



# ACTIVIZENSHP

CIVIC SPACE WATCH REPORT 2019 - SUCCESS STORIES OF RESISTANCE



# ONE YEAR AND A HALF MONITORING CIVIC SPACE

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

By Giada Negri

In recent years, the European Civic Forum<sup>1</sup> 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.

<sup>1</sup> The European Civic Forum is a network of over 100 associations and NGOs across Europe, working to promote civic engagement for a Europe grounded on Equality, Solidarity and Democracy. We connect civil society actors transnationally and cross-sectorally to participate in dialogue with the institutions, to advocate and campaign in defence of civil liberties and fundamental rights.

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 counter-

ing 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 it is the values they have in common that are under threat: 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



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society's struggles for rights are connected. Any success is a success of all.

Having this in mind, the following 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*<sup>2</sup> to showcase significant trends we observed in Europe over the last year (between June 2018 and June 2019)<sup>3</sup>. Together with Civil Society Europe, the European Centre for Non-for-Profit Law, and CIVICUS, we developed a list of threats we saw emerging in today's Europe. We use this list to categorise each resource based on developments, actors involved, and rights under attack. This helps to navigate the database of resources and cluster information in meaningful ways.

The first part of the analysis will focus on the challenges civil society faces along four elements we believe are crucial for civil society to enact its full potential<sup>4</sup>:

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.

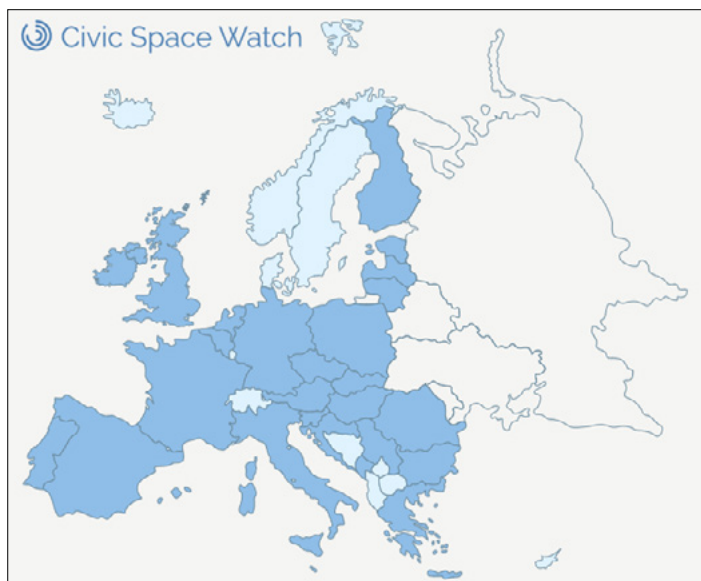
The following analysis will present how each of those pillars are today under pressure. A second part will look at some of the positive developments emerged during the analysed period.

<sup>2</sup> European Civic Forum, towards 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.

<sup>3</sup> 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.

<sup>4</sup> Read the policy paper towards 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>.

This analysis is authored by Giada Negri, Research and advocacy officer of the European Civic Forum. It was written with the support of Giorgia Gusciglio, Communication and event officer at ECF and the feedback of the editorial team. Special thanks to Katerina Hadzi-Miceva Evans, Vanja Škorić and Andrea Judit Tóth from the European Center for Non-for-Profit Law and Carlotta Besozzi of Civil Society Europe for their review and input in the second chapter of the analysis.



As of June 2019, the Civic Space Watch collected resources on 24 EU Member States

# 1. ADVERSE POLITICAL, CULTURAL AND SOCIO-ECONOMIC LANDSCAPE

## THE NEOLIBERAL FRAME PAVING THE WAY TO DEEP DEMOCRATIC REGRESSIONS

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<sup>5</sup>. 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. Entire sectors of public action have been excluded from the influence of voters or the scrutiny of civil society organisations. Definitely, even in its minimal definition, democracy has lost its substance, since partisan pluralism no longer has visible impact on major decisions affecting our living conditions.

Economic ultra-liberalism has paved the way to political illiberalism<sup>6</sup> and power verticalism, at the expense of a genuine democratic functioning of institutions based on strong and respected counter-powers. 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. These practices include the tendency to favour direct relationships of leaders and institutions with individuals at the expense of intermediary bodies that are essential for strengthening people's voices; the centralisation of powers by the executive branch at the expense of parliamentary democracy or participatory mechanisms; the deployment of a range of legislative, judicial and coercive measures to shrink the space for democratic civil society and other social actors calling the state and market institutions to account (see chapter 2 'Growing restrictions of fundamental freedoms of associations, assembly and expression').

Security issues are used to downsize civil liberties. Economic targets are used to downsize social rights. Policies regarding climate change are only adopted when they do not hamper economic private interests. The Italian watchdog Osservatorio Repressione comments as follows on the repression of social movements it has observed in Italy since 2007: *"Public security has slowly replaced politics on the social level. [...] On the one*

*hand, politics have become meaningless, filled up only with the repressive universality of the category of public order. The condition of citizenship is no longer defined by the provision of services as a universal right, but as a function of being subject to rules. On the other hand, the apparent neutrality of the law is instead filled with politics, since the law (and the legal means that guarantee its respect) becomes the main instrument to face the different social emergencies."*

In Hungary and Poland, reforms of the judiciary and media have raised concerns and criticism over the political control introduced, and its implication for fundamental rights. But also, episodes challenging the rule of law have emerged in well-established democracies. For example, public authorities prosecuting organisations (see the case of the German branch of Attac under "Targeting 'political' actions and chilling effect on advocacy"), activists (see section "cracking down on solidarity") and peaceful protesters (see section "Criminalisation of protesters") are worrying signals not to be overlooked.

However, paradoxically, these challenging situations also create spaces and opportunities for civil society to step from resistance to emancipation<sup>8</sup> (see chapter 5 "Challenges for acting for rights are increasing but civil society is striking back").

### HIJACKING OF CIVIC SPACE BY ANTI-RIGHTS GROUPS

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. This emerges to an extent in all of the country case studies below. 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.

Certain extremist groups – specifically neo-fascist ones – are using very confrontational tactics, such as physical attacks against the police, activists, vulnerable

<sup>5</sup> For example, data from Varieties of Democracy (V-Dem) show a clear but complex relationship between inclusion in participation and levels of democracy. The initiative looked at the inclusion of four groups (socio-economic, social, geographic and gender) and found that in the macro-region of Eastern Europe and Central Asia, "exclusion of poorer citizens increased dramatically with the end of communism in the early 1990s, and democratization in the 1990s is only associated with improving conditions regarding the exclusion of social groups". See 2019 report, p. 46: [https://issuu.com/v-dem/docs/v-dem\\_democracy\\_report\\_2019\\_high](https://issuu.com/v-dem/docs/v-dem_democracy_report_2019_high). Even in old democracies socio-economic, social and gender factors affect the effective exercise of rights and freedoms.

<sup>6</sup> The link between socio-economic factors and illiberalism has been explored in the previous three issues of Activizenship.

<sup>7</sup> Osservatorio Repressione, ITALY: A story of repression of social dissent, <http://civicspacewatch.eu/italy-a-story-of-repression-of-social-dissent/>. Published on Civic Space Watch on 9 July 2019.

<sup>8</sup> See: Transnational Institute, Disrupting European authoritarianism. Grassroots organizing, collective action and participatory democracy during the Eurozone crisis, <https://www.tni.org/files/publication-downloads/tni-disrupting-european-authoritarianism.pdf>, May 2018.

groups and CSOs<sup>9</sup> to gain increasing space in the media. Most European countries have legislation against these kinds of groups, but the authorities are failing to call them out, prosecute them and outlaw them. Around issues like migration or sexual and reproductive rights, these groups are increasingly present in the public sphere. As some governments and parties also pick up the topics and discuss them with similar narratives (see for example “cracking down on solidarity”), they provide some legitimacy to these groups<sup>10</sup>.

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<sup>11</sup>.

<sup>9</sup> For updates see: <http://civicspacewatch.eu/perpetrator/extreme-right/>.

<sup>10</sup> CIVICUS, Interview with the European Civic Forum, [https://www.civicus.org/index.php/media-resources/news/interviews/4038-anti-rights-groups-they-want-to-stop-us-because-we-do-make-a-difference?fbclid=IwAR3CelRK4vfUerANl2WLeCGBD5OozSfQS9gnMcdqp3fKB75mXDk4\\_Aax7Bk](https://www.civicus.org/index.php/media-resources/news/interviews/4038-anti-rights-groups-they-want-to-stop-us-because-we-do-make-a-difference?fbclid=IwAR3CelRK4vfUerANl2WLeCGBD5OozSfQS9gnMcdqp3fKB75mXDk4_Aax7Bk), 09 September 2019.

<sup>11</sup> Open Democracy, Revealed: dozens of European politicians linked to US “incubator for extremism”, <https://www.opendemocracy.net/en/5050/revealed-dozens-of-european-politicians-linked-to-us-incubator-for-extremism/>, 27 March 2019.

## 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. As emerged by the contributions in Activizenship 3, the extent of the impact depends on historical and cultural factors as well as on geographies of power of the actors involved.<sup>12</sup> 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

<sup>12</sup> 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).

# CIVIC SPACE IN THE 28 EUROPEAN UNION COUNTRIES



● Open (14) 
 ● Narrowed (13) 
 ● Obstructed (1) 
 ● Repressed (0) 
 ● Closed (0)

● Belgium ● Cyprus ● Czech Republic ● Denmark ● Estonia ● Finland ● Germany ● Ireland  
● Lithuania ● Luxembourg ● Netherlands ● Portugal ● Slovenia ● Sweden  
● Austria ● Bulgaria ● Croatia ● France ● Greece ● Italy ● Latvia ● Malta ● Poland  
● Romania ● Slovakia ● Spain ● United Kingdom ● Hungary

more ratings at [monitor.civicus.org](https://monitor.civicus.org)

Infographics of the ratings of EU Member states on the CIVICUS Monitor as of fall 2019. Since 2018, five countries have been downgraded while only one has improved the rating.)

for action of anti-rights groups seems to be expanding at the expense of democratic forces (see above “hijacking of civic space by anti-rights groups” and the country case studies). While it is not possible to generalise trends, the following chapter attempts 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 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 Activizenship 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 causes of general interest. 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

As discussed in the previous edition of this magazine, *Activizenship #3*, allegations of CSOs being "political" or engaging in "political activity" have emerged all across Europe in the attempt to delegitimise the sector and justify measures to hinder its actions. For example, Jolana Turnerová and Ryan Turner wrote that in the Czech Republic "smear campaigns depicting Czech NPOs/NGOs as economic parasites have been led by prominent political leaders, including Czech President Miloš Zeman, who regularly calls NPOs/NGOs 'leeches (píjavnice) of the state budget'. He particularly targets organisations deemed 'political', for working on issues uncomfortable for the authorities.<sup>13</sup> Such statements have accompanied threats to substantially cut funding for the sector and particularly for those "political NGOs".<sup>14 15</sup> At the beginning of 2019, the government budget for non-governmental organisations working on corruption was cut by over one-quarter.<sup>16</sup>

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

<sup>13</sup> J. Turnerová and R. Turner, *Fragility and resilience of civic sector in troubled waters – A Czech insight, ACTIVIZENSHIP # 3 Democracy under stress / Rebuilding trust / Rights for all*, <http://civic-forum.eu/publication/view/activizenship-3>, February 2019.

<sup>14</sup> Ibidem.

<sup>15</sup> CIVICUS Monitor, CZECH REPUBLIC: Coalition party moves to cut funding to "political NGOs", <https://monitor.civicus.org/news-feed/2018/08/21/coalition-party-cut-funding-political-ngos/>, 8 August 2018.

<sup>16</sup> Radio Praha International, *Funding for NGOs cut despite government declared fight against corruption*, <https://www.radio.cz/en/section/business/funding-for-ngos-cut-despite-governments-declared-fight-against-corruption>, 15 April 2019.

also has wider repercussion on the understanding of the role civic actors play in a healthy democracy. As pointed out by Stefan Diefenbach-Trommer spokesperson of the German coalition *Rechtssicherheit für politische Willensbildung*<sup>17</sup> speaking of the German context, "political" does not only mean longing for political power but also selfishly influencing the political debate. *Civil society has a wide range of tools to influence politics: advocacy, campaigning, press releases, demonstrations ... These actions become political when civil society points at societal problems, bringing these problems to the public attention. [...] There is a thinking that politics is only the realm of political parties and public benefit organisations should not be allowed to influence politics. But I also think there is a generational struggle within parties with younger people understanding civil society differently than older ones*".<sup>18</sup> 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. But as the Council of Europe Expert on NGO Law highlighted: "The ability of NGOs to engage in activities that influence politics and policy-making is particularly important for those that engage in advocacy activities. Such organisations aim to actively take part in policy-making in order to contribute to shaping the future of the country around elections and

<sup>17</sup> Translated: Legal certainty for political advocacy.

<sup>18</sup> ECF, GERMANY: ATTAC ruling could affect a thousand organisations – Interview with Coalition for Legal certainty for political advocacy, <https://civicspacewatch.eu/germany-attac-ruling-could-affect-a-thousand-organisations-interview-with-coalition-for-legal-certainty-for-political-advocacy/>, 29 April 2019.

### POLITICAL ACTIVITY OF CIVIL SOCIETY

**"The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25."** – UN, Human Rights Council, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 1996 (para. 26)

**"The right to engage in any activities, including political activities as well as public policy is closely linked to the freedoms of expression, association and assembly. This right is an expression and manifestation of these freedoms."** – Expert council on NGO Law of the Conference of INGOs of the Council of Europe, *Regulating political activities of Non-Governmental Organisations*, 2014 (para. 10)

to defend human rights of fellow citizens.”<sup>19</sup> Indeed, the European Court of Human Rights also stated that allowing participation in public life and policy is one of the principal features of democracy—that is, to create the possibility for members of a society to resolve social and political problems through dialogue.<sup>20</sup>

Moves targeting “political” actions of civil society have been observed in Germany, Ireland and the United Kingdom.

In February 2019, the German Federal Fiscal Court ruled that “*influencing political decision-making and shaping public opinion [...] does not fulfil a charitable purpose*”<sup>21</sup> in relation to the public benefit status of the German branch of the Association Taxation of Financial Transactions and for Citizens’ Action (Attac). The organisation saw its status revoked in 2014 when the local tax authority found its campaigns on international taxation and tax justice too political to benefit from tax deductions. The decision puts at serious risk the financial sustainability and life of the association that has been unable to provide receipts for tax breaks for the last five years. According to the coalition “Rechtssicherheit für politische Willensbildung”, bringing together over 80 CSOs to advocate for a change of the charity legislation, this ruling will create a chilling effect on fights for human rights and democracy. The spokesperson of the coalition, Stefan Diefenbach-Trommer, said: “*The Supreme Federal Tax Court’s judgement in the Attac case will affect thousands of associations and foundations throughout Germany, and likewise influence the involvement of the many thousands of people who belong to them. Accordingly, many organisations are in great turmoil. [...] Many association boards are now discussing whether they should discontinue some of their efforts*”.<sup>22</sup> Moves to target other CSOs deemed too involved in the policy-making have been anticipated by governing party CDU (see below the case of environmental NGO Deutsche Umwelthilfe under “Barriers to meaningful civil dialogue”).

In Ireland, the Electoral Act, as amended in 2001, bans donations to “third parties” campaigning for “political purposes” from abroad and limits donations up to €100 from anonymous sources and up to €2500 from

any source, beyond elections times. It also requires entities to open a separate bank account for donations for “political purposes”.<sup>23</sup> In 2017 and 2018, it was applied to advocacy work conducted by CSOs on human rights issues, including the right to access to education and the right to abortion, which were asked to return funding received from abroad or any significant donation. The Fundamental Rights Agency included this measure among the challenges that human rights CSOs face in the EU.<sup>24</sup> In the case of the controversy involving Amnesty International donation supporting the campaign to repeal the abortion ban, in July 2018, the Standards in Public Office Commission (SIPO), the regulatory body supervising the compliance with the Electoral legislation, accepted that the process leading to the adoption of the decision in November 2017 was “procedurally flawed”.<sup>25</sup> A “Coalition for civil society freedom” is currently campaigning to change the current wording of the Electoral Act. In a contribution to the public consultation on the electoral reform, it stated: “*Civil society advocacy is only one form of engagement with the political system and influence on public debate. It exists alongside other influences that the Government will not prohibit, and in fact will continue to support, such as commercial interests and political party activity. Civil society advocacy provides a vital counterbalance to these permanent influences on the democratic system, acting as a vehicle through which a wider range of people can access and contribute to public debate and the formulation of public policy and law*”.<sup>26</sup>

In the United Kingdom, in 2013 the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 was passed amending previous electoral legislation. The law forced non-party campaigners, including civil society organisations, to register as such and declare expenditures to the Electoral Commission if their spending during one year preceding an election passes a certain threshold or if their activities could influence the result of the elections. Such provision can be applied retrospectively to the

<sup>19</sup> Regulating political activities of Non-Governmental Organisations, 2015 (para. 10)

<sup>20</sup> United Communist Part of Turkey and Others v. Turkey, no 19392/92, 30 January 1998, paras 57-58

<sup>21</sup> GERMANY: Regulating the political activity of civil society – the case of ATTAC (UPDATED), <https://civicspacewatch.eu/germany-regulating-the-political-activity-of-civil-society-the-case-of-attac/>, published on CSW on 13 March 2019.

<sup>22</sup> Ibidem.

<sup>23</sup> Coalition for civil society freedom, Statement on the electoral act, <https://www.iccl.ie/wp-content/uploads/2018/12/COALITION-STATEMENT-ELECTORAL-ACT.pdf>.

<sup>24</sup> FRA, Challenges facing civil society organisations working on human rights in the EU, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-challenges-facing-civil-society\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society_en.pdf), January 2018, p.22.

<sup>25</sup> ECF on CIVICUS Monitor, Regulator settles dispute with Amnesty Ireland over foreign funding, <https://monitor.civicus.org/news-feed/2018/08/02/regulator-settles-dispute-amnesty-ireland-over-foreign-funding/>, 2 August 2018.

<sup>26</sup> Coalition for civil society freedom, Statement on the electoral act, <https://www.iccl.ie/wp-content/uploads/2018/12/COALITION-STATEMENT-ELECTORAL-ACT.pdf>, p. 12.



spending of organisations, as it happened during the 2017 snap elections, when social care and housing charities had reported “being scared to speak out” during election campaign.<sup>27</sup> The former UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association raised criticism concerning the “chilling effect” of the law on civil society, found it a “disproportionate impact” compared to the businesses and in-house lobbying activities.<sup>28</sup> While the government has denied any consequence for the sector, research by the Sheila McKechnie Foundation released in June 2018 found that the legislation had a severe chilling effect on the policy and campaign work of civic organisations. The network BOND reported that according to the research, “35% of campaigners said that they had avoided issues seen as too politically “live”, and 36% reported that they had watered down the language or tone of their communications. 34% of respondents said that the Act made them less agile and responsive, while 36% said that it had slowed down their decision making”.<sup>29</sup>

<sup>27</sup> Anushka Asthana, UK: Charities “scared to speak out” during election campaign, <https://www.theguardian.com/society/2017/may/31/charities-scared-to-speak-out-during-election-campaign>, The Guardian, 31 May 2017.

<sup>28</sup> UN, HRC, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, 8 June 2017.

<sup>29</sup> Rowan Popplewellbond, 6 ways the Lobbying Act restricts campaigning and undermines democracy, <https://www.bond.org.uk/news/2018/06/6-ways-the-lobbying-act-restricts-campaigning-and-undermines-democracy>, BOND, 5 June 2018.

## 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).<sup>30</sup> 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 2018 report on the shrinking civic space for solidarity to migrants and refugees by the Transnational Institute summarises the different shapes this has taken by stating: “Europe’s “refugee crisis” triggered a wave of solidarity actions by both civil society organisations and ordinary citizens. Their efforts were part of a wave of compassion, as people organised convoys to refugee reception centres, warmly greeted arrivals at train stations and lined highways to provide food and water to those making the journey from Syria and elsewhere. Just a few years later those same activists are treated as criminals and humanitarian search and rescue missions are criminalised. The current onslaught originated in the intensification of the

<sup>30</sup> See: <http://civicspacewatch.eu/field-of-action/migration/>.

Map showing NGO ships involved in SAR operations in the Mediterranean Sea between 2016 and 1 June 2019

SOURCE: FUNDAMENTAL RIGHTS AGENCY (<https://fra.europa.eu/en/publication/2019/2019-UPDATE-NGOS-SAR-ACTIVITIES>)



EU's restrictive approach to immigration policy from late 2014 and the EU's treatment of Italy and Greece, front-line states on the EU's migration routes. Today in Europe, solidarity with migrants and refugees can lead to arrest, legal troubles, or harassment. The actions of national police, judiciaries, political powers and far-right militants have created and compounded hostility to solidarity with refugees and migrants".<sup>31</sup>

A strong indicator of this process is the change of attitude towards search and rescue operations led by civic organisations and activists initially welcomed and rewarded and currently criminalised through criminal investigations as described in the interview with Alessandra Sciurba, spokesperson for Mediterraneana (see below).

In the year under focus, in Italy (see case study) and Hungary, governments have further institution-alised this criminalisation through legislation. On the Hungarian case, the coalition Civilization wrote to the European Civic Forum:

*"Immediately after the victory, the old-new government made clear that it will use its power first against Soros and 'his network', and that it will keep up the anti-immigration hype, which many had thought was merely a campaign stunt. The new version of the Stop Soros law, submitted to Parliament at the end of May 2018, turned out to be markedly different from earlier drafts. Measures intended to directly restrict CSO operation and funding have been dropped, and indeed the new bill does not even mention CSOs directly. Instead, the bill seemingly aims at criminalising the provision of assistance to asylum seekers, including legal aid and the provision of information,*

<sup>31</sup> Transnational Institute, The shrinking space for solidarity with migrants and refugees, <https://www.tni.org/en/publication/the-shrinking-space-for-solidarity-with-migrants-and-refugees>, 6 November 2018.

## STATES' OBLIGATIONS TO PROVIDE ASSISTANCE TO PEOPLE IN DISTRESS AT SEA

*"Providing assistance to people in distress at sea (search and rescue – SAR) is a duty of all states and shipmasters under international law. Core provisions on SAR at sea are set out in the 1974 International Convention for the Safety of Life at Sea (SOLAS), the 1979 International Convention on Maritime Search and Rescue (SAR Convention), and the 1982 UN Convention on the Law of the Sea (UNCLOS). In general, the shipmaster (of both private and government vessels) has an obligation to render assistance to those in distress at sea without regard to their nationality, status, or the circumstances in which they are found."* – Fundamental Rights Agency, NGO ships involved in search and rescue in the Mediterranean and criminal investigations, 2018

*by threatening people giving such support with prison time. The probably intentionally opaque wording of the bill leaves much space for arbitrary interpretation, and of course the measures go against international law on several counts, including the right to a fair trial, to equal treatment and to seeking asylum."*

In addition, the law introduced a 25% tax on organisations supporting migration (see section: Reduction and restriction of funding for civil society's activities).

A number of European and international institutions have expressed concern, including the CoE Commissioner for human rights<sup>32</sup> and UN Special Rapporteurs<sup>33</sup>. In July 2019, the European Commission referred Hungary to the European Court of Human Rights for criminalising activities in support of asylum seekers and opened an infringement procedure for the detention conditions in transit zones.<sup>34</sup>

## 2.3 OVERREGULATING AND OVERBURDENING THE SECTOR

At least ten countries<sup>35</sup> announced, drafted, passed or entered into force anti-money laundering and transparency legislation between June 2018 and June 2019, all with the potential to hamper civil society sector. The following section, co-drafted with the European Center for Non-for-profit Law (ECNL), also thanks to the input of Civil Society Europe (CSE), will be split into two. The first part will deal with the transposition at national level of the 4th EU Anti-Money Laundering Directive conducive of overregulation of the sector; the second with other types of transparency legislation. While we appreciate the fact that the drivers and intentions behind the pieces of legislation described below are different, as further developed in the two sections, we observe they raise similar concerns and potential threats to the entire

<sup>32</sup> CoE, Commissioner concerned about proposed additional restrictions to the work of NGOs in Hungary, <https://www.coe.int/en/web/commissioner/-/commissioner-concerned-about-proposed-additional-restrictions-to-the-work-of-ngos-in-hungary>, 15 Feb. 2018.

<sup>33</sup> OHCHR, UN experts decry Hungary's tough new measures against migrants and civil society, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23533&LangID=E>, 11 Sept. 2018.

<sup>34</sup> EC, Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones, [https://ec.europa.eu/commission/press-corner/detail/en/IP\\_19\\_4260](https://ec.europa.eu/commission/press-corner/detail/en/IP_19_4260), 25 July 2019.

<sup>35</sup> Romania, Spain, Portugal, Greece, Italy, the Netherlands, Belgium, Germany, Denmark and Slovakia. Not all of these countries' initiatives moved forward.



## REPORTING AND DISCLOSURE REQUIREMENTS FOR CSOs

*“The resources received by associations may legitimately be subjected to reporting and transparency requirements. However, such requirements shall not be unnecessarily burdensome, and shall be proportionate to the size of the association and the scope of its activities, taking into consideration the value of its assets and income”* – Venice Commission and OSCE/ODIHR, Guidelines on freedom of association, 2015 (para. 104)

sector, beyond organisations at risk of money laundering and terrorism, including:

- ▶ Bureaucratic burden and obstacles for CSOs (such as double or disproportionately strict reporting requirements draining CSO resources);
- ▶ Disproportionate sanctions in case of non-compliance;
- ▶ Privacy concerns related to making publicly available information of individual donors and beneficiaries, including the names, financial data and places of residence.
- ▶ Ineffectiveness of the measures proposed, as creating additional layers of administrative burdens on the broader CSO sector and public administration that monitors will require vast resources on both sides that are much needed for targeted and focused oversight on the real channels of money laundering and terrorism abuse (including a minor part of the civic sector).<sup>36</sup>

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 specific CSOs.

## MISTARGETED ANTI-MONEY LAUNDERING LEGISLATION

The 4<sup>th</sup> EU Anti-Money Laundering Directive<sup>37</sup> (AML Directive) requires Member States to introduce registers of so-called “beneficial owners” of legal entities, trusts and similar legal arrangements and introduces various obligations to a variety of legal entities. Its implementation has caused uncertainty of what is actually required by national governments to ensure appropriate implementation.

The AML Directive states which legal entities should be obliged to fulfil the requirements laid out

in the AML Directive.<sup>38</sup> Generally, CSOs as non-profit sector are not legal entities which engage in activities particularly likely to be used for money laundering or terrorist financing (which is AML Directive’s criteria) and would not fall under such obligations. The EU Directive requires countries to adopt measures after they have conducted an assessment of risk of the legal entities, and to ensure that those measures are proportionate to the risk.<sup>39</sup> A national risk assessment must include clear evidence of generalised misuse of CSOs for terrorist financing or money laundering.<sup>40</sup> However, some Member States included AML Directive’s obligations to civil society organisations without demonstrated rationale in national risk assessments or beyond what is required by the Directive.

In Romania, all associations, and in Spain, associations and foundations are considered as “obliged entities” which means that they have the same obligations as, for example, banks or money exchange offices. This clearly entails a disproportionate administrative burden and may not follow a risk-based approach required by the Directive. In Romania<sup>41</sup>, the legislation transposing the AML Directive imposes on associations unjustified reporting duties about their donors, supporters or “real beneficiaries” of their services and activities, or else risk immediate dissolution. In practice, this would mean that the associations would have to report the personal data of all children-beneficiaries, parents, journalists and supporters, which would limit donations, raise personal data use issues and deter citizens from associating with it.<sup>42</sup> These obligations set in national law have been found all the more worrying in the context of the concerted smear campaigns by

<sup>38</sup> These include: Identify and verify the identity of their customers and of the beneficial owners of their customers; Monitor the transactions of the customers; Report suspicions of money laundering or terrorist financing to the public authorities; Provide training of personnel and the establish internal preventive policies and procedures.

<sup>39</sup> This means that only where national risk assessments clearly identify CSOs (or part of the CSO sector) at risk of being used for money laundering or terrorist financing, this would give Member States the mandate to extend the AML Directive’s scope to those parts of the CSO sector identified at risk.

<sup>40</sup> EU Commission response to the Petition No 0642/2018 by G. A. (Romanian), on behalf of Save the Children Romania, on the alleged wrongful transposition of Directive 2015/849 into Romanian law, [http://www.europarl.europa.eu/doceo/document/PETI-CM-637219\\_EN.pdf?redirect](http://www.europarl.europa.eu/doceo/document/PETI-CM-637219_EN.pdf?redirect)

<sup>41</sup> Civil Society Development Foundation, ROMANIA: The government is fighting terrorism with red tape, forcing NGOs to send thousands of TINs to ministries <http://civicspacewatch.eu/romania-the-government-is-fighting-terrorism-with-red-tape-forcing-ngos-to-send-thousands-of-tins-to-ministries/>; published on CSW on 22 August 2019.

<sup>42</sup> European Parliament, Petition No 0642/2018 by G. A. (Romanian), on behalf of Save the Children Romania, on the alleged wrongful transposition of Directive 2015/849 into Romanian law, [http://www.europarl.europa.eu/doceo/document/PETI-CM-637219\\_EN.pdf?redirect](http://www.europarl.europa.eu/doceo/document/PETI-CM-637219_EN.pdf?redirect)

<sup>36</sup> As an example, Netherlands coalition of notaries, main accountancy companies and non profit sector defined a draft of Transparency Law as “killing a mosquito with a cannonball”.

<sup>37</sup> Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

the leaders of the former majority party (see the case study of Romania for more information on the national context and most recent developments of the law).

In Portugal<sup>43</sup>, the law 89/2017 on the central registry for effective beneficiary does not make a distinction between the non-profit sector and other entities, creating uncertainty among civil society organisations on its implementation. To the knowledge of Portuguese NGDO Platform, associations and foundations were included in the scope of this law without first carrying out a risk assessment justifying the provisions set in the law as recommended by the EU standards. The law requires collecting information on “effective beneficiaries” of the CSOs, creating uncertainty among the civil society as it is nearly impossible to establish who all the “real” beneficiaries of CSOs are (e.g. the individual recipients of services or activities). Especially burdensome and worrisome is the requirement to register personal details of donors contributing with more than or equal to €100, including personal address, fiscal number, sustainability guarantee, etc. with severe implications for the privacy of donors. Whether this information will be of public domain remains so far unclear. Sanctions for not doing so range between €1.000 and 50.000.<sup>44</sup>

In the case of Romania, the EU Commission clarified that “beneficial owner” refers to the natural person who ultimately controls/owns a legal entity or arrangement. It would imply that the beneficial owner does not refer/apply to the beneficiaries of services offered to others for charitable purposes<sup>45</sup>, but still leaves a gap in terms of who are the controllers or owners of associations.

ECNL, CSE and the European Foundation Centre (EFC) raised concern that such misapplication shows lack of understanding of the functioning of associations, foundations and other non-profits and that such approaches result in Member States implementing the provisions beyond the EU requirements (so-called *gold plating*). In some countries, this results in direct interference with the right to associate. Civil Society Europe explained: “*While the EU Directives are a critical and welcome tool in countering money laundering and terrorism financing in Europe, in a number of*

*cases, we noted misinterpretation of some of the provisions and also lack of knowledge of the realities of associations, NGOs and foundations.*” ECNL, CSE and EFC called on the EU Commission to initiate action in case of disproportionate transposition, but also to better clarify with guidelines the provisions of the directive that are applicable to the sector in respect with the right to association, as well as to facilitate dialogue among all the relevant stakeholders<sup>46</sup>.

### **DAMAGING CONSEQUENCES OF TRANSPARENCY LEGISLATION ON CSOS**

Over the past few years, the issue of transparency of the civil society sector has been used by states as a reason for imposing additional requirements and restrictions on CSOs. Draft laws and policies started to appear that require CSOs to report more frequently on funding received or that oblige those organisations receiving funding from foreign sources to report extensively on any foreign-sourced funding (e.g., Hungary, Romania). Especially the latter requirements have come with enhanced state rhetoric against such civil society organisations, labelling them as “foreign agents”, or otherwise harassing them or accusing them of working against the interests of their own state. Moreover, according to some laws, any failure to comply with reporting obligations is met with sanctions, which may even result in the dissolution of an organisation.

In the Netherlands, a public register was proposed to improve oversight on all types of donations received by or CSOs over €15 000 during the same year<sup>47</sup>, which would cause problems for CSOs due to disproportionate administrative burden and privacy issues of donors. In Germany<sup>48</sup>, Belgium, and Denmark<sup>49</sup>, authorities have called for legislative measures concerning the possibility of monitoring and possibly restricting foreign funding, but the initiatives did not move forward. In Italy, an anti-corruption law introduced in January 2019 for political parties included measures requiring any association and foundation to apply the same

<sup>43</sup> ECF, PORTUGAL: Problematic transposition of the EU directive against Money Laundering <http://civicspacewatch.eu/3192-2/>, 23 May 2019.

<sup>44</sup> Ibidem.

<sup>45</sup> EU Commission response to the Petition No 0642/2018 by G. A. (Romanian), on behalf of Save the Children Romania, on the alleged wrongful transposition of Directive 2015/849 into Romanian law [http://www.europarl.europa.eu/doceo/document/PETI-CM-637219\\_EN.pdf?redirect](http://www.europarl.europa.eu/doceo/document/PETI-CM-637219_EN.pdf?redirect)

<sup>46</sup> Joint letter of ECNL, CSE and EFC to the European Commission.

<sup>47</sup> European Center for Non-for-profit Law, NETHERLANDS: According to new Dutch draft act, CSOs would be obliged to publish personal information of certain donors, <http://ecnl.org/according-to-new-dutch-draft-act-csos-would-be-obliged-to-publish-personal-information-of-certain-donors/>.

<sup>48</sup> Initiative tabled on 3 August 2018 at the Bundesrat for initiative of the Minister President of Bavaria. See: <https://dipbt.bundestag.de/dip21/brd/2018/0358-18.pdf>.

<sup>49</sup> This information was collected during conversations with ECNL and CSE.



transparency procedures as political parties in addition to the ones specific for the sector. In particular, this included in-depth reporting on board members that had been involved in public authorities or parties in the previous ten years.<sup>50</sup> Following the strong opposition of the civil society, the measure was partially amended in April and now exempts organisations registered in the national register of the sector. The exemption excludes organisations that, for different reasons, are not registered as well as organisations that support “initiatives or individuals linked to the political world” for a sum above €5000 s<sup>51</sup>, an overly broad wording that might allow maneuver for discretionary decisions. Failure to comply leads to sanctions equivalent to 1% of the amounts, with a minimum of €2000. In Romania, according to a widely criticised 2018 draft legislation<sup>52</sup> in the name of transparency all associations, foundations and federations would have needed to publish financial statements every six months in the Official Gazette detailing all donors and value of donations. The transparency argument was also linked as motivation of draft laws and regulations which impact public policy and advocacy activities of CSOs (e.g., Poland, UK, and Lithuania).

In addition, transparency legislation has raised concerns in a number of cases over intentions to restrict the independence or watchdog role of the sector or its capacity to act. This is evident in cases when the discussion on the transparency laws has been carried hand in hand with smear campaigns and vilification attempts, or in the aftermath of actions or demonstrations addressing the accountability of the public sector. For example, in fall 2018, Slovakia discussed the creation of a transparency register collecting a wide range of information on legal status, founders, size, etc. This came after mass protests across the country sparked by the murder of investigative journalist Jan Kuciak, and emerging evidence of responsibilities of the government in place, as well as vilification statements against critical NGOs allegedly being “foreign agents”. The register entered into force in January

2019, but thanks to the coordination of several civil society organisations, the legislation was at the end adopted in consultation with the sector.<sup>53</sup>

## 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

<sup>53</sup> This information comes from discussions with officers from the Slovak NGO Via Turis.

### RESTRICTIONS ON ASSEMBLIES MUST COMPLY WITH A THREE-PRONG TEST

*“[A]n interference with the exercise of freedom of peaceful assembly does not need to amount to an outright ban, whether legal or de facto, but can consist in various other measures taken by the authorities. The term “restrictions” in Article 11 § 2 must be interpreted as including both measures taken before or during an act of assembly and those, such as punitive measures, taken afterwards.”* – ECtHR, *Gafgaz Mammadov v. Azerbaijan*, judgement of 15 October 2015 (para. 50)

*“The legitimate grounds for restriction are prescribed by the relevant international and regional human rights instruments, and these should neither be supplemented by additional grounds in domestic legislation, nor loosely interpreted by the authorities. The regulatory authorities must not raise obstacles to freedom of assembly unless there are compelling arguments to do so. Applying the guidance below should help the regulatory authorities test the validity of such arguments. The legitimate aims discussed in this section (as provided in the limiting clauses in Article 21, ICCPR and Article 11, ECHR) are not a licence to impose restrictions, and the onus rests squarely on the authorities to substantiate any justifications for the imposition of restrictions.”* – Venice Commission and OSCE/ODIHR, *Guidelines on freedom of peaceful assembly*, second edition, 2010 (para. 69-70)

*“The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11. The Court stresses in this connection that the organisers’ autonomy in determining the assembly’s location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are important aspects of freedom of assembly. Thus, the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact”* – ECtHR, *Lashmankin and others v. Russia*, judgement 7 February 197 (para. 405)

<sup>50</sup> Vita, Spazzacorrotti: le conseguenze (irragionevoli) per il Terzo settore, <http://www.vita.it/it/article/2019/03/16/spazzacorrotti-le-conseguenze-irragionevoli-per-il-terzo-settore/150971/>, 16 marzo 2019.

<sup>51</sup> Vita, Spazzacorrotti e Terzo settore, nel decreto crescita c’è la retromarcia, <http://www.vita.it/it/article/2019/04/26/spazzacorrotti-e-terzo-settore-nel-decreto-crescita-ce-la-retromarcia/151375/>, 26 aprile 2019.

<sup>52</sup> Expert Council on NGO Law Opinion on the Romanian Draft Law 140/2017 on Associations and Foundations as adopted by the Senate on 20 November 2017, CONF/EXP(2017)3 para. 4 <https://rm.coe.int/expert-council-conf-exp-2017-3-opinion-on-the-romanian-draft-law-140-2/168076fc9d> and Venice Commission/ODIHR Opinion [https://www.legislationline.org/download/id/7836/file/322\\_NGO\\_ROU\\_16March2018\\_en.pdf](https://www.legislationline.org/download/id/7836/file/322_NGO_ROU_16March2018_en.pdf)

under the former ÖVP-FPÖ government<sup>54</sup> due to controversial statements of FPÖ leaders.

In July 2018, the Hungarian Parliament approved the Law on freedom of assembly (Act LV of 2018) proposed by the government. According to the bill, authorities can ban a demonstration on the grounds of “threatening public order” or “violation of rights and freedoms of others”. Such broad concepts have been criticised by civil society for allowing too much discretion to the police. According to an analysis by the Hungarian Civil Liberties Union (TASZ), as the law widens the grounds to ban assemblies, providing broad discretionary powers to law enforcement authorities, the notification of gatherings de facto functions as an authorisation system. Moreover, the law disproportionately sanctions participants taking part in banned demonstrations with fines up to €450, a penalty turning into prison sentence if the crime is repeated three times within six months.<sup>55</sup>

The Civic Space Watch also collected several episodes of measures banning or marginalising demonstrations alongside gatherings of international leaders. In January 2018, Poland had introduced a law on specific solutions related to the organisation of sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change banning all spontaneous gatherings in Katowice between November 26 and December 16 alongside the world climate summit.<sup>56</sup> Similarly, in France, all protests were banned in an “enlarged perimeter” around Biarritz during the G7 meeting in August 2019.<sup>57</sup>

In Hungary, in October 2018, thanks to the above-mentioned law on assemblies, the police refused permission for an anti-Erdogan demonstration, while a “sympathy protest” held just a few metres from the site by the local Turkish community was approved

during the visit of Turkish President Recep Tayyip in the country.<sup>58</sup>

In the United Kingdom, the police banned anti-Trump protests from marching past Downing Street connecting Trafalgar Square with Parliament Square ahead of the state visit of the American President in early June 2019.<sup>59</sup> In August 2018, organisers of a similar anti-Trump demonstration had experienced “an unprecedented lack of cooperation and obstruction” by the police for what should have been a straightforward arrangement of routes and logistics. For example, the police originally objected to the demonstration having stages and a sound system.<sup>60</sup> In Belgium, in July 2018, four people were arrested in Brussels for holding an anti-Trump banner during a NATO summit.<sup>61</sup>

## 2.5 HEAVY-HANDED POLICING OF PROTESTS

The top four categories linked with resources on peaceful assembly collected between June 2018 and June 2019 are: deviant police practices ranging from lack of cooperation to the disproportionate use of force; detention and imprisonment of protesters; legal intimidation or attack; harassment. The first part of this section discussing policing of assemblies<sup>62</sup> will deal with disproportionate or unjustified use of force, intimidation and humiliation of protesters, while the second with criminalisation of protesters.

<sup>54</sup> ECF on the CIVICUS Monitor, Government official oversteps mandate threatening to fire reporters with state broadcaster, <https://monitor.civicus.org/newsfeed/2018/05/24/Government-official-threatens-fire-reporters-state-broadcaster/>, 24 May 2018.

<sup>55</sup> TASZ, New bill on the right to assembly, <https://hclu.hu/en/articles/summary-of-the-hungarian-civil-liberties-unions-analysis-of-the-new-bill-on-the-right-to-assembly>, 24 July 2018.

<sup>56</sup> Katharina Wecker, Dörmant clamps down on environmental defenders ahead of UN climate talks, <https://www.dw.com/en/poland-clamps-down-on-environmental-defenders-ahead-of-un-climate-talks/a-43101293>, Deutsche Welle, 23 March 2018.

<sup>57</sup> Pauline Bock, A climate of repression during the G7, <https://www.newstatesman.com/world/europe/2019/08/climate-repression-how-france-undermined-human-rights-g7>, New Statesman, 27 August 2019.

<sup>58</sup> CIVICUS Monitor, Police in Hungary are already using a restrictive new law to ban protests, <https://monitor.civicus.org/newsfeed/2018/11/06/police-restrictive-law-ban-protests/>, 6 November 2018.

<sup>59</sup> The Guardian, Anti-Trump protesters to be kept away from Downing Street, <https://www.theguardian.com/uk-news/2019/may/31/anti-trump-protesters-kept-away-from-downing-street>, 31 May 2019.

<sup>60</sup> ECF on CIVICUS Monitor, UN Special rapporteur: anti-terror bill “falls short” of UK’s rights obligations, <https://monitor.civicus.org/newsfeed/2018/08/09/UN-special-rapporteur-anti-terror-bill-falls-short-international-rights-obligations/>, 9 August 2018.

<sup>61</sup> RTL info, Ixelles: 4 personnes arrêtées pour cette banderole anti-Trump, <https://www.rtl.be/info/regions/bruxelles/ixelles-4-personnes-arretees-pour-cette-banderole-anti-trump-1039490.aspx>, 11 July 2018.

<sup>62</sup> Hereby we are adopting a broad understanding of “policing” beyond the mere actions by the Police institution, in the attempt to include other set of institutions through which social order is created and protected. See Mark Neocleous, *The Fabrication of Social Order. A Critical Theory of Police Power*, 2000.



## **DISPROPORTIONATE OR UNJUSTIFIED USE OF FORCE, INTIMIDATION AND HUMILIATION OF PROTESTERS**

Records of unjustified or disproportionate use of force against protesters were collected in several countries, including Romania, France, and Spain (see respective case studies). In Ireland and the United Kingdom, the aggression of the police has been observed alongside a growing role of private security actors: in the former, specifically during evictions; in the latter, during anti-fracking protesters in front of drilling site.

In Ireland, in fall 2018, large-scale housing protests started spreading across the country. Civil society feared that the demonstrations could lead to an escalation of force after the police failed to protect a group of peaceful protesters occupying an empty building in Dublin's city centre from the use of excessive force by private security guards wearing balaclavas on 11th September, when four people were hospitalised".<sup>63</sup> While the tensions appear to have de-escalated in Dublin, worries around policing of evictions persist.

A preliminary report by the Irish Council for Civil Liberties – resulting from a national consultation with protest groups between 19 and 22 June 2019 – raised concern over the deployment of private security force during assemblies without sufficient clarity concerning the authority they act under. Another aspect as worrisome is the police use of intimidation and harassment against protesters, including housing activists

<sup>63</sup> ECF on CIVICUS Monitor, Police criticised for abetting the use of force to remove housing protestors, <https://monitor.civicus.org/news-feed/2018/10/24/police-criticised-abetting-forceful-eviction-housing-protestors/>, 24 Oct.2018.

## **PRINCIPLES GOVERNING THE USE OF FORCE**

***"Policing in a democratic society includes safeguarding the exercise of democratic activities. Therefore, police must respect and protect the rights of freedom of speech, freedom of expression, association, and movement, freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law. In the event of unlawful but non-violent assemblies, law enforcement officials must avoid the use of force or, where this is not possible, limit its use to the minimum"***

***"While the use of force is often indispensable to proper policing – in preventing a crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders police officers must be committed to the principle that the use of force must be considered as an exceptional measure, which must not be executed arbitrarily, but must be proportionate to the threat, minimizing damage and injury, and used only to the extent required to achieve a legitimate objective."*** – OSCE Guidebook on Democratic Policing, 2008 (para. 65, 69)

and asylum seekers. For example, the report states that police officers *"intimidate and harass protesters by filming them in close quarters, recording vehicle registration numbers and misusing policing powers to target activists and protest leaders, including through the confiscation of mobile phones (and erasing content) and through stop-and-search procedures and strip searches in detention"*.<sup>64</sup> The director Liam Herrick commented: *"While the government and An Garda Síochána [ : police agents] are supportive of large protests taking place on the main thoroughfares of Ireland, when it comes to protesters living on the margins of society or protesting outside of the media spotlight, the Garda and state response can be much more heavy-handed"*.<sup>65</sup> Evidence of victimisation of and retribution was also found during the detention of protesters, including *"the withholding of food and benefits and the excessive use of restraints against those seeking international protection who attempt to exercise their right to protest was reported"*.<sup>66</sup>

In the United Kingdom, a number of repressive measures carried out by authorities and by extractive companies during anti-fracking protests has been reported<sup>67</sup>, including the police dragging, pushing and kicking demonstrators<sup>68</sup> and targeting disabled and elderly protesters.<sup>69</sup> In early 2017, the National Police Chiefs Council promised to undertake a review of the guidelines on policing of fracking protests which – as of May 2019 – was continuously delayed.<sup>70</sup> In December 2018, anti-fracking campaigners from Lancashire, North Yorkshire and Nottinghamshire set up a project Protest Justice to collect incidents and complaints

<sup>64</sup> Irish Council for Civil Liberties, Preliminary report on the national consultation on the right to protest in Ireland facilitated by the Irish Council for Civil Liberties (ICCL) and supported by the International Network of Civil Liberties Organisations (INCLO), <https://www.iccl.ie/wp-content/uploads/2019/06/190626-ICCL-National-Consultations-Preliminary-Report.pdf>, 26 June 2019.

<sup>65</sup> Irish Council for Civil Liberties, ICCL highlights urgent concerns for the right to protest following national consultation, <https://www.iccl.ie/news/iccl-highlights-urgent-concerns-for-the-right-to-protest-following-national-consultation/>, 26 June 2019.

<sup>66</sup> Ibidem.

<sup>67</sup> Read more: <http://civicspacewatch.eu/category/freedom-of-assembly/?tag=united-kingdom>.

<sup>68</sup> Network for Police Monitoring, Victory for campaigners as police chiefs concede on anti-fracking protest consultation, <https://netpol.org/2018/03/20/npcc-petition-consultation/>, 20 March 2018.

<sup>69</sup> Disability News Service, "Kicked, punched, knocked unconscious, tipped out of wheelchairs": Campaigners describe repeated police targeting of disabled anti-fracking protesters, <https://www.disabilitynewsservice.com/kicked-punched-knocked-unconscious-tipped-out-of-wheelchairs-campaigners-describe-repeated-police-targeting-of-disabled-anti-fracking-protesters/>, 13 December 2018.

<sup>70</sup> ECF on CIVICUS Monitor, UK anti-terror legislative and judicial steps threaten civil rights and freedom, <https://monitor.civicus.org/news-feed/2019/05/16/UK-anti-terror-legislative-and-judicial-steps-threaten-civil-rights-and-freedom/>, 16 May 2019.

of mistreatment during protests to support people in having justice. The first report released in May 2019 showcases many worrying incidents by police agents, private security forces and suppliers, including using vehicles as “*weapons to intimidate them*”.<sup>71</sup> A split of the incidents collected between December 2018 and April 2019 found that 22% of those were aggression and violence carried out by the police, while 22% were aggression and violence carried out by private security staff. The report stresses that private forces have no jurisdiction outside the perimeters of the drilling sites and adds: “*Security staff, it seems, perceive themselves as “protected” by the police in some circumstances and it is reported that their aggressive or intimidatory behaviour escalates when the police is not present*”.<sup>72</sup> Examples of this conduct are verbal abuse and intimidation as well as physical attacks against protesters and removal of objects (e.g. banners, personal belongings).

Further research on the use of private security forces in the context of demonstrations is needed.

### CRIMINALISATION OF PROTESTERS

In recent years several countries have passed legislation toughening sanctions related to assemblies, including Hungary (see above under “Restricting the right to peaceful assembly”), France, Italy, Spain and Poland (see the respective case studies). These sanctions target different behaviours such as organising or attending unauthorised gatherings and wearing items impairing identification and might act as a deterrent to public participation. The use of administrative sanctions against peaceful protesters, a phenomenon known in Spain as *bureaurepression*, were reported in Romania<sup>73</sup> and Italy<sup>74</sup> and also emerges in some of the case studies below (see Spain and Poland).

Particularly worrying are episodes involving the use of excessive charges, specifically penal charges, against protesters or activists to discourage others from undertaking similar actions. This practice has substantial consequences on the psychological safety of people engaging with dissent.

In the United Kingdom, in December 2018 fifteen activists known as the #Stansted15 were found guilty

under the Aviation and Maritime Security Act for trespassing Stansted airport and chaining themselves to a chartered flight<sup>75</sup> thus impeding its departure. None of the Stansted 15 activists received prison time as the judge recognised they were motivated by “genuine reasons”.<sup>76</sup> Nevertheless, sharp criticism – including by UN experts<sup>77</sup> – found the use of the anti-terror law in connection to a peaceful protest unprecedented and disproportionate. In similar cases, activists were

<sup>75</sup> It is immigration removal flight with the aim to deport people from Britain.

<sup>76</sup> Independent and others, UNITED KINGDOM: Activists are being charged under terrorism laws for the first time in Britain – this sets a dangerous precedent (UPDATED), <http://civicspacewatch.eu/united-kingdom-activists-are-being-charged-under-terrorism-laws-for-the-first-time-in-britain-this-sets-a-dangerous-precedent/>, published on CSW on 18 March 2019.

<sup>77</sup> OHCHR, UK must stop disproportionate use of security laws after conviction of Stansted, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24141&LangID=E>, 6 February 2019.

### ASSEMBLIES' PARTICIPANTS AND ORGANISERS SHOULD NOT BE SUBJECT TO SANCTIONS

*“Unnecessary or disproportionately harsh sanctions for behaviour during assemblies could, if known in advance, inhibit the holding of such events and have a chilling effect that may prevent participants from attending. Such sanctions could thus constitute an indirect violation of the freedom of peaceful assembly.”* – Venice Commission and OSCE/ODIHR, Guidelines on freedom of peaceful assembly, third edition, 2019 (para. 222 – This version may be subject to editorial revision)

*“[T]he freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion.”* – ECtHR, Kudrevicius and others v. Lithuania, Judgement 15 October 2015 (para. 149)

*“Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification. A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty.”* – ECtHR, Kudrevicius and others v. Lithuania, Judgement 15 October 2015 (para. 146)

*“Civil disobedience, i.e., non-violent actions that, while in violation of the law, are undertaken for the purpose of amplifying or otherwise assisting in the communication of a message, may also constitute a form of assembly. If those who incite, or engage in, acts of civil disobedience are subject to legal punishment for their acts, this should always be proportionate. Sanctions shall take the nature of the unlawful conduct into account, but neither the offense nor the penalty must ever be increased due to the content of the expression or message that accompanies the unlawful conduct. Under no circumstances should a protestor engaged in civil disobedience be punished more severely than a person who committed the identical offense without expressive intent.”* – Venice Commission and OSCE/ODIHR, Guidelines on freedom of peaceful assembly, third edition, 2019 (para. 228 – This version may be subject to editorial revision)

<sup>71</sup> Protest Justice, Data analysis of incident reported to Protest Justice from December 2018 to April 2019 <https://protestjustice.org/incidents-reported-what-the-data-says/>, 14 May 2019.

<sup>72</sup> Ibidem.

<sup>73</sup> Conversations with civil society researching on or involved in anti-corruption demonstrations.

<sup>74</sup> Osservatorio Repressione, ITALY: A story of repression of social dissent, <https://civicspacewatch.eu/italy-a-story-of-repression-of-social-dissent/>, 9 July 2019.



only convicted of “aggravated trespass”. Their lawyer Raj Chada said: *“While we are relieved that none of our clients face a custodial sentence, today is still a sad day for justice. Our clients prevented individuals being illegally removed from the UK and should never have been charged under counter-terrorism legislation. We maintain that this was an abuse of power by the Attorney General and the CPS and will continue to fight in the appeal courts to get these wrongful convictions overturned.”* The ruling has been interpreted as an attempt to censor dissent and deter future actions challenging the government’s migration policy.<sup>78</sup>

In Spain, Jordi Sanchez and Jordi Cuixart, the presidents, respectively, of the independentist civic organisations the Catalan National Assembly (ANC) and Omnium Cultural have been charged with sedition for organising protests in Barcelona on 20 and 21 September 2017. The charge refers to their call for people to peacefully gather in front of public buildings in Barcelona in order to obstruct the police operations dismantling the organisation of the referendum on the independence of Catalonia on 1 October, which had been ruled unlawful by the Constitutional Court. Without challenging the decision of the Constitutional Court, human rights organisations have expressed worries for changes of sedition, punishable with up to 10 years of prison.<sup>79</sup> They have been held in pre-trial detention for nearly two years, a measure that has been found an excessive and arbitrary deprivation of their liberty. The International Trial Watch, a network of civil society organisations observing the trial, stated: *“The criminal charges against Mr Sanchez and Mr Cuixart are intended to coerce their political opinions about the independence of Catalonia and inhibit them from continuing their claim in the political arena”*<sup>80</sup> In October 2019, the two civil society leaders were found guilty and sentenced to 9 years in prison. The sentence of the trial sets a dangerous precedent for freedom of expression and peaceful assembly in the country.

In December 2018, twelve Greenpeace activists were detained and denied bail awaiting trial for

peacefully protesting against coal mining in the Horná Nitra region of Slovakia by displaying banners demanding an end to coal. The activists faced criminal charges for *“intentionally endangering the operations of a generally beneficial facility/enterprise”* and the risk of imprisonment up to five years. They spent six to seven days in detention before the Slovak General Prosecutor’s ruled to release as there were “no grounds for detention”. In April 2019, the Regional Directorate of the Police Corps found that they had committed no crime<sup>81</sup>.

## 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 (for the latter three see case study). These interferences range from confiscations, to arrests, to physical assaults.

Mapping Media Freedom has reported several incidents of public services intimidating and confiscating properties of journalists filming police actions in Germany between 2016 and 2018. Notoriously, during demonstrations against the G20 summit in Hamburg in July 2017, thirty-two journalists had their accreditation revoked or not recognised by the police while others were pepper-sprayed and even beaten<sup>82</sup>.

In Belgium, on June 2018, two reporters and three technical staff of the French-speaking public broadcaster RTBF were arrested after refusing to stop filming a demonstration against a new centre for refugees outside Brussels.<sup>83</sup> On 24 November, a local journalist was arrested – despite wearing an orange jacket with the label “Presse” while covering Yellow Vests protests in Charleroi. On 30 November, a video journalist from the French news website Brutwas was arrested while

<sup>78</sup> ECF on the CIVICUS Monitor, UK anti-terror legislative and judicial steps threaten civil rights and freedom, <https://monitor.civicus.org/newsfeed/2019/05/16/UK-anti-terror-legislative-and-judicial-steps-threaten-civil-rights-and-freedom/>, 16 May 2019.

<sup>79</sup> Amnesty International, SPAIN: Charges for sedition and pre-trial detention against Jordi Cuixart and Jordi Sanchez are excessive – says Amnesty International, <https://www.amnesty.org/download/Documents/EUR4173082017ENGLISH.pdf>, 18 October 2018.

<sup>80</sup> International Trial Watch, Human Rights Council – Universal Periodic Review – SPAIN, <https://internationaltrialwatch.org/wp-content/uploads/2019/07/1907-ITW-Shadow-Report-ENG.pdf>.

<sup>81</sup> Greenpeace, SLOVAKIA: Greenpeace activists denied bail, facing months in jail awaiting trial (UPDATED), <http://civicspacewatch.eu/slovakia-greenpeace-activists-denied-bail-facing-months-in-jail-awaiting-trial/>, published on CSW on 2 December 2018, updated on 25 September 2019.

<sup>82</sup> Index on censorship, GERMANY: Journalists facing conflict with emergency responders over filming [https://www.indexoncensorship.org/2018/07/germany-journalists-facing-conflict-with-emergency-responders-over-filming/?utm\\_source=twitter&utm\\_medium=social&utm\\_campaign=social-pug](https://www.indexoncensorship.org/2018/07/germany-journalists-facing-conflict-with-emergency-responders-over-filming/?utm_source=twitter&utm_medium=social&utm_campaign=social-pug), 31 July 2018.

<sup>83</sup> The Brussels Times, RTBF reporters arrested at refugee centre demo <https://www.brusselstimes.com/all-news/belgium-all-news/justice-belgium/49092/rtbf-reporters-arrested-at-refugee-centre-demo/>, 21 June 2018.

live-streaming the Yellow Vests protest in Brussels despite showing his press card to the police.<sup>84</sup> In March, a photographer, a collective of photographers, an association of media and a human rights association were sued by the Brussels police for organising a photo exhibition on the issue of censorship on recording of police actions. The pictures depicted actions of repression by the police against social movements and minorities.<sup>85</sup>

In some countries, incidents have also involved citizens filming police operations (see for example under “Disproportionate or unjustified use of force, intimidation and humiliation of protesters”). In Ireland, in fall 2018, the Minister for Justice proposed outlawing the recording of police on duty after a police officer was

harassed for the aggressive removal of housing activists during an eviction in Dublin featured in a video.<sup>86</sup>

Physical attacks or intimidation of journalists covering protests are particularly worrying. In Romania, violence by the police against a journalist was reported during the anti-corruption assembly of 10 August 2018 (see case study). In Italy, on 23 May during an anti-fascist protest in Genoa, a journalist was beaten by the police despite having identified himself as a journalist. Police officers later justified their actions stating they believed he was a demonstrator.<sup>87</sup> In France, a growing number of arrests and police assaults among journalists covering protests have been recorded (see case study). Twelve resources collected by the Civic Space Watch concerning violent incidents against journalists covering demonstrations have involved far-right actors in Greece, Italy, France, the UK, and Germany.

<sup>84</sup> CIVICUS Monitor, Hundreds arrested reported as clashes during anti-government protests, <https://monitor.civicus.org/news-feed/2019/01/25/Hundreds-arrested-clashes-reported-during-series-anti-government-protests/>, 25 January 2019.

<sup>85</sup> Collective ZIN TV, Les forces de police ne sont pas au-dessus des lois, <https://www.zintv.org/Les-forces-de-police-ne-sont-pas-au-dessus-des-lois>, 28 Février 2019.

## DUTY TO PROTECT AND FACILITATE THE WORK OF JOURNALISTS AND MEDIA PERSONNEL

*“The media perform a pre-eminent role in a state governed by the rule of law. The role of the media as public watchdogs is to impart information and ideas on matters of public interest – information that the public also has a right to receive.*

*Media professionals, therefore, have an important role to play in providing independent coverage of public assemblies. [...] Furthermore, [a]ssemblies, parades and gatherings are often the only means that those without access to the media may have to bring their grievances to the attention of the public.*

*[...] the media must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them.”* – Venice Commission and OSCE/ODIHR, Guidelines on freedom of peaceful assembly, second edition, 2010 (para. 206-208)

*“Member States should assure to the maximum extent the safety of media professionals – both national and foreign. The need to guarantee the safety, however, should not be used by member States as a pretext to limit unnecessarily the rights of media professionals such as their freedom of movement and access to information.”* – Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis, 2017 (para. 2)

*“The photographing or video recording of the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law-enforcement agencies should be subject to prior judicial scrutiny.”* Venice Commission and OSCE/ODIHR, Guidelines on freedom of peaceful assembly, second edition, 2010 (para. 169)

## 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. In the Netherlands, an anti-racism group Kick Out Zwarte Piet reported having faced negative repercussions, including being demonised in the media, after it was mistakenly included in a report on domestic extremism by the anti-terrorism agency.<sup>88 89</sup> In February 2019, the group filed a complaint to the Ministry of Justice and in May 2019, the counter-terrorism agency NCTV clarified that the group was never believed to be an extremist

<sup>86</sup> ICCL, ICCL statement on Minister for Justice, Charlie Flanagan’s statement regarding the recording of Gardai on duty, <https://www.iccl.ie/news/recording-gardai-on-duty/>, 17 September 2018

<sup>87</sup> ECF, ITALY: Police beats up and threatens protesters in Genoa and Florence, <http://civicspacewatch.eu/italy-police-beats-up-and-threatens-protesters-in-genoa-and-florence/>, published on CSW on 27 May 2019.

<sup>88</sup> Dutch News, NETHERLANDS: Zwarte Piet protestors make complaint about inclusion on terrorism list, <https://www.dutchnews.nl/news/2019/02/zwarte-piet-protestors-make-complaint-about-inclusion-on-terrorism-list/>, 8 February 2019.

<sup>89</sup> Dutch News, Anti-Black Pete activists “were never considered extremist”, <https://www.dutchnews.nl/news/2019/05/anti-black-pete-activists-were-never-considered-extremist/>, 24 May 2019.

or terrorist organisation and it is no longer listed in any future evaluation.<sup>90</sup>

In the United Kingdom, in September 2017, leaked documents have revealed the use of the anti-terror strategy *Prevent* to monitor Muslim activism and charitable work, as well as activism including anti-war, anti-fracking, pro-Palestinian, anti-austerity, and animal rights campaigners.<sup>91</sup> The Network for Police Monitoring has warned about the “increasing evidence that the police are categorising campaigners as “domestic extremists” because of their political opinions.” According to the group, such a label is not defined in the law, but has been used to smear, collect data and surveil legitimate dissent in the country, including protesters with no criminal record. For example, in January 2019, the European Court of Human Rights found that data of 94-year-old peace campaigner John Catt had been unlawfully collected and retained and the details on his political activism should be deleted from the database of “domestic extremists”. He had been a peace activist since 1948 and in 2010, found that he had been under surveillance during protests against an arms factory in Brighton between 2005 and 2009. The Court noted that he “*had never been convicted of any offence and his risk of violent criminality was remote*”. Catt’s lawyer, Shamik Dutta, commented: “*This ruling sets an important precedent that it is unlawful for governments across Europe to label citizens engaged in peaceful protest domestic extremists and put them on a searchable database for a potentially indefinite period.*”<sup>92</sup> The former UN Special Rapporteur on the freedom of peaceful assembly and association has repeatedly expressed strong concern over the use of these practices in the UK.<sup>93</sup> Moreover, in December 2018, anti-terror law has been applied for the first time to peaceful protesters (see more under “criminalisation of protesters”).

In Poland, the 2018 security law to prepare the country to the climate summit (see more under “Restricting the right to peaceful assembly”) enabled authorities to “collect, obtain, gather, verify, process and use information, including personal data about persons posing a threat to public safety and order, including outside the borders of the

*Republic of Poland*”<sup>94</sup> without their knowledge and consent nor judicial supervision. The law did not specify the type of information that could be gathered, but civil society believed it was an attempt to surveil and intimidate environmental activists. Bartosz Kwiatkowski, director of Frank Bold Foundation, a Polish civil liberties group, commented: “*From my perspective, there’s no terrorist threat or security threat to justify introducing such severe regulations. It’s a chance to collect data on NGOs*”.<sup>95</sup> The law had a chilling effect on potential participants coming from countries where environmental activism faces safety risks.<sup>96</sup>

Evidence of surveillance of activists, particularly related to their participation in protests against the

<sup>94</sup> The Intercept, Poland’s new surveillance law targets personal data of environmental advocates, threatening UN climate talks, <https://theintercept.com/2018/07/02/cop24-poland-surveillance-law/>, 2 July 2018.

<sup>95</sup> Ibidem.

<sup>96</sup> Katharina Wecker, Poland clamps down on environmental defenders ahead of UN climate talks, <https://www.dw.com/en/poland-clamps-down-on-environmental-defenders-ahead-of-un-climate-talks/a-43101293>, Deutsche Welle, 23 March 2018.

## **“EXTREMISM” AND “NATIONAL SECURITY” CANNOT JUSTIFY INTERFERENCE WITH THE RIGHTS TO EXPRESSION, PRIVACY AND OTHER HUMAN RIGHTS**

*“All countering and preventing violent extremism (CVE/PVE) programmes and initiatives should respect human rights and the rule of law, and contain specific safeguards against abuse in this regard. They should be independently reviewed on a regular basis to determine their impact on human rights, including the right to freedom of expression, and these reviews should be made public.*

*The concepts of “violent extremism” and “extremism” should not be used as the basis for restricting freedom of expression unless they are defined clearly and appropriately narrowly. Any restrictions drawing upon a CVE/PVE framework should be demonstrably necessary and proportionate to protect, in particular, the rights of others, national security or public order. The same applies whenever the concept is invoked to limit the activities of civil society, including in relation to their establishment or funding, or to impose restrictions on fundamental rights, including the right to protest.”* - UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information, Joint declaration on freedom of expression and countering violent extremism, 2015 (para. 2.b, 2.c)

*“[...] While it is common for States to seek to justify restrictions, especially targeted surveillance, on the bases of national security, the Special Rapporteur has found that this rationale should be limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime or power group (A/71/373, para. 18).”* - Surveillance and human rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 2019 (para. 24.c)

<sup>90</sup> Ibidem.

<sup>91</sup> ECF on CIVICUS Monitor, Environmental protests continue as fracking companies seek court injunction, <https://monitor.civicus.org/news-feed/2018/07/02/Environmental-protests-continue-fracking-companies-seek-court-injunction/>, 2 July 2018.

<sup>92</sup> NETPOL, Campaigners. Not extremists., <https://netpol.org/domestic-extremism/>,

<sup>93</sup> UN, HRC, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, 8 June 2017.



Polish government, has been reported in a 2018 report by Amnesty International. According to the organisation, in January 2016 an amendment to the Police Act made possible “operational” surveillance and collection of metadata beyond the context of a criminal investigation, without the obligation to notify the person under surveillance. Amnesty Poland stated: “A direct consequence of the shift in the use of surveillance – and information derived from it – from regulated use within the context of criminal proceedings to measures taken in a more “preventive” posture by law enforcement agencies is the emergence of a climate of uncertainty in relation to surveillance. Inadequate safeguards and broad surveillance power mean that anyone – human rights defenders, opposition politicians, lawyers or activists – can be monitored by the police or other law enforcement agencies.”<sup>97</sup>

Further research efforts at national and European level on the issue of surveillance of activists are needed.

In Spain, a report by Amnesty International warned about the “exponential increase” of the use of anti-terrorism legislation against satire and dissent. According to the NGO, article 578 of the criminal code was used to charge three people in 2011, 39 people in 2017, and 70 people between 2018 and early 2019.<sup>98</sup> In an interview with the Civic Space Watch, Daniel Fernandez from No Somos Delito, a social movement and a platform bringing together activists who resist the gag laws in Spain, said: “We progressively assisted to a shift from fighting terrorism to targeting other groups, e.g. Spanish artists. This is a clear case of bad legislation being taken and used out of context. For example, people were fined for hate crimes against the police. Legislation against hate crime is meant to protect powerless people, which is definitely not the case of police in Spain, which in fact has huge powers and influence. The charges raised against them were of making “art violence”, glorifying terrorism, referring to several jokes which spread on social media but were also used as lyrics by the artists. They were only criticising the establishment, but they were put on trial for the content of their songs or for what they posted on social media.”<sup>99</sup> Already in 2015, five UN Special Rapporteurs warned that excessively broad wording could lead to a criminalization of behaviours that do not constitute terrorism and importunately restrict freedom of expression among other rights.<sup>100</sup>

<sup>97</sup> Amnesty International, Report on the Right to Peaceful Protest in Poland, <http://citizensobservatory.pl/ustawa/the-power-of-the-street-protecting-the-right-to-peaceful-protest-in-poland-amnesty-international-report/>, Citizens Observatory, 25 June 2018.

<sup>98</sup> Sam Jones, Spanish anti-terror law has “chilling effect” on satire, says Amnesty International <https://www.theguardian.com/world/2018/mar/13/spanish-anti-terror-law-has-chilling-effect-on-satire-says-amnesty-international>, The Guardian, 13 March 2018.

<sup>99</sup> ECF, SPAIN: Interview with No Somos Delito, <https://civicspacewatch.eu/interview-with-no-somos-delito/>, published on CSW on 3 July 2019

nalization of behaviours that do not constitute terrorism and importunately restrict freedom of expression among other rights.<sup>100</sup>

## 2.8 BUSINESS SECRECY AND CORPORATE'S SLAPP LAWSUITS THREATEN CIVIC ACTIVISM

In France and Germany, civil society reported fears that the transposition of the European Directive on business secrets could lead to a deterioration of freedom of expression. The EU Directive 2016/943 was passed in June 2016 to strengthen the protection of business information within private enterprises.

<sup>100</sup> OHCHR, “Two legal reform projects undermine the rights of assembly and expression in Spain” – UN experts, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15597>, 23 February 2015.

### BUSINESS AND HUMAN RIGHTS

*“Within their jurisdiction, member States have a duty to protect individuals against human rights abuses by third parties, including business enterprises. This includes their positive and procedural obligations under the European Convention on Human Rights, as applied and interpreted by the European Court of Human Rights. Such obligations consist of requirements to prevent human rights violations where the competent authorities had known or ought to have known of a real risk of such violations, to undertake an independent and impartial, adequate and prompt official investigation where such violations are alleged to have occurred; to undertake an effective prosecution, and to take all appropriate measures to establish accessible and effective mechanisms which require that the victims of such violations receive prompt and adequate reparation for any harm suffered.”* – CoE Recommendation of the Committee of Ministers to member states, Human rights and business, 2016 (para. 15)

*“Persons who work for a public or private organisation or are in contact with it in the context of their work-related activities are often the first to know about threats or harm to the public interest which arise in this context. By ‘blowing the whistle’ they play a key role in exposing and preventing breaches of the law that are harmful to the public interest and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. In this context, the importance of providing balanced and effective whistleblower protection is increasingly acknowledged both at European and international level.”* – European Parliament, Resolution on the proposal for a directive on the protection of persons reporting on breaches of Union law, 2019 (para. 1)

In Germany, the European Centre for Press and Media Freedom stated that the draft proposal for the transposition of the law into national legislation (Federal Law 19/4724) presented crucial weaknesses, including the broad definition of “trade secret” and the fact that the law did not explicitly exclude journalists from its application. The managing director of the organisation Lutz Kinkel commented: “*The law is supposed to protect trade secrets, but it must not endanger investigative journalists and whistleblowers. Whoever wants an informed public, must permit critical reporting on enterprises. Whistleblowing is a basis for this*”.<sup>101</sup> The formulation of the law could also force journalists to reveal the sources of their information, creating a chilling effect on whoever would want to step forward to provide information of public interest. Finally, the legislation was approved in the Bundestag in March 2019 integrating some of the proposals by civil society.

Similar concerns were raised by civil society and journalists in France concerning the Law on business secrecy (LOI n° 2018-670) approved in the Parliament on June 2018.<sup>102</sup> In an editorial on the newspaper *Le Monde* signed by a coalition of associations of journalists of major newspapers, radio and television, the law was defined as a “*weapon of massive deterrence*”. The article stated: “*The breach of business secrecy would occur as soon as this information is obtained or disseminated and their disclosure would be punishable by criminal penalties. The derogations instituted by the text are too weak to guarantee the exercise of fundamental freedoms. Scandals like that of the pick or bisphenol A, or business like the Panama Papers or LuxLeaks may no longer be brought to the attention of citizens*”<sup>103</sup> (Translated from French).

Fears related to this legislation are justified by the number of lawsuits that have been carried out by corporations against journalists and NGOs attempting to keep them accountable. For example, according to the research centre CRID (Centre de recherche et d’information pour le développement) since 2009, the Bolloré Group, which is listed on the Paris Stock Exchange and is one of the 500 largest companies in

the world, sued over 40 people in over 20 lawsuits<sup>104</sup> in a systematic attack against freedom of expression. CRID is part of the collective *On ne se taira pas* (in English, We are not going to be silenced) which is calling for France to introduce legislation against Strategic Lawsuits Against Public Participation (SLAPPs).

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 also in the United Kingdom, Portugal and Estonia. In Portugal, an environmental activist, Arlindo Consolado Marques, has been demanded a compensation of €250 000 by the pulp industry CELTEJO. Since 2015, he has been recording videos disseminated on social networks to show the pollution state of the river Tagus, stating a strong suspicion that it was produced by the corporation.<sup>105</sup> In January 2019, the store Prisma threatened to file a complaint against the Estonian animal protection NGO, Invisible Animals, for its campaign asking the supermarket to ban “cage eggs” by 2025.<sup>106</sup> In the United Kingdom, the fracking industry has carried out a number of injunctions to prevent protests of “person unknown” in front of drilling sites.<sup>107</sup>

<sup>101</sup> European Centre for Press and Media Freedom, GERMANY: Draft “Trade Secret Protection Act” in Germany threatens whistleblowers and press freedom, [https://mailchi.mp/ecpmf/press\\_release-15-02-2019](https://mailchi.mp/ecpmf/press_release-15-02-2019), 15 February 2019.

<sup>102</sup> RTL info, La loi controversée sur le secret des affaires obtient son feu vert constitutionnel, <https://www.rtl.be/info/monde/france/la-loi-controversee-sur-le-secret-des-affaires-obtient-son-feu-vert-constitutionnel-1043947.aspx>, 26 July 2018.

<sup>103</sup> ECF on the CIVICUS Monitor, Thousand of tear gas canisters fired as police clear anti-capitalist community, <https://monitor.civicus.org/newsfeed/2018/05/01/thousands-tear-gas-canisters-police-clear-anti-capitalist-community-ZAD/>, 1 May 2018.

<sup>104</sup> CRID, Les poursuites-baillons en France, <https://vimeo.com/292894838>, Vimeo.

<sup>105</sup> PPL, “We are all Arlindo Marques”, reaction to SLAPP by Celtejo, <https://ppl.pt/en/causas/somos-todos-arlindo-marques>.

<sup>106</sup> ECF on CIVICUS Monitor, Right-wing coalition members threaten media independence and freedom of expression, <https://monitor.civicus.org/newsfeed/2019/06/18/Right-wing-coalition-members-threaten-media-independence-and-freedom-of-expression/>, 18 June 2019.

<sup>107</sup> Legal Action Group, Fracking and the right to protest, <https://www.lag.org.uk/article/205728/fracking-and-the-right-to-protest>, Oct 2018.

# 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 reported in the section “Targeting “political” actions and chilling effect on advocacy” above. In Hungary, in June 2018 the Parliament approved a special tax of 25% on any revenue aimed at supporting immigration. The Civilization coalition reported to the ECF in May 2019: *“In addition to the act penalising aid to refugees and asylum-seekers, a new 25% tax was introduced in August that can be imposed first on the donors of NGOs which „support immigration” and failing that on the NGO itself. Its wording is so opaque that nobody – including the tax authority – can tell whom it would apply to. The „primary suspects”: Helsinki and Amnesty have publicly declared that they will not pay this tax. In practice, so far no proceedings have been launched.”*<sup>108</sup> The measure has been understood as an attempt to silence and starve critical civil society. The Hungarian Helsinki Committee is currently challenging the provision in front of the European Court of Human Rights.<sup>109</sup>

In July 2019, during an interview on the radio programme Good Morning, Hungary!, Prime Minister Viktor Orbán stated that money from the EU budget should not support CSOs *“which are acting against the will of the majority”*.<sup>110</sup> This statement is particularly

## ACCESS FINANCIAL RESOURCES AS A VITAL PART OF THE RIGHT TO FREEDOM OF ASSOCIATION

*“The ability to seek, secure and use resources is essential to the existence and effective operations of any association, no matter how small. The right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources.”* – UN, HRC, Second thematic report on the freedom of peaceful assembly and association, 2013 (para. 8)

*“Associations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities. In particular, states shall not restrict or block the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources.”* – Venice Commission and OSCE/ODIHR, Guidelines on Freedom of Association, 2014 (principle 7)

worrying in the context of the opaque distribution of public funding, which prevents critical organisations from access, and the stigmatising campaign against NGOs receiving foreign funding, culminated with the 2017 Law on the transparency of organisations supported from abroad.

Also, in the Czech Republic (see “Targeting “political” actions and chilling effect on advocacy” above), Poland (see case study) and Austria civil society witnessed a shift in funding priorities affecting critical NGOs. In Austria, IGO – Interest Group of Public Benefit Organisation reported “unexpected and existence-threatening cuts in funding for well-established NGOs” during Sebastian Kurz’s government. These cuts particularly affected CSOs working on discrimination, migration and women’s rights.<sup>111</sup> These claims were confirmed by the 2019 Civil Society Index carried out by IGO in cooperation with the WU-University of Economics and Business of Vienna.<sup>112</sup>

In Croatia, the watchdog GONG reported that the process of drafting the Civil society strategy 2017-2021 is currently stalled due to the obstruction of the Ministry of Labour and Pension System (MoL), which administers several European Social Fund programmes. As a result: *“This delay hampers organisations’ ability to plan for the future and their financial sustainability. Call for*

<sup>108</sup> Email exchange in June 2019.

<sup>109</sup> Hungarian Helsinki Committee, [https://www.helsinki.hu/wp-content/uploads/Application\\_HHC\\_25\\_percent.pdf](https://www.helsinki.hu/wp-content/uploads/Application_HHC_25_percent.pdf).

<sup>110</sup> ECF, HUNGARY: Viktor Orbán states “no money should be provided to NGOs from the EU budget”, <http://civicspacewatch.eu/hungary-viktor-orban-states-no-money-should-be-provided-to-ngos-from-the-eu-budget/>, published on CSW on 19 July 2019.

<sup>111</sup> ECF on CIVICUS Monitor, As pressure on civil society grows, new coalitions are formed <https://monitor.civicus.org/newsfeed/2018/07/20/pressure-civil-society-formed-new-coalitions-form/>, 20 July 2018

<sup>112</sup> IGO, AUSTRIA: The situation of civil society has changed significantly under the current government – new report says, <http://civicspacewatch.eu/austria-the-situation-of-civil-society-has-changed-significantly-under-a-the-current-government-new-report-says/>, published on CSW on 24 April 2019.



*funding are opened without strategic planning: organisations do not know when and if the funding will be available for their area of work”.*<sup>113</sup>

In Italy, the reform of the third sector, approved in May 2016, remains inactive because only one-fourth of the regulations required for the implementation has been approved. Among the issues to be tackled by the regulations are self-financing and the Five per thousand (Cinque per mille), the law which allows taxpayers to allocate part of their income tax to non-profit organisations.<sup>114</sup>

In Latvia, the 2017 tax reform was perceived as a deliberate attempt to weaken the sector as it disincentivised tax breaks for companies donating to CSOs. A 2019 report by Civic Alliance Latvia showed a sensible reduction in donations as a result of the new regulation consisting of 38% or €24 million. In 2017 the sector had received €63.5 million, while in 2018 it had dropped to €39 million.<sup>115</sup>

## 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 (see for example case study on Poland); restrictions to advocacy (see above “Targeting “political” actions and chilling effect

<sup>113</sup> Gong, CROATIA: Civil Society Strategy in limbo puts at risk CSOs’ financial sustainability <http://civicspacewatch.eu/croatia-civil-society-strategy-in-limbo-puts-at-risk-csos-financial-sustainability/>, published on CSW on 6 June 2019.

<sup>114</sup> ECF, ITALY: Third sector reform stalled – an attack on civil society <http://civicspacewatch.eu/italy-third-sector-reform-stalled-an-attack-on-civil-society/>, published on CSW on 14 May 2019.

<sup>115</sup> Data provided by Civic Alliance Latvia in email exchange in June 2018.

on advocacy”); hurdles in accessing policy-makers and public consultations.

In Austria, Germany and Slovenia, governments have questioned environmental organisations’ involvement in public processes. In Austria, in October 2018, a last-minute amendment to the Environmental Impact Assessment Act was introduced by the Austrian People’s Party (ÖVP) and the Freedom Party (FPÖ) impeding organisations with less than a hundred members to take part in environmental impact assessments. According to Greenpeace, about two-thirds of the environmental NGOs in the country will not be able to fulfil the requirements under the new regulation.<sup>116</sup> In Germany, during the party congress, the governing Christian Democratic Party, CDU, announced the start of an investigation on the public benefit status of the organisation Deutsche Umwelthilfe, an environmental protection organisation that fights against pollution in cities through legal actions to limit car traffic in cities. The party also called for a legislative change so that environmental organisations cannot go to court to ask the government to follow environmental standards.<sup>117</sup> In Slovenia, in spring 2019, the association Društvo za preučevanje rib Slovenije (DPRS – Society for the Study of Fish of Slovenia) was smeared after the Administrative Court invalidated the environmen-

<sup>116</sup> ECF on CIVICUS Monitor, Civil society space narrowing in Austria as CSOs face smear campaign and restrictions, <https://monitor.civicus.org/newsfeed/2019/04/25/Civil-society-space-narrowing-in-Austria-as-CSOs-face-smear-campaign-and-restrictions/>, 25 April 2019.

<sup>117</sup> ECF, GERMANY: ATTAC ruling could affect a thousand organisations – Interview with Coalition for Legal certainty for political advocacy, <https://civicspacewatch.eu/germany-attac-ruling-could-affect-a-thousand-organisations-interview-with-coalition-for-legal-certainty-for-political-advocacy/>, published on CSW on 29 April 2019.

### PARTICIPATION IN DECISION-MAKING PROCESSES

*“In a participatory democracy with an open and transparent lawmaking process, associations should be able to participate in the development of law and policy at all levels, whether local, national, regional or international.*

*This participation should be facilitated by the establishment of mechanisms that enable associations to engage in dialogue with, and to be consulted by, public authorities at various levels of government. In order to be meaningful, consultations with associations should be inclusive, should reflect the variety of associations that exist and should also involve those associations that may be critical of the government proposals being made.*

*All consultations with associations should allow access to all relevant official information and sufficient time for a response, taking account of the need for the associations to first seek the views of their members and partners.”* – Venice Commission and OSCE/ODIHR, Guidelines on freedom of association, 2014 (para. 183-184, 187-188)

tal permit for the construction of a hydropower plant project over accusations by the associations to have obstructed effective environmental assessment.<sup>118</sup>

## 5. 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 somehow reassuring feeling in these hard times, where governmental crackdown, restrictive legislation, closing the borders to those in need have become the new normal for too many people. The trends we will discuss below show how there are still actors, groups, assemblies of people successfully making their voices heard.

### A WAKE-UP CALL: ORGANISED CIVIL SOCIETY RE-ORGANISES

A significant positive development is the fact that shrinking civic space has pushed CSOs to get better organised. As argued in the previous edition of *Activizenship*, the crackdown on civil society in Hungary and Poland came as a wakeup call for the sector to gear up for the new

challenges and face heads up long-standing ones.<sup>119</sup> This was true for CSOs in the targeted countries, but also across many EU countries. 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. An example is the philanthropic initiative Civitates, bringing together 16 foundations whose first grant operation supported coalition-building at the national level.<sup>120</sup> In most interviews below, civil society expressed a strong need for strengthening networking and collaboration also at the regional and European level to respond to the current pressures. Attempts to foster regional synergies have been observed in the year under analysis, including with the funding contribution of actors like the Iceland, Liechtenstein and Norway Grants which have traditionally been an important source of funding in the Central and Eastern European region.<sup>121</sup>

Another noteworthy development very well expressed in the interview with the Italian initiative *Mediterranea*, but emerging strongly also in other interviews and case studies below, is the 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. CSOs have re-discovered international and European channels like the Venice Commission, the UN Special Rapporteurs and European Court of Human Rights among others, to reclaim these principles, while the European Union institutions are expected to take a more proactive and ambitious role in the sense.

<sup>118</sup> ECF on CIVICUS Monitor, CSO in Slovenia wins lawsuits, while cooperation between CSOs and state continues, <https://monitor.civicus.org/newsfeed/2019/05/29/CSOs-in-Slovenia-win-lawsuits-while-cooperation-between-CSOs-and-state-continues/>, 29 May 2019.

<sup>119</sup> Read for example: Interview with Veronika Mora, Back to the roots to resist backslidings in democracy – A wake up call from Hungary, <http://civic-forum.eu/publication/view/activizenship-3>.

<sup>120</sup> <https://civitates-eu.org/in-a-nutshell/>

<sup>121</sup> <https://eeagrants.org/topics-programmes/culture-civil-society-good-governance-and-fundamental-rights-and-freedoms/civil>

# NEW OPPORTUNITIES FOR DIALOGUE BETWEEN GOVERNMENTS AND CIVIL SOCIETY

While we are well aware of the pressures that CSOs face because of governments in some realities (see chapter number 4 “Barriers to meaningful civil dialogue”), we have also captured a positive evolvement of these relations in other countries.

In Latvia, between 2016 and 2018, civil society had witnessed a deterioration of dialogue with the government, which had carried out measures perceived as a “deliberated attempt” to weaken the sector. This challenge forced organisations to coordinate better and openly speaking about their role in society. Elections were held on October 2018, and the government formed in January 2019 immediately opened up dialogue with civil society.<sup>122</sup> According to local Latvian partners, for the first time, the prime minister will have an external advisor on society integration, who will be the contact point for NGOs in the Prime Minister’s cabinet. In May, the new Parliament also approved amendments to tax law brought forward by CSOs to overcome the challenges posed by the 2017 reform (for more information see above chapter number 3 “Reduction and restriction of funding for civil society”’s activities”).<sup>123</sup> While difficulties remain, these are important steps forward. An obvious issue is to get this trend to become immune to governments’ change.

In spring 2019, Lithuanian civil society was very active to make visible the causes they are defending as three elections took place in the country. Even before these events took place, the National NGO Coalition managed to get a memorandum/agreement signed by all the main political parties who committed to cooperate on strengthening civic participation and citizenship. Inga Aksamitauskaitė from the Lithuanian NGOs’ Information and Support Centre commented:

*“It took time to negotiate with all political parties. Finally, on the last day before the elections (March 1, 2019) National NGO Coalition managed to convince all the main political parties to sign the Memorandum. One more task that other political leaders didn’t manage to implement recently, to gather all political parties at one table, was accomplished too. It’s a big milestone for the Lithuanian Civil Society. We believe that this Memorandum will become important guidelines for the productive government and civil society cooperation”.*<sup>124</sup>

In Slovenia, although during the last elections anti-immigrant parties made progress, a minority government was formed keeping these forces out of the executive powers.<sup>125</sup> In early 2018, the country had seen significant improvements concerning civic space, largely as a result of a new NGO law passed by the Parliament on March 2018 and the promise of increased funding. Nevertheless, the implementation of the law relies for most only on the new government which shows openness to the sector and willingness to maintain previous commitments. Particularly positive is the improved relationship between the Minister of the Environment and Spatial Planning and environmental organisations which had previously experienced difficulties. The new Minister has stated the importance of opening dialogue with civil society and committed to building a constructive relationship with the sector. An outcome of this goodwill was the establishment of a council of cooperation with NGOs.<sup>126</sup>

In Slovakia, following the killing of the investigative journalist Ján Kuciak in February 2018, civil society experienced great turmoil as the former government led by the then Prime Minister Robert Fico tried to shift the attention from responsibilities of public authorities towards critical NGOs, including through vilification statements (see also under “Damaging consequences of transparency legislation for CSOs”).<sup>127</sup> This also

<sup>122</sup> ECF on Civicus Monitor, As negotiations continue, Latvian CSOs look forward to good relations with new government, <https://monitor.civicus.org/newsfeed/2019/01/15/negotiations-continue-CSOs-look-forward-good-relations/>, 15 January 2019

<sup>123</sup> ECF on Civicus Monitor, Draft amendments to Public Benefit Law under discussion, <https://monitor.civicus.org/newsfeed/2018/08/08/Draft-amendments-to-Public-Benefits-Laws-Under-Discussion/>, 8 August 2018

<sup>124</sup> NGO Information and Support Centre, LITHUANIA: Civil Society Organizations Managed to Sign the Cooperation Agreement with all the Main Political Parties in the Country, <https://civicspacewatch.eu/lithuania-civil-society-organizations-managed-to-sign-the-cooperation-agreement-with-all-the-main-political-parties-in-the-country/>, published on CSW on 15 March 2019

<sup>125</sup> ECF on Civicus Monitor, Worry spate of attacks on journalists as new government formed in Slovenia, <https://monitor.civicus.org/newsfeed/2018/09/24/worrying-spate-attacks-journalists-new-government-formed-slovenia/>, 24 September 2018

<sup>126</sup> Ministrstvo za okolje in proctor, SLOVENIA: The government set up a council for cooperation with NGOs, <https://civicspacewatch.eu/slovenia-the-government-set-up-a-council-for-cooperation-with-ngos/>, published on CSW on 6 December 2018

<sup>127</sup> ECF, SLOVAKIA: Civil society to react to the murder of Ján Kuciak, <https://civicspacewatch.eu/slovakia-civil-society-to-react-to-the-murder-of-jan-kuciak/>, published on CSW on 27 February 2018



opened opportunities for civil society to draw public attention on certain issues. Milan Šagát, Executive Director of Slovakian NGO VIA IURIS summed up:

*“Despite the turbulent times that Slovakian civil society faces, we have experienced some positive developments. In January, a new Law on Register for Non-governmental/ Non-profit Organisations came into effect. The draft resulted from a cooperation between civil society and the Government and the register poses no threat for CSOs. In March, Slovak presidential elections ended up with the victory of Zuzana Čaputová – a former environmental lawyer, civic activist and a former collaborator of VIA IURIS. Protection of democratic institutions and civil society is one of her priorities. Last but not least, in October, an umbrella organisation – Voice of Civic Organizations – has been launched. It aims to create a space for the cooperation of civic initiatives and CSOs and to support their activities towards the protection of civil society principles as elements of democracy in Slovakia.”* Again, the progress needs to be sustainable which requires the long term engagement of all the democratic political forces.

## COURTS SUCCESSFULLY UPHOLD FUNDAMENTAL RIGHTS

Some positive outcomes were recorded in courts when civic actors were criminalised as a consequence of their activism but won the judicial proceedings opened against them. In the United Kingdom, in October 2018, three anti-fracking protesters, Richard Roberts, Simon Roscoe and Rich Loizou, were freed after they had been sentenced to 16 months’ prison for “causing a public nuisance” during a four-day protest in front of a drilling site in Lancashire in July 2017. The activists stated after their release: “Today’s decision affirms that when people peacefully break the law out of a moral obligation to prevent things such as the fossil fuel industry they should not be sent to prison.” This outcome was achieved in a context where nearly 29000 people signed a petition condemning the crackdown against the opposition to the fracking industry<sup>128</sup>, while the attention around the issue has been growing and opposition galvanised by the oppression.

<sup>128</sup> <https://you.38degrees.org.uk/petitions/hold-an-inquiry-into-the-declining-space-for-civil-society-to-oppose-the-uk-fracking-industry-1>

Thanks to similar disobedience actions, anti-fracking campaigners in the UK contributed to delay the beginning of the extraction operations for years. On March 2019, in a case raised by environmental campaigners, the high court ruled unlawful key aspects of the UK national planning policy for fracking as the government failed to take into account relevant scientific evidence concerning the environmental impact of the industry. Based on this sentence, civil society will be able to claim climate change as a reason to object to planning permission for fracking sites.<sup>129</sup>

In Poland, in 2016 a new law of assemblies was introduced *de facto* banning counter-demonstrations against “cyclical” gatherings that are organised by the same organiser at the same place or on the same route at least four times a year or those that were organised at least once a year in the period of the last three years.<sup>130</sup> In response, a civic movement Citizens of Poland (in Polish “Obywatele RP”) was formed to engage in civil disobedience to this law to “stands firm against marches of radical, racists, xenophobic, antisemitic groups organised more and more often in different places of Poland” by ignoring the ban. The groups established a mutual support project (ObyPomoc) to connect all kinds of protesters criminalised by the police for taking part in mobilisations with pro-bono lawyers. In two years, ObyPomoc has monitored more than 200 court proceedings involving nearly 700 protesters. In 98% of the cases, the activists were acquitted based on the right to assembly enshrined in the Constitution.<sup>131</sup> According to the group, these actions also helped establish jurisprudence on the matter thanks to which protesters are judged based on the constitution rather than the new legislation.<sup>132</sup>

On the front of solidarity towards migrants, an emblematic victory for human rights defenders in France, and potentially all across Europe was achieved during a court case. Cedric Herrou had been sentenced to four months’ prison time by the Court of Appeal of Aix-en-Provence in August 2017 for having transported some two hundred migrants from the Italian border to

<sup>129</sup> Fiona Harvey, High court rules government’s fracking guidelines “unlawful”, <https://www.theguardian.com/environment/2019/mar/06/high-court-rules-governments-fracking-guidelines-unlawful>, 6 March 2019.

<sup>130</sup> Citizens Observatory, Law on Assemblies changed by the Law Amending Law on Assemblies of 13 December 2016, <http://citizensobservatory.pl/ustawa/amendments-to-the-law-governing-public-assemblies/>, 13 December 2016.

<sup>131</sup> ObyWatele, The machine of repression – will it get fine-tuned or will it grind to a halt?, <https://obywatele.org/wp-content/uploads/2019/06/2-years-of-ObyPomoc-actions.pdf>, June 2019.

<sup>132</sup> Application to ECF nomination

provide refuge in his home, and a similar case involved a teacher and researcher Pierre-Alain Mannoni, also sentenced by the Aix-en-Provence Court of Appeal to two months' imprisonment for accompanying three Eritreans to a safe place.<sup>133</sup> The Constitutional Council ruling abolished the so-called "offence of solidarity" that was at the root of the condemnations and recognised providing humanitarian assistance and care to people regardless of the regularity of their stay on the French territory "as in accordance to a constitutional principle of *"Fraternité"* (brotherhood) as these acts were accomplished without direct or indirect compensation".

La Ligue des Droits de l'Homme stated in this regard:

*"Recalling that Fraternity is not just a word but a legal reality, the Constitutional Council comforts those who try to bring it to life for migrants. The LDH welcomes this reminder and hopes that the government, the prosecution and the courts will abide by the letter and the spirit of this decision by ceasing to wrongfully prosecute those men and women who implement the principle of solidarity."*<sup>134</sup>

Similarly, on the grounds of the international Sea laws for people in distress, Carola Rackete, Sea Watch captain, was discharged on July 2019 after being kept on house arrest by the Italian authorities for her refusal to comply with the ban on entering Italy's territorial waters.<sup>135</sup>

## CIVIL SOCIETY SCORES HARD VICTORIES

Groups working on sexual and reproductive rights are increasingly under pressure of the "anti-gender" narrative, exposing them to hatred and even to physical attacks. Nevertheless, in the year under discussion, they have scored significant victories.

In May 2018, a historical battle was won by Irish women which represented a momentum for women all over the world. An overwhelming majority of Irish citizens voted to repeal the country's ban on abortion

in a referendum.<sup>136</sup> The advocacy carried out by Irish civic organisations played a central role in pushing for the referendum on the repeal of the 8th amendment, a decision which also saw the involvement of a Citizens' Assembly. Afterwards, diverse groups of activists and several CSOs started campaigning with the slogan "Together 4 Yes". Ailbhe Smyth, from the coalition Together 4 Yes commented:

*"The Eighth Amendment to the Irish Constitution, inserted by referendum in 1983, banned abortion in all circumstances except to save a woman's life. In May 2018, the Irish electorate voted by a large majority (66.4%) to repeal it and thus to allow for the legal provision of abortion services in Ireland. This historic victory marked a seismic shift in the struggle for women's rights and equality, and between the forces of religious and moral conservatism and those of progressive liberalism in social policy. Together for Yes was the alliance of feminist, pro-choice organisations that came together to lead the repeal campaign. Key to the campaign's success were its focus on a clear goal (repeal); the building over several years of a cross-sectoral and cross-party civil society coalition; early strategic planning; savvy crowd-funding which also raised awareness and mobilised campaigners; succinct evidence-based messaging rooted in the findings of long-term research and primarily targeting "middle ground" voters; and the realisation that the emotional strength and honesty of personal testimonies and stories were vital to moving the electorate to vote in favour of a more generous, equal and compassionate Ireland."*

The campaigners were able to mobilise Irish people living abroad who travelled back home to vote, using the hashtag #hometovote. They received support from all over the world: emblematic the case of women from the International Freedom Battalion from Rojava, showing a cardboard sign in Gaelic reading "*Ní Saoirse go Saoirse na mBan*" meaning "*There is no freedom until the freedom of women*".<sup>137</sup>

In Poland, since 2016, massive strikes of tens of thousands of women and men dressed in black have mobilised all over the country, in big cities and small towns, against the repetitive attempt by the government to further restrict one of the already most restrictive legislation on abortion. Thanks to the mobilisation,

<sup>133</sup> ECF, FRANCE: Constitutional Council recognises humanitarian help and solidarity as legitimate, <https://civicspacewatch.eu/france-constitutional-council-recognises-humanitarian-help-and-solidarity-as-legitimate/>, published on CSW on 6 July 2018

<sup>134</sup> Ibidem

<sup>135</sup> Info Migrants – Deutsche Welle, Sea-Watch captain free after court order, <https://www.infomigrants.net/en/post/17912/sea-watch-captain-free-after-court-order>, 3 July 2019

<sup>136</sup> ECF on CIVICUS Monitor, Concerns over free expression rights and censorship emerge during abortion referendum, <https://monitor.civicus.org/newsfeed/2018/06/15/concerns-over-free-expression-rights-and-censorship-emerge-during-abortion-referendum/>, 15 June 2018.

<sup>137</sup> Irish Examiner: <https://www.irishexaminer.com/breakingnews/discover/ni-saoirse-go-saoirse-na-mban-there-is-no-freedom-until-the-freedom-of-women-753554.html>

in March 2018, the new restrictive bill was yet again put on hold.<sup>138</sup> However, it did not stop there. In the words of Marta Lempart from the Polish women's Strike: *"The most recent polls say that when we started the fight, which initially was just about stopping the total ban, only 37% of people in Poland were pro-choice. Now 69% of the people in Poland want to legalise abortion. So, after each protest against the total ban, more and more people want to have the choice."*<sup>139</sup>

In Romania, on 6 and 7 October 2018 a referendum took place regarding the definition of the family in the Romanian Constitution aimed at excluding any kind of same-sex couples. The referendum followed a 2015 citizens' initiative initiated by *Coaliția pentru Familie* (the Coalition for Family) with the support of religious groups and political leaders. In just 6 months, the campaign collected roughly 3 million signatures with advocates going door to door collecting support and stressing the idea that traditional family values should prevail over LGBTQI rights. This campaign put a lot of pressure on the community and policy-makers contributed to spreading hate through controversial statements. The initiative intensified hate against the LGBTQI community and activists and could lead to becoming *"a license to kill."*<sup>140</sup> Nevertheless, civil society successfully mobilised to discourage people from taking part in the vote and, also thanks to extensive campaigning, the referendum failed to reach the 30% quorum needed.

In July 2018, in Portugal, an ambitious law was passed on Gender Identity and Sexual Characteristics guaranteeing full self-determination for trans persons of legal age and prohibiting genital mutilation at birth in the case of intersex children, a major victory for LGBTQI rights and civil society defending them.<sup>141</sup>

More generally, in some occasions, civil society was able to resist restrictive legislation. In late March 2018, in Poland, an amendment to the law on public collections which for its ambiguity would hinder the

fundraising ability for civil society was abandoned. The Minister of the Interior and Administration was forced into this decision thanks to a petition signed by citizens and the protests of NGOs.<sup>142</sup> A similar case, although the law affected the taxation of the non-profit sector, involved Italy. In this case, the new legislation was aimed at replacing the preferential tax of 12 per cent for entities with solidarity purposes by the ordinary rate of 24 per cent. In January 2019, the procedure was blocked within the Italian parliament, after facing strong criticism from all the non-profit sector, especially the Catholic Church, which is one of the primary providers of social services and one of the biggest organisations relying on the preferential tax.<sup>143</sup>

In Ireland, in May 2019 thanks to the conjunct effort of around 60 organisations coordinated by the Irish Council for Civil Liberties (ICCL), Amnesty International, The Wheel, Front Line Defenders, Transparency International Ireland and Uplift, a bill to reform the Electoral Act was launched in the attempt to overcome civil society's concerns on human rights campaigning (see under "Targeting "political" actions and chilling effect on advocacy").<sup>144</sup>

## CIVIC GROUPS AND MOBILISATIONS ARISE

From women's rights to environmental protection, from living standards to anti-corruption struggles, citizens have taken to the streets to hold the policy-makers and corporations accountable, showing that great civic energy is present in society. The massive mobilisations in the streets are the most visible manifestation of a revival of *ad hoc* activism and engagement in communities, as it also appears in all case studies below. Among the many exciting examples of civic engagement and activism is the use of crowdfunding and donations to support actions. An emblematic case is the Italian initiative *Mediterranea* which is entirely funded by small donations. In order to start and maintain the operations in

<sup>138</sup> ECF, POLAND: Show solidarity to Polish women calling the Parliament to reject bill to further limit abortion, rights <https://civicspacewatch.eu/poland-more-than-200-ngos-across-europe-call-the-parliament-to-reject-bill-to-further-limit-abortion-rights/>, published on CSW on 22 March 2018

<sup>139</sup> Interview with Marta Lempart - From "one-issue movement" to "human rights for all" narratives and mobilisations the case of the Polish Women's Strike <http://civic-forum.eu/publication/view/activizenship-3>

<sup>140</sup> ECF, ROMANIA: Hate speech on the rise against LGBT community and activists, <https://civicspacewatch.eu/romania-hate-speech-on-the-rise-against-lgbt-community-and-activists/>, published on CSW on 30 August 2018

<sup>141</sup> Civicus Monitor, Civil society complaint on harmful speech receives state support, <https://monitor.civicus.org/newsfeed/2018/05/14/civil-society-complaint-harmful-speech-state-support/>, 14 May 2018

<sup>142</sup> Civicus Monitor, State restricts protest on disability benefits, <https://monitor.civicus.org/newsfeed/2018/06/14/state-restricts-disability-protest-poland/>, 14 June 2018

<sup>143</sup> Il Post, ITALY: The government doubles taxes on non-profit sector (UPDATED) <https://civicspacewatch.eu/italy-the-government-doubles-taxes-on-non-profit-sector/>, posted on CSW on 28 February 2019

<sup>144</sup> Irish Council for Civil Liberties, Senator Lynn Ruane launches bill for reform of Electoral Act with backing of campaign groups, <https://www.iccl.ie/news/lynn-ruane-electoral-act/>, 16 May 2019



a hostile climate, the project was able to collect over 1 million Euro in less than one year<sup>145</sup>, and crowdfunding has continued to support new missions.<sup>146</sup> As described by *Mediterranea's* Alessandra Sciurba in the interview below, supporting the project has become an opportunity for people to take a stand on fundamental rights. In several cases involving civic actors criminalised in court, crowdfunding was also used to support the legal costs for the defence in legal proceedings. For example, in June 2019 a campaign in support of detained sea captain Carola Rackete raised €500,000 within hours from its launch.<sup>147</sup> A general rise of individual donations to the sector was reported within some of the case studies below (see Estonia, Poland, Romania) in part as a consequence of organisations asking more directly for support in the face of growing difficulties and needs.

All these forms of association and mobilisations we witness present an opportunity for the sector as well as they raise new challenges. For example, as argued by Kai Klandorf in the case study on Estonia, there is an increasing trend towards *ad hoc* participation and pop-up activism in place of more permanent volunteer positions. One question for the sector is then how to channel this civic energy in an organised and permanent involvement to ensure both the mobilisation capacity of CSOs and the long-term sustainability of the actions led and the demands raised by these civic groups and movements. Another issue is how to bridge two souls of civic activism. Some movements show a *disruptive* nature that CSOs are sometimes unprepared to dialogue with. This approach often roots in the fact that *newborn* activists feel that there are no existing channels for their voices to be heard (see for example the interview with the *Comite for Adama Traore*). Another reason is that the emergency of the situation they deal with has to be expressed in the most striking way possible to wake up consciences. At the same time, facing similar pressures creates an opportunity for solidarity and new alliances between diverse actors that form the civic space. Once again, *Mediterranea* showcases well the coming together of very diverse organisational realities, a complex process that allows for the expression of great creativity in participation processes.

When looking at climate change mobilisations, hopes for a more sustainable Europe are fuelled by the thriving of environmental struggles occurring in many European countries, if not all. These movements have shown that their importance lies not only in the relevance and urgency of the issue they address, which has also become a key political topic, but furthermore in their ability to mobilise high numbers of people. All year long, demonstrations for climate have been organised by students and young people in the public squares of cities, coordinated by the movement FridaysForFuture.<sup>148</sup>

At the core of some of these movements' strategy lies civil disobedience, as a non-violent act which deliberately violates the law with the aim of not only changing particular law or policy of the government but also highlighting systemic issues. For example, since 2015 the grassroots climate action group *Ende Gelände* has mobilised thousands of people from across Europe in a series of large-scale events in the Rhenish lignite mining area in Germany targeting coal plants and demanding for phasing out the industry. In June 2019, over 6,000 activists were involved in a three-days blockade alongside a mobilisation called by the FridaysForFuture movement involving a total of 40,000 people.<sup>149</sup> The global movement Extinction Rebellion (XR) has also been organising massive protests and city blockades, starting from the UK, where they shut down cities such as London<sup>150</sup> and Manchester<sup>151</sup>, calling for governments to announce climate emergency and forcing them to face the worsening climate change. Different generations have come together in solidarity for the same fight.

In France, since late 2018, the Yellow Vests movement has been sparked by the French government's tax reforms disproportionately affecting middle and low-income classes living in the periphery of big cities. More recently, the struggle for higher standards of living represented by the Yellow Vests has converged in different actions with social justice and environmental organisations. In an interview, Priscilla Ludosky, who was one of the individuals who ignited the Yellow Vests movements after launching a petition against

<sup>145</sup> Since October 2018: <https://www.produzionidalbasso.com/project/mediterranea-saving-humans/>

<sup>146</sup> <https://www.produzionidalbasso.com/project/per-tornare-in-mare-abbiamo-bisogno-di-voi/>

<sup>147</sup> Deutsche Welle, Celebrity appeal raises €500,000 for Sea-Watch captain, <https://www.dw.com/en/celebrity-appeal-raises-500000-for-sea-watch-captain/a-49420750>, 30 June 2019.

<sup>148</sup> <https://www.fridaysforfuture.org/events/map>

<sup>149</sup> [https://en.wikipedia.org/wiki/Ende\\_Gel%C3%A4nde\\_2019](https://en.wikipedia.org/wiki/Ende_Gel%C3%A4nde_2019)

<sup>150</sup> BBC News, Extinction Rebellion activists end London protests, <https://www.bbc.com/news/uk-england-london-48058177>, 25 April 2019.

<sup>151</sup> Manchester Evening News, Deansgate reopens as four-day Extinction Rebellion protest comes to an end, <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/deansgate-reopens-four-day-extinction-16855566>, 2 September 2019

the tax on fuel, told the European Civic Forum: *“On the ground, the Yellow Vests found themselves calling out the same people, the same institutions, the same corporations as the organisations fighting for the protection of the environment. Thus we converged with them on common actions on the ground. I think this is what elevated the fight: the convergence of struggles and the awareness that social and environmental rights are interlinked”*.

Similar struggles for socio-economic rights have also emerged in other countries, in particular for the right to decent housing in Romania (see the interview with Linda Greta Zsiga), Spain (see the case study), Portugal, Ireland, Hungary and elsewhere to oppose evictions and urging governments to revise their housing policies.

In Central Eastern Europe, political corruption has led people to the streets in unprecedented mobilisations. Romania was the first country to witness massive protests back in 2012, intensified in 2017 by the government’s attempts to weaken the punishments for corruption. On 10 August 2018, up to 100,000 protesters gathered in Bucharest and thousands in smaller cities, with Romanians abroad returning to join the mobilisation which was met with unprecedented force by the police (see Romania case study below). Victoria Stoiciu, from Friedrich-Ebert-Stiftung Romania and PhD. Candidate with a thesis on social movements in Romania explains:

*“Romanian social movement emerged in 2012-2013 with a series of anti-system and anti-austerity protests, radically rejecting all political parties. After 2017 the anti-system rhetoric of those mobilisations, which reminds us of Occupy or Indignados movements, was abandoned and replaced with an anti-governmental one, criticising only the party in power (PSD). Contrary to previous protests, emerging around social or ecological issues, such as privatisation of health care, deforestation, cyanide gold mining or fracking, the mobilisations of 2017-2018 were triggered exclusively by corruption or justice reform issues. The anti-corruption demonstrations prove Romania has a vibrant civil society, with an exceptional mobilisation capacity; however, setting the anti-corruption rhetoric as the dominant frame of the protests is obscuring other struggles, rendering them invisible, if not impossible.”* ■

**This fourth edition of the European Civic Forum's  
Magazine Activizenship was published thanks to the  
collaboration and contributions of:**

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Vanja Škorić

Andrea Judit Tóth

Carlotta Besozzi

Kai Klandorf

Silver Tambur

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Assa Traoré

Almamy Kanouté

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Ioana Florea

Mihail Dumitriu

Linda Greta Zsiga

Thais Bonilla

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Co-funded by the  
Europe for Citizens Programme  
of the European Union



**Edited by**  
the European Civic Forum

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**Graphic design:**  
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**Printed by:**  
Van der Poorten

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**Published under**  
Creative Commons

ISSN 2491-2603

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The opinions expressed in the present articles do not necessarily reflect the views of the European Civic Forum.

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The European Civic Forum benefits from the financial support of the Europe for Citizens Programme of the European Union. The content of this publication is the sole responsibility of the European Civic Forum and the European Commission cannot be held responsible for any use which may be made of the information contained therein.





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