reaction of affiliated political structures to launch a “witch hunting” to demonstrate their political utility, reverting to the tools of intimidation and harassment used during the ruling of PCRM.

From the above-mentioned considerations, labelling of political affiliation of organisations that do not share the point of view of governing parties is an attempt to silence these organisations and limit their involvement in the decision-making process. Such behaviour is inadmissible in the process of debating such an important initiative as changing the electoral system. Such speeches are not suitable for state officials and erode public confidence in state authorities.

We therefore ask the representatives of public authorities and political decision-makers:

- to immediately cease attacks against civil society organisations that have different or critical views regarding actions or initiatives of the government;
- to engage in an open and inclusive dialogue with all civil society organisations on the real priority reforms for the country (e.g. poverty

reduction, central and local public administration reform, fighting corruption, political party financing, justice reform, education, etc.).

We also appeal to all media and opinion-makers to abide by deontological and common sense norms, as well as provide an equally balanced reflection of the debates taking place in the society on initiatives to change the electoral system and other issues of public interest.

Signatories (in Romanian alphabetical order 22 TTs and organisations).

Programme of cooperation between the Ministry of Justice and the non-governmental organisations (Poland)

The program was developed in 2015 (for 2016) by the Ministry of Justice. It was long process including the consultations with civil society. Finally the program was officially published as a Minister's regulation (zarządzenie). Unfortunately, after the parliamentary elections in the autumn of 2015 the new government did not decide to implement the program. It is however interesting and may serve as a point of reference. The program is quite comprehensive, below we include only short description prepared by the Ministry of Justice.

Full program in Polish: Program współpracy Ministra Sprawiedliwości z organizacjami...

Presentation on the program in English by M. Solon, Ministry of Justice (prezi): https://prezi.com/wy9sgapywoo_/cooperation-programme-2016/

The purpose of the Programme of cooperation between the Ministry of Justice and the non-governmental organisations and other public benefit entities for 2016 is organisation of cooperation processes between the Ministry of Justice and the NGOs as well as initiating the improvements underlying further and more extensive cooperation between these institutions.

The Programme's establishment was the effect of the "Programmes for change" project implemented jointly by the Ministry of Justice and the National Federation of Polish NGOs. The Cooperation Programme Team composed equally of the NGOs representatives and the representatives of individual department of the Ministry of Justice was established within the framework of the project. The final form of the Programme was set up in the course of the meeting and workshops carried out under the project.

The Programme defines the main objective followed by detailed objectives, derived from the strategic directions specified in a more comprehensive document, entitled Strategy of modernization of the area of justice in Poland for 2014–2020. The Programme objectives include as follows:

Main objective – increasing mutual trust between the citizens, NGOs and public institutions in the area of justice, in particular by organizing effective and efficient cooperation of the Ministry with the organisations and establishing the official frameworks for such cooperation.

Detailed objectives

Objective 1. Ensuring effective execution of citizens' rights to participate in the area of justice.

Objective 2. Enhancing the procedures of cooperation with the NGOs.

Objective 3. Consolidation and better consistency of cooperation with the NGOs in the Ministry of Justice.

Objective 4. Effective allocation of funds for cooperation with the NGOs. The Programme focuses also on the description of the rules of cooperation (general and accompanying the public consultation process) as well as institutional support for cooperation (forms of cooperation and defining the obligations of the individual units in the MJ).

The basic arrangements are followed by eleven priority tasks referring to the individual detailed objectives specified in the Programme and including:

1. Increasing publicity and transparency of operation of the Ministry of Justice by publication of Raw statistical data and information on the projects implemented by the Ministry (in line with the Open Data Strategy guidelines provided by the European Commission).
2. Adopting the assumptions of multiannual cooperation of the Ministry of Justice with the NGOs.
3. Organisation of the public consultation process with consideration to recommendations provided in the Guidelines for impact assessment and public consultations performance document adopted by the Council of Ministers.
4. Carrying-out of the accountability standards functioning analysis for the projects financed from the Crime Victims and Post-penitentiary Assistance Fund and implementation of the mechanisms favouring the

organizations meeting these standards and eliminating the ones failing to comply.

5. Dissemination of the rules on obtaining the patronages of the Minister of Justice.
6. Determination of transparent rules on project partnership with participation of the Ministry of Justice and its subordinate units as well as NGOs, analysis of opportunities for enhancing the establishment of such partnerships.
7. Designation in the organizational rules and regulations of the Ministry of Justice of the organizational unit responsible for coordination of cooperation with the NGOs, including coordination of the Programme implementation with the NGOs and other public benefit entities.
8. Preparation and carrying-out of the audit on the operations of the advisory and consultative bodies at the Ministry of Justice, enhancing information flow between them, standardization of the method for communicating the effects of their works and determination of transparent criteria for appointment of the members of such bodies.
9. Establishment of the NGOs database acting as a consultative list and a tool for grants administration and settlement management (application generator).
10. Carrying-out of an analysis of opportunities for commissioning the public tasks to the NGOs by the Ministry of Justice in 1Q 2016, followed by allocation of funds intended for financing the projects executed by the NGOs in the “justice” area in the Ministry’s budget.
11. Standardization of services provided from the funds distributed under the Crime Victims and Post-penitentiary Assistance Fund in the part of assistance provided to the crime victims.

Successful Monitoring of Candidates for Justices of the Polish Constitutional Tribunal (Poland)

Monitoring of Candidates for important public posts was initiated in 2006 with monitoring of candidates for justices of the Constitutional Tribunal and currently covers number of positions (see in the report). Most materials about the project are available in Polish. Below we include the press release that was also available in English. Even it is dated for 2010 it adequately describes methodology of the monitoring activities.

15 March 2010; Press release from:

Helsinki Foundation for Human Rights

INPRIS – Institute for Law and Society

Polish Section of the International Commission of Jurists

A coalition of non-governmental organisations monitored the election process for a justice of the Polish Constitutional Court. This civic vetting process led to withdrawal of the candidate initially thought to have the support of the parliamentary majority. The involvement of the press and the NGOs proved necessary for the official, parliamentary vetting process to work.

Since 2006, a coalition of three non-governmental organisations: the Helsinki Foundation for Human Rights, the Batory Foundation and the Polish Section of the International Commission of Jurists („NGO Coalition”) monitors elections of the justices to the Polish Constitutional Tribunal. The NGO Coalition believes that elections to one of the key public positions in Poland should not occur without civic scrutiny. We think that the public has the right to know the ethical and professional qualifications of the candidates.

The Coalition undertakes the following activities to advance an informed, fair and transparent election process:

- independent research, collection and publication of data on the candidates (e.g. filing requests for public information in government agencies that hold official records about the candidate’s career);
- we ask the candidates to answer a detailed questionnaire on their career and qualifications; our questionnaire and the answers are published on the Internet at monitoringsedziow.org.pl;
- public debates with participation of the candidates;
- we monitor the parliamentary proceedings in the election process, starting with the official hearing of the candidates before the Justice and Human Rights Commission of Sejm (the lower chamber of the Polish Parliament).

In 2006–2009, the Coalition monitored the election of several candidates to the Constitutional Tribunal.

In January 2010, the composition of the NGO Coalition changed. INPRIS – Institute for Law and Society (*INPRIS – Instytut Prawa i Społeczeństwa*), a newly established legal think-tank, joined the group in place of the Batory Foundation. At the same time, we started to

monitor the elections for the position previously held by Justice Janusz Niemcewicz (the Vice-President of the Tribunal), who was going to end his term in March 2010. “Gazeta Wyborcza”, a high circulation, influential daily newspaper, covered the election by running a series of articles on the election.

In the beginning of February 2010, the Civic Platform (*Platforma Obywatelska*) which is the majority partner in the government coalition in Poland, and holds the office of the Prime Minister, proposed Mr. Kazimierz Barczyk, a lawyer from Krakow, as a candidate. The proposal was made without public consultation with the academic community or the legal profession. The opposition party, Law and Justice (*Prawo i Sprawiedliwość*) proposed Professor Krystyna Pawłowicz, a specialist in economic administrative law, known for her critical views on Poland’s integration with the EU.

Mr. Barczyk met criticism as a candidate. His professional qualifications for the position at the Tribunal have been questioned. Many commentators saw the proposal as a purely political nomination. Mr. Barczyk has been active in the Solidarity movement since the early eighties. Later he was a member of Parliament and of various political parties, usually oriented to the center or to the right side of the political spectrum in Poland. In his biographical information, Mr. Barczyk lists membership in the Civic Platform in 2004–2010. Recently, he has been active as a politician at the local level. In 1974–1982 Mr. Barczyk has been working first as a candidate-judge and then judge. Currently Mr. Barczyk is active as an attorney, but according to the press he remains not really well-known for his professional activity in this field.

In course of the monitoring, the NGO Coalition issued a statement to the Justice and Human Rights’ Committee of the Polish Parliament. We took the position that the elections were not fully transparent, and proceeded too quickly. The NGO Coalition complained that there was no practical way for the NGOs or the public to vet the candidates. Following the statement and growing controversies regarding Mr. Barczyk, the Polish Parliament decided to defer the vote by two weeks before the matter would come to the floor again.

By that time, the NGO Coalition obtained an official document from the Ministry of Justice on the career track of Mr. Barczyk. It became apparent that he failed to submit full and precise information to the Polish Parliament (and to general public) as regards his judicial career. He claimed to have been a judge in 1974–1982. In fact, between 1974 and 1980, he sat on the bench only as a not-yet-tenured candidate-judge (*asesor sądowy*), who had the power to adjudicate cases but was not

fully independent, and who was not a judge under the law. Second, it appeared that in 1977 he was dismissed from the position of the candidate-judge due to insufficient skills in dealing with civil cases.

Mr. Barczyk has provided the Coalition with substantive information on himself and agreed to take part in the debate to be organised by the Coalition two days before the vote at the Parliament. Professor Pawłowicz submitted the information but refused to take part in the debate.

On 2 March 2010, Mr. Barczyk withdrew. In the press release, among other claims, he asserted that his decision had resulted from a series unprecedented, political manipulations and attacks by the journalist who had been covering the election process for „Gazeta Wyborcza”.

In the statement of 3 March 2010, the NGO Coalition noted the lack of grounds for accusations advanced by Mr. Barczyk, and welcomed the withdrawal of his candidacy. The Coalition complained that the election process never saw significant interest from the public or from the media, and that the political system (even the opposition) failed to apply adequate scrutiny in the vetting process. In the opinion of the NGO Coalition, the method of election calls for improvement. In particular, more time and resources need to be devoted to verifying professional and ethical credentials of the candidates. Second, academia and the legal profession should play a larger role in the election.

On 4 March 2010, the majority in the Polish Parliament voted against the appointment of Professor Krystyna Pawłowicz as a justice in the Constitutional Tribunal. Thus, new elections are due, and there is one vacancy at the Tribunal.

If not for the monitoring, probably Mr. Kazimierz Barczyk would have been appointed to the Constitutional Tribunal. The successful effort by the NGO Coalition and “Gazeta Wyborcza” demonstrates that public scrutiny should and can be brought into the election process, and that it can have positive effects on the composition of top level judicial bodies. At the same time, we realized again that the political class, the legal profession, NGOs, and the academia in Poland need to step up and play an active role in the vetting of candidates.

First Letter of LTTs and CSOs to the Venice Commission (Poland), 1 December 2015

Gianni Buquicchio

President of the European Commission for Democracy through Law (Venice Commission)

(fragments; footnotes excluded)

The Helsinki Foundation for Human Rights, the Polish Bar Council, INPRIS – Institute for Law and Society, Center for Citizenship Education, Institute of Public Affairs, Foundation “Panoptikon” and Stefan Batory Foundation would like to draw the attention of the Venice Commission to the recent disturbing legislative developments in relation to the Polish Constitutional Court and the resolutions adopted by the Polish Parliament concerning the Court’s composition.

It is our strong belief that the recently adopted legislative changes violate the rule of law and the rule of proper legislation, and pose a huge threat to the protection of human rights in Poland. This is why we would hereby like to submit a motion to the Venice Commission to prepare an opinion on the recent legislative changes in Poland.

Facts

1. On 25 June 2015, the new Act on the Constitutional Court was adopted. After the bill was signed by the President of Poland, it was promulgated in the Official Journal. It entered into force on 30 August 2015. On the basis of an inter-temporal provision of the Act, the Lower Chamber of the Parliament (the Sejm) initiated elections of the new judges to the Constitutional Court. The new judges were supposed to replace the three judges whose tenures were to terminate on 6 November 2015, but also two other judges whose tenures were to terminate on 2 and 8 December 2015. At the same time, the Sejm’s 7th term of office was to end at the turn of October and November 2015. On 17 July 2015, the President of Poland decided that the parliamentary elections would be held on 25 October 2015. In the light of these circumstances, a fundamental question was raised as to **who should elect the judges – the Sejm of 7th or 8th term**. The above-mentioned inter-temporal provision in Article 137 of the Act on the Constitutional Court stated that in the case of judges whose terms of office expire in 2015, candidatures for new judges of the Constitutional Court shall be submitted within 30 days from the Act’s entry into force.

2. On 8 October 2015, the Sejm (during its last session in 7th term) **adopted five resolutions in which it elected five new judges of**

the Constitutional Court. Paragraph 2 of each resolution provided that the tenure of each newly elected judge starts, respectively, on 7 November 2015 (three judges), and 3 and 9 December 2015. According to Article 21 of the Act on the Constitutional Court, before the assumption of office, a newly elected judge needs to take the oath before the President of Poland. Since the election of the new judges, **the President of Poland has not taken their oath.**

3. Before the elections took place, the parliamentary opposition (the Law and Justice party) had filed a **motion to the Constitutional Court to verify whether the Act of 25 June 2015 on the Constitutional Court is compatible with the Constitution**, e.g. whether the Sejm of 7th term was entitled, under the Constitution, to elect all five judges. The motion was, however, dropped on 10 November 2015 after the elections had already been held and after the date of the hearing had already been announced. The same motion was then sent to the Constitutional Court by a different group of MPs. The hearing before the Constitutional Court will be held on 3 December 2015.

4. During the first session of the new Parliament (Sejm of 8th term), draft amendments to the Act on the Constitutional Court were proposed. After a few corrections had been introduced into the draft, it was referred for the first reading in the Legislative Commission (*Komisja Ustawodawcza*) of the Sejm. The draft act covered:

- introduction of a tenure for the President of the Court, which results in the loss of office by the current President (3 months after the amendments enter into force);
- establishment of a 30-day time-frame for the President to hear the oath of a person who was elected as a judge for the Constitutional Court;
- annulment of the inter-temporal provision which allowed the Sejm of 7th term to elect all five new judges of the Constitutional Court;
- introduction of a similar provision which established a 7-day time-frame for filing new motions with candidates for offices of judges of Constitutional Court.

The draft act amending the Act on the Constitutional Court was adopted within 3 days. The first reading was held on 18 November 2015, while the second and the third – on 19 November 2015. During the legislative proceedings in the Sejm, no opinion of an expert in the constitutional law was heard, even though such a suggestion was formed by the Legislative Bureau of the Sejm. [...] Afterwards, late at night, the

draft act was discussed during the plenary session of the Senate and the next day, it was adopted without any amendments. On same day, after few hours, the President of Poland signed the amending act and it was promulgated. It will enter into force after 14 days of its promulgation (on 5 December 2015).

5. On 23 November 2015, a group of MPs filed a **complaint to the Constitutional Court**, arguing that the Act of 19 November 2015 violated the Constitution. The same day, the Human Rights Defender also filed his motion to the Constitutional Court. On 24 November 2015, the motion to the Constitutional Court was filed by the National Council of the Judiciary. All the motions were registered under one case number and the hearing will be held on 9 December 2015.

6. On 25 November 2015, a group of MPs who constitute a parliamentary majority submitted five drafts of resolutions containing “the declaration of the lack of legal force” of the resolutions adopted on 8 October 2015 by the Sejm of 7th term, namely the resolutions on the election of the five new judges of the Constitutional Court. Already on 25 November 2015, the Sejm held the first and second reading of the submitted draft resolutions. The justification for the resolutions stated that the previous election procedure for Constitutional Court judges was incorrect, and the resolutions aim at its validation. [...] It was also stated that the change in the composition of the Constitutional Court is necessary for the parliamentary majority in order to conduct their political reforms. [...]

This highly complicated state of facts gave rise to a set of fundamental constitutional questions.

The starting point relates to the question of **who (the Sejm of 7th or 8th term) shall appoint the judges elected to replace the judges whose tenure ends in 2015** (respectively in November and December). Three seats became vacant on 6 November 2015 – after the parliamentary elections took place, but before the 7th term of the Sejm ended. Two seats will be vacant on 2 and 8 December 2015. [...]

In parallel, the President’s failure to hear the oath of three judges whose tenure should have started on 7 November 2015 was based on the argument that the elections of the judges held on 8 October 2015 gave rise to a set of constitutional doubts. The President, however, did not initiate any proceedings before the Constitutional Court to verify those doubts. [...] **Thus, it is doubtful whether the President was entitled to refuse to hear the oath of the three judges elected on 8 October 2015 without constitutional verification.** The lack of any attempts to initiate

such a constitutional verification process could justify an opinion that the President may well have committed a constitutional offence. [...]

From the perspective of the civil society, **the fact that the act amending the foundations of the system of independent judiciary is adopted within 3 days, without any public discussion, undermines the basic principles of a democratic state, in particular the rule of law.**

Additionally, the Act adopted on 19 November 2015 results in a dismissal of the President and Vice-president of the Constitutional Court after 3 months from its entrance into force. It is a consequence of the introduction of fixed terms (3 years) for these offices with a possibility of re-appointment. In the light of the established European standards in this respect, it raises doubts whether such a solution is compatible with protection of acquired rights and with the principle of judicial independence.

Three motions by a group of MPs, the Human Rights Defender and the National Council of the Judiciary were filed to Constitutional Court arguing that the Act of 19 November 2015 violates the basic constitutional rules: independence of the judiciary and the separation of powers. Without waiting for the judgement of the Constitutional Court and without waiting for the Act of 19 November 2015 to enter into force, the Sejm adopted – without any legal basis – five resolutions aimed at “invalidating” the resolutions adopted on 8 October 2015 by the Sejm of 7th term.

Previously, the Venice Commission “strongly recommended” with respect to the Amendments to the Constitution of Ukraine that a decision on dismissing the constitutional judges “be entrusted to the Constitutional Court itself. Such a provision would strongly contribute to guaranteeing the independence of the judges.” Additionally, “a dismissal of a judge should always be subject to a fair procedure and involve a decision of the High Council of the Judiciary.” Whereas in the case of the resolutions of 25 November 2015, the **decisions of the Sejm were based on an extra-statutory cause to terminate the mandate of the judges of the Constitutional Court before their term-in-office has expired without any judicial review of such decisions.**

In addition, the procedure proposed by the amendments to the Rules of the Sejm on 26 November 2015 is contrary to the proceedings prescribed by the statute – even by the Act adopted on 19 November 2015 which enters into force on 5 December 2015. **It does not allow for a transparent and well-discussed procedure of electing the judges of the Constitutional Court. [...]** Such a procedure prevents

any verification of the candidates' profiles and background. Bearing in mind that the elections of judges for the Constitutional Court are one of the most important in a democratic state, such a procedure based on the Rules of the Sejm, but contradictory to the Act on the Constitutional Court – and illegal in their nature, since the judges of the Constitutional Court had already been elected in October 2015 – does not constitute transparent proceedings required by the rule of law. [...]

Conclusion

[...] Taking into consideration all the recent developments and a disturbing prognosis of the problem's further escalation, we would like to use this opportunity to kindly ask the members of the Venice Commission to consider issuing an opinion on the recent changes in the functioning of the Constitutional Court.

Signatures

Minimum Standards VI: Non-judicial Members in Judicial Governance, European Network of Councils for the Judiciary (2016)

Definitions

“Non-judicial members” refers to individuals, who are not judges or prosecutors, participating in Judicial Councils and other relevant bodies.

“Judicial Governance” refers to the participation of non-judicial members in activities of Judicial Councils and other relevant bodies, including activities concerning judicial appointments and promotion as well as complaint and disciplinary procedures.

1. Composition of Judicial Councils and other relevant bodies with regard to non-judicial members

1.1. The composition of Judicial Councils and other relevant bodies should include non-judicial members.

1.2. The composition of such bodies should reflect the diversity of the society, including gender diversity.

1.3. The exact number and proportions of judicial and non-judicial members depends on the type of body. In particular:

- In Judicial Councils, judges should constitute a majority, but not more than 2/3 of members. Therefore, non-judicial members should constitute at least 1/3 of members.
- In other relevant bodies, non-judicial members should participate in any selection procedure regarding the appointment and promotion of judges (and prosecutors if applicable) at all levels of seniority.

2. Process of selection and appointment of non-judicial members

2.1. The process of selection, election or appointment of non-judicial members should be merit based and transparent.

2.2. Civil society should be involved in one or more of the abovementioned stages (selection, election or appointment), including the possibility to propose appropriate candidates for consideration.

2.3. Where non-judicial members are appointed by parliamentary bodies, it is desirable that their selection be subject to the achievement of particular qualified majorities in order to avoid political influence.

3. Personal qualities, competences and political relationships of non-judicial members

3.1. Non-judicial members are expected to meet the same standards of integrity, independence and impartiality as judges. In particular they must be appointed in accordance with the standards set out in the Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary (2012). At paragraph II.5 we read: *The body in charge of judicial appointments should comprise a substantial participation of legal professionals or experts (including experienced judges, academics, lawyers, prosecutors and other professionals) and could also include independent lay members representing civil society, appointed from among well-known persons of high moral standing on account of their skill and experience in matters such as human resources.*

3.2. It follows that persons with a range of backgrounds and experience should be considered for appointment as non-judicial members. Possible categories of non-judicial members include: lawyers, academics, and other professionals like sociologists, psychologists, economists, specialists in human resources and representatives of Civil Society Organizations.

3.3. In order to secure the voice of civil society, non-judicial members should not be politicians or persons with political affiliations.

3.4. In order to respect the separation of powers, the Minister of Justice should not be a member of the Judicial Council or other relevant body.

3.5. Additionally, non-judicial members of Judicial Councils and other relevant bodies should not be involved in politics for a reasonable period of time before and after their mandate as member of a Judicial Council or other relevant body.

3.6. Certain persons should always be ineligible for appointment as non-judicial members. In particular:

- Judges, even if retired,
- Persons who have been convicted of criminal offences, who are or have been bankrupt, or who are otherwise disqualified from public office,
- Members of Parliament (including former Members), and
- Members of governments (including previous governments).

4. Status of non-judicial members

4.1. Non-judicial members should have the same rights and obligations as judicial members.

4.2. Judicial and non-judicial members should be involved in the decision making process. In order to ensure effective participation of non-judicial members it is recommended that adequate quorum for the composition of the bodies and voting procedures (majorities for adoption of decisions) be adopted to give effect to this aspiration.

4.3. Non-judicial members must have the same voting rights and should be involved in the work of all relevant bodies, including presiding committees, working groups and subcommittees created by Judicial Councils. For that reason, they should have the same access as judicial members to support staff and technical assistance, to documents and resources.

4.4. Non-judicial members should receive the same remuneration/per diem as judicial members for their activities on Judicial Councils and other relevant bodies.

5. Conduct

5.1. Non-judicial members during their service on Judicial Councils and other relevant bodies should be bound by any rules of conduct applicable to judicial members of such bodies.

5.2. In drafting rules of conduct for Judicial Councils and other relevant bodies, account should be taken of the presence on such bodies of non-judicial members.

5.3. In particular the rules of conduct developed should deal with the following matters (depending on the competences of the particular body): confidentiality in respect of all matters; honesty; objectivity and impartiality; obligation to attend meetings; obligation to fulfil the tasks; obligation to recuse oneself in the case of conflict of interest.

5.4. In default of such rules of conduct, the conduct of non-judicial members may be guided by reference to the provisions of the London Declaration on Judicial Ethics (2010), part 1.

COUNTRY REPORT TEMPLATE

(fragments)

Part One – Country questions

Introduction – summary

Short country information

The map of (Legal) Think Tanks in the country

Think Tanks activities – Government interactions

When answering the questions regarding particular thematic fields, please bear in mind the list of possible Think Tanks methods of action:

- analysis of the state of the law in the field, in particular through the comparison of the alternatives,
- monitoring of the operation of the legislation, judiciary and government agencies,
- conducting empirical surveys,
- collection, aggregation, analysis, presentation of available statistical data,
- analysis and comments on draft legislation, strategic documents, etc.,
- taking part in the consultation of legislation, taking part in developing Regulatory Impact Assessment,
- creating legislation amendments of existing regulations,
- participation in committees, advisory boards and other structures functioning at the parliamentary level or government,
- drafting standards and best practices,
- more activist actions (amicus curiae brief, strategic litigation, public statements of political character).

Please provide general information whether in your country Think Tanks are engaging in this particular field.

Please formulate (if possible, two, three) most important challenges in this field (milestones) that Think Tanks are focused on, that Think

Tanks are monitoring, advocating for or against, in the past (10 years) or nowadays.

Within this thematic field please describe types of Think Tanks activities and interaction of Think Tanks with Government.

Please provide examples of particular activities of particular Think Tanks (you may refer to the Think Tank Cards and Project Cards included below).

What are the best practices regarding legislative process in the context of Think Tanks worth sharing?

What are main challenges?

Recommendations – based on your desk research, your assessment of the situation as well as interviews (focus groups) what would you recommend in this context for the future.

Legislative process

- Legislative process as such, as a procedure. We are not interested here in any particular legislative process on given draft law. We are interested in procedure(s).

System of justice, judiciary

- Judiciary, and its qualities: independence, competence, accountability, and efficiency, management of the judiciary, IT in the judiciary.

Legal profession

- Regulation of legal profession, access to legal profession, legal ethics and discipline, etc.

Access to justice

- Legal services, legal aid, legal empowerment

Legal education

- Legal education for lawyers (legal studies, future lawyers training systems, continuing professional education)
- Legal education for non-lawyers (civic education)

Language of the law (quality, communication)

- Efforts to make law more comprehensible and accessible,

- Advancement of new tools for communication about the law (visualisation of the law, legal info-graphics, apps etc.).

Internationalisation of law

- Processes of integration, harmonisation of the law.
- International bodies (reporting and shadow reporting)

Human rights, equality, discrimination

Information society and the legal system and administration

Other thematic fields

- *If there are different thematic fields of activities of legal Think Tanks, which do not fit into any of above categories, please provide information on them here*

Think Tanks – opportunities and challenges

We are formulating here some additional questions to be answered based on the research done by authors of the country report.

We have also proposed (see below) the list of questions that might/should be used in the interviews and focus groups. In the following sections please summarise both information collected as well as your opinion and answers you received (we mark separately questions repeated from the Questionnaire for interviews).

Think Tanks and government

- What are the best methods for Think Tanks to influence decision-makers?

Questionnaire

- How should the government draw knowledge from the Think Tanks sector?
- How the cooperation between the Government and Think Tanks should be structured? What needs change?
- Should the government build its own research structures or commission analysis from outside institutions? Why?
- Where should the government draw knowledge for determining regulatory policies? What are the mechanisms for government's interaction with non-governmental research structures? What should be the shape of this relation?

Think Tanks and Academia, scientific circles

- Does the government cooperate with the academia in developing its policies? To what extent?
- Do legal sciences currently deal with issues important practically?
- In which areas there is a lack of legal research, including empirical surveys?
- Do Think Tanks cooperate with academia? How? If not, why?

Questionnaire

- Should Think Tanks seek involvement with academia? Should they look for involvement not only as regards research but also teaching?
- How should the academia structure its relation with Think Tanks? Is it competition or opportunity for cooperation? How can the academia benefit from operation of Think Tanks?
- Do you know any examples of good cooperation of Think Tanks and academia. What?

Think Tanks and their limits

Questionnaire

- What is the interaction between the activity of Think Tanks and lobbying? How should this relation be shaped?
- What is the interaction between the activity of Think Tanks and activism? How should this relation be shaped? Should Think Tanks get involved in social activism?
- Should Think Tanks look for opportunities to influence important judicial decisions (e.g. file amicus curiae briefs)?
- Does independence of Think Tanks matter? If yes, what are the principles for economic and political independence of research think-tanks? Where is the threshold that a think loses its independence? What is the relation between independence and transparency?
- Should Think Tanks operate as business entities that provide research services for remuneration?
- What should be avoided in the activity of a think-tanks? Please name examples of bad practice.

Interdisciplinary approach to the law

- Do Think Tanks promote interdisciplinary approach to the law and system of justice?

Do Think Tanks promote collaboration of lawyers with economists, psychologists, sociologists, IT experts, HR experts etc.?

Think Tanks – identifying problems

Questionnaire

- What are the best methods for Think Tanks to identify problems and issues requiring their policy work?
- What type of legal think tank activity is lacking in your country? What are the important areas of law that are neglected by Think Tanks?

TT and access to data

- Do Think Tanks face any problems with access to data needed for their analyses?
- Is the public system of collecting statistical data adequate and accessible

Think Tanks and innovations

Questionnaire

- What is the role of technology and innovation in the business of Think Tanks as regards:
 - issue spotting,
 - enhancement of research quality,
 - earning influence?

Think Tanks – success stories

Questionnaire

- What are the examples that you recommend to follow in the activity of think-tanks? What is the formula for operating an efficient and influential think-tank?
- Please name examples of particularly effective/successful methods or projects in this respect.

- Please provide, if possible, concrete examples of successful interaction of the Think Tank and Government. What determined the success in that case?
- Are there policy areas in which think-tanks prove to be particularly useful and effective?
- What should be the products of a think-tank?

Think Tanks – communications and media

- What are the methods of formulating the results of think-tanks work, ways of communicating with the public?
- Are there in your country any best practices in relation of Think Tanks and media contacts?

Questionnaire

- How should the Think Tanks structure their relation with the media? Are there specific products, ideas, or methods of presentation that Think Tanks should address to media?
- What do the media need from Think Tanks?
- Why would media consider a think tank reliable and why unreliable?
- Should Think Tanks run their own social media projects?

Cooperation of legal Think Tanks

- Do Think Tanks cooperate with each other. Are there any country networks, coalitions, and umbrella organisations? Please elaborate and describe particular projects if relevant.
- Do Think Tanks cooperate with Think Tanks from abroad? On what kind of project?
- If there is cooperation – what added value it brings.
- What are the best practices regarding cooperation between Think Tanks worth sharing?
- What are main challenges?
- Recommendations

Financing of legal Think Tanks activities

- What are the sources of funding for Think Tanks?

- Are there any special funds for Think Tanks?
- Are there public funding sources available? On what basis (grant competition, individual contract, other)?
- Are there private funding sources available? What are those sources (foundations, business, other)? On what basis (grant competition, individual contract, other)?
- Are there international funding sources available? On what basis (grant competition, individual contract, other)?
- Is crowdfunding used by Think Tanks (the practice of funding a project by raising many small amounts of money from a large number of people, typically via the Internet)? What is the experience with this?
- Are there any other sources of funding available for Think Tanks?
- What are the best practices regarding funding worth sharing?
- What are main challenges?
- Recommendations

Questionnaire

- What should be the guidelines for donors: government, NGOs and businesses which support Think Tanks? How should the donors evaluate whether their money is put for good use?

Part Two – Legal Think Tank Cards

Part Three – Legal Think Tank Projects Cards

Part Four. Country bibliography

Part Five – International bibliography. Further readings on Think Tanks

Part Six – Additional material

Part Seven – Study of Legal Think Tanks. Interview Questionnaire

Below, please find a list of questions that might be used by authors of the country report for the interviews and focus group meetings. [...]

INFORMATION ABOUT PROJECT PARTNERS

Liga lidských práv (Czechia)

LIGA was founded in 2002 by separating from Environmental Law Service and right from the beginning LIGA began to develop a wide range of activities aiming to advance human rights in Czech Republic. We focused on the police violence, protection of the rights of children and victims of the domestic violence. During subsequent two years, we became more consistent in enforcement of the human rights in practice of the state authorities. Also, an awareness-raising regarding human rights in the Czech society became a new LIGA's objective.



In 2005, LIGA began providing legal assistance in cases of illegal sterilization. In the same year, we started to cooperate with Mental Disability Advocacy Centre (MDAC) and since then LIGA focuses also on the rights of people with disabilities. In the same year, LIGA launched The Fair School project and by that we start to support the right to inclusive education. Until 2006, LIGA's activity was also focused on domestic violence. In this year, new organization specialized only to this issue was separated from LIGA.

We currently continue with projects, strategic litigation, and advocacy with aim to advance freedom, justice, and respect in our society. In recent years, we also started to focus more on the idea of engagement (not exclusively) and capacity-building of our clients as we know that it is not possible to reach the biggest changes by ourselves.

During the last years, we finished transition of the organization from the "founding fathers" to new generation of lawyers and other experts. This was also reflected by new organizational structure which is now flatter and as such one director was replaced by 4 leaders. We also established an external board, a supervisory body where a majority of members are financially independent on LIGA to achieve greater transparency.

Vision of Liga is fair, free and engaged society for all.

That is why we advance the rights and freedoms of all people, we support the involvement of individuals and we strive for a just and functional institutions in the Czech Republic.

Fair Childhood

Our vision in this area is "Society, which respects and supports all children and families and provides them professional support". We focus on two specific issues regarding the rights of a child: Right to equal access to education ("Fair school"), right to remain in the family and right to live in the community ("Children out of institutions"). In Fair school project, we also promote good practice of individual schools that provide inclusive education for all. In both areas we use strategic litigation, advocacy and capacity-building of decision-makers to improve practice of Czech authorities towards child-friendly justice.

Fair hospital – rights of patients

In Fair hospital, we focus on rights and freedoms of patients, especially regarding informed consent and respect for individuality of every patient, adequate involvement of minors and people with mental disabilities in decisions about care, possibility to freely choose health care provider and combating ill-treatment within medical settings. The goal is to strengthen patients' rights, create more space for informed choice and promote alternative (extrajudicial) dispute resolution and increase of transparency and efficiency of the whole healthcare system. We use strategic litigation, advocacy, and capacity-building. Moreover, we administer a web advisory board for patients www.ferovanemocnice.cz.

Rights of persons with disabilities

We focus on three specific areas of rights of persons with disabilities – informed consent and ill-treatment in psychiatric hospitals and social care institutions, right to live in the community and guardianship and supported decision-making. There has been a major change in legislation regulating legal capacity and supported decision making in 2014, so we have been concentrating on proper implementation of the change. We are also monitoring the process of deinstitutionalisation of social care and psychiatric services.

Justice and police

In justice and police, we concentrate on accountability of state authorities for human rights violations. We are advocating for systemic changes to prevent human rights violations and ensure that every occurrence is properly investigated and the victim is compensated. We try to develop a consistent case-law regarding effective remedies for human rights violations and continue to monitor the work of General Inspection of Security Forces (GISF) that investigates misconducts of police officers. We also challenge the work of GISF by bringing strategic cases and concentrate on providing recommendations for effective investigation of ill-treatment.

Eötvös Károly Policy Institute (Hungary)



Eötvös Károly Policy Institute (EKINT), founded in 2003 by the Soros Foundation, is an independent think-tank engaged in shaping democratic public affairs in Hungary. Acting with other institutions, including advocacy groups and watchdog organizations, EKINT wishes to contribute to raising professional and general public awareness and to shaping the political agenda in issues with an impact on the quality of relations between citizens and public power. The Institute is deeply committed to the liberal interpretation of constitutionality, constitutional democracy, and individual rights, and supports initiatives instrumental in bringing about a civil political culture inspired by the spirit of solidarity. Since the illiberal turn of Hungary in 2010, EKINT has been the major constitutional watchdog organisation and the most adamant advocate for constitutional restoration.

To represent and protect constitutional values, EKINT continuously monitors and analyses the activities of the government and state institutions that are responsible for the control of the government. Drawing up professionally sound and authentic analyses and maintaining the need for constitutional values in society at large are of equal importance for the Institute, therefore, it aims to reach out to public opinion via popular channels.

Since its establishment EKINT has paid due attention to the implementation of the transparent state – non-transparent citizen concepts and has been consistently dealing with issues of privacy protection, freedom of information and press-controlled public power.

Several of EKINT's projects are addressed at university students and promote the democratic education of young activists. The aim of these projects, on the one hand, is to inspire the young to take an active part in public affairs and be committed to democratic values, on the other hand to impart theoretical and practical knowledge to the committed ones who will take advantage of such knowledge at the time of constitutional restoration.

Legal Resources Centre (Moldova)



Legal Resources Centre from Moldova (LRCM) is a legal think tank established in 2010 by a group of lawyers and human rights activists. LRCM strives to build an efficient, transparent, fair and credible judiciary, a culture of respect for human rights and a vibrant civil society sector in Moldova. In its activities, LRCM employs such methods as public policy research, monitoring of the authorities, national and international advocacy, strategic litigation, as well as watchdog activities.

LRCM current main activities are focused on reforming the justice sector in the Republic of Moldova, monitoring the transparency and efficiency of the judiciary, strengthening legislative framework on functioning of the civil society organizations and implementing the best human rights standards in the Republic of Moldova.

Main LRCM successes include both public policy proposals and amendments to the legislation.

Upon Ministry of Justice request, LRCM developed the studies on optimization of the judicial map, specialisation of judges and optimization of the structure of the prosecution service. Based on these studies, in 2016, the Parliament voted for the optimisation of the judicial map, reducing the number of district courts from 44 to 15. This is one of the most important reforms of the Moldovan court system since Moldovan independence in 1991.

Between 2013 and 2016, the Executive Director of the LRCM led the interdepartmental working group for the reform of the prosecution service. In 2016, the Parliament voted the new Law on prosecution service, prepared by the working group. It involves the most serious reform of the Moldovan prosecution service since Moldovan independence.

In 2015–2016, LRCM contributed to strengthening the financial sustainability of NGOs by putting in place a legal instrument that enables taxpayers to redirect 2% of their income tax to civil society organisations (the "2% Law"). The mechanism was launched in 2016 and applied for the first time in 2017.

Starting with 2013, LRCM monitors the transparency and efficiency of the Superior Council of Magistracy of the Republic of Moldova. As a result, LRCM published several analysis with recommendations for streamlining the transparency and efficiency of the SCM and realised numerous

advocacy activities on this issue. LRCM also monitors the selection, appointment and promotion of judges in the Republic of Moldova. This activity lead to publishing two policy documents and one monitoring report, but also numerous public appeals and promotion of merit based and transparent procedures for selection and promotion of judges. LRCM also advocates for the improvement of the legal and institutional framework for the disciplinary responsibility of judges.

In 2012 and 2015, LRCM published two reports about the execution of judgments of the ECtHR by the Republic of Moldova. The reports highlight the problems in execution of ECtHR judgments and makes recommendations for improvement of the situation. Based on findings from the first report, a new Law on Governmental Agent was adopted in 2015.

In 2015, LRCM published an analysis of the compatibility of Moldovan legislation with European standards on equality and non-discrimination, focused on the legislative framework and national jurisprudence, including the activity and efficiency of the legal remedies offered by the Equality Council.

In 2016, LRCM was awarded with the UN Moldova Human Rights Awards, a trophy aimed to highlight and award the most valuable, innovative, effective and participatory initiatives and actions to protect and promote human rights.

LRCM is a member of the Civil Society Platform “Pro Europe” and the National Platform of the Eastern Partnership Civil Society Forum.

You can find more about LRCM by visiting www.crjm.org.

INPRIS (Poland)



INPRIS – Institute for Law and Society is a foundation registered in Poland in 2009. We are an independent, non-partisan think tank focused on law. We care about the quality of law and governance in Poland. Our mission is wrapped around ten concepts.

Science

We like science as a tool for social progress.

Practical Wisdom

We like to draw inspiration from practical wisdom, and use it as well it for a check on law, regulation and science. We admire the art of efficiency and flexibility in real life decisions involving law, also finding smart and fair exceptions to rules.

Power of the Citizens

We are happy to give a hand when social energy can improve law and governance. We participate in projects aimed at monitoring of public institutions, draft recommendations for them and consult.

Interdisciplinary Approach

We stand for combining legal research with application of social sciences, psychology, economics, information science.

Information Technology

Electronic tools for communication, aggregation of information, and cooperation will exercise significant and good influence on the quality of discussion about law, research, law making, application of law, legal education and research.

Empirical Research

Empirical data makes grounds for good law. We are holding thumbs for progress of empirical methods for analysis of law in Poland: sociology, psychology, economics of law. Whenever possible, legislative proposals should take into account and show evidence based in empirical data.

Comparative Analysis

We are looking for inspiration as regards law and its institutions in other countries, and we are happy to share Polish know-how.

Communication and Presentation

Legal education, textbooks, research, journalism about law, public discussion can benefit from a new look at the form of presentation. It is possible to adjust the language of communication about law to the needs of the audience. It's not a shame to talk about law in a comprehensible manner. Lawyers and graphic artists can teach each other about presentation of legal problems by means of info-graphics: mind-maps, charts and other visualization tools. Information technology allows for creating dynamic, interactive, user-friendly models of legal and social problems.

Education as Reform of the Law

We think of legal education as the future practice of law. We believe the way of teaching will transform the law, so our interest lies not only in the content but in the method. We like to support innovative and experimental methods that can supplement the lectures: international programs, clinics, incubators, interdisciplinary projects, labs, simulations, training of practical skills: negotiation, mediation, rhetorical skills, research with participation of students.

Independence

We put a high value on the opportunity to work with public and private institutions, but we remain intellectually and administratively independent. INPRIS is not affiliated with any political group, and does not aspire to become associated. The same principle applies to our relations with law firms and other businesses. We do not speak for anyone. We say and write only what we consider right, no matter with whom we are cooperating or who supports us.

VIA IURIS (Slovakia)



VIA IURIS is a civil society organization and as such its conduct is strictly non-governmental, not-for-profit and non-partisan. As an expert legal organization, we use the law as the instrument of justice. We bring systemic solutions and promote equal application of law for all.

VIA IURIS was established in 1993, first under the name Center for Environmental Public Advocacy – CEPA. The initial purpose of the organization was to provide a support to wide spectrum of civil initiatives and organizations active at local level, who were trying to bring fairness and public participation in the decision making of public authorities.

After 1997, we went through significant institutional change by creating two main program areas: Towards sustainable economy and Law for public interest. The first was focused on seeking and promoting sustainable economic alternatives; the second was based on the efforts to broaden the possibilities of citizens to influence the decisions that affect their lives.

As both programs grew and their contents and activities gradually became more specific, the situation required further institutional changes, culminating in 2005 and 2006 in creation of the new organization. The legal program transformed in VIA IURIS in 2006.

During its existence, the legal program provided and continues to provide legal assistance in hundreds of cases, consultancies and analyses. Their contents developed in time, reacting to actual needs of the society. Besides providing legal assistance, CEPA and later VIA IURIS organised summer courses for law students in cooperation with NGO Citizen and Democracy.

Since 2000, we find it obvious that success in any legal efforts, in specific cases as well as on the level of legislation, is closely related to the quality of decision-making of courts and judges. Therefore, a significant part of our programme is focusing on the judiciary. We have gradually developed the complex training programmes for the judges in crucial topics, such as freedom of speech, public access to information, constitution in judicial decision-making, but also personal development of the judge.

This led to creating the cycle of regular expert conferences Access to Justice – Barriers and Solutions. At the beginning, they were focuses on the quality of the court decisions, but gradually we focused more on the personality of the judge. We follow this aspect of the judiciary,

from the appointment of judges (by monitoring the selection procedures for judges), through their behaviour (by triggering and advancing the public discussion on judicial ethics, which lead to adopting the new Code of Conduct of Judges), to their accountability (by monitoring the disciplinary proceedings in judiciary and forming the proposals for legislative changes).

Our work on the problem of the state capture and its impunity leads to our closer interest in the functioning of the police and the public prosecution. These are the institutions, which most often fail in holding businesses, individuals and public officials accountable for corruption and alike actions. With three other NGOs, we have formed the coalition Jingling for the Change. We analysed the legal environment of police and public prosecution and formulated the proposals for the measures necessary to free these institutions from political influence.

The quality of the legislation is a strong factor determining the results of the actions and the possibilities to protect the public interest. Therefore, we started to systematically monitor the legislation changes; we prepare the comments of the draft legislation and address the public with the calls to support our comments. This way of participation in creation of legislation proved to be very efficient. For example, we have collected more than 8,000 signatures for our comments of the draft amendment to the law on the free access to information. We have also prepared the comments of the environmental legislation (construction law, law on environmental impact assessment, law on integrated prevention and pollution control), law on free access to information and laws regulating the judiciary and the public prosecution.

VIA IURIS lawyers continue to provide legal assistance in the area of public interest law. In strategic litigation, we seek to reach not only solution in the specific case, but also to achieve the systemic change. We find it important to protect the rights of citizens from the formalistic decision-making and restrictive interpretation of the law. We try to make the citizen rights not only a matter of the constitution and the legislation, but also a principle of everyday practice of the courts and other state institutions.

The most important cases, in which the lawyers of VIA IURIS assisted, include the landfill in Pezinok, the cases of the highway construction, gold mining in Podpolanie, assistance to Greenpeace Slovakia in the case of construction of the 3rd and 4th block of the nuclear power plant in Mochovce, numerous cases of access to information, several lawsuits related to construction of waste incinerators, small hydroelectric power plants and activities in protected natural areas.

Since 2008, we organise the White Crow Award in cooperation with an NGO Fair-play Alliance. This project awards the people, who defend the truth, justice and public interest and who, by their specific actions, have proven their civic courage and were able to suppress their personal interest in the favour of the public good, values and principles, although they were threatened, wronged or denounced.

Centre of Policy and Legal Reform (Ukraine)



Centre of Policy and Legal Reform (CPLR) is a think tank, established in 1996. Its main target is the promotion of reforms in political and legal spheres on the establishment of democracy and the rule of law in Ukraine. In 2016 CPLR was recognized as one of the most transparent think tanks in the world.

CPLR considers its main task to develop and to support the implementation of such reforms, which are appropriate to safeguard democracy and rule of law in Ukraine which shall in the future result in the membership of our country in the EU.

The main areas of CPLR's activities are the public administration, constitutionality, the courts and the criminal courts. The protection of human rights, the fight against corruption and the European integration are the most prominent elements of the activities.

CPLR is an analytical institution, which develops analytical products. Based on the results of monitoring of state institutions, expertise on draft laws, results of public opinion polls (for example the one-stop-shops), sociological researches and analysis of foreign examples and experiences, CPLR publishes "Green books", textbooks and handbooks, recommendations, analytical periodicals etc. The usual way of CPLR is the presentation of conducted analytical research during press conferences and round tables.

The biggest: achievements:

1. Development of the draft Law "On local public administrations". The law was adopted by the Verkhovna Rada in 1999.
2. Development of the Concept of the creation of the administrative courts system in Ukraine and participation in the Code of Administrative Justice preparing that was adopted by the Verkhovna Rada in 2005. The Code is introducing the system of administrative courts and administrative procedure.
3. Development of a draft Law "On access to judicial decisions" which was adopted in 2005 and which stipulated the creation of Unified State Register of courts' decisions. The Law is introducing the unique in Europe free national portal of most decision of domestic courts open to the public.

4. Development of the Concept of judicial reform and the draft Law “On the judicial system and status of judges” (A version of the draft was adopted in 2010 but unfortunately it was so distorted that it had a negative impact at judicial system).
5. Preparation of the draft Law “On access to public information” in 2008 followed by a wide and successful advocacy campaign of NGOs and media until its adoption in 2011. The Law is introducing the rights and guarantees for citizens to request public information from public authorities.
6. Active participation in drafting the new Code of Criminal Procedure and the draft Law “On legal aid” adopted in 2012. The Code and the Law are replacing the soviet criminal procedure by the contemporary human-right-oriented approach to criminal investigation.
7. Preparation of Green and White Papers of Ukrainian constitutional reform.
8. Participation in preparing and advocacy for the consideration and adoption by Verkhovna Rada of the Law of Ukraine “On prosecution office” of October 14, 2014. The introducing European standards of criminal prosecution and the status of attorney general as contrast to former soviet system of prokuratura.
9. Permanent working for intensification of combatting corruption in Ukraine. Especially participation in the development of anti-corruption legislation, realizing anti-corruption expertise of draft Laws and Laws.
10. Assistance in National police formation; participation in the preparation of the Law about National police from 2015, participation in shortlisting of service officers. Development of the Law “On State Bureau of Investigation” and advocacy for its adoption.

The logo for the Visegrad Fund, featuring the text "Visegrad Fund" in a teal color. It is surrounded by four teal dots: one at the top, one to the left, and two at the bottom.

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