

CIVIC SPACE WATCH REPORT 2019 • SUCCESS STORIES OF RESISTANCE

Challenges for acting for rights are increasing but civil society is striking back

In recent years, the European Civic Forum members have observed the increasing pressure on NGOs and social movements in the form of burdensome and limiting legislation; reduction, restrictions and constraints on financial resources; new barriers to influence the policy-making and accessing information; restriction to the freedom to protest, as well as a general pressure and decline in access to rights for all.

At the beginning of 2018, the ECF launched the Civic Space Watch platform (<http://civicspacewatch.eu>) to collect findings and analyses from actors in Europe on the conditions for civil society to operate. Its goal is to improve the sharing of information within civil society and between civil society and European institutions, as well as to trigger coordinated solidarity responses to organisations and movements in need.

In one year and a half, we collected through Civic Space Watch nearly 400 resources from a variety of civic actors: articles, reports, interviews, alerts on threats to fundamental rights but also initiatives aimed at countering these trends and a number of news on positive developments. These contributed to the work of the European Civic Forum for the CIVICUS Monitor - feeding into over 70 updates - and the annual survey on civic space by Civil Society Europe as well as other research and advocacy efforts. These resources hint at the fact that while pressures to contain its growth and impact are increasing, civil society is successfully expanding in new areas of action.

The fast reactivity and involvement of many NGOs into the Civic Space Watch initiative comes as no surprise. Civil society organisations know that each alone can hardly resist an attack by authorities. They understand that what is under threat is the values they have in common: a

society built on inclusivity, equality and solidarity. Whatever the mandate they have, whatever the sector put under threat, their whole universality is at risk. In the same way, civil society's struggles for rights are connected. Any success is a success of all.

Having this in mind, the opening analysis builds on the findings of *Civic Space Watch* and follows up to the policy paper *Towards an enabling environment for civil society in Europe*¹ to showcase significant trends we observed in Europe over the last year (between June 2018 and June 2019)². The first part of the analysis focuses on the challenges civil society faces along four elements we believe are crucial for civil society to enact its full potential³:

1. A conducive political, cultural and socio-economic landscape;
2. Respect of fundamental freedoms of expression, association and peaceful assembly;
3. A supportive framework for CSOs' financial viability and sustainability;
4. Meaningful dialogue between civil society and governing bodies.

A second part looks at some of the positive developments emerged during the analysed period.

1 European Civic Forum, *Toward an enabling environment for civil society in Europe*, <http://civic-forum.eu/publication/view/towards-an-enabling-environment-for-civil-society-in-europe>, December 2018.

2 While some of the developments discussed in the analysis below happened before June 2018 or after June 2019, the focus of the analysis will be on the resources collected between June 2018 and June 2019

3 Read the policy paper *Toward an enabling environment for civil society in Europe* for more details: <http://civic-forum.eu/publication/view/towards-an-enabling-environment-for-civil-society-in-europe>

TRENDS:

1. Adverse political, cultural and socio-economic landscape

Since the fall of the Berlin Wall in 1989, Europe has been a land of peace and prosperity. However, over the last decades, the consolidation of an economic system characterised by rising inequalities, concentration of wealth and shrinking social rights has resulted into a de-legitimation of democracy in the eyes of many who feel that the current democratic channels no longer ensure that their needs are heard and addressed. The 2008 financial crisis has speeded up a process of de-democratisation, with decision making shifting away from democratically-elected institutions and many facing new socio-economic barriers to the effective exercise of their rights. Economic ultra-liberalism and austerity have paved the way to political illiberalism and power verticalism, at the expense of a genuine democratic functioning of institutions based on strong and respected counter-powers. Entire sectors of public action have been excluded from the influence of voters or the scrutiny of civil society organisations. A wide range of trends and practices aimed at insulating certain policies from democratic checks and balances emerge with different intensity all across Europe, not only in countries where regressive populists were able to gain executive powers.

It is no surprise that at times when people question the value of democracy, we see anti-rights groups which promote a view of rights that creates competition between vulnerable groups or is exclusive of some groups on the grounds of identity, culture or sexual orientation gaining confidence to act. These groups build on the fears and anxieties present in our societies. They are often using human rights language and human rights tools to hijack the spaces and mechanisms traditionally occupied and used by democratic civil society. Despite the nationalist rhetoric they use, these groups are also interconnected at the European level and beyond. The World Congress of Families that gathered in March 2019 in Verona (Italy) was a clear example of this.

2. Growing restrictions of fundamental freedoms of association, assembly and expression

In the European Union, freedom of association, peaceful assembly and expression are recognised by the Charter of Fundamental Rights of the European Union as well as in many national constitutions. Its member states have also committed internationally to protect these rights, for example as parties to the European Convention of Human Rights and the International Covenant on Civil and Political Rights. While the EU enjoys among the strongest safeguards of fundamental rights in the world, these are under increasing pressure across the region.

Civic space is shrinking everywhere but not evenly: the extent of the impact depends on historical and cultural factors as well as on geographies of power of the actors involved⁴. These elements critically affect not only how pressures are exerted, but also how well civil society and social movements are equipped to resist and respond. Moreover, in some countries the space for action of anti-rights groups seems to be expanding at the expense of democratic forces. While it is not possible to generalise trends, we can attempt at capturing certain themes that are recurring in the resources collected on the Civic Space Watch.

On top of the 'hard' obstacles mentioned below, it is important to note that the number one category linked with freedom of association in the resources collected between June 2018 and June 2019 is 'smear campaign and vilification'. Records of negative statements against critical organisations and social movements

⁴ The power relations depend on several factors, for example political capture of the judiciary and the media can crucially limit civil society's leverage. Another important issue is who are the actors involved. On this see for example the interview with Francesco Martone where he explained: "I have some problems with the concept of "shrinking civic space". The first one is that in some cases this space is not shrinking, it is being denied from the very beginning. Look for instance at social actors that do not have access to the decision-making or the public space. For example, the Roma are put at the margins; they are criminalised, stigmatised, excluded. So I think that the concept of shrinking civic space does not fully capture all the different geographies of exclusion and marginalisation and also the different power relations within the space." See: <http://civic-forum.eu/publication/view/activizenship-3>, (p. 52).

have emerged all over the EU. While we decided not to dedicate a specific section of the analysis to this trend, to which we devoted the previous edition of *Activizanship* and which clearly emerges in all six case studies, this development is cross-cutting all the trends below and it is an important indicator of the atmosphere in which civil society operates. It impacts the trust between CSOs and other stakeholders as well as the ability of civic actors to mobilise the general public on their causes. Concerted attacks by public figures can also have distressing effects on people working on organisations or involved in groups targeted. In some cases, it contributed to creating an unsafe environment where individuals and organisations under the spotlight have been subjected to intimidations, threats and even physical attacks by anti-rights forces and their supporters.

2.1 Targeting “political” actions and chilling effect on advocacy

Accusations made against CSOs of being ‘political’ are often aimed at discrediting civil society’s causes as partisan in front of the public. However, it also has wider repercussion on the understanding of the role civic actors play in a healthy democracy. Civil society’s action, regardless of the type of activity (advocacy, service provision, watchdog...), deals with the protection of common goods and values. It responds to societal problems and needs thus it might target topics that become high on the political agenda. In this regard, it is important to notice how a wide range of issues has been interpreted as ‘political’ in different countries. These measures have sometimes put civil society in disadvantage compared to other actors that are involved in influencing policy-decisions, for example private lobbying groups.

2.2 Cracking down on solidarity

A very well documented trend which also emerges on the Civic Space Watch is the criminalisation of solidarity through a variety of formal (e.g. criminal persecution) and informal methods (vilification, intimidation and harassment). To an extent, this trend can also be understood as an attempt to target ‘political actions’ of citizens and civic organisations as solidarity has often filled and pointed at institutional gaps and hypocrisy, becoming the main playground for the fight for European values. A strong indicator of this process is the change of attitude toward search

and rescue operations led by civic organisations and activists initially welcomed and rewarded and currently criminalised through criminal investigations. The European legislation and approach to the migration phenomenon has also facilitated criminalisation.

2.3 Overregulating and overburdening the sector

A general tendency to overregulate and burden the sector emerged all across the European Union member states. The first part of the analysis deals with the transposition at national level of the **4TH EU ANTI-MONEY LAUNDERING DIRECTIVE**; the second with other types of **transparency legislation**. While we appreciate the fact that the drivers and intentions behind the pieces of legislation are different, we observe they raise similar concerns and potential threats to the entire sector, beyond organisations at risk of money laundering and terrorism, including disproportionate sanctions in case of non-compliance and privacy concerns related to making publicly available information of individual donors and beneficiaries, including the names, financial data and places of residence. All in all, this kind of legislation contributes to negatively affecting all CSOs capacity to focus on their mission instead of targeting on the actors more at risk (including a minor part of the civic sector).

2.4 Restricting the right to peaceful assembly

Restrictive legislation against peaceful assemblies has been introduced during the time under examination in Hungary, Italy (Security Decree I and II – see the case study on Italy) and in France (Anti-rioters law – see the case study on France), while in Austria, civil society was concerned that stricter legislation would be introduced under the former ÖVP-FPÖ government due to controversial statements of FPÖ leaders. The Civic Space Watch also collected several episodes of measures banning or marginalising demonstrations alongside gatherings of international leaders.

2.5 Heavy-handed *policing* of protests

The analysis highlights a trend to deter participation in public mobilisations through the use of **disproportionate or unjustified use of force, intimidation and humiliation of protesters**, as well as their **criminalisation**. In recent years several countries have passed legislation toughening sanctions related to assemblies, including Hungary, France, Italy, Spain

and Poland. These sanctions target different behaviours such as organising or attending unauthorised gatherings and wearing items impairing identification. The use of administrative sanctions against peaceful protesters, a phenomenon known in Spain as bureau repression, were reported in Romania, Italy, Spain and Poland. Particularly worrying are episodes involving the use of excessive charges, specifically penal charges. This practice has substantial consequences on the psychological safety of people engaging with dissent.

2.6 Covering protests and police actions is becoming increasingly dangerous

A number of reports of interference of the police with journalists covering their actions have emerged in Germany, Belgium, Italy, Romania, France and Spain. These interferences range from confiscations, to arrests, to physical assaults. In some countries, incidents have also involved citizens filming police operations and in France, civil society's observers. Journalists covering demonstrations have also been targeted by far-right activists.

2.7 Using anti-terrorism and public security laws to smear, surveil and silence dissent

Records of misuse of anti-terror and public security legislation against activists and civil society have been collected from the United Kingdom, Spain and Poland. Particularly worrying is the data collection and surveillance of activists without judicial oversight. More research and attention on the issue is needed.

2.8 Business secrecy and corporate's SLAPP lawsuits threaten civic activism

Records of corporations using or threatening to use strategic lawsuits against civic actors and journalists to hamper civic participation and silent critics (SLAPP) have been collected in several countries. In France and Germany, civil society raised the issue that these practices could be facilitated by the transposition of European legislation concerning business secrets.

3. Reduction and restriction of funding for civil society's activities

'Issues related to funding' is the second most frequent category on the Civic Space Watch concerning

developments negatively affecting freedom of association. A number of cases targeting funding for 'political' activities of NGOs have been observed and have the potential to chill advocacy and campaigning actions of associations on issues that emerge on the public agenda. Changes in tax reforms, sometimes connected with public budget concerns, can have consequences on the entire sector.

4. Barriers to meaningful civil dialogue

In a number of countries, the relationship between civil society and governments has seen a deterioration. The participation of civil society in the policy-making is affected on the one hand, by their internal capacities and resources; on the other hand, by barriers to a meaningful civic dialogue. Challenges include problems accessing information of public interest; opaque involvement in the decision-making process; restrictions to advocacy; hurdles in accessing policy-makers and public consultations. In particular, in some countries, governments have questioned environmental organisations' involvement in public processes.

Civil society strikes back

In the last two years, through the Civic Space Watch, we have observed, among the trends, a number of positive developments in the civic space and witnessed to some important victories of civil society in Europe. Although this was not primarily the scope of Civic Space Watch, among the developments collected and categorised, the tag "positive development" is the second one for frequency. Under this tag fall new opportunities of dialogue with institutions, new means for acting for the effective access to rights, court cases that have scored positive resolutions for criminalised civic actors and successful resistance against restrictive legislation.

A significant positive development is the fact that shrinking civic space has pushed CSOs to get better organised. Since January 2018, when the Civic Space Watch was launched, we observed civil society's awareness of civic space issues increasing together with the perceived need to discuss nationally what shapes the phenomenon takes and how to react. A number of formal and informal coalitions were formed in

Hungary, Poland, Romania, Italy, France... In several circumstances this was supported by new funding opportunities encouraging diverse civil society actors to team up. Civil society also expressed a strong need for strengthening networking and collaboration also at the regional and European level to respond to the current pressures. At the same time, we observed renewed interest in the European and international laws and institutions. These supranational spaces and tools have become a real anchor for democratic forces when national governments implement illiberal policies and laws. The principles expressed allow civic actors to explain to citizens who still look up to them why they stand on the right side of justice and legality – even when the national political and legislative framework goes in the opposite direction. The European Union institutions are expected to take a more proactive and ambitious role in the sense.

COUNTRY CASES

ESTONIA - Civic space is rated “open” on the CIVICUS Monitor

The CSO sector in Estonia has been relatively stable and is one of the most sustainable in the region. In parallel to long-term forms of volunteering, ad-hoc activism is becoming more popular, providing both opportunities and challenges. However, in the past years, the legislative and financial framework has failed to adapt and keep up with the needs of CSOs. With the establishment of the conservative, right-wing government, some CSOs have raised concerns on the future of the sector, in particular for those working on minorities and human rights (representing less than 1% of the sector), after verbal attacks against the organisations have become more frequent.

FRANCE - Civic space is rated “narrowed” on the CIVICUS Monitor

The associative sector in France is strong, mature and growing, with averagely 70 000 new associations each year. It is a recognised economic force. A sizable part of associations deals with human rights and civil liberties issues. Associations are quite vocal on rights’ violations, as well as on advocacy towards policy-makers. France has a strong associative and mobilisation culture, with thousands of assemblies and protests, carried out peacefully every year, most often led by associations and trade unions. While fundamental freedoms are protected by the law and generally respected, civil society and civil liberties have been put under increasing pressure since 2015, when the state of emergency was introduced in response to the terrorist attacks. More recently, the heavy-handed state response to the unstructured and leaderless Yellow Vests movement is also bringing at the forefront police violence that has already a long story rooted in the discrimination of vulnerable groups in poor suburban “ghetto” areas.

ITALY - Civic space is rated “narrowed” on the CIVICUS Monitor

The country was downgraded in November 2018

The data from 2016 show that the third sector in Italy has been growing in an economic context characterised by a deep and prolonged recession. 11,6% more entities were registered compared to 2011, with a growth in the number of volunteers and employees, respectively +16,2% and +15,8%⁵. While half of these entities are concentrated in the northern part of the country, the sector grew in all Italian regions compared to 2011. In 2018, however, the establishment of a new government has put pressure on associations. The space for solidarity, in particular, has been hit by a heavy campaign of criminalisation directly driven by the Government of the time in parallel with restrictive legislation, with repercussions on the whole sector. At the same time, a multitude of initiatives have taken place, promoted and also coordinated by new and informal social groups and coalitions, to reverse the trend and reclaim the right to act.

POLAND - Civic space is rated “narrowed” on the CIVICUS Monitor

Since 2015, when the Law and Justice government took power, the conditions for Polish civil society organisations have greatly deteriorated. Nevertheless, in comparison with other countries in Central-Eastern Europe, the conditions of Polish CSO sector are relatively positive. There is a civil society strong in numbers and mature, as shown by the increased presence of well-established CSOs (31% of NGOs have over 15 years) next to younger ones (30% NGOs have up to 5 years). The negative political environment brought CSOs to react and look for new, innovative solutions to sustain their activities, including asking more openly for donations. 2017 was the year which registered one of the highest tax allocations ever from the 1% income tax with Poles donating approximately €117 million. Moreover, a growing number of Poles engage informally, through protests and non-statutory associations.

5 ISTAT, Censimento permanente delle Istituzioni non profit. Primi risultati, 2017

ROMANIA - Civic space is rated “narrowed” on the CIVICUS Monitor

In Romania, the presence of CSOs on the territory is unevenly distributed with most of the active organisations and the total income of the sector concentrated in urban areas. 75% of NGOs is in urban areas⁶ while 62% of the incomes and 54% of the staff of the sector are located in the Bucharest, Northwest and Centre regions⁷. Most CSOs struggle to have a stable income in order to secure their organisational capacity and, in particular, their ability to maintain permanent paid staff. 65% of organisations operates with an income which is less than € 9000 per year, and nearly 50% is below € 2500. Since 2017, the situation of the CSO sector has further deteriorated due to worsening relationship with the government. Nevertheless, one of the biggest developments of recent years is the increase of civic participation in more informal ways, with a strong focus on community development, social issues and environmental protection.

SPAIN - Civic space is rated “narrowed” on the CIVICUS Monitor

In 2011, in the aftermath of the economic crisis and the multiple cuts in public services, social movements took to the streets mobilising thousands of people. The answer was securitisation. The legislative framework has been hardened in its sanctioning and penal instruments based on arguments linked to security and maintenance of public order. The management of the crisis in Catalonia shows the same approach. The civil society reaction, after a first period of de-mobilisation, is now experiencing a new wave of civic participation. The third sector for social action is a mature reality with 60% of organisations having 20 years or more. Despite the funding cuts and the decrease in donations, the data show an expansion towards new areas like housing, integration and inclusion reflecting the social needs and political changes. Volunteering has increased substantially, representing a positive sign of citizens' engagement, but also a relative loss of professionalism for the associations. Parallely, many citizens have also been self-organising in these areas taking part in social movements or creating civic groups that often operate without formal registration.

6 FDSC, Infografice „Romania 2017. Sectorul guvernamental – profil, tendinte, provocari” (en), 2017

7 USAID, CSO Sustainability Index, 2017