

# Civil Society and the State – The Double-Edged Sword

A Case Study of Poland



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# Abstract

There has been plenty of debate on the relation between civil society and democracy. This case study of Poland thus adds to this debate. The research was done through analysing reports from civil society organisations and conducting two interviews with civil society organisations. The conclusion is that although civil society organisations in Poland can have a positive impact on democracy, there are big divisions in society. There is also a presence of a strong non-democratic civil society. In contemporary Poland, the non-democratic civil society and the state cooperates, strengthening both spheres. It is thus argued that the relationship between state and civil society is mutually reinforcing when their views align. However, the state will always be the stronger party, and in case of a democratic decline the laws which the non-democratic civil society supported can be turned against them.

*Key Words:* Civil Society Organisation, State, Poland, Relationship, Democracy

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# 1 An era of democratic decline and closing spaces?

For many liberal democrats, the beginning of 2018 was not a time of joy. At the time of writing, Freedom House recently published their yearly report 'Freedom in the World'. It was simply titled *Democracy in Crisis* (Abramowitz, 2018). For 12 consecutive years, there has been a decline of global freedom reaching from autocracies to established democracies. Democratic supporters all over the world have thus grown increasingly worried. Up until recently, the democratic decline was mainly seen in countries that were not considered democratic. The last two years however, has been especially worrying as the decline has been increasingly prevalent in established democracies. The rise of Donald Trump has been accompanied by a number of scandals causing the United States to fall behind many of the major democracies in the world. The US has now fallen from a one in political rights to a two on scale from one to seven. Additionally, also countries such as Denmark, France and Poland have been pointed out as having a worrying development (Abramowitz, 2018 & Puddington/Roylance, 2017)

The huge increase of populist and national political forces in democratic countries is considered one of the major threats for the future. Parties with this agenda are often the ones heading the development to restrict rights for certain groups, and have a tendency to adhere less to democratic principles. In many of these countries, restrictions on refugees, increased surveillance as well as stricter legal control over the population have been enforced (Abramowitz, 2018 & Puddington/Roylance, 2017:6 & 9).

More visible in some countries than others, shrinking spaces for civil society organisations (CSOs) has been one area where the democratic recession has hit hard. Worst hit are CSOs in authoritarian and hybrid regimes where the democratic space has been drastically reduced in recent years. Russia and Turkey have for example gone from being relatively open societies to limiting the space for the opposition, including CSOs, in a fairly short span of time. In both countries, opposing figures are harassed and legally impaired in order to prevent their opposition against the regimes (Freedom House, 2018<sup>a</sup> & Freedom House, 2018<sup>b</sup>).

The developments have also been observed in more democratic countries however. Poland is one such example. In 2015, the right-wing party Law and Justice (PiS) was elected into government gaining a majority in both the Senate and the parliament (Sejm). Since then, a number of controversial reforms that have severely risked the democratic standards in the country have been introduced. Many of these reforms have also targeted CSOs and include restricted

and more governmental controlled funding, harassment as well as increasingly restricted space civil society activities (Freedom House, 2017 & HFHR, 2016).

The increased difficulties for CSOs is worrying as there is a close connection between CSOs and democracy. Not least in Poland, where the road to democracy is intimately connected to the organisation Solidarity. Acting as a labour union, Solidarity formed a strong opposition towards the communist regime and was an important actor when it was overthrown. Solidarity then went on to win the first democratic election in 1991 after which Poland rapidly developed into becoming a role model for democratic development (Nationalencyklopedin, 2018<sup>a</sup>).

An early writer regarding civil society<sup>1</sup> was Alexis de Tocqueville (1805-1859). In his famous work *Democracy in America* (1835-1840), Tocqueville argued that free associations were “the bedrock on which American democracy was built” (Tocqueville, [1840] 1998:215). CSOs have been assumed to foster and monitor democratic values in the wider society, which can trigger a democratisation or improve democratic standards in an already democratic society (Diamond, 1994:7-10). Thus, many have seen it as essential to support CSOs in countries where the democratic standards are lacking, for example Sida (Sida, 2017).

As the backslide in democratic levels have hit also Poland, oppositional CSOs have become gradually marginalised and thus risk becoming powerless to oppose the government. Considering that Poland has been democratic for almost three decades, and assuming that CSOs foster democratic values, one can wonder how this happened.

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<sup>1</sup> In this essay, civil society and civil society organisation will be used synonymously.

## 1.1 Purpose

As mentioned, the democratic recession has mainly hurt CSOs in authoritarian and hybrid regimes. Poland thus represents an interesting case as it is a democratic country with a relatively long history of democracy experiencing a decline. The development is thus backwards. Although the democratic decline is not yet too significant according to Freedom House, the country has still fallen in the ratings as especially civil rights have decreased (2017<sup>a</sup>). As most research on the role of CSOs has been done in processes of democratisation or in authoritarian contexts, the case of Poland can thus add new knowledge to the role of CSOs and their relation to democracy. Assuming that CSOs fosters democratic values, the opposition towards PiS should be strong(er). Instead, the PiS government seems to have retained their support after the elections (CBOS, 2017), despite their actions. Clearly, there is more to this question.

The purpose of this thesis is therefore to examine CSOs relation(s) to the state and how it develops. The overarching question will hence be as follows.

- *What relationship(s) does CSOs have to the state/government and society in terms of ideological development in Poland?*

As this depends on a number of factors, a number of topics will need to be examined. These include the history of civil society and the democratic development in Poland, what has happened since PiS came to power, how CSOs in the country work as well as how they view the situation. The thesis will thus go into all of these different aspects.

## 2 Definitions

As both democracy and the definition of civil society organisations are contested topics, the following chapter will examine these two concepts.

### 2.1 Democracy

Even though democracy can be considered a core of political science, it is a heavily contested concept. There is no universally accepted definition of democracy, nor any widely accepted agreement on what type of democracy that 'should' be desired (Diamond/Morlino, 2005:ix & Cunningham, 2002:2-3). While it is not the aim of this essay to join the debate in how to define democracy, nor take a definite stand on the desired form, some basic assumptions about democracy used will be presented.

First, when speaking about democracy, what is meant in this essay is *liberal democracy*. Liberal democracy is typically the commonly used term in the general debate about democracy by organisations such as Freedom House (2016) as well as various academics (See for example Diamond/Morlino, 2005 or Fukuyama, 1992). In addition, liberal democracy is also intimately connected to the civil society literature. That is, when CSOs are examined it is commonly done in relation to liberal democracy (Baker, 2004:43-44). Thus, in order to contribute to the debate regarding civil society, it will also be used here.

Although a liberal democracy can be constituted in various ways, there are some dimensions that can be considered essential. The following dimensions have been formulated by Larry Diamond and Leonardo Morlino: "democracy requires: 1) universal adult suffrage; 2) recurring, free, competitive, and fair elections; 3) more than one serious political party; and 4) alternative sources of information" (Diamond/Morlino, 2005:x-xi). In addition, individuals must have the freedom to organise outside of the political arena around their beliefs. Further, democratic institutions should not be constrained by powers that are not accountable to the people (Diamond/Morlino, 2005:xi). The main goals of a democracy are then considered to be political and civil freedom, popular sovereignty and political equality while another broad standard, good governance (including transparency, legality responsible rule), is also important for a high democratic quality (Diamond/Morlino, 2005:xi). As can be seen already in this basic conceptualisation, the freedom to organise outside the political sphere is seen as essential. A well-functioning civil society is thus central in a well-functioning democracy.

Further, Diamond and Morlino argues that the quality of democracy can be assessed by looking at the following dimensions<sup>1</sup>: 1) Rule of law - that all citizens are equal before the law in a clear, publically known, stable and consistently applied legal system led by an independent judiciary. 2) Participation – all citizens are able to vote and to organise and lobby for their interests as well as influencing the decision-making progress. This can be achieved through communication with elected officials, making demands for accountability, or/and joining civil society organisations and political parties. 3) Competition – the electoral system must be fair and free with regular elections between different political parties. 4) Vertical accountability – elected political leaders are mandated to justify their political decisions. Information of political actions must thus be available to the public. Elected officials can then be punished or compensated. 5) Horizontal accountability – Officials need to be accountable to other institutions of the society such as the constitutional court, commissions and the central bank that scrutinize their decisions and limit possible power abuse 6) Freedom – includes political, civil and social rights. These can be the possibility to vote independently, independent media, freedom of expression and rights regarding employment. 7) Equality – All parts of society, no matter aspects such as gender, political orientation, ethnicity have the same rights and legal protections, including accessibility to power. 8) Responsiveness – That is, how well the government respond to public demands (2005:xiv-xxxi).

It is relevant to note that these dimensions are quite open, and in addition that the dimensions are in many ways interconnected with each other and might sometimes be hard to separate. This becomes obvious looking at how different regimes, such as Sweden, Germany and the United States of America, are which are all considered democracies, but functions in quite fundamentally different ways. Thus, a regime can be governed in various fashions and still be called a liberal democracy. As Diamond and Morlino argues however, these indicators will be considered when looking at the development of democratic standards in Poland

Finally, as will be explained below and of value for this essay, the different dimensions encompass a view that an independent civil society is essential for a state to be called a consolidated democracy. That is, in order to call a state democratic, it must allow for an independent and free civil society that can influence the political process.

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<sup>1</sup> Please note that the explanations does not entail the full scope of each dimension but only serves as an overview.

## 2.2 Civil society

There are many difficulties in defining CSOs. As with the conceptualisation of democracy there is no single definition. In neo-Tocquevillian research, civil society is considered as at least relatively, but sometimes completely autonomous from the state. Often, it is also regarded as in some kind of opposition of the state (White, 2004:8) and consists of “voluntary organisations that is founded on a community of interests<sup>1</sup>” (Stubbergaard, 1998:4).

Diamond have made an attempt of clarifying the distinction somewhat. He includes a wide set of formal and informal organisations into the concept.: 1) Economic, 2) cultural, informational and, 3) educational, 4) interest-based, 5) developmental, 6) issue-oriented, 7) civic and what Diamond calls 8) the organisations of the ideological marketplace which includes “the flow of information and ideas” (1994:6) from independent media universities and think tanks. For instance, the civil society thus includes market associations, religious and ethnic groups, charities and watchdogs. In addition, Diamond also contends that CSOs are autonomous from the state and he calls the political society. In other, words political parties (Diamond, 1994, 6 & 7).

CSOs carry some further characteristics that differentiate them from other parts of society. Their interests must first be of public rather than private ends. They should also not aspire formal political power. That is, they pressure the state, seeking concessions, policy changes et cetera, but does not intend to take over on their own. CSOs can further not be exclusive towards other individuals’ interests. Instead it should embrace pluralism. Religious fundamentalists, ethnic groups or other similar movements that argue that their way is the only legitimate can thus not be considered a part of civil society. Finally, a civil society group cannot contend that it represents the view of a whole community (Diamond, 1994:6-7).

However, there are some problems. The idea of an autonomous sphere is today contested as is whether the market can be considered part of civil society or not. In addition, while the limits drawn by Diamond makes it easier to argue for the ‘good’ of civil society, it makes it more difficult to classify organisations movements that are not fulfilling his criteria. That is organisations that do not promote democratic progress for different reasons. As Ylva Stubbergaard argues, this implies that we would need to create a sphere of the “non-democratic civil society” (1998:7), something which would create further difficulties in how to distinguish this new sphere.

Stubbergaard’s view is supported by Petr Kopecký & Cas Mudde (2003) who highlights the difficulties of differentiating between what they call a civil and an uncivil society. The uncivil society is usually considered violent, extremist and/or non-democratic groups who also lack the values that is normally part of civil society. Nationalist organisations are often considered part of this uncivil phalanx.

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<sup>1</sup> Authors translation

In Slovakia, similar nationalist groups were considered as parts of civil society when they were in opposition to the “bad” communist regimes. Just a few years later however, the same type of nationalist organisations were considered uncivil (that is, not real CSOs) when they instead were in opposition to the “good” democratic post-communist state (p. 3-4). Both Stubbergaard, Kopecký and Mudde thus argue that is not empirically meaningful to differentiate between CSOs that promote democracy and the ones that do not. The discussions of the level autonomy and what spheres in society are included in the concept of civil society is thus contested.

What this means is that a perfectly clear definition might not be possible. The definition of civil society used here is an attempt of some boundaries from other spheres of society, while at the same time capturing the complexity of the concept.

The arena where people deliberate upon, organize and act around shared purposes and concerns. As an ideal type, it is distinct from government, market and family, though in practice the boundaries between these spheres are blurred and interwoven to varying degrees (Howell/Lind, 2009: 5).

While highlighting an ideal type, this definition also allows for a more nuanced and multifaceted picture of the civil society. It does not exclude organisations that does not work for democracy, nor state that civil society is autonomous from the state.

That this holds true may not be that surprising. For example, as mentioned by Kopecký & Mudde, the degree of financial and state independence over civil society can vary great over time and space (6-8). Even in western liberal democracies, a large number of CSOs are highly dependent on financial support from the state. In addition, it has been pointed out that in eastern Europe groups have shifted between being considered civil society groups and political parties over time. As many groups additionally have been very closely tied to parties, although functioning as CSOs it can be difficult to find distinct borders between the two spheres (Kopecký/Mudde, 2003:6-8).

This definition will be of benefit in the case of Poland where CSOs can be found on all parts of the political scale, with varying degree of connections to parties. This will be further explained below.

## 3 The different views on civil society organisations

In the previous sections, the difficulties of how to define the civil society were shown. However, there are also competing views on the possibilities for CSOs to function as creators of democracy. While the ‘traditional’ view have been that of civil society as promoters and fosterers of democracy autonomous from the state, more recent research has questioned this. As was mentioned earlier, some argue that CSOs can also be a force against democracy. Arguments for both sides will be presented below.

### 3.1 Civil society organisations as fosterers of democracy

As mentioned earlier, Tocqueville was the first great writer on civil society. He analysed the connections between civic associations and democracy and praised Americans for their attitude regarding self-governance. Instead of looking to the state for solutions of problems, Tocqueville argued that Americans would first try to solve it through collective action. This attitude went through the whole society, whether it was for building churches or to learn from good examples. These free associations, separate from the state, were essential in fostering democratic processes in the country. (Spires, 2011:3, Tocqueville, [1840] 1998:215 & Woldring, 1998:363-364). The associations, he argued, functioned as schools where Americans could learn the “general theory of association” (Diamond, 1994:8). The American mentality also revealed the strength of collective action:

As soon as several of the inhabitants of the United States have taken up an opinion or a feeling which they wish to promote in the world, they look out for mutual assistance; and as soon as they have found one another out, they combine. From that moment they are no longer isolated men, but a power seen from afar, whose actions serve for an example and whose language is listened to (Tocqueville, [1840] 1998:218).

That this happened in America and not a more aristocratic society was because of necessity according to Tocqueville. In aristocratic or authoritarian societies, people do not need form groups in order to reach goals. In those societies, people are strongly bound together by a small number of wealthy individuals who make common citizens dependent upon them. Aristocrats force the citizens into

associations which allows them to undertake big projects without help from others. This is not as effective as in democratic nations though. In them, voluntary associations form because without them individuals are “independent and feeble”. No man can force another one into do a task against that persons will and thus voluntary associations are necessary. However, this makes the people capable of accomplishing even greater tasks than what would have otherwise been possible (Tocqueville, [1840] 1998:216).

Continuing on Tocqueville’s praise of the civil society as well as later success of CSOs, more neo-Tocquevillian researchers believed that the civil society has a great potential in promoting democracy. They argued that CSOs can provide the social infrastructure needed for liberal democracy as well as possibilities to work against the state and market when necessary (Alagappa, 2004:41). They deepen democracy as they foster democratic values, give a voice to disadvantaged individuals and contribute to a better functioning market. Finally, they provide what services that the state cannot (Alagappa, 2004:41 & Stubbergaard, 1998:3-6). Thus, a strong civil society is especially important in authoritarian contexts where it can act against regimes to work for democratic changes in the system (Feenstra, 2017:338-339, Fung, 2003:516, Foley/Edwards, 1996:39 & 46 & Spires, 2011:4).

Diamond (1994) also rated CSOs highly in their contribution to democratisation processes and the consolidation of democracy (p. 4 & 16). He describes civil society as “the realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous from the state, and bound to legal order or set of shared rules” (Diamond, 1994:5). As a consequence, civil society is often in a natural opposition to the state (Stubbergaard, 1998:4 & Spires, 2011:3-4). Although Diamond himself is cautious about a taking the opposition too far (Diamond, 1994:7), this aspect is essential as it can be considered a prerequisite for mounting challenges to the state in order to promote democracy.

CSOs can promote and consolidate democracy in a number of ways. One of the most crucial aspects is their ability to put up a basic limit on state power. In a democratic setting, this means that they monitor state power and sets up restrictions for the state. In a process of democratisation, or in a more authoritarian context, on the other hand, the civil society can highlight injustices and other abuses which the regimes commit, and thus delegitimise it. Therefore, the regime becomes more restrained in its actions (Diamond, 1994:7). CSOs are also beneficial for the political participation of citizens as it can help cultivate their political skills and efficiency. In addition, the value of democratic rights becomes more highlighted to them. Thus, CSOs contribute to the training of future political leaders which is especially important when the current political leaders are met with distrust by the people. Furthermore, a well-functioning democratic civil society also develops norms such as tolerance and respect for opposition. It thus has both fostering and value-spreading dimensions. (Diamond, 1994:7-10).

A further way in which civil society can improve democracy is by facilitating communication between the regime and the wider society, including for

previously excluded groups. By allowing for participation and influence from all parts of society, they help these groups influence public policy. This can be especially effective on the local level (Diamond, 1994:8-9).

Part of this work include the spreading of information about the conducts of the state to a wider audience. This helps the population organise around issues that are of big concern to them. The information can also give another perspective on the official government story of the government which is especially important if it tries to hide important aspects of a topic. This is of course of extra value if the government is in control of the public media. Less powerful parts of society with limited access to information gain the most from this. As these groups can gain huge improvements in their living situation, it can give them the opportunity to organise themselves to push for their agenda (Diamond, 1994:10-11).

Improved communication can also bring previously divided groups together. These new groups can generate further ideas, and in turn form additional interest groups around them. These issue-based groups can work over cleavages that were previously a big obstacle such as ethnical, religious or regional belonging. The increased communication between different groups may also help in decreasing possible hostility, paving way for compromise (Diamond, 1994:8-9).

The electoral system could also benefit from well-functioning CSOs, for instance if they work for improvements of the electoral system. In addition, they can monitor elections for attempts of fraud and work to democratise the political parties. Through these actions, they increase the confidence of the voters in the system. Thus, they strengthen the legitimacy of the result (Diamond, 1994:10).

According to Diamond, all the characteristics mentioned above combines into the final benefit of civil society. In the long run, even if the civil society might oppose the government in some ways, it strengthens the state. By constantly monitoring it, CSOs ensure that the regime preserve its accountability, responsiveness and inclusiveness. As long as these characteristics are upheld, the citizens will accept the rulings of the state. Hence, it will be easier to govern. So while on the one hand challenging the regime, a strong and democratic civil society also strengthens it (Diamond, 1994:11).

A democratic civil society is thus assumed to have great possibilities for both democratisation and consolidation of democracy according to Diamond. For some, this has led to the belief that civil society has a given connection to democracy (Foley/Edwards, 1996:39 & 46 & Spires, 2011:4).

Gordon White is a bit more cautious, although also he argues that there are a number of ways in which CSOs can contribute to democratisation processes. This is mainly because they can create a balance of power between the government and other actors in society. Or in other words, the civil society can deliver alternatives to the regime, possibly weakening its power when it is necessary (White, 2004:13).

In democratisation processes, CSOs can function as disciplinarians of the state. Through acting as watchdogs, they can pressure state officials to act according to public morality and regulations. They thus push for a higher degree of accountability. As Diamond, White also acknowledge the possibility of CSOs to act as communicators between the state and the society. He argues that this

helps improving the accountability of the state. In addition, communications help stabilising and disciplining the society as well as individuals by providing a means of voicing concerns (White, 2004:14-15).

CSOs are also assumed to be able to redefine the rules of the political game. As they themselves can see the benefit of a liberal democratic organisation of society for their own benefit, they work to deepen those values within the political sphere. Thus, by lobbying to perpetuate those norms, they can turn the political arena more democratic (White, 2004:15-16).

In both cases, civil society is assumed to act in a setting autonomous from the state, often working in opposition to it. This could be condensed in the following statement. Civil society functions “as a sphere of action that is independent of the state and that is capable-precisely for this reason-of energizing resistance to a tyrannical regime” (Foley/Edwards, 1996:39).

As a summary of what has been said. (1) Civil society promotes and pushes for democratisation. (2) It fosters the morals and feel for the collective good among its members, and hence democratic values (3) It also provides services that the state does not. (4) The inclusiveness of civil society serves to give the whole population a voice, which also promotes stability. This in turn also strengthens the legitimacy of the state. (5) In addition, CSOs provides a space for different groups to meet each other. (6) CSOs also serves as a link between the state and its people. (7) They further strengthens the individual autonomy by preventing the state from intruding on the personal sphere in a too extensive way. (8) Finally, a strong trans-national network for CSOs can prevent the feeling of losing influence caused world globalisation (Stubbergaard, 1998:3 & 6).

Not everyone agrees with this though. Philippe C. Schmitter, for example, argues that although civil society can facilitate democracy, they do not cause it (Schmitter, 1993, 4). In addition, some scholars argue that they can also act as non-democratic actors, instead stalling democratisation process. This will be further discussed below.

### 3.2 Why CSOs can have a negative impact on democracy

Although civil society actors can undoubtedly promote democracy, it is as mentioned not self-evident. In cases where the goals of a civil society group are other than improving democracy they can instead have a negative impact.

One such example is *Lapporörelsen* in Finland. The organisation was united by a thought of a Finish motherland and an overarching goal of prohibiting the national communist movement. The organisation had great influence over the state because of a great number of sympathisers both within and outside of the government. Parts of the movement used violence to promote their view, and also argued that their will was above law. Because of their low trust in government

decision-making and powerful contacts, the movement often took law into their own hands. Their crimes often got legalised in retrospect. In the end however, they went too far and became banned with the help of laws that they themselves had argued for (Stubbergaard,1998:8-9). Similar organisations with non-democratic tendencies have been found also in other cases, such as the nationalist movements in Slovakia (Kopecký/Mudde, 2003).

However, there are also more subtle ways in which the civil society can hamper democratic progress. Some of these negative effects have been stated by Schmitter. He argues that civil society can lower the functioning of a democratic state. This can happen because CSOs make it more difficult to form majorities. This can in turn can lower the legitimacy of a government.

In addition, organisations which have lots of influence can make the policy process biased towards their interests (1993:15). As these interest does not necessarily need to be for the good of the whole society, it may create problems. If this goes too far, it may result in unwanted policy outcomes that no one wanted to start with. This presents the biggest risk when civil society becomes divided into exclusive groups based on ethnicity, culture or similar lines. This might result in a society where a number of competing only promotes their own interests and compete with each other. When a state encompasses a number of these self-interested groups the result could be meaningless squabble. This would not only weaken the groups, but also prevent a common struggle for the interests of the public (Schmitter, 1993:15). This is however more likely in authoritarian settings than in democracies (Northey, 2017:211). Still, in a democratisation process, it can prove to be a great hindrance to democratic development. (Schmitter, 1993:15). A strong civil society can thus complicate the political processes.

Another scholar, Amaney Jamal, argues that while there “is a circular and self-reinforcing relationship” (cited in Northey, 2017:211) between CSOs and democracy, it is different in more authoritarian settings. In these contexts, “ineffective democratic institutions promote levels of civic engagement, including social capital, supportive of non-democratic procedures” (cited in Northey, 2017:211). CSOs adapt to the rules of the game in order to avoid repercussions (Leigh Doyle, 2017:245). Thus, “socio-political factors (most significantly the state) can shape CSOs and their societal role” (Leigh Doyle, 2017:245). This fact is used by authoritarian regimes in order to make groups work for their own interests. As will be shown below, some autocratic governments in fact strengthen their legitimacy by promoting parts of the civil society in certain ways.

### 3.2.1 How state actions towards CSOs can hamper democratic progress

The potential strength of CSOs have obviously gained the attention of regimes worried of being challenged. CSOs all over the world have thus been the target of regimes keen to keep their power. While “pure” repression has traditionally been a common way of dealing with opposition in authoritarian regimes, today this method seems to be riskier than before. As the connections and trade between

countries have grown, technology have spread. The new technology has made it easier for people to communicate and organising themselves. In addition, it has given way for people to exchange ideas and opinions much more discreetly and with less risk. The development has thus made it increasingly difficult for regimes to control what information is exchanged. In addition, suppression of all opposition also risk an explosive reaction such as happened in a number of countries during the Arab Spring which took many leaders by surprise. A combination of increased difficulties and the risk of violent reactions have therefore led to authoritarian leaders into changing tactics (Ryan, 2011).

Authoritarian regimes have thus made small liberalising reforms that allows (some) civil society groups to act. At the same time however, they have increased their control of these groups. Through “tactical concessions” in areas where they feel secure, regimes have shaped the space available for CSOs to their own advantage. These reforms let regimes ease the tensions without actually losing any power. In addition, by allowing debate in a monitored space, the regime can adapt to acceptable wishes of the population. Hence they gain praise for the reforms it is willing to do and increases its legitimacy and its support (Froissart, 2014, p 268-269 & Geoffray, 2014:223-231). At the same time however, the threat of repression always persists allowing the regime to put the lid on in case things gets too uncomfortable for it (Spires, 2011, p, 22 & 36).

There are a number of methods used by states to achieve this effect. A common one, is the targeting of the finances of organisations. A number of countries have introduced legislation that limits the available sources of funding, most commonly foreign ones. The severity of the laws can vary from fully prohibiting foreign funding to only allowing a certain amount of an organisations budget to come from foreign sources. In addition, organisations can also be forced to channel the money through state agencies and to submit burdensome reporting to the authorities. Sometimes, certain development organisations (such as the American USAID) can be the target of authoritarian regimes that wish to limit foreign funding as it usually is seen as more threatening (Wolff/Poppe, 2015:6-7). As many organisations work with a limited budget, often from foreign sources, the restrictions can affect them severely, reducing their capacity or even forcing them to shut down (Wolff/Poppe, 2015:6-7).

Sometimes, organisations are allowed to act but are instead exposed to harassment. Organisations that are considered unwanted are harassed in public channels in an attempt to reduce the trust in them. Not rarely, does organisations get accused of being foreign agents that aims to serve the interests of other countries (very often the US). Pictured as foreign agents, the are accused of having a goal of destabilising the country. This can obviously delegitimise these organisations which make their work harder to pursue (Carother/Brechenmacher, 2014:11-12)

Another common way of restricting the space for CSOs is new legislation. This often involves mandatory registration and an overview of the members. Regimes can also force organisations to report information about all their work and meetings which makes it possible to control what is discussed and done by them (Wiktorowicz, 2000:48-50).

Other legal measures include mandatory registration in order for CSOs to work legally. This makes it possible to prevent organisations from engaging in work in which the regime does not approve. Not rarely is this process time consuming, and requires significant work effort as well as resources from the organisation in question. This means that only facing the burdensome process to register properly might refrain individuals and organisations from trying to pursue their ambitions. (Wiktorowicz, 2000:51-55).

Another way of limiting the space is to open up for cooperation with organisations within state controlled institutions. Russia, for example, have introduced the ‘Council for the Development of Civil Society and Human Rights of the President of the Russian Federation’. The council comprise about 30 members from the biggest organisations in the human rights community. While the council has no actual power in making decisions it has been seen by its members as a lobbying forum which provides an access to the presidential administration. Additional institutions have also been introduced that for example administer public financial support. This have increased the contact between state officials and CSOs. Some of these institutions also had CSOs participating in them (Daucé, 2014:244-245).

While these channels for communication with the government might initially sound beneficial for civil society groups, they have also been used as a mean of neutralising the opposition to the government. When organisations accept the institutions as legitimate and act within the rules set, it allows the regime to only listen to them when they see fit. This can further be used to depoliticise the work of CSOs, as well as reduce their political activism. Since CSOs wish to keep the influence that they have, they might refrain from challenging the regime. Instead, they work within the limits set in order to avoid repercussions. Thus, regimes have developed what Françoise Daucé calls a ‘civilised’ oppression. He explains: “Although this development enables human rights activist to continue to act officially, it does not advance any revival of political pluralism” (Daucé, 2014:247 & 251).

Sometimes, the regime instead allows CSOs to engage in ‘legal activism’. Debate is allowed in a controllable space (courts). Thus, political participation is allowed but only within the rules set by the regime which allows it to adapt to ‘acceptable’ calls for change without needing to risk any threatening challenge to the authoritarian order. This is mentioned by Chloe Froissart who argues that “legal actions have become a new form of *political participation within the system* that together contests and reproduces mechanism of political domination. Legal mobilization that attempts to play *by* the system at the same time plays *for* the system.” (2014:256-257).

In China for example, the authorities have allowed lawyers to work within the juridical system. There, worker’s rights are often promoted through so called Public Interest Litigation (PIL). Through PILs, lawyers and individuals can work for law changes to address injustices committed by companies. This has proven to be an effective method for people to claim rights (Froissart, 2014:258-259). As these processes happen within state institutions, the state gain legitimacy when it rules in favour of the workers. Workers then feel as they are listened to, and that

the state protects individuals. At the same time however, the regime can whenever it wants to refrain from judging in the workers favour if the ruling for some reason is considered a threat to state power. In some instances, the regime has also done favourable law changes for workers, but refrained from introducing any checks to make sure the new legislation is adhered to by companies. Thus it has silenced the opposition without actually making any real changes (Froissart, 2014:265).

In this way, the political framework itself is not challenged but allows the regime to conduct necessary changes without losing face. In fact, the regime can instead gain legitimacy. As Froissart puts it in the case of China, “lawyers defend rights within the existing legal system and thereby acknowledge both its legitimacy and limitations” (Froissart, 2014:268). Put another way. Even though the law can be used to challenge principles in an authoritarian setting, it is possible for the state to control what is tolerated and what is not. Since the method is seen as legitimate, it presents no real threat to the leadership (Froissart, 2014:269).

Many of these actions can also be exemplified with the case of Jordan. In the nineties, Jordan faced what could first be seen as a big liberalisation. After riots in 1989, the regime introduced a great deal of reforms, opening up new possibilities for CSOs. Martial law was lifted and opportunities for political competition opened up. In just a few years (1989-1994), the number of CSOs increased by 67 percent (Wiktorowicz, 2000:47). However, the liberalisation turned out not to be a sign of a big democratisation process. Instead it was part of a regime survival strategy in face of crisis. By what Wiktorowicz calls “defensive democratization” (2000:48) the government allowed the people to ventilate some anger without risking its own power. Although the government allowed activist organisations to work, they instead increased the control of *what* they worked with. Government legislation forced organisations to report what projects they intended to work with, when they had meetings, their members, their finances and so on. This forced transparency made it possible for the regime to stop whatever project they thought of as not suitable (Wiktorowicz, 2000:48-52).

In this fashion it took ‘social control’ over CSOs. Also, if it viewed organisations as threat to its power, it still had the possibility to shut them down. A further benefit for the regime was that the organisations themselves started with self-disciplining. In order to not anger the government and keep their work going, they purposely avoided certain areas they knew were sensitive. Not only did the self-disciplining make them work with ‘unwanted’ projects that the organisations did not choose themselves. It also made it less necessary for the state to conduct as careful surveillance of the organisations (Wiktorowicz, 2000, p, 53-54). By the ‘liberalisation’ then, the government *increased* its control over the society by opening a window to it. In addition, the public pressure for government reform decreased (Wiktorowicz, 2000, p, 57).

What is seen is thus that CSOs are highly dependent on the state in which they act. In authoritarian regimes, often only some might be allowed. The ones that are, are in addition often exploited so that they strengthen the regime in which they work, no matter their intentions.

### 3.2.2 Summarising the discussion about civil society

We can conclude from the above description that the relation between the state and civil society is complicated and be constituted in many different ways. What can be said however, is that it seems like the state has possibility to decide the rules of the game. As Weiss puts it:

In all but the most hermetically closed regimes, engagement may be either through or outside state channels, depending on what those channels are. Those channels that run through the state are substantially crafted and maintained by the state for its own purposes of incorporation and input, even if they still offer meaningful access to policy processes. Furthermore, it is the state itself that has the most obvious power to set the contours of what is not the state - to define the parameters of civil society, however much those boundaries may then be contested (Weiss, 2017:376-377)

The space in which CSOs can act is thus limited by the state. While organisations of course may still have their own interests, it is difficult to maintain that they can pursue them independently. On the contrary, CSOs can in some situations be steered into serving the interests of the state.

As, mentioned, even in liberal democracies, CSOs are often heavily dependent on the state, not least for financing which is important to remember as CSOs are always of risk of adapting to the conditions they face in order to survive. If they need to fulfil certain criteria to get money for their activities, it is possible that they will. Thus:

What matters is not just what space is available – a product largely of relative political liberalism and state capacity - but also what alternatives specifically positioned activists see as promising, ideologically congruent with their own objectives, and, where collective action is entailed, offering an encouraging balance of potential risks and rewards (Weiss, 2017:381).

Nevertheless, there is a point worth highlighting. Although authoritarian states can take advantage of civil society groups, it can be argued that these CSOs can still be for the good of society. That is, even though they cannot directly oppose a regime for political reforms, they can fill important roles. They can for example take care of social needs, provide for a platform for discussion as well as a link to the state. It might be limited support under control of the government, but it can still help the community.

In democratic countries however, they might do even more. When acting as watchdogs, they discipline it and further promote democracy. They can highlight issues that the state might have otherwise forgotten, promote transparency, provide a channel of communication with politicians and so on. As Jamal pointed out, CSOs and democratic states can reinforce each other in a self-reinforcing relationship. However, this does not mean that they necessarily do that. In most countries, there is a wide variety of CSOs with different agendas. Some are what we would call “good” for a country, and some are what we would call “bad”. Nationalistic CSOs, anti-abortion NGOs and so on exists in liberal democracies as well. In many cases, it is hard to argue that they promote democracy.

## 4 Methodological considerations

This thesis is a case study on CSOs in Poland, where the intention is to add to the theoretical debate outline above. The approach will be two-fold, where analyses of reports from CSOs will be combined with semi-structured interviews.

### 4.1 Ontology and epistemology

To state ones ontological and epistemological position means to state how one can perceive the world. Is there a “real” world out there? What can we know about it? The answers to these questions shows what a researcher thinks that (s)he can claim. In addition, the methods used can differ depending on research (Furlong/Marsh, 2010:185).

In this thesis, the assumption is that there is a real and independent world, one which we can gather empirical information from. However, the relation between the state and CSOs that is sought after in this thesis can vary between different organisations, space and time. Thus, attempts of quantifying this research would seem futile (Furlong/Marsh, 2010:189-190 & 204-205), as for example a law could state that X is forbidden, while at the same time not be enforced or used against all organisations. Thus, it is necessary to dig deeper into the context of what is studied and interpret it. As a consequence, this thesis will use the realist epistemology outlined in Furlong/Marsh (2010:186 & 204-205).

### 4.2 Method and limitations

The method in this thesis will be a case study of CSOs in Poland, including qualitative analysis of reports made by CSOs as well as two interviews with members from CSOs. The organisations included will be limited to ones that are working the promotion of democratic rights, rule of law, transparency and accountability (Esaissaon et al., 2012:258). By choosing organisations working in this field it is expected that the respondents are heavily concerned with the issues related to this debate. It is additionally expected that these organisations might be in some kind of opposition to the state, and that they have been effected by the negative democratic development in Poland. The organisations have been found through tips from Polish activists as well as through *The Citizens Observatory of Democracy* which is a joint project started by ten local non-governmental

organisations promoting democracy. This umbrella organisation includes some of the bigger CSOs in Poland (COD<sup>a</sup>, 2017).

As it is the views of CSOs that are of main interest, reports from these organisations will serve as a base for the study, or in other words the primary sources of information. Although it is possible that the reports might not give a perfect picture ‘objective’ reality, they provide the picture of the perceived reality of CSOs. This was considered of greater value for this research (Vromen, 2010:262). Further, as mentioned above what is stated in laws might not be enforced, or maybe not directed towards all organisations equally. To attain knowledge about these events, one must go more in depth during the research. The (negative) democratic developments are of an issue to these organisations not only as watchdogs, but also as these changes might directly their possibilities. As such, it is assumed that they will be more aware of changes affecting their daily activities. In other words, they provide a good overview of the situation. Finally, these reports are of value as they can provide information on how these organisations conduct their everyday work and their concerns.

Further, two interviews were conducted with representatives from two different CSOs. This was done in order to gather information that has not been “editorialised”, and to gain the perspective directly from individuals working with these issues. Thus, it was possible to also attain information that could otherwise have been overlooked. In other words, a deeper understanding of the phenomena rather than an ‘on the surface’ understanding was gained (Kapiszewski et al., 2015:28-29 & Vromen, 2010:258). The two organisations included in the study were the Stefan Batory Foundation and Watchdog Poland which will be further described below.

Although the interviews gave a valuable input, there were a number of issues to be aware of. First, the respondents could have had an incentive to promote the value of their own work and what they could do). By for example picturing a grimmer picture than there actually is, their work might look even more valuable than otherwise. In other words, interviews are a possibility for the organisations to get ‘free ad-space’. In addition, the information provided might be biased towards the government as these CSOs opposed the on-going reforms (Esaiasson et al., 2012:280-285. Nevertheless, as stated before, it was the view of the CSOs that were out of interest which limited this problem somewhat.

Second, it was necessary to be aware of my positionality. That is, how I perceived the answers, and how the respondents perceived me. Put another way, the answers might have been adapted to me as a student research, or maybe I interpreted them in ways that was not intended (Kapiszewski et al., 2015:229-230). Third, since the number of interviews were only two, it is hard to generalise the answer to all organisations. Thus, they only serve as a compliment to the other reports analysed from a greater number of CSOs (Esaiasson et al., 2012:272 & Vromen, 2010:258-259).

The interviews were conducted as semi-structured in-depth interviews with open-ended questions which allowed the respondents to develop their answers (see Appendix 1 for the question template). Thus, they could add nuance the answers. In addition, it made it possible to avoid the risk of steering the

respondent towards predetermined answers. Their answers could thus affirm, challenge, and reshape the research as the interviewees could put emphasis on the issues they thought were important and to present their own realities (Bryman, 2004:320-321 & Kapiszewski et al., 2015:29 & 194-197).

In addition, as a researcher it was possible to customize questions asked on the spot as well as open up new questions. The assessments and insights made from individuals actually working with these issues added to a richer and more complex picture of the events affecting the civil society in Poland (Bryman, 2004:320-321 & Kapiszewski et al., 2015:194-197). Further, it is worth to note that no ethical issues (Esaissaon et al., 2012:257 & Kapiszewski et al., 2015:29-30 & 145-149) such as requests of anonymity were requested.

The interviews were done in November 2017, one during a one week visit in Warsaw and one through Skype as the respondent did not have time at my time of visit. They were then transcribed and new issues that were brought up was used for the further development of the essay (Bryman, 2004:329-332 & Kapiszewski et al., 2015:31). A summary of the most relevant parts of the interviews will be found below.

While it would have been valuable with additional interviews, this turned out to be difficult, partly because of the development in Poland. Organisations were first contacted by mail. However, many organisations contacted did not reply, some only after many weeks or even months. Some replied that they did not have time. Other preferred not to be interviewed, but instead referred to reports, although this was also valuable. Another interview was planned through Skype, but this never happened to the amount of work of the interviewee. The first interview took place in Warsaw, and during the visit there, further contacts with a number of organisations were made. However, this did not result in additional interviews.

Secondary material came mainly from academic evaluations of the developments in Poland. However, as many changes are very recent, also a number of articles from other sources were used. Still, an assessment of the sources has been made in each case to deem if they were suitable and it is worth noting that the authors of these articles are often academics. Finally, a number of other sources were used such as statements from the EU and statistics.

What has been left out, must be admitted, is the perspective of the Polish government and other state institutions. This was done partly because it was the perspective of CSOs that was deemed more interesting. In addition, the language barrier constituted a problem as this author does not know Polish. While there were attempts to include reading of Polish laws and amendments to laws, this turned out to be difficult as they were rarely translated to English.

## 5 The case of Poland

In this section, the case of Poland will be more deeply analysed. Starting with a historical background, the focus then turns on the events after the election of PiS in 2015.

### 5.1 Polish development between 1989-2015

An important actor in the creation of the modern Polish state was the organisation *Solidarity*. Founded as a labour union, Solidarity became a strong force for the democratisation process by organising big parts of the opposition against the Polish communist regime. Rallying up to 10 million members at its height, the organisation called for free elections and economic reforms. Despite attempts of repression by the regime (partially) free elections were finally held in 1989. In the elections, Solidarity also won 99 out of 100 seats in the Polish Senate as well as all 161 seats that opposition parties were allowed to be elected for in the Sejm, (Encyclopaedia Britannica, 2017, Rae, 2007:222 & Stubbergaard, 1998:5).

In 1991 the first truly democratic elections were held. Poland since then been seen as a success story. A fast political development towards democracy and huge financial growth was combined with a NATO membership in 1999, and an EU membership in 2004. Poland was thus quickly brought into the western liberal sphere and celebrated for their democratic development (Nationalencyklopedin, 2018<sup>a</sup>).

However, as Poland turned increasingly liberal, the old optimism waned. An elite political class, distanced from society developed. The new elite consisted of old leaders from the communist era who had maintained their high positions and the new pro-liberalisation class. In addition, the left seemed to abandon their resistance to capitalism. The political arena was thus left without an alternative. Combined with great social inequality and high unemployment rate, scepticism against liberal ideas grew. As a consequence, Poland went through a resurgence of conservative ideas (Rae, 2007:222 & 225 & Shields, 2012:369).

In addition, although CSOs were seen as very important in 1989, some argue that liberal CSOs never seemed to firmly establish itself in Polish society. Although the number increased quite dramatically, they were still quite low considering the size of the country. In addition, many CSOs were small, underfunded and ineffective in raising money. As a consequence, they were not very effective in providing service, nor provide a good link between state institutions between public and state (Ekiert, et al., 2009 & Makowski, 2012).

As conservatives gained strength, they argued that a side effect of liberalism was an increasingly individualistic and immoral society. The conservatives wished for a state where politics and moral went hand in hand. The state should therefore intervene in the morality, religion and lifestyle of the population. The separation of church and state was hence seen as worrying as it would mean an exclusion of “believers from political debate” (Rae, 2007, 226 & Shields, 2012:361).

The conservatives wanted to create an alternative of values for the population to rally around. Thus, ‘historical politics’ was born. Through advancing a more positive version of Polish history and highlighting the importance of patriotism, the conservatives hoped to change the future Poland. In order to achieve this, there was a need of reshaping the institutions of Poland in favour of the conservative agenda (Rae, 2007:228). Today, 88% of Poles consider themselves patriots (CBOS, 2016)

It is from these groups PiS have garnered support. From the early 2000s, PiS have claimed that they aim to finish the revolution that Solidarity abandoned when they allied with former communists, the main source of corruption, and introduced liberalism. The party has been aided by the Catholic church that has once again become embroiled in Polish politics. After having been a source of resistance during the communist era, the importance of the church declined somewhat in the years to follow (Zuba, 2010:119-120). However, they have recently attempted to restore the influence. As the church is the largest CSO in Poland, it can rally lots of support. Even though the involvement in politics is sometimes more indirect, the church has used the radio channel *Radio Maryja* to mobilise its voters. The church’s support has been very valuable for PiS (Fomina/Kucarczyk, 2016:61, Modrzejewski, 2017:27-28 & Zuba, 2010:124-125 & 128).

One of the goals of the conservatives, and PiS, has been to ensure that Catholic institutions are not “discriminated against” (Rae, 2007:230). They have also tried to re-establish the moral values that they argue have disappeared in Poland. For PiS, these moral values have meant attempts of removing the right to abortion, campaigning against the LGBT community and to further expand on the ‘historical politics’ mentioned above Modrzejewski, 2017:28, Rae, 2007:230). The antipathy of liberalism has thus taken expression in an emphasis on a reborn national identity (Shields, 2012:373).

The first attempts of reforming the system occurred when PiS first got into a government in 2005. They were part of a coalition combined by a wide set of ideological positions and a despise of the Polish neo-liberal elites, the successor parties of Solidarity, former communists and a suspicion of foreign influence (Modrzejewski, 2017:23, Rae, 2007:228 & Shields, 2012:368-371). It tried to introduce a number of laws that would undermine the liberal-democratic institutions. Many of these laws severely risked individual integrity and eventually some of them were stopped by the Constitutional Tribunal (Rae, 2007:228 & (Bugarič/Ginsburg, 2016:74). In addition, the weak coalition resulted in an early election in 2007 which PiS lost (Fomina/Kucarczyk, 2016:59).

When PiS was elected in 2015, they replaced a coalition between the Civic Platform (PO) and the Polish People's Party (PSL) which had governed since 2007. However, during their second term they faced a number of setbacks. The coalition had gained support by avoiding controversial issues and leaning more to a nationalistic identity. A number of disliked reforms, a scandal as well as their leader Donald Tusk leaving for the EU hurt them badly (Marcinkiewicz/Stegmaier, 2015:1 & Vermeersch, 2013:131).

PiS used this to their advantage during the election campaign. The party criticised the reforms conducted by PO/PSL, and in order to keep the moderate voters they toned down their controversial aspect and instead focused on welfare issues. It was also not until the refugee crisis hit Europe that PiS started their anti-immigrant campaigns. Even the PO/PSL coalition had at first been unsure about the distribution of refugees that had been proposed by the EU. When the coalition finally did support it, PiS protested loudly (Kucharczyk et al., 2017, p.310 & Marcinkiewicz/Stegmaier, 2015:2-3). As fear of Islam and multi-culturalism is very prevalent in Poland, this benefitted them (interview 1 & Kucharczyk et al., 2017:327-331).

When the polls had been counted in the parliament elections, PiS had won a great victory. Although, they only received 37.58% of the popular vote, they had achieved something unprecedented in Polish politics. For the first time since the Polish independence in 1989, a single party managed to get a majority in both the lower house of the parliament, Sejm and the Senate (Kucharczyk et al., 2017:312 & Marcinkiewicz/Stegmaier, 2015:3-4).

## 5.2 Changes in Poland since the election of PiS

As mentioned above, PiS had already during their first period in government tried to introduce controversial reforms. They included attempts of centralising the power to the government, away from legislative institutions. However, PiS were not successful as the Constitutional Tribunal blocked a number of reforms. This led to frustration. The prime minister, Jarosław Kaczyński, called for raising charges against the judges for behaving “improperly” (Bugarič/Ginsburg, 2016:74 & Kucharczyk et al., 2017:312). However, after a number of setbacks (including a crisis in the ruling coalition), and growing criticism from the opposition, PiS called for re-election already in 2007. This turned out to be a loss. Many saw this as a victory for liberals (Fomina/Kucharczyk, 2016:59). However, PiS actually got a higher number of people voting for them in the 2007 election. They got 32 % of the votes, compared to 27% in 2005. In real numbers, that was an increase of almost two million voters. In other words, they did not lose support because of their reforms. Instead, it was the liberal opposition that managed to mobilise an even higher number of their voters (Jasiewicz, 2008:11). Thus, the reforms that have been made so far is not without support among the public.

### 5.2.1 Reforms affecting the democratic system

That PiS once again was going to follow a controversial line during their second time in office got obvious early on. As soon as they were comfortably in office they abandoned that track. A number of controversial politicians that had been kept out of the election campaign were picked as ministers. One example is the far-right hardliner Antoni Macierewicz who was chosen as Minister of Defense despite promises of not to do so. Other controversial nominations included the minister of justice, the minister of intelligence and the minister of environment (Marcinkiewicz/Stegmaier, 2015:3-4). Although some of these ministers have since been dismissed (Sobczak/Baczynska, 2018), it thus seems like the moderate campaign was a show, conducted mainly not to scare away centrist voters.

The first target was the judiciary system, beginning with the Constitutional Tribunal. Instead of swearing in three new judges that had been appointed by the previous government, PiS picked five judges of their own choosing to the tribunal. They did so by arguing that the previous government had extended their rights, which was actually true. They had tried to elect five judges, when they only had the right to elect three before their end of office. The result was that PiS refused to accept all five (Europa.eu, 2017<sup>b</sup>:17-18, FIDH, 2017, Kucharczyk et al., 2017:312-313 & Jankovic, 2016:55).

A few months later PiS passed an amendment called the ‘repair bill’. The bill mandated that the Constitutional Tribunal needed a two-thirds majority in order for decisions to be binding. It also ruled that the court needed thirteen judges (from previously nine) to be able to hear a case. As the tribunal only had twelve judges at the time, the bill made it impossible for tribunal to stop new legislation. The bill also included other amendments, such as giving the Sejm the right to terminate the mandate of judges. The Constitutional Tribunal thus became immobilised (Bugarič/Ginsburg, 2016:73-74, (Europa.eu, 2017<sup>b</sup>:17-18, HFHR, 2016:4 & Jankovic, 2016:52-53).

In spite of this, a few months later the Constitutional Tribunal declared the bill in violation of the constitution, and in addition, Poland’s Supreme Court passed a resolution stating that the rulings of the tribunal should be respected. The government’s reaction was harsh. Jarosław Kaczyński, the Polish prime minister, stated in Sejm that “anarchy” in Poland would not be allowed no matter what the courts said. The government also refused to publish the rulings, which in fact made them unbinding as according to Polish law, rulings have to be published in order to come into force. In addition, the Constitutional Tribunal had another problem. The situation with the judges was not yet resolved. The tribunal only had twelve judges instead of fifteen as there were six different judges competing over the last spots (some favoured by the previous government and some by PiS). The government therefore ignored the rulings as the tribunal did not act according to the law of thirteen judges needing to support a judgement in order for it to be binding (Batory, 2018:2-4, Bugarič/Ginsburg, 2016:74, Fomina/Kucharczyk, 2016:63, Jankovic, 2016:56 & Kucharczyk et al., 2017:313).

Also other parts of the judiciary system have been targeted in clear attempts of reducing or taking over their power. Among other institutions, this includes the

Supreme court, ordinary courts and the prosecution system (Batory, 2017, Europa.eu, 2017<sup>a</sup>, HFHR, 2017<sup>a</sup>). As with the Constitutional Tribunal, PiS have attempted to replace existing judges with ones of their own choosing also in those courts. They have done so partly by forcing a high number of judges out of office by lowering the age of retirement. In the Supreme Court, 37% of the judges got removed. The same thing was done in the ordinary court system with similar consequences. However, it has hit the Supreme Court harder as judges there are in the end of their careers, and hence usually are of a higher age. In these cases, PiS have thus challenged the principle of irremovability of judges (Batory, 2017, Batory, 2018:7-8, Europa.eu, 2017<sup>b</sup>:28-30 & HFHR, 2017<sup>a</sup>).

Although the final decision is made by the President (which is in itself questionable), the responsibility to nominate replacements of these judges falls on the newly established National Council for Judiciary. This council consists of other judges from all parts of the judiciary system. While it was originally planned as a way of ensuring independence in the court system, amendments in the law establishing it prevented this. The amendments stated that the members of the council will be chosen by politicians instead of other judges as is normally done in similar institutions. The parliament will also be able to replace judges when they deem it suitable (Batory, 2017, Batory, 2018:5-6, Europa.eu, 2017<sup>b</sup>:29 & 34 & HFHR, 2017<sup>a</sup>). In order to not lose their jobs or get promotions, judges will thus have an incentive to make sentences that are in accordance with what PiS wants. In other words, the independence of the court system is lost.

Further, in the Social Service Council, all members are now chosen by the Prime minister while previously it was only eight out of fifteen. The position of prosecutor general has also been politicised. The post is now intimately connected with the Minister of Justice who can now control the work of the prosecution service. Additionally, (s)he only needs to inform public officials about cases of “public interest” which risks decreasing the independence of the justice system (Jankovic, 2016:58-59 & COD<sup>b</sup>, 2017:2).

There also other legal changes that have been made or announced. Among these are amendments on Law of the National Remembrance Institute, law on assemblies, the police and a new anti-terrorism law. Most recently however, a law proposing changes in the electoral system has been approved by the Polish parliament.

The new law will affect the State Election Commission (PKW), which is the body that oversees most aspects concerning elections. This includes the registration of parties, managing voter rolls, party finances, announcing the final election results and so on. The bill presented by PiS concerns the way in which the members of PKW are chosen. It states that all current members will have to step down in 2019. Thus new ones have to be chosen. Previously, the 9 members of PKW were elected by the three top courts in Poland (The Constitutional Tribunal the Supreme Court, and the Supreme Administrative Court. This time however, seven out of nine members will instead be chosen by the Sejm and only two by the Constitutional Tribunal and the Supreme Administrative Court. PiS argues that this will prevent one party from dominating the body, since one party will only be allowed to nominate a maximum of three members. However, as PiS

is now in control of the court system they will be able to secure at least four, probably five, seats in the PKW and get crucial control over the electoral system. Further, the administrative support body to the PKW, the National Election Bureau (KBW) will also lose independence. The KBW coordinates most aspects of the election process which means it is highly important that it is seen as impartial. The executive of the bureau was previously chosen by the PKW. Now, the President, the Sejm, and the Senate will instead nominate one candidate each, from which the PKW can choose one. As PiS is in control of all those institutions however, they can choose people of their liking as executives (Marcinkiewicz/Stegmair, 2018 & Shotter/Huber, 2017).

The amendments to the Law on the National Remembrance Institute makes it criminal to use terminology that may be seen as harming Polish reputations, mainly concerning World War II. More concretely, it forbids people from using terms such as “Polish death camps” instead of German concentration camps. The government argues that the bill is meant to prevent misunderstandings that Poland is to blame for German crimes (Morawiecki, 2017). However, it has been heavily criticised for playing down the holocaust. In addition, it does not only concern the holocaust, but Polish reputation more generally. Thus, it can be an obstacle to free speech as it further includes measures that make it possible to sue individuals or organisations that ‘harm’ the reputation of Poland (HFHR, 2016:4-5, HFHR, 2018 & Matthews, 2018). In other words, criticising the Polish history or politics in any way may make you guilty of a crime. Obvious targets of this law may be CSOs.

The proposed amendments to the Law on Assemblies (COD, 2016) allows the creation of hierarchies of assemblies. In other words, it will become possible for the government to promote one assembly over another. When an assembly becomes privileged, it will be illegal to protest against them within a distance of 100m. In addition, the law can make it possible for the government to prevent protests which they do not like. People will thus have difficulties voicing their disagreements on government approved topics (HFHR, 2016:4-5).

The police and anti-terrorism laws makes it far easier to monitor Polish and foreign citizens. As the laws are very vaguely written, foreigners can be monitored on the basis of “fear” rather than suspicion. CSOs points out the risk that these changes will be aimed at arbitrary targets such as oppositional individuals and organisations (COD<sup>b</sup>, 2017:6-7, Council of Europe, 2016:5-11 & HFHR, 2016:4-6). That there is a risk in opposing the government have already been shown. After widespread protests against the government, the police published pictures of people participating in the protests and asked for help with identification of them. In another instance when ten teachers wore black clothes to work in a protest against an almost complete ban on abortions, the Schools Authority initiated disciplinary proceedings. These charges were however dropped (COD<sup>b</sup>, 2017:3-4).

Additionally, the government have effectively taken over state media. By adopting a new Media Law, the boards of all public-service broadcasters where

dismissed and replaced with new ones controlled by the Treasury Ministry. PiS also appointed a new President of television and dismissed, demoted, or forced to resign around 250<sup>1</sup> media profiles and journalists. These individuals were suspected of being opposed to the government (COD<sup>b</sup>, 2017:5, Fomina/Kucharczyk, 2016:63, HFHR, 2017<sup>b</sup>:11-15 & Jankovic, 2016:59). In addition, government bodies have been forbidden to subscribe to the newspaper *Gazeta Wyborcza* and to advertise in some of the independent media. This has had a big impact on their incomes (COD<sup>b</sup>, 2017:6).

Although not a reform, PiS have used its increased control of media to conduct smear campaigns against oppositional groups. Accusations, including statements that some human rights defenders “received public funds in a fraudulent, non-transparent way, through family and personal ties” (COD<sup>b</sup>, 2017:5, CSF, 2017:79 & HFHR, 2016:6-8 &) were made. However, these accusations were not based on any proofs making them clear attempts of the government trying to delegitimise CSOs (HFHR, 2016:6-9 & HFHR, 2017<sup>b</sup>:11-15).

Some developments have directly affected CSOs. One is the newly established National Centre for the Development of Civil Society. While not yet fully functional, the centre will be responsible for controlling the public distribution of funding. Although a part of the board will come from CSOs, a majority will be politically appointed, and the Centre will ultimately be controlled by the Prime minister. CSOs will thus be unable to stop rulings in which they do not agree. As it will centralise the funding to a government controlled institution, instead of as before an independent organisation, the centre will heavily increase the government control over CSOs (Day, 2017, HFHR, 2016:5-6 & OSCE, 2017).

Fears that the government would only choose to fund certain programmes are not unfounded as the vague formulations regarding funding makes it easy to influence where money goes to. The decision of what to fund will be taken by the director of the institute who in turn is directly appointed by the Prime minister. Organisations working with minorities and LGBT groups have already seen reduced funding from public sources. Government officials have additionally implied that they do not intend to fund certain organisations (CSF, 2017:87-88, Day, 2017 & OSCE, 2017). As a consequence, some CSOs have already restrained their criticism against the government because of fear of retributive actions (USAID, 2017:180).

Yet other platforms with relation to CSOs have been dissolved, including a council, a working group and a team which aimed at simplify discussions and coordinate work done by CSOs (HFHR, 2016:4). In other state authorities, the government have got an increased control over the employees. High-ranked state officials can now be fired at any time as the government sees fit. The people replacing them will additionally not be chosen through competition but nominated, most often by the Prime minister (Jankovic, 2016:58-59).

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<sup>1</sup> Until May 2016

Further, the drafting of the new Bill on Transparency has ironically not been very transparent itself. Without issuing any information on the outline during the process, it was published in full with only six work days for consultations instead of the usual fourteen (COD<sup>c</sup>, 2017:3) The government have also gained the right to withhold information if it significantly burdens the work of the government office. Accessing the publication of a draft legislation will additionally be subject to a mandatory fee<sup>1</sup> which makes it less accessible (COD<sup>c</sup>, 2017, p.1).

The low transparency has become a more common problem. The amount of public consultations and the time available for comments of the reforms have been significantly reduced. In addition, decisions are often taken hastily on short notice and/or during proceedings in night time. This means many organisations are unable to participate because of work times, or distance to the meetings in Warsaw (COD<sup>b</sup>, 2017:1 & COD<sup>c</sup>, 2017:1-3). Further, even when organisations have been allowed to participate, they might not be allowed to speak. A lawyer from HFHR<sup>2</sup> requested to speak for eight hours without getting the permission during a discussion (HFHR, 2016:3).

While the government has apparently reduced transparency, it goes somewhat the other way for the organisations and individuals wanting to access information. Organisations taking part in consultations of new legislation will now have to provide information on the VAT number<sup>3</sup> of their donors down to donations of 2000 PLN<sup>4</sup>. This gives the government an almost full control on the donors and risks silencing those organisations who for instance receives plenty of funding from abroad. Individuals will instead have to disclose their income data. Not doing so will be a criminal offence (COD<sup>c</sup>, 2017:2-3).

### 5.3 Final remarks

One can conclude that the reforms done by PiS have endangered the democratic standards in Poland. PiS's majority in the political system has allowed the party to get a firm grip over important institutions in Poland. Especially the state of rule of law have worried many both nationally and internationally.

Poland was for example marked with a downward trend arrow in the annual 2017 report by Freedom House (Puddington/Roylance, 2017:19). More severely however, the EU decided in December 2017 to trigger Article 7 of the Treaty on the European Union in an attempt to stop the development. Known as the 'nuclear option', it was the first time that the EU proposed such as measure against a

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<sup>1</sup> While this is also the case now. However, the new rule means that a failure of payment will prevent the party from accessing the information.

<sup>2</sup> Helsinki Foundation for Human Rights

<sup>3</sup> The VAT number is a tax identification number and provides information and details on the individual or organisation in question.

<sup>4</sup> Approximately 4 500 SEK in November 2017.

member country. The Commission argues that Poland have breached EU law by rearranging the justice system. If the article 7 procedure is fully triggered, Poland risks losing voting rights in EU institutions. The deadline for improvements was set to the 20<sup>th</sup> of March, 2018, but at the time of writing no final decision had been made (Boffey/Davies, 2017, Europa.eu, 2017<sup>a</sup>, Europa.eu, 2017<sup>c</sup> & Wróbel, 2018). These measures are a clear sign that the Polish democratic system is at risk.

Worth noting however, is that so far, the reforms have usually been done somewhat within the legal framework. Even though both the Constitutional Tribunal and the Polish Supreme Court have made rulings against the government, PiS have often found legal loopholes to go through with their changes anyway. While, controversial and perhaps immoral, it is not definitely illegal.

Academic Sava Jankovic argues that it is the “Polish political system that is at fault and not the party that governs” (2016, p, 60). He contends that while PiS manoeuvres on the edge of what is legal, they have managed to adjust it for their own purposes within the limits of the Polish legal system. Although the Constitutional Tribunal is meant to be a guardian of the legal system, Polish laws at the same time allow the Sejm and the Senate to subordinate. The apparent weakness of the court system when a party gets a majority in both chambers is thus risky. As the Sejm can nominate their candidates for judges in the Constitutional Tribunal it can never be fully independent from politics. This makes it hard for it to be a guardian of the constitution (Jankovic, 2016:61). Thanks to the majority of PiS in both these institutions they can therefore push through reforms without having to deal with other parties in a coalition as have been the case for previous governments (Jankovic, 2016:60-62). Nevertheless, PiS have still shown little respect for the Polish democratic and juridical system.

On a more positive note, while the government have shown despise towards both opposition groups and the EU, they have also listened to protests in some instances. For example, the government had to postpone the decision to prioritise assemblies led by the state and the church over other others after they met heavy opposition (COD<sup>b</sup>, 2017:4). CSOs have also so far also still been allowed to act even though they face a harder climate.

The developments in Poland have not only been negative, however. CSOs have gotten increased acknowledgement for being experts in certain fields. This has led to increased involvement in the drafting of some public policies. CSOs have also observed increased civic mobilisation in the society, not only within the work of the organisations but the political development in general. In independent media channels and opinion polls, CSOs have gained increased support. Additionally, the closing space have led to initiatives where different organisations create coalitions in order to coordinate their work. One such initiative is the Citizens Observatory of Democracy. The initiatives have also led increased transparency and outreach among CSOs, making them more accessible and closer to the public (CSF, 2017:90-94 & Interview 1 & 2). Some CSOs have thus arguably become more effective over the last years.

## 6 Interviews

In order to gain a greater insight in how CSOs work in Poland, two interviews with members of CSOs were conducted. The interviews are meant to give further knowledge on the state of democracy, challenges and how CSOs work. The interviews confirmed much of what was said above, but also helped nuancing the situation.

It was earlier mentioned that it was difficult to find interviewees. The first interesting answer however, came during the attempts to contact organisations. One organisation replied that at the time of contact, it had received “very bad pieces of legislation to consult withing [sic] 7 days – in a week that everybody is travelling home for All Saints” (Mail conversation 1). As their team was small and had limited capacity they could thus not participate in the study.

In the end, two individuals from two different organisations were interviewed. The first came from the liberal oriented Stefan Batory Foundation, an organisation devoted to promote democracy and democratic standards in Poland. It is one of the oldest CSOs, established shortly after 1989. Historically, one of their main tasks has been supporting the activities for other organisations in the third sector in Poland. First by being responsible for distributing the so called Norway-grants<sup>1</sup> to other CSOs in Poland. In addition, by supporting publications and publishers such as *Znak*, a publisher with close ties to democratic Catholics.

For the past 10-15 years, they have also functioned as a think tank working with systematic issues. Their main focus has been anti-corruption, local democracy, promoting democratic standards and local governments. In recent years, also the protection of whistle-blowers, promoting democratic standards in law-making as well as other important issues for the democratic system have been included. They also distribute scholarships.

The other organisation, Watchdog Poland, is an organisation that started as a grassroots’ movement 15 years ago. At the beginning, it focused on better governance, transparency and accountability on the local level. An important part of its work has been raising awareness about the need for democratic standards. Quite soon, it expanded its activity also to the central level by creating a network among activists. Within the network, Watchdog Poland provided legal support as well as education for new activists. It developed into a system of peer learning,

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<sup>1</sup> The Norway grants are grants contributed by a number of different countries in order to reduce economic and social disparities, including support to civil society organisations working with democracy, in receiving countries. The part of the programme focused on civil society organisations ended in 2015 however. The grants are actually called EEA grants and Norway grants. However, the commonly used name in Poland is Norway grants. Read more here: <https://eeagrants.org/What-we-do> and here: <https://eeagrants.org/programme/view/PL05/PA10>

with members from many parts of society and backgrounds. They also regularly publish content related to the democratic standards in Poland.

Both of the organisations thus monitor the democratic development in the country, but from slightly different perspectives. Their view on the state of democracy was however similar.

## 6.1 The mixed bad

That the democracy in Poland was going backwards in Poland became quite clear early on in the interviews. A number of reforms that shifted the balance of power were brought up. While the state of democracy was not only seen as bad, what happened to the Constitutional Tribunal seemed to be very worrying.

I would say it is a mixed bad because on one hand, of course some crucial institutions were either, you know, totally disabled or seriously weakened. Like the Constitutional Tribunal for example, which is not only controlled by the party in a sense, because it was captured. But it is also very ineffective [...] The whole purpose of capturing the tribunal was to basically stop it and silencing it (Interview 1).

Thus, there were no longer any place to refer to if the government did anything wrong which added to the distrust of the system. In addition, the close connection between the judiciary and the electoral system was brought up. Since the courts controls the electoral bodies, PiS also got increased influence over the election system. Although not that much had happened yet, PiS had already proposed changes to it.

At the time of the interviews, additional laws were awaiting approval. If all these were approved, PiS could influence the career of judges. Thus, also the judges in the courts would need to step up, but that was not always the case.

And these bodies have an influence on the career opportunities of the judges. So it means that now judges will have to be very brace, and actually our experience is that they are not that much (interview 2).

The situation in the parliament was described as a mess. Regulations that limit the space for opposition parties to criticise and evaluate PiS proposals, and to present ideas of their own have been introduced. The opposition, which was already considered weak, thus had even less possibility to exert influence.

There were also concerns regarding the way in which the laws were pushed through.

For example, some drafts of laws are read at the ministries by the experts hired by certain ministries, but they are then proceeded and voted as if they were projects by particular MPs. They do not have to announce earlier, they do not have to organise public consultations if this is a project submitted by an MP and so on. So they are basically, they are not changing the rules. They are simply ignoring them (interview 1).

In addition, PiS exploited the system in also in other ways.

Sometimes the problem is that they do not change law or the institution but they basically hollow it out from the inside. So on the surface everything is fine but they just nominate their people for certain positions within ministries or within state owned companies (interview 1).

Mentioned was also the Law on Transparency in Public Life which have been mentioned above. Not only do this put additional administrative strain on organisations, it also makes it impossible to disclose foreign sources of income. For example, the EU can thus no longer act as a donor.

[They] are basically pretending this is just for procedural reasons for transparency but you are effectively limiting access to certain organisations, like Batory (interview 1).

Legal measures that reduce influence of oppositional groups were often disguised as administrative regulations, even though they were political moves to make them more resilient towards CSOs. The increased difficulties of monitoring and criticising the government also affected the opposition outside of the parliament. The Law on Assemblies was brought up as one reason as it makes protesting even harder.

[People] have criminal charges because they meet consequences of civil disobedience which is of course one of the means to protest. People accept it but it does not mean what we have a lot of freedom (interview 2).

Both organisations also mentioned public media, stated to be an “arm of the government” (interview 2) and broadcasting propaganda. However, both interviewees pointed out that public media has always been a kind of a target for Polish governments.

Every party, every political force was trying to capture public media and they usually succeeded because there were no checks and balances. So public media was in a pretty bad shape institutionally even before, but right now of course it is propaganda (interview 1).

While bad, it had let to an interesting development.

... [Public media] numbers are terrible. I mean people just stopped watching it. And their ratings are terrible so people simply turned their back on public media, which is interesting because right now smaller and independent media outlets are gaining ground because of that. That people are simply looking for different sources of information (interview 1).

Although both interviewees put up grim pictures, they agreed on that democracy was not completely in shambles. One pointed out that although there were ongoing reforms that could change the situation, there were still independent media, independent NGOs and independent courts (at least until the reforms were finished). Comparing it with Hungary, Poland was seen as nowhere near as bad. There were worries that this would change however.

... the real threat is what is going to happen with the electoral system because so far nothing was done. But it may be done. There are already plans. And also the

fact that there is the reform of the Superior [sic] Supreme Court that can impact the freedom of elections (interview 2).

The National Centre for the development of Civil Society which had recently started to function was also discussed. While there were some worries, none of the interviewees seemed to be overly concerned by the centre. One of them meant that idea of centralising the funding is not bad in itself. It was instead the way in which the government that was trying to control it that was worrying. Although the centre was a part of this effort it could, and had, been done in other ways. Probably to make it easier the government did have plans to change the law regarding public funding though. There were sign that those changes might exclude some organisations.

Both organisations interviewed however, had always tried to use as little public money as possible, as there was “strings attached” (interview 1). The new centre would thus not directly affect their activities. However, other organisations that are more dependent on public money could find themselves in big problems.

... there are some organisations in Poland which are very dependant of public money. This will probably be a huge problem for some of them. Because they will not be able to get public money if they do not comply with some regulations. They will not be particularly willing to do that so they will have to find other sources of financing their activities (interview 1).

There was one worry though. “More probable is just that [the centre involves] more reporting, more difficulties, more controls more opportunities for the administration to make our lives a nightmare” (interview 2).

Other reforms relating to the funding were however seen as more troubling. The main issue was that there plans to change what was considered a public good. This might affect he so called 1%-law which allows individuals to assign 1% of their tax to a CSO of their own choosing. The money is thus ‘semi-public’. That is, it is part of the tax collecting, but organisations do not apply for the money as it is a gift from individuals. For independent organisations it can make up a huge part of the budget.

The receiving organisation must however work for the public good. If the meaning of public good changes, PiS can refuse some organisations money. For example, some organisations work on topics like abortion or domestic violence were considered in risk of no longer being able to receive money. While it would be hard to argue that organisations working for democracy are not a public good it was still seen as a risk.

At the time of the interviews, the financial situation was stable or even quite good for both organisations interviewed. The Stefan Batory Foundation had a stable donor base, and so did Watchdog Poland. Watchdog Poland had however prepared for a changed economic climate for many years as foreign donors had pulled out of Poland, and the Norway Grants were coming to an end. PiS had in one way made the situation riskier, but it had also helped them.

So what we did for several years before we were preparing ourselves for raising money from citizens. So Law and Justice actually somehow helped us. Because the fact that they are so confronting. And they made people realise how important

democratic standards are, made also our activity more visible, more understandable (interview 2).

While not both organisations felt that PiS directly targeted them, it was clear that PiS attempted to make their life harder. “They will of course never say that they are against promoting democracy or human rights [...] But of course they are suspicious of civic organisations” (interview 1). Especially liberal ones seemed to be seen as a threat according to the interviewee. Maybe not as a part of a larger scheme but as “a whole mind-set that they have as a conservative right wing party (interview 1). While somewhat afraid to directly state that they were against some organisations, they had other ways to argue.

Here is where right-wing organisations come in handy [...] people who are more conservative politically, Catholics, [argue that they] are in fact treated by big donors and liberal organisations, like Batory, as minority organisations and that they are treated unfairly. So they kind of have this zero sum game image of the third sector. So if the money goes for gender mainstreaming, securing rights of homosexuals, they immediately argue that it is at their disadvantage (interview 1).

Thus, PiS argues that “we are not censoring anybody, we are not pushing anybody out. We are just restoring balance” (interview 1). As such, the conflicts between different CSOs are very useful for the government.

There were organisations that had directly felt the effects of PiS politics, however. CSOs working on issues such as LGBT and gender equality had experienced difficulties. There were concerns that this would eventually happen also to other organisations.

There was a series of raids you can even say, aimed at women’s organisations in different parts of [the] country. So there is pretty credible assumptions there that they might at some point try to send police forces or simply officials from different ministries to control us, to look into our files (interview 1).

The Batory foundation had thus already started to think about ways to restrict access to their offices and documents. PiS was also stated to use harsh rhetoric and media to attack CSOs that oppose them. The target of those smear campaigns were usually organisations that PiS consider connected to the old government and members of the Constitutional Tribunal. A notable exception is however the organisation Akcja Demokratyczna that managed to rally a large number of people in protests against the government. Further, it was directed towards the well-known George Soros who donate large sums to democratic organisations, partly through his Open Society Foundation<sup>1</sup>. While none of the organisations reported government accusations, they both receive money from Soros.

However, the criticism against Soros seems to have given PiS sympathisers the confidence to attack organisations which they do not like. There have been

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<sup>1</sup> George Soros is a controversial figure in many parts of the world. However, this thesis is not the space to discuss those controversies. To find out more about him and the Open Society Foundation. Please visit: <https://www.opensocietyfoundations.org/> and <http://www.businessinsider.com/how-did-george-soros-become-the-favorite-boogeyman-of-the-right-2017-5?r=US&IR=T&IR=T>.

attacks on LGBT organisations with methods such as stone throwing, and attacks have also been aimed towards Watchdog Poland. “My organisation in the last two weeks or three had the destroyed plate at the gate with descriptions like ‘Soros bastards’” (interview 2). Thus, there was a sense of ongoing feeling of a changing climate in the society.

The future of democracy in Poland was seen as very uncertain. Both organisations agreed that there was a need of change. However, only changing the government was not a guarantee that the situation would get better.

This is a problem for my organisation to say. You know, we always think about standards regardless who is at power you need those standards. So the problem is that I do not believe that this party at power is going to provide, to keep any standards. They do what they want. On the other hand I am very much afraid that those who will come after them, I hope very soon, they will be forgiven different things that they are doing (interview 2).

Thus, the interviewee was concerned about attempts from the opposition to ally themselves with them.

The opposition tries to contact us and to say we need to unify, we need to work together and so on. On the one hand we are not very happy with that since we do not want to become politicised. On the other hand, they are really not reliable people. But on the third one, is if we do not expect from them they are not going to be different (interview 2).

Explaining these statements, it was mentioned that previous had not kept up to standards either. As mentioned, they had also tried to influence public media, they had done reforms that were arguably unconstitutional and so on. At one occasion, a law was prepared by the Constitutional Tribunal, but put forward as it was prepared by the president. When Watchdog Poland tried to criticise this, no-one wanted to listen and there was nowhere to refer to as the Constitutional Tribunal itself had prepared the law (interview 2).

Then, some people argued that they should not voice criticism since it might help PiS come back to power again (after the 2005-2007 episode). The government should be excused since they were a “successful country after transition” (interview 2). As could now be seen, it did not help the Liberals win the election. Rather, it helped Law and Justice as it gave them some truth behind the argument that they were not treated on equal terms. The interviewee admitted that “this is to some extent true. That we were not trying to force the previous government fulfil all standards” (interview 2).

Thus, it was important to not let fear of giving points to PiS prevent CSOs to voice criticism. Instead, there was a need to raise the expectations among the public for those standards to be held. “Then we really need to say at the beginning. ‘There is no mercy, you have to be very democratic’. And this is something that we are working on” (interview 2).

There were other concerns regarding liberals. Not only did the liberal vision seem increasingly exhausted. In addition, the big divisions in society had led to liberals increasingly showing tendencies of accepting a status quo. In other words, that they would give up on parts of the country where PiS was stronger and focus

on the cities as liberal “islands”. There was a concern that this would just deepen the rift between different sides. Instead, one interviewee called for a more aggressive outreach to the society.

It is not only about dialogue because some people you simply cannot have an effective dialogue with. It is just an exchange of opinions or feelings even. But at some point you have to stand around and say ‘Here is what I believe is true. I will do my best to convince you it is’. [...] That this is how democracy works, and this is what democracy is. That it is not you know, tyranny of majority. It is not only about the number of votes. It is also about everyday life, living with difference (interview 1).

However, his hopes were not high. As he thought the development went the other direction, he stated “I am very concerned not only about PiS, but I am even more concerned about liberals” (interview 1).

## 7 So what does this mean?

There seems to be good reasons that the development in Poland over the last few years have caused great concern among democrats. Important institutions have been put under the control of government politicians and oppositional groups are being worked against through law-making and smearing campaigns. The democratic systems have become increasingly hollowed out. There are also positive aspects however. One of them is that CSOs seem to have got more support for their activities from the public. In addition, some have managed to rally the opposition. Although they are sometimes harassed, as a consequence, even PiS has become somehow restricted in a few cases.

While the democratic system has been severely weakened in an ongoing ‘demolishment’ of democracy as one interviewee (2) called it, democracy in Poland seems to have been far from perfect also before PiS came to power. Although celebrated as a role model by many, democratic standards do not seem to have been very deeply rooted in society. Also previous governments had done questionable actions during their time at power, including attempts of increased control over public media and trying to circumvent the Constitutional Tribunal.

Hence, when a weak legal framework combined with PiS in a majority in the Senate and the Sejm gave PiS the possibility to conduct reforms without meeting resistance they used the opportunity. In such a context, it was very difficult for CSOs to stop it the reforms. The Constitutional Tribunal was simply outmanoeuvred and the following reforms were difficult to stop. It is thus clear that there was a lack of safeguards in the legal system. Put in other words, it is the system that is at fault, not the ruling party, as Jankovic argued above. It does not mean that another party would have done the same, but looking at how previous governments stretched the rules it was perhaps just a question of time before it happened.

In addition, democracy has not been very deeply rooted among the public either. Membership in political parties and voter turnout in elections have been on a very low level ever since 1989. On average, the voter turnout between 1991 and 2015 have been on approximately 48%. In the 2007 election which was considered a huge success, especially among liberals, the turnout was 53,88% (IDEA, 2018). Party membership has also been mediocre. In 2011, the biggest party in Poland, PSL, had 90 000 members (Gwiazda, 2015:84) which is quite equal to the biggest part in Sweden, the Social Democrats (Melzer, 2013). Poland however, had a population of about 38 millions in 2011 compared to 9,5 millions in Sweden (World Bank, 2018). A number of reasons has been pointed out. One seems to be the low trust in parties among voters which probably has not been helped by parties lacking in democratic standards. Another that political parties

consists of “elites” without connection to the public as well as that Polish parties do not see advantages in having a big number of members (Gwiazda, 2015:84).

That PiS have gained increased support during these years supports these claims. Even though PiS lost in the 2007 election, which has held after a number of scandals, they actually gained more votes in 2007 than 2005 with quite a big margin as mentioned above. While the liberal parties managed to mobilise their voters to an even higher degree, it thus seems questionable whether the liberal victory was a such huge success as it was made out to be. In addition, despite the scandals PiS won in 2015 and even though they have met lots of protests, opinion polls show that they have kept their voters (CBOS, 2017). According to some their support has even increased to 47% (Stanley, 2018).

To be fair, they have delivered on some of their crucial election promises, especially the child subsidy programme *500 plus* which has been hugely popular (interview 1 & Szczerbiak, 2017). In addition, they seem to have answers to many of the frustrations that exists among Polish citizens (interview 1 & Kucharczyk et al., 2017:310 & 320). They have also attempted to increase Polish influence in the EU. Although Poland have gained much from the EU, and that the population largely supports the institution, PiS have been very sceptical of the organisation. Especially after the refugee crisis, PiS have gained a lot of support by arguing for Polish values and refusing some of the proposed EU regulations. Kucharczyk et al., 2017:329:331).

Regarding the actions towards civil society, there is cause for concern. While not using “tactical concessions”, it could be argued they use “tactical breaches” of democratic standards. The government seems to have reasoned in the same way as authoritarian states. Organisations are still allowed to act, but the available space has shrunk and is also more closely monitored. PiS might thus get an increased possibility to shape the work by CSOs into benefitting the government. Many of the reforms that PiS have done risk the possibility of organisations to remain independent. If PiS decides to use the new regulations against pro-democracy groups, it might result in them being unable to keep it and monitor the state. As mentioned, some organisations have already been avoiding criticising the government to not loose public funding.

For example, The National Centre for the Development of Civil Society might result in a centralisation of funding and regulations that will reduce the independence of CSOs significantly. If the fears by Watchdog Poland comes true, it might also result in a huge administrative burden. As mentioned, PiS have introduced a number of reforms that can harm, or already have harmed, the economic situation of many CSOs. PiS have also considered changing what is considered working the public good, aching more to accepting ‘traditional values’ as more important. They will thus be able to steer more money towards certain areas. Some organisations have already start preparing for this eventuality by finding other ways of receiving individual funds (like crowd-funding)<sup>1</sup> (CSF,

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<sup>1</sup> However, this could of course be seen as positive as CSOs finds way of increasing their resilience.

2017:83 & 91). However, it still limits the options available to them and thus the possibility to maintain their activities.

In addition, the Law on Assemblies might make it harder to remain independent. While it will not be forbidden to receive foreign money, the rules may make CSOs incapable of acting as watchdog organisations. Put in other words. If PiS can remove the funding for oppositional organisations within the country, as well as make it impossible to attend hearings when receiving money from foreign sources, how are those organisations supposed to monitor the state?

The space available have been shaped in other ways. The laws on the National Remembrance Institute and hierarchies of assemblies further makes it more difficult for the opposition to voice their concerns. Not being able to criticise Poland or make counter protests without being of risk of facing criminal charges will be very limiting. While the situation is not that bad today, many of the reforms necessary to put an end to meaningful opposition are thus already there.

Finally, the smear tactics used against oppositional groups was also seen as concerning. Media repeatedly claims that the opposition consists of a small liberal minority that will lose out from the changes in the country and that they accept money from foreign or 'liberal' sources meddling in Polish Affairs. Harsh statements have also been made on topics which PiS does not approve. These tactics have made it increasingly difficult to work in some areas and has additionally changed the mood in society. The effects can be seen in the statement below.

There is reluctance to help, support and engage in dialogue with LGBT organisations. All the activities of public authorities are ridiculing, belittling the value and dignity of this group, as well as show and give permission (which willingly goes down to the citizens) for hatred, violence and aggression (CSF, 2017:88).

The implications of these changes is that pro-democratic organisations in Poland might find increasingly difficult to get their messages out to both the state and the society. There are thus reasons for worry. However, one can wonder why, after almost three decades of democracy, democratic values were not more deeply rooted in society. Should not CSOs have been more influential?

## 7.1 The role of civil society in Poland

According to the theories, CSOs are assumed to have a monitoring role as well as a fostering one. Regarding democratic values, the fostering role seems to have been pretty unsuccessful. There are probably many reasons for this.

First, the membership in CSOs in Poland have been among the lowest in Europe. While it has still increased slightly, from 23% in 1998 to 28% in 2010 (Gwiazda, 2015:77), CSOs in Poland seems to have had difficulties establishing in society. Many organisations have also been small and underfunded. As mentioned above, many organisations have failed to be the providers of a link to

the state, civic mobilisation and providers of services. Second, the presence of a conservative/nationalistic has been strong ever since 1989 which does not have be very surprising.

As virtually all accounts of anti-communist ‘revolutions’ testify, they were in general as much about nationalism (national independence from the Soviet Union) as they were about democracy (anti-communism). In short, nationalism was very much a part of civil society in 1989-1990; in some cases, it became even the dominant ideology, leading some scholars to talk about ‘nationalist civil society’. It is not surprising then, that in post-communist times nationalist forces remained active in the civil society of Eastern Europe (Kopecký/Mudde, 2003:3).

These groups have increasingly constituted a challenge to liberal CSOs. Schmitter argued that civil society risks becoming divided into distinct groups, who promote their interests and compete with each other. This seems to be what has happened in Poland as liberal and conservative/nationalistic values have become increasingly divided. Although the church had been a source of opposition to the communist regime, it has now become somewhat in opposition to the democratic one. To be fair, the Batory foundation cooperated with a catholic democratic publisher but this did not seem to be common. As the competition between these groups only increases, the divisions does as well. In Poland, liberals have become increasingly disrespected to the benefit of conservative forces which have gained increased influence.

Relating to the above is the third point. The competition has weakened liberal CSOs further during the PiS government. As pointed out in interview 1, right-wing CSOs, can argue that it is not fair that they do not get as much support as other ones. Thus, PiS can argue that they remove funds from LGBT, refugee and women’s groups for the sake of fairness rather than that they do not support these views.

Finally, perhaps liberal groups are themselves to blame. When conservative forces became stronger, it seems like at least some CSOs refrained from criticising liberal governments in order to not benefit PiS. This seems to have backfired as PiS and conservatives then were partially right when disputing the fairness of the reporting, which have helped them in gaining increased support.

Although it has been a reactionary response, the election of PiS seems to have also empowered CSOs somewhat however. Although some CSOs have suffered, others seem to have become stronger. More people have joined oppositional movements and some CSOs in have seemingly found ways of increasing their resilience towards outside pressure. By organising themselves into coalitions, using independent media and new sorts of campaigning, many have continued their work. So far, many have found ways of ensuring their income as well. The pro-democratic CSOs thus have found ways of maintain a sphere of opposition to the state.

The organisations interviewed and analysed were mainly well-established ones. Thus it is hard to generalise on Polish civil society. However, at least these CSOs did have many of the traits that were assumed by Diamond. By publishing reports and reaching out the public, they have formed a link between state and society. Both organisations acts as monitors and provides information on reforms

and actions to the wider public. They have also highlighted wrongdoings of the state in its governance and regularly provides reports on different issues in the country. In addition, they attempt to restrict the state by criticising them and refer to the rulings of courts. They thus attempt to make political parties follow democratic standards and provided information that can be of help for individuals to get a better picture on how reforms might affect their lives, which could aid them when voting. Since PiS is now in control of the public media, this have become especially important as they can provide a different picture to that of the government. Independent media has been very important in this process.

That the civil society can contribute to the development of new political leader can maybe best be exemplified with Lech Walesa, the founder of Solidarity who then became President in Poland (Nationalencyklopedin, 2018<sup>b</sup>). The organisations analysed also worked similarly. They provided possibilities for networking, peer learning, grants and scholarships to individuals that help them develop skills in many different areas, including the political. They provided places for people to meet, as well as provide public services and speak for the rights of people. That CSOs are growing somewhat seems to be enhanced in a 2016 report where it was stated the CSOs have seen increased involvement from citizens (CSF, 2017:93).

Thus, the organisations examined undoubtedly seem to work for the preservation and improvement of democratic standards. They also fit quite well to the assumption of autonomy and opposition to the state by trying to maintain their independence from state organs. In addition, they constantly try to form a link to society by reporting on state conducts as well as trying to get more people involved. To sum it up, these organisations performed both monitoring and fostering actions, as well as provided a link between the state and the people. Thus, they seem to fit the theories on the “good” civil society.

However, there are also a non-democratic sphere of CSOs. Although they were not directly included in the research, there seems to be a strong evidence that conservative and nationalist groups are influential as well as supported by PiS. In 2017, an Independence Day march organised by nationalists, xenophobes, and fascist groups was first hailed as “patriotic” and a “beautiful sight” by members of PiS. Approximately 60 000 people joined (Charnysh, 2017).

These groups also support the policies of PiS since they emphasise traditional (Catholic) and nationalistic values and the idea of a “historical politics” to emphasise the Polish nation. Additionally, during previous governments, some of these organisations have led the struggle to stop reforms that increase the rights for women to make their own choices on for example abortion (Sreeraman, 2011).

With their help, and since they won a majority in the election, PiS can claim that what they do is legitimate. Repeating the above statement, PiS also can also point towards to justify their actions as these groups claim to have been mistreated. PiS have then “rewarded” these groups with privileges as the Law on Assemblies described above. This shows how CSOs by promoting their own interests can support non-democratic developments as well.

There are thus plenty of positive as well as negative aspects that can be said on CSOs. Regarding the “good” civil society, it is difficult to say to what degree they

have succeeded in their work. PiS have despite protests, manoeuvred on the edge of what is legal and pushed through many of their reforms without seemingly having lost legitimacy. The attempts of disciplining the state have ended in failure as the government have most often refused to listen despite being ruled against by the court. One watchdog organisation put it like this in a report.

It is also necessary to find new methods of work because the current government does not listen to anybody, so 'old methods' for legal acts and attempts to engage in substantive discussion do not work (CSF, 2017:87)

It undoubtedly does seem that CSOs have problems and there is a lot to do also in spreading their ideas to the wider population. As mentioned above, PiS have maintained their support since the election.

## 7.2 Theoretical impact

PiS claims they speak for the the majority, the true Poles after winning the elections (Kucharczyk et al., 2017:315). While this is disputable, it is true that they do have a strong support among the population and also among some CSOs. At the same time however, CSOs have also been in strong opposition to them. What this shows, is that it is difficult to speak about a single civil society that is good or bad for democracy. There are big divisions between different groups that all belong to the civil society sphere. Some of them work to preserve democratic standards. Other promote interests that are not necessarily democratic. In other words, CSOs can be a power both for the preservation and creation of democracy as well as the dissolution of it.

In the era of PiS, being a pro-democratic CSO has turned out to be difficult. Trying to discipline PiS seems to have come with a price of an increasingly limited influence in state affairs. While it is still possible to monitor and to voice opinion, the government is making it more and more difficult. In addition, PiS seems to turn a deaf ear to criticism with which they do not agree, no matter how well founded it is. If this development continues along the same lines, some organisations might have to give up their independence in order to have any way of influencing the politics.

There are additional issues. The big divisions in Polish society as well as that the liberal vision of the future in Poland had been exhausted, and that many Poles felt like second class citizens in Europe. Combined with conservatism and the fear of multi-culturalism, this might explain why nationalistic ideas have come back so strongly. While the Solidarity movement had broad public support around the idea of an independent Poland, today there is no such united. Liberal democratic thoughts have gotten into conflict with nationalistic and traditional ones.

Additionally, one can look at the fostering values of CSOs. While the pro-democratic civil society has been argued are fostering democratic values, the fostering aspect should valid regarding a non-democratic civil society as well. In

other words, the conservative civil society should also have fostering aspects, but to promote their values rather than democratic ones. The same goes for the monitoring of the state. Right-wing CSOs arguably have tried to monitor the state in order to make it promote their interests as well. Thus, the opposition towards the state, which Diamond argued promoted democracy, should be considered to also be able to promote a non-democratic development. Once again, as Schmitter pointed out, CSOs will want to promote their interests.

Jamal stated that there is a “circular and self-reinforcing relationship” between CSOs and democracy. However, in the current Poland, right-wing CSOs support the state, and the state supports them. Arguably, that is also a circular and self-reinforcing relationship. We can thus make the following statement.

- *When the will of the government in a state and CSOs align, the relationship is one of mutual reinforcement even when the development is non-democratic.*

In a country like Poland, where there is a strong public support for many of the values that PiS and right-wing organisations stand for, the cooperation strengthens both spheres. PiS gains legitimacy for their actions, the supporting organisations get more public support, while their opponents get discredited.

There are two hiccups however. Jamal also argued that authoritarian settings with ineffective democratic institutions promote non-democratic procedures among CSOs. As shown, although Poland is still considered democratic, the democratic standards have been lacking and some institutions were weak. Thus, Poland could be considered more sensitive to these developments.

There is also a second limit to the above statement. Although the current government and right-wing CSOs currently cooperate, it is not certain that they always will. The same laws that might now be used against liberal CSOs, might in the future be used against them. Albeit in a different context, this is what happened to Lapporörelsen which was discussed earlier.

Thus, the state, the strong connection between PiS and right-wing CSOs, has arguably made the CSOs less independent from the state. While they have gained increased support under PiS and have hence become stronger, the development has made them also more dependent on the good-will of PiS. The new laws introduced could just as well be turned against them just as they have been used against disliked CSOs.

The case of Poland, as well as other countries mentioned above thus hints that although there can be a cooperation in a mutually reinforcing relationship between state and CSOs, the state will always be the stronger party. It has the possibility to shape the system as it sees fit as Weiss argued. However, if the state is given the possibility to gain legitimacy for its action it is only rational to use it. The more opposition it faces, the more oppressive measures are needed, which obviously can be costlier.

A consequence of the above statement is thus that the view of Schmitter could be supported. In a democracy, CSOs should be seen as facilitators of democracy rather than creators of it, with the addition that they could just as likely be considered facilitators of another (unjust) system.

Still however, civil society is very beneficial in a democratic country and should be supported. A pro-democratic civil society strengthens the state and the democratic standards. Many of the organisations in this study had the traits that are important for a democracy. They monitored, fostered and formed an opposition to undemocratic reforms made by the government. Hence, they attempted to preserve a balance of power. Thus, as long as they are still able to act, they can spread democratic values. It remains to be seen if it is enough to change the development in Poland, and if the PiS's strength falters. As liberals seem to have abandoned big parts of the country however, it seems unlikely.

## 8 Conclusion

In this thesis, the case of Poland was studied in order to answer the question on what the relation(s) between CSOs and the state is.

It was shown that in Poland, democratic values seemed to be not rooted in society. Important safeguards were also lacking. Further, CSOs monitoring democratic standards was often not listened to and had little impact in society. In the opposite, criticism against liberal governments was sometimes suppressed in order not to benefit non-liberal groups. However, this backfired as it was used as an argument against those liberal groups. At the same time, nationalistic and traditional values that does not go hand in hand with democracy have become stronger. The result has been a situation where the democratic standards have sunk rapidly.

It was also shown that there is a presence of both a democratic and undemocratic civil society could be found. Although the democratic civil society in many ways acted according to theory, the big divides in Polish society undermined their impact. The undemocratic civil society was strong, and supported the actions of PiS even though the actions were not democratic. Thus, it was argued that CSOs can be a power both for and against democracy.

In addition, it was contested that the relationship between state and CSOs is mutually reinforcing when their goals align. When the common goal is affecting the state of democracy in a negative way however, also the CSOs supporting the state might be hurt in the long run. In such a context, the state may decide to use the rules against also these CSOs when they see fit. Therefore, even though CSOs can challenge the state and try to maintain a balance of power, the state is arguably stronger.

If this holds true, that means that civil society groups can only be as autonomous from the state as they are allowed to, supporting the view of Weiss. At any time, their rights and possibilities could be taken away. However, the stronger civil society, the costlier it will be to suppress them.

Thus, it is essential to support a strong and vibrant civil society and to listen to it. An inclusive democratic civil society which monitors, fosters and challenge the state, benefits the society as a whole. Not only for the sake of improving democratic standards, but also for making the society more resilient towards authoritarian powers.

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## 9.1 Interviews and mail conversations

Interview 1: The Stefan Batory Foundation. Interview conducted 2017-11-14

Interview 2: Watchdog Poland. Interview conducted 2017-11-24

Mail conversation 1: E-mail from Panoptykon Foundation 2017-11-02

## 10 Appendix 1

Question template: (See Bryman, 2004, p. 327 & Esaiasson, 2012, p. 264-267)

- 1) Can you please tell me about your organisation?
  - What do you work with at the X organisation?
  - In your view, what is the main mission of your organisation?
  - How does the organisation work towards that goal?
  
- 2) Could you describe the state of democracy in Poland today?
  - Why do you think PiS was elected?
  - What are the main changes your organisation has seen since PiS came to power?
  - What do you think are the biggest challenges today?
  - How do your organisation think PiS views civil society organisations?
  - How do your organisation think that the *National Centre for Civil Society* will affect civil society in Poland?
  
- 3) Has your organisation conducted its work differently since PiS came to power?
  - Do your organisation run projects in cooperation with the government now/before?
  - What are the organisations sources of funding? Have you looked for new sources of revenue?
  - How have your organisation adapted/reacted to X law?
  - Do you feel worked against by the government?
  - How do you view the role of the EU?
  
- 4) Specific question for the organisation (when necessary).
  
- 5) How do you look at the future for democracy in Poland?
  
- 6) Is there anything you want to add?