

Chapter III

THE PROCESS OF DEVELOPING PERCENTAGE LAWS

How the 1% system was developed in Poland

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Written: December, 2003

Status: Final version

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The system allowing up to 1% of tax to be directly transferred by Personal Income Tax and Lump Sum taxpayers to public benefit organisations of their choice constitutes one element in building a wider legal framework to support the NGO sector's development in Poland. The 1% system was adopted by the Polish Parliament as the part of the Law on Public Benefit Activity and Volunteerism in April, 2003.¹ For many years Polish NGOs had been calling for the passing of a law of this kind in order to address a number of key questions including a new legal status for NGOs carrying out public benefit activities, incentives to encourage public philanthropy, issues linked to volunteering, more transparent rules for co-operation between public authorities and NGOs and other issues important for the NGO sector linked to taxation and investments.

This paper covers the two-year period of NGOs' advocacy efforts immediately prior to the law's enactment and focuses on the process that led to the introduction of this 1% option into the Polish legal system. This process provides an extremely interesting case study because it is probably the first time in Poland that third sector representatives had a direct opportunity to participate in a legislative proposal at all levels starting from the discussion of the broad principles involved, negotiations within the NGO sector, consultations with government and participation in sessions of the parliamentary committees involved, and finally, being present at the ceremony when the related legislation was signed by Poland's President.

In Poland's case, the process leading to the law is particularly important because over the past years there has been a general reluctance to get involved in public life. Likewise, over this same period, a decrease in Poles' active involvement in social questions can be observed.

Policy-making and consultations within the NGO Sector

As part of efforts to complete the process of regulating, under one legislative framework, several urgent issues related to the functioning of the third sector in Poland, the Association for the Forum of Non-governmental Initiatives (FIP) organised and carried out an extensive debate on a proposal for legislation it had prepared.² FIP invited fifty of the biggest NGOs, including sector development and umbrella organisations, to discuss the subject.

During the consultations on the draft proposal, the idea of including a 1% system was supported. Within a short time, a series of meetings were held within the group of participating NGO representatives. Usually a compromise regarding the main issues related to the draft proposal was reached that was acceptable to the majority of participating organisations. Almost all the different types of NGOs were involved in negotiation process including representatives of large organisations with many years' experiences (Polish Red Cross, Polish Scouts' Organisation, Polish Association for the Blind etc.), the representatives of large foundations as well as those types of network organisations that support and help develop the sector. In order to collect the opinions of those not directly involved in the consultations, the draft proposal, together with an explanatory commentary, was distributed

¹ This law is described in an article by Igor Goliński, SEAL, Summer 2003, Vol. 6. No. 1, European Foundation Centre.

² This apolitical association was formed by various NGO leaders in 1996 in order to act, when necessary, as a spokesperson on key issues affecting NGOs. Details of FIP's activities can be found at www.fip.ngo.pl

among active organisations and umbrella groups all over the country. In this way, a total of 250 organisations supported the proposals which were finally presented to the government that entered office following the elections held on 23 September, 2001.

The “Forums of Non-Governmental Initiatives” constituted one of the main components in the advocacy campaign for the new legislation conducted in Poland among NGOs, including the proposed 1% system. The Forums are organised every year in most regions of Poland. These kinds of meetings have two main goals. First, they are organised as local events where each organisation can present its activities to all interested parties, often carried out in a form of a festival in the streets of towns and cities. Second, there is an opportunity to meet people actively engaged in community activities and discuss the sector’s problems as well as communicate needs and expectations to the local authorities, politicians and the mass media.

In September 2001, an event called the “Week of Non-Governmental Initiatives” was organised to support the idea of introducing the 1% system as well as issues, tabled in the framework of the proposal for legislation, important for the functioning of NGOs, such as the delegation of public tasks to NGOs by the public administration and issues relating to work undertaken by volunteers.

The process of working towards a legislative proposal for a 1% system can be roughly divided into three stages represented by three groups of organisations within the NGO sector. Each group was working on the basis of a slightly different philosophy.

The first group was deeply engaged in lobbying activities and supported a 1% system, as a principle, in general terms. Its main goals were to have the idea of introducing such a system accepted in order to put in place a new mechanism for financing NGOs and also mobilising Polish society to play a more active role in supporting NGOs and their objectives. The second group, mainly consisting of the representatives from big foundations, had a pragmatic attitude towards this issue. It lobbied in favour of a simple and effective 1% system based on the Hungarian model whereby the tax office transfers 1% of a taxpayer’s tax liability to a single, eligible NGO specified by the taxpayer in an easy-to-use form. The third group of organisations supported the system proposed by the government and which, in the end, was adopted by Parliament. The mechanism involved is slightly more demanding on taxpayers who are personally responsible for transferring up to 1% of their tax liability to one or more public benefit organisations, then reporting the transfer details to the tax office. Whereas in Hungary the beneficiary organisation does not know which taxpayers have supported it, in Poland there is no such anonymity.³

Lobbying political parties

Advocacy activity promoting the NGO sector’s interests was also conducted in parliamentary clubs. Politicians were asked questions and also requested to express opinions on various issues so the sector could obtain information on the various parties’ intentions after the parliamentary elections that were due to be held in September, 2001.⁴

Just prior to the elections, during the “Week of Non-Government Initiatives”, FIP organised a public debate on the stances of political parties and particular parliamentary candidates

³ These two approaches are discussed in more detail in Igor Goliński’s paper, *Poland’s 1% system* in Chapter IV of this study.

⁴ After the election a coalition of the social-democratic and rural parties was formed.

regarding the draft Public Benefit Activity and Volunteerism Law, including the 1% mechanism. Numerous meetings were held with candidates standing for parliamentary seats and voters to discuss the draft law. About 200 parliamentary candidates took part at meetings held all over the country. About 10% of these candidates were elected. The public declarations they had made in favour of the idea of a 1% system meant there was a real possibility to maintain contact and intensify work with them after the election. It was because of previous governments' lack of support for the idea of regulating issues important for NGOs during earlier parliamentary cycles, that FIP had undertaken these new lobbying initiatives. The approaching election provided the opportunity to canvass political support.

FIP addressed the questions regarding the policies of particular political parties towards the NGO sector. Perhaps as a result of the campaign regarding this subject, the party that went on to form the coalition government included a point calling for a "legislative proposal on NGOs and volunteers" in its election manifesto. In other words, it accepted the name of the draft law based on NGOs' work up to 2001 that had been prepared and discussed with representatives of the fifty biggest organisations and networks already described above. The NGO proposal became the point of departure for the draft law to be prepared by the new government.

Consultation with government

During the celebration of World Volunteer Day on 5 December, 2001 at a meeting in the Presidential Palace, President Aleksander Kwaśniewski together with Vice Prime Minister and Minister of Finance, Professor Marek Belka declared their support for the proposed law.

Regarding the drafting of the proposed law, a few umbrella NGOs submitted a proposal to the Minister of Labour and Social Policy, Professor Jerzy Hausner (the responsible minister) about creating a working group consisting of NGO sector representatives and the relevant ministries (or departments). The idea of being active participants in the decision-making process regarding the law encouraged the NGO sector to put forward a proposal to create the so-called "Contact Group".

Due to the fact that there was no formalised selection mechanism for NGO sector representation on a body such as the proposed Contact Group, it was agreed to hold elections for representatives to the Contact Group (this idea had appeared at a conference on third sector "federal" mechanisms). The election was carried out electronically and a group of 15 experts representing NGOs was established to act as a consultative team to government officials responsible for drafting the law.

The Contact Group, an informal body, discussed the majority of issues linked to the public benefit law and some additional ones such as the EU structural funds. The Contact Group's work improved the flow of information between government and the wider network of NGOs on the work started by the government on the draft law. Regarding the 1% issue, ideas and models rather than the technical details were discussed.

After finishing these consultations, the Contact Group's report was completed.⁵ The report included the accepted compromises; a few issues were annexed in a separate opinion.⁶ This

⁵ The Contact Group no longer exists. According to the Law on Public Benefit Activity and Volunteerism, the Council of Public Benefit Activity, a formal body was recently established. It consists of central, local government and NGO sector representatives.

⁶ The report on the Contact Group's work is available in Polish on www.ustawa.ngo.pl

document was the basis of formulating the content of the draft law. Based on this report, government representatives, together with NGO representatives, submitted amendments when parliamentary committees discussed the matter.

Co-operation with Parliament

NGOs conducting advocacy activities and promoting the third sector's interests asked the Speaker of the Sejm (the lower house of the Polish Parliament) to pay special attention to the draft law. As a result, the Speaker initiated a meeting with NGO sector representatives and, before the first reading of the draft legislation, also organised a conference on the subject. NGO representatives were invited to participate in parliamentary committees which would examine the draft law.

Due to the efforts of associations and foundations involved in lobbying on the draft law, the Speaker of the Sejm set up a special body, the Parliamentary Group of Members of Parliament on Co-operation with NGO Sector. The Group consisted of deputies representing all shades of political opinion in Parliament. The group's appointment was of great significance as it immediately suggested the NGO sector now had "its own address in Parliament".⁷ The chairman of the group, Mr. Wojciech Olejniczak, played an important, positive role in the process of the law's enactment both in regard to the 1% system as well as other issues important for NGOs in this piece of legislation.

As a rule, lobbying on the 1% issue was not particularly associated with any political camp. Besides the above mentioned forms of co-operation, leaders of NGOs' networks approached Members of Parliament (MPs) to draw their attention to different solutions for issues covered by the draft law. The tactic of co-operating with the opposition was a good instrument for submitting different ideas that did not have the government's support to parliamentary committees. As a result, NGO ideas were submitted as amendments by political parties and won support in committee.

During the parliamentary process which took 14 months, NGO sector representatives had an opportunity to participate in the decision-making process by making statements, presenting their arguments for specified solutions and giving their opinions. What was very important was having direct contacts with MPs in order to debate and justify certain points.

During the work of the parliamentary committees involved, the two types of 1% models were taken into account. MPs representing the opposition submitted a minority motion based on the Hungarian solution. However, this proposal was rejected when voted on in the Sejm. The proposal prepared by the government was finally approved.

At a ceremony on 20 May 2003, the President signed the law regulating, among others issues, the 1% system in the presence of representatives from the NGO sector.

The various lobbying and advocacy activities described above were supported by preparing and presenting to the government and parliamentary representatives legal analyses and opinions of the various organisations involved on every issue. In addition, during the period of the various discussions, articles were published in the national and local press and research findings on the NGO sector were presented on the perceived needs for the sector's

⁷ This parliamentary group still exists but is less active.

development. NGO leaders and staff as well as legal and social policy experts, sociologists etc. were and still are involved in such advocacy work. Inputs from foreign institutions and organisations, for example the International Center for Not-for-Profit Law (ICNL) were also presented by Polish NGOs during discussions with government and Parliament.

Concluding remarks

The campaign and lobbying activities that preceded the Law on Public Benefit Activity and Volunteerism were important in several ways.

- First and foremost, the various initiatives resulted in increasing public awareness of NGO sector activities as a whole.
- A number of new bodies facilitating consultations between NGOs and ministries were established.

As a result of the Law on Public Benefit Activity and Volunteerism, the obligation to engage associations and foundations in consultative and decision-making procedures was imposed on all levels of the public administration.⁸

While the adoption of the new law can be viewed as a significant legal landmark in terms of regulating the functioning of Poland's NGO sector, the various compromises reached, including the 1% system, have received a mixed reaction from NGOs in terms of the improvements promised. Some commentators have suggested that too much attention was focused on the 1% question instead of the more fundamental issues the law addressed.⁹

Parallel developments affecting the NGO sector certainly present a less rosy picture. Just after the questions surrounding the 1% system were settled, the Polish government prepared a radical package of fiscal reform measures to tackle the disastrous shape of public finances. Among other things, the government proposed cancelling all or almost all tax relief, including tax relief on donations for charitable purposes. The recently enacted, but at that time still not functioning 1% system, constituted an argument for the government's intended measures. Due to the sector's strong resistance to the proposed changes, tax relief on donations to NGOs was not abolished, but in the autumn of 2003 the regulations were still modified to lower the limits for tax deductible deductions in 2004. Needless to say the government's actions, in contradiction of the spirit of the recently adopted law, have caused much anger and disillusionment in the NGO sector.

⁸ The government prepared and accepted the document "Rules of social dialogue". These rules (available in Polish on www.mpips.gov.pl) oblige public bodies to co-operate with, among others, NGOs in the decision-making process.

⁹ A view expressed by Jakub Wygnański in Chapter I of this study.