

# ACTIVIZENSHIP

CIVIC SPACE WATCH REPORT 2021 | STORIES OF HOPE IN DARK TIMES

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# 10 HIGHLIGHTS IN EU CIVIC SPACE IN 2021

Through the voices of those on the frontlines

By Giada Negri, European Civic Forum

In the 2020 Civic Space Watch report, we looked at how the COVID-19 pandemic deepened democratic, rule of law and socio-economic challenges underpinning the shrinking and shifting civic space phenomenon. While the health crisis exacerbated existing social vulnerabilities and produced new ones, 2020 had been characterised by a general sense of togetherness in the crisis, with common good at the centre of public action and social solidarity. Civil society had also showcased great resilience as it stepped up and stretched beyond capacities to provide solutions to the consequences of the pandemic and emerging societal needs, despite shrinking resources and narrowing space for action.

In 2021, we observe that the general sense of trust in the collective capacity of institutions to find an inclusive way out of the crisis and build back better seems to have been worn down by the growing fears for the socio-economic impact of restrictions, especially among lower-income populations. While we witness a widespread desire for systemic change in our societies, divisive narratives and discriminatory political proposals are gaining ground in the public sphere. Anti-rights and anti-democratic groups and parties benefit from societal

tensions regarding COVID-19 restrictions and vaccination policies as well as fears in relation to the long-term consequences of the effects of the pandemic. In this challenging political and cultural landscape, while the work and space of civic organisations is increasingly under pressure, there are signs that civil society seems to be more and more recognised as a unifying social force, capable of providing the leadership needed to face the challenges ahead. Important victories and positive steps for rights for all have also taken place in the course of the year providing some hope.

In this context, the European Union is expected to be proactive in the current democratic backsliding, supporting and speaking out for civic actors under pressure. Nevertheless, European civic space is becoming a contested space.

The following article highlights 10 aspects of the challenges civil society faced throughout the year 2021, the victories it achieved and the growing European dimension of the struggle for plural and vibrant civic space.

The European Civic Forum (ECF) bases its analysis of challenges for civil society in Europe on five elements that we believe are crucial for an enabling environment:

1. The political, cultural and socio-economic landscape;
2. The respect of civic freedoms;
3. The framework for CSOs' financial viability and sustainability;
4. The dialogue between civil society and governing bodies;
5. Civil society's responses.

See the report "Civic space in the European rule of law framework: Assessing the inclusion of civil society in the consultation, methodology and follow up of the European rule of law mechanism 2 years on" (2021), <https://civicspacewatch.eu/wp-content/uploads/2021/12/Report-Civic-Space-in-the-European-Rule-of-Law-Framework.pdf>, for the methodological questions.

The following article relies on findings from extensive monitoring and research carried out throughout the year:

- ▶ Through the **Civic Space Watch** (<https://civicspacewatch.eu>), the ECF Secretariat collects resources on the state of civic space in European countries. In 2021, it collected 169 resources. This monitoring activity, combined with weekly experts interviews with civic actors on the ground fed into

23 updates for the CIVICUS Monitor, of which the ECF is one of the research partners.

- ▶ The article also builds on the **ECF response to the European Commission rule of law stakeholder consultation** on the situation of civic space in 15 EU countries relying on the information provided by NGOs on the ground, which is accessible here: <https://civicspacewatch.eu/elementor-16622/>.
- ▶ It also relies on thematic research carried out in 2021: **study on "The implications of the COVID-19 pandemic on fundamental rights and civic space"**, commissioned by the Diversity Europe Group of the European Economic and Social Committee to a consortium of European Civic Forum, Civil Society Europe, European Center for Not-for-Profit Law and the Institute of Public Affairs (forthcoming); study **"Towards an open, transparent, and structured EU civil dialogue - Civil society's views on challenges and opportunities for an effective implementation of Article 11 TEU"** by the European Civic Forum and Civil Society Europe (2021, accessible here: <https://civic-forum.eu/wp-content/uploads/2021/02/Civil-Dialogue-Study.pdf>).

Finally, the article also takes stock of the 14 debates organised by the European Civic Forum throughout the year discussing with practitioners, academics and representatives of EU institutions the topics addressed, including trust, civil dialogue, anti-rights groups and rule of law concerns.

## 10 TRENDS IN EU CIVIC SPACE

- 01 Continuous crises mobilise and challenge civic actors
- 02 Civic organisations are perceived as a unifying force against growing fear and distrust
- 03 Anti-rights groups and hate narratives are increasingly present in the public space
- 04 Marginalised groups and their defenders are attacked, their rights restricted
- 05 Bureaucratic control over associations' functioning targets critical NGOs
- 06 The right to protest is under pressure despite some wins
- 07 Victories against criminalisation unveil the political nature of prosecution
- 08 Civil dialogue is squashed between the hammer of corporate lobbying and the anvil of institutional populism
- 09 Some countries use funding policies to silence critics
- 10 European dimension is growing: making or breaking vibrant civic space?

# 1. CONTINUOUS CRISES MOBILISE AND CHALLENGE CIVIC ACTORS

## CONSEQUENCES OF COVID-19 PANDEMIC ARE HERE TO STAY

In 2021, the Covid-19 pandemic continued to represent a challenge for democratic and rule of law institutions as well as for civic actors. In the 15 countries under examination for the ECF response to the rule of law consultation<sup>1</sup>, most governments continued to impose different restrictions to manage the pandemic, including a number with a far-reaching impact on fundamental rights and significant impacts on the enabling environment for civil society. In several countries, including **Slovenia** and **Poland**, court rulings have highlighted the unlawfulness of certain measures introduced in the context of the pandemic that have deliberately and disproportionately restricted civic space.

In addition to the democratic questions posed by the pandemic, the social and economic crisis has continued to deepen, expanding the number and categories of people experiencing vulnerability. A survey by Eurofound, European Foundation for the Improvement of Living and Working Conditions, collecting almost 190,000 responses in April 2021, provides insights on the impact of the pandemic: increased level of unemployment and one in three respondents being affected by fear of losing their job in the next three months. The findings show that difficulties in making ends meet increased significantly among those already in a precarious situation. Mental well-being had reached its lowest level across all age groups since the onset of the

pandemic. Citizens' satisfaction with crisis support measures has declined dramatically, with only 12% feeling support measures are fair at the time of the e-survey<sup>2</sup>.

Civil society's role has remained crucial to respond to the emerging social needs and keep the institutions and political representatives accountable throughout the pandemic, despite the growing challenges. A study commissioned by the Diversity Europe Group of the European Economic and Social Committee to a consortium of European Civic Forum, Civil Society Europe, European Center for Not-for-Profit Law and the Institute of Public Affairs found that the great majority of CSOs their operating environment (conditions for their work and action) during the COVID-19 pandemic deteriorated as compared to the pre-pandemic environment. The COVID-19 restrictions had a negative impact on many areas of CSO functioning, including access to public and private funding, but most often the pandemic exacerbated trends already present in pre-COVID19 times. At the same time, the increased vulnerabilities of the population called for expanding civil society's actions. The study highlighted a number of ways in which civic actors successfully adapted to the new situation in order to respond to their constituencies: reorganisation of activities online and offline, mobilising volunteers and services and fast-tracking the digitalisation process<sup>3</sup>.



### THE AUTHOR

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<sup>1</sup> ECF response to the European Commission rule of law stakeholder consultation on the situation of civic space in 15 EU countries relying on the information provided by NGOs on the ground, which is accessible here: <https://civicspacewatch.eu/elementor-16622/> (2022).

<sup>2</sup> [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef21064en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef21064en.pdf)

<sup>3</sup> Forthcoming, "The implications of the COVID-19 pandemic on fundamental rights and civic space", European Civic Forum, Institute for Public Affairs, European Centre for Not-for-Profit Law and Civil Society Europe; commissioned by the Diversity Europe Group of the European Economic and Social Committee.

# TENSIONS OVER MIGRANTS' ARRIVAL AT THE BORDERS WITH BELARUS LEAD TO MASSIVE RIGHTS VIOLATIONS

Following the unprecedented arrival of thousands of migrants and asylum seekers at the borders between Belarus and the European Union, and the tensions with the State of Belarus, **Poland, Lithuania, and Latvia** have described the situation as hybrid warfare and have declared a state of emergency. Such militarised approach, legitimised as trade-off between the EU's policy on migration and Belarus black-mailing, has led to the systematic violations of migrants' rights, including asylum seeker pushbacks by Lithuanian and Polish border guards, the denial of the possibility to lodge an asylum claim, as well as inadequate humanitarian aid and supply of food, water, and shelter.

As a result of the state of emergency **Poland** implemented at the beginning of September and extended in December, the intervention of civic actors on the borders was forbidden as CSOs, humanitarian workers, medical aid providers, media and independent observers have been denied access to the area. At the same time, journalists, activists and the local community engaged to help and provide humanitarian care to the migrants have been targeted by smear and intimidation campaigns and repressive actions, including threats, brutal stop and search operations.

Aleksandra Chrzanowska, Member of the Board of the Association for Legal Intervention said during a policy debate on rule of law in December:

*"The emergency state [...] poses not only a mortal threat to migrants trapped in the forests but also dramatically restricts the rights of hundreds of thousands of residents of the border area and poses a threat to social and economic life.*

*Let's be clear: the only actors providing humanitarian help are the civil society activists and volunteers outside the emergency zone and the residents of the restricted area inside it. Until the end of November we received about 6000 of accounts from people trapped in the forests.*

*We bring basic humanitarian aid to the migrants (food, drink, warm clothes, sleeping bags, we work with independent medics and hospitals). We also support*

*them with access to administrative procedures. But we have no chance of reaching many migrants who ask for our help because of the prohibition to enter the state of emergency zone.<sup>4</sup>"*

Following the appeal of three journalists who were punished for entering the emergency zone, in January 2022 the Supreme Court in Poland ruled that forbidding general access to the border was disproportionate.

<sup>4</sup> <https://civicspacewatch.eu/defending-european-civic-space-in-the-framework-of-the-rule-of-law-mechanism-association-for-legal-interventions-testimony-poland/>

## 2. CIVIC ORGANISATIONS ARE PERCEIVED AS A UNIFYING FORCE AGAINST GROWING FEAR AND DISTRUST

### POPULAR DESIRE FOR CHANGE IS FED BY FEAR AND DISTRUST

In Activizenship #5 – Civic Space Watch report 2020<sup>5</sup>, we saw that the societal despair caused by the socio-economic hardships and uncertainty for the immediate future fuelled distrust in institutions. The general sense of social solidarity and public action in a struggle for the common good that has characterised the first phase of the emergency was quickly replaced

<sup>5</sup> <https://civicspacewatch.eu/activizenship-5/>

by contestation, including in the form of street protests. These trends continued in 2022.

After a short-term boost in trust in governments<sup>6</sup>, the data from the Eurobarometer from April 2021 shows that trust in national governments (36%) and national parliaments (35%) have lost ground. Only 43% of Europeans considered themselves satisfied with measures taken by national governments to fight the pandemic (-19 percentage points since the previous summer) while 56% were dissatisfied (+19)<sup>7</sup>.

Global research on level of trust by Edelman confirms that distrust and fear are on the rise inside societies globally, and in Europe too. According to the study looking at six EU member states, nearly 6 in 10 people say their default tendency is to distrust something until they see evidence it is trustworthy. Over half of respondents said this level of distrust affects the ability to have healthy debates and discussions. In EU countries under study<sup>8</sup>, government institutions are trusted by less than half of the population. The data shows lack of faith in national institutions' ability and leadership to provide response to societal concerns, namely job loss and climate change, fuels fear<sup>9,10</sup>. This mistrust is positively correlated with income levels: the data seems to indicate that the lower the income, the lower the trust level. The population in developed countries, including EU member states under study, shows a tendency towards economic pessimism, believing that their families will not be better off in the future<sup>11</sup>. This pessimism appears also in recent Eurobarometer poll which shows that perceptions of the national economy have continued to deteriorate reaching the lowest level of confidence since 2013, while six out of ten Europeans do not foresee economic recovery before 2023<sup>12</sup>. Similarly, a 6-country comparative study on the impacts of COVID on trust by the think tank More in Common finds that *“while a spirit of solidarity had emerged early in the pandemic, the public today is exhausted, frustrated and divided. Feelings of shared endeavor are low. Majorities*

*everywhere believe “it’s everyone for themselves”. Most see their country as ‘divided’.”*<sup>13</sup>

The pandemic has eroded confidence in the institutions' ability to tackle the challenges, leaving large numbers of people distrustful and feeling lied to<sup>14</sup>. But these tendencies must be looked at also in the context of a long process<sup>15</sup> of rising social and economic vulnerabilities combined with a weakening of social protections - that have only been exacerbated by the COVID-19 pandemic. Even before the COVID-19 pandemic many people felt that democratic processes and the current institutional channels do not ensure that their needs are addressed or even heard.<sup>16</sup> When democracy does not deliver social and economic cohesion, trust in democratic institutions tends to perish. Research on trust by Eurofound states the urgency to *“prevent those hardest hit by the impact of the crisis from falling further behind”*. The institute warns that *“failure to prevent the continued rise of inequalities among citizens and between Member States risks further undermining trust of Europeans in their institutions, as well as triggering political discontent.”*<sup>17</sup>

We can witness on the ground a widespread popular desire for deep, structural change, and it is confirmed by the data. The research by More in Common finds that 3 out of 4 people believe the *“system is rigged to serve the rich and influential”* and there is a majority of the population that aspires to social change, with economic concerns COVID-19 and climate change on top of the political agenda<sup>18</sup>. The results of the special Eurobarometer on the Future of Europe released in January 2022 also showcase the most pressing challenges for Europeans are social inequalities, unemployment, health, environmental issues and climate change<sup>19</sup>. According to the Edelman institute people

<sup>13</sup> <https://www.moreincommon.com/media/eoahwumw/navigating-uncertainty-more-in-common-feb-2022.pdf>

<sup>14</sup> Ibidem.

<sup>15</sup> <https://www.edelman.com/trust/2022-trust-barometer/defaulting-back-trust>

<sup>16</sup> See, for example, Pew Research Center, European Public Opinion Three Decades After the Fall of Communism, Washington DC, [www.pewresearch.org/global/2019/10/15/european-public-opinion-three-decades-after-the-fall-of-communism/](http://www.pewresearch.org/global/2019/10/15/european-public-opinion-three-decades-after-the-fall-of-communism/), October 2019; Reynié, D., Democracies under Pressure. A Global Survey, Paris: International Republican Institute/Fondation pour l'innovation politique, [www.fondapol.org/en/etudes/en/new-global-survey-democracies-under-pressure-volume-i-the-issues/](http://www.fondapol.org/en/etudes/en/new-global-survey-democracies-under-pressure-volume-i-the-issues/), 2019; La France en quête: Une grande enquête sur l'état de la vie démocratique en France par Destin Commun, <https://www.lafranceenquete.fr>, 2019.

<sup>17</sup> <https://www.eurofound.europa.eu/topic/trust>

<sup>18</sup> <https://www.moreincommon.com/media/eoahwumw/navigating-uncertainty-more-in-common-feb-2022.pdf>

<sup>19</sup> <https://www.eureporter.co/politics/eurobarometer/2022/02/16/eurobarometer-defending-democracy-is-top-priority-for-the-european-parliament/>

<sup>6</sup> See for example, <https://www.oecd-ilibrary.org/docserver/1c258f55-en.pdf?expires=1645606516&id=id&accname=guest&checksum=FACB1834B71A21F09F47E9EC9A3BDDFB>

<sup>7</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_1867](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1867)

<sup>8</sup> Italy, France, Spain, Ireland, Germany and the Netherlands.

<sup>9</sup> [https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/Trust%2022\\_Top10.pdf](https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/Trust%2022_Top10.pdf)

<sup>10</sup> [https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/2022%20Edelman%20Trust%20Barometer%20FINAL\\_Jan25.pdf](https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/2022%20Edelman%20Trust%20Barometer%20FINAL_Jan25.pdf)

<sup>11</sup> Ibidem

<sup>12</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_1867](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1867)

question the capitalist economic model that has shown its limitations during the pandemic and call for more accountability and social responsibility for businesses<sup>20</sup>.

Lack of meaningful political responses to address socio-economic vulnerabilities and societal fears as well as the aspirations for change will continue to nurture nationalism, xenophobia and reactionary politics and social movements.

## **INCREASING TRUST IN CIVIC ORGANISATIONS**

In the previous report, we described how civil society stepped up in the face of the multifaceted challenges represented by the pandemic providing support for the vulnerable, proposing policy-solutions and systemic alternatives to ensure solidarity for all is at the centre of the post-emergency recovery. As written above, civil society showed great resilience and ability to adapt in a challenging health and political context. When communities were left aside from public policies at an early stage of the pandemic, civic actors pushed policy makers to address the issues at stake. Additionally, civil society has also continued to step up when democracy and rule of law are under attack. An important victory in this sense took place in **Poland**, where the participation and pressure of civic organizations ensured the independence of the new Ombudsman that was feared would have been hijacked by the governing majority. This civic engagement led to an ongoing cooperation of organizations that now monitor what is happening with the Ombudsman's budget, check how public institutions respond to the Ombudsman's general comments and take action in this matter, and finally work out their demands and cooperate with the Ombudsman's office in their implementation.

These efforts contribute to the positive perception of civil society in some countries. For example, the case study on **France** shows how people trust associations to fill the gaps left by public policies. In countries where public trust in civil society is traditionally low such as **Czech Republic, Bulgaria** (see case study), **Hungary** (see case study) there have also been positive signals indicating growing public trust in civil society.

For example, the contribution by Glopolis, Association for International Affairs (AMO) and NGO Information Portal Svet neziskovek on civic space in Czech Republic for the ECF rule of law response to the European Commission stakeholder consultation reads:

*“During Covid-19, the CSOs sector showed the diverse scope of CSOs’ innovative responses in helping different parts of society and addressing otherwise neglected topics (e.g., increase of gender and home-based violence, huge inequality in access to quality education during home-schooling, unjustifiable system of restraints for debtors). Watchdog organisations have been monitoring the relevance of governmental pandemic programmes for the most vulnerable, the transparency of public procurements, and the attempts to push shoddy or harming laws during the rapid procedures in the state of emergency. As a consequence, the public credit of the civil society increased, and citizens, in general, recognized the added value of civic activism for the public good and well-being as well as management of public affairs.”<sup>21</sup>*

A pan-European survey conducted as part of the above-mentioned study for the Diversity Europe Group of the European Economic and Social Committee on the impact of COVID-19 on the civic sectors shows that “public image of CSOs” was the only category for which the number of surveyed organisations reporting an improvement was higher than those lamenting a deterioration, with roughly half of the respondents stating that the public image of sector has improved.

Edelman research confirms these trends and highlights that NGOs are perceived as a unifying force, seeing from the majority of the people in surveyed countries as able to take leadership roles and get results when faced with the political and social challenges posed by the pandemic and climate change<sup>22</sup>.

<sup>20</sup> ibidem

<sup>21</sup> <https://civicspacewatch.eu/wp-content/uploads/2022/01/Czech-Republic.pdf>

<sup>22</sup> [https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/2022%20Edelman%20Trust%20Barometer%20FINAL\\_Jan25.pdf](https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/2022%20Edelman%20Trust%20Barometer%20FINAL_Jan25.pdf)



# 3. ANTI-RIGHTS GROUPS AND HATE NARRATIVES ARE INCREASINGLY PRESENT IN THE PUBLIC SPACE

In the context described above, where fear for the future and mistrust are on the rise, reactionary political parties and extremist movements surf these societal tensions with various degrees of success depending on the country.

In late 2020 and throughout 2021, in several EU countries, regressive narratives and anti-rights groups have become more prominent and aggressive in the public sphere. As anticipated in the previous report, they are capturing and diverting emerging societal grievances linked with COVID-19 exhaustion, social needs unanswered, amplifying through disinformation the growing distrust in institutional crisis management narratives and policies, including vaccination policy.

## ANTI-DEMOCRATIC FORCES CONTINUE TO GROW

For a few years, practitioners and experts have observed the rise globally and in Europe too that our understanding of what civil society is and stands for is being challenged by the increasing assertion of regressive voices that position themselves in the civil society arena. In the past year, these anti-rights movements have become more visible and aggressive in the public sphere, sometimes initiating or infiltrating popular mobilisations regarding COVID-19 restrictions and vaccination policies.

Their strength comes from transnational organisation, campaigning and funding, but in some countries also from their ties with political leadership. Klementyna Suchanow, one of the leaders of the Polish Women's Strike said during an event organised on this topic in the Fundamental Rights Forum in September 2021 reflecting on the Polish context:

*“The networks of anti-rights groups active against women rights are now engaging with anti-covid narratives. These groups have been very active since government in 2015 and are gaining more and more power. Initially, they were perceived as crazy, too extremists even for the conservative party. Now they hold positions of power; they have their own think tanks and lobby groups. This is a sort of Hybrid war against human rights, utilising tactics similar to the Russian authorities. It is a geopolitical operation as they are heavily supported from abroad. In Poland, these conservative organisations are not very popular, so they require huge amounts of money and support to survive.”*

In some countries, they have taken advantage of growing pessimism, the deterioration of trust in public institutions and political leadership. Yonous Muhamadi, ECF Vice-President and Director of the Greek Forum of Refugees commented at the same event with regards to the Greek context:

*“I am happy to say that last week was anniversary since a court ruling recognising the far-right group Golden Dawn as criminal and its leaders were jailed. Legal persecutions of groups and leaders of the far right is important, but the fight does not stop there: new attacks against migrants took place just last week.*

*What is most worrying is that anti-rights messages are being integrated in the policies and narrative of conservative parties. Policies are shifting and becoming more conservative, picking up anti-rights narratives also in the political left. These groups use the gaps existing in the system to express themselves. For example, in Greece they use the lack of integration policies, but their aim is not migrants. The COVID-19 pandemic also created a gap in the society that is used by them to express themselves and take space in the public sphere.”*

Whatever their genesis, anti-rights civil society creates a real threat to democracy, to the universal principles that we are all equal in dignity and rights. By re-interpreting and re-coding human rights narratives and tools in an anti-rights direction, new conservative civil society groups and radical movements contribute

to shrinking civic space and deteriorating democracy in Europe.

## UNCIVIL SOCIETY THREATENS AND ATTACKS

As part of the ECF response to the rule of law consultation of the European Commission, we asked members and partners on the ground writing the country-contributions whether there have been there have been instances of physical harassment against civic actors. Episodes of hate, including threats and physical attacks, against vulnerable social groups (see below) and democratic civil society have been documented in **Sweden, Spain, Italy, Poland, France, Bulgaria, Hungary**<sup>23</sup>. For example, in **Italy**, representatives of the radical far-right and neo-fascist groups attacked the headquarters of Italy's largest trade union, the Italian General Confederation of Labour (CGIL) during an anti-green pass demonstration<sup>24</sup>. In **France**, a far-right website published sensitive data of hundreds of public figures, activists and associations so called 'Islam-leftists' ('Islam-gauchistes' in French, i.e. a neologism applied from the French far-right to an alleged political alliance between leftists and Islamists)<sup>25</sup>. These episodes create a climate of fear and insecurity and can often lead to self-censorship, one of the signs of a shrinking of civic space and a threat to European values.

Such incidents are even more worrying when they are enabled by anti-rights narratives mainstreamed or even led by representatives of the institutions, as it might be conducive to a sense of impunity for perpetrators. For example, in **Poland**, leaders of the Polish Women's Strike movement and organisations supporting them have received death, rape and bomb threats following the huge mobilisation against the near abortion ban in October 2020. Public authorities have responded violently to the protest through aggressive policing, prosecution of the leaders and smear campaigns. After months of threats, in October 2021, Marta Lempart, co-founder of the Polish Women's

Strike, was assigned police protection due to severe escalating threats<sup>26</sup>.

<sup>26</sup> <https://monitor.civicus.org/updates/2021/10/25/police-protection-whrd-after-escalating-threats-press-freedom-concerns-polandber-larus-border/>

## 4. MARGINALISED GROUPS AND THEIR DEFENDERS ARE ATTACKED, THEIR RIGHTS RESTRICTED

Across European Union member states, racialised groups, migrants and asylum seekers, the LGBTQI+ community have been particularly affected by the deterioration of the rule of law and backsliding democracy, as emerges from the case studies included in this report. Civil society organisations and rights defenders which represent and stand up for these groups, often face specific challenges to their actions linked with discriminatory and exclusionary action promoted, enabled or tolerated by some authorities. As a consequence, they have been further marginalised, silenced, being put under pressure in order to make them invisible, as they become afraid of expressing themselves and exercising their rights in the public space.

### LGBTQI+ RIGHTS UNDER GROWING PRESSURE

Threats to LGBTQI+ rights have continued. In **Poland**, LGBTQI+ activists have faced persecution for the "crime of offending religious feelings" (read the case study on Poland). In **Hungary**, anti-paedophilia

<sup>23</sup> See ECF response to the European Commission rule of law stakeholder consultation on the situation of civic space in 15 EU countries relying on the information provided by NGOs on the ground, which is accessible here: <https://civicspacewatch.eu/elementor-16622/> (2022).

<sup>24</sup> <https://civicspacewatch.eu/italy-calls-to-ban-neo-fascist-groups-after-a-violent-attack-against-trade-union/>

<sup>25</sup> <https://civicspacewatch.eu/france-far-right-website-published-lists-of-hundreds-of-islamo-leftists-and-csos-helping-migrants/>

legislation introduced to Parliament was hijacked through last-minute amendments banning “homosexual propaganda to minors,” i.e. the appearance of LGBTQI+ people in media and schools. The government and pro-government media also carried out systemic smear campaigns against organizations working on the rights of LGBTQI+ people. As a consequence, the number of attacks - especially verbal –on and conflicts with LGBTQI+ people has increased (read the case study on Hungary). In **Bulgaria**, a surge of physical attacks and violent threats against LGBTQI+ organisations, activists and members (or perceived members) of the LGBTQI+ community has become particularly visible since 2020. Several attacks were not adequately investigated by the authorities, and there is no publicly available information about any actions taken by the police or the prosecution office (read the chapter on Bulgaria).

raid was declared unlawful<sup>27</sup>. In **France**, following the murder of teacher Samuel Paty in October 2020, the stigmatisation and harassment by public authorities of organisation who defend the rights of Muslims became more widespread. Civil society organisations and trade unions have collectively stressed that the stigmatising statements by political forces “can only reinforce deleterious cleavages” in society and “feed the machines of hatred”<sup>28</sup>. The case studies and interviews regarding **Denmark** and **migrants’ rights defenders** included in this report tell the growing pressures on racialised communities and especially undocumented people.

<sup>27</sup> <http://civilsocietyeurope.eu/wp-content/uploads/2022/01/Rule-of-Law-report-2022-CSE-Contribution.pdf>

<sup>28</sup> <https://civicspacewatch.eu/wp-content/uploads/2021/06/France-Country-briefing-for-EP.pdf>; [https://civicspacewatch.eu/wp-content/uploads/2022/02/Rapport\\_Chasse-aux-Sorcieres\\_2022\\_VF.pdf](https://civicspacewatch.eu/wp-content/uploads/2022/02/Rapport_Chasse-aux-Sorcieres_2022_VF.pdf)

## **RACISM, ISLAMOPHOBIA AND XENOPHOBIA ON THE RISE**

In an interview in September 2021, Julie Pascoët Senior Advocacy Officer at the European Network against racism (ENAR) reflected on an apparent paradox emerging in Europe: on the one hand, following the unprecedented mobilisation for racial justice in 2020 important steps have been taken at the European level to recognise and tackle the phenomenon of structural racism, including the ambitious EU antiracism action plan; on the other hand, the opposition to equality has become louder, civic space for racialised groups is increasingly being narrowed. In **Sweden**, delegitimising and stigmatising campaigns against Muslim and migrants’ civic organisations and rights defenders carried out by representatives of far-right groups and parties have led to their growing marginalisation and exclusion from the public debate as well as to loss of public funding. In **Greece**, journalists and CSOs have been disgraced for publishing reports on unlawful push-backs of refugees and migrants. In few cases they have been threatened with criminal sanctions or even arrested for their work. CSO staff and migrants have been the target of racist violence from local groups. In **Austria**, in November 2020, heavily militarised police forces raided houses of Muslim activists based on unfounded terrorist allegations. Following this large operation, no charges were found, nor arrests happened. In 2021, the

# 5. BUREAUCRATIC CONTROL OVER ASSOCIATIONS' FUNCTIONING TARGETS CRITICAL NGOS

## UNDUE ADMINISTRATIVE REGULATION AND INTERFERENCE

Laws on transparency, public funding, anti-money laundering, security, regulating CSO operations, including registration, licensing, reporting and accountability, continue to impact the freedom of association in a number of countries. These include burdensome reporting requirements that disproportionately affect small organisations. For example, in **Greece**, in 2021 the government adopted a new law entitled “Civil Society Organizations, Voluntary Employment and other provisions” that instead of strengthening and supporting the sector, restricts freedom of association. According to the new legislation, a registry will be created and managed by the Ministry of Interior; however, the registration requirements - in particular costly auditing requirements - will not be easily met by NGOs, especially by those that are small or newly established<sup>29</sup>.

These restrictions tend to create a complex legal environment that limits, restricts and controls the entire civil society sector. They drain CSOs resources and capacities and contribute to negatively affecting their ability to focus on their mission. By doing so, it puts CSOs that advocate for the general interest and

European values at a disadvantage with other groups lobbying for private interests. This laws often increase interference by public authorities, such as laid down in the new 2021 law on organisations “capable of influencing public life” in **Hungary** that replaced the repealed 2017 act on foreign funded organisations empowering the State Audit Body to carry out inspections at CSOs with an annual income above 20 million HUF, ~60,000 €. They also foresee Government approval or registration as precondition to operate and receive funding (i.e. in the case of the 2020 and 2021 laws in **Greece**, new ‘republican engagement contract’ in **France** introduced by the 2021 ‘Separatism Bill’ granting administrative authorities the power to withdraw public funding to organisations that do not comply with ‘the principles of the French Republic’ - see case study).

## DEREGISTRATION, DISSOLUTION OF CRITICAL CSOS

In **France**, in the context of growing stigmatising narratives against organisations standing up against Islamophobia following terrorist attacks in fall 2020, the French Collective against Islamophobia (CCIF), civic organisation fighting against discrimination of Muslim people, was ordered to be dissolved by the Government in December 2020. The dissolution came after a public smear campaign, with the Interior Minister labelling the organisation as “enemy of the Republic”. The decision was validated by the Council of State in fall 2021<sup>30</sup>.

A joint statement by dozen of French NGOs comments on the decision:

*“The dissolution of the CCIF, under the accusation of provocation to acts of terrorism, had been announced with great fanfare by the Minister of the Interior in reaction to the murder of Samuel Paty. The Council of State had to state that the accusation didn’t have any basis, as there was no elements to suspect the association of complicity, or even complacency, in this abominable act or in other terrorist acts. The Minister of the Interior must not have been so sure of himself since he had also invoked, to justify the measure, the provision that allows the dissolution of associations “that cause discrimination, hatred*

<sup>29</sup> [https://civicspacewatch.eu/wp-content/uploads/2022/01/ROL\\_Greece.pdf](https://civicspacewatch.eu/wp-content/uploads/2022/01/ROL_Greece.pdf)

<sup>30</sup> <https://civicspacewatch.eu/wp-content/uploads/2021/06/France-Country-briefing-for-EP.pdf>

or violence” or that propagate ideas that justify or encourage such discrimination, hatred or violence.

*In a curious twist, the dissolution of the CCIF is therefore approved on the grounds that by fighting – legally – against anti-Muslim discrimination and hatred, it has itself become guilty of discrimination and hatred... In fact, for the Council of State, “criticising without nuance” public policies or laws that are considered to be discriminatory is to push the victims of the alleged discrimination down the slope of radicalisation and to invite them to evade the laws of the Republic. In other words, having the impertinence to criticise the state by arguing that it is violating the law is almost an attack. What a curious concept of the rule of law...<sup>31</sup>”*

The new law on strengthening republican values introduced in 2021 also extends the grounds to dissolve associations with a limited role of the judiciary. New civic organisations have been threatened with dissolution (read the case study of France for more information).

In **Cyprus**, Amendments of the Law on Associations and Foundations and Other Related Issues adopted in 2020 gave the Minister of Interior the power to start a dissolution process for CSOs if certain regulatory requirements were not met within a two-month notice period. In the aftermath, this power was used to remove KISA, a leading non-governmental organisation fighting for equality in Cyprus, and many other civil society organisations, from the Registry of Associations. The dissolution of KISA followed stigmatising remarks by public authorities (read the case study on criminalisation on solidarity).

In **Greece**, the law on the new registration requirements for organisations working on migration issues adopted in 2020 continues to be implemented despite international criticism, leading to arbitrary refusals of registration of established organisations, including the Refugee Support Aegean (RSA)<sup>32</sup>.

## 6. THE RIGHT TO PROTEST IS UNDER PRESSURE DESPITE SOME WINS

The right to peaceful assembly and to protest are crucial means for political participation, and they gain special importance at times when far-reaching decisions are taken impacting people’s rights. Additionally, freedom of assembly is especially important to give visibility to matters of general interest, including linked to the rule of law and democracy, in contexts where channels for dialogue between authorities and civil society are not functioning well.

In the previous Civic Space Watch report, we observed increased pressure on the right to peaceful assembly as most countries closed public space at the height of the COVID-19 emergency. In **Hungary, Greece, Slovenia** and **Poland**, a total or de-facto ban on public demonstrations – disproportionately restricting the right to protest in a blanket way - was in effect for most of 2020 and part of 2021. Court rulings in **Slovenia** and **Poland** found such restrictions unlawful. In several countries this poses a legal uncertainty regarding the arbitrary application of COVID-19 rules (i.e. in **Spain**) and the unpredictability of constantly changing governmental decrees addressing the pandemics (i.e. in **Poland, Czech Republic**)<sup>33</sup>.

Beyond the pandemic, in recent years several countries have passed legislation restricting the right to peaceful assembly and toughening sanctions related to assemblies, including 2019 Security decrees I and II in **Italy**, 2019 Anti-rioters law and 2021 Global security law in **France**, 2016 Law public assemblies in **Poland** (introducing ‘cyclical assemblies’), 2015 Organic law on Citizens security (known as “gag law”) in **Spain**, 2020 law on public outdoor assemblies in **Greece**. These sanctions target different behaviours such as

<sup>31</sup> <https://civicspacewatch.eu/france-according-to-csos-the-dissolution-of-the-ccif-puts-associations-in-danger/>

<sup>32</sup> [https://civicspacewatch.eu/wp-content/uploads/2022/01/ROL\\_Greece.pdf](https://civicspacewatch.eu/wp-content/uploads/2022/01/ROL_Greece.pdf)

<sup>33</sup> See ECF response to the European Commission rule of law stakeholder consultation on the situation of civic space in 15 EU countries relying on the information provided by NGOs on the ground, which is accessible here: <https://civicspacewatch.eu/elementor-16622/> (2022).

organising or attending unauthorised gatherings and wearing items impairing identification and might act as deterrents to public participation. These restrictions have continued to apply limiting the capacity of civic actors to organise public demonstrations and mobilise people in the public space.

During 2021, new provisions potentially restricting the right to assembly were also proposed in **Denmark** and **Slovenia**, but civil society was able to block them. In **Poland**, a law aiming to ban LGBTQI+ Pride events, with the stated intention of stopping “*homosexual propaganda in public space*” and making it illegal to “*promote sexual orientations other than heterosexuality*”, has been approved to be discussed in Parliament (read the case study). Such restrictions on the content of assemblies are considered particularly serious according to international human rights standards as the approach of the authorities to peaceful assemblies and any restrictions imposed must in principle be content neutral.

On a positive note, in **Spain**, after years of call from civic organisations and international human rights bodies, the government has started a process of reform of the law on the Protection of Citizen Security (dubbed “gag law”) to take place in early 2022<sup>34</sup>.

## HARD-FOUGHT VICTORIES AGAINST HEAVY-HANDED POLICING

The use of administrative sanctions against peaceful protesters, a phenomenon known in Spain as *bureau-repression*, was reported in **Italy, Spain, Slovenia, Poland, France, Greece**<sup>35</sup>. Particularly worrying situations involve the use of excessive charges, specifically penal charges, against protesters or activists (see below) to discourage others from undertaking similar actions. Episodes of violence by the police against peaceful assemblies have been reported in Slovenia, **Italy, Spain, Poland, Greece, France**.

**Marta Lempart**, one of the leaders of the Polish Women Strike, shared during an ECF Monthly Talk on the Criminalisation of the right to protest:

*“We are being detained. We are being beaten up. We are tear gassed. We put our bodies on the line. We put our lives on the line. And this is so hard. And yet we stand. We the women of Poland we stand. We the people of Poland we stand.”*

On a positive note, in **France**, the Observatoire des pratiques policières stroke a victory in court against rulebook provisions supporting violent police practices at protests. The State Council ruling recognised the role that human rights observers play, just like journalists, during protests, and outlaw heavy-handed police practices (including ‘kettling’ techniques – read the interview with Nathalie Tehio). In Catalunya, **Spain**, thanks to the advocacy of civil society, Catalan police officers in charge of public order functions started to be identified by a Police Operational Number on the back, chest and helmet, with a shorter and more visible typeface, meaning that the identity of any officer could be recognized at a 360-degree angle. In the event of a malpractice complaint, the corresponding legal actions can now be taken to guarantee and protect the rights of the complainants. This measure enabled victims of police violence to access and obtain justice<sup>36</sup>.

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<sup>36</sup> SPAIN: Visible Police ID – Civic Win for CSOs in Catalunya <https://civicspacewatch.eu/spain-visible-police-id-civic-win-for-csos-in-catalunya/>

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<sup>34</sup> <https://civicspacewatch.eu/spain-gag-law-under-reform-the-right-to-freedom-of-peaceful-assembly-expression-and-rule-of-law-at-stake-joint-letter/>

<sup>35</sup> Ibidem.

# 7. VICTORIES AGAINST CRIMINALISATION UNVEIL THE POLITICAL NATURE OF PROSECUTION

The use of legal frameworks and strategies with the intention of treating actions for human rights as illegitimate and illegal includes:

- ▶ Legislation criminalising specific actions (i.e., 2018 “Stop Soros” Law in **Hungary**, read the case study on criminalisation of solidarity);
- ▶ Prosecution of CSOs, activists or other critical voices for their actions (i.e. Sarah Mardini and Seán Binder in **Greece**, see below criminalisation of solidarity with migrants), words (i.e. the musician and rapper Pablo Hassel in **Spain**) or organising and participating in peaceful demonstration (i.e. criminal charges against leader of the Polish women Strike in **Poland**, prosecution of the NO TAV and NO TAP movements in **Italy**);
- ▶ Strategic lawsuits against public participation (SLAPPs): malicious civil lawsuits abusing the judicial system with the aim of draining the target through long court processes (such as those initiated by anti-rights groups against LGBTQI+ NGOs in **Poland**).

These legal proceedings often do not lead (or not even aim to) to a conviction and many complaints often end in acquittal or dismissal. In 2021, there have been a few positive court rulings linked to the criminalisation of solidarity: the case against Carola Rackete in **Italy** and the trial against Cédric Herrou in **France** were dismissed. As argued in the case study on migrants’ rights defenders, these exemplary cases show “*how trials against migrants’ rights defenders are, from the very beginning, merely political acts*”. These proceedings have serious material and symbolic costs such as reputational damage or intimidation. They also divert capacities and resources away from the mission of

the organisation to defend itself in Court and in the public. These proceedings also often aimed at generating self-censorship among other associations and activists for fear of punishment or deter them from pursuing certain actions (i.e. search and rescue) for fear of reprisal.

# 8. CIVIL DIALOGUE IS SQUASHED BETWEEN THE HAMMER OF CORPORATE LOBBYING AND THE ANVIL OF INSTITUTIONAL POPULISM

Civil dialogue is an essential component of participatory democracy. Civil society, both long-term oriented and organised and spontaneous movements, enables and empowers people to freely participate in matters of the public good and contribute to building a culture of active participation in public and community life, which is a prerequisite for the inclusiveness, the quality and transparency of law-making. Civic organisations are at the frontline to witness precarious situations and rights’ violations that people suffer from while trying to respond to people’s needs. Therefore, they are in a privileged position to contribute to policy making and alert on the possible limitations and adverse consequences of public policies.

In most EU member States, while the legal framework for civil dialogue can be considered satisfactory and in line with international human rights standards, lack of implementation is often an issue. This is particularly true in the **Central-Eastern region and Greece**

where the participation of civil society in policy-making is often formalised through different bodies, but the functioning and effectiveness of these bodies is often questionable. In **Croatia** and **Bulgaria**, the establishment of the Council for the Development of the Civil Society, which is designed to act as a venue of cooperation between the government and CSOs, is stalled. In Bulgaria, this body is in charge of distributing funding to the sector - the national fund for civil initiatives - thus not only the right to participation is impacted, but also on the financial viability of the sector.

On a positive note, in the last years there have been promising steps taken in Latvia (new strategy for the Implementation of the Memorandum of Co-operation between Non-governmental Organisations and the Cabinet of Ministers) and Czech Republic (Strategy of cooperation of public administration with CSOs 2021 - 2030) towards more participatory approaches to drafting state policies, thanks to efforts of civil society. However, the real challenge is in how these positive plans will be implemented and how they manage to change the practices of state administration.

In **Hungary**, the functioning of formal consultation and dialogue mechanisms remains obstructed. Decisions are often made behind closed doors, without any involvement by the affected stakeholders. The Government often circumvents existing consultation mechanisms, e.g. through submitting significant bills by individual governing party MPs.

## **PREPARATIONS OF NATIONAL RECOVERY PLANS MARGINALISE CIVIL SOCIETY, ARE SHAPED BY INDUSTRY'S INTERESTS**

In several countries, the bodies for civil dialogue developed around the EU semester and European Structural investment funds were not used in the context of consultation for the National Recovery and Resilience Plans (i.e. in **Bulgaria, Denmark, Czech Republic, Croatia...**). Research conducted by the European Center for Not-for-Profit Law (ECNL) and Civil Society Europe has shown that the participation of civil society in the preparation of the National Recovery and Resilience

Plans and its inclusion as beneficiaries of the funding was perceived by CSOs as far from satisfactory in many EU countries<sup>37</sup>. These findings have been confirmed by the study conducted on the impact of COVID-19 on civic space in Europe<sup>38</sup>.

An inspiring example of civil society self-organising democratic participation to feed into the work of institutions is the hearing process organised by **Polish** civil society in the context of the preparation of the national recovery plans. In few weeks, hundreds of stakeholders were enabled to debate and come to a common proposal presented to the national authorities. Nevertheless, the inclusion of civil society's proposals in the Polish recovery Plans remained marginal (read the interview with Iwona Janicka). A worthwhile exception was **Latvia**: after strong calls from civil society to be involved in the preparations, the Ministry of Finance invited representatives of NGOs to participate in the process leading to the inclusion of several proposals made by NGOs, including providing funding for NGO support, social innovation and representation.

Patricia Heidegger, from the European Environmental Bureau commented on the participation of civil society at EU and national level during the European Civic Academy dedicated to this topic:

*“The industry and business stakeholders often enjoy privileged access in many policymaking structures, as it was the case with the national Recovery and Resilience plans or the European Green Deal. Whenever timing is critical, EU institutions and national governments will use it as an excuse not to engage in meaningful civil society participation. But when we make noise, they usually open the door for us and we get our seat at the table – that’s the positive message: if civil society is vocal enough, it usually succeeds.”*

A few reports by civic organisations have also shown how - while civil society was often marginalised in the preparations, the National Recovery plans have instead been shaped by lobbying corporations. Recovery Watch, a collaborative project by Observatorio de la Deuda en la Globalización, Observatoire des Multinationales, Re:common, Corporate Europe

<sup>37</sup> ECNL and CSE, Participation of Civil Society Organisations in the preparation of the EU National Recovery and Resilience Plans, December 2020; ECNL and CSE, Civil Society and the National Recovery and Resilience Plans: a reality check, December 2021.

<sup>38</sup> Forthcoming, “The implications of the COVID-19 pandemic on fundamental rights and civic space”, European Civic Forum, Institute for Public Affairs, European Centre for Not-forProfit Law and Civil Society Europe; commissioned by the Diversity Europe Group of the European Economic and Social Committee.



Observatory, Friends of the Earth Europe, Food and Water Action Europe, Greenpeace Europe found that despite the calls for the European Recovery Fund to be a driver for the green transition, “*industry lobbying at both national and EU level has ensured oil and gas firms and utilities remain some of the biggest beneficiaries in Italy, the Spanish State, Portugal and France.*”<sup>39</sup>

Lack of transparency and public disclosure of the draft recovery plans was also identified as a challenge to external scrutiny by NGOs or sectoral experts which could have guaranteed that harmful measures were identified, modified or rejected. On the contrary, the “do not significant harm” assessment that member states presented to the European Commission regarding the planned investments was of poor quality and did not reflect the views of third-party experts. This was identified as a factor which contributed not only to planned investments that do not meet the green ambitions set by the European commitments<sup>40</sup> but also to the approval of measures harmful to the environment and the climate<sup>41</sup>.

## **DIRECT DEMOCRACY FRAMED AS A SUBSTITUTE TO COLLECTIVE ORGANISING.**

In many countries, the participation of civil society in policy-making is affected on the one hand, by the decrease of resources available; on the other hand, by the lack of understanding or lack of political will to engage in meaningful civil dialogue. A general tendency exacerbated by the pandemic is the shortening of consultation periods and to adopt a “box ticking” approach that does not meaningfully reflect inputs of civil society in the policy output. Participation of CSOs in decision-making is a key area of concern that was exacerbated by the COVID-19 pandemic<sup>42</sup>. Additionally, in some countries, critical voices engaged in advocacy activities are often isolated and targeted by authorities with stigmatising campaigns (see below).

A risk raised in several EU member states and witnessed at the EU level is that participatory

mechanisms privileging direct and atomised participation of individual citizens tend to be presented in contraposition to and replace – instead of complement – collective participation through associations, CSOs and other intermediary bodies. In many EU countries and also at the EU level, the legislative framework is more and more oriented to look at the role civic organisations as a body responsible for implementing public policies, whether national or European, then a democratic player to self-organising people and movements.

On the contrary, the role of collective and long-term self-organising associations is sometimes framed as an obstacle to direct participation of individual citizens or in competition with representative democracy. However, in representative democracy systems, collective organising is crucial to participatory democracy to leverage people’s voice and make it heard by the decision-makers. Organised civil society has a prominent role to play in better connecting citizens to decision-makers for the purpose of the practical implementation of participatory democracy. Indeed, civil society participation channels the expression of collective engagement, which adds to forms of direct citizens’ participation that convey the sum of individuals’ opinions

Civil society’s mediation role is particularly relevant at the EU level, where, while some tools of direct citizens’ participation exist at EU level, they are rarely used by citizens to influence the EU decision-making process – both due to their expertise - based and technocratic nature and to their limited impact, which frustrate the engagement of ordinary citizens. However, also at the EU level civil dialogue show gaps and challenges (see below, under subheading #10 “Civil dialogue: a long way to go for a European civic space”). The Conference on the Future of Europe is a case in point. Citizens’ associations and trade unions play only a marginal role in this process, through the weak representation in the plenary, without the involvement of civic organizations in the preparations of citizens panels, nor a proper mechanism for civil and social dialogue which should be at the heart of the reflection on the future of our societies and of Europe.

By opposing the individual citizens, whom they tend to glorify, to the collective, whom they often do not meaningfully engage, the institutions at all levels deprive themselves of an instrumental force in our societies to build inclusion against divisions, equality and solidarity against competition between people. This approach only reinforces a populist culture, often reactionary and exclusionary, where political leadership

<sup>39</sup> <https://corpwatchers.eu/IMG/pdf/hijacking-recovery-hydrogen.pdf>

<sup>40</sup> [https://caneurope.org/content/uploads/2022/02/2022\\_02\\_Reaching-for-a-green-recovery-CAN-Europe-Bankwatch.pdf](https://caneurope.org/content/uploads/2022/02/2022_02_Reaching-for-a-green-recovery-CAN-Europe-Bankwatch.pdf)

<sup>41</sup> <https://green10.org/wp-content/uploads/2021/11/Statement-of-the-Green-10-on-the-do-no-significant-harm-principle.pdf>

<sup>42</sup> Ibidem.

speaks directly to individual citizens, at the expense of intermediary bodies or checks and balances.

## **NEGATIVE DISCOURSE AND SMEAR CAMPAIGNS**

Smear campaigns against democratic civil society – especially when acting as public watchdog or advocate – and critical voices have been carried out by political representatives, including in the Government, in **Bulgaria, Hungary, Czech Republic, Croatia and Slovenia**<sup>43</sup>. In particular, in **Croatia and Czech Republic**, watchdog NGOs have been discredited as “political” for raising awareness at national and EU level of developments linked to conflict of interest and corruption. Anti-CSO campaigns are also in some countries, smear campaigns by authorities target specific sectors of civil society, such as organisations working on Islamophobia (such as in **France**) or migrants rights (such as in **Italy**). It is worrying that in these countries, anti-rights narratives emerging from the far-right are channelled and mainstreamed by democratic institutions.

Reputational attacks can create a distressing environment for affected NGOs and activists and produce fear of speaking out and campaigning on sensitive issues. They also often create the impression that critical voices are ‘legitimate targets’ for other measures and often anticipate the deployment of other legal, judicial or financial obstacles.

<sup>43</sup> See ECF response to the European Commission rule of law stakeholder consultation on the situation of civic space in 15 EU countries relying on the information provided by NGOs on the ground, which is accessible here: <https://civicspacewatch.eu/elementor-16622/> (2022).

## **9. SOME COUNTRIES USE FUNDING POLICIES TO SILENCE CRITICS**

The right to freedom of association includes the ability to seek, receive and use resources – human, material and financial – from domestic, foreign and international sources. Thus, the right to mobilise resources, including human and financial, is a direct and essential component of the freedom of association. Access to and use of funding provide associations with the means to operate and pursue their missions and are therefore essential for civil society’s ability to operate as part of the social and democratic fabric and the rule of law ecosystem.

In the previous annual report, we described the loss of funding for the sector in many EU countries as a result of the pandemic. The study conducted on the impact of COVID-19 on the civic sector confirmed that access to funding is one of the most pressing needs of CSOs, which was exacerbated by the COVID-19 pandemic<sup>44</sup>, although the impact and level of public support depends on the country. For example, in **Austria and Germany** the support received was adequate.

The ECF response to the rule of law stakeholders’ consultation also showed that availability of public funding for the civic sector hugely depends on the field of action. In many EU member states, funding is mostly distributed to CSOs involved in social care, service provision and sport activities, while availability of funding to engage in rule of law and fundamental rights issues is a problem raised in several countries (e.g. **Latvia, Spain, Bulgaria, Czech Republic, Italy**). In the Central-Eastern region, the EEA and Norway grants represent an important source of funding, if not the main one, in the field of rule of law and

<sup>44</sup> Forthcoming, “The implications of the COVID-19 pandemic on fundamental rights and civic space”, European Civic Forum, Institute for Public Affairs, European Centre for Not-for-Profit Law and Civil Society Europe; commissioned by the Diversity Europe Group of the European Economic and Social Committee.

democracy. Challenges regarding this stream of funding that emerged in **Hungary** and **Slovenia** (then resolved) particularly affect the capacities of the sector to act on these issues. In **Hungary**, the unsuccessful conclusion of the negotiations concerning the third period of the EEA & Norway Grants means a loss of 10 million € for the coming years in the context of already difficult access to funding for critical and independent CSOs.

## CONTROLLING CSO ACTIVITIES THROUGH FUNDING POLICIES

Transparency, counter terrorism and anti-money laundering laws have in some cases led to restrictions of access to public funding by introducing new, burdensome, complex, not always transparent procedures and challenging eligibility criteria. While, as described above (See subheading #5, “Bureaucratic control over associations’ functioning targets critical NGOs”), organisations with critical views or working on sensitive issues have become particularly vulnerable. For example, in **Sweden**, organisations working with Muslim people and migrants have been subject of increased scrutiny, sometimes leading to lose of funding, in processes that have often shown procedural flaws<sup>45</sup>. Similarly in **France**, civic organisations have seen their funding cut or suspended in the context of the fight against Islamic terrorism, but often in absence of judicial or factual bases<sup>46</sup>.

Governments have used funding policies in an attempt to curtail the work of critical CSOs in **Hungary**<sup>47</sup>, **Croatia** and **Slovenia**<sup>48</sup>.

For example, the contribution by CNVOS – Centre for Information service, cooperation and development of CSOs on civic space in Slovenia for the ECF rule of law response to the European Commission stakeholder consultation reads:

*“While the overall financial viability of the sector is good and not affected by the COVID-19 pandemic, some thematic areas, especially, protection of environment, nature conservation and culture, were affected*

*by the national budget cuts, while individual more critical NGOs are left without funding or affected by significant decrease (similarly to critical media). The changes to the Rules on the procedures for implementing the budget passed in January 2022 risk further politicising access to NGO fund thus creating new barriers for critical NGOs.”<sup>49</sup>*

These moves can lead to the self-censorship of organisations in order to preserve access to funding. Other organisations are in a situation of financial precariousness in order to preserve a certain autonomy, which nevertheless weakens their ability to act. In the long-term, these can lead to a gradual change of the fabric of civil society.

In **Hungary** and **Poland**, for years it has been documented that the opaque distribution of public funding has sometimes resulted in critical civic organisations’ inability to access funding. In these countries, governments have made moves to economically starve critical civic organisations, including through centralisation in increasing direct control of distribution of funding (i.e. ; National Cooperation Fund in **Hungary**, National Institute of Freedom – the Centre of Civil Society Development in **Poland**) and through this favouring the establishment and financing of parallel organisations (quasi GOCSOs) that could be used for political purposes while diverting funding away from the CSO sector with a transparent and proven track record.

Karolina Dreszer of the National federation of Polish NGOs warned during a policy debate on rule of law in December:

*“In Poland the government supports organisations that are favourable to the government and encourages their participation while restricting and limiting the participation of independent organisations. In a few years, this may lead to a complete transformation of the civil society’s sector.”*

<sup>45</sup> <https://civicspacewatch.eu/wp-content/uploads/2022/01/Sweden-updated.pdf>

<sup>46</sup> [https://civicspacewatch.eu/wp-content/uploads/2022/02/Rapport\\_Chasse-aux-Sorcieres\\_2022\\_VF.pdf](https://civicspacewatch.eu/wp-content/uploads/2022/02/Rapport_Chasse-aux-Sorcieres_2022_VF.pdf)

<sup>47</sup> <https://monitor.civicus.org/updates/2021/08/18/orban-government-alleged-have-used-pegasus-spyware-investigative-journalists/>

<sup>48</sup> <https://monitor.civicus.org/updates/2021/08/02/more-200-days-without-funding-slovenian-press-agency-attempts-block-funds-ngos/>

<sup>49</sup> <https://civicspacewatch.eu/wp-content/uploads/2022/02/Slovenia-.pdf>

# 10. EUROPEAN DIMENSION IS GROWING: MAKING OR BREAKING VIBRANT CIVIC SPACE?

While policies related to democracy, rule of law and fundamental rights are the competence of national authorities, the struggle for vibrant civic space has an increasingly European dimension. Civic actors across Europe are expecting the EU institutions to take stronger actions to protect and support civil society. CSOs are increasingly relying upon EU law and institutions to hold governments accountable for upholding their democratic commitments, using advocacy and strategic litigation. At the same time, governments and anti-rights groups are looking at EU institutions and policies to extend their control and influence. The EU level is increasingly becoming a new battlefield for contestation between different visions of society and Europe's.

## POSITIVE STEPS AT EU LEVEL FOR VIBRANT CIVIC SPACE AND FUNCTIONING DEMOCRACY

After years of advocacy and campaigns, positive signs are coming at the European level towards more ambitious role on democracy, rule of law and fundamental rights. The past couple of years has seen the development of a number of European measures aimed at strengthening the rule of law, democracy and fundamental rights, such as the European Rule of law mechanism<sup>50</sup> and promising work to tackle SLAPPs against

<sup>50</sup> <https://civicspacewatch.eu/wp-content/uploads/2021/12/Report-Civic-Space-in-the-European-Rule-of-Law-Framework.pdf>

public watchdogs<sup>51</sup>. The European Parliament voted on at least two reports regarding the civic sector in early 2022, including calling on the European Commission to establish a European statute for associations<sup>52</sup> and create a European Strategy on civil society.

In 2021 there have been also important wins at the European Court of Justice (CJEU) which show the role that the Court can play in protecting civic space and fundamental rights both at national and European level. For example, the ruling regarding Hungary's law on foreign funding for civil society has contributed to the retraction of the law at national level in the spring 2021 (read the interview with Veronika Mora). In December 2021, the court also found that Hungary's bill criminalising helping asylum seekers is against EU law setting a positive precedent for the rest of the Europe against similar moves. The story of Baby Sara in Bulgaria is an exemplary case of how CJEU has been instrumental to ensure the protection and rights of children of LGBTI+ couples not only in the country but across the European Union (read the interview with Denitsa Lyubenova). The use of EU law to build arguments to protect civic space and fundamental rights have been identified as areas to be further developed and where the EU institutions could support the development of civil society's capacities. One virtuous example is ECNL Handbook on how to use EU law to protect civic space<sup>53</sup> that provides practical guidance for CSOs on how to advocate and litigate to protect their rights and civic space based on EU law.

## CIVIL DIALOGUE: A LONG WAY TO GO FOR A EUROPEAN CIVIC SPACE

While some European policies and initiatives are contributing to expand civic space in some cases, others are conducive of negative impact on fundamental rights and civic space. The chapter on migrants' rights defenders describes the risks of further criminalisation of solidarity linked with the new pact on

<sup>51</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13192-EU-action-against-abusive-litigation-SLAPP-targeting-journalists-and-rights-defenders\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13192-EU-action-against-abusive-litigation-SLAPP-targeting-journalists-and-rights-defenders_en)

<sup>52</sup> <http://civilsocietyeurope.eu/wp-content/uploads/2022/02/Final-Joint-Civil-Society-position-paper.pdf>

<sup>53</sup> <https://ecnl.org/publications/ground-breaking-handbook-how-use-eu-law-protect-civic-space>

migration and asylum. NGOs have also raised great concerns over the potential threats posed on fundamental rights and civil society working with people of Muslim faith by the 2020 counter-terrorism agenda for the EU. EU laws spanning a wide range of issues, from data protection to social economy and digitalisation, have the potential to increasingly impact and shape civic space at the national level. For example, in **Italy**, the Government has made moves to impose new VAT obligations following an infringement procedure by the CJEU over alleged breach the VAT European Directive<sup>54</sup>.

This calls for better assessment of EU policies' impact on fundamental rights (including socio-economic and environmental rights), better involvement of civic organisations in shaping policies and better guidance on how to implement them. The above-mentioned issues linked to the preparations of National Recovery Plans show how better involvement of civil society in the preparations could have led to fairer and more sustainable planned investments, tackling one of the most pressing needs identified by EU citizens: climate change.

Longstanding gaps in the consultation and involvement of civil society in the European policy-making have been pointed out by CSOs over the last decades, and the pandemic crisis had a magnifying effect. Although Article 11.2 of the TEU sets since 2009 a legal obligation for EU institutions to engage into an open, transparent and regular dialogue with organised civil society, according to a recent study by Civil Society Europe and the European Civic Forum, current practices of institutional dialogue with civil society on European policy-making, both at EU and at national level, *“are clearly failing to meet the basic standards of enabling environment, openness and transparency, accountability and responsiveness, equality and inclusiveness as well as sustainability and structural nature”*<sup>55</sup>. The study found that the lack of an overarching policy framework setting a common basic approach for the implementation of Article 11 TEU is seen by CSOs as one major gap affecting the coherence, transparency, inclusiveness and regularity of civil dialogue between CSOs and EU policy makers. Lacking such framework, civil dialogue between CSOs and EU policy makers is mostly channelled through top-down processes or is informal in nature. The failure to ensure a regulated approach

to EU civil dialogue also translates into the lack of coordination and support structures both within and among EU institutions and bodies. As a consequence, civil dialogue practices differ greatly from one institution to another<sup>56</sup>.

The study on the impact of COVID-19 on civic space and fundamental rights has also highlighted that CSOs believe there is need to look into better ways to include CSOs in existing European mechanisms and processes, such as the European semester, at national and EU level. The challenges mentioned above regarding national consultation and dialogue between CSOs and policy-making affect also national CSOs' ability to participate and influence EU law-making. The lacklustre inclusion of CSOs in the National Recovery and Resilience Plans is a case in point. Balanced participation of stakeholders in policy-making would allow EU institutions to have a complete view of all issues at stake and avoid undue influence<sup>57</sup>.

Implementation of civil dialogue along the Article 11.2 of the TEU is a longstanding demand of the European civil society, supported through various EESC opinions and the work of its Liaison Group (Participatory Democracy A success story written by the EESC, 2020), as well as by several European Parliament reports and resolutions, starting with the Resolution of 13 January 2009 on the perspectives for developing civil dialogue under the Treaty of Lisbon. Dialogue structures both at EU and national level that offer opportunities for transnational and grassroots civil society to engage in EU policy making would contribute to ensure better quality and effectiveness of EU legislation, and its ability to respond to people's needs on the ground. This would also support policies to identify and respond to the needs exposed and exacerbated by the COVID-19 pandemic. More generally, by improving the quality of impact assessments and ensuring meaningful opportunities for civil and social dialogue, the social and environmental impacts of national and EU legislation would be better balanced with economic impacts, and fundamental rights would be taken more adequately into account when designing legislation and policies. Better and fairer policies would create more fertile ground for trust in democratic

<sup>56</sup> Ibidem

<sup>57</sup> Forthcoming, “The implications of the COVID-19 pandemic on fundamental rights and civic space”, European Civic Forum, Institute for Public Affairs, European Centre for Not-for-Profit Law and Civil Society Europe; commissioned by the Diversity Europe Group of the European Economic and Social Committee.

<sup>54</sup> <https://civicspacewatch.eu/wp-content/uploads/2022/01/Italy.pdf>

<sup>55</sup> Towards an open, transparent and structured civil dialogue, 2021

## **WARNING BELL: SHRINKING CIVIC SPACE ATTEMPTS ARE REACHING THE EU LEVEL**

Not only do developments at the European level affect civic space at the national level, backsliding democracy and shrinking civic space at national level impacts the space for civil society at European level and, more widely, the positive steps taken by the European institutions to protect the rule of law and democracy.

An emblematic case is the confrontational approach of **Hungary** and **Poland** against the European Commission's rule of law toolbox, challenging the legitimacy and fairness of the rule of law annual assessment by establishing their own rule of law institute<sup>58</sup> and bringing to the CJEU the funding conditionality. Another known example is the election in the European Economic and Social Committee of representatives of civil society. As stated in a letter by Civil Society Europe warned of how the nomination processes for representatives of civil society organisations in **Croatia**<sup>59</sup>, in the **Czech Republic**, and in **Poland** did not respect the accountability and good governance rules, with worrying implications for civic freedoms and democratic representation of national civil society in the European body<sup>60</sup>.

The **French** Government has also made moves to shrink civic space at the European level by requesting the European Commission to block the disbursement of EU funding to French grassroots organisation empowering Muslim women after the project proposal was assessed and approved on the basis of eligibility and selection criteria by the European Commission<sup>61</sup>. The request by the French Minister of Interior Gerald Darmanin leaked to the media also showed a dangerous narrative on foreign funding for CSOs casting a negative presumption and a general stigmatisation affecting foreign funding to associations and urging more control of Member States on the decision of distributing European funding to NGOs. French authorities

<sup>58</sup> <https://www.politico.eu/article/poland-and-hungary-charge-brussels-with-double-standards-on-rule-of-law/>

<sup>59</sup> <https://crosol.hr/en/election-of-members-of-the-european-economic-and-social-committee-in-croatia-civil-society-representatives-without-voices-from-civil-society>

<sup>60</sup> <https://civilsocietyeurope.eu/wp-content/uploads/2020/07/Open-letter-on-breaches-in-transparency-and-accountability-of-Member-States-nominations-to-the-EESC-2020-2025.pdf>

<sup>61</sup> <https://civicspacewatch.eu/france-french-minister-of-interior-interfere-with-european-commissions-distribution-of-funding-to-local-ngo/>

also criticised European Commissioner for Equality Helena Dalli for meeting with FEMYSO, network of Muslim youth associations<sup>62</sup> and protested against the Council of Europe's anti-discrimination campaign focusing on hijabs leading to its suspension<sup>63</sup>.

<sup>62</sup> <https://civicspacewatch.eu/france-femyso-statement-on-attack-of-muslim-youth-by-french-government-officials/>

<sup>63</sup> <https://www.politico.eu/article/hijab-promotion-campaign-council-of-europe-anti-hate-speech-protest-france/>

## **CONCLUSION**

Civic actors are fundamental players for a democracy that works and delivers for all, functioning rule of law and ensuring social and environmental justice. During 2021 they have shown resilience and gained trust in face of an unfavourable political landscape characterized by, on one hand, institutional disregard to the role of civil society as intermediary between the citizens and their governing authorities, and, on the other hand the growing threat of far-right narratives and attacks in the public space, that creates fear and further marginalises racialised communities, migrants and LGBTQI+ people and those who defend them. These represent also key democratic challenges to be addressed at the European level through a comprehensive vision and appropriate European policies.

As European Union's proclaimed commitment to just and equal society, functioning rule of law and democracy, and vibrant civic space becomes more ambitious, transnational expression of civic expectations, demands and contestation will tend to grow. The European Union is called to take a strong and clear stand towards the protection of civic space, enabling civic ownership of the European project. ■