

ACTIVIZENSHIP

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



ACTIVIZESHIP

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STORIES OF PRIDE AND HOPE IN DARK TIMES

When we planned this publication, we were living in a different world. War in Europe was for many of us, if not distant memory, at least a matter of “dealing with the past”.

As every year, we awarded the outstanding stories told in this report because we believe that in a context of growing challenges against rights and democracy, it is crucial to recognise and praise the tremendous civic energy that stands for equality and solidarity and strives to defend the democratic foundations of our living together.

Of course, this recognition cannot be limited to meddles and nice words; it has to translate into policies that nurture civil society and allow it to act in full independence and capacity.

Today, we find ourselves in a situation where words such as “pride” and “celebration” are in contrast with the dark times we are living in, the fear and sense of powerlessness we all feel.

As the war rages at the borders of the European Union, we see civil society organisations and groups at the forefront, responding to urgent needs, addressing the burning issues.

It is true in the tormented Ukraine that needs so much urgent assistance and support.

It is also true in Russia and Belarus, when people are taking to the streets expressing their opposition to the war, calling for peace.

17 March 2022

It is true in Poland, Romania, Moldova, and the other countries at the borders with Ukraine, where the democratic and independent civil society, since the first minute of the war, is devoting its energy to rescue, welcome, and assist millions of refugees. Sometimes, like in Poland, despite the lack of systemic solutions and support from the state authorities.

It is true all over the European Union where we see a large mobilisation against the war and huge efforts to organise solidarity with the refugees and the victims. Civic actors are stepping up to provide direct humanitarian, legal, psycho-physical support to those crossing the borders in search of safety. They are collecting medicines and essential goods to be sent to civilians remaining in the country. They call for and organise the welcoming of all refugees over the UE territory, regardless of their ethnic or geographic origin.

After the pandemic crisis, still not behind us, it is once again obvious that we need vibrant civic space enabling active citizenship and civic organising in all of its forms: not only as, often low cost, service providers for public policies but also to raise awareness, self-organise different expressions of active citizenship, empower and give voice to vulnerable communities and populations that struggle to access their rights, or who's rights are denied, who feel left behind, silent, invisible and disillusioned with a society of unequal relationships and competition.

Crisis after crisis, we've been given the lesson how everyone's safety depends on how safe others are. Today's interconnected global challenges – namely, the extreme poverty and inequality, the climate emergency, violent conflicts, the trend of autocratisation and shrinking civic space, and the ongoing pandemics – call for a new impetus to international solidarity.

The dramas that are unfolding now with the war in Ukraine will have lasting consequences in Europe and beyond, the most vulnerable pay the price. In the most dramatic situations, civic and social actors play a crucial role helping people in need, often with few resources and little power, they are often the first ones to come and the last ones to leave.

We have seen it in the past two years in the context of the COVID-19 pandemic – as this report showcases. We see it in relation to the climate crisis and successive crises before that. And again, it comes to light in this context of war that exposes the dramatic consequences of the unlawful actions of authoritarian governments.

The best source of antibodies to the virus of authoritarianism is an active and sustainable civil society. That is also why it always sits among the targets for repression by authoritarian powers.

But regardless of external circumstances, before, during and after a crisis, civic action alone is not enough. Democratic institutions must play their crucial role responding to society's needs, including through support

for civic organisations to preserve their role as independent actors.

We hear from our colleagues in Poland, Hungary, and elsewhere in Europe how the lack of cooperation and support from public authorities negatively affects the scale and long-term sustainability of these crucial efforts in the face of the humanitarian crisis at the borders of the European Union.

Civic organisations and initiatives rely on limited resources and capacities, which - in many cases - have been shrunk over the years. Institutions have a duty to leave no one behind, all the more in the current crisis. This requires public policies that are shaped through civil and social dialogue, as well as support for civil society in playing its role, both in its advocacy and agency for change.

We hope that reading these pages will lead to a fruitful reflection and that the civic struggles and achievements showcased in the publication can feed some hope for the future, which is an essential and rare resource in these times of darkness and emergency. ■

Out of thirty inspiring stories that reached us through an open call in May 2021, the European Civic Forum Steering Committee selected six that present a fair territorial and thematic distribution of the various challenges and rights-related fights during the past year. We collected the interviews in July 2021, while the authors wrote the country case studies between August and October 2021. The analysis relied on the resources collected throughout the year and was written in February 2022 on the basis of the European Civic Forum response to the rule of law consultation accessible here: <https://civicspacewatch.eu/elementor-16622/>.

LEARNING FROM CIVIC SPACE WATCH

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 finding 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

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|--|--|--|--|---|
| 01 Continuous crises mobilise and challenge civic actors | 03 Anti-rights groups and hate narratives are increasingly present in the public space | 05 Bureaucratic control over associations' functioning targets critical NGOs | 07 Victories against criminalisation unveil the political nature of prosecution | 09 Some countries use funding policies to silence critics |
| 02 Civic organisations are perceived as a unifying force against growing fear and distrust | 04 Marginalised groups and their defenders are attacked, their rights restricted | 06 The right to protest is under pressure despite some wins | 08 Civil dialogue is squashed between the hammer of corporate lobbying and the anvil of institutional populism | 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 consultation¹, 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-survey².

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 process³.



THE AUTHOR

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¹ 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).

² https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef21064en.pdf

³ 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."

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.

⁴ <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 2020⁵, 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

⁵ <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 governments⁶, 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)⁷.

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 study⁸, 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^{9,10}. 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 future¹¹. 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 2023¹². 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'."*¹³

The pandemic has eroded confidence in the institutions' ability to tackle the challenges, leaving large numbers of people distrustful and feeling lied to¹⁴. But these tendencies must be looked at also in the context of a long process¹⁵ 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.¹⁶ 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."*¹⁷

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 agenda¹⁸. 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 change¹⁹. According to the Edelman institute people

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

⁷ https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1867

⁸ Italy, France, Spain, Ireland, Germany and the Netherlands.

⁹ https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/Trust%2022_Top10.pdf

¹⁰ https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/2022%20Edelman%20Trust%20Barometer%20FINAL_Jan25.pdf

¹¹ Ibidem

¹² https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1867

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

¹⁴ Ibidem.

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

¹⁶ 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/, 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/, 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.

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

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

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

question the capitalist economic model that has shown its limitations during the pandemic and call for more accountability and social responsibility for businesses²⁰.

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 Glropolis, 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 distraints 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.”²¹

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 change²².

²⁰ ibidem

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

²² 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 Muham-madi, 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**²³. 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 demonstration²⁴. 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)²⁵. 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 threats²⁶.

²⁶ <https://monitor.civicus.org/updates/2021/10/25/police-protection-whrd-after-escalating-threats-press-freedom-concerns-poland-belarus-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

²³ 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).

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

²⁵ <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 unlawful²⁷. 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”²⁸. 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.

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

²⁸ <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-Sorcières_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 established²⁹.

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 2021³⁰.

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

²⁹ https://civicspacewatch.eu/wp-content/uploads/2022/01/ROL_Greece.pdf

³⁰ <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...³¹”

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)³².

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**)³³.

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

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

³² https://civicspacewatch.eu/wp-content/uploads/2022/01/ROL_Greece.pdf

³³ 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 2022³⁴.

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**³⁵. 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 justice³⁶.

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

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

³⁵ 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 countries³⁷. These findings have been confirmed by the study conducted on the impact of COVID-19 on civic space in Europe³⁸.

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

³⁷ 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.

³⁸ 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.

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.”*³⁹

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 commitments⁴⁰ but also to the approval of measures harmful to the environment and the climate⁴¹.

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 pandemic⁴². 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

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

⁴⁰ https://caneurope.org/content/uploads/2022/02/2022_02_Reaching-for-a-green-recovery-CAN-Europe-Bankwatch.pdf

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

⁴² 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**⁴³. 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.

⁴³ 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 pandemic⁴⁴, 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

⁴⁴ 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 flaws⁴⁵. 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 bases⁴⁶.

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

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.”⁴⁹

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 GOCOSs) 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.”

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

⁴⁶ https://civicspacewatch.eu/wp-content/uploads/2022/02/Rapport_Chasse-aux-Sorcières_2022_VF.pdf

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

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

⁴⁹ <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 mechanism⁵⁰ and promising work to tackle SLAPPs against

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

public watchdogs⁵¹. 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 associations⁵² 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 space⁵³ 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

⁵¹ 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

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

⁵³ <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 Directive⁵⁴.

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"*⁵⁵. 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 another⁵⁶.

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 influence⁵⁷.

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

⁵⁴ Ibidem

⁵⁵ 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.

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

⁵⁵ 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 institute⁵⁸ 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**⁵⁹, 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 body⁶⁰.

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 Commission⁶¹. 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

also criticised European Commissioner for Equality Helena Dalli for meeting with FEMYSO, network of Muslim youth associations⁶² and protested against the Council of Europe's anti-discrimination campaign focusing on hijabs leading to its suspension⁶³.

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

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

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

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

⁶⁰ <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>

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

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. ■

MIGRANTS' RIGHTS DEFENDERS

Acting in solidarity with migrants in the EU has been difficult for decades. Over the past couple of years, several states adopted increasingly restrictive legal frameworks for NGOs, while others are trying new criminalisation tactics. At the same time, proposed legislation at the EU level would hinder even more the work of individuals and NGOs defending the rights of migrants. At the core of these trends, there is the criminalisation of migration itself – both in the language and narrative, and in the legal framework of several EU member states. Faced with lower protection for their rights, undocumented people stand up to demand Justice, supporting them is more urgent than ever.

CRIMINALISATION OF SOLIDARITY IS A POLITICAL ACT

The EU needs to stand up for human rights at home too

By Marta Gionco, advocacy officer, Platform for International Cooperation on Undocumented Migrants

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Acting in solidarity with migrants in the EU has been difficult for decades. Nearly twenty years ago, three volumes of PICUM's Book of Solidarity highlighted "the alarming tendency to criminalise assistance to undocumented migrants".¹ Between 2015 and 2019, research shows that at least 171 individuals were criminalised in 13 EU Member States.² Far from slowing down, the criminalisation of solidarity with migrants in the EU is soaring. Over the past couple of years, several states adopted increasingly restrictive legal frameworks for NGOs, while others are trying new criminalisation tactics.³ At the same time, proposed legislation at the EU level would hinder even more the

work of individuals and NGOs defending the rights of migrants.

Increasingly, what we see is that all acts around the migration journey can be criminalised: from steering a boat which is going adrift, to rescuing people at sea, to providing essential services, information, a roof, assistance during the asylum procedure, denouncing human rights violations at borders, to helping people in return procedures (see infographic). At the core of these trends, there is the criminalisation of migration itself – both in the language and narrative, and in the legal framework of several EU member states.

WHAT WE SEE IS THAT ALL ACTS AROUND THE MIGRATION JOURNEY CAN BE CRIMINALISED

A SHRINKING LEGAL SPACE: A RACE TO THE BOTTOM

A legal framework facilitating and protecting the role and functioning of civil society organisations is a vital element of a democratic state.⁴ However, it is well documented that an increasing number of legal reforms throughout several member states have had the opposite effect of shrinking civic space and hindering the work of NGOs. In a few countries, these legislative changes have directly or indirectly targeted migrants' rights defenders. In **Hungary**, a reform of the Tax Laws in 2018 imposed a special tax of 25% on financial support provided for any activities that support or promote immigration. Among the activities covered are "participating in a media campaign", "building and

¹ PICUM, 2002, Book of Solidarity, Vol. 1.

² ReSOMA, 2020, *The criminalisation of solidarity in Europe*.

³ Amnesty International, 3 March 2020, *Europe: Punishing compassion: Solidarity on trial in Fortress Europe*.

⁴ OSCE/ODIHR, 2015, *Guidelines on Freedom of Association*, p.5.



THE AUTHORS

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ORGANISATION

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a network of organisations working to ensure social justice and human rights for undocumented migrants.

operating a network", "educational activities", and "positive propaganda".⁵

In **Greece**, the Ministerial Decision 3063/2020 issued on 14 April 2020 and the Ministerial Decision 10616/2020 of 9 September 2020 introduced new measures wherein all Greek or foreign NGOs as well as their members, staff and volunteers would have to register with the NGO Members Registry to work in the fields of asylum, migration or integration.

⁵ Financial Times, 20 July 2018, Hungary toughens migrants stance with 'propaganda' tax [checked on 27 August 2021].

NGOs working in Greece have expressed concern that this policy will further shrink the country's already limited civil society space. These concerns were confirmed by an Opinion of the expert council on NGO law of the Council of Europe, which found that "*onerous registration and certification requirements, coupled with the wide discretions on the competent authorities to refuse to register or certify applicant NGOs*", will further restrict civil society space in Greece, and increase "*significantly and disproportionately the control of the State over the work of NGOs in the field of asylum, migration and social inclusion*."⁶

In **Cyprus**, Amendment 118 (I)/2020 of the 2017 Law on Associations and Foundations and Other Related Issues gives the Minister of Interior the power to start a dissolution process for NGOs if certain regulatory requirements were not met within a two-month notice period.⁷ Shortly after, 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 Register

⁶ Expert Council on NGO Law, 2 July 2020, Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration; Expert Council on NGO Law, 23 November 2020, Addendum to the opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration.

⁷ <http://www.moi.gov.cy/moi/moiup/moi.nsf/>

**THE TERM
"CRIMINALISATION OF
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of Associations.⁸ The deregistration was carried out despite KISA indicating that all formal requirements would be met within a short time period and appealing against the Minister's decision. KISA has, in the meantime, submitted to the Registrar of Associations all formal requirements of the Law, namely its audited accounts for 2019, the amended statutes and the names of the new Steering Committee, with their positions and contact details.⁹

In a letter to the Minister of Interior of Cyprus, the Council of Europe Commissioner for Human Rights Dunja Mijatović suggested that this action might be in violation of the principles of necessity and proportionality and international standards.¹⁰ Several UN special procedures further considered the deregistration of KISA "*very troubling*" and potentially in violation of Articles 19 and 22 of the International Covenant on Civil and Political Rights.¹¹

Despite these actions and international calls for solidarity with KISA¹², in June 2021 KISA's recourse against the decision of the General Registrar was rejected. With this decision, the court considered that the Ministry of Interior had the right to deregister an NGO which has been active in the fields of migration and human rights for 23 years, simply because it did not inform the Registrar of Associations on

⁸ PICUM, 19 February 2021, Organisations across Europe call on Cypriot government to reinstate equality champion KISA.

⁹ Kisa, 20 January 2021, <https://kisa.org.cy/wp-content/uploads/2021/01/SLet-Eforos-20012021-1.pdf>.

¹⁰ Dunja Mijatović, 10 March 2021, Letter to Mr. Nicos Nouris, Minister of Interior of Cyprus, Commissioner for Human Rights and Council of Europe, Strasbourg.

¹¹ Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on trafficking in persons, especially women and children, 31 March 2021, Communication to the Cyprus Government regarding the deteriorating environment for civil society organizations in Cyprus (AL CYP 1/2021), Palais des Nations, Geneva, Switzerland.

¹² PICUM, 19 February 2021, Organisations across Europe call on Cypriot government to reinstate equality champion KISA [checked on 27 August 2021].

time that its constitution was compatible with the Associations and Institutions Law (104(I)/2017).¹³ As a consequence, KISA's bank accounts have been frozen since mid-February, leaving the organisation unable to pay costs related to salaries, rent, ongoing activities and other expenses, and to receive any funding from ongoing projects and other sources.

DOUBLE-DISCRIMINATION: THE CRIMINALISATION OF MIGRANT HUMAN RIGHTS DEFENDERS

As mentioned above, at the core of the criminalisation of solidarity with migrants is the criminalisation of migration itself. The term “*criminalisation of migration*” refers to policies that treat undocumented migrants as a potential security threat and irregular migration as a crime (e.g. by criminalising acts such as irregular entry and stay). As highlighted by the Special Rapporteur on the Human Rights of Migrants, this is intrinsically connected with the use of the word “*illegal*”, which denies migrants’ humanity.¹⁴ In 2014, at least 24 EU member states criminalised irregular entry and/or stay with imprisonment and/or a fine.¹⁵ Moreover, migrants who act in solidarity with other migrants are disproportionately hit by criminalisation policies. Indeed, criminal proceedings, including when they end in acquittals, can have a life-long impact on migrants’ human rights defenders’ possibility to live regularly in the EU. A first instance conviction, or even just reliable proof for suspicion, can have the effect of excluding them from the right to apply for asylum¹⁶ and from

future applications for residence status. Even after an acquittal, migrants who have been accused of smuggling often have difficulties accessing asylum procedures, and they are often excluded from official reception centres.¹⁷ On 13 May 2021, a 27-year-old Somali asylum seeker was sentenced to 146 years in prison on the island of Lesbos for migrant smuggling from Turkey to Greece. Other migrants defended him in the Greek court, saying he started steering their boat to save lives after a

**MIGRANTS WHO ACT
IN SOLIDARITY WITH
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capsizing.¹⁸ In April 2021, a Syrian man was sentenced in Greek court to 53 years in prison, accused of “*facilitating illegal entry*” and causing a shipwreck after Greek authorities accused him of having been at the helm of a boat that brought his family and as many as 40 people to safety.¹⁹ In May 2020, the Croatian Ministry of Interior revoked the refugee status of an Iraqi citizen volunteering for a Croatian organisation supporting migrants on allegations that he represents a “*threat to national security*”.²⁰ The move comes after

several episodes where he and his partner, who also works for the same organisation, were intimidated by the police and questioned about their work.

In Malta, three teenagers, known as *El Hiblu 3*, who resisted pushbacks to Libya in 2019 are now accused of terrorism. The three teenagers, who at that time were 15, 16 and 19 years old, acted as translators during a collective protest against an attempted pushback of 108 people from Malta to Libya, where they would be facing torture and ill-treatment. Upon arrival in Malta, they were immediately detained for seven months and are now on parole. The case against them is still ongoing, with the first witness summoned only in March 2021.²¹

THE EU PACT ON MIGRATION AND ASYLUM: MORE POLICING AND FEWER CIVIC RIGHTS

The EU Pact on Migration and Asylum is a policy document setting out the EU’s agenda on migration and a package of legislative proposals and recommendations for the years to come.²² The European Commission presented the Pact in September 2020, allegedly with the purpose of “*offering a fresh start*” and “*providing a comprehensive approach, bringing together policy in the areas of migration, asylum, integration and border management*”.²³

The Pact has been broadly criticised for its impact on fundamental rights, increasing

²¹ BBC, 9 August 2021, Malta: The teenagers pulled from the sea and accused of terrorism [checked on 27 August 2021].

²² European Commission, 23 September 2020, Migration and Asylum Package: New Pact on Migration and Asylum documents adopted on 23 September 2020.

²³ European Commission, 23 September 2020, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum; European Commission, 23 September 2020, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum.

¹³ KISA, 30 June 2021, KISA after the rejection of its appeal by the Administrative Court.

¹⁴ United Nations General Assembly, 3 August 2010, Report of the Special Rapporteur on the human rights of migrants, Sixty-fifth session, A/65/222.

¹⁵ European Union Agency for Fundamental Rights (FRA), 27 March 2014, Criminalisation of migrants in an irregular situation and of persons engaging with them.

¹⁶ European Asylum Support Office (EASO), January 2016, Exclusion: Articles 12 and 17 Qualification

Directive (2011/95/EU), A Judicial Analysis, p. 42.

¹⁷ Patane, F., Bolhuis, M., van Wijk, J., & Kreiensiek, H., 2020, *Asylum-Seekers Prosecuted for Human Smuggling: A Case Study of Scafisti in Italy*. Refugee Survey Quarterly, 39(2), 123-152.

¹⁸ Info Migrants, 14 May 2021, Greece: Migrant accused of smuggling sentenced to 146 years in prison [checked on 27 August 2021].

¹⁹ ECRE, 30 April 2021, Greece: Scandalous Sentence for Young Refugee, Request to Commission, Legal Action Before ECtHR and Ombudsman Report on Pushbacks [checked on 27 August 2021].

²⁰ Frontline Defenders, 21 July 2021, Pressure on family member of migrant rights defender Tajana Tadić [checked on 27 August 2021].

detention, including for children outside of the legal framework, and curtailing safeguards.²⁴ In addition, a number of provisions would risk further stiffening the criminalisation of solidarity with migrants.

First of all, the Commission Guidance on the implementation of EU rules on the definition and prevention of the facilitation of unauthorised entry, transit and residence²⁵ only invites member states not to criminalise acts that are “*mandated by law*”, which are very different from acts “*permitted by law*”. Activities like providing food, shelter, car lifts or information, all remain excluded, particularly when they are not carried out by an official NGO that is “*mandated*” to carry out such activities. The almost exclusive focus on search and rescue (SAR) also risks leaving out activities on the territory and activities that are not directly lifesaving. Search and rescue operations are only considered legitimate when they “*observe the instructions received from the coordinating authority*” and while “*complying with the relevant legal framework*”, which leaves the door open to the prosecution of NGOs under (often trumped-up) accusations of breaching national legislation or instructions on disembarkation.²⁶

Secondly, the Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities further imposes a number of (not so hidden) obligations on SAR NGOs. These include “*safety and health requirements*”, reporting obligations on the administrative structure

WHEN INDEPENDENT JUDGES ARE CALLED TO DECIDE, THERE IS HOPE FOR JUSTICE TO BE ACHIEVED

of the NGO, and verification of “*compliance with migration management rules*”.²⁷ The Recommendation reinforces the link between migrant smuggling and SAR NGOs, suggesting that “*it is essential to avoid a situation in which migrant smuggling or human trafficking networks, including criminal organisations trafficking people or engaging in forms of exploitation assimilated to slavery, take advantage of the rescue operations conducted by private vessels in the Mediterranean*”.

Thirdly, the Screening Regulation²⁸ does indicate that EU member states “*may*” authorise relevant NGOs to provide information and monitor fundamental rights at borders. Yet, there is no clear obligation to grant NGOs access to border facilities, which means states might also decide to exclude them.²⁹

Last but not least, the same Regulation foresees that, at the end of the pre-entry screening, authorities fill in a debriefing form (art. 13). While the information included in the briefing will remarkably impact individuals’ future options, this is provided in the absence of a lawyer and with no adequate information. Individuals have no right to see the briefing, do

not have to sign it, and cannot appeal it. Importantly, the briefing includes “*information on assistance provided by a person or a criminal organisation in relation to unauthorised crossing of the border, and any related information in cases of suspected smuggling*”. **This information could be used to initiate criminal proceedings against human rights defenders, NGOs and migrants themselves.**

However, if information on migrant smuggling is collected in the context of the application for asylum or the provision of information on individuals’ asylum application, individuals might feel psychologically constrained to provide information on any assistance received, including by family and friends, in order to support their asylum application. Moreover, this information would be collected while individuals are in situations of deprivation of liberty.

The use of this evidence would risk violating the right not to be compelled to incriminate oneself.³⁰ Considering the high number of European Court of Human Rights cases which found that the conditions in border detention centers amount to a violation of article 3 of the European Convention of Human Rights,³¹ the evidence collected during this process should be deemed inadmissible as it is extracted as a result of psychological coercion, in situations of fundamental rights violations, and without the defence counsel present.

THE JUDICIAL POWER: ROOM FOR HOPE?

After almost two years, on 19 May 2021, the Public Prosecutor of Agrigento, Sicily, dismissed the case against Carola

²⁴ European Parliament, August 2021, The European Commission’s New Pact on Migration and Asylum Horizontal substitute impact assessment.

²⁵ European Commission, 23 September 2020, Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence.

²⁶ PICUM, October 2020, More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations.

²⁷ European Commission, 23 September 2020, Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities.

²⁸ European Commission, 23 September 2020, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 COM/2020/612 final.

²⁹ PICUM, April 2021, PICUM recommendations on the screening regulation.

³⁰ Council of Europe: European Commission on Human Rights, 27 August 1991, Murray v. The United Kingdom, 18731/91; ECHR, 5 February 2003, Allan v. United Kingdom, App. no. 48539/99.

³¹ ECtHR, 29 April 2013, Case of R.R. and Others v. Hungary, Application no. 19400/11; ECtHR, 11 September 2009, S.D. v. Greece, App. no. 53541/07; ECtHR, 22 July 2010, A. A. v. Greece, App. no. 12186/08.

Rackete.³² The facts date back to the night of 29 June 2019, when Carola Rackete, the Sea Watch 3 ship commander, entered the Port of Lampedusa, invoking the state of necessity as she could no longer guarantee safety on board to the 42 people rescued 17 days before. A police patrol boat tried to stop her twice, and she was arrested on charges of “*resistance or violence against a warship*”, a crime that includes a sentence of between three and ten years.³³ The prosecutor of Agrigento maintained that she acted out of a state of necessity and had the duty to bring the migrants to a safe harbour.

Equally, after four years, on 31 March 2021, the French Court of Cassation dismissed the case against Cédric Herrou, a farmer who was charged in 2017 with facilitation of irregular entry for guiding nearly 200 migrants through the mountains between France and Italy.³⁴ In 2018, the French Constitutional Council upheld the “*principle of fraternity*” and overturned his first conviction, sending the case back to the Court of Appeal in Lyon. In May 2020, the Lyon Court of Appeal discharged him, but the prosecutor appealed the decision. By rejecting the prosecutor’s appeal and acquitting Cédric Herrou, the Court of Cassation finally put a halt to years of judicial harassment.

These two examples seem to indicate that, when independent judges are called to decide, there is hope for justice to be achieved. Indeed, in most cases, judges have found no sound evidence for convictions.³⁵

While this gives hope for the independence of the judiciary system, it also highlights how trials against migrants’ rights

defenders are, from the very beginning, merely political acts. And even when they end in acquittals – which, sadly, is very far from being always the case – the impact of lengthy processes, often lasting years and characterised by repeated appeals by the prosecutor against first-instance acquittals, is extremely harmful. Ample research has shown that even after the acquittal, irreparable harm is done to the reputation of NGOs and their volunteers, who have to bear the social, economic and psychological costs of the trial.³⁶ Indeed, the trials’ length and the slug-

**TRIALS AGAINST
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gishness on the prosecutors’ sides often seem to suggest that, in many cases, the end goal seems not to be actual conviction, but a wider chilling effect on life-saving activities.

RECOMMENDATIONS

As analysed in the previous paragraphs, the criminalisation of migration and people acting in solidarity with migrants is a complex, deep-rooted phenomenon. At the source is the criminalisation of migration itself, and for this reason, the first step to work towards its end would be embracing a different narrative and approach of migration through legal changes which do not criminalise undocumented people and people crossing borders irregularly. This also includes refraining from xenophobic discourse, which foment a climate of suspicion

against migrants and NGOs and volunteers helping them.

Secondly, national legal frameworks should be amended in line with the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) Guidelines on Freedom of Association³⁷ and the Opinions of the expert council on NGO law of the Council of Europe.³⁸ The European Commission should monitor this in the Rule of Law report and initiate infringement proceedings when relevant. Thirdly, as several migrants’ and human rights’ defenders are unfairly accused of migrant smuggling, it is pivotal to narrow the interpretation of the crime of migrant smuggling in line with the UN Migrant Smuggling protocol and fundamental rights, by limiting it to acts carried out to obtain unjust profit and in connection with transnational organised crime. The interpretation of the crime of migrant smuggling should not prevent the realization of the fundamental rights of undocumented migrants, including access to housing, services and collective organising.

The European Parliament and the Council should propose and adopt amendments to the Screening Regulations aimed at clarifying that national, international and non-governmental organisations and bodies shall be allowed to participate in the fundamental rights monitoring and the provision of information (recital 23, article 7 and 8) and should delete the inclusion of “*information on assistance provided by a person or a criminal organisation in relation to unauthorised crossing of the border, and any related information*”

³² La Repubblica, 19 May 2021, I pm: “Niente processo per Carola Rackete, aveva il dovere di portare i migranti in porto”. E il gip archivia [checked on 27 August 2021].

³³ Ibid.

³⁴ Le Monde, 21 March 2021, Symbole de l’aide aux migrants en France, Cédric Herrou relaxé définitivement [checked on 30 August 2021].

³⁵ ReSoma, June 2019, *Crackdown on NGOs and volunteers helping refugees and other migrants*.

³⁶ ReSoma, December 2019, How could strategic litigation prevent policing of humanitarianism.

³⁷ OSCE/ODIHR and Venice Commission, 2015, Guidelines on Freedom of Association.

³⁸ See, for instance, ODIHR, Council of Europe – Expert Council on NGO law (2 July 2020) “Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration”, and Council of Europe – Expert Council on NGO law (23 November 2020) “Addendum to the opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration”.

EUROPEAN UNION,
WHICH PRESENTS ITSELF
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in cases of suspected smuggling” in the debriefing form.³⁹

And last but not least, the European Union, which presents itself as a leading actor in the protection of human rights defenders in its relation with third countries,⁴⁰ should promote the same principles in its internal action, including by developing clear guidelines, monitoring early signs of policing of solidarity as well as all cases of criminal investigations, promote a clear internal legal framework to prevent the risk of abuses, and dedicate EU funding to strategic litigation and support of human rights defenders in Europe. ■

³⁹ PICUM, April 2021, PICUM recommendations on the screening regulation.

⁴⁰ European Union External Action (EEAS), 2008, Ensuring protection – European Union guidelines on human rights defenders.

AT THE CORE OF THE CRIMINALISATION OF SOLIDARITY WITH MIGRANTS IS THE CRIMINALISATION OF MIGRATION ITSELF

1 MIGRATING IRREGULARLY



In 2014, 24 of the 27 EU Member States sanctioned irregular entry and/or stay with imprisonment and/or a fine.¹

¹ European Union Agency for Fundamental Rights (FRA), 26 March 2014, *Criminalisation of migrants in an irregular situation and of persons engaging with them*.

2 RESCUING PEOPLE AT SEA



In March 2021, 21 individuals and 3 organisations were accused of aiding and abetting irregular migration and risk up to 20 years of prison for search and rescue operations conducted between 2016 and 2017.² Among them are crew members of the *Iuventa* ship, *Vos Hestia* and *Vos Prudence* rescue ships, operated by NGOs Jugend Rettet, Save The Children International (STC), and Médecins Sans Frontières (MSF).³

² *Iuventa*, 4 March 2021, *Italian prosecutor presses charges against the Iuventa crew* [checked on 27 August 2021].

³ *Italy: A slippery slope for human rights: The Iuventa case* [checked on 27 August 2021].

5 HOSTING AN ASYLUM SEEKER



On 13 June, Ingeborg Beugel, a correspondent for the Dutch magazine De Groene Amsterdammer, was arrested on the island of Hydra, Greece, for hosting a 23-year-old Afghan during the appeal against a negative asylum decision.⁵ The journalist now risks up to one year imprisonment and at least 5,000 euro in fines on charges of facilitating the stay of a person in an irregular situation on the Greek territory.

⁵ The Guardian, 24 June 2021, *Greek police arrest Dutch journalist for helping Afghan asylum seeker* [checked on 27 August 2021].

4 PROVIDING FOOD



In Spain, an NGO risked fines up to 60'000 EUR for having distributed food to undocumented migrants during the COVID-19 pandemic.⁴

⁴ El Salto, 1 April 2020, *Aplican la Ley Mordaza a una red de apoyo mutuo que reparte comida a migrantes en Barcelona* [checked on 27 August 2021].

3 PROVIDING ESSENTIAL SERVICES



On 23 February 2021, the Italian police raided the house of Lorena Fornasir, a 68-year-old psychotherapist and Gian Andrea Franchi, an 84-year-old retired teacher, founders of the organization “La Linea d’Ombra”, and confiscated their mobile phones and laptops as well as the archives of their organization and other material. Since 2015, they have been providing medicine, clothes, water and food to migrants in front of Trieste’s main train station, washing and curing the feet of those who have walked barefoot for miles. They are now accused of aiding and abetting irregular immigration.

6 MONITORING FUNDAMENTAL RIGHTS VIOLATIONS



On 24 April 2020, 4 members of the organisation Utopia 56 were arrested for one day for having filmed the evacuation of a migrants’ camp in Grande-Synthe in northern France.⁶

⁶ Utopia56, 28 April 2020, *L’état d’urgence sanitaire autorise-t-il les violences envers les exilé.e.s et les intimidations*

7 SUPPORTING PEOPLE IN RETURN PROCEDURES



In the UK, the “Stanstead 15” group of human rights defenders were charged with aggravated trespass and “endangering safety at aerodromes” – a charge which carries a maximum penalty of a life sentence – for stopping a charter deportation flight in March 2017. Some of the people on the flight were facing threats of death and serious danger over deportation, and 11 of them were granted a regular status in the UK afterwards.⁷

tions envers les bénévoles? [checked on 27 August 2021].

⁷ Amnesty International, 3 March 2020, *Europe: Punishing compassion: Solidarity on trial in Fortress Europe*, p.84.

L'USPR represents a movement of undocumented people in Belgium, who started occupying the Béguinage Church and sites at ULB and VUB Brussels universities in January 2021. From 23 May 2021 to 21 July 2021, over 400 undocumented workers have been on hunger strike to demand clear regularisation criteria, and the establishment of a commission to process regularisation requests. Despite large mobilisations around the strike, demonstrations, petitions and international pressure, national authorities failed to start a dialogue. In July 2021 the government promised to add new clarification elements in the assessment of the regularisation files and the hunger strike came to an end. More than 400 applications have been sent, but the majority were rejected. The movement continued the mobilisation and brought a case against the Belgium state, which was rejected by the court. The story of the Sans-Papiers is a symbol for how underrepresented communities do not have access to civic space. Nevertheless, they are determined to continue standing up for their rights.

MAKING THEIR VOICES HEARD

The undocumented workers' call is yet to be heard

By Ahmed Manar, spokesperson, L'Union des sans-papiers pour la régularisation (UPSR)

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How did the undocumented worker's movement for regularisation start?

The undocumented worker's movement is an informal movement that started 6 years ago. We have as a project to organise ourselves by creating a more permanent structure through registering the association to strengthen our credibility. We started with small demonstrations without much impact on government policies. Undocumented workers were not heard. We needed to establish a balance of power, mobilise the media, the public opinion and work with academics to make politicians accountable. One of the most significant events was the opportunity that the collective created to challenge the Minister of Employment. Activists presented a report that explained how undocumented workers



could fill the structural shortage in certain sectors of the economy. When the Minister did not react, activists demonstrated in front of his office and met with him to question the lack of action. He replied that he was not prepared to shock public opinion. This clearly meant that he did not want to alienate a part of the electorate that supports racist views. It is important to distinguish between people and ideology. People who hold this type of opinion and refuse, for example, to support the regularisation of undocumented workers are themselves victims of such ideology. These people must be given the opportunity to understand the situation of undocumented workers, and for this to happen they must meet with them, listen to them and speak to them.

A second important moment in the history of the movement is the health

crisis that we are experiencing. Undocumented workers have been particularly affected as the pandemic was the channeling event that pushed and abandoned them into extreme precariousness. Yet they were at the forefront of the response to the COVID-19 crisis. They made and distributed masks on a voluntary basis for

THERE IS A REAL PARADOX: AUTHORITIES AND SOCIETY IN GENERAL APPRECIATE THE WORK OF UNDOCUMENTED WORKERS AND BENEFITS FROM IT, BUT THEY DO NOT RECOGNISE THEM

example. Additionally, most of their jobs that required them to continue working, exposing them to higher sanitary risks (personal assistance, delivery, construction, etc.). However, this did not change the government's position.

There is a real paradox: authorities and society in general appreciate the work of undocumented workers and benefits from it, but they do not recognise them. When undocumented workers are employed on a construction site they are exposed to accidents as any worker. However, contrary to other workers, if they have an accident, they are not

THE IMPACT OF THE CRISIS ON UNDOCUMENTED WORKERS WAS MADE INVISIBLE. THIS IS ONE OF THE REASONS WE DECIDED TO MAKE OUR CAUSE VISIBLE

covered by the health system. Another situation that illustrates the precarious situation of undocumented workers is in case of forced return to their country of origin. When authorities take these decisions, they do not take into account the life that undocumented workers created in Belgium, their personal situation, their relationships and the roots they have developed.

Another key step of the movement is the beginning of the occupation of the Saint Jean Baptiste au Béguinage church, the campus of Université Libre de Bruxelles, as well as the national theatre together with artists and sex workers.

What was needed to mobilise people to join the movement?

During the global health crisis, authorities and media did not question the fate of the most vulnerable, including undocumented workers. The impact of the crisis on undocumented workers was made invisible. This is one of the reasons we decided to make our cause visible.

The 2009 regularisation did not provide the expected results. Undocumented workers were given a 1-year residence permit and a special work permit that requires the person to work for the same employer for 5 years. The fate of the person is therefore linked to the fate of the company. For that reason, many were unable to keep their residence permit.

These are some of the reasons we mobilised. We are 475 people, and we created an electroshock that alerted international press about the situation of undocumented workers in Belgium. 475 people remains a small number, however we manage to stir the media and the public which helped to mobilise people for our actions.

In general, were members of the movement active in civic actions? What motivated them to act, and do they consider themselves to be human rights defenders?

In the occupations the majority of people were not militants before joining the movement, simply undocumented workers. The occupiers became activists out of necessity. Joining the movement was a question of survival for them. We carried out awareness-raising work with activists. These past few months really

WE ARE 475 PEOPLE, AND WE CREATED AN ELECTROSHOCK

THE OCCUPIERS BECAME ACTIVISTS OUT OF NECESSITY. JOINING THE MOVEMENT WAS A QUESTION OF SURVIVAL FOR THEM

taught them to see themselves as activists and rights defenders.

A question about your personal background, how did you join the occupation organised by the Union of Undocumented Workers for Regulation movement? What was the most difficult part?

I also became an activist despite myself. I was an undocumented worker for 10 years with no experience in activism. I have a job but whenever I have time, I answer calls from collectives. After hearing about the occupation, I joined the activists. I started as a simple occupier, then organically others asked me to take part and represent the movement at meetings with supporters. A lot of this representation work is done alone, but the consultation process for the decision making is very important for the movement. Indeed, decisions have always been taken democratically by the occupiers. Finally, I continued to respond to calls from activists from other causes such as sex workers, health workers because I believe in the convergence of struggles.

Did you see any negative narratives circulating about undocumented workers especially at the level of political parties and the media?

We have suffered several forms of blasphemy, insults, slander from individuals



on social media but it has been minimal in terms of numbers.

Moreover, some media identified us as homeless people looking for a roof over our heads, to delegitimise our cause and our political demands. However, after our actions, the media relayed our message in a pragmatic and honest manner. We managed to be very present in the media as our struggle was mentioned in the media in 32 countries.

How did you experience demonstrations? Have you seen any forms of repression during the mobilisations, if so, what were they and by whom?

The first thing to say is that the declaration to submit in order to lawfully demonstrate was a simple procedure. We only had to respect the health protocol and declare the route of the demonstration

and in the majority of cases the declaration was approved.

Regarding the repression, the only ones we have experienced were from the police forces, which implement instructions and techniques that constitute a hindrance to our right to protest. We have suffered excessive use of violence and tear gas. There have been arbitrary arrests, notably at the end of April 2021, 66 people were arrested at the end of the demonstration when they tried to join the occupation location. Indeed, Brussels police implemented techniques to make demonstrators take different a route to access the occupation in order to encircle them via the “nasse” technique and arrest them.

How would you describe your relationship with the authorities, in particular the national government? How did the negotiations with the government go? What arguments did they put forward to refuse your demands?

From the beginning, our demands were not welcomed. At the beginning of April 2021, we handed over our demands to

the Secretary of State on asylum and migration but unfortunately, he did not follow up. He was stubbornly attached to a case-by-case policy which maintained the blockage. This is the reason that the occupiers decided to start our hunger strike. The government has called this action a suicidal act, yet in our view this hunger strike is a form of struggle and militancy to make our voice heard against a deaf government. Indeed, this hunger strike follows 6 months of demonstrations and 7 months of occupation which did not convince the government to open a discussion with us.

The effects of the hunger strike have been devastating for many and irreversible for some. We suffered neurological and psychological disorders, fainting,

I CONTINUED TO RESPOND TO CALLS FROM ACTIVISTS FROM OTHER CAUSES SUCH AS SEX WORKERS, HEALTH WORKERS BECAUSE I BELIEVE IN THE CONVERGENCE OF STRUGGLES

OUR STRUGGLE WAS MENTIONED IN THE MEDIA OF 32 COUNTRIES

post-traumatic syndrome, kidney failure, depression, suicide attempts... All this happened as a result of the government's declarations. When we made a step towards the Prime Minister by sending a letter in order to open channels of discussion and negotiation, he referred us to the Secretary of State despite the seriousness of the situation. Following this second rejection, the activists decided to close the doors of the occupations and to start a thirst strike. When we reached an agreement with the Secretary of State on the elements of clarification it was very



difficult to convince the activists in each occupation to stop their thirst and their hunger strike as they wanted to continue the fight. They finally decided to stop their thirst strike and suspend their hunger strike.

What concessions did the government make on 21 July 2021? What are you planning now?

Our discussion with the government took place with a facilitator who unfortunately was specialised in issues relating to migrants and asylum seekers and not in the regularisation of undocumented workers. For this reason, the volunteer lawyers decided to approach the Immigration Office, with whom they were able to negotiate the inclusion of clarification elements in the regularisation files as well as the admissibility of claims made from Belgium's territory and not the origin country. These clarification elements aim at showing the roots built in Belgian society. While non-exhaustive, these elements include familial and social ties, integration, the person's abilities and potential.

Despite the political context and the reluctance of the government we obtained a discussion. The fact that we were able to secure these clarification elements is an important victory. Moreover, if we had continued the hunger strike there would have been deaths among the activists and our movement is not there to bury people but to help them live decently though regularisation. Our movement has shown bravery despite the constraints. We hope that the people who will take over the movement will be able to continue on this basis to reinforce these gains and obtain further improvements for the situation of undocumented workers. We need to give hope to other

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undocumented workers around the world and show that it is necessary to take the issue in our hands and make the change we want to see.

On the basis of these clarification elements, we are creating the files for each undocumented worker wishing to ask for regularisation. We then submit them to the authorities and wait for the answers.¹ It was planned that we would evacuate the church on 15 August, but we convinced them to let us stay until the end of September.² Indeed, we decided to maintain the occupations until the files were answered. This allows us to retain a certain political pressure and nurture the solidarity that developed among activists. We hope that the occupiers will not have to resume the hunger strike which has only been suspended.³

The mental health aspect was especially difficult when it came to the creation of the files. Emotionally and psychologically, it was the most difficult part as it

¹ Update: more than 400 applications have been sent. On 5 November, the Foreign Office announced it had sent a first package of replies. Of these 22, only 5 are positive, and the majority relate to applications for medical reasons, rather than residence and work permits under the mechanism of article 9bis of the 15 December 1980 law. The responses indicate that several of the government's assurances around how the applications would be treated have not been respected. People whose applications have been refused have been given an obligation to leave the territory.

² The Béguinage church asked the activists to vacate the space before the 28 February 2022.

³ Five former hunger strikers took legal action against the Belgian state, represented by the Secretary of State for Asylum and Migration, Sammy Mahdi, before the Brussels Court of First Instance. They argued a breach of the agreement reached on 21st July 2021 regarding the clarification elements. On the 2nd of February 2022 their claim was rejected by the court.

is an impossible task to summarise and prove a person's life on paper. This paper file system does not express the reality of a person's life, and the government does not understand this. While going through a difficult recovery journey both physically and psychologically, activists had to compile their file and get various documents from numerous administrative bodies. We were able to mobilise two coordinators to help us with the workload that was involved in carrying out initial checks of the documents before sending them to the volunteer lawyers. We were also available to answer the many questions that activists had (administrative, legal, etc.). Therefore, the creation of the files came in on top of the rest of the activities we were leading which led to a period of increased stress.

dead end. We need to join forces with institutional support because, ultimately, the problem is structural, and all institutions need to be involved and take a stand on this problem.

People such as MEP Pietro Bartolo which has shown great solidarity with undocumented workers, can make things happen. He made an important step by coming to the church and standing with undocumented workers. His position as an MEP can help move forward the national discussion and pass this political blockage by working at a European level as it is a European struggle.

If we succeed, all our supporters succeed with us in advancing the undocumented workers cause. ■

The interview was carried out on 16 September 2021.

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What kind of support did you receive from organisations at local, national or European level? Can you identify supports at European level that could help to move the cause of undocumented workers forward?

During the 5 months of the occupation, we had mostly local support and some support at regional level. When we had received media attention, we also secured some support at national and European level (France, Spain, Italy).

Undocumented workers are confronted with measures of repression and expulsion. The discussion often results in a

BULGARIA

Civil society is characterized by weak capacities in the context of fragile democracy and rule of law. In 2021, civic space in Bulgaria was heavily influenced by the complicated political and public health situation. In the current turbulent context, it is not surprising that during the past two years the advancement of human rights protection, civil society space, the rule of law and democracy in Bulgaria has been limited. Nevertheless, following the visibility of NGOs positive actions during the pandemic, public trust in the sector has improved despite the anti-NGO campaigns by leading politicians, magnified by politically affiliated media outlets and Bulgaria's worsening freedom of press situation. The LGBTI+ community is under pressure after the surge of physical attacks and violent threats by far-right groups. Nevertheless, the story of baby Sara is an achievement for rights nationally and at the European level.

POLITICAL TURBULANCES AFFECTS CIVIC SPACE

Civil society resilience results in higher trust

By Zahari Iankov, lawyer and Nadia Shabani, director, Bulgarian Center for Not-for-Profit Law

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Bulgaria is a Member State of the European Union since 2007. However, it is still considered as a semi-consolidated democracy.¹ Additionally, the freedom of press in Bulgaria is ranked the lowest in the whole European Union and second lowest after Turkey in the Balkan region.² The sustainability of the civil society organisations is also still developing.³ Since 2020, the Bulgarian authorities are struggling to find a proper response to the health, economic and social crisis triggered by the COVID-19 pandemic. As to October 2021, Bulgaria is the country with the lowest COVID-19 vaccination rates in the EU⁴ – despite the availability of

vaccines – and one of the countries with the highest mortality and infection rates.⁵ Bulgaria is also in a seemingly deepening political crisis awaiting its third parliamentary election in just a year. During the summer of 2020 protesters took to the streets of the capitol Sofia and some other major cities demanding the resignation of the ruling party GERB which had dominated the Bulgarian political landscape for the past 12 years. The parties who promoted themselves as “bringers of change,” however, failed to form a government and the civil society actors backing the 2020 protests did not manage to form a new political party with a substantial popular support.

In the turbulent political situation, it is not a surprise that during the past two years the advancement of human rights protection, civil society space, the rule of

law and democracy in Bulgaria has been limited. This analysis examines the main issues faced by the civic space, democracy and human rights in Bulgaria for the period 2020-2021 as well as the reasons for them and provides recommendation for further actions.

THE RULE OF LAW, POLITICAL LANDSCAPE AND SAFE SPACE

In 2021, civic space in Bulgaria was heavily influenced by the complicated political and public health situation. Since 2020 the country has been struggling to

MANY PEOPLE MANAGED
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OR BENEFIT FROM
THE CSOS' WORK

¹ <https://freedomhouse.org/countries/nations-transit/scores>

² <https://rsf.org/en/ranking>

³ <https://www.fhi360.org/sites/default/files/media/documents/csosi-europe-eurasia-2019-report.pdf>

⁴ <https://www.statista.com/statistics/1196071/covid-19-vaccination-rate-in-europe-by-country/>

⁵ <https://www.ecdc.europa.eu/en/cases-2019-ncov-eueea>

implement effective measures against the negative health, economic and social effects of the COVID – 19 pandemic. Additionally, after a lengthy protest against the ruling majority and Government during the summer of 2020, the results of the regular parliamentary elections held in April 2021 did not provide any political party or a group of parties willing to form a coalition with a majority. This course of events led to snap elections in July 2021, which had a similar outcome, effectively creating a state of a political crisis. Another snap election for Parliament will

**THIS POSITIVE EXPOSURE
RESULTED IN INCREASED
PUBLIC TRUST IN THE
CIVIC ACTORS COMPARED
TO PREVIOUS YEARS**

be held together with a regular election for a President in November 2021.⁶ Despite this context, the Bulgarian NGOs were and still are very active. A lot of organisations quickly reorganised their work after the announcement of the first and strictest lockdown in March 2020 to face the multifaced challenges linked with the pandemic. As a result, many people managed to personally take part, observe or benefit from the CSOs' work. The traditional media sources also gave more visibility to the CSOs by promoting good practices, initiatives and charity campaigns.⁷ This positive exposure resulted in increased public trust in the civic actors compared to previous years. However, according to public opinion research, only about a third of the Bulgarians trust the NGOs (31,3 % in 2020 compared to 24,7% in 2018), and half of the Bulgarians see the NGOs as helpful (49,7 % in 2020 compared to 44,7 % in 2018).⁸ Contributing to the low level of public trust in civil society organisations is some political parties' ever expanding anti-NGO rhetoric in recent years. The so-called far-right parties are leading in the speech aiming to undermine NGOs image.⁹ However, in the past year, such

vilifying narratives¹⁰ were also embraced by a major Bulgarian party that identifies itself as liberal and is a member of the liberal party of the EU Parliament – Renew Europe.¹¹ The creation of a hostile environment is also aided by publications of politically affiliated media outlets and Bulgaria's worsening freedom of press situation.¹² The smear attacks are mainly targeting watchdog organisations (e.g. BCNL¹³) and human rights organisations, in particular those advocating for children (e.g. National Network for Children¹⁴) and minority rights. These groups are being framed as “organisations protecting foreign interests” or “Soros’ organisations.”

SAFE SPACE

In 2018, a heated public debate was instigated around the ratification of the Istanbul Convention. During this debate many groups identifying themselves as Christian, conservative and/or patriotic gained traction and continued their activities well after the Istanbul Convention was proclaimed to contradict the Bulgarian Constitution by the country's Constitutional Court.¹⁵ These groups claim to fight against the “gender ideology” imposed by the European Union and the Western democracies. There is no widespread common understanding of what the “gender ideology” is as it serves as an umbrella term which includes some aspects of children rights, women rights, LGBT rights, multiculturalism, reproductive rights and others. Seen as a showcase of far-right extremism¹⁶, these groups are spreading false news which can be



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⁶ Update: the party “We Continue the Change” won the most seats and the elected president was the incumbent Rumen Radev. A coalition formed in December 2021 with PP BSP ITN and DB. Bulgaria's Rumen Radev wins presidential re-election: Exit polls | Euronews
⁷ The 2020 Civil Society Sustainability Index for Bulgaria, p. 12, <https://bit.ly/3t4emUO>
⁸ <http://bcnl.org/analyses/obshtestveni-naglasikam-grazhdanskite-organizatsii-2020.html>
⁹ <https://offnews.bg/analizi-i-komentari/npo-to-mi-e-po-dobro-ot-npo-to-ti-748766.html>

¹⁰ <https://bnr.bg/post/101511428/dps-partiite-da-zabravat-za-politicheskia-revansh>
¹¹ https://www.aldeparty.eu/tags/update_movement_for_rights_and_freedom
¹² <https://rsf.org/en/bulgaria>
¹³ <https://blitz.bg/obshtestvo/ogromen-skandal-ministr-zakharieva-buta-grantovozavisimata-shabani-za-klyuchov-post-v-es-news747036.html>
¹⁴ <https://bit.ly/3hYbCCf>
¹⁵ <https://balkaninsight.com/2018/07/27/bulgaria-constitutional-court-says-istanbul-convention-not-in-line-with-basic-law-07-27-2018/>
¹⁶ https://h2020connekt.eu/wp-content/uploads/2021/09/Bulgaria_CONNEKT_Macro_Drivers.pdf



THE AUTHORS

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tracked to Russian sources,¹⁷ praise the homophobic and anti-NGO policies propagated by the ruling parties in Russia, Hungary and Poland and frequently target NGOs (mainly LGBT and human rights organizations as well as providers of social services for children and women), LGBT people (or people considered falsely or not to be members of the LGBT community), LGBT Pride events and any group or political party which they see as having a liberal agenda. They also oppose legal documents meant to advance the human rights protection and the social state, such

A HEATED PUBLIC DEBATE WAS INSTIGATED AROUND THE RATIFICATION OF THE ISTANBUL CONVENTION

as the proposed Strategy for the Child 2019-2030, amendments to the Protection against Domestic Violence Act, the Social Service Act as well as the anti-COVID measures and vaccination.

The emergence of far-right groups and the lack of proper response by the authorities led to a surge of physical attacks and violent threats against LGBT+ organisations and activists which is particularly visible since 2020.¹⁸

At the end of 2020 in Plovdiv, violent threats citing the names of two LGBT activists were written on the walls of buildings where the activists live or work.¹⁹ The threats were likely connected to the activists' response to a violent attack in a public park against children who, according to the attackers – also minors, looked gay.

The harassment of LGBTQ activists and organisations continued in 2021 in the months preceding the annual Sofia Pride. In May 2021, a Pride was held in Burgas,²⁰ one of the major cities in Bulgaria, for the first time. Although the event gathered a small number of people, it was met with a counterdemonstration and some minor accidents: bottles and other objects were tossed towards the participants of the Pride. Later the same month, a group claiming to "protect the motherland" and affiliated to a far-right political party disrupted the presentation of an LGBTQ-friendly children's book held in a private property in Sofia. Just two days after this episode, a group of individuals managed to enter the building of Radio "Plovdiv" – a local station of the Bulgarian National Radio in the second biggest city in the country – where members of the LGBT NGO "Dejstvie" were giving an interview about a book on the problems faced by members of the LGBT community in Bulgaria. Although the police managed to bring the intruders outside of the building, they remained in front of the entrance blocking members of "Dejstvie" from entering and intimidating any supporter of the NGO. The end of May saw yet another accident when an event organised by an LGBT organisation was disrupted. This time a group of far-righters entered the screening of a short movie intimidating the audience and putting posters saying "STOP THE LGBT VIRUS" on the building of the event. Similarly, on 1 June, upon the official opening of the Rainbow Hub – the first LGBT community centre in Bulgaria, a big group made yet another intimidation attack on an event organised by LGBT organisation. A couple of days before, an online campaign disseminated the false information that a pro-pedophilia movie was about to be screened in Sofia

¹⁷ Ibid.

¹⁸ https://www.clubz.bg/114411-koy_tormozi_lgbt_obshtnostta_predi_prayda

¹⁹ <https://www.svobodnaevropa.bg/a/30890741.html>

²⁰ With 226 179 population, <https://bg.wikipedia.org/wiki/%D0%91%D1%83%D1%80%D0%B3%D0%B0%D1%81>

ORGANISATION

The Bulgarian Center for Not-for-Profit Law (BCNL)

was founded in 2001 as public-benefit foundation. Its mission is providing support for the drafting and implementation of legislation and policies with the aim to advance the civil society, civil participation and good governance in Bulgaria.

The numerous attacks on LGBT organisations, activists and mere members or perceived members of the LGBT community in Bulgaria 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. Meanwhile, the main political actors remained silent about these instances of harassment, and the only vocal group on the matter were the far-right parties that supported the attacks and actively participated in some of them.²¹

THE REGULATORY ENVIRONMENT FOR AND IMPLEMENTATION OF CIVIC FREEDOMS OF ASSOCIATION, ASSEMBLY, EXPRESSION AND PRIVACY ONLINE AND OFFLINE

The 2000 Non-profit Legal Persons Act regulates the establishment and operation of NGOs in Bulgaria. The Act sets a relatively simple procedure for the registration of NGOs with limited powers of the administration (previously the court) to refuse registration based on the goals and means of achieving those goals. The law is in general applied as intended and, thus, it guarantees freedom of association.

²¹ <https://www.monitor.bg/bg/a/view/vmro-is-ka-anti-gej-merki-i-trudovo-obuchenie-za-ne-gromotni-275482>

The main exception of this trend is the case of UMO Ilinden²² and similar, which were denied formal recognition as legal persons, organisations. Organisations aiming to achieve recognition and protection of the interests of the Macedonian minority in Bulgaria have been frequently denied registration by various Bulgarian courts and administrative bodies since the late 90s. Despite several decisions of the ECtHR in the past 20 years which ruled that Bulgaria violates freedom of association in those cases, the Bulgarian judicial authorities and Government at large are constantly refusing to comply with the ECtHR decisions, Bulgarian laws, Constitution and established practice applied to other NGOs.

During a meeting of the Committee of Ministers of the Council of Europe held on 7-9 June 2021, Bulgaria was once again invited to comply with the decisions of the ECtHR in connection with the refusal to register the UMO Ilinden Association and similar organisations. Still, there are no signs that there is any willingness for the issue to be resolved.²³

²² <http://bcnl.org/en/news/two-decades-of-violation-of-the-right-of-association-the-case-of-united-macedonian-organisation-ilinden-and-others-against-bulgaria.html>

²³ https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a29ae6

THE EMERGENCE OF FAR-RIGHT GROUPS AND THE LACK OF PROPER RESPONSE BY THE AUTHORITIES LED TO A SURGE OF PHYSICAL ATTACKS AND VIOLENT THREATS AGAINST LGBT+ ORGANISATIONS AND ACTIVISTS

Although the Bulgarian legal framework regulating the freedom of association and the NGOs is compliant with the applicable standards, there were several attempts to adopt restrictive new rules in 2020. As an example, in July 2020, just two weeks after the ECJ announced that the Hungarian Transparency Act is discriminatory, a Bill to amend the Non-Profit Legal Entities Act (the Bill) was filed in the Bulgarian National Assembly, containing proposals similar to the Hungarian law. These measures included an obligation to report all income from foreign sources (foreign states, individuals, or companies) above 1000 BGN (500 EUR), the creation of a register of non-profit legal entities financed from abroad (intended to serve as a *blacklist*) and other restrictions and disproportionate administrative duties.²⁴ None of these restrictive bills were passed nor properly discussed during a public consultation procedure. Nevertheless, they served as an intimidation of the NGOs and consumed time and resources of watchdog organisations that had to oppose the bills at the earliest possible stage of the legislative procedure.

THE IMPACT OF THE COVID-19 PANDEMIC

As nearly every sphere of life, the work and operation of CSOs were also affected by the anti-pandemic restrictions. Firstly an *ad hoc* law regulated the restrictions in Bulgaria. Subsequently, an amendment to the Health Act gave the Minister of Health the power to issue ordinances for specific restrictions when an emergency epidemic state is announced. To date, Bulgaria is under emergency epidemic state and the Minister of Health issues ordinances regulating different restrictions on uneven time intervals and with no prior official and opened public consultations. Although during the pandemic some administrative deadlines (e.g. the deadline

²⁴ <http://bcnl.org/en/news/a-dangerous-attack-against-independent-civil-society-in-bulgaria.html>

for filing an annual financial report in the respective administration) were postponed for all legal entities, including the NGOs, the authorities failed to adopt any specific measures that would ensure the NGOs' sustainability during the pandemic. Furthermore, amendments were introduced to regulate the possibility for governmental bodies and other collective bodies to conduct their meetings online, but the NGOs were "forgotten." This means that, up to date, there is still a legal uncertainty whether or not a meeting of a general assembly of an association, for example, in which some or all members are participating via online communication means, is legal or not. The question is of great concern since the collective supreme bodies of the NGOs have the obligation to approve certain documents (e.g. the annual narrative and financial reports) which need to be made publicly available and filed with the respective administration. Since the restrictions were effectively forbidding in-person meetings in certain periods, some NGOs were forced to face an unreasonable choice: either to breach the anti-pandemic measures or falsify their assembly protocols in order to comply with their administrative duties. A bill resolving this issue was proposed in the Parliament, but due to the political crisis in the country, it seems unlikely for it to be adopted any time soon.

Soon after the announcement of the first lockdown in March 2020, the chairwoman of the Bulgarian Pharmaceutical union voiced her concerns that there might be a shortage of medical supplies. This led to formal charges against her on the accusation of instigating panic in the public.²⁵ After a public outcry, the charges were dropped, and no similar cases of breaches of the freedom of expression

were observed. There were no restrictions on access to the internet or similar forms of censorship during the pandemic. Freedom of assembly, and freedom to protest in particular, was generally unaffected by the COVID-19 restrictions. Many protests took place in 2020 – 2021, none of which were dispersed due to anti-pandemic restrictions. Despite this, there were multiple cases of infringement of the right to protest during a nearly four months continuous anti-government protest in Sofia during the summer of 2020.²⁶ The breaches included police brutality, unlawful detentions, alleged unlawful surveillance of protest's leaders and others. The newly elected parliaments in 2021 formed commissions to investigate the police brutality during the 2020 protests, but due to the political crisis and the short life of those parliaments, the results of the work of the commissions were limited. So far, there is publicly available information about a few police officers who received disciplinary punishments, but no criminal proceedings were initiated.

THE FRAMEWORK FOR CIVIC ORGANISATIONS' FINANCIAL VIABILITY AND SUSTAINABILITY

According to the 2020 Civil Society Sustainability Index for Bulgaria, the financial sustainability of the Bulgarian CSOs remained unchanged compared to 2019.²⁷ Still, the financial resources are very limited and mainly provided by foreign donors. Although donations have increased in recent year, they are mainly directed towards specific causes (e.g. particular sick children in need of money for medication) rather than organisations and broader goals.

The Bulgarian Government provides funding for NGOs through the annual

budget. The sum for 2020 was nearly 100 million BGN (around 50 million Euro). However, most of this funding is disbursed to religious institutions and sports clubs, and the remaining money is distributed without any clear criteria or public consultations.

The Government implemented different support schemes, and, in principle, NGOs were covered by some of the general measures. However, the conditions to apply for this support left many NGOs ineligible to apply, while no aid was specifically aimed to support the civic sector. Furthermore, NGOs are not mentioned in any of the Bulgarian Recovery and Resilience Plan drafts, which will ensure sizable funding from the EU.²⁸

Additionally, the Government is also delaying the realisation of an already adopted support mechanism. Since 2018, according to the Non-profit Legal Persons Act, the creation of a Council for the Development of the Civil Society (CDCS) is pending. The CDCS has to be composed of NGOs elected by other NGOs, and among its duties, it should distribute state funding to other NGOs. However, after two years of drafting bylaws for the functioning of the CDCS and successful elections of its members held at the beginning of 2020, the CDCS was never formally established.

THE RIGHT TO PARTICIPATION AND DIALOGUE BETWEEN THE CIVIC SECTOR AND GOVERNING BODIES

The Bulgarian laws regulate a multitude of different consultative councils which, in theory, should ensure a civil dialogue. However, some of them do not function properly, or the results of their work are generally not adequately disseminated, thus leaving the public either completely

²⁵ https://www.capital.bg/politika_i_ikonomika/zdraveopazvane/2020/04/13/4054000_farmaceutivite_protestiraha_sreshitu_absurdno_obvine-nie/?fbclid=IwAR3sAE5BRonQoqoW-VxRT8ie-OpU_5El9e12bgF4wEwJHOesZdOJ5hE61w

²⁶ <https://civicspacewatch.eu/bulgaria-protests-continue-peacefully-after-tension-escalated-in-sofia-on-the-second-of-september/>

²⁷ <https://bit.ly/35QxaOK>

²⁸ https://ec.europa.eu/info/strategy/recovery-plan-europe_en

uninformed about the existence of such councils or with low trust in them.

For example, the Council for the Development of the Civil Society (CDCS) to the Council of Ministers was never created, although the respective legislation has been in force since 2018. Another example is the procedure for elections for new NGO members of the National Council for Equality Between Men and Women.²⁹ The elections process for this Council was successfully concluded in July 2021, but the elected NGOs have not been formally included in the Council.

Some councils, such as the Economic and Social Council,³⁰ are granted significant state funding; however, it is unclear if they serve the intended purpose since it is nearly impossible to find mention of their work or media presence of their representatives.

CIVIL SOCIETY'S RESPONSES TO CHALLENGES TO DEMOCRACY, THE RULE OF LAW AND FUNDAMENTAL RIGHTS

In 2021, a Bulgarian was elected³¹ as one of the four new members of the quota of civil society organisations in the Steering Committee of the Open Government Partnership.³² Bulgaria is currently implementing 37 commitments from their 2016-2018 action plan in the scope of the Open Government Partnership. This action plan features commitments related to e-government, access to information, open cities, open data, and public integrity. Currently, Bulgaria is in the process of adopting its fourth national action plan.

²⁹ https://www.mlsp.government.bg/novini-11?fbclid=IwAR1_PdVbov-yc74YmwhoqZ-SS9X9KCvAzpkrurtwmsStqRwGOJpCUUn182c

³⁰ <https://esc.bg/>

³¹ <http://bcnl.org/en/news/luben-panov-and-douglas-rutzen-are-elected-as-members-of-the-open-government-partnership-initiatives-steering-committee.html>

³² <https://www.opengovpartnership.org/about/who-we-are/steering-committee/2021-civil-society-steering-committee-selection/>

In recent years a couple of grassroots organisations, such as BOEC³³ and the Justice for Everyone Initiative,³⁴ have become increasingly active and vocal on issues of the rule of law in Bulgaria. Those organisations are actively advocating for a much-needed reform of the judiciary and are leading a number of protests against the election of the highly controversial head of the prosecution.³⁵ The Venice Commission frequently criticises Bulgaria concerning the judiciary and, especially, the prosecution. The Bulgarian prosecution is structured in a strict hierarchy.³⁶

IN RECENT YEARS A COUPLE OF GRASSROOT ORGANISATIONS HAVE BECOME INCREASINGLY ACTIVE AND VOCAL ON ISSUES OF THE RULE OF LAW IN BULGARIA.

This means that the head of the prosecution, who serves a 7-year mandate, has the power to retract any act of any other prosecutor, to change the leading prosecutor of any case and in general to personally control the actions of any other prosecutor without any proper mechanism for check and balances.

RECOMMENDATIONS

Political landscape and safe space: Authorities should refrain from smear campaigns and hate speech and condemn any act motivated by hate or propagating

hate. The Bulgarian Penal Code should be amended in order to criminalise hate crimes.³⁷ Police officers should be trained to engage with LGBT people and other minorities and provide appropriate support against violence based on sexual and gender identity. Individuals and groups inciting or involved in these crimes should be duly prosecuted.

EU institutions should stand up for associations targeted by smear campaigns. In particular, it is recommendable for the European Parliament to take a firm stand on anti-NGO speech by Members of the Parliament and for the European parliamentary groups to condemn such speech by representatives of their member-parties.

The regulatory environment for and implementation of civic freedoms of association and assembly: Authorities should take into account the Committee of Ministers of the Council of Europe recommendations regarding the UMO Ilinden case. This case is setting a dangerous precedent which reaffirms a faulty and overly broad interpretation of the legal restrictions to freedom of association.

The incidents during the anti-government protests in 2020 need to be thoroughly examined and serve as a basis for a reform in the police structures which will ensure the respect for the right of peaceful assembly. Good practices and standards as set in General comment No. 37 (2020) on the right of peaceful assembly (article 21)³⁸ of the Human Rights Committee need to be applied.

³³ <https://www.boec-bg.com/>

³⁴ <https://pravosadiezhavseki.com/>

³⁵ <https://bntnews.bg/news/protest-pred-vss-s-iskane-za-ostavkata-na-ivan-geshev-1163175news.html>

³⁶ <https://balkaninsight.com/2020/11/23/venice-commission-criticizes-bulgarias-rush-to-change-constitution/>

³⁷ <https://bilitis.org/2021/02/22/kriminalizirane-na-prestapleniyata-ot-omraza-v-balgariya/>

³⁸ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f37&Lang=en

COVID-19 response measures and financial sustainability of NGOs

The Bulgarian authorities need to urgently develop sector-specific recovery and support measures for the NGOs in Bulgaria. Additionally, a solution needs to be found to resolve the legality issue of the online participation of members of the supreme collective bodies of NGOs. This could be achieved either by passing the bill of amendments already filed in the Parliament or by adopting internal policies of the administrative bodies concerned for them to implement a broader interpretation of the term “present.” The second approach seems a possible solution since there is already some court practice in that sense.

The European Commission need to guide and insist on the inclusion of NGOs in the Member state’s Recovery and Resilience Plans.

The right to participation and dialogue

The Bulgarian Council of Ministers should comply with the law and establish the CDCS. The Bulgarian authorities need to ensure the effective work of all established consultative councils by providing them with operational and administrative resources and taking into an account and promoting the results of their work. ■

The NGO Deystvie operates a legal defence programme providing support to LGBTI couples in Bulgaria. The award recognises the tireless commitment of Denitsa Lyubenova and Deystvie to LGBTI rights in the context of a complex cross-border family case and a hostile environment for the LGBTI community in Bulgaria. Baby Sara's mothers came to Deystvie for help as their child born to British and Bulgarian mothers in Spain is at risk of statelessness. Sara's story brings to light the outstanding work of lawyer Denitsa Lyubenova and the NGO Deystvie in their dedication to improve the rights of LGBTI people in Bulgaria. Following the refusal of the Bulgarian authorities to recognise baby Sara's Spanish birth certificate recording both her mothers' names, Lyubenova has taken the case to the Court of Justice of the European Union (ECJ). In December 2021, a landmark judgement paved the way for other EU member states, as the ECJ has ruled that a child and its same-sex parents must be recognised as a family, therefore, the child should be issued a Bulgarian passport, and the family should have free movement in all Member States of the European Union".¹

¹ Top EU Court Recognises Relationship of Same-sex Parents and their Children Under EU Law | ILGA-Europe

SAME-SEX FAMILIES ARE EUROPEAN FAMILIES

Baby Sara's case sets a crucial precedent for the EU

Interview with Denitsa Lyubenova, lawyer, Deystvie

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What are the goals and types of actions of Deystvie?

In Bulgarian, Deystvie means “action”. We started our work as an informal group of friends in 2010. The organisation was founded officially in 2012, and in 2014 organisation’s Legal Program was created. The legal program is really at the heart of the organisation now. Since 2014, we provide pro bono legal services and engage in strategic litigation. Our long-term goal is to change the Bulgarian legislation in three main areas: First, we want to achieve recognition for same-sex partnerships and/or marriage equality for LGBT+ couples. Then, we are working towards changing the criminal code so that it recognises hate crime against LGBT+ people. Finally, we want the state to put in place a procedure for legal gender recognition.



We also organise many community and human rights events. For instance, we co-organised Sofia Pride and organise the Sofia Pride Film fest, an annual film festival. We also publish books to facilitate our legal program and stories to show people who might become victims of discrimination what their rights are. We want to raise awareness about their rights and empower them to speak up if they are violated. Then, our role is also to defend their rights with legal consultation and representation before courts.

Could you give us an overview of the legislative and political landscape in regards to LGBT+ rights in Bulgaria?

The key issues of the Bulgarian legislation are the ones I mentioned above. As a post-communist country, Bulgaria has a

very patriarchal and chauvinistic society. There is a lot of domestic violence and phobia not only against LGBT+ people but also against Roma, refugees, Jews... against everyone who differs from the norm as understood by the general public. In the past 10 years, the work on LGBT+ rights has been difficult. At the same time, we saw a lot of improvements and acceptance both in society and at the administration level. Nevertheless, this year especially around our Pride events, many attacks took place against LGBT+ people. Neo-Nazi groups

WE SAW A LOT OF IMPROVEMENTS AND ACCEPTANCE BOTH IN SOCIETY AND AT THE ADMINISTRATION LEVEL

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surrounded us, and we had to pay additional private security to do extra checks and protect each event. One of the events was especially terrifying for me. We had organised a movie night during Sofia Pride film fest where around 150 LGBT+ people gathered to watch a movie. During this occasion, we found ourselves surrounded by between 200 and 300 violent hooligans. They were screaming during the whole event, holding hands around us to create human chains to trap and threaten us. This year, it was extremely challenging for me to stay in the public eye around Pride events. However, we should not let fear prevail! We are on the right side of history, and we do our job with all the love we are capable of.

Have there been being physical injuries as a result of these attacks around pride events?

Yes, there were several. During one of our events, we were raided by a far-right group and our chairperson was attacked; she was pushed, and they tried to take her out. The police took measures to take these people outside of the venue. In May 2021, we co-organised a Pride event in Burgas, the first-ever Pride outside of Sofia. The people who gathered around this event were very violent; they were throwing stones, glass bottles, and a type of Molotov cocktail. We were evacuated, and we personally paid for taxis in order to escape the place. This is one of the events where the police did not take



enough measures to secure people's lives and health. They were expecting this kind of attack, but they were unprepared. Otherwise, during the Sofia Pride, the police forces took all the necessary protective measures. We have a good and close cooperation with the police in Sofia. We work very closely together to prepare our events beforehand. We always have a contact person present on the day responsible for the security during the event itself. However, in smaller cities outside of the capital of Bulgaria, the situation is different. We need to work more closely with these police officers.

We often receive reports from people who suffered violent attacks. The striking thing is that these attacks started happening during the day as well. This is another crucial area of work for our organisation: we are very proud that since 2019, we have trained between 100 and 200 police officers on how to tackle hate crimes and help LGBT+ communities.

Let's take a step back: when did these attacks start happening?

I will start with a small retrospective. Before the elections in April 2021, our government was composed of a centre-right political party in a coalition with a far-right political party. For almost 12

years, it was a difficult political context to operate in. In 2017 and 2018, a big debate in Bulgaria took place regarding the ratification of the Istanbul convention. This is where the term "gender ideology" was invented. There was a serious backlash from politicians, the Bulgarian Church, the media, and the general public against the Istanbul Convention, and LGBT+ people were targeted as scapegoats. This was when several negative developments started happening to the LGBT+ community in the country: violent attacks against LGBT+ people started raising, Courts, including the Constitutional court, started targeting trans people and

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refusing changes in the legal gender of trans people – it is shameful for the courts in Bulgaria. In 2018, the Constitutional Court of Bulgaria ruled that the Istanbul Convention is against the Bulgarian Constitution; hence, we could not ratify it. In early 2019 an official complaint was filed at the prosecution office against the LGBT NGO Deystvie by the leader of Revival Political Party – a far-right political group, with the Prosecutor’s Office. The group is not seated in the Parliament. However, the party has members in the Municipal councils in several cities across the country. Revival filed the complaint together with an Evangelistic NGO National Group – Parents United for Children” – ROD (“Национална група – Родители обединени за децата” – РОД) alleging a crime under Article 108 of the Bulgarian Penal Code:

“A person who preaches fascist or another anti-democratic ideology or forceful change of the social and state order as established by the Constitution of the Republic of Bulgaria, shall be punished by imprisonment for up to three years or a fine of up to BGN 5,000 (2,500 thousand euro)”.

This criminal investigation should be understood as a manifestation of shrinking space for human rights’ defenders, especially LGBT+ rights’ defenders, who were and still are being subjected to severe pressure. It also needs to be contextualised in the democracy backsliding and violations of human rights in the country. This landscape, together with the lack of legislation protecting LGBT+ people and lack of recognition of rights, created the fear of insecurity in us. Our main fear was that if the Prosecutor’s Office decided to open a prosecutorial investigation, our bank accounts would be immediately blocked, and people in charge of the organisation would be arrested. Fortunately, the Prosecution office decided not to open an investigation against Deystvie. Now, the situation has changed, and none of the far-right political parties is

IT IS CRUCIAL THAT PEOPLE UNDERSTAND THAT THE RULE OF LAW AND DEMOCRACY CANNOT EXIST WITHOUT HUMAN RIGHTS

represented in Parliament. We are very happy because we did a lot of campaigns to achieve this result.

Did you experience disinformation or smear campaigns against LGBT+ people and organisations from the media or the government coalition? And how do you respond to this challenge?

We learned that we need to build strong civil society coalitions because the organisers of these anti-human rights campaigns, such as the ones against the adoption of a more liberal Family Code, the ratification of the Istanbul Convention and the Strategy of Children in Bulgaria, are loud and interconnected. “Agenda Europe” is a pan-European, Christian-extremist network committed to the “*restoration of natural order*”.¹ Agenda Europe members are the ones who wrote and promoted the draft laws on restricting abortion in Spain (2014) and complete ban on abortion in Poland (2016). They started the European Citizens’ Initiative “One of Us” asking the Commission to halt all EU funding that involved the “*destruction of the human embryo*”.² They also started the European Citizens Initiative “Mum, Dad and Kids” – a legislative effort to protect marriage and family, by defining marriage as “*a permanent and*

faithful union of man and woman with the purpose of founding a family”.³

You were nominated for your legal work on baby Sara’s case, which reached the CJEU. Can you tell us more about this case and why it is so special?

Sara was born in December 2019 in a family of two women: a Bulgarian woman and a woman born in Gibraltar but whose descendant were from the United Kingdom. When the child was born, they realised that Sara could not gain Spanish citizenship because neither was a Spanish citizen. Therefore, they requested the UK to issue a birth certificate and passport. Indeed, they thought that the ancestry of one of them made Sarah eligible for a UK citizenship. However, the UK passport office stated in an official paper that since the mother was a UK citizen by descent, she could not transfer the UK citizenship to her child. The only possibility left for the couple was to request a Bulgarian birth certificate to get Bulgarian citizenship. The Bulgarian mother returned to Bulgaria and contacted us to provide legal support. She brought the Spanish birth certificate, on which both mothers were recognised as parents. In the process of getting the Bulgarian birth certificate of the child, she was asked to provide information on who the biological mother of the child was. We refused to give this information because we consider that it was a personal information that was not necessary for administrative bodies to have. Additionally, we consider this practice discriminatory because none of the heterosexual couples returning to Bulgaria with a birth certificate of their child issued from a European Union member state is asked to prove the biological connection with the child. The birth certificate issued from another EU member state should be considered proof of this connection. As we refused to give

¹ <https://www.gwi-boell.de/en/2019/04/29/agenda-europe-extremist-christian-network-heart-europe>
² https://europa.eu/citizens-initiative/initiatives/details/2012/000005_en

³ https://europa.eu/citizens-initiative/initiatives/details/2015/000006_en



this information, the municipality refused to issue the child's birth certificate. We appealed this decision, and the case reached the administrative Court in Sofia. On the basis of our findings, the court decided that this case concerns pieces of European law that are not clear enough. Hence, the administrative Court of Sophia decided to send the so-called preliminary ruling request to the Court of Justice of the European Union. We had our court hearing in Luxembourg on February 2021 and we are waiting for the court's decision. This court case is of great importance for the development of EU law.

What would be the impact of the ruling in case of a favourable outcome both in Bulgaria and at EU level?⁴

In the EU and in many member states, there are no standards that secure the rights of same-sex couples, especially

same-sex couples who are in cross-border relationships. This means that when travelling or coming back to their country of origin, their rights as partners and spouses are not guaranteed, nor are the rights of their children born in same-sex relationships. The uncertainty in same-sex relationships extends to their children. This situation creates a multiplicity of insecurities related to their economic situations, inheritance rights, access to healthcare, and education. This is a grey area at the moment, and it should be discussed and decided at the European level. I hope it

**THE EU SHOULD BE
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SPECIFIC FUNDING FOR
THE GOVERNMENTS THAT
ABUSE DEMOCRACY**

⁴ It should be known that the decision was rendered months after the interview took place, therefore the answer to the question should be considered in light of this and of the fact that the decision was favourable.

will become a priority for the European Commission and the Parliament. Additionally, the decisions of the Court of Justice are mandatory for all member states. Therefore, if the Court of Justice decision is positive for this case, other EU member states will be obliged to apply this decision. If they do not comply or are too slow, the European Commission can start infringement procedures against those countries. Once the decision is published, we will have to push countries to change their law and to grant recognition to LGBT+ families.

What are your thoughts on the first LGBTI strategy? Do see any new opportunities for support for civil society?

First of all, I think it is a very important position on behalf of the European Union. It is very meaningful for the advancement of LGBT+ rights in the EU. It is important and needed in the current context across Europe, and especially in Hungary and Poland. I think that a lot more can be achieved and a lot more can be done to achieve it. We understand how politics work and how the European Union functions, however we hope that human rights will be a priority for the EU. It is crucial that people understand that the rule of law and democracy cannot exist without human rights.

What else could the EU do to support LGBT+ organisations in their work and in facing the challenges you described in Bulgaria?

We need more action instead of words from the EU. We need the EU to understand that threats will not stop countries like Bulgaria, Romania, Poland, Hungary. The EU should be more courageous to use infringement proceedings or stop specific funding for the Governments that abuse democracy.

We cooperate a lot and with different organisations, mainly in the field of

LGBTIQ rights and mainly with umbrella organisations such as ILGA Europe, ILGA World, NELFA (the network of European LGBTI families) TGEU (the transgender Europe), the intersects organisation, the European lesbian conference. We are all fighting and trying to make our voices heard at the European level, and I think we succeed when we work together. ■

The interview was carried out on 28 July 2021

DENMARK

Denmark is a democratically well-performing country with high scores across the most essential democratic variables, including an open civic space, with good funding possibilities, access to relevant actors and institutions, and access for citizens to be engaged and voice their opinions free from fear. But an increased political focus on security and safety in recent years is causing concern amongst civil society actors, who report increasing anti-democratic sentiments in the public debate and political initiatives challenging certain liberties and rights. What is most concerning is how this trend disproportionately targeting specific, racialised and marginalised groups. This is also the case of the 'Security for all Danes' law package and the legislative changes allowing for the transfer of asylum seekers to a third country outside the EU for the purposes of both asylum processing passed in summer 2021. Civil society mobilises to show the wide detrimental effect of discriminatory laws.

CIVIL SOCIETY IS CELEBRATED

But security policies raise worries

By Regitze Helene Rohlfing, doctorant, Université de Copenhague

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Denmark is a democratically well-performing country with high scores across the most essential variables. According to the CIVICUS Monitor, Denmark has an OPEN civic space.¹ The think tank Varieties of Democracy likewise reports high scores on both the *core civil society index* and the *civil society participation index*, with an average score over the last ten years of 0.97 and 0.99 on a scale with 1 being the highest.² These

indicators show a well-functioning civic space, with good funding possibilities, access to relevant actors and institutions, and access for citizens to be engaged and voice their opinions free from fear. But political and discursive trends in recent years are causing concern amongst civil society actors who report increasing anti-democratic sentiments in the public debate and political initiatives challenging certain liberties and rights. This is also evident in the (albeit small) decrease of 3.29% regarding civil liberties in Denmark over the last ten years.³ What is most concerning is how

this trend is not strictly society-wide but appears to be disproportionately targeting specific, marginalised groups.

HISTORY AND ORGANISATION OF THE DANISH CIVIL SOCIETY

There is a long tradition for civic engagement in Denmark, the first instance dating back to the 18th century, though the modern form of civil society only emerged after the introduction of the Danish Constitution in 1849.⁴ It is estimated that there are more than 100,000 associations in Denmark, and since 2010, the number of Danes active in civil society accounts

¹ Civicus Monitor (2021). Denmark. <https://monitor.civicus.org/country/denmark/>.

² Coppedge, Michael, John Gerring, Carl Henrik Knutsen, Staffan I. Lindberg, Jan Teorell, Nazifa Alizada, David Altman, Michael Bernhard, Agnes Cornell, M. Steven Fish, Lisa Gastaldi, Haakon Gjerløw, Adam Glynn, Allen Hicken, Garry Hindle, Nina Ilchenko, Joshua Krusell, Anna Luhrmann, Seraphine F. Maerz, Kyle L. Marquardt, Kelly McMann, Valeriya Mechkova, Juraj Medzihorsky, Pamela Paxton, Daniel Pemstein, Josefine Pernes, Johannes von Römer, Brigitte Seim, Rachel Sigman, Svend-Erik Skaaning, Jeffrey Staton, Aksel Sundström, Ei-tan Tzelgov, Yi-ting Wang, Tore Wig, Steven Wilson and Daniel Ziblatt. (2021). "V-Dem [Country-Year/Country-Date] Dataset

v11.1" Varieties of Democracy Project. <https://doi.org/10.23696/vdemds21>

³ Coppedge, Michael, John Gerring, Carl Henrik Knutsen, Staffan I. Lindberg, Jan Teorell, Nazifa Alizada, David Altman, Michael Bernhard, Agnes Cornell, M. Steven Fish, Lisa Gastaldi, Haakon Gjerløw, Adam Glynn, Allen Hicken, Garry Hindle, Nina Ilchenko, Joshua Krusell, Anna Luhrmann, Seraphine F. Maerz, Kyle L. Marquardt, Kelly McMann, Valeriya Mechkova, Juraj Medzihorsky, Pamela Paxton, Daniel Pemstein, Josefine Pernes, Johannes von Römer, Brigitte Seim, Rachel

Sigman, Svend-Erik Skaaning, Jeffrey Staton, Aksel Sundström, Ei-tan Tzelgov, Yi-ting Wang, Tore Wig, Steven Wilson and Daniel Ziblatt. (2021).

"V-Dem [Country-Year/Country-Date] Dataset v11.1" Varieties of Democracy Project. <https://doi.org/10.23696/vdemds21>

⁴ Mette Hjære, Helene Elisabeth Dam Jørgensen og Malthe Lindholm Sørensen. (2018). Tal om frivillighed i Danmark. Frivilligrapport 2016-2018. Center for Frivilligt Socialt Arbejde



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for around 40 per cent.⁵ An association is understood as a voluntary grouping of persons who come together for a common purpose or to pursue a common interest. Any citizen may form an association as guaranteed by Article 78 of the Danish Constitutions, as long as the association's activities and purpose are lawful. There is no law on associations in Denmark, but some formal requirements must be met to receive grants or employ staff, for example. These requirements demand that associations have more than two members and must have been formally established in a documented founding meeting. The association must also draw up and adopt official statutes, but there is no rule on what such statutes should

⁵ Mette Hjære, Helene Elisabeth Dam Jørgensen og Malthé Lindholm Sørensen. (2018). Tal om frivillighed i Danmark. Frivilligrapport 2016-2018. Center for Frivilligt Socialt Arbejde. <https://frivillighed.dk/guides/fakta-og-tal-om-frivillige-organisationer-i-danmark>;

contain. It is further required that there is some sort of management committee that acts as the authority. Lastly, an association must have its own defined finances including its own budget and account keeping. An association must also be democratically structured, and members must pay membership fees in order to be entitled to public grants under the Act on Non-formal Education and Democratic Voluntary Activity. Though there has been a decrease in the number of registered members of organisations,⁶ there has been increased public and political focus on civil society over the last 30 years⁷. All Danish governments since the early 2000s have emphasised the important role of civil society in various policy initiatives,⁸ with the latest initiative from 2017 declaring that "...Civil society and volunteering are of great importance to Danish society. Through voluntary action and commitment, individuals take on a personal responsibility that benefits society as a whole and creates active citizens".⁹

CIVIL DIALOGUE AND PARTICIPATION: A WEAKENING OF THE POLITICAL INCLUSION OF CIVIL SOCIETY?

A key characteristic of civic space in Denmark is the relatively high degree of openness in the political system to input from civil society, where civil society

⁶ Hans-Peter Y Qvist, Lars Skov Henriksen, Torben Fridberg, The Consequences of Weakening Organizational Attachment for Volunteering in Denmark, 2004–2012, *European Sociological Review*, Volume 34, Issue 5, October 2018, Pages 589–601, <https://doi.org/10.1093/esr/jcy030>

⁷ Grubb, A., Henriksen, L.S. On the Changing Civic Landscape in Denmark and its Consequences for Civic Action. *Voluntas* 30, 62–73 (2019). <https://doi-org.ep.fjernadgang.kb.dk/10.1007/s11266-018-00054-8>

⁸ Espersen, Helle Hygum, Torben Fridberg, Asger Graa Andreasen & Niels Westermann Brændgaard (2021) Frivillighedsundersøgelsen 2020 En repræsentativ befolkningsundersøgelse af udviklingen i danskernes frivillige arbejde. VIVE – Det Nationale Forsknings – og Analysecenter for Velfærd

⁹ Regeringen (2017). Strategi for et stærkere civilsamfund. Børne – og Socialministeriet. *Authors own translation.*

tends to act as a channel for citizens to raise their concerns and negotiate solutions to problems.¹⁰ The framework for stakeholders' consultations is generally considered robust, but a new tendency of shortened consultation periods has been noticed. This limits the ability of civil society organisations, especially those with fewer resources at their disposal, to voice any concerns and offer guidance to government institutions. Additionally, formal structures for the involvement of civil society in policymaking were not used in the context of the preparation of the national plan for the EU recovery funds, which saw a lack of involvement of civic organisations.

Involvement of civil society is also a matter of funding, and though public funding is overall high and well-regulated, there are concerns over a possible diminution in available financing following the COVID-19 epidemic but also a voiced need for better funding of democracy-related activities.¹¹

Another issue for the right to participation is the unprecedented emergency law passed in August 2021 to halt the nurses' strike. The strike is the longest running in Danish history, and the emergency law is an extraordinary measure given that labour rights issues are usually settled between social partners through collective bargaining.¹² This bears witness to what some civil society actors have also described as a burgeoning tendency to centralise the executive powers. Others also point to a slow but steady regression of the rule of law. Instances of illegal

¹⁰ Espersen, Helle Hygum, Torben Fridberg, Asger Graa Andreasen & Niels Westermann Brændgaard (2021) Frivillighedsundersøgelsen 2020 En repræsentativ befolkningsundersøgelse af udviklingen i danskernes frivillige arbejde. VIVE – Det Nationale Forsknings – og Analysecenter for Velfærd

¹¹ Ad hoc group on Fundamental Rights and the Rule of Law (2020). Fundamental rights and the rule of law. Denmark – Country visit report. European Economic and Social Committee.

¹² Civicus Monitor (2021). Government passes emergency law to halt the longest strike in danish history. <https://monitor.civicus.org/updates/2021/09/20/government-passes-emergency-law-halt-longest-strike-danish-history/>

CIVIL SOCIETY TENDS TO ACT AS A CHANNEL FOR CITIZENS TO RAISE THEIR CONCERNS AND NEGOTIATE SOLUTIONS

instructions ordered by the authorities, such as the massive culling of minks without legal basis in 2020 and the unlawful order to separate married and cohabiting couples at an asylum centre in 2016, are examples of this trend. Likewise, the closure of courts in March 2020 in the context of COVID-19 gave rise to concerns for the respect of judicial independence, as reported in the EU's Rule of Law Report.¹³ Though not a systematic attack on rule of law, like seen in other European member states, these tendencies should be closely observed.

LEGAL FRAMEWORK FOR CIVIC FREEDOMS: WHICH WILL WIN IN THE BATTLE BETWEEN SAFETY AND CIVIL LIBERTIES?

In recent years, an increased political focus on security and safety has introduced a line of changes, which are feared because they could jeopardise basic rights. These changes are not just an effect of the COVID-19 epidemic but follow a general trajectory in Denmark and globally. Even the EU's global strategy from 2016 talked about a need for a stronger Europe because *"We live in times of existential crisis, within and beyond the European Union. Our*

Union is under threat".¹⁴ In the Danish context, concerns center on safety-ensuring initiatives and the COVID-19 introduced measurements. Safety-ensuring initiatives like counter-terrorism legislation and the Police Act have for years been criticised for not attaching sufficient importance to fundamental rights. The think tank Justitia has previously noted that practices of the Danish police have interfered with basic freedoms as did the case concerning mass arrests during COP15 in 2009, the detention of people at the protests against the Chinese state visits in 2012 and 2013 and the relocation of several demonstrations.¹⁵ Issues of arbitrary surveillance, wider margin of interpretation for the police and lack of sufficient due process guarantees in relation to far-reaching provisions are some of the critical points of the counter-terrorism legislation which concern privacy rights, freedom of speech, and rights of assembly. It has been voiced that the law needs to be reassessed to ensure a better balance concerning the proportionality, efficiency, and necessity aspects of restrictions.¹⁶

The laws introduced for dealing with the COVID-19 epidemic were also heavily criticised for having potentially far-reaching infringements of citizens' rights. This included restrictions on freedom of assembly (with an exception for political or opinion-forming assemblies), personal freedom, respect for personal

and private life but also a strong centralisation of power in the hands of the executive. Amnesty raised, for instance, concerns for the application of the special paragraph of the Criminal Code allowing double punishment for offences related to the epidemic. Especially, the need for clearer conditions on the applicability of the special paragraph was highlighted to ensure that the measures in place were not unnecessarily curtailing citizens' freedoms.¹⁷ To date the special paragraph is still part of the Danish legislation.¹⁸ Though the government was responsive to some of the critics raised by civil society organisations and the national human rights institute, and though the new epidemics law of February 2021 did reinforce oversight powers to the Parliament and repealed the temporary act of 2020, it shows a worrisome example of the government being willing to curb liberties for the sake of safety.¹⁹ Older examples include the ban on full-face covering on 2018 and the unconstitutional restrictions imposed on pro-Tibet demonstrators during an official visit from China back in 2012 where investigations about the conduct of the events are still ongoing.

MARGINALISED GROUPS UNDER FIRE

In June 2021, the Danish Parliament adopted a so-called Security Package, known as "Security for all Danes". When

¹³ COMMISSION STAFF WORKING DOCUMENT (2021). Rule of Law Report Country Chapter on the rule of law situation in Denmark Accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS 2021 Rule of Law Report The rule of law situation in the European Union

¹⁴ European External Action Service (2016). Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union's Foreign And Security Policy. https://eeas.europa.eu/topics/eu-global-strategy/49323/global-strategy-european-union_en

¹⁵ Justitia (2016). Politiets indgreb i ytrings- og forsamlingsfriheden [Police interference with freedom of expression and assembly]. http://justitia-int.org/wp-content/uploads/2016/01/Analyse_Politiets-indgreb-i-ytrings-og-forsamlingsfriheden_29-01-16.pdf

¹⁶ Ad hoc group on Fundamental Rights and the Rule of Law (2020). Fundamental rights and the rule of law. Denmark – Country visit report. European Economic and Social Committee; Enhedslisten (2020): Enhedslisten vil oprette Frihedskommission. <https://enhedslisten.dk/2020/01/28/enhedslisten-vil-oprette-frihedskommission>

¹⁷ Amnesty (2021). Amnesty: Folketinget bør se på lov om dobbeltstraf i forbindelse med corona-epidemien. <https://amnesty.dk/amnesty-mener-folketinget-boer-se-paa-lov-om-dobbelstraf-i-forbindelse-med-epidemien/>

¹⁸ <https://dansklove.dk/straffeloven> (in Danish)

¹⁹ Amnesty (2021). Epidemilovforslag med vigtige ændringer. <https://amnesty.dk/epidemilovs-forslag-med-vigtige-aendringer/>; COMMISSION STAFF WORKING DOCUMENT (2021). Rule of Law Report Country Chapter on the rule of law situation in Denmark Accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS 2021 Rule of Law Report The rule of law situation in the European Union; Danish Institut for Human Rights (2021). Denmark. European Network of National Human Rights Institutions

AN INCREASED POLITICAL FOCUS ON SECURITY AND SAFETY HAS INTRODUCED A LINE OF CHANGES

first introduced as a draft in October 2020, the package was heavily criticised for its “security-creating assembly ban”, which would allow the police to issue a general ban on staying in a geographical defined if a group of people exhibit insecurity-creating behaviour. The ban would be for 30 days, extendable for an additional 30 days and failure to abide by the ban would result in a fine of DKK 10,000 (over 1300 Euro) for a first offence and a prison sentence of up to 1 year for a second offense. The ban could restrict freedom of movement, judicial guarantees, the right to privacy, and the right to demonstrate peacefully. Such restrictions could result in a general chilling effect, but the law was especially feared for disproportionately affecting marginalised and racialised groups. In fact, the assembly ban would violate Section 79 of the Danish Constitution and Article 20 of the UN Universal Declaration of Human Rights and risk breaching the EU Race Equality Directive and the EU Charter for Fundamental Rights. The fear for disproportionality rises from progressively hardening public rhetoric about ethnic minorities and politically labelling specific groups as troublemakers. This was, for instance, the case when Prime Minister Mette Frederiksen announced the draft law, stating that “...every fifth young man with a non-Western background, born in 1997, had violated criminal law before the age of 21”.²⁰ This statement drew a

²⁰ Civic Space Watch (2021). DENMARK: New security package risks restricting the right to peaceful assembly and discriminating against minorities. <http://civicspacewatch.eu/old/>

clear link between ethnic minorities and security concerns. It is also important to understand that the security package follows a number of other measures with the same discriminating elements. These include the 2018 Ghetto Package, which was condemned by UN experts for its discriminatory nature and has made it possible to give harsher convictions to offenders from a “ghetto”-area,²¹ a neighbourhood identified as such based on the percentage of “non-Western” immigrants and descendants. The security package and its rhetoric may well contribute to the already increasing public stigmatisation experienced by these groups. Luckily, upon adopting the law, a majority outside the government rejected the assembly ban.²² This is a victory for the protection of freedoms and for marginalised groups. It is also the result of an active civil society standing up for democratic values.²³

THE DEVELOPMENTS IN CONTRAST TO THE DANISH INTERNATIONAL OUTLOOK

Democracy and human rights are core elements of the Danish international outlook, which is also visible in the funds

denmark-new-security-package-risks-restricting-the-right-to-peaceful-assembly-and-discriminating-against-minorities/

²¹ New York Times (2018). In Denmark, Harsh New Laws for Immigrant ‘Ghettos’. <https://www.nytimes.com/2018/07/01/world/europe/denmark-immigrant-ghettos.html>

²² European Center for Non-Profit Law (2021). Comments on the Draft Act amending the Danish Penal Code, the Act on the Activities of the Police, and the Judicial Care Act (“Security for all Danes” Act). <https://ecnl.org/news/security-all-danes-serious-threat-freedom-assembly>; Civic Space Watch (2021). DENMARK: New security package risks restricting the right to peaceful assembly and discriminating against minorities. <https://civicspacewatch.eu/denmark-new-security-package-risks-restricting-the-right-to-peaceful-assembly-and-discriminating-against-minorities/>; Civicus (2021). Denmark: Reject discriminatory “Security for all Danes” Act and respect freedom of assembly. <https://www.civics.org/index.php/media-resources/news/4999-denmark-reject-discriminatory-security-for-all-danes-act-and-respect-freedom-of-assembly>

²³ Mellem Folkeligt Samvirke, Nyt Europa, Amnesty International (2021). Fælles høringsvar til forslag til Lov om ændring af straffeloven, lov om politiets virksomhed og retsplejeloven.

THE SECURITY PACKAGE AND ITS RHETORIC MAY WELL CONTRIBUTE TO THE ALREADY INCREASING PUBLIC STIGMATISATION EXPERIENCED BY THESE GROUPS

allocated to such work, like the democratic fund with a budget of approximately € 6.7 million.²⁴ The current strategy for development policy states, “...People have the right to live in security, to be free to think, speak and believe, to be free from oppression and free to participate in the life of their communities”.²⁵ Promoting such efforts is important work, but it is equally important to cherish and uphold these values at home. There is a risk of sounding hollow if one promotes democracy and partnerships with civil society abroad while in the Danish context certain liberties are under stress and marginalised groups are excluded and targeted.

A FINAL WORD OF RECOMMENDATION


Denmark has high standards when it comes to democratic rights and people’s participation in public life, but there are nonetheless also challenges. The deterioration of the democratic tone with a more polarised and tensed public debate as well as outright attacks on critical voices are deeply concerning.²⁶ The

²⁴ Huusmann, K.E and L. G Hendriksen (2020). Legal environment and space of civil society organisations in supporting fundamental rights – Denmark. The Danish Institute for Human Right

²⁵ Udenrigsministeriet/Danida (2021). Fælles om verdenen – Danmarks udviklingspolitiske strategi. Juni 2021, ISBN 978-87-93760-66-0

²⁶ Daily newspaper, Politiken, “Justitsministeren anklager direktør for Institut for Menneskerettighederne for at agere politisk”

challenges are, though, not only discursive as introduced legislation holds the possibility to actively curtail certain freedoms and liberties, at times even disproportionately against marginalised groups. This must be actively combatted to ensure that everyone feels part of the society and that everyone can freely engage in (civil) society and enjoy their civil liberties, both locally and nationally.²⁷



(“The Minister of Justice accuses Executive Director of the Danish Institute for Human Rights for acting politically”), 16 may 2021, <https://politiken.dk/indland/art8201096/Justitsministeren-anklagerdirekt%C3%B8r-for-Institut-for-Menneskerettighederne-for-at-agere-politisk>; Daily newspaper Politiken, “Hård kritik: Regeringens kamp for tryghed truer vores frihed” (“Harsh criticism: The Government’s fight for safety threatens our freedom”), 18 April 2021, <https://politiken.dk/nyheder/art8170239/H%C3%A5rd-kritikRegeringens-kamp-for-tryghed-truer-vores-frihed>

²⁷ Ad hoc group on Fundamental Rights and the Rule of Law (2020). Fundamental rights and the rule of law. Denmark – Country visit report. European Economic and Social Committee.

In early 2021, the Danish government proposed a draft law to parliament granting police the power to issue a “security-creating assembly ban” if a group of people exhibit “insecurity-inciting behaviour”. In recognising the serious repercussions for freedom of peaceful assembly rights and minority groups, CSOs Amnesty International, Action Aid Denmark and Nyt Europa came together in defence of civic space. The decision to award their initiative celebrates their successful national and international mobilisation against limitations to civic space, which culminated in parliament voting down the «security-creating assembly ban». At the same time, this story highlights the struggles that are to come in responding to stigmatising and discriminatory policies in place against migrants.

CSOS DEFEAT ASSEMBLY BAN

Challenges for racialised groups persist

Interview with Lisa Blinkenberg, senior advisor, Amnesty International, Danish Section for coalition on security package

Could you tell us about the security package and the coalition of organisations that opposed it?

We were part of a working group on civic space under the organisations called Globalt Fokus. Throughout our conversations we realised that there was a need to create a coalition to further work on civic space issues, therefore, New Europe (Nyt Europa), Globalt Fokus, ActionAid Denmark and Amnesty International united.

THEY MOVED FROM
BEING CONVINCED
TO QUESTIONING THE
TEXT AND ULTIMATELY
REJECTING IT

In October 2020, at the opening of the Parliament, the Prime minister gave her usual speech in which she mentioned the need for restrictive legislation addressing young male criminals with a non-western background. We had also heard of a briefing paper called “security for all Danes”. With these elements in mind and the general context in the country, we were expecting that there would be some type of legislation related to security and targeting young males with a non-western background.

We had a first discussion already in late Autumn, during which we agreed on the first steps of the coalition. When the legislation was published, we met again to discuss and design how we would fight it. When the legislation was then introduced on 14 January, we discussed our methodology and our analysis of the bill. We also

invited other organisations, including the Danish Institute for human rights.

Could you tell us about the restriction on assemblies proposed in the legislative package on “Security for all Danes” and the main concerns?

It was part of a broad range of restrictions and amendments under the “Security for all Danes” package. From the beginning, we decided to exclusively focus on the legislation which introduced a ban on assembling in an open access area. To illustrate the situation, it would have meant that if you are living in a small apartment and want to organise a birthday party for your children, there are chances that you could get in trouble if you select a play yard located in a forbidden area. It also raised concerns regarding the right





**IT IS PARAMOUNT TO
HAVE AN ACTIVE AND
CRITICAL CIVIL SOCIETY
IN THESE TIMES**

to privacy, freedom of movement, and the right to demonstrate. For instance, this legislation would have limited the choice of areas to hold protests regardless of its meaning or symbolic value. The law referred to “*groups of whom the behaviour would threaten the feeling of security*” which is very difficult to measure. This vague formulation questioned whether the law met the legality requirements as it exposes citizens to a risk of arbitrariness in the decisions of the police and to a risk of disproportionate impact on gatherings and assemblies which ultimately amounts to legal uncertainty. Additionally, it raised concerns regarding indirect discrimination against particular groups of persons, especially due to their gender, race and ethnicity.

What types of actions did you take together? To what extent did the international and European pressure contribute to the positive results?

We acted on an early stage because we were aware of the Prime Minister’s intention to draft legislation on security targeting men with a non-western appearance. To start the work, we reached out to the Danish Institute of Human Rights

and other international partners. We discussed, gathered inputs and adopted statements highlighting the issues of the legislations both in Danish and English. Then, we proceeded to the legal and political assessment of the legislation and produced a written analysis. We also received a lot of input from the European Law Centre for Non-Profit Law both on the bill itself and helpful case-law for our analysis.

We reached out to almost all parliamentarians and engaged with organisations that collaborate with parliamentarians that we could not reach. We succeeded in meeting with crucial ones who seemed very interested and willing to listen to us. They helped us arrange a hearing at

the parliament legal affairs’ committee. During that meeting, we raised our concerns and introduced our recommendations. We especially stressed the clear conflict with human rights and existing European case-law. We stressed that the UK had introduced similar amendments years ago, which were deemed to be against human rights law by the European Court of Human Rights.

To build up international pressure, we had many international organisations as well as five of the UN special rapporteurs writing a letter in which they criticised the legislation. We also had the Universal Periodic Review examination raise concerns on this legislation. Parliamentarians felt this. It was clear that parliamentarians listened as there was a clear evolution of their position from the first to the third discussion and finally, the vote. They moved from being convinced to questioning the text and ultimately rejecting it.

Could you tell us which strategies helped you achieve the impact you aimed for: the rejection of the “Security for all Danes” package?

One of the most important things that we did was start the work very early. The second is that we made sure to analyse the strategies to use for each step of our work: media, advocacy, and case-law. We also had an important joint effort and emphasised the collaboration across organisations, which cemented our efforts. The use of concrete examples was very helpful to illustrate and reach people. Additionally, the face-to-face meeting with

**THERE HAS BEEN
A HARDENING OF
POLICIES ON ASYLUM
SEEKERS, REFUGEES,
AND IMMIGRANTS AND
A RESTRICTION OF
SOME OF THEIR RIGHTS**

parliamentarians was very impactful as it provided interesting insiders' views. We were able to hear their recommendations and adjust ours to theirs. One example of adjustments we made in our arguments to better address parliamentarians' concerns relates to the heart of our argumentation which we changed from the discriminatory aspect of the legislation to a stronger focus on the right to demonstrate, the right to assembly and freedom of movement. This was to take into account the Danish political landscape and history.

In this case, it was important to have a solid analysis to rely on and take the time to think of the most strategic way to approach the issues. We decided to focus our efforts on building a strong judicial and legal analysis, prioritising a written

IN RECENT YEARS, WE HAVE SEEN POLICIES AND LEGISLATION ESPECIALLY TARGETING OR IMPACTING PEOPLE FROM NON-WESTERN BACKGROUND

format and engaging international actors and parliamentarians. In other cases, it might have been really helpful to engage the right holders.

Have you witnessed a securitization of the narrative in Denmark?

There have been some worrying developments and narratives circulating in Denmark. At the highest levels, the Minister of Justice made comments stating that our freedoms depend on security, against which our organisations issued a statement and organised a joint debate. The Covid 19 pandemic reinforced

the shrinking of civic space. We have seen the government using the populist us/them discourse. Moreover, there has been a hardening of policies on asylum seekers, refugees, and immigrants. Unfortunately, that is one of the reasons we shifted our focus by working mainly on the right to freedom of assembly, the right to privacy, and the arbitrary aspect of the "Security for all Danes" package. We thought about the negative consequences of less democratic countries copying the Danish developments. It is paramount to have an active and critical civil society in these times.

Could you tell us more about the legislative and political framework around civic space in Denmark?

Denmark is a democratic country with a relatively open-minded government when it comes to civil society. This is also the image conveyed by Denmark through its work abroad. The ministry of Foreign Affairs' website showcases the ways Denmark supports civil society in other countries and how they fight against shrinking civic space abroad. However, we also have a social Democrats government driven by populist narratives. On internal policies, this government has restricted certain rights for refugees, asylum seekers, and immigrants in the past years.

There can be a paradox between what Denmark is doing internally and its external policies. Denmark strongly condemned the situation for civil society in Belarus, Russia, Hungary and Poland. Even though the situations are difficult to compare to the Danish context where NGOs do not feel threatened and where there are a lot of possibilities for democratic consultations, there are contradictions.

We have seen restrictions due to the COVID-19 emergency laws, limiting people's right to assemble in larger groups. Additionally, some of the amendments that were introduced in the criminal code increased the sanctions for offences if they

IN THE ERA OF THE FIGHT AGAINST TERRORISM, RIGHTS STARTED TO GET RESTRICTED AND THE USE OF US/THEM RHETORIC HAS BEEN GROWING OVER THE PAST 20 YEARS.

were committed in connection with the COVID-19 epidemic and these provisions are still in place. For example, In March 2021, a woman received a 2-year prison sentence as she urged other protesters to "trash the city in a non-violent way" during a demonstration in January. Her sentence was doubled due to an amendment in the Danish penal code, saying that the sentence could be doubled if the action was linked to the COVID-19 pandemic. Later, the court reversed its sentencing, reducing the sentence to 60 days.¹ This remains a worrying use of the legislation and similar situations may arise. There has been a lot of criticism against these sentences. We are concerned that acts are punished twice simply because they are broadly related to the corona epidemic.² Amnesty International has opposed many of the issues introduced in the legislation due to COVID-19, especially in relation to these double standards. Our coalition wrote to the relevant parliamentarians stressing that they should look into the penal code and the restrictions due to the COVID-19 pandemic.

How were COVID 19 restrictions implemented in Denmark? Are

¹ <https://nyheder.tv2.dk/samfund/2021-06-09-to-coronasager-omgjort-i-landsretten-og-der-er-flere-paa-vej>

² <https://amnesty.dk/amnesty-mener-folketinget-bor-se-paa-lov-om-dobbeltstraf-i-forbindelse-med-epidemien/>

there groups that are more vulnerable or more affected by this legislation?

As said, there have been double standards in the implementation of the COVID 19 measures. For instance, in April 2020, a prohibition to sit in certain areas was adopted for a certain period of time. One story got media attention: a woman with a 4-year-old child was playing in a yard, she was sitting down close to him, and she received a fine because of the mentioned regulation even though there were no people in this area.³

The most vulnerable people are from non-western background. We were very much alert, particularly organisations such as ActionAid and Amnesty International, on the risk of discriminatory aspects of the legislation. In recent years, we have seen policies and legislation especially targeting or impacting people from non-western background. That is the case of the Act on social housing, the so-called ghetto package in 2018 on the basis of which residents might face double criminal proceedings and in which a ghetto is defined as a place where the proportion of immigrants and descendants from non-western countries exceeds 50%. We have also seen new policies on externalising asylum procedures, which fits in this pattern of targeting immigrants and refugees. Indeed, also with regards to

³ <https://www.dr.dk/nyheder/politik/efter-boede-til-mor-med-boern-paa-legeplads-partier-bakker-politiets-linje-op>

IT WOULD BE IMPORTANT TO HAVE DIFFERENT INTERNATIONAL ACTORS AND INSTITUTIONS WORK TOGETHER TO FOCUS ON THE ISSUES FACED BY CIVIL SOCIETY

the new security law, in her speech the Prime Minister said that this legislation was focusing primarily on a young man with a non-western background.

How is the general public reacting to this situation?

We have not done research on that aspect, so it is difficult to tell. We have a far-right party called Nye Borgerlige, which stands against refugees and asylum seekers. This party was introduced only two years ago but gained seats in Parliament very quickly, which resulted in two parties with anti-immigrants and anti-refugees' views present in the house. Therefore, there are Danes who think that refugees and asylum seekers should not be protected in Denmark but there is also a strong part of the society fighting against this trend. It remains difficult to say because there are also other issues and themes such as gender, the climate change that mobilise people.

Do organisations experience backlash from far-right groups while working on certain issues?

We have not done a lot of research on that, but I think there is a lot of hate speech on social media. On the other hand, according to my experience, there are no aggressions against organisations. It is different from the situation in Hungary and Poland or other countries where there is a strong mobilisation against people working on these themes. For instance, our organisations have worked a lot on Syria. Denmark has said that all the Syrian refugees' cases should be renewed or reopened, and we have seen strong support and mobilisation of people supporting Syrian refugees. In May, we have had demonstrations gathering 15.000 to 20.000 people in 20 cities despite Covid-19. That makes me think that there is a large group of supporters for these causes. On social media, when organisations like Amnesty International post on refugees or asylum-seekers, you

THE WELFARE STATE AND THE SENSE OF EQUALITY IN SOCIETY HAVE SUFFERED THE PAST YEARS AS THE GAP BETWEEN THE RICHEST AND THE POOREST HAS DRASTICALLY INCREASED

can be sure that there will be supporters and opposition using hate speech.

What do you think about this conflict between the open and democratic aspect of Danish civic space and, on the other side, this wave of restrictions and populist sentiment that has been growing these past few years?

We have not analysed the shrinking civic space in Denmark; however, I think it has been on its way for many years. In the era of the fight against terrorism, rights started to get restricted and the use of the *us/them* rhetoric has been growing over the past 20 years. Additionally, I think there might have been a shift after the economic crisis in Denmark in 2008. The welfare state and the sense of equality in society have suffered the past years as the gap between the richest and the poorest has drastically increased, which contributed to this wave of restrictions. To respond, European governments introduced measures that participated to the shrinking of political and civic space, which is especially visible in countries such as Hungary and Poland. This had a domino effect on other countries, like

Denmark. I think all these aspects played a role in the current situation.

Could you think of practices or processes at the institutional level that could potentially be helpful in Europe?

There is more that can be done at a European and international level. The EU is a strong ally, but there are also strong actors such as the UN and the Council of Europe that could be helpful for civil society's work. As there seems to be an agreement at an institutional level about the shrinking of civic space, it would be important to have different international actors and institutions work together to focus on the issues faced by civil society. The diversity of international institutional actors is a strength, but it is underused. Another factor is providing organisations the necessary means to do their work such as a general institutional support, including with funding based on operating grants additionally to project-based ones. Indeed, it is important that all civil society organisations are supported in Europe to avoid situations, like the Hungarian one, where it is very difficult for organisations to work. ■

The interview was carried out on 12 August 2021.

FRANCE

France is characterised by an associative sector that is strong, mature and growing, with high public trust. Associations are quite vocal on rights' violations, and active in advocacy towards policymakers. France also has a strong associative and mobilisation culture, with thousands of assemblies and protests, carried out peacefully every year, most often led by associations and trade unions. As a result, the civil society is an integral pillar of checks and balances and plays an important role in protecting the rule of law when it is under attack. While fundamental freedoms are protected by the law and generally respected, civil society and civil liberties have been put under increasing pressure since 2015, when the state of emergency was introduced in response to the terrorist attacks. In 2021, several legislative initiatives have further restricted the legislative framework for civic freedoms. In particular, the law on "Strengthening republican values" imposes and generalises new constraints to all associations, controlling their actions and their finances, and subjecting them to the risk of arbitrary and permanent sanctions and dissolution. Nevertheless, recent court rulings led to significant victories for civil society.

THE CIVIC SECTOR IS STRONG

But associative freedoms are under pressure

By Pierre Antoine Cazau, lawyer and Jerome Graefe, lawyer, Ligue des droits de l'Homme

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FREEDOM OF ASSOCIATION IS RECOGNISED

In France there are nearly 1.5 million associations¹ and each year 70,000 new associations are formed.² They represent a budget of 113.3 billion euros, or 3.3% of GDP.³ They involve 1.8 million employees and 22 million volunteers.⁴ The important role of associations is recognised since almost one in two French people consider that associations serve to compensate for the shortcomings of public action, 15% to complement public action⁵ and 14% to raise awareness of certain issues among the population. In 2020, in most fields of

action, associations enjoyed more confidence than public authorities.⁶

In France, the law of 1901 recognises the freedom of every citizen to be a member of an association or not. Freedom of association represents the two sides of a key piece of democracy, it is the freedom to associate in the strict sense, to physically form a group, to meet, to act in common. It is also the freedom to exercise fundamental rights, because freedom of association is consubstantial to the expression of many recognised rights and freedoms. Several measures have been taken in France to encourage associative life: in 2011⁷ by authorising minors aged 16 to form an

association, then in 2014⁸ and 2015⁹ by creating or renovating existing mechanisms to encourage the work of associations and finally in 2017¹⁰ by a law which aims to strengthen associative commitment, particularly among young people. Contrary to these measures, which aimed to strengthen associations, simplify their operations and encourage civic commitment, for several years now we have seen a decline in public freedoms in France, a restriction of the space for civil society.

A MOVEMENT TO ERODE CIVIL LIBERTIES IN FRANCE

Since 2015, when the state of emergency was implemented to combat terrorism, until today in times of health crisis, there has been a succession of liberticidal

¹ <https://injep.fr/wp-content/uploads/2019/07/Chiffres-cles-Vie-associative-2019.pdf>

² <https://www.associatheque.fr/fr/creer-association/chiffres-cles.html>

³ <https://www.associations.gouv.fr/les-associations-en-france.html#Les-chiffres>

⁴ <https://injep.fr/wp-content/uploads/2019/07/Chiffres-cles-Vie-associative-2019.pdf>

⁵ https://www.donenconfiance.org/offres/doc_inline_src/759/Observatoire_du_Don_en_Confiance_rapport_public-2019.pdf

⁶ https://www.donenconfiance.org/offres/doc_inline_src/759/Rapport+Viavoie.Don+en+confiance-Novembre2020.pdf

⁷ Loi du 28 juillet 2011 pour le développement de l'alternance et la sécurisation des parcours professionnels

⁸ Loi du 31 juillet 2014 relative à l'économie sociale et solidaire

⁹ Ordonnance du 23 juillet 2015 portant simplification du régime des associations et des fondations

¹⁰ Loi du 27 janvier 2017 relative à l'égalité et à la citoyenneté



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measures, with repeated infringements of rights leading to a decline in public and individual freedoms and a restriction of the space for civil society. Following the attacks, the repeated implementation of the State of Emergency for two years led to measures whose necessity and proportionality can be questioned. Between November 2015 and 5 May 2017 the authorities used emergency powers to sign 155 orders banning public gatherings, while also banning dozens of demonstrations under French common law. They also imposed 639 measures banning specific individuals from participating in public gatherings, of which 574 targeted people demonstrating against labour law reform.¹¹ Between 2016 and 2017,¹²

¹¹ <https://www.amnesty.org/fr/latest/press-release/2017/05/france-unchecked-clampdown-on-protests-under-guise-of-fighting-terrorism/>

¹² Loi n° 2016-339 du 22 mars 2016 relative à la prévention et à la lutte contre les incivilités, contre les atteintes à la sécurité publique et contre les actes terroristes dans les transports collectifs de voyageurs ; Loi n° 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale ; Loi n° 2016-987 du 21 juillet 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence et portant

numerous texts were passed extending the state of emergency and transposing the provisions of the state of exception into common law, but also adding security, intelligence, control, surveillance and sanction measures. Intended to allow a controlled exit from the state of emergency regime under which France had been living for nearly two years, Law No. 2017-1510 of 30 October 2017 strengthening internal security and the fight against terrorism, known as the "SILT Law", introduced into ordinary law various measures inspired by the provisions of the Law of 3 April 1955 on the state of emergency. These measures were intended as an experiment and their implementation limited to the 31 December 2021.

In November 2018, the social movement of the Yellow Vests began, which was illustrated by an unprecedented degree of violence and repression, with nearly 2,448 people injured, 4 deaths, 353 head injuries, 30 people with eye injuries and 6 hands torn off.¹³ The disproportionate use of force against the demonstrators was denounced by the Défenseur des droits,¹⁴ the Commission nationale consultative des droits de l'Homme,¹⁵ the European Parliament,¹⁶ the Council of Europe¹⁷ and the United Nations.¹⁸ Excessive use of force has occurred during all types of

mesures de renforcement de la lutte antiterroriste ; Loi n° 2016-1767 du 19 décembre 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence ; Loi n° 2017-258 du 28 février 2017 relative à la sécurité publique ; Loi n° 2017-1154 du 11 juillet 2017 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence ; Loi n° 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme.

¹³ <https://www.mediapart.fr/studio/panoramique/allo-place-beauvau-cest-pour-un-bilan>

¹⁴ Rapport annuel 2018 Défenseur des droits

¹⁵ Déclaration sur les violences policières illégitimes 28 janvier 2020 CNCDH

¹⁶ Source : https://www.europarl.europa.eu/doceo/document/TA-8-2019-0127_FR.html

¹⁷ Source : <https://www.coe.int/fr/web/commissioner/-/maintaining-public-order-and-freedom-of-assembly-in-the-context-of-the-yellow-vest-movement-recommendations-by-the-council-of-europe-commissioner-for>

¹⁸ Source : <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=24166&LangID=F>

THE IMPORTANT ROLE OF ASSOCIATIONS IS RECOGNISED SINCE ALMOST ONE IN TWO FRENCH PEOPLE CONSIDER THAT ASSOCIATIONS SERVE TO COMPENSATE FOR THE SHORTCOMINGS OF PUBLIC ACTION

demonstrations, high school students, women's rights, pensions, the climate movement during 2019, 2020, 2021, etc. These repressions have been widely highlighted via social networks, but also by the press and independent human rights observers, who have been subjected on numerous occasions to pressure, intimidation, attacks, obstructions, confiscation of materials when covering demonstrations, and even prosecutions by police forces, between 2018 and 2020.



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ORGANISATION

Ligue des droits de l'Homme

is an association founded in 1898. It is a free civic actor, independent of political parties, unions and associations. It claims to be a citizen, involved in political life, and participates in its debates. It fights against injustice, racism, sexism, anti-Semitism and discrimination of all kinds. It is interested in social citizenship and proposes measures for a strong and vibrant democracy in France and in Europe. It defends secularism against xenophobic instrumentalisation, freedoms, equal rights and fraternity as the basis of a fraternal society and, therefore, of solidarity.

REPEATED ATTACKS ON ASSOCIATIVE FREEDOMS

In a context of erosion of rights and tougher treatment by the public authorities of social movements carried and supported by associations, for several years there have been obstacles to associative freedoms. We will use the term “associative freedoms” to describe the various public freedoms that allow associations to carry out their mission, such as freedom of association, assembly, expression and demonstration. In March 2019, a coalition of associations met to set up an Observatory of associative freedoms,

THE TERM “ASSOCIATIVE FREEDOMS” DESCRIBES THE VARIOUS PUBLIC FREEDOMS THAT ALLOW ASSOCIATIONS TO CARRY OUT THEIR MISSION

which aims to systematically document attacks on associative freedoms.

A study revealed 100 cases of associations whose activities have been repressed, restricted or even hindered by the public authorities.¹⁹ These cases cover a wide range of activities, from environmental protection to the fight against discrimination, from sport to culture, from the right to housing to solidarity, and this in all territories. The report distinguishes between four types of obstacles to associative freedoms. The first is smear campaign of associative actors and reputational attacks. For example, since 2017, the Secours Populaire d'Hayange has been subject to several retaliatory measures by the new mayor, who accuses them of being ‘infiltrated by the communist party and pro-migrants’, cutting off the gas and electricity to their premises, multiplying eviction procedures and removing the association from the municipal directory.²⁰

The second type of hindrance consists of material obstacles, including cuts in subsidies and difficulties in accessing premises for meetings. In Toulouse, an association health centre in a working-class neighbourhood had its subsidy cut because, according to the authorities, it was “too militant” and was involved in too many legal proceedings concerning the refusal of state medical assistance to certain patients.²¹

Thirdly, there are the judicial obstacles, which include all the complaints, fines and lawsuits brought against association activists, and the administrative obstacles, such as the refusal of accreditation. Alongside Anticor and Transparency International France, Sherpa was the third association to be able to act as a civil party in corruption cases. This position allowed it

not only to report potentially criminal acts to the public prosecutor's office, but also to revive buried cases. In 2018, without justification, the Minister of Justice did not renew the approval that allowed it to act as such. The association lodged an appeal with the administrative court. The approval was finally granted without any justification being given.²²

FROM THE BEGINNING OF THE CRISIS, IT IS POSITIVE TO NOTE THAT A DIALOGUE WAS ESTABLISHED BETWEEN THE PUBLIC AUTHORITIES AND THE ASSOCIATIONS

Finally, obstacle linked with the actions of the police include physical repression of collective action, but also searches and arrests. In Bure in the Meuse region, opponents of the nuclear waste disposal centre project are subject to legal proceedings under the charge of “criminal association”. The judicial investigation opened in 2017 has already cost more than a million euros and is leading to widespread surveillance of local collectives. Several local and national associations denounce the harassment and criminalisation of opponents.²³

This harassment and criminalisation of critical voices, which structures the functioning of democracy in France and contributes to the distrust of citizens, has once again put associative freedoms to the test, especially due to an accentuation in these times of health emergency.

¹⁹ https://www.lacoalition.fr/IMG/pdf/rapport_v2.pdf

²⁰ <https://www.lacoalition.fr/Proces-disqualification-ostracisation-coupure-de-subvention-le-maire-d-Hayange?view=liste&type=21>

²¹ <https://www.lacoalition.fr/Un-centre-de-sante-communautaire-menace-de-fermeture-par-la-prefecture-de-Haute?view=liste&type=18>

²² <https://www.lacoalition.fr/Suspension-d-agrement-pour-une-association-de-lutte-contre-la-corruption?view=liste&type=20>

²³ <https://www.lacoalition.fr/Harclement-policier-et-judiciaire-contre-les-opposants-au-projet-d?view=liste>

DURING THIS STATE OF EMERGENCY, FEARS OF LASTING INFRINGEMENTS OF ASSOCIATIVE FREEDOMS HAVE INCREASED

ASSOCIATIVE FREEDOMS PUT TO THE TEST BY THE STATE OF HEALTH EMERGENCY

From the beginning of the crisis, it is positive to note that a dialogue was established between the public authorities and the associations. The associations were able to activate one or more financial solutions proposed by the public authorities, such as the solidarity fund, sectoral aid from the State, aid set up by the different departments and the municipalities, and other types of support such as delays in the payment of social and tax liabilities. However, in 2020, 61% of associations encountered difficulties with their applications. Concerning the state of the sector, a survey carried out in 2021²⁴ shows that a large proportion of associations have suffered the effects of the crisis. The health crisis will have led 40% of associations to close down and will have had a major impact on voluntary activity, making it impossible for many to carry out their activities. For the coming period, the associations are very concerned about membership, voluntary work and their finances. Indeed, the needs that are most often considered to be priorities are the confirmation of announced subsidies and exceptional financial aid in view of the emergency situation.

The coronavirus epidemic first caused restrictions on freedom of assembly, then, with the confinement of the entire

population, restrictions on freedom of movement and personal freedom, medical freedoms, freedom of trade and industry, cultural freedoms, freedom of worship, as well as violations of the right to a fair trial. During this state of emergency, fears of lasting infringements of associative freedoms have increased as legislative texts, all of which were adopted under an accelerated procedure, and regulatory texts, which have no connection with the issue of health, were adopted, not without consequences for rights and freedoms.

A new law was tabled in parliament in June 2020 and adopted in December 2020, which aims to extend various measures to combat terrorism.²⁵ In addition, at the beginning of December 2020, decrees were issued to extend the police databases which already include almost 350,000 people.²⁶ They allow for the collection of data²⁷ of natural and now legal persons, but also “de facto” groups and their members, in case they can be a threat to public security. The files can now contain information such as lifestyle, online activities, political opinions, philosophical or religious beliefs or trade union membership. In practice,²⁸ the files could concern all persons who are checked or questioned during a demonstration.

²⁵ Loi n° 2020-1671 du 24 décembre 2020 relative à la prorogation des chapitres VI à X du titre II du livre II et de l'article L. 851-3 du code de la sécurité intérieure

²⁶ https://www.liberation.fr/france/2020/12/10/l-executif-lache-la-bride-aux-fichiers-de-renseignement-territorial_1808254/

²⁷ <https://www.laquadrature.net/2020/12/08/decrets-pasp-fichage-massif-des-militants-politiques/>; Décret n° 2020-1511 du 2 décembre 2020 modifiant les dispositions du code de la sécurité intérieure relatives au traitement de données à caractère personnel dénommé « Prévention des atteintes à la sécurité publique » ; Décret n° 2020-1512 du 2 décembre 2020 modifiant les dispositions du code de la sécurité intérieure relatives au traitement de données à caractère personnel dénommé « Gestion de l'information et prévention des atteintes à la sécurité publique » ; Décret n° 2020-1510 du 2 décembre 2020 modifiant les dispositions du code de la sécurité intérieure relatives au traitement de données à caractère personnel dénommé « Enquêtes administratives liées à la sécurité publique »

²⁸ <https://www.interieur.gouv.fr/Publications/Securite-interieure/Prevention-des-atteintes-a-la-securite-publique-traitement-des-donnees-personnelles-des-mineurs>

The law for a global security preserving liberties was adopted in May 2021.²⁹ The Constitutional Council censured some of the provisions on the dissemination of police images, surveillance by drones and helicopters, and constant video surveillance of people in police custody or in administrative detention centres. However, it validated the extension of video surveillance powers to the municipal police and to railway services, the surveillance of building halls, the real-time transmission of images from pedestrian cameras or their use for national police officers, national gendarmerie soldiers and municipal police officers.

A new law relating to the prevention of acts of terrorism and intelligence was tabled in parliament in April 2021 and adopted at the end of July 2021.³⁰ It perpetuates and adapts certain counter-terrorism measures tested since the above-mentioned SILT law of 2017. In addition, the intelligence services will have new means of control, notably on an experimental basis to intercept satellite communications, but also the technique known as the algorithm is perpetuated. This technique allows automated

²⁹ LOI n° 2021-646 du 25 mai 2021 pour une sécurité globale préservant les libertés (1)

³⁰ loi du 30 juillet 2021 relative à la prévention d'actes de terrorisme et au renseignement

BY CONSIDERING THAT THE ASSOCIATIONS' OPINIONS CONSTITUTE ACTIONS AIMED AT PROVOKING ACTS OF TERRORISM, THE GOVERNMENT HAS SHOWN THAT NO ONE IS SAFE FROM PROSECUTION

²⁴ https://lemouvementassociatif.org/wp-content/uploads/2021/06/LMA_COVID19_enquete3_resultats-detailles.pdf

processing of connection and browsing data on the Internet, thanks to the cooperation of access providers, and this algorithmic surveillance is extended to connection addresses (URLs). The text facilitates the sharing of intelligence and information between intelligence services and administrative authorities. In July 2021,³¹ the accelerated procedure for a bill on criminal responsibility and internal security has been initiated, which reintroduces the possibility of using airborne image capture devices for administrative purposes, such as drones, tethered balloons, planes and helicopters. It should be noted that, despite lack of any legal framework, drones have been used to monitor public demonstrations, migrants and lockdown.

Finally, it is worth noting that during this period, environmental participatory democracy has also declined. In April 2020, the government issued a decree to resume public enquiries into potentially environmentally damaging projects without public meetings and only by electronic consultations, on the grounds that this would delay economic recovery. This was the case for several projects contested by associations,³² such as a road widening and the expansion of the quarry that is to supply the construction site in the Allier, the future line 18 of the Grand Paris Express and the Larivot power plant in Guyana. Public participation, which is seen as a hindrance and a secondary right, suffered a further legislative setback in December 2020³³ with the law on accelerating and simplifying public action.

³¹ https://www.assemblee-nationale.fr/dyn/15/dossiers/reponsabilite_penale_securite_interieure

³² <https://reporterre.net/Le-gouvernement-profite-du-confinement-pour-imposer-des-projets-contestes>

³³ Loi du 7 décembre 2020 d'accélération et de simplification de l'action publique

"IT FOLLOWS FROM THE PRINCIPLE OF FRATERNITY THE FREEDOM TO HELP ONE ANOTHER, FOR HUMANITARIAN REASONS, WITHOUT CONSIDERATION AS TO WHETHER THE ASSISTED PERSON IS LEGALLY RESIDING OR NOT WITHIN THE FRENCH TERRITORY."

ASSOCIATIVE FREEDOM UNDER GENERAL SURVEILLANCE

In December 2020, the government initiated the accelerated procedure for the bill to strengthen respect for the principles of the Republic and to combat separatism. This text, which is intended to combat separatism and the development of radical Islamism, concerns a much broader field, since it covers practically all the public rights and freedoms guaranteed by the Constitution and the conventions: freedom of association, freedom of conscience and worship, freedom of assembly, expression, opinion and communication, freedom of the press, free administration of local authorities, freedom of education, freedom of marriage, freedom of enterprise and freedom of contract. The bill undermines many of the major republican freedoms. This is why the High Council for Associative Life,³⁴ the Defender of Rights,³⁵ the

³⁴ https://www.associations.gouv.fr/IMG/pdf/avis_du_haut_conseil_a_la_vie_associative_concernant_le_projet_de_loi_confortant_les_principes_republicains.pdf

³⁵ https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=20384

French Lawyers' Union,³⁶ the National Consultative Commission on Human Rights,³⁷ the Conference of INGOs of the Council of Europe,³⁹ and the special rapporteurs of the United Nations⁴⁰ have all underlined the serious dangers that this text poses to freedoms. The Human Rights Defender notes a general tendency to strengthen the overall control of the social order. Under the pretext of separatism, the bill impedes associative freedoms through several provisions that are binding on all associations.

It creates a new criminal offence punishing threats, violence or any act of intimidation against public service employees with the aim of evading the rules governing the operation of a public service. This offence may be applied to actions of civil disobedience as they are conscious and intentional public and collective infringements of a legal norm, normally using peaceful means.

The law creates a new offence of endangering the life of others by disseminating information relating in particular to the professional life of a person, making it possible to identify or locate him or her, with the aim of exposing him or her or the members of his or her family to a direct risk of harm to life, physical or psychological integrity, or to property, the penalties for which are increased when the person in question is a representative of public authority or entrusted with a public service mission. It cannot be ruled out that criminal law may be misused to suppress certain demonstrations or to cover up certain police operations. The vagueness of the definition of this offence provides a possibility for police forces to

³⁶ <http://lesaf.org/le-syndicat-des-avocats-de-france-passe-au-crible-le-projet-de-loi-confortant-le-respect-des-principes-de-la-republique/>

³⁷ https://www.cncdh.fr/sites/default/files/a_-2021_1_-pjl_principes_de_la_republique_janv_2021.pdf

³⁸ 2nd avis sur le projet de loi confortant les principes de la république (cncdh.fr)

³⁹ <https://rm.coe.int/avis-sur-le-projet-de-loi-confortant-le-respect-des-principes-de-la-re/1680a1f44b>

⁴⁰ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26047>

arrest and place people in police custody without the need of justification.⁴¹ Journalists and independent observers who document policing practices are at risk. The text extends the possibilities for dissolution of associations by decree of the President of the Republic. It modifies the law that allows the dissolution of associations that provoke armed demonstrations in the street, a measure of democratic protection, by allowing the dissolution of associations for violent acts against persons or property, thus becoming a measure for maintaining public order. There is a reversal in the philosophy of presidential power. For damage or deterioration of property or violence that may consist of an emotional shock, the President of the Republic could now decide to dissolve any association. In March 2021, Greenpeace activists painted a plane green to denounce the weakness of measures taken to reduce air traffic. The associations are being prosecuted for damage to other people's property committed in a gathering. In July 2021, several Attac activists sprayed black paint on the windows of the Samaritaine to denounce the big fortunes that have become rich during the crisis. On the same day, a newspaper launched a poll "Should Attac be dissolved?"⁴² The President of the Republic now has the power to dissolve these two associations. Furthermore, the current legal framework allows for the dissolution of associations that either provoke discrimination, hatred or violence, or propagate ideas or theories that tend to justify or encourage such discrimination, hatred or violence, or that engage in actions to provoke acts of terrorism. In December 2020⁴³ the Government dissolved the association

Collectif contre l'islamophobie en France because it had described as Islamophobic measures taken with the aim of preventing terrorist actions and preventing or combating acts punishable by law. By considering that the association's opinions constitute actions aimed at provoking acts of terrorism, the government has shown that no one is safe from prosecution. By extending the possibility of dissolution to associations whose actions contribute to discrimination, hatred or violence, this wording clearly distorts the required causal link between the association's behaviour and the infringement of the protected public interest, without it being determined which opens the way to a risk of random

ALL THESE
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DETERIORATION OF
THE RULE OF LAW

application.

Finally, the law makes associations liable for actions of their members when the leadership is aware of them and refrained from stopping them, thus investing them with a "policing" mission, a role which by nature is not devolve upon them. The association's leadership must anticipate the effects of these acts on the social climate, which refers to a very broad spectrum of behaviour. The association leadership must therefore engage in prediction, since the text does not limit dissolutions to the hypotheses of tacit acceptance of violence, discrimination or hate speech. Thus, for associations in France such as the French Red Cross, which has more than 65,450 volunteers and 16,703 employees or the

Restos du cœur, which has 75,000 volunteers, the burden of control on the part of the association's leader is impossible to bear, and the risk of possible dissolution is permanent.

As if civil society were by nature separatist, the authorities are imposing new constraints on all associations, controlling their lives, their actions and their finances, and subjecting them to the risk of arbitrary and permanent sanctions and dissolution.

CRIMINALISATION OF SOLIDARITY

Another front that should be assessed in relation to civic space in France is the repression of activities assisting migrants. Many legal proceedings for facilitating illegal immigration have been opened against individuals or associations helping migrants and unaccompanied minors at risk in the Roya Valley located on the French side of the border with Italy. This offence is commonly referred to as "solidarity offence". Article L622-1 of the Code de l'Entrée et du séjour des étrangers et du Droit d'Asile states that (with some exceptions) "*any person who has, by direct or indirect action, facilitated or attempted to facilitate the illegal entry, movement, or residence of a foreign national in France is liable to five years' imprisonment and a 30,000 euro fine.*"

After several convictions, in 2018 the French Constitutional Council, which is in charge of ensuring that the law complies with the constitution, has overturned several of these prosecutions by constitutionalising the principle of fraternity. In the words of this decision from 6 July 2018, "*it follows from the principle of fraternity the freedom to help one another, for humanitarian reasons, without consideration as to whether the assisted person is legally residing or not within the French territory.*" It thus considered that the absence of an exemption from the offence of aiding illegal residence on humanitarian grounds was not constitutional. However, aiding

⁴¹ Contributions extérieures – Décision n° 2021-823 DC du 13 août 2021, [Loi confortant le respect des principes de la République] (conseil-constitutionnel.fr)

⁴² <https://www.lefigaro.fr/choix-redaction/la-selection-figaro-live-les-videos-qu-il-ne-fallait-pas-rater-20210705>

⁴³ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042602019>

illegal entry into the territory remains criminally punishable. The legislator had to take into account this decision of the Constitutional Council and included an exemption for any act that did not give rise to “*any direct or indirect compensation*” and was carried out “*for an exclusively humanitarian purpose*” in the law in 2018. It extended the already existing exemptions to aiding residence and movement but did not extend it to aiding entry into the territory. Cédric Hérou, an activist from the Roya valley who helped the migrants he was sheltering in his farm next to the border to enter the country, was thus prosecuted, leading to numerous court cases. After a conviction, appeal, and cassation, Cédric Hérou’s trial was referred to the Lyon Court of Appeal, which acquitted him of the facts on 13 May 2020. However, the public prosecutor lodged a new appeal before the Court of Cassation, which rejected the appeal on 31 March 2021, thus ending all legal proceedings against him.

Despite the new jurisprudence, the French prosecutor’s office continued to have a restrictive reading of the humanitarian exemption. Seven people were prosecuted for taking part in a demonstration in reaction to an anti-migrant action by the now disbanded far-right group Génération identitaire. During this demonstration, around 200 people had crossed the Alpine border from Italy into France in the presence of migrants. The “7 from Briançon” were prosecuted for allegedly helping the migrants to enter on that occasion. In December 2018, the criminal court of Gap had thus sentenced them in first instance, some of them to prison sentences. They were finally acquitted on appeal on 9 September 2021. Thus, despite the decision of the Constitutional Council to enshrine the principle of fraternity, the public prosecutor and certain courts continue to adopt a hostile attitude towards human rights activists, and only the interventions of

the highest jurisdictional authorities have made it possible to put an end to these proceedings.

OBSTRUCTION OF SOLIDARITY

In addition to the criminalisation of solidarity, French institutions hinder solidarity and information on human rights violations provided by activists and observers. In Calais, where migrants are present in large numbers in the hope of crossing the sea to England, public authorities have taken measures to ban the distribution of meals. The mayor banned

**ASSOCIATIONS CONTINUE
TO CHALLENGE THEM
IN COURT SOMETIMES
OBTAINING SUBSTANTIAL
VICTORIES**

all gatherings in a large area, a measure that targets migrants as part, according to the mayor of “a marketing and tourism strategy aimed at improving the image of our city”. He had also banned the distribution of meals in 2017 before courts overturned his decision. Associations also have difficulties in helping the exiles and denounced in 2019 the same ill-treatment. They denounce inhuman and degrading treatment. The associations denounce the numerous police abuses and harassment of migrants. Journalists, for their part, are hindered to report on the dismantling of camps, particularly in Grande Synthe and Calais. The Council of state found that the obstruction was not disproportionate. However, the National Consultative Commission on Human Rights (CNCDH) recommended that no outside view of citizens or journalists should be obstructed during the evacuation of camps. These attacks on solidarity

and information actions are often less serious than the human rights violations suffered by the exiles themselves, but they contribute to preventing them from being denounced and to making them worse.

CONCLUSION

All these developments are taking place in the context of a general deterioration of the rule of law. We are witnessing the regression of standards and the development of mass surveillance tools without any real control mechanisms or accepted counter-powers. Nevertheless, associations continue to challenge them in court sometimes obtaining substantial victories. ■

Observatoires des pratiques policières is a network of local observatories to bear witness to the experience of demonstrators across France. These observatories play a fundamental role in the defence of freedom of peaceful assembly, documenting and denouncing repressive police practices and policies. Their important victory gained official recognition of the role that human rights observers play, like journalists, at protests, and the outlawing of heavy-handed police practices in the police rulebook provisions used in the context of protests via a State Council ruling.

HUMAN RIGHTS OBSERVERS ARE ESSENTIAL DURING PROTESTS

A victory against violent police practices

Interview with Nathalie Tehio, lawyer and member of Observatoire parisien des libertés publiques

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Why were the observatories of police practices created?

In past few years, social movements that took to the streets their concern and protested have been met with suspicion, discontent, and violence from the authorities. The major trade union demonstrations in 2016 against the El Khomri law (labour law) clearly showed the change in the way police and gendarmerie forces carry interventions in the context of public demonstrations. Notably, we saw an increase in the number of demonstrators questioned by police officers during the demonstrations.

In November 2018, the right to protest was challenged more than ever by the disproportionate police violence against the “Yellow Vests” movement. The “crossroads” rallies and especially the Saturday demonstrations were subject



to brutal police interventions, with repression rapidly becoming repetitive and regularly disproportionate. The violent acts of some demonstrators were used to justify widespread deterrent measures. The number of serious injuries reached levels not seen in France for decades. By carrying out arrests for minor offences and preventing people from joining the demonstrations because they were wearing their bicycle or motorbike helmets, decision makers and police forces discouraged people from exercising their right to protest. In 2019, hiding one's face in a public space became a punishable offence in France. In certain cases, police forces prevented people wearing headscarves from entering a demonstration venue as they argued the garment could be used to hide the face. Additionally, the police have been given broad power. For example, in

the case of the offence of concealing of one's face during a demonstration, this is a preventive offence¹ for which the police have a wide margin of appreciation in

¹ If violence or damage is committed with the face covered, it is an aggravating circumstance of these offences, violence with the face concealed...Here, it

THESE POLICE OFFICERS WERE OFTEN MEMBERS OF TEAMS BASED IN WORKING-CLASS NEIGHBOURHOODS KNOWN FOR THEIR FREQUENT USE OF FORCE, OFTEN DISPROPORTIONATE AND SOMETIMES RACIST

DEMONSTRATIONS SEEM TO BE SEEN AS A CONFRONTATION WITH THOSE IN POWER RATHER THAN CONSUBSTANTIAL TO DEMOCRACY

choosing if the action will amount to a contravention. The accused will be able to justify themselves eventually, but they would have already been prevented from demonstrating and would have been registered in the police database and taken into custody. Thus, creating an impactful deterrent.

As a consequence of these actions there was an increase of tensions among the demonstrators. In addition to the multiplication of police deterrent actions, several factors accentuated the intensity of the violence exercised by police forces. First, police forces that were not trained to intervene in the context of demonstration were called in support as a result of a policy that decreased the number of trained officers. These police officers were often members of teams based in working-class neighbourhoods² known for their frequent use of force, often disproportionate and sometimes racist. These teams implement a doctrine of engagement opposed to the de-escalation techniques normally used in demonstrations

is an autonomous offence, punishable by one year's imprisonment, "except for legitimate reasons".

² The BAC (brigades anti-criminalité), CSI (compagnies de sécurisation et d'intervention) and other police officers not specifically trained in maintaining order (e.g. in Paris, CI - compagnies d'intervention - and Brav-M - brigades de répression de l'action violente, motorised; elsewhere, CDI, compagnies départementales d'intervention) are the ones who cause the most serious injuries, and who needlessly increase tension. Observers saw these police officers put themselves in danger during arrests in the middle of demonstrators, forcing the companies dedicated to maintaining order to come and "recover" them, at the cost of using force.

which leads to the deplorable use of force mentioned above. Second, from 2018 in Paris, new intervention brigades travelling on motorbikes were hired. It resulted in increased violence, which was arguably encouraged by a certain degree of anonymity provided by the helmets and the absence of a visible identification number for police officers. Finally, the use of weapons of war, defensive ball launchers (LBDs), has had deleterious effects, since it permitted and encouraged their use, with insufficient or even non-existent supervision.

This violence shows that we are dealing with a systemic problem that questions the doctrine of engagement of the police forces, their training, and the conception that authorities have of demonstrations in a democracy. Demonstrations seem to be seen as a confrontation with those in power rather than consubstantial to democracy. The fact that the police contributes to ensuring the conditions for demonstrations that challenge a government's policy is an indicator of the quality of democracy. In recent years, we have seen, the systematisation of police interventions based on a 'preventive' approach to repression. This doctrine of preventive policing has fuelled tensions ultimately used by political authorities to discredit the demands made and to criminalise demonstrators via preventive offences.

THIS DOCTRINE OF PREVENTIVE POLICING HAS FUELLED TENSIONS ULTIMATELY USED BY POLITICAL AUTHORITIES TO DISCREDIT THE DEMANDS MADE

How did the first observatories appear? What missions did they set themselves?

We noticed that during large demonstrations, a significant part of government communication relied on highlighting clashes involving some demonstrators and denying the unnecessary or disproportionate nature of violence by police personnel. This led civil society organisations to fill the need to observe policing during demonstrations in order to report objectively and to document them accurately.

The creation of an observatory has generally taken the form of inter-association and trade union groups with members of the Ligue des droits de l'Homme and the Syndicat des avocats de France, but also, depending on the city, other national or local partners (Nantes, Bordeaux, Toulouse, Montpellier, Nice, Rennes, Seine-Saint-Denis, etc.).

These images help to counter the justification regularly put forward by authorities of a context that would explain police violence. They also help victims of violence to prove their side of the story in face of police statements. For example, observatories transmitted videos to the media showing the targeting of journalists by a police commissioner, or the unregulated firing of grenades resulting in mutilations.³ The observatories were able to report on police practices during demonstrations in general. This was done through reports that put specific facts into a global analysis framework. The Nantes and Montpellier observatories reported more specifically on police behaviour criminalising the activity of demonstrators arrested under false pretences.⁴

³ Arthur Carpentier - investigation by Le Monde - <https://www.bing.com/videos/search?q=le+monde+vid%C3%A9o+commis-saire&docid=608018256571597709&mid=oF-C2583BFB475C9C909EoFC2583BFB475C-9C909E&view=detail&FORM=VIRE>

⁴ Nantes Observatory: "Exercise of policing in Nantes and respect for rights", report of May 2019; Montpellier: Report on the judicial repression of the yellow waistcoat movement, hearings of the



Finally, the observatories produced guides or legal tools to enable demonstrators to take ownership of their rights and defend themselves in the event of an arrest for instance.⁵

Can you show us the ‘back and forth’ between the kind of police behaviour that challenges the freedom to demonstrate and developments in legislation or in the political climate that in turn have a worrying influence on police practices?

One of the phenomena that explains these legal challenges to the freedom to demonstrate is the instrumentalisation of laws to validate illegal practices.

I will start with the misuse of anti-terrorism legislation to check bags around demonstrations, prior to the provisions introduced in the April 2019 Act. This law legalised the control of bags through requisitions issued by the Procureur de la République. Even though the

Constitutional Council had specified that it was not possible to act in the field on the basis of weapons by destination (an object only becoming a weapon after use), we have seen all sorts of objects (helmets, masks, sometimes scarves, physiological serum, etc.) being confiscated and arrests made in the name of prevention.⁶ The directives issued jointly by the Ministries of Interior and Justice illustrate the instrumentalisation of justice in the service of an expansive conception of policing.⁷

Another misuse concerns the offense of “assembling”. An assemble in that sense

⁶ CC n°94-352 DC 18 janvier 1995, *Loi d’orientation et de programmation relative à la sécurité*, §18

⁷ Exemples : circulaires du ministre de l’intérieur du 21 avril 2021 INTJ2111626J et du ministre de la justice du 22 avril 2021, JUSD2112858C

**CIVIL SOCIETY
ORGANISATIONS FELT
THE NEED TO OBSERVE
POLICING DURING
DEMONSTRATIONS
IN ORDER TO REPORT
OBJECTIVELY**

correctional court from 29 December 2018 to 18 March 2019 and second report, from 23 March 2019 to 29 October 2019

⁵ “Points droit”: Filming police officers and gendarmes; Wearing of personnel numbers by police officers and gendarmes; Removal of badges, acronyms and banners at the end of a demonstration; Interpellation of a person with a helmet before a demonstration; Demonstrator’s guide

is constituted by any gathering of people that may disturb public order.⁸ After two warnings issued by police forces such assemblies must disperse or individuals could face prosecution. The Court of Cassation specified that the offense of “assembling” is a political offence which would normally preclude its prosecution through a procedure of immediate appearance (an expeditious trial procedure).⁹ Despite this fact, the law of April 2019 made it possible to prosecute “assembling” through an immediate appearance procedure. Additionally, the same law created a new offence of concealing one’s face during a demonstration, which was the ground for several preventive arrests and police custody.

Instrumentalisation of laws encourages the police to multiply unauthorised behaviour with the expectation that these behaviours will be validated afterwards. It results in courts displaying more leniency during a trial including by taking into account in their interpretation of the texts the legalisation of police abuses by successive laws or ministerial instructions.

Another point is that the practices of police forces evolved towards a more confrontational approach. The encirclement and entrapment techniques have become ordinary police practices. The use of violence against peaceful demonstrators under the pretext of the absence of prior declaration has often been observed, whereas the European Court of Human Rights gives precedence in this case to the freedom of peaceful assembly.¹⁰ There were untimely summonses (orders to disperse), which were issued outside the

⁸ Article 431-2 Criminal Code: https://www.legifrance.gouv.fr/codes/article_lc/LEGIART1000025543347

⁹ Highest judicial jurisdiction. Crim. 28 mars 2017, n° 15-84.940, au Bull. crim. n°82. Participation to a mob: article 431-4 du code pénal. The procedure of immediate appearance cannot be chosen for a political offense.

¹⁰ https://echr.coe.int/Documents/Guide_Art_11_FRA.pdf



situation that could legally justify them.¹¹ Police officers or gendarmes confirmed to observers, off the record, that they had been ordered to shock demonstrators. We have seen demonstrations resulting in major damage that took place in front of police officers who did not intervene at the time, but brutally attack later when the perpetrators of the damage had already left. It was as if there had to be two images: violent demonstrators (giving

¹¹ See the report of the Parisian of the observatory of public freedoms: report towards the ombudsman on the demonstration of the 28 June 2019 on the Sully bridge

**THE OBSERVATORIES
PRODUCED GUIDES
OR LEGAL TOOLS
TO ENABLE
DEMONSTRATORS TO
TAKE OWNERSHIP OF
THEIR RIGHTS AND
DEFEND THEMSELVES**

them time to develop their rampage) and police officers in action.

The impunity of police officers who commit violence is encouraged: the absence of an individual number,¹² is accepted by the hierarchy and accepted by the political authorities. Observers were able to document this non-compliance with the legislation.¹³ The wearing of a balaclava by police officers, allowing them to hide their faces, was also tolerated.

Additionally, not all demonstrations are treated in the same way: the presence in number of major media outlets or the absence of a stake for the government goes hand in hand with greater freedom in the conduct of the demonstration. It is noticeable that many high school student gatherings are dispersed immediately and violently, without necessity, as if young people had to be educated not to protest.¹⁴

¹² RIO : référentiel des identités et des origines. Voir le « Point droit » de l'Observatoire parisien pour les références textuelles.

¹³ Despite a recent ministerial instruction called « Schéma national du maintien de l'ordre », on 16 September 2020. See notes of the Parisian Observatory and the Toulouse Observatory.

¹⁴ The Human Rights Defender has taken up the issue of violence committed against high school students at the Lycée Colbert in Paris (10ème), for

There is also a tendency to lead public opinion to consider that protest demonstrations are intolerable disturbances of public order and justify the violent intervention of the police

The government seeks to control information gathered by journalists or independent observers but also images of police violence filmed by demonstrators. It demonstrated this by passing the Global Security law through an accelerated procedure.¹⁵ The Senate finally eliminated the provision allowing the use of images filmed by police officers for information purposes: the police would have given the press pre-formatted images. Then the Constitutional Council censured an article aiming to give the police the power to prevent the filming of law enforcement officers.¹⁶

The government also strengthened the surveillance of demonstrators: through drones and social media.¹⁷ A police state

example. The example of the “class that behaves itself” in Mantes-la-Jolie in 2018 is illustrative of this drift: the high school students were forced to kneel on their knees, hands on their heads, for several hours, while the police officer filming them made this comment.

¹⁵ See the open letter inter-observatories to members of parliament against the Global security law reminding that “police is a public force, the public character is the safeguard of the people” Analysis in the report of the Toulouse observatory on police practices « 4 ans après ».

¹⁶ CC 20 mai 2021, n°2021-817 DC, Loi pour une sécurité globale préservant les libertés. Sur l'article « 24 » de la proposition de loi, devenu 52, voir §158s.

¹⁷ The draft law on criminal responsibility and national security uses the text censored by the constitutional court: https://www.assemblee-nationale.fr/dyn/15/textes/l15b4387_projet-loi ; Décrets du 2 décembre 2020, n° 2020-1511 (PASP) ; n°2020-1512

**THESE LEGAL
CHALLENGES TO
THE FREEDOM TO
DEMONSTRATE IS THE
INSTRUMENTALISATION
OF LAWS TO VALIDATE
ILLEGAL PRACTICES**

is thus emerging, with increased surveillance, particularly digital, especially as the Council of State has refused to give full effect to the CJEU's decision on the ban on mass digital surveillance.¹⁸

Faced with these developments, the Paris Observatory submitted for discussion a key interpretation based on the theory of the "criminal law of the enemy": the authorities would consider that they were facing an internal enemy, which would make acceptable a de facto derogation from the ordinary rules and guarantees, and ultimately the multiplication of exceptional practices.¹⁹

Have observers in the field experienced repression by the police? In what forms?

Police officers have deliberately hit observers or thrown grenades in their direction.²⁰ Complaints or referrals to the Human Rights Defender have been made. A female observer in Montpellier was also prosecuted, accused of "obstructing traffic" and of several offences related to her observation practice. Her role as an observer, making her a non-participant in the demonstration, was however perfectly identifiable. She was acquitted, but these prosecutions constitute real obstacles to the mission of citizen observers.²¹

(GIPASP) ; n°2020-1510 (Enquêtes administratives, EADS)

¹⁸ CE Ass. 21 avril 2021, n°393099, Rec. Lebon

¹⁹ See part 4 of the report on the kettling and other technical encirclement written by the Parisian observatory of public freedoms: "kettling is police technic that highlighted a vision of demonstrators as enemies"

²⁰ See the article in the Revue des droits de l'Homme by Anna Hertkorn et Alexandre Richard (members of the Parisian observatory) and the cited references: «Garantir la protection des observateurs indépendants et l'accomplissement de leurs missions», Actualités Droits et libertés, 26 avril 2021, §33s. Since the publishing of this article : https://actu.fr/occitanie/toulouse_31555/toulouse-un-observatoire-denonce-une-violence-unilaterale-des-forces-de-l-ordre-contre-les-manifestants_41468612.html and the rapport d'observation on the Paris demonstration of the 1st of may p.17s and the video: <https://twitter.com/ObsParisien/status/1389127074372362244>

²¹ See the analysis of Amnesty international regarding international law <https://www.amnesty.fr/personnes/camille-halut>

Obtaining full recognition of the legitimacy of the role of observation and being able to exercise it fully in the field is essential. This is why the Observatories have worked to ensure that international texts (UN / OSCE and Venice Commission) and the case law of the European Court of Human Rights concerning citizen observers are respected. The French Human Rights Defender has asked that they be considered in the field as journalists. The National Consultative Commission on Human Rights took up this recommendation in an opinion and a parliamentary commission of enquiry also noted it.²²

Finally, following an appeal by a member of the Paris Observatory, the Council of State annulled provisions that hindered the action of citizen observers by recognising their role.²³ This is a step forward and a potentially useful precedent for

²² Cf the previously cited article in the Revue des droits de l'Homme

²³ Article in the Revue des droits de l'Homme by Bérénice Checchi et Nassim Harket (members of the parisian observatory): «Schéma national du maintien de l'ordre : la sanction provisoire d'une doctrine ambiguë et imprécise. Retour sur la décision du Conseil d'Etat du 10 juin 2021», Actualités Droits et libertés, 5 juillet 2021. And : <https://www.facebook.com/obsparisien/> (11 juin)

THERE IS ALSO A TENDENCY TO LEAD PUBLIC OPINION TO CONSIDER THAT PROTEST DEMONSTRATIONS ARE INTOLERABLE DISTURBANCES OF PUBLIC ORDER AND JUSTIFY THE VIOLENT INTERVENTION OF THE POLICE

A POLICE STATE IS THUS EMERGING, WITH INCREASED SURVEILLANCE, PARTICULARLY DIGITAL, ESPECIALLY AS THE COUNCIL OF STATE HAS REFUSED TO GIVE FULL EFFECT TO THE CJEU'S DECISION ON THE BAN ON MASS DIGITAL SURVEILLANCE

other European countries that may be affected in the future.

Can you explain the referral to the Council of State against the doctrine of police engagement at demonstrations, its consequences and how were the observatories involved?

The referral to the Council of State was made by the Ligue des Droits de l'Homme, the National Union of Journalists, as well as by a member of the Parisian Observatory of Public Liberties, the French Lawyers' Union, the Magistrates' Union, the Association of Christians for the Abolition of Torture (ACAT) and the Union syndicale Solidaires, the General Confederation of Labour (CGT) and the National Union of Journalists CGT.

The referral concerned not only the protection of observers but also of journalists, particularly with regard to the possibility of wearing protective equipment, of remaining after a dispersal order and of positioning themselves freely for observation, subject only to the constraint that they should not directly interfere with the police. The Council of State

THE COUNCIL OF STATE ANNULLED PROVISIONS THAT HINDERED THE ACTION OF CITIZEN OBSERVERS BY RECOGNISING THEIR ROLE

annulled the contested provisions on the basis of these points.²⁴

The Council of State also prohibited the practice of the authorities to decide in a discretionary way which journalist would get accreditation to obtain privileged information. This is a welcome decision that no longer leaves the executive in control of restricting freedom of information, however, it validated the requirement of a press card to be a recipient of such information.

In addition, the appeal was lodged against the encirclements' techniques, based on the report produced by the Parisian Observatory of Public Liberties.²⁵ This report showed that this technique infringes on several freedoms, in particular the freedom of movement and the freedom to demonstrate. Crucially, it showed how this technique is contrary to the collective expression of opinions.²⁶ The

²⁴ CE 10 juin 2021, n°444849 et autres

²⁵ Report: "Controlling, repressing, intimidating: nasses and other police encirclement devices during Parisian demonstrations – spring 2019, autumn 2020". Part 1: Typology. Part 2: "The political dimension of encirclement practices: is the demonstration still possible when the police encircle the procession? Fabien Jobard, sociologist, and the magazine Savoir/agir, kindly authorised the Paris Observatory to reproduce an article comparing the French practice of the nasse with that of Germany, with an unambiguous conclusion: "This cross evolution of the political socialisation of police officers and the morphology of social movements make demonstrations in Germany a respected moment of collective expression, a world away from the fear that the very idea of going out to beat the cobblestones inspires in an increasing number of French people today.

²⁶ See the above-mentioned report on kitting and technical encirclement

Conseil of State did not prohibit the use of encirclement but set out criteria to ensure that it did not run counter to the freedom to demonstrate. The Council of State also laid down criteria that apply to non-hermetic enclosures. The European Court of Human Rights has admitted the use of the encirclement only three conditions: that it is the only means of preventing serious violence; that the aim is not to hinder freedom of demonstration; and that an exit door is left as soon as possible. These three conditions are not met by the engagement doctrine implemented in France.²⁷

What other legislative developments, political actions or legal decisions are needed to ensure the protection of freedom of demonstration at national and European level?

The development of "obstructionist" (or "preventive") offences that hinder the exercise of the freedom to demonstrate must be prevented. In particular the decisions taken prior to any demonstration

²⁷ See the article in the Revue des droits de l'Homme de Capucine Blouet, Nassim Harket, Sarah Hunet-Ciclaire, Vincent Louis, Alexandre Richard et Nathalie Tehio (members of the Parisian observatory) : « La pratique de la nasse au regard du droit européen des droits de l'Homme », Actualités Droits et Libertés 24 mai 2021.

THERE SHOULD BE A BAN ON THE USE OF SO-CALLED "NON-LETHAL" WEAPONS IN DEMONSTRATIONS, SUCH AS LBDs, OFFENSIVE GRENADES AND EVEN DISENCRYPTION GRENADES



such as arbitrary placement in police custody.²⁸ For example, the offence of planning to participate voluntarily in a group formed with a view to committing violence or damage.²⁹

Additionally, the notion of "gathering" should be precisely defined, in a way that protects freedom to demonstrate, so it does not allow the police and gendarmes to arbitrarily decide when to disperse, including by using force.

The prefect's power to authorise the route of a demonstration must also be redefined. Indeed, the threat of a demonstration ban order is gradually transforming the declaration system into a request for authorisation. The prefect must be required to give his answer within a period of time that allow an appeal to be made. There should be a ban on the use of so-called "non-lethal" weapons in demonstrations, such as LBDs, offensive grenades and even disencryption grenades. These weapons cause mutilation because the conditions in which they should be used are incompatible with the demonstrations' settings. The use of tear gas should be strictly regulated.³⁰

²⁸ Expression of professeur Olivier CAHN : « Construction d'un maintien de l'ordre (il) légaliste », Revue de sciences criminelles, 2020.1069. The expression means that these offences were created more to enable the police to arrest people than to actually punish offenders.

²⁹ Article 222-14-2 of the criminal code. See part 4 of the above-mentioned report on demonstrators-enemies, p.10

³⁰ See the report of the Association toxicologie-chimie (ATC) by Alexander Samuel and André Picot in June 2020 on the long-term harmful effects

Certain arrest techniques must be totally banned: the belly-hold or the chokehold, in particular.

Police training must be reinforced, both in terms of techniques learned and applicable law. Only specially trained police officers should be allowed to intervene in demonstrations.³¹ Assuming that the Austin judgment of the European Court of Human Rights on the closed-circuit system is not reformed, compliance with the conditions laid down must at least be taught and imposed.³²

**INSTRUMENTALISATION
OF LAWS ENCOURAGES
THE POLICE TO MULTIPLY
UNAUTHORISED
BEHAVIOUR WITH THE
EXPECTATION THAT
THESE BEHAVIOURS
WILL BE VALIDATED
AFTERWARDS**

The identification of police officers, in particular by the legible wearing of their personnel number in readable print must be imposed.

of CS tear gas. Dispersion is often accompanied by a gas cloud, even without violence from the demonstrators (see for example the observation note of the demonstration of 17 November 2020 in Paris and the use of gas against a line of demonstrators wanting to leave the demonstration).

³¹ BAC, CSI, CDI, CI, and Brav-M (see note 2).

The technique of “de-escalation”, which requires flexibility, communication with demonstrators and a certain tolerance towards minor damage, is ignored and if the national policing plan creates “ELI” (liaison and information teams), it does not change the doctrine of interpellation by cutting off the procession violently if necessary, thus endangering the police officers dedicated to this function. In Toulouse or Paris, they do not yet seem to operate.

³² Analysis of French law in the light of this judgment in the above-mentioned article in the *Revue des droits de l’Homme*, note 36.

Finally, investigations should be carried out by an independent body, not by an authority under the Ministry of the Interior made of police officers. The current police inspectorate has discredited itself with biased investigations into police violence.³³ For instance, the recordings of surveillance cameras in public spaces are almost never seized in time to be able to view the images after a demonstration;³⁴ the weapons used are not always seized, which makes it impossible to demonstrate the involvement of a particular weapon, and thus to find the author of the shooting.³⁵ The lack of independence of the police inspection service means that it must be abolished in any case, in favour of other types of control.³⁶

In the reflection of the observatories, do you think that the European Union could play a positive role on issues related to the freedom of demonstration?

It would be good if the European Union could produce, perhaps with the support of the Fundamental Rights Agency, a practice guide for the respect of the right to demonstrate. The annual monitoring

³³ For example, see the case of the death of Steve Maia Caniço in Nantes: the IGPN (national police inspectorate) claimed that his drowning in the Loire had no connection with the police operation to disperse participants in a concert on the evening of the Fête de la Musique. The examining magistrate entrusted the investigations to other police officers who, by using the victim’s telephone, showed that the operation and the fact that he had fallen into the water, like a number of other people, were pushed into the Loire at night and that there were no protective barriers.

³⁴ The recordings are only kept for 30 days, but the lawyers are experiencing the impossibility of obtaining them despite complaints to the IGPN.

³⁵ See the case of the death of Zineb Redouane, hit by a MP7 tear gas grenade with a 100 metre delay propulsion device (DPR100), while she was closing her windows on the 4th floor of a building in Marseille located 30 metres from the shooter. Five cougar lances were used but the CRS commander refused to hand them over to investigators. Independent journalists conducted a counter-investigation: <https://disclose.ngo/fr/article/mort-de-zineb-redouane-les-preuves-dune-bavure>

³⁶ For example, Senator Sophie Taillé-Polian proposed giving this power of investigation to the deontologist of the Defender of Rights: <http://www.senat.fr/leg/exposes-des-motifs/pp120-184-expose.html>

**INVESTIGATIONS SHOULD
BE CARRIED OUT BY AN
INDEPENDENT BODY,
NOT BY AN AUTHORITY
UNDER THE MINISTRY
OF THE INTERIOR**

exercise on the rule of law should have a broad approach which implies including the observation of police violence (unnecessary or disproportionate use of force) and making judgements on its illegitimacy. The use of weapons, whether in demonstrations or during security operations on the territory, should also be subject to analysis, comparison and judgement. Weapons such as LBDs and grenades should be banned. States should be required to explain the circumstances that led to the serious injury or death of people and prove that an independent investigation was carried out.³⁷

France should be pressured to participate in the EU-supported Godiac research programme to find new ways of calming relations between demonstrators and police during political demonstrations.³⁸ The EU’s contributions should be based on existing human rights standards set by the UN, OSCE and the Venice Commission. ■

The interview was carried out 2 September 2021. Read the full interview on Civic Space Watch: <https://civicspacewatch.eu/human-rights-observers-are-essential-during-protests/>

³⁷ In France, the lack of transparency regarding serious injuries, mutilations or deaths during demonstrations led the journalist David Dufresne (grand prize at the 2019 International Journalism Awards) to create a website to document them: <http://www.davduf.net/alloplacebeauvau>

³⁸ Good practice for dialogue and communication as strategic principles for policing political manifestations in Europe: <https://bulletin.cepo.europa.eu/index.php/bulletin/article/view/48>

HUNGARY

Over the last decade, the right-wing alliance of Fidesz and Christian Democratic People's Party (KDNP) has taken advantage of its parliamentary majority to consolidate political control over the judiciary, media, cultural and education institutions. At the same time, it weakened all critical voices, including local authorities, civic organisations and independent media through restrictive legislation, cuts of funding and aggressive rhetoric. The strategy of the government relies on using the fear of sanctions against critical voices and challenging the access to funding of critical civic organisations, while organisations aligned with the Government receive strong support from public organisations and companies close to the ruling Party. As a result of these political pressures and historical structural weaknesses, Hungarian civil society's capacities and sustainability is ranked lowest for several years in a row in the CSO Sustainability index, especially in the field of advocacy and financial viability. The COVID-19 pandemic further deteriorated CSOs' capacities as a consequence of the loss of income and increased powers of the public authorities. In the run-up to the 2022 elections, the Government has stated targeting of the LGBTI+ community, including through a constitutional amendment in November 2020. Nevertheless, civil society is stepping up its cooperation to multiply its voice, with some positive developments in the political and public sphere.

LGBTI+ RIGHTS UNDER PRESSURE AHEAD OF THE ELECTIONS

Positive signs on the public image of civil society emerge

By Veronika Móra, director, Ökotárs

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Since 2010, Hungary has been ruled by Viktor Orbán and the right-conservative Fidesz party, holding a two-thirds (constitutional) majority in Parliament. The party won two consecutive elections in 2014 and 2018 against a fragmented and weak opposition. This position enabled the Government to reshape the legal and institutional landscape of the country fundamentally: it eliminated most democratic checks and balances primarily by filling the institutions (such as the Constitutional Court, the media authority, the public prosecutor, the State Audit Body) with party functionaries, concentrated large parts of the economy (e.g. construction, energy production, tourism, media) in the hands of a few loyal oligarchs, and generally weakened the rule of law on a systematic level. All this made the Hungarian Government an infamous “pioneer” in the European Union, and of course

affected civil society and civic space, too, as independent civil society organisations (CSOs) have been among the last to stand up against and criticize certain detrimental governmental policies, together with the remaining independent media. In 2020, the Government utilised (or abused) the Covid-19 pandemic to advance its political goals instead of efficiently fighting against the virus. Under the guise of the emergency, a number of decrees and other measures were introduced which were not related with the health crisis, but rather further consolidated the power of Fidesz. Such measures included decisions about new, large-scale infrastructure projects from public funding awarded to friendly oligarchs in dubious procurement processes, declaring other projects as being of “national importance” with the consequence of fast-tracking their approval without any public participation and providing sizeable public funding support

to friendly sports and church organisations. At the same time, the health and education system remained seriously underfunded, while smaller businesses received little support.

THE RULE OF LAW, POLITICAL LANDSCAPE AND SAFE SPACE

The year 2021 in Hungary was dominated by two phenomena: the global coronavirus pandemic and the upcoming parliamentary elections.

Even before the second wave of the pandemic could die down, the third wave hit Hungary very heavily in mid-February. After some delay and hesitation, the Government reintroduced restrictions in early March 2021, including compulsory mask-wearing in open-air spaces, the closing of most non-essential shops, and online schooling in public education. While vaccination progressed well – with roughly 60% of the population being inoculated by the end of summer,

the number of infections only started to decrease significantly towards the end of May. By that time, the total death toll reached 30,000, the worst number in



THE AUTHOR

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Europe proportional to population. The underfunded and overburdened health system was unable to deal with the wave appropriately, while the Government did little to improve the situation in the hospitals. At the same time, people who suffered the social consequences of the pandemic, such as unemployment, continued to receive only limited or no support, just like during the first waves. Many CSOs continued to play an essential role in mitigating the unfolding social crisis by providing information, relief and contributing to online schooling.

Despite the struggles to face the pandemic, the Government's popularity did not decrease significantly, not least due to the very restricted information and one-sided propaganda in the dominant pro-government media. As parliamentary elections are scheduled for spring 2022, all communication – including about the pandemic – served to gear up for the campaign. Nevertheless, the upcoming elections will take place in a markedly different situation compared to the previous ones. Learning from similar experience in the municipal elections in 2019, in spring 2021, the six main opposition parties from all sides of the political palette joined forces and agreed to organise preliminary elections in September, which were fairly successful with more than 600,000 people casting their ballot. Thus, one consensus opposition candidate will run in each district, making the election a 1-on-1 competition against the governing party, Fidesz. As the current Hungarian election regulation – in force since 2013 – strongly favours the strongest candidate, this is the only realistic chance for the opposition to be on equal footing. Current polls show that Fidesz and the united opposition are head-to-head, making it impossible to predict the election results.

This new situation also mobilised many CSOs. Based on the experience of the municipal elections in 2019, they see the preliminaries and the campaign as an opportunity to spotlight their issues, such

as local environmental conflicts related to infrastructure development projects, to mobilise and activate citizens and later to engage in election monitoring. Of course, government officials and media often labelled these organisations as being “political” and not truly civic – however, the intensity of such smear campaigns has in 2021 decreased compared to earlier years. One of the reasons may be that civil society is still largely viewed as positive by the public, also thanks to the visible efforts to face the pandemic, especially during the first wave. While there is no fresh data on public perception of civic organisations, the latest results of the 1% personal income tax assignments support this hypothesis: in 2021, after several years of steady decline, more taxpayers directed their support to civil society, including to organisations most harassed by to Government. For example, ‘Háttér’ Association, a leading LBGTQI group, tripled (!) its income from this source.

SAFE SPACE

As part of the electoral campaign, the Government named a new target for its hatemongering: sexual minorities. In June, anti-paedophilia legislation was introduced to Parliament, and through last-minute amendments, it was hijacked to ban “homosexual propaganda to minors,” i.e. the appearance of LBGTQI people in media and schools. In spite

MANY CSOS CONTINUED TO PLAY AN ESSENTIAL ROLE IN MITIGATING THE UNFOLDING SOCIAL CRISIS BY PROVIDING INFORMATION, RELIEF AND CONTRIBUTING TO ONLINE SCHOOLING

ORGANISATION

Ökotárs – Hungarian Environmental Partnership Foundation aims at contributing to the development of a democratic, sustainable and equitable society and an institutional system based on citizen participation by supporting community initiatives. The foundation promotes the development of the environmental movement through providing grants, training, fellowships and technical assistance where necessary.

of domestic and international protest, the law was approved with the amendments, although it left many questions regarding its exact definitions and applicability unanswered. However, reports from affected organisations show that the number of – especially verbal – attacks on and conflicts with LGBTIQ people has increased in the months since then. The Government’s narrative harmfully blends gender and sexual orientation with the abuse of children, while framing the law as targeting “the sexual education of children to LGBTIQI activists”. As a consequence, sensitisation and citizen education programs carried out by CSOs are eliminated as schools are afraid to cooperate with them.

THE REGULATORY ENVIRONMENT FOR AND IMPLEMENTATION OF CIVIC FREEDOMS

The two major pieces of legislation governing civil society operation in Hungary are the Civil Code (2013) and the Act on the Right to Association, Public Benefit Status and the Operation of and Support to Civic Organizations (2011, the Non-profit Act for short). They generally conform with relevant international standards: the former regulates the fundamental legal forms of organisations

– associations and foundations, while the latter provides for the freedom of association, public benefit status and rules of operation. Under these laws, anyone can register a CSO at the administrative courts (and with the introduction of an electronic system a couple of years ago, this process has become easier, though geographic differences among courts still prevail), and the organisations can freely operate. However, current regulation and oversight are placing unnecessary administrative burdens on smaller organisations, while larger organisations, especially those with public benefit status (20% of all) and those receiving public funding, must meet rigorous reporting obligations. They must annually and publicly report separately on their accounts and activities, on the collection of donations and the use of the 1% personal income tax assignments – but thereby, their transparency is guaranteed as well.

The infamous Act on the Transparency of Organisations Supported from Abroad of 2017, stigmatising CSOs based on their funding sources, was found by the European Court of Justice in June 2020 to breach EU law on several counts, including restrictions on the freedom of assembly, the right to privacy, and the free movement of capital in the EU. Hungarian legislators moved very slowly and only repealed the act in April 2021. However, it

was replaced with similarly worrying new clauses that affect organisations “capable of influencing public life,” i.e. those with an annual budget above 20 million HUF (~€60,000), making them subject to inspection by the State Audit Body. As this law will apply first to the current financial year, its practical consequences are yet to be seen, but at a minimum, new administrative burdens and perhaps new inspections are expected.

The Government also used the pretext of the pandemic in 2021 to limit avenues of participation or the expression of dissent by extending the deadline for response to freedom of information requests from 15 to 45 days and introducing a total ban on peaceful assemblies. These restrictions remained in place until mid-May 2021, and were criticised by human rights organisations as unjust, disproportional and discriminatory, especially as certain larger gatherings were permissible, such as for religious purposes. Back in 2020, when two independent members of Parliament (MPs) organised a series of vehicle demonstrations with cars circling and honking in a downtown roundabout, the police reacted by sanctioning participants with significant fines of up to 750,000 HUF (~2100 Euro), citing either traffic rules or emergency restrictions.¹ This disproportionate reaction induced a chilling effect and made everyone else cautious to organise public protests as long as the ban was in effect. However, the first major demonstration was held just a week after the ban was lifted, with many thousands of people protesting against a planned Budapest campus of the Chinese Fudan University (supported by the Hungarian Government). This and other protests, including the Budapest Pride, took place without atrocities.

IN 2021, AFTER SEVERAL YEARS OF STEADY DECLINE, MORE TAXPAYERS DIRECTED THEIR SUPPORT TO CIVIL SOCIETY, INCLUDING TO ORGANISATIONS MOST HARASSED BY TO GOVERNMENT

¹ Horn Gabriella, Car honking protests cancelled due to astronomical fines handed out by Budapest police, <https://english.atlatszo.hu/2020/05/25/car-honking-protests-cancelled-due-to-astronomical-fines-handed-out-by-budapest-police/>, Atlatzso, (25 May 2020).

**IT HAS BEEN SHOWN
THAT THE DISTRIBUTION
OF PUBLIC FUNDING
LACKS TRANSPARENCY
AND IS POLITICALLY
BIASED AGAINST
INDEPENDENT
ORGANISATIONS**

THE FRAMEWORK FOR CIVIC ORGANISATIONS’ FINANCIAL VIABILITY AND SUSTAINABILITY

According to the latest official statistics, the total income of associations and foundations is ~HUF 900 billion (€2.6 billion). Of this, somewhat less than 40% comes from public funding, around 20% from private sources, with the rest originating from generated own income and a variety of other sources.² However, this income is very unevenly distributed across the sector, with more than 70% of all CSOs operating on an annual budget of less than 5 million HUF (~€16,000). Also, it has been shown that the distribution of public funding lacks transparency and is politically biased against independent organisations. For example, in 2021, a new ‘City Civil Fund’ was opened – following the Village Civil Fund in the previous year, but as investigative journalists revealed,³ about half of its biggest beneficiaries are organisations directly controlled by local Fidesz politicians or their affiliates. While independent CSOs – e.g. those engaged in human rights or LGBTIQ issues – are not excluded from

applying for public funding *per se*, but they rarely have a chance to secure a grant. These organisations remain dependent on international philanthropic and institutional donors – of which fortunately more and more are active, and individual giving. The latter has steadily increased over the past years with an unprecedented surge observed during the first wave of the pandemic in spring 2020: the most popular crowdsourcing platform (adju-kossze.hu) reported a ten-fold increase in the amounts collected in March and eighteen-fold in April compared to the year before. CSOs themselves are also becoming more and more professional in collecting donations, especially online, and through other creative tools, such as collections by “ambassadors,” Giving Tuesday, etc. At the same time, domestic institutional philanthropy (grant making foundations) remains very underdeveloped.

In spring 2020, several organisations conducted surveys among CSOs to gather information about the impacts of the pandemic. According to these, approximately three-quarters of respondents suffered income losses in the short term and expected further decrease in their budget in the longer run. The Government did not provide any additional funding or relief to CSOs in response to the effects of the pandemic on the sector. In 2021, a major development affecting CSO funding was the unsuccessful conclusion of the negotiations concerning the third period of the EEA & Norway Grants. While the donors and the Hungarian Government signed a Memorandum of Understanding (MoU) in late 2020, and the open call to find a Fund Operator managing the Active Citizens Fund – the allocation for supporting CSOs – was announced, eventually the parties could not come to the required consensus to select a mutually acceptable candidate (based on the expert assessment). According to the MoU, if no agreement is reached in this respect

in seven months after signing, the whole support to Hungary becomes void. This deadline was passed at the end of July, and thus, as the Norwegian Foreign Minister announced, “*no programmes will be implemented in Hungary under the EEA and Norway Grants scheme during this period*”. This situation is exceptional: out of the fifteen eligible countries, Hungary is the only one not able to benefit from the programme. For civil society, it means a loss of 10 million € for the coming years.

THE RIGHT TO PARTICIPATION AND DIALOGUE BETWEEN THE SECTOR AND GOVERNING BODIES

The Hungarian legislation from 2011 provides for public participation in law-making. Nevertheless, in practice, 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 or abolishing or not convening in a timely manner existing consultative bodies and committees. In 2020, the Parliament adopted 159 government-submitted laws, but only one was published for commenting on the Government’s dedicated webpage. Even when drafts are circulated, deadlines allowing for comments are often exceedingly short, in some cases not more than a few hours.

**IN PRACTICE, DECISIONS
ARE OFTEN MADE
BEHIND CLOSED
DOORS, WITHOUT
ANY INVOLVEMENT
BY THE AFFECTED
STAKEHOLDERS**

² See: https://www.ksh.hu/stadat_eves_3_2

³ <https://telex.hu/belfold/2021/07/28/fideszes-vezetesu-civil-szervezeteket-tamogat-a-magyar-allam-egy-uj-palyazati-alapbol> <https://atlatszo.hu/2021/08/11/fideszes-politikusok-altal-iranyitott-szervezetek-nyertek-a-norveg-alap-helyen-felallitott-civil-programon/>

Besides, both the central Government and Parliament routinely ignore CSOs pleas and petitions for dialogue in many areas and remain unresponsive—or often downright hostile—to any criticism or proposals coming from “outside.” Thus, traditional channels of CSO advocacy – both formal (such as consultative bodies and processes) and informal (petitions and signature collections) – ceased functioning years ago.

During the pandemic, in the absence of other options, online petitions were increasingly used, especially through the ahang.hu platform. Nevertheless, despite collecting as many as 100,000 signatures in response to some major national issues, especially against the emergency restrictions adversely impacting rule of law standards, such as the ban on assemblies, these petitions had little or no effect on decision-makers.

The Government used the pretext of the pandemic to obstruct participation through other measures too. For example, many questionable investment projects were declared of “national strategic importance” by decree, thereby legally completely exempting them from public oversight or control. A recent example was the contested industrial investment planned in Göd, a small town near Budapest, which drew much popular protest. Under these circumstances, CSOs’ advocacy efforts rarely bring results: the few successful cases of the past years involved multi-year concentrated campaigning, broad coalitions, and popular mobilisation, as was recently the case with a planned experimental oil drilling project in the Western border area.

CIVIL SOCIETY’S RESPONSES TO CHALLENGES

In early 2017, in reaction to the first news about the then-planned legislation on foreign-funded organisations, around 30 prominent CSOs came together to brainstorm about possible action and

**CIVIL MINIMUM 2022
IS A SET OF 13+1
MEASURES IN FOUR
AREAS – LEGISLATION,
FUNDING, DIALOGUE
AND SOCIAL SUPPORT
– THAT SHOULD FORM
THE BASIS OF A FUTURE
GOVERNMENTAL CIVIL
SOCIETY STRATEGY**

protest. Out of this series of discussions the Civilization coalition was born, which remains the major (informal) coalition that defends civil space up to this day (read the interview for more information). Civilization is a platform of solidarity, of mutual help and defence that regularly speaks out on issues affecting civil space and conducts campaigns to improve the positive image of civil society in Hungary.

In 2021, Civilization dealt with – among others – the lack of participation in the preparation of the Hungarian National Recovery and Resilience Plan and the new legal provisions replacing the foreign-funded law (see above). Most recently, it has compiled the Civil Minimum 2022, a set of 13+1 measures in four areas – legislation, funding, dialogue and social support – that should form the basis of a future governmental civil society strategy. Parties and candidates running for the next elections were asked to include these in their programs and to commit themselves to adopt and implement such a strategy should they achieve a position to do so. To date, three main opposition parties and their Prime Minister candidates made public commitments, and Civilization will continue to campaign for more in the months until the elections,

thereby putting the issue of shrinking civil space once again on the political agenda in Hungary.

RECOMMENDATIONS

What measures should the Government carry out to ensure an enabling civic space?

The 13+1 steps included in Civil Minimum 2022 summarise the main measures that any future government needs to take:

On legislation:

1. commit to adhere to international standards in legislating civil society matters and abolish any restrictive provisions;
2. in consultation with civil society, review existing legislation in order to guarantee the full exercise of the freedom of association and to decrease the administrative burdens of CSOs;
3. encourage, e.g. through special tax incentives, the development of domestic philanthropic foundations;

On funding:

4. award service contracts in open, competitive and sector-neutral processes enabling CSOs to tender;
5. support CSOs in an unbiased, transparent and accountable manner, involving representatives of the sector in the decision-making;
6. provide for meaningful CSO participation in the Monitoring Committees of EU funds;

On dialogue:

7. fully and appropriately implement existing legislation providing for participation;
8. develop transparent plans for dialogue in main policy and strategy procedures, including feedback to stakeholders;

- 9. guarantee the freedom of information without undue obstacles to requests for access;
- 10. re-join the Open Government Partnership;

On social support:

- 11. encourage individual giving through reintroducing personal tax benefits;
- 12. re-organise the system of corporate tax benefits to encourage business giving;
- 13. provide for balanced reporting on CSOs in its media policy and regulation;
- +1 encourage the direct participation and activism of individual citizens.

What actions should the EU institutions take to support civil society in the country?

Instead of viewing CSOs as instruments to achieve specific policy goals and addressing shrinking space issues in a reactive and piecemeal manner, the European Commission should adopt and implement a comprehensive European civil society strategy acknowledging the role CSOs play in upholding European values in accordance with Article 2. of the Treaty, and thereby putting civil society on the policy agenda.

Such a strategy should address:

1) The right to entry (freedom of association and assembly) – legal environment:

- ▶ convene a working group to develop guidelines for the statutory legislation of associations and foundations as well as for the tax treatment of cross-border activities of public benefit and philanthropic entities across the EU, based on best practices of the Member States;
- ▶ develop and pass legislation on European Statute for Associations and Foundations;

CIVILISATION IS A PLATFORM OF SOLIDARITY, OF MUTUAL HELP AND DEFENCE

- ▶ integrate the CoE Convention on the recognition of civil society organisations into European law.

2) The right to freedom of peaceful assembly:

- ▶ monitor and regularly report on the state of and potential restrictions on freedom of assembly across Member States, highlighting practices that contravene relevant international law.

3) The right to operate free from unwarranted state interference and state duty to protect:

- ▶ cover civil society in the annual Rule of Law reports in a structured and detailed manner;
- ▶ continue the regular FRA data collection and monitoring of the state of civil society;
- ▶ continue using infringement and legal procedures in case of legislation restricting legitimate civil society action;
- ▶ create an alert system to report attacks on civic space;
- ▶ condemn instances of harassment and attacks on civil society at the political level;
- ▶ continue acknowledging the contribution of civil society to the European project.

4) The right to free expression:

- ▶ encourage balanced reporting about and giving more space to civil society in the media during the implementation of the European Democracy Action plan and the Media Plan;

- ▶ fully implement and use the CoE charter and framework for citizen education; create European best practice and a separate agency devoted to the subject.

5) The right to cooperation and communication – participation:

- ▶ develop inter-institutional guidance for structured dialogue with civil society;
- ▶ improve the accessibility and the impact of the European Citizens Initiative;
- ▶ develop binding rules for delegating civil society members to the 3rd group of the EESC;
- ▶ encourage consultation with and participation of civil society on the national and local levels;
- ▶ monitor national-level consultation processes in the programming of EU funds under shared management.

6) The right to seek and secure resources – funding:

- ▶ in consultation with civil society experts, develop transparent, flexible and user-friendly grant mechanisms in the CERV programme to decrease administrative burdens on applicants, also taking into account capacity building and institutional development needs of target CSOs;
- ▶ increase the accessibility of other centrally managed funding programs to CSOs (through simplifying procedures and/or capacity building of applicants);
- ▶ monitor the accessibility of funds under shared management for CSOs and step up in case of deficiencies observed. ■

The Civilization coalition was established to enable more civil society organisations to support one another in fighting for a common cause that promotes collective care, protection of disadvantaged people and preservation of nature. The coalition's work in campaigning against the abusive and stigmatising LexNGO law, which violated fundamental freedoms of association and the protection of personal data, is a historic moment for European civil society. This award celebrates the coalitions' efforts, which span over 3 years, in fighting the LexNGO, ultimately resulting in the repeal of the law. Their work was able to put an end to an unnecessarily damaging and stigmatising civil society law in Hungary, but the fight for civic space in the country is not over!

THE POWER OF COALITIONS

Civic actors together stand up for one another

Interview with Veronika Móra

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How did Civilisation Coalition start and how did it evolve in the past 4 years?

In spring 2017, the news that the Government would target foreign-funded organisations sparked a series of discussions among 30+ major civil society organisations (CSO) from Hungary. After a couple of discussions, we started to get together and plan joint actions to respond to the upcoming draft legislation. Civilisation was officially established in March 2017 when we came out with our founding declaration. That spring, we organised a couple of spectacular actions like the civic heart demonstration on Heroes' Square and a silent protest in the Parliament. At the demonstration, the civic heart as a symbol was born and it became so popular that we decided to keep it. That was the beginning of the story.

During the summer of 2017, we had our first strategic meeting where we laid down

the basic rules for cooperation and started planning our strategy in the longer term. Since then, the Civilisation coalition has been working together continuously. Civilisation is not a legally registered organisation but an informal coalition. However, we formalised our relations by drafting mutually accepted rules of operation. By now, we have almost 40 members in the “inner circle” composed of active organisations which meet monthly. We have active working groups organising the actions. The communication working group meets most regularly and is composed of communication officers from different organisations. We also have roughly 300 organisations that gravitate in the “outer circle”; these are organisations with whom we have regular contact via our newsletter and joint actions.

What is the added value of coalition building to respond

to shrinking civic space in the country?

Individual CSOs are most often not strong enough to defend themselves in the face of attacks, and also easily become afraid and insecure if they feel isolated. Cooperation and networking are the main way to counter this: civic actors together can stand up for one another, express solidarity and support those most in need. Also, together as a coalition they can

**CIVIC ACTORS TOGETHER
CAN STAND UP FOR
ONE ANOTHER,
EXPRESS SOLIDARITY
AND SUPPORT THOSE
MOST IN NEED**



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**WE DO SEE A
POLARISATION OF
CIVIL SOCIETY LINKED
WITH THE WAY THE
GOVERNMENT VIEWS THE
ROLE OF CIVIL SOCIETY**

show and communicate better and louder why and how civil society is important for us all and what organisations do for the public good. So, coalition building is absolutely essential in the situations of shrinking space.

Cooperation among Hungarian NGOs was limited before the Civilisation Coalition was created. How did the cooperation within the sector evolve? Has there been more collaboration beyond resisting to the shrinking civic space?

Civilisation was unique, as it is the first long-term cooperation among organisations from different backgrounds and

working on different areas such as human rights, environmental issues or community organising. The key to Civilisation's longevity is the boundaries that we established: we limit our structured cooperation to horizontal issues that concern civil society as a whole. We do not interfere with what the member organisations do or the way they do it. We must acknowledge that members of Civilisation are very different not only in terms of areas of work but also in their capacity. We accept that everybody contributes according to their capacity while ensuring that we are all on equal footing.

Indeed, cooperation within Hungarian civil society has always been an issue. Some sectors organise themselves well; in particular environmental NGOs have a long-standing cooperation network. In other areas, there have been less sustainable efforts. In that sense, Civilisation is quite unique. Around 2014, at the start of the controversy between the EEA & Norway grants,¹ there were attempts to form a similar structure to Civilisation. Those efforts were unsuccessful, but we learned from the experience and avoided some of the same pitfalls when we started Civilisation. Recently, CSOs but also trade unions and movements working in the

field of education have been cooperating quite well. Also, organisations working on housing and homelessness started to come together and build a structure similar to Civilisation. They organised a big-scale campaign against Government's attacks on the social housing system in the spring. The Government wanted to reduce social housing drastically by selling out the properties, but CSOs organised protests which mobilised almost all organisations active in the field. Since then, they are trying to structure and consolidate this cooperation. It is less formalised, but they are trying to meet regularly, introduce basic cooperation mechanisms, find common grounds on certain aspects.

What are the most significant civil society movements challenging the deterioration of rights and the rule of law in Hungary? And what is the biggest challenge for civil society actors in Hungary?

Civilisation is undoubtedly part of these movements. Trade unions are also becoming more active: just this week, a big demonstration initiated by the trade union of health workers took place also supported by other trade unions. Organisations working on public education issues have also been quite active over the past years. More recently, LGBTI organisations have also played a significant role in challenging the status quo.

**CIVILISATION WAS
UNIQUE, AS IT IS THE
FIRST LONG-TERM
COOPERATION AMONG
ORGANISATIONS
FROM DIFFERENT
BACKGROUNDS
AND WORKING ON
DIFFERENT AREAS**

¹ See e.g.: https://norvegcivilalap.hu/sites/default/files/anyagok/ncta_book_angol_epdf.pdf pages 27-29.

The biggest challenge for CSOs is the fact that the Government treats critical organisations as enemies and tries to limit and tarnish their image and make their functioning difficult. This is rooted in the context of a larger democratic backsliding and the elimination of checks and balances in Hungary.

How did the polarisation of civil society led by the Government's narrative changed civil society landscape? Is the rise of conservative civil society a challenge for democratic civil society?

The situation in Hungary is different from that of Poland: conservative civil society is not necessarily an issue in Hungary. There are a number of GONGOs (government-organised non-governmental organisations) that mirror real civil society organisations, such as the Civil Unity Forum and the Fundamental Rights Centre, a right-wing so-called fundamental rights organisation. All know the conservative NGOs to be GONGOs created to support government policies in the given areas and serve as a counterweight to democratic ones. For example, they regularly appear on pro-government media.

However, we do see a polarisation of civil society linked with the way the

Government views the role of civil society. Civil society should limit itself to the very traditional, charitable and leisure activities: feeding the poor is acceptable but speaking up or advocating for them is not. The Government divides or polarises CSO by dividing them between “good” organisations that are very traditional and do not engage in any advocacy or criticism, and the “bad” organisations that do. That is a real issue for us because organisations considered as good from the Government's perspective are often unwilling to engage with actions that could be construed as political or controversial. They keep their distance from organisations considered as bad by the Government. They often refrain from speaking up even when they experience problems locally as they are afraid to lose their funding or dialogue channels with the local authorities.

This polarisation is quite visible in terms of funding. Recently the Government opened more funding sources, in particular one big fund for organisations working in small villages under 5000 inhabitants and another for organisations working in larger towns. It was shown that organisations that have been founded or led by local Fidesz functionaries were awarded most of the funds.²

² <https://telex.hu/belfold/2021/07/28/fideszes-vezetesu-civil-szervezeteket-tamogat-a-magyar-allam-egy-uj-palyazati-alapbol> <https://atlatszo.hu/2021/08/11/fideszes-politikusok-altal-iranyitott-szervezetek-nyertek-a-norveg-alap-helyen-felallitott-civil-programon/>

THE GOVERNMENT USES FUNDING TO KEEP TRADITIONAL ORGANISATIONS SILENT AND STARVE THE CRITICAL ORGANISATIONS

The Government uses funding to keep traditional organisations silent and starve the critical organisations.

In this sense, CSOs in the countryside are generally weaker and more dependent on local authorities, but regional differences exist. There are several major urban centres around, such as Pécs and Szeged – where there is visible civic activism, but there are other areas where it is feeble.

How did you manage to mobilise European attention and action to the situation in Hungary?

We managed to mobilise European attention and action with the help of European networks. This issue first received international attention in 2014, around the time of the EEA & Norway grant controversy.

[hu/2021/08/11/fideszes-politikusok-altal-iranyitott-szervezetek-nyertek-a-norveg-alap-helyen-felallitott-civil-programon/](https://atlatszo.hu/2021/08/11/fideszes-politikusok-altal-iranyitott-szervezetek-nyertek-a-norveg-alap-helyen-felallitott-civil-programon/)

17 FEBRUARY 2017: The bill to ensure the transparency of the Hungarian branches of international organisations is announced.

17 MARCH 2017: Almost 300 organisations sign a joint statement responding to the government's restrictive and stigmatizing attitude against CSOs and create the Civilization coalition.

7 APRIL 2017: The ‘NGO Bill’ is submitted to the Parliament: associations and foundations receiving more than 724,000 EUR per year from abroad must register at the court as ‘foreign funded organisations’ and must use this label on their websites and publications.

12 APRIL 2017: Tens of thousands of people gather in Heroes’ Square in Budapest to protest against the new NGO Bill.

17 MAY 2017: The European Parliament condemns the NGO Bill in a resolution, and the Venice Commission also criticises it in its preliminary opinion.

13 JUNE 2017: The Parliament adopts the NGO Bill.

13 JUNE 2017 — 12 JULY 2017: About a dozen affected NGOs publicly declare that they would not register as “organisations receiving foreign funds”.

13 JULY 2017: The European Commission launches an infringement procedure against Hungary concerning the Lex NGO, claiming that the Act does not comply with EU law.

28 AUGUST 2017: 23 organisations cooperating in the Civilization coalition submit a joint complaint to the Constitutional Court of Hungary against the Lex NGO.

18 DECEMBER 2017: As a reaction to the attacks on CSOs by the local governments in Kaposvár, Miskolc and Pécs, 118 CSOs declare in a joint resolution that the affected CSOs working for the local communities deserve support and not vilification.

JANUARY 2018: “Stop Soros” Bill is presented: any organisation that receives more foreign than domestic funds would be deprived of the public benefit status.

It was such a unique and unheard-of event to happen in the EU that it immediately received attention internationally and made headlines. As a consequence, civil society mobilised. At the time, all big international and inter-governmental organisations dealing with human rights and democracy paid attention because what happened was unprecedented. The European institutions came to us.

What effects did the Court of Justice if the European Union ruling produce in Hungary?

The Hungarian Government and Parliament were slow in implementing the CJEU ruling; they finally repealed the law in April this year. However, they replaced it with other provisions that give cause for concern. The new legislation would come into effect next year and give the State Audit Body power to audit organisations with an annual income of over ~66.000 euros.

It is important to stress that while the foreign funding legislation was enforced, it did not directly affect the organisations that it targeted. A number of Civilisation members publicly boycotted the legislation, and none of us suffered sanctions or consequences: we continued receiving

money from abroad to pursue our activities. The chilling effect resulting from the law was felt primarily by organisations in the countryside and smaller organisations, which became more cautious about their actions and their funding sources. Additionally, some funders also became overly cautious about their activities in Hungary.

What were the effects of four years of implementation of the LexNGO on civil society? What changed with the retraction?

As the Government's approach did not change, the withdrawal of the law did not have a direct impact on the day-to-day operations of civic organisations. Organisations that were afraid still are; those that were not afraid are still not. In this respect, the law achieved its primary goal, that is, to divide the sector and frame civic organisations as entities that should be controlled. Regardless of the retraction, it should not be forgotten that the Hungarian Government has continued its campaign to vilify and discredit CSOs during the past years. Other restrictive pieces of legislation and discriminatory practices are still in place. The lack of change in the Government's approach

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is illustrated by the adoption of a short-lived decree obligating for CSO to publish the names of all donors without exception. This decree was retracted two weeks after it was published, and the retraction might be linked to the fact that church-based and other major charities would also have been subjected to this legislation. But this suggests that the Government continues to look for ways to restrict civil society.

What about at the European level? The CJEU ruling declaring the LexNGO contrary to EU law was the first EU ruling

4 JUNE 2018: CSOs present their position on the "Stop Soros" Bill and express their protest at a spectacular action in front of the Parliament organized by Amnesty International.

20 JULY 2018: The third draft of the "Stop Soros" law package is eventually approved, after the government propaganda repetitively attacked CSOs working with asylum seekers and refugees during the run-up to the general elections in April 2018.

AUGUST 2018: In addition to the act penalising aid to refugees and asylum seekers, a new 25% tax is introduced, which can be imposed firstly on the donors of a CSO that "support immigration" and secondly, in case of non-compliance, to the CSO itself.

12 SEPTEMBER 2018: The European Parliament votes to start proceedings against Hungary under Article 7 of the Charter of Fundamental Rights of the Union referring to the systemic threat to the core values of the EU.

15 DECEMBER 2018: The decision of the European Commission for Democracy through Law confirms the strong criticism of the Hungarian Helsinki Committee and other CSOs on the "special immigration tax", to be considered as an arbitrary punishment that has been imposed on CSOs and their supporters.

28 FEBRUARY 2019: The Constitutional Court of Hungary states that the Criminal Code amendment by the "Stop Soros" law package is constitutional.

14 MARCH 2019: The Civilisation coalition releases its manifesto, calling the Hungarian government to preserve civic freedoms.

25 JULY 2019: The infringement procedure initiated concerning the "Stop Soros" package reaches its final stage: the Court of Justice of the European Union.

18 JUNE 2020: The Court of Justice of the European Union (CJEU) echoes the Hungarian civil society's opinion of past years, ruling that the Lex NGO is stigmatising, harmful and goes against EU law.

29 OCTOBER 2020: The Tempus Public Foundation, the Hungarian operator of Erasmus+ Grants, changes the criteria and excludes NGOs solely because they have not registered as 'foreign funded organisations' according to the Lex NGO.



explicitly referring to freedom of association. Do you think it provides a good basis for other NGOs to act at the European level?

Indeed. For instance, a similar proposal for legislation on foreign funding also came up in Poland and Bulgaria, but authorities decided not to pursue the process. The court of justice's ruling sent a strong message: "do not try this at home". The ruling also proves that the Government's narrative about the transparency was just a pretext, not a real issue. The law was not about transparency, rather about controlling the narrative on civil society and their work. In all European societies, raising awareness about the work of civil society, their importance, and their role in a democratic society is paramount. I think this awareness was missing in Hungary. For this reason, the Civilisation coalition, beyond reacting to events and legislation, also put substantial effort to raise awareness and highlight the activities that our members carry out to create our narratives as civil society. The aim is to help shape a favourable public opinion.

It seems that this is like the Hydra: if you cut one head, two grow back instead. Do you

see to break this cycle at the national level in the long term?

In this political environment, it does not seem possible to change the cycle. However, we are being proactive about the change, and we have several ideas on what should be done to improve the environment for civil society.

Ahead of the 2022 general elections, Civilisation made a list of demands to the parties and the candidates, outlining 13+1 points needed to improve the situation of civil society (see the case study above). It includes measures and steps that political authorities should take regarding the legal environment, funding, civil dialogue and public support or image. We are promoting this among the parties and the prime minister candidates, asking

EUROPEAN INSTITUTIONS SHOULD CLEARLY STATE IN WORDS AND ACTIONS THAT HUNGARY'S SITUATION IS UNACCEPTABLE AND IT GOES AGAINST EU FOUNDING TREATIES

them to commit to implementing this set of measures if they come to power. We will continue this campaign in the coming months.

How can the EU support civil society avoid the reappearance of laws and other mechanisms targeting NGOs and their work?

There are two things that the EU can do. First, European institutions should clearly state in words and actions that Hungary's situation is unacceptable and it goes against EU founding treaties. This also requires taking steps in the form of infringement procedures and decisions of the European Court of Justice or EU funding conditionalities. This would also show that no Member State should take similar actions.

Second, the Commission should adopt a European civil society strategy and treat civil society as a valuable sector in itself. It should identify steps and measures that the EU could take to support CSOs financially and through EU legislation. We realise the challenge as civil society is mostly a Member State competence, but that is why the Commission should develop a policy and look at the areas where it could intervene within its competencies. There are several recent and ongoing promising initiatives by the European Commission, such as planned EU legislation on SLAPPS and on whistleblower protection, showing the willingness to stretch competences in areas related to civil space.

Do you identify the weaknesses and slowness of actions at the European level as factors that allowed for the deteriorated situation that NGO face? What can European civil society and European institutions learn from the Hungarian case at the European level?

A common opinion is that the European Union thought that following the

accession process during which countries were thoroughly vetted on their level and quality of democracy and the state of human rights would not backslide after their admission as members. The EU institutions took it for granted that democracy in these countries would remain solid and human rights respected. Therefore, there were no mechanisms planned at the EU level to counter democratic backsliding and the deterioration of checks and balances. However, in 2008, nobody thought that such measures would be necessary.

Of course, the EU could have reacted faster: once Hungary entered this path and Poland followed, it took the EU quite a while before “waking up”. If that period were shorter, we would probably be in a better situation. In 2021, the EU has at its disposal the Article 7 procedure, the rule of law reporting, the rule of law conditionalities... if we had these measures in 2015 or 2016, I think it would have made a difference.

The story of the frog put in hot water versus one in cold water and slowly heated up is an essential metaphor for EU institutions. First early warning signs should not be discarded; there is a need to act before the water is boiling.

Do you have some suggestions or good examples of how not having a reacting narrative

but create your own positive narrative would like to share?

The first example started with the fact that in Hungary we can decide to give 1% of our taxes to civil society organisations. In the past years we in Civilisation were trying to create materials – videos. Facebook ads – for our members that they can use in their campaigns to collect these 1% assignments. We are not fundraising for Civilisation itself, but rather try to create a common image for CSOs and to promote their positive image. The added value was a coordinated and uniformed image and message, so that when people see the civil heart in some CSO’s communication, it clicks in their heads and they understand better what civil society and activism is about.

Later, when the recipients of these 1% tax assignments became public, we again created videos with a unified message in which the CSOs explained how they were planning to use the money, what they did the past years, why is it important and the money’s possible impact. We continued that half a year later and with this we helped the campaigns of our members to get more attention on their activities – helping tax payers finding the causes they are willing to pay for.

What is the situation of the EEA & Norway grant?

The Norwegian Foreign Minister’s recent statement made clear that Hungary will not receive funds in the present format because of the disagreement between the

donor states and the Hungarian Government about which organisation should manage to funds allocated to support civil society. She also hinted that they remain committed to support civil society in Hungary in some way. We are waiting to see what the possibilities are but I guess it will take some time. ■

The interview was carried out on 27 July 2021.

20 NOVEMBER 2020: The Parliamentary Committee of Justice Affairs submits Bill T/13631 to the Parliament proposing to abolish the Equal Treatment Authority (Hungary’s equality body) and transferring its tasks and competences to the Commissioner for Fundamental Rights (Hungary’s Ombudsperson) as of 1 January 2021.

11 FEBRUARY 2021: Members of the Civilization coalition and signatory CSOs find they are excluded from meaningful participation in the consultation process on the spending of the 51.6 billion EUR that Hungary will receive between 2021 and 2027 from the Multiannual EU budget and Recovery Fund.

21 APRIL 2021: The Lex NGO is retracted, but the Hungarian government continues its campaign to vilify and discredit CSOs, with some provisions of the new draft *Law on the transparency of civil society organisations capable of influencing public life* which give cause for concern.

30 JUNE 2021: The government issues a decree, without any consultation with the concerned stakeholders, according to which all CSOs would be obligated to name all their individual donors (regardless of the amount of funds) in their public-benefit status report from 1 July 2021 onwards (first in May 2022).

16 NOVEMBER 2021: The Court of Justice of the European Union (CJEU) finds that the Soros law threatening to imprison civilians who help refugees is contrary to EU law.

POLAND

Since 2015, when the Law and Justice government took power, democracy and the rule of law have gravely backslided. As a consequence, the conditions for Polish civil society organisations have seriously deteriorated. However, civil society and social movements have demonstrated their crucial role in protecting the rule of law and fundamental rights “from below”. This was true also in 2021, a year of crisis in which there was sustained pressure on democracy and the rule of law, linked with the further deterioration of media pluralism, the contested election of the Ombudsperson and the state of emergency on the borders with Belarus, in the context of systematic violations of the rights of migrants, LGBTI+ community and women. Civic organizations organised participatory public hearings on the National Recovery Plan and contributed to the election of an independent person as Ombudsperson, in accordance with the Constitution, achieving important results.

FACING DETERIORATING CONDITIONS

Civil society unites to protect fundamental rights

By the National Federation of Polish NGOs (OFOP), with the support of Filip Pazderski

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as Ombudsperson, in accordance with the Constitution. In both cases, it was not certain whether the two actions would be successfully concluded, so the victories are significant. An important achievement in the context of both events was also the mobilisation of large coalitions of very diverse civil society organisations around both issues.

ELECTION OF THE OMBUDSPERSON

The term of the former Ombudsperson, prof. Adam Bodnar, expired on 9 September 2020. Before the end of his term of office, NGOs nominated the civic candidate Zuzanna Rudzińska-Bluszcz. While until the end of 2020, the ruling majority did not propose any candidates, it regularly rejected the civic candidate, supported by the opposition. She resigned when her candidacy was rejected for the third time at the end of January 2021.

According to constitutional tradition, if a new Ombudsperson is not elected, the old one continues to hold office in order to ensure the constitutional principle of continuity of power. However, the ruling party’s parliamentarians submitted a motion to the Constitutional Tribunal (controlled by the ruling party since 2016) challenging whether prof. Bodnar should remain in office after his term as, according to the Constitution, it lasts five years. This was considered by civil society as a move to put political pressure to promote the election of the ruling party’s candidates, since without a new elected candidate, citizens would risk being left without an Ombudsperson. Indeed, in April 2021, the Constitutional Tribunal decided that the term of office of the Ombudsperson must last only 5 years, and that Bodnar had to definitively cease to hold office on 15 July 2021. After the decision of the Constitutional Court and with the impossibility of the Parliament to elect a successor, a



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suspicion arose the ruling party would appoint a person from the party acting as an Ombudsman, therefore modifying the existing law accordingly.

Nevertheless, also thanks to pressure from civil society organisations and their cooperation with the political opposition an independent candidate was chosen. Prof. Marcin Wiącek from the University of Warsaw was formally proposed by the opposition. He went through the entire procedure and was elected to the post six days after prof. Bodnar left the office in July.

There are at least two victories achieved by civil society organisations in the situation described above. First, the participation and pressure of more than 1200 civic organizations from various parts of the country ensured the independence of the position which could have been hijacked by the governing majority. Second, this civic engagement led to an ongoing cooperation of organizations that now monitors what is happening with the Ombudsperson's budget, checks how public institutions respond to the Ombudsperson's general comments and takes action in this matter, and finally works out demands and cooperate with the Ombudsperson's office on the implementation.¹

EMERGENCY ON THE POLISH-BELARUSIAN BORDER

Since August 2021, an important issue is stirring public debate in Poland and involves many civil society organisations and activists. Indeed, the humanitarian crisis caused by actions of the Belarusian authorities and reactions of the Polish authorities at the border between the two countries. On 2 September 2021, President Andrzej Duda issued a decree imposing a 30-day state of emergency in parts of Podlaskie and Lubelskie Voivodeships (in the cross-border zone), at the

request of the Council of Ministers. The decision was later extended to the maximum time allowed by the Constitution – 90 days. During the state of emergency and on the basis of a new law adopted afterwards (see below), access to the border strip was practically prohibited to all entities that do not belong to the state services or are not residents. Access to the border strip was, and largely remains, prohibited to the media and humanitarian and social organisations. In late August, the Sejm also received a government draft amendment to the Act on foreigners. The proposed changes enable the local chief of border guards to issue a decision regarding foreigners crossing the border illegally, on the basis of which they will have to leave the territory of Poland immediately. This legalises the practice of pushbacks, contrary to international law obligations. For this reason, the Act was explicitly criticised by the Ombudsperson, the Helsinki Foundation for Human Rights and aid organisations. Nevertheless, the law was adopted by Parliament at the end of October.

PRESSURE ON CIVIL SOCIETY

The only actors providing humanitarian help at the Polish-Belarusian border are civil society activists and volunteers outside the emergency zone and the residents of the restricted area inside it. They bring basic humanitarian aid to the migrants (food, drinks, warm clothes, sleeping bags, as well as work

**ACCESS TO THE
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WAS, AND LARGELY
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TO THE MEDIA AND
HUMANITARIAN AND
SOCIAL ORGANISATIONS**

¹ More about the initiative can be found at <https://naszrzecznik.pl/>. The initiative is affiliated with the National Federation of Non-Governmental Organizations (OFOP).

THE AUTHOR

National Federation of Polish NGOs (Ogólnopolska Federacja Organizacji Pozarządowych, OFOP) was established in 2003 by the initiative group of Polish organizations – as a result of a participatory process aimed at establishing a representation body for the third sector in Poland. It is a politically independent and non-governmental organization guided by the principles of European Charter of the Fundamental Rights. Currently, OFOP has 146 member organizations. As many of the members are also federations of organizations, indirectly OFOP may claim over 400 member organizations. The list of members includes organisations working at national, regional or community level, engaging with the public on local issues, active in domains of third sector advocacy, watchdogs, human rights, social inclusion, ecology, heritage and many others.

with independent medics and hospitals) and support them with access to administrative procedures. In order to respond to the systematic human rights violations enabled by this context, civic organisations present at the border increased exponentially their activities, with huge psychophysical consequences of the staff and volunteers involved. At least two spontaneous movements – Medics on the Border (Medycy na Granicy)² and Families without Borders (Rodziny bez Granic)³ sprung to provide assistance. A joint civic campaign entitled Save the People on the Border calls for immediate

admission of medical and humanitarian aid to the emergency state zone.⁴

Both the activists and local residents have often faced threats or even repression for their relief work, including brutal stop and search operations, smear and intimidation campaigns against activists speaking up in the media. For example, the Crisis Intervention Post run by the Club of Catholic Intelligentsia⁵ reported that on 15 December 2021, volunteers on duty were detained by the Police and were held in a police car for several hours. Dozen police officers armed with automatic weapons conducted a search, questioned the volunteers until five in the morning and confiscated all computers and phones used for work as well as volunteers' private phones, other electronic equipment, and all documentation.⁶

RESTRICTIONS TO ACCESS OF INFORMATION AND FREEDOM OF EXPRESSION

The state of emergency described above resulted in a ban on recording of the border area using technical means. Access to public information on the activities carried out in the areas covered by the state of emergency was also restricted. In short, citizens were cut off from access to information.

The reasons provided for the restriction of access to information were “numerous, intensified attempts to illegally cross the border” and “the scale and nature of the actions undertaken by the Republic of Belarus”. In addition, there were arguments about the threat to national security posed by people providing humanitarian aid who supposedly made it difficult for Border Guard officers and Armed Forces soldiers to perform their duties. It was also argued that providing access to information would have reduced

THIS BILL WILL IN EFFECT PROVIDE THE GOVERNMENT WITH A MEANS TO CONTROL AND PREVENT EXTRACURRICULAR ACTIVITIES AND/OR EDUCATIONAL WORKSHOPS FROM TAKING PLACE IN SCHOOLS

their efficiency, which in turn would be a danger for citizens.⁷ Even before that, although without any legal basis, journalists were not allowed to observe the border.⁸

On 17 November 2021, in view of the passing of the maximum constitutional deadline for the duration of the state of emergency, the Sejm adopted amendments to the Act on State Border Protection and introduced the possibility of further cutting off journalists from the possibility of observing the situation on the border. It de facto extended the state of emergency. From that moment on, the Minister of Internal Affairs and Administration can, by ordinary decree, without additional procedures, introduce a ban on non-residents in a given area. Journalists can get special permission from the local Border Guard Commander (in justified cases, temporarily, under specific rules) to stay in the area. However, NGOs cannot obtain such a permit.⁹ This greatly affected access to information for

² See <https://www.facebook.com/medycynagranicy/>.

³ See <https://rodzinybezgranic.pl/english/>.

⁴ PL <https://publicystyka.ngo.pl/ratujmy-ludzi-na-granicy>

⁵ See <https://www.kik.waw.pl/english/>.

⁶ PL <https://publicystyka.ngo.pl/oswiadczenie-dzialania-policji-w-punkcie-interwencji-kryzysowej-kik>

⁷ PL <http://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=1512>

⁸ PL <https://drive.google.com/file/d/1Hb-PjS9HuFSaRpKinjyBUI6mPzozK2bTg/view?usp=sharing>

⁹ PL <https://sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=8F2FFCA4F3477BB7C125878E0064B115>

CONVERSATIONS ABOUT ABORTION, VIOLENCE AGAINST WOMEN, ABOUT GENDER IN GENERAL HAVE BECOME PART OF THE EXPERIENCE OF A LARGE SECTION OF THE SOCIETY

humanitarian organisations. For example, it was not possible to find out the orders (with reasons laying behind) intended to be the basis for the non-acceptance of requests for international protection and the ban on serving food to foreigners being stuck in the border zone.

These regulations on the state of emergency also concerned the “*suspension of the right to organize and hold assemblies in the area covered by the state of emergency*.” On 19 January 2022 the Supreme Court in Poland ruled that forbidding general access to the border was disproportionate. Freedom of Speech cannot be restricted to such an extent. This verdict was issued in the individual case of three journalists who were punished for entering the state of emergency zone.¹⁰

FREEDOM OF ASSOCIATION UNDER PRESSURE

In 2021, almost nothing happened in terms of guarantees for NGOs. On the contrary, the situation of independent NGOs in Poland and the general atmosphere in which they operate have continued to worsen. The number of restrictive legislative proposals initiated in 2021 and affecting fundamental rights as well as imposing on the sector additional burden require CSOs to remain

constantly mobilised, draining their resources and capacities to focus on their core mandate.

Among these proposals, amendments to the regulations on the system of education (the Education Act), the so-called ‘Lex Czarnek’, are under discussion in the Parliament. In addition to questionable provisions on the organization of education itself (the role of superintendents, reduction of schools’ autonomy), the draft includes provisions directly regulating the operation of NGOs in schools. These provisions introduce certain bureaucratic procedures that in practice can limit NGOs access to educational institutions. Additionally, schools’ regional superintendents, representatives of the Minister of Education on the regional level, will have the power to arbitrarily decide on such a permit, even against the parents’ opinion. Over 100 organizations have come together to stop these laws as part of the Free School campaign.¹¹ Civil society representatives are voicing concerns that this bill will in effect provide the government with a means to control and prevent extracurricular activities and/or educational workshops from taking place in schools, such as ones pertaining to anti-discrimination, gender equality, LGBT+ rights, or comprehensive sexuality education.

A draft governmental Act on NGO Reporting was made public in July 2021, officially aimed at gathering in one place the rules of reporting by NGOs and simplify the reporting obligations. However, the document was prepared without any prior discussions with CSOs. The National Federation of NGOs and other CSOs networks pointed out the inadequacy of the timing and method of consultation¹² as the consultation period for the act was short and the process was conducted in the middle of the summer

holidays. Contrary to the aim of the law, the drafted regulations proved to be complicated, flawed and their enactment would not simplify the obligations. In addition, the draft imposed on NGOs obligations that did not exist previously, such as the requirement to disclose the data of individual donors (natural persons). Some of the new measures that this act proposes to establish includes also obliging all CSOs to report to one governmental entity all funding coming from all foreign entities (individual and private persons, as well as public entities).

RESTRICTIVE LAW ON FREEDOM OF ASSEMBLY IS STILL IN PLACE, ‘STOP LGBT+ BILL’ THREATENS LGBTI RIGHTS AND PRIDE PARADES

The Act on Assemblies, adopted in 2015, met all modern requirements. In 2016, the ruling majority adopted an amendment introducing provisions on cyclical assemblies, which raises objections. Among other things, they are vague and favour one type of assembly.

On 9 August 2021, a civic legislative initiative to amend the Act on Assemblies was submitted to the Sejm. The bill called ‘Stop LGBT+’ was signed by 140,000 citizens. The bill would ban LGBT+ Pride events in the context of systemic deterioration of LGBT+ rights. On 29 October 2021, the bill was sent for further work in the Sejm’s Administration and Internal Affairs Committee. Although to date legislative

THESE THREATS HAVE BEEN ENABLED BY THE VIOLENT RHETORIC OF THE GOVERNMENT AND STATE-OWNED MEDIA AGAINST THE MOVEMENT

¹⁰ <https://siecobywatelska.pl/whyombudsmanrighttoknow/?lang=en>

¹¹ PL <https://www.wolnaskola.org/>

¹² PL <https://ofop.eu/stanowisko-organizacji-pozarzadowych-w-kwestii-projektu-ustawy-o-sprawozdawczosci-organizacji-pozarzadowych/>

works did not progress¹³ such laws tend to return to the public debate whenever favourable political circumstances or need arises. In such case parliamentary work can be unfrozen by a parliamentary majority.

THE 2020 PROTESTS ON THE BAN ON ABORTION HAVE BENEFICIAL IMPACT ON SOCIETY BUT THE MOVEMENT REMAINS UNDER PRESSURE

In 2020, a general mass mobilisation erupted throughout Poland, both in large and small towns, in workplaces, at universities and schools against the ruling of the Constitutional Court of November 2020 which led to the practical ban on abortion.¹⁴ The huge protests have had a positive impact on the Polish society:¹⁵ conversations about abortion, violence against women, about gender in general have become part of the experience of a large section of the society and individuals confronted with the topics for the first time in their life have become acquainted with or involved in feminist and women rights issues.

HARASSMENT AND INTIMIDATION PRACTICES

The constant pressure and threats, including judicial harassment and intimidation tactics by police, other state authorities and ultraconservative groups is also a threat to the sustainability of democratic civic organisations and movements, particularly those acting for the rights of migrants, LGBTI+ rights, and sexual and reproductive rights. Following the 2020 protests against the practical ban on abortion, leaders the

THE POLISH SECRET SERVICES, CONTROLLED BY THE RULING PARTY, HAD ACCESS TO CALLS, PHOTOS, E-MAILS, MESSAGES FROM MESSAGING APPS USED BY TWO ACTIVE CRITICS OF THE GOVERNMENT

Polish Women's Strike movement and supporting organisations have received death, rape and bomb threats. While there has been little to no response from the authorities in investigating these threats, escalating threats on Marta Lempart during October 2021 eventually resulted in police protection being assigned to her in public. These threats have been enabled by the violent rhetoric of the government and state-owned media against the movement. Additionally, women rights defenders and people who have been protesting against the near-total abortion ban have faced judicial harassment. Lempart is facing over 90 criminal charges for her role in protests. Many youth activists involved in women's rights protests have faced reprisals from their school principals or school superintendents. There have also been some publicised cases where police have turned up at the homes of minors only supporting the protests in the morning. All this has also undoubtedly had a chilling effect on many young people.

LGBTQI+ activists continue to face persecution. Although three LGBT+ activists were acquitted for the crime of "offending religious beliefs" after displaying posters depicting the Virgin Mary with a rainbow halo symbolic of the LGBT+ flag around her head, in December 2021 the case was heard again after the prosecutor appealed

the outcome. Others are facing legal actions from far-right religious groups. In July 2021 six lawsuits were opened against the founders of The Atlas of Hate, a website that maps local municipalities that passed anti-LGBT+ resolutions or adopted a charter written by the ultra-conservative Catholic organisation Ordo Iuris Institute, by the so-called "LGBT+-free" municipalities. The founders of the website believe that the lawsuits are an attempt to silence them.

WIRETAPPING OF THE OPPOSITION RAISES CONCERNS OVER THE RIGHT TO PRIVACY

In late 2021, a major surveillance scandal occurred involving people perceived as opposition to those in power. The Canadian Citizen Lab group revealed that Roman Giertych, an attorney, and Ewa Wrzosek, a prosecutor, were both subject to surveillance using the Pegasus programme. This technology was also used during the 2019 election period (when European and national elections took place) against then Civic Platform chief election campaign officer and now Senator Krzysztof Brejza. In result, the Polish secret services, controlled by the ruling party, had access to calls, photos, e-mails, messages from messaging apps used by two active critics of the government as well as information on the current campaign plans of the main opposition party. Materials from this surveillance were also to be used to fabricate news items criticising selected individuals in the public media controlled by the ruling party. The case was reported by the Associated Press.

Oversight on wiretapping by security services is a concern in Poland. The courts accept 98-99% of wiretapping requests filed by secret services. Polish legislation also allows the Internal Security Agency to conduct wiretaps in certain situations without asking for court approval (2016 Anti-Terrorism Act). An expert

¹³ PL <https://orka.sejm.gov.pl/proc9.nsf/0/7510F178D30F38AAC12584B7003F9693?Open>

¹⁴ See the ruling in English at <https://trybunal.gov.pl/en/hearings/judgments/art/11300-planowanie-rodziny-ochrona-plodu-ludzkiego-i-warunki-dopuszczalnosc-przerwywania-ciazy>.

¹⁵ PL <https://publicystyka.ngo.pl/ponad-rok-od-protestow-po-wyroku-tk-komentarz-malgorzaty-leszko>

**IF THE TRENDS ARE NOT
INVERTED, THE POLISH
CIVIL SOCIETY AND
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OF THE SECTOR
– INDEPENDENCE
FROM THOSE
EXERCISING POWER**

group operating at the Ombudsperson's office consisting of former secret service officers and representatives of organizations protecting human rights calls for the establishment of an independent body to control the services and informing the persons subjected to surveillance about it after the control is completed.¹⁶

**CRITICAL ORGANISATIONS
ARE STARVED**

The economic and financial viability of the sector¹⁷ has been negatively affected on the one hand, by the Covid-19 pandemic and the decrease of income of local governments (the main sources of financing), and, on the other hand, by the decreasing availability of public sources.

¹⁶ <https://panoptikon.org/pegasus-giertych-wrzosek>

¹⁷ Before the pandemic, the annual budget of an average organization was PLN 28,000. 6% of organizations had a budget of over 1 million PLN; 22% between 100 thousand and 1 million PLN; 43% between 10 thousand and 100 thousand PLN; 19% between 1 and 10 thousand PLN; 11% up to 1000 PLN. 39% of the income of organizations came from domestic public funds; 15% from foreign public funds; 15% from paid and business activities; 14% from individual and institutional philanthropy; 3% from 1% of taxes; 3% from membership fees; 3% from own property, 2% from other organizations; 6% other: <https://api.ngo.pl/media/get/108227>

Organisations working for the defence of the rule of law or fundamental rights also face a significant reduction in the possibility of obtaining funds in competitions organised by the governing party's subordinate institutions, including ministries or the National Freedom Institute. While new programmes supporting the activities and development of NGOs are established, these funding tends to be accessible mostly by those loyal to the ruling party.¹⁸ In result, the gradual transformation of civil society in the country is a tremendous threat. Independent organisations find it increasingly difficult to operate due to a lack of resources. At the same time, pro-governmental organisations benefit from privileged access to policymaking, financial support and a favourable political climate for their activities. In the long-term, if the trends are not inverted, the Polish civil society and non-governmental organisations will be deprived of the basic characteristics of the sector – independence from those exercising power.

**CIVIL DIALOGUE IS
INSTITUTIONALISED BY THE
PUBLIC BENEFIT ACTIVITIES
COUNCIL, BUT THE BODY IS
NOT REPRESENTATIVE OF
THE SECTOR**

The Public Benefit Activities Council is the only body that institutionalises the principle of civic dialogue and cooperation between the public sector and the third sector. It is a consultative and advisory body of the Minister called the Chairperson of the Public Benefit Committee and complements the institutions implementing the principle of social dialogue. However, this body is heavily overburdened and does not fully meet the requirement of being a place for dialogue between organizations and the government.

¹⁸ <https://oko.press/dotacje-niw-fundacje-zych-ordo-iuris/>

The composition on the non-governmental side is ultimately decided by the Minister, although organizations themselves propose candidates who must prove being strongly supported by other NGOs or their coalitions. The current term of the Council began at the end of 2021. Despite the huge mobilisation by civic organisations, the Minister responsible for the selection chose the Council members at his own discretion.¹⁹ As a result, the Council did not include people who have been working in the NGO sector for years and, among others, the person who won the most votes of support from various NGOs. Due to the lack of elections, the Council does not represent the NGO sector in Poland.

RECOMMENDATIONS

The EU institutions should constantly monitor the situation, in direct contact with Polish NGOs. In addition, they should make even greater use of the position of federations, network organisations or larger groups of the non-governmental sector, including them in the process of systematic assessments of the situation in the country. Strengthening the capacity of independent organisations becomes crucial, which means preparing

¹⁹ PL <https://publicystyka.ngo.pl/na-profilu-rdpp-na-fb-opublikowano-liste-pozarządowych-kandydatów-do-rady>

**ESTABLISH A
PERMANENT POINT OR
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SOCIETY ORGANISATIONS
CAN REPORT VIOLATIONS
OF FUNDAMENTAL
RIGHTS IN INDIVIDUAL
MEMBER STATES ON
A PERMANENT BASIS**

funds available from the level of individual EU institutions so that they are directed not only to projects, but also to the development and building of organisational stability of Polish organisations.

It is also essential to emphasise the need to respect EU law and the principles set out in, inter alia, the Charter of Fundamental Rights by each Member State. It would be advisable for the European Commission not only to carry out its own monitoring of Charter violations and actively encourage Member States to apply the Charter, but also to establish a permanent point or body to which civil society organisations can report violations of fundamental rights in individual Member States on a permanent basis. ■

The interview was carried out on 20 August 2021.

In responding to the omission of organised civil society from the preparation and consultation on the National Recovery and Resilience Plan in Poland, an unofficial coalition of NGOs mobilised to initiate their own series of public hearings. Within a few weeks, the coalition organised the largest ever public hearings in Poland, resulting in a series of 11 public hearings over 11 days, bringing together over 460 speakers (from civil society, local government, trade unions, businesses etc.), and watched by over 20,000 people via livestreams. This award celebrates the determination of NGOs in defending civil dialogue, in bringing social partners and local dignitaries on board, and making their voices audible to decision makers, who recognised the value of the hearings by attending and assuming roles as listeners.

SELF-ORGANISING DEMOCRATIC PROCESSES

CSOs work closer together to raise their voices

Interview with Iwona Janicka, OFOP, National Federation of NGOs

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Can you tell us a bit about the context in which the hearings started? Why did you decide to self-organise and what were the goals of the coalition behind them?

We understood quickly that time was of the essence as we realised that The National Recovery and Resilience Plan for Poland that the government was preparing would not include consultations with civil society. There was no dialogue about the Recovery Plan. We were presented with a final and complete document that only allowed for minor modifications. Therefore, we could not think of that recovery plan as civil society's plan. It was for us a technocratic and political document. We met the deputy minister for EU funds, Ms Małgorzata Jarosińska-Jedynak and

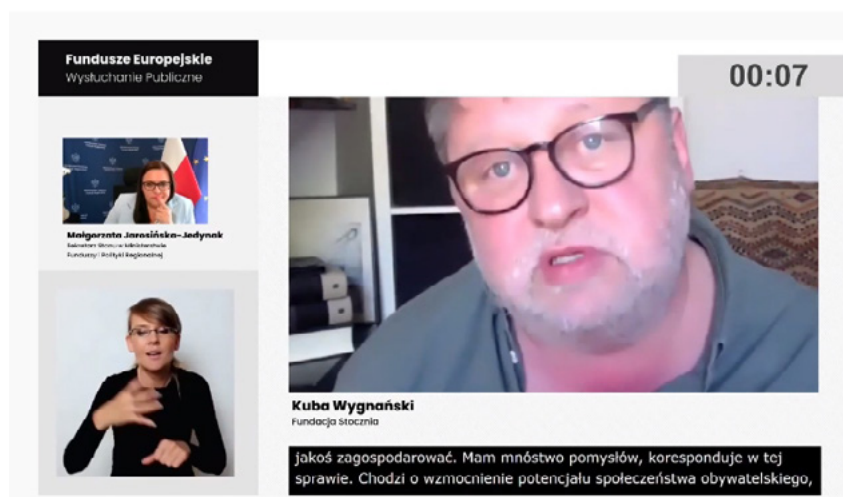


showed that the Code of Conduct for Partnership set out in EU legislation and the basic principles of dialogue were violated. She agreed but could not provide support in this regard. We then decided very quickly to organise on our own hearings to create the consultation process we wanted. First, the health situation forced us to organise ourselves online. Second, we had a very challenging time-frame as we only had two weeks to organise all the sessions. We also encountered other issues among which the fact that we did not have an online platform to hold the sessions, there was a problem of accessibility in relation to access to internet coverage. The pandemic also added personal challenges. Despite all these issues we pulled through and decided that the only way was to make

this possible and show that civil society is strong, even stronger than the government expected.

The goal was both to have a process in which we learn from each other but also to create a collaborative document coming from a consultative process that civil society would recognise as its own. We wanted to achieve a recovery plan by civil society. These consultations included civil

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society in a broad term including social business partners and others.

First of all, we had to fundraise to make this possible and secure a platform that would be easily accessible to ensure the public hearings' sessions. We also wanted to ensure transparency, which is harder for online events. We decided that the speeches will have to last five minutes maximum to allow everyone to speak. Anyone willing to participate could do it via a special form 48 hours before the session. We then grouped those who were willing to speak in line with the European Code of Conduct on the Partnership. The order of speakers was randomly selected.¹ We also ensured that the public hearing was streamed live on Facebook and YouTube to enable anyone to watch it. To increase accessibility, we also had sign language interpretation.

The public hearings were held in cooperation with very committed employees of the Ministry of Funds and Regional Policy under the patronage of the Partnership Development Subcommittee.

Could you tell me more about the partnership agreement that you talked about?

There were two processes running approximately on the same timeframe regarding the EU budgeting. One was about the Partnership Agreement within EU Cohesion Policy 2021-2027, for which the government was required to consult with partners, including civil society in its broader sense, the second was the National Recovery and Resilience Plan for Poland. Both processes

IT WAS IMPORTANT THAT IN THE RECOVERY PLAN AND THESE THEMATIC NATIONAL PROGRAMS THE FUTURE OF YOUTH AND CHILDREN WAS ADDRESSED NOT ONLY IN TERMS OF JOBS BUT ALSO REGARDING OTHER ISSUES FACED DURING PANDEMIC AND BEYOND

were quite interlinked in terms of the content included and the analysis needed from our side. It appeared necessary for us to feed into both in order to provide a comprehensive and useful contribution. Therefore, we decided to have five public hearings sessions about the National Recovery Plan and to use the same model for nine hearings regarding the Partnership Agreement and related national programs. For the partnership agreement, we needed to provide nine national programs on thematic areas such as social issues, environment digitization, fisheries...

Working on both these processes almost simultaneously and in a short timeframe required a lot of work on our side but we decided to do it to provide a meaningful contribution that addressed the underlying causes of the issues that were highlighted during the COVID-19 crisis.

It was important for us that the provisions were consistent – the speakers emphasized that the demarcation line between the Reconstruction Fund and the Cohesion Policy programs is important. Through our contributions we also tried to highlight the role that civil society played during the pandemic. In fact, we could say that NGOs were like the local fire brigade, on which the government relied. For instance, we underlined the role that youth played in remote areas by biking to provide isolated elderly people with the medicine and basic food they needed. Young volunteers walked with the dogs. Meanwhile, there was a situation when the government forbade young people to leave their homes before 4 p.m. (without adult supervision), which was socially incomprehensible and disrupted the process of providing civic support. Therefore, for us it was important that in the Recovery plan and these thematic national programs the future of youth and children was addressed not only in terms of jobs but also regarding other issues faced during pandemic and beyond.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0240&from=PL>

What did you want to get out of the hearings?

We had no illusions about the way the government operated and its potential response to comments and proposed changes to the Plan, but we wanted to maintain goodwill. We thought that civil society's point of view should be captured in a document. We were very careful in our approach and relied on Union Regulations, in particular the European Code of Conduct on the Partnership.

We also criticized the government's plan which did not appear to us as an answer to a crisis, it was not a plan for our future, and it did not address the challenges that we were facing. The government's plan would only apply "bandages instead of an operation" without addressing the underlying causes and effects of the crisis. Addressing these shortcomings was also a motivation factor for us. We wanted to provide solutions for deeply rooted issues. In order to do so, we started from the beginning.

What was the result?

During the hearings, we received more than 2500 propositions and recommendations from very different point of views, experts, local actors and authorities, citizens, national level actors, students, trade unions and social partners... To ensure this diversity in the participation

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we had to be flexible and adapt the agenda on the spot. This diversity allowed everybody to hear about many issues that we were not aware of in the past. Waldemar Buda, the minister of Funds and Regional Policy, that was present was impressed by the amount of information and point of views he was hearing, he used the term "information bomb".

We relied on a Union Regulation to ensure that our consultations took place and included the presence of national representatives and local authority representatives. That also meant ensuring that all actors are treated equally as partners as the Regulation puts economic and social partners as well as NGOs on the same level for collaboration.

We did not have a completely new version of the plan, but on the basis of the comments submitted to plan, we prepared a completely new, separate social component taking into account the scope, in particular the social and territorial cohesion; health, and economic, social and institutional resilience, with the aim of, inter alia, increasing crisis preparedness and crisis response capacity; and policies for the next generation, children and the youth, such as education and skills.

What do you think is the biggest success of the public hearings?

One of the main successes is related to the media. Apart from the independent media channels, the public hearings were also covered by the mainstream media which traditionally only cooperates with the government. I think this was an important achievement as it allowed the hearings to reach outside of the "traditional NGOs bubble". This coverage meant that the public hearings were accessible to a broader audience and a different public from the usual target.

But... the fact that we had to collaborate with the government questioned us and me personally on an ethical level. We had to be careful. We had very transparent

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rules so that they would be legible to everyone. I was afraid of being manipulated, which added a large amount of stress to the already difficult work. Being selected to the European Civic Pride Award was a timely and welcomed celebration.

The most important success is that we could all hear each other, with a feeling of mutual respect and eagerness to get to know different points of view. We want to cooperate further.

Did you have any chance to see if anything that you said during these people public hearing was taken upon by the decision-makers and authorities?

There were only few sentences that I could see were taken from the discussions held during the public hearings. However, often the ideas that were included were not assigned a budget, whereas other actions have clear assigned budget for implementation. Additionally, these sentences often described the climate around the issue and do not necessarily formulate a policy target.

Looking forward, we are concerned about the monitoring of funds, which must be independent. The government actually wants to secure a majority in the monitoring committee, which in the case of the general regime of conditionality for the protection of the Union budget, is a cause for considerable concern. We are afraid that the monitoring committee will be a façade.

WE PREPARED A COMPLETELY NEW, SEPARATE SOCIAL COMPONENT TAKING INTO ACCOUNT THE SCOPE, IN PARTICULAR THE SOCIAL AND TERRITORIAL COHESION; HEALTH, AND ECONOMIC, SOCIAL AND INSTITUTIONAL RESILIENCE

We insisted on an equal distribution of seats in the committee, where 1/4 of the seats are allocated to each group (government and local authorities and science, social and economic partners, NGOs), and on the fact that the government should not have a majority.

In addition, the committee must include independent NGOs, including those dealing with horizontal principles – the Charter of Fundamental Rights, sustainable development (to better implement the assumptions of the European Green Deal & Fit for 55), equal opportunities and non-discrimination, gender mainstreaming and accessibility for people with disabilities & needs.

During the hearings, you collaborated with social partners and local authorities. Do you see other opportunities to collaborate with them? How did the collaboration go?

This also requires a lot of effort and finesse in our interactions with the authorities. Organizing these public hearings allowed us to get to know other actors and to collaborate at a technical level with them.



These hearings stimulated our interactions among civil society actors. Indeed, by bringing people together, this process allowed us to build trust so we can really rely on each other for close collaborative work going forward. Additionally, it laid down the foundations for other collaborations with business and social partners as well as with local authorities. I am very pleased that everyone took these hearings seriously.

This experience is very useful now as we need to mobilize quickly and discuss some key issues with the different types of actors.

What can the EU institutions do to prevent the omission of a dialogue with civil society in the preparation and implementation of EU funds, including the National Recovery Plans?

We would need clearly written and binding regulations that require and structure the collaborations between the national governments and civil society regarding decisions such as the Recovery Plan. That would allow us to base our advocacy for implementation as we did for the Partnership Agreement within EU Cohesion

Policy 2021-2027. The Code of Conduct for Partnership is very helpful.

We also need clearer rules of implementation to avoid interpretations by national governments that would disadvantage civil society. For instance, we had a divergence in regards to the interpretation of the provisions of the Article 9 of EU Regulation establishing the European Social Fund Plus (ESF+).

The government interpreted the regulation as establishing that 25% of resources of the ESF+ of national program should be

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included for the capacity building of the social partners and civil society organisations. Whereas we were convinced after reading the regulation that it this applies both to the national program and to any regional program as well.

To resolve the misunderstanding the national government asked the European Commission through an unofficial channel which agreed with the government. However, as it is an unofficial answer, which stops us from contesting it without providing a clear and official answer. Therefore, it would be necessary to have straight forward indications on interpretation and implementation of regulations provided by the European Commission, as it is a heavy burden on civil society to have to contest the government's interpretations.

In this case, we were right, but many weeks passed before we achieved our goals.

What do you think the EU could do to help civil society engage in dialogue at National level, but also at the European level?

It is a difficult question; I understand that the EU must avoid involving itself in an internal and national conflict according to the treaties. However, if I use a metaphor to describe its involvement, I would say that it should act as a parent for certain member states providing a clear guide for conduct and punishing

when necessary. Additionally, it would be interesting if the EU could directly interact with civil society and not have to go through the government, especially when it comes to programming and monitoring European funds. It would provide a freer and a more cooperative system for the management of the funds. It would also avoid unfair situations where civil society finds itself unable to access EU funds because of the political decisions of their government. Especially, when this civil society does not share the views of the government and is active in denouncing its actions. This would of course require the setting up of guiding rules, maybe at regional level to ensure an oversight. ■

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